

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

SPECIAL PERMIT NO: 024-17

APPLICANT/OWNER: C. DANIEL HARON and MARY G. HARON of Nashville, TN

SUBJECT PROPERTY: 8 Brockton Street, Teaticket, Massachusetts
Assessor's Map: Map 46A, Section 08, Parcel 000, Lot 049

DEED/CERTIFICATE: Certificate #188205 – Lot 49, Plan 4286A (Plate 17)

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 4, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to construct a second floor addition to create additional habitable space within the pre-existing nonconforming single-family dwelling on subject property known as 8 Brockton Street, Teaticket, MA.
2. Notice was duly given as required by Section 11 of Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.
3. A duly advertised public hearing was opened on May 25, 2017.
4. The public hearing was terminated on May 25, 2017, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate Robert Dugan (sitting as voting member) made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Attorney Kevin P. Klauer, II of Ament Klauer LLP, who reviewed and discussed proposed plans with the Board.
6. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

None

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

- 04/06/2017 E-mail to ZBA staff from Attorney Klauer in response to question regarding Velocity Zone – Attorney Klauer noted that the proposed addition is 191 square feet which is < than the 200 square feet noted in Section 240-82 B. of the Code of Falmouth.
- 05/25/2017 Attorney Klauer submitted a letter during the hearing from Charles W. Mello, P.E. with an opinion that the second floor can be added to the structure without causing distress or exceeding load requirements per the 8th addition of the State Building Code – letter is stamped and signed.

Letters/Referrals/E-mails from Town Departments

- 04/10/2017 Referral submitted to the file from Planning Department staff with no comment
- 04/11/2017 Referral submitted to the file from Director of Assessing that notes subject property includes Lots 49, 50 and 51
- 04/20/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 05/08/2017 Referral submitted to the file from the Town Engineering Department that states: *This application was reviewed only for impacts to public right of ways and public utilities. Brockton Street is a Public right of way in this area. No alterations are proposed to the right of way; any changes within the right of way would require filing a permit with the Engineering Division. Any connections or alterations to public utilities would require permission from the appropriate Town Department. The project must not direct any stormwater runoff to public property, abutters, or right of ways. We recommend adding dry wells, rain garden, or other stormwater measure for the roof because the front yard appears to drain towards Brockton Street which drains towards Little Pond.*

Note: No referral submitted by Building Department to verify square footage addition within Velocity Zone.

Plans submitted by Applicant/Applicant's Representative

“Plot Plan for #8 Brockton Street” prepared for Mary Haron in Falmouth, MA as drawn on a plan by Falmouth Engineering, Inc. – Sheet 1 of 1 dated November 20, 2014 – stamped, signed and dated 12/01/2014 by Gary S. Labrie, PLS – with a Board date ‘received’ stamp of April 04, 2017; and

“Haron House 8 Brockton Street East Falmouth, MA” architectural drawings by Denise D’Ambrosi Bonoli, AIA consisting of nine (9) pages showing existing basement, first floor plan and elevations; and proposed basement, first and second floor plan and elevations – plans not dated – all with a Board date ‘received’ stamp of April 04, 2017.

Hearing:

Attorney Klauer, reviewed the existing site and structural conditions existing and reviewed the proposed second floor addition to the existing dwelling. He noted that the shed on the property will be removed and not replaced, which reduces lot coverage by structures to 19%. The footprint of the dwelling will remain the same. The dwelling, although within the sewer district, will remain a three-bedroom dwelling.

The Board discussed plans with Attorney Klauer including the integrity of the existing foundation and first floor to allow for a second story addition and stormwater runoff. Attorney Klauer said he has a letter from a structural engineer verifying the integrity of the dwelling and submitted it to the file. He further stated, in response to Engineering’s referral, that drywells will be installed on subject property.

Chairman Bielan asked for any public comment in support or opposition of the proposed project. There was no public comment.

Member Foreman made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 - 0.

Chairman Bielan closed the hearing.

FINDINGS

The Board of Appeals, after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

The subject property located at 8 Brockton Street in Teaticket contains 7,200 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District; and is located partially within a Velocity zone. The dwelling on subject property has a nonconforming setback of 5' 1" to the front yard property line off Brockton Street that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The applicant applied under Section(s) 240-3 C of the Code of Falmouth to construct a second floor to the pre-existing nonconforming one-story, three-bedroom dwelling. There will be no increase in the number of bedrooms as proposed. According to the Town GIS map, the property will be attached to the Town Sewer; there was no referral from the Board of Health verifying Town sewer hookup.

