

TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

CASE NO: 020-20

APPLICANT/OWNER: Richard K. Bradshaw and Mary Ann Bradshaw, Trustees of the Mary Ann Bradshaw Revocable Trust, 61 Fruit Street, Norfolk, Massachusetts

SUBJECT PROPERTY: 8 Elysian Avenue, Falmouth, Massachusetts

Assessor's Map: Map 46B Section 29 Parcel 008 Lot 008

DEED/CERTIFICATE: Book 20418, Page 81

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. On March 20, 2020, an application was filed with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-3.(C) and 240-69 E. of the General Code of the Town of Falmouth, to allow a second floor addition at 8 Elysian Avenue, 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 May 14, 2020. Board members present included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Edwin Zylinski.

5. Kevin P. Klauer II, Ament Klauer LLP, 59 Town Hall Square, Falmouth, MA, appeared before the Board on the application.
6. The public hearing was closed on May 14, 2020, following 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)

- Attorney Klauer submitted an application for a special permit, filing fee, appropriate plans and supporting documents; application was filed with the Town Clerk on March 20, 2020
- Owner authorization dated March 6, 2020
- Lot Comparison Worksheet not dated – Board date ‘received’ stamp of March 20, 2020

Letters/Referrals/E-mails from Town Departments

- Referral dated March 25, 2020 from the Fire Department– no comment
- Referral dated March 26, 2020 from the Planning Department – no comment
- Referral dated March 27, 2020 from the Water Department – not applicable
- Referral dated March 31, 2020 from the Assessors signed by Patricia Favulli, Director: *Includes lots 8 and 10*
- Email dated May 14, 2020 from Amy Lowell, Wastewater Superintendent – *The property is a 7,500s/f lot in a sewer area (LPSSA). The proposed plan includes 4 rooms labeled as bedrooms. An increase up to 4 bedrooms in a sewer area is allowed by right under the flow neutral bylaw. There are 2 rooms labeled ‘living room. The second ‘living room’ is upstairs. It looks to me like it meets the Title 5 definition of a bedroom. Revised comments dated May 14, 2020 – based on the information provided by Kevin, the second floor living room is not a bedroom and the proposed plan will not require a flow neutral bylaw variance hearing*

Letters/E-mails from Abutters/Interested Parties

- Email dated May 14, 2020 from Edgar Gadbois

Plans submitted by Applicant/Applicant’s Representative

- ‘Plot Plan – Proposed Second Floor’ dated March 13, 2020 prepared for Maryann Bradshaw, 8 Elysian Avenue, Falmouth Heights, Massachusetts as drawn by BSS Design, Inc., 164 Katharine Lee Bates Road, Falmouth, Massachusetts – plan is stamped and signed by Thomas Jackson Bunker, PLS; and
- ‘Cover’ sheet A0.0, ‘Existing Basement Demo Plan’ sheet A0.1, ‘Existing First Floor Demo Plan’ sheet A0.2, ‘Existing Attic Demo Plan’ sheet A0.3, ‘Existing Demo Elevations’ sheet A0.4, ‘Existing Demo Elevations Cont.’ sheet A.0.5, ‘Proposed Basement Plan’ sheet A1.0, ‘Proposed First Floor Plan’ sheet A1.1, ‘Proposed Second Floor Plan’ sheet A1.2, ‘Proposed Attic Plan’ sheet A1.3, ‘Proposed Elevations’ sheet A2.1, ‘Proposed Elevations Cont.’ sheet A2.2, ‘Window/Door Schedules’ sheet A3.1, all plans are dated November 21, 2019 – plans are not stamped or signed

Hearing:

The Notice of Hearing and referrals were read into the record.

Appearing before the Board was Kevin Klauer, representing Richard K. Bradshaw and Mary Ann Bradshaw, Trustees of the Mary Ann Bradshaw Revocable Trust, 61 Fruit Street, Norfolk, Massachusetts (the "Applicants"). Mr. Klauer reported that 8 Elysian Avenue, Falmouth, Massachusetts (the "Premises") comprises 7,584 square feet of area, located within the Single Residence C zoning district. The Premises is improved by a three-bedroom dwelling and a detached garage with a total footprint of 1,836 square feet. He reported that the ridge height is 19.9 feet. Mr. Klauer stated that the Premises is nonconforming at 22.7 feet from Elysian Avenue at the west, and 11.6 feet from Nantucket Avenue at the north. The detached garage is nonconforming, sited 8.2 feet from the southerly side lot line, and 5.8 feet from the easterly rear lot line. The lot coverage by structures is also nonconforming at 24.2%. Mr. Klauer stated that the Applicants would like to expand the 2nd floor, including an increase in the bedroom count from 3 to 4. He noted that the footprint of the structure would not change, and that no new nonconformities would be created. The proposed ridge height would be increased to 29.1 feet. Mr. Klauer reported that they conducted a lot coverage worksheet, comparing 49 surrounding properties within a 300-foot radius. He stated that 20 lots have a larger gross floor area, 16 lots have larger footprints, and 34 lots exceed the maximum 20% lot coverage by structures.

The Board noted that the record plot plan references that the height is 30.8 feet, which does not agree with the architectural plan, and that the plot plan and architectural plans should be corrected. The Board inquired about the use of the attic, and was advised that the planned use was storage. Mr. Klauer confirmed that no work was planned for the detached garage. The issue of the second floor living room was raised as to whether it could constitute a bedroom. Mr. Klauer stated that the living room had no privacy, as you would pass through that room to reach a bedroom. Due to the lack of privacy, it cannot constitute a bedroom.

