



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

CASE NO: 086-19

APPLICANT/OWNER: John W. and Maura W. Leddy

106 Overlook Drive, East Raynham, Massachusetts

SUBJECT PROPERTY: 105 Silver Beach Avenue, North Falmouth, Massachusetts

Assessor's Map: Map 04A Section 32 Parcel 000 Lot 364

DEED/CERTIFICATE: Book 28245, Page 29

SUMMARY: Special Permit Granted

PROCEDURAL HISTORY

1. On December 10, 2019 an application was filed with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-3 of the General Code of the Town of Falmouth, to reconstruct the dwelling at 25 Wood Neck Road, West Falmouth, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the tax list.
3. There was no previous Zoning Board of Appeals case for the Premises.
4. The advertised public hearing was opened on February 6, 2020. Board members present included Terrence J. Hurrie, Robert B. Dugan, Edward Van Keuren, Mary P. Barry and James T. Morse.
5. Attorney Kevin P. Klauer, II, Ament Klauer LLP, 39 Town Hall Square, Falmouth, Massachusetts, appeared before the Board, representing the Applicant.

6. The public hearing was closed on February 6, 2020, following a motion made by Mr. Dugan, seconded by Mr. Van Keuren, and unanimously voted. Minutes of the hearing(s) are on file with the Zoning Board of Appeals.

7. The following documents and information are on file in the office of the Zoning Board of Appeals at Town Hall, as set forth below:

Letters/E-mails/Information from Applicant/Representative(s)

- Thomas J. Bunker, project engineer / representative filed a special permit application, filing fee, owner authorization and appropriate plans
- Updated Owner Authorization letter dated February 3, 2020 submitted by Attorney Klauer
- Bulk / Lot Coverage Calculations dated February 3, 2020 submitted by Attorney Klauer

Letters/Referrals/E-mails from Town Departments

- Referral from the Health Department dated December 12, 2019 signed by Scott McGann, Health Agent stating: *Property on sewer – refer to Wastewater Dept.*
- Referral from Planning dated December 12, 2019 – no comment
- Referral from the Fire Department dated December 16, 2019 – no comment
- Referral from Assessor's dated December 17, 2019 - no comment
- Referral from Conservation dated January 10, 2020, signed by conservation agent stating; *Approved via RDA 12/18/19; attached.*
- Email to representative dated December 11, 2019 regarding meeting date and lot coverage calculations
- Email to representative dated January 28, 2020 in regards to lot coverage comparison worksheet
- Memo from the Engineering Department dated January 30, 2020 signed by Scott Schluter, PE with standard comments in addition to obtaining approved driveway permit, erosion and sediment controls, required apron for each driveway, comply with §99-1 Affixing of legible numbers required; time limit for compliance.

Letters/E-mails from Abutters/Interested Parties

- Email dated January 28, 2020 from Bruce Parkinson, 109 Silver Beach Avenue, North Falmouth
- Letter and attachments from Joseph Keenan – not dated – 107 Silver Beach Avenue
- Letter from Ron Johnson, dated February 3, 2020 – 84 Arlington Street, North Falmouth
- Letter from Peter Lind, dated February 3, 2020 – 137 Silver Beach Avenue, North Falmouth
- Letter from Dotty and Henry Buonomo, dated February 2, 2020 – 110 Silver Beach Avenue, North Falmouth
- Letter from Meg and Tom O'Brien, dated February 4, 2020 – 96 Silver Beach Avenue, North Falmouth
- Letter from Ronald V. Fernandes – 192 Crystal Spring Avenue, North Falmouth
- Letter from Robert E. and Sueanne M. Bouchie - 136 Silver Beach Avenue, North Falmouth
- Letter from Kevin P. Leddy, - 37 Crystal Spring Avenue, North Falmouth
- Letter from Louis T. Falcone, Jr., dated January 31, 2020 - 20 Cove Road, North Falmouth
- Letter from Michael O'Brien dated February 4, 2020 – 104 Silver Beach Avenue, North Falmouth

- Nine (9) pictures submitted by James Heller, 101 Silver Beach Avenue, North Falmouth (submitted at hearing 2/6/20)

Plans submitted by Applicant/Applicant's Representative

- 'Existing Floor Plan' 105 Silver Beach Avenue, Falmouth – plan is not dated or authored; Board dated 'received' stamp of December 10, 2019;
- 'Plot Plan – Proposed House Reconstruction' dated December 2, 2019 prepared for Maura and John Leddy, 105 Silver Beach Avenue, North Falmouth, Massachusetts as drawn by BSS Design, 165 Katharine Lee Bates Road, Falmouth, Massachusetts – plan is stamped and signed by Thomas J. Bunker, PLS; and
- 'Custom Three Bedroom Home - Elevations' dated October 30, 2019 page 1 of 7, 'Custom Three Bedroom Home – Floor Plans' dated October 30, 2019 page 2 of 7 – all plans were drawn by JB Designs, P.O. Box 285 West Barnstable, Ma – plans were stamped and signed by Richard P. Anderson, PE 11/14/19

Hearing:

The Notice of Hearing and referrals were read into the record; it was noted that there were 3 letters of opposition and 8 letters of support in the record.

