



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

CASE NO: 085-19

APPLICANT/OWNER: Adam F. Chase and Dean F. Chase
2 Avery Street, Apt. 24D, Boston, Massachusetts

SUBJECT PROPERTY: 118 Bywater Court, Falmouth, Massachusetts
Assessor's Map: Map 47 Section 05 Parcel 030 Lot 031

DEED/CERTIFICATE: Certificate No. 201007

SUMMARY: Special Permit Granted

PROCEDURAL HISTORY

1. On December 6, 2019 an application was filed with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-3 C. of the General Code of the Town of Falmouth, to add habitable space on the second floor, on a lot less than 20,000 square feet, at 118 Bywater Court, 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. Thomas J. Bunker, BSS Design, 164 Katharine Lee Bates Road, 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. Morse, 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 an application for a special permit, filing fee, owner authorization and appropriate plans; application was filed with the Town Clerks office December 10,2019
- Building Bulk / Lot Coverage calculations dated January 30,2020

Letters/Referrals/E-mails from Town Departments

- Email dated December 11, 2019 from ZBA staff to representative regarding meeting date and plot plan information
- Email referral dated December 12, 2019 from Wastewater Superintendent, Amy Lowell stating: *This property is connected to the sewer and is in Town's original sewer service area (not New Silver Beach). A flow neutral bylaw variance is not required because increasing to 3 bedrooms is proposed (increasing beyond 4 bedrooms would trigger flow neutral bylaw variance requirement). It appears from the plan that no sewer connection modification permit would be required either (no changes required to existing sewer connection, only interior plumbing changes).*
- Referral from the Health Department dated December 12, 2019 signed by Scott McGann, Health Agent stating: *Property is on Town sewer.*
- Referral from Planning dated December 11, 2019 – no comment
- Referral from the Fire Department dated December 12, 2019 – no comment
- Referral from the Assessor's dated December 17, 2019 – no comment
- Referral from Conservation dated January 10, 2020, signed by Conservation staff stating: *Approved under RDA on 11/20/2019. Attached.*
- Memo from the Engineering Department dated January 15, 2020 signed by Scott Schluter, PE with standard comments.

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

Letters/E-mails from Abutters/Interested Parties

None

Plans submitted by Applicant/Applicant's Representative

- 'Plot Plan – Existing House' dated November 5, 2019 prepared for Adam Chase 118 Bywater Court, 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
- 'Cover Sheet' sheet A000, 'Existing and Proposed Floor Plans' sheet A120, 'Existing and Proposed Floor Plans' sheet A121, 'Existing and Proposed Elevations' sheet A220, 'Existing and Proposed Elevations' sheet A222, 'Existing and Proposed Elevations' sheet A223, 'Existing and Proposed Elevations' sheet A224, all plans dated December 02, 2019 Chase Residence 118 Bywater Court as drawn by Jill Neubauer Architects, 15 Depot Avenue, Falmouth, Ma

Hearing:

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

Appearing before the Board was Thomas J. Bunker, representing, Adam F. Chase and Dean F. Chase (the "Applicants"), owners of 118 Bywater Court, Falmouth, Massachusetts (the "Premises"). Mr. Bunker stated that they are proposing an expansion of habitable space on the second floor of an existing nonconforming dwelling. The lot coverage by structures will remain at 27.11%, and lot coverage by structures/parking/paving will remain at 30.71%. The height of the dwelling is 25.5 feet; the new addition will be approximately two feet lower. The average elevation for the Premises is 12 feet, but the Premises is not in a velocity district. The addition will run from front to back (south to north), adding approximately 230 square feet of area, on the westerly side of the dwelling. It was stated that where the roofline is lowered, the addition does not add to the perceived bulk, and that the house fits within the neighboring dwellings.

No one further appeared on the application. Mr. Dugan made a motion to close the hearing, which was seconded by Mr. Morse, and unanimously voted.

Findings:

The subject lot, 118 Bywater Court, Falmouth, Massachusetts (the "Premises") is sited in the Single Residence C zoning district, the AE 12 flood zone, and the wind-borne debris region. The Premises is nonconforming in that it comprises 8,999 square feet of area in a district now requiring a minimum 40,000 square feet. The lot has 75 feet of street frontage, in a district requiring a minimum of 100 feet. The existing dwelling is sited 19.4 feet from the street, in a district requiring a minimum 25-foot setback from the street, and 15.1 feet from the east, 42.3 feet from the north, and 7.2 feet from the west, in a district requiring a 10-foot setback from side and rear lot lines. The existing lot coverage by structures is 27.11 %, which will remain the same; (which, as existing, is nonconforming, as it exceeds the maximum of 25% lot coverage by special permit). The lot coverage by structures/parking/paving is 30.71%, and which will remain unchanged. According to neighborhood lot coverage submitted, there are five other dwellings in the neighboring area that have lot coverages exceeding that of the Premises. There was no opposition expressed.

The Board found that the Premises is on the sewer system, and will comprise three bedrooms. There will be no new nonconformities created, and the addition will be set within the roof line, to minimize perceived bulk. The size of the proposal fits within the neighborhood, and the Conservation Commission approved a Request for Determination of Applicability.

In addition to the above findings, the Board finds that the proposed addition 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 addition 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 C. of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Morse, voted unanimously, to grant a special permit, for the addition at 118 Bywater Court, Falmouth, 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 – Existing House' dated November 5, 2019 prepared for Adam Chase 118 Bywater Court, 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
 - 'Cover Sheet' sheet A000, 'Existing and Proposed Floor Plans' sheet A120, 'Existing and Proposed Floor Plans' sheet A121, 'Existing and Proposed Elevations' sheet A220, 'Existing and Proposed Elevations' sheet A222, 'Existing and Proposed Elevations' sheet A223, 'Existing and Proposed Elevations' sheet A224, all plans dated December 02, 2019 Chase Residence 118 Bywater Court as drawn by Jill Neubauer Architects, 15 Depot Avenue, Falmouth, Ma
2. The lot coverage by structures will be 27.11 %; lot coverage by structures/parking/paving will be 30.71 %. The height will remain at 25.5 feet, with the addition approximately two feet lower.
3. The project shall not direct any stormwater runoff from the Premises, and Applicant shall provide stormwater infiltration mitigation with gutters to drywells, as approved by Engineering. Additionally all staging of materials and construction vehicles shall be within the Premises.
4. The Premises is allowed three bedrooms within the municipal sewer system.
5. Applicant is required to provide confirmation from a structural engineer to certify the ability of the foundation to support a second floor.
6. 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.

7. 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.)

8. 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.

9. 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: 5 to 0 to grant the Special Permit, as represented to the Board, based on the Findings stated herein, and with the above stated Conditions.



Robert B. Dugan, Falmouth Zoning Board of Appeals

RECEIVED
FEB 24, 2020 PM 3:14
TOWN CLERK

Date Filed With Town Clerk