Thomas Bunker, Project engineer, reported that the lot coverage by structures matched the lot coverage by structures/parking/paving as the cars would park in the garage, and that the driveway was a pervious surface. It was also reported that all construction vehicles and stock would be managed within the Premises.

There was no public comment. Mr. Dugan made a motion to close the hearing, which was seconded by Mr. Van Keuren, and unanimously voted.

Findings:

The subject lot, 8 Elysian Avenue, Falmouth, Massachusetts (the "Premises") comprises 7,584 square feet of area, located within the Single Residence C zoning district. The minimum lot size in the district is now required to be 40,000 square feet. The Premises is improved by a three-bedroom dwelling and a detached garage with a total footprint of 1,836 square feet, and a ridge height of 19.9 feet.

1. The Premises is nonconforming sited 22.7 feet from Elysian Avenue at the west, and 11.6 feet from Nantucket Avenue at the north, where the district requires a minimum 25-foot setback from streets. The dwelling is sited 139 feet from the east, and 46.1 feet from the south, in compliance with the 10-foot minimum side lot line setback.

2. The detached garage is nonconforming, sited 8.2 feet from the southerly side lot line, and 5.8 feet from the easterly rear lot line, in a district requiring a minimum 10 foot setback. There will be no change to the garage.
3. The Board found that there would be no increase to the existing nonconformities listed.
4. The lot coverage by structures is also nonconforming at 24.2%; however, upon a grant of a special permit, under By-Law § 240-69. E., lot coverage by structures may be allowed up to 25%.
5. According to the lot comparison sheet provided the Premises fits within the floor area, footprint, and lot coverage calculations of the neighborhood.
6. As part of the second floor expansion, the bedroom count will increase from 3 to 4. The Premises is connected to the Little Pond Sewer Service Area. Four bedrooms is the maximum allowed.
7. There will be an addition to the second floor, but no increase in the footprint. The proposed ridge height was reported to be 29.1 feet; however, the surveyed plot plan listed the height as 30.8 feet.
8. There will be a living room on the second floor; however, it is not a private space, and therefore cannot constitute a bedroom.

In addition to the above findings, the Board finds that the proposed second floor 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 proposed construction 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) 240-69. E and 240-3.C. of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Zylinski, voted unanimously to grant a special permit to construct a second floor addition at 8 Elysian Avenue, Falmouth, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

Conditions:

1. The construction shall be substantially as shown on the plans:
 - 'Plot Plan – Proposed Second Floor' dated March 13, 2020 prepared for Maryann Bradshaw, 8 Elysian Avenue, Falmouth Heights, Massachusetts as drawn by BSS Design, Inc., 164 Katharine Lee Bates Road, Falmouth, Massachusetts – plan is stamped and signed by Thomas Jackson Bunker, PLS; and
 - 'Cover' sheet A0.0, 'Existing Basement Demo Plan' sheet A0.1, 'Existing First Floor Demo Plan' sheet A0.2, 'Existing Attic Demo Plan' sheet A0.3, 'Existing Demo Elevations' sheet A0.4, 'Existing Demo Elevations Cont.' sheet A.0.5, 'Proposed Basement Plan' sheet

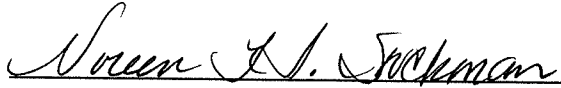
A1.0,'Proposed First Floor Plan' sheet A1.1,'Proposed Second Floor Plan' sheet A1.2,'Proposed Attic Plan' sheet A1.3,'Proposed Elevations' sheet A2.1,'Proposed Elevations Cont.' sheet A2.2,'Window/Door Schedules' sheet A3.1, all plans are dated November 21, 2019 – plans are not stamped or signed.

2. The Applicant shall install gutters and drywells to manage stormwater runoff for minimally the new roof area, in consultation with town Engineering. No stormwater may be directed off the Premises.
3. The Applicant shall properly post the address on the dwelling in compliance with §99-1, prior to final sign off on the building permit.
4. The second floor living room shall not be modified to create privacy.
5. The bedroom count is limited to four bedrooms.
6. There shall be no change to the detached garage.
7. Construction vehicles and materials shall be maintained within the Premises.
8. The architectural plans shall be updated to match the 30.8 feet ridge height.
9. Lot coverage by structures, and total lot coverage will be 24.2%.
10. Statutory appeal periods, and thus the issuance of Certificates of No Appeal, have been temporarily affected by Court Standing Orders, available at www.mass.gov/guides/court-system-response-to-covid-19. Applicants, abutters and interested parties should consult the Standing Orders to determine their next actions. Any decision by a permit holder to proceed is at their own risk, and the permit holder is urged to consult their own legal counsel.
11. Under Section 17 of Chapter 53 of the Acts of 2020, the requirement to record permit decisions with the Registry is suspended for so long as the Registry is "closed or subject to rules and procedures restricting public in-person access." However, such recording will still be required upon the full reopening of the Registry, and a copy shall be provided to the Zoning Board of Appeals. The Barnstable County Registry of Deeds continues to accept filings by postal mail during this period, and permit holders are requested to file for recording through this method to the extent possible.
12. 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 Zoning Board of Appeals may deny the request.

13. 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.

True Copy Attest:



Noreen H. Stockman, Zoning Administrator

RECEIVED
JUN 11, 2020 PM 9:09

TOWN CLERK
Date filed with the Town Clerk