Appearing before the Board was Kevin P. Klauer, II, representing John W. and Maura W. Leddy, (the "Applicants"), owners of 105 Silver Beach Avenue, North Falmouth, Massachusetts (the "Premises") with Thomas Bunker, BSS Design, Inc., 164 Katharine Lee Bates Road, Falmouth, MA. Mr. Klauer, II stated that the Premises is sited in the Single Residence C zoning district, and is close to wetlands, with a wetland buffer area affecting approximately one third of the northerly area of the lot. The Premises is also in the Average Elevation (AE) 15 flood zone. The Premises is nonconforming in that it comprises 5,228 square feet of area in a district now requiring a minimum 40,000 square feet; the lot has 55 feet of street frontage, in a district requiring a minimum of 100 feet. The existing dwelling is nonconforming, where it is sited approximately 9.7 feet from the street, with a landing and steps as close as 4.7 feet from the street, in a district requiring a 25-foot setback from the street. The Premises is also improved by a shed, sited in the northeast corner of the lot, approximately 2 feet from the north and less than 1 foot from the east lot lines, in a district requiring a 10-foot setback from lot lines for sheds over 100 square feet. The existing lot coverage by structures is 27.98 %, where lot coverage by structures is limited to a maximum of 25% with a special permit.

Mr. Klauer II reported that the Applicants have owned the property for an extended time. The proposed replacement dwelling will comprise 34.5 feet in height, in order to comply with flood zone requirements. The reconstruction will provide more habitable space, and all mechanicals will be above the flood zone. The elevated dwelling will allow for garage space underneath. Mr. Klauer II stated that the nonconforming shed will be removed, and that the front setback from the street will be improved to 20.3 feet, with steps and a deck that will be 5 feet from the street. The side and rear lot line setbacks will comply with the 10-foot district requirement, and the lot coverage by structure will be slightly improved.

James Heller, 101 Silver Beach Avenue, immediate abutter, appeared before the Board, and stated concern regarding the proposed increase in height and bulk. He noted that the photographs shown by Mr. Klauer II of larger houses in the area are actually on larger lots in less dense areas. Mr. Heller submitted photographs he took of the existing dwelling and abutting dwellings, including the proximity of stakes for the proposed footprint, into the record. He stated he is concerned about the overpowering design, and his lack of privacy from the second and third floors, which would look into his outdoor shower and yard. Mr. Heller expressed concern about the adverse impact of bulk on future lack of sunlight, reporting that this proposal would be an adverse impact to the immediate area.

Mr. Klauer stated that there were no view rights, and that the proposed dwelling falls within the range of the neighborhood. He noted that the dwelling will be in compliance with flood zone standards, with the benefit of being able to park under the dwelling. Maura Leddy confirmed that the immediate abutting dwellings comprise a single story.

No one further appeared on the application. Following a motion made by Mr. Dugan, and seconded by Mr. Van Keuren, the hearing was closed, and the Board proceeded to deliberate.

Findings:

The subject lot, 105 Silver Beach Avenue, North Falmouth, Massachusetts (the "Premises") is sited in the Single Residence C zoning district, the AE 15 flood zone, the Wild Pond Coastal Pond Overlay District, and has a wetland buffer area covering approximately one third of the northerly area of the lot. The Premises is nonconforming in that it comprises 5,228 square feet of area in a district now requiring a minimum 40,000 square feet; the lot has 55 feet of street frontage, in a district requiring a minimum of 100 feet. The existing dwelling is nonconforming, where it is sited approximately 9.7 feet from the street, with a landing and steps as close as 4.7 feet from the street, in a district requiring a 25-foot setback from the street. The Premises is also improved by a shed, sited in the northeast corner of the lot, approximately 2 feet from the northerly rear lot line and less than 1 foot from the easterly side lot line, in a district requiring a 10-foot setback from lot lines for sheds over 100 square feet. The existing lot coverage by structures is 27.98 %, where lot coverage by structures is limited to a maximum of 25% with a special permit.

The replacement dwelling will comprise 34.5 feet in height, which is within the 35-foot height limit of the By-Law, in order to comply with flood zone requirements, and locate house mechanical equipment and habitable space above the flood zone. The dwelling will also be elevated to place garage space underneath. The front setback from the street will be improved to 20.3 feet, with steps and a deck that will be 5 feet from the street. The dwelling will be sited 10.5 from the east, 28.9 feet from the north, and 10.4 feet from the west side lot lines, in compliance with the district side and rear setback requirement of 10 feet. The lot coverage by structure will be slightly improved to 27.96% from 27.98%. Lot coverage by structures/parking/paving will be improved to 27.96% from 34.18%.

Given the AE 15 flood zone and wetland area in the rear (northerly side) of the dwelling, the Board determined that it was not reasonable to site the dwelling further toward the northerly side of the lot. Where there is no on-street parking allowed, the Board determined that it was practical elevate the dwelling, to provide for parking underneath. The nonconforming shed will be removed, which is within

Zone B of a wetland. The Board determined that it was an improvement to remove this shed, which will also decrease the impervious coverage by 245 square feet within Zone B of the wetland. The Board also found that there would be gutters and piping to direct roof runoff to drywells at the northerly side of the dwelling.

In addition to the above findings, the Board finds that the proposed dwelling will be in harmony with the general purpose and intent of the By-Law, and does include consideration, as set forth in Section 240-216 of the Code of Falmouth.

The Zoning Board of Appeals weighed the effects of the reconstruction at the Premises, as discussed herein, and found that the beneficial effects of granting this special permit outweigh any negative effects there may be. The Board further found that the granting of this special permit will be in harmony with the purpose and intent of the Zoning By-Law, and that the change, extension or alteration shall not be substantially more detrimental to the neighborhood, and will not nullify or substantially derogate from the intent or purpose of the By-Law.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under Section(s) 240-3 of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Van Keuren, voted unanimously, to grant a special permit, for the replacement dwelling at 105 Silver Beach Avenue, Massachusetts (the "Premises"). This special permit shall be subject to the following Conditions:

1. The construction shall be substantially as shown on the plans:
 - 'Plot Plan – Proposed House Reconstruction' dated December 2, 2019 prepared for Maura and John Leddy, 105 Silver Beach Avenue, North Falmouth, Massachusetts as drawn by BSS Design, 165 Katharine Lee Bates Road, Falmouth, Massachusetts – plan is stamped and signed by Thomas J. Bunker, PLS; and
 - 'Custom Three Bedroom Home - Elevations' dated October 30, 2019 page 1 of 7, 'Custom Three Bedroom Home – Floor Plans' dated October 30, 2019 page 2 of 7 – all plans were drawn by JB Designs, P.O. Box 285 West Barnstable, Ma – plans were stamped and signed by Richard P. Anderson, PE 11/14/19
2. The height of the structure shall be certified at framing, and reported to the Building Department and Zoning Board of Appeals, to insure that it will not exceed the height of 34 feet, 5 inches.
3. The dwelling shall be sited 20.3 feet from the street, with a deck and stairs being 5 feet from the street (south). The dwelling shall be 10.5 feet from the east, 28.9 feet from the north, and 10.4 feet from the west. The lot coverage by structures will be 27.96 %; lot coverage by structures/parking/paving will be 27.96 %. The shed at the northeast shall be removed. The Applicant shall provide an As-Built survey to the Zoning Board of Appeals containing certification that the dwelling is in compliance with the approved setback and lot coverage dimensions.
4. The Applicant shall obtain an approved Driveway permit, and post any required bond with the Engineering Division, prior to the start of construction, and shall complete the work as approved. Erosion and sediment controls will be required for the gravel construction entrance. Additionally, all staging of materials and construction vehicles shall be within the Premises.

5. The limit of work line shall be as approved by the Conservation Agent or Engineering Department. The project shall not direct any stormwater off the Premises.

6. The Premises is limited to three bedrooms within the municipal sewer system.

7. The address of the Premises shall be properly posted in compliance with §99-1, prior to a final Certificate of Occupancy.

8. Any deviation, no matter how minor, from plans submitted and approved by this Board, shall be submitted to the Board for approval, prior to implementation of said change. The Zoning Administrator may make a determination as to whether the changes are minor in nature, and can be approved administratively, or whether they will require a hearing for an amendment. Changes made prior to an approval may be subject to a full hearing, and are at risk that the ZBA may deny the request.

9. This permit shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days has elapsed, after the decision had been filed in the office of the Town Clerk with no appeal being filed, or an appeal has been filed within such time, is recorded in Barnstable Registry of Deeds. (Any person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit, and that any construction performed under the permit may be ordered undone.)

10. This special permit shall lapse three years from the date on which this decision is filed in the Town Clerk's office, if a substantial use of the Special Permit has not sooner commenced, except for good cause, as determined by the Zoning Board of Appeals.

11. The Zoning Board of Appeals reserves the right to recall the Applicant, with such notice as the Board deems proper, to discuss any unresolved matters of concern.

Action: The Zoning Board of Appeals, by the signature below, certifies the vote of the Board, as follows, for the above referenced hearing:

Vote: 4 to 1 to grant the Special Permit, as represented to the Board, based on the Findings stated herein, and with the above stated Conditions.

The Zoning Board of Appeals, by the signature below, certifies the vote of the Board:



Terrence J. Hurrie, Falmouth Zoning Board of Appeals

RECEIVED
FEB 21, 2020 AM 9:01
TOWN CLERK

Date Filed With Town Clerk