Section 240-3 C. of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the proposed second floor addition to the pre-existing nonconforming single-family dwelling will not be substantially more detrimental than what exists as other properties within the general area have been improved similarly. The Board further finds that the proposed second floor addition will not increase the nonconforming setback to the front property line, nor will it create any additional nonconforming setbacks. Furthermore, the Board finds that the proposed second floor addition will enhance the habitable space within the dwelling for its residents.

The Board finds that the plans submitted, specifically the "Plot Plan", shows that the shed in the northeast corner of subject property will be removed and not replaced. The Board further finds that the removal of the shed will reduce the nonconforming lot coverage by structures of 21% to 19.6%, making the lot coverage compliant with Section 240-69 A. of the Code of Falmouth.

The Board finds that the proposed second floor addition will increase the height of the dwelling from 17' to 27', which is below the 35' maximum allowed according to Section 240-70 of the Code of Falmouth. The Board further finds that the subject property is partially within the velocity zone, however the increase to habitable space within the dwelling will increase by 191 square feet which is less than the maximum of 200 square feet pursuant to Section 240- 82 B. of the Code of Falmouth.

The Board finds through testimony by the applicant's representative that no bedrooms are located in existing basement and none will be created. The Board further finds through testimony by the applicant's representative that the applicant is amenable to adding drywells to subject property to insure stormwater runoff is maintained on site.

The Board finds according to a letter submitted to the file by applicant's representative, from Charles W. Mello, P.E. dated May 23, 2017, that Mr. Mello believes the integrity of the existing structure will not be compromised through the proposed second floor addition (see file for letter).

In addition to the above findings, the Board finds that the proposed construction of a second floor to the existing dwelling will be in harmony with the general purpose and intent of this chapter and does include consideration set forth in Section 240-216 of the Code of Falmouth as follows:

A. The site is adequate in terms of size for the proposed second story addition as there will be no increase to the existing footprint so existing nonconforming setback will remain the same and no new nonconforming setbacks will be created; and the plans show the removal of the existing shed with no replacement which will decrease the nonconforming 21% lot coverage by structures to a conforming 19.6% in compliance with Section 240-69 A. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and will maintain a single-family dwelling use through this special permit approval.

C. There will be no impact on traffic flow and safety as there is currently no increase in the number of bedrooms proposed on the property and there is no change in the location of the existing driveway on site.

D. The visual character of the subject property will be improved and there does not appear to be any impact on the neighborhood's visual character as there are several houses in the surrounding area that have been improved such as this; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is for a three-bedroom dwelling according to testimony by the applicant's representative; it was noted that the property has capability to be hooked to the Town sewer. No referral received from Board of Health as verification.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant will have to contact the Town Water Department regarding updating of water system as no referral was received from the Water Department.

G. The proposed second floor addition to the existing dwelling discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. There was no Site Plan Review required by the Planning Board and the referral submitted to the file from the Planning Department had no comment.

I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformities stated herein.

J. The approval of this special permit does not include any affordable housing.

The Board of Appeals has weighed the effects of the proposed second floor addition as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Foreman made a motion to Grant the Special Permit with conditions. Member Van Keuren seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted **5 – 0 to Grant the Special Permit** to C. Daniel Haron and Mary G. Haron (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct a second floor addition to the pre-existing nonconforming single-family dwelling on subject property known as 8 Brockton Street, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The second floor addition, all setbacks, height of structure as proposed, lot coverage and use of the dwelling structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Plot Plan for #8 Brockton Street" prepared for Mary Haron in Falmouth, MA as drawn on a plan by Falmouth Engineering, Inc. – Sheet 1 of 1 dated November 20, 2014 – stamped, signed and dated 12/01/2014 by Gary S. Labrie, PLS – with a Board date 'received' stamp of April 04, 2017; and

- "Haron House 8 Brockton Street East Falmouth, MA" architectural drawings by Denise D'Ambrosi Bonoli, AIA consisting of nine (9) pages showing existing basement, first floor plan and elevations; and proposed basement, first and second floor plan and elevations – plans not dated – all with a Board date 'received' stamp of April 04, 2017.
- 2. The shed in the northeast corner of the lot shall be removed as shown on the plans submitted and noted above and shall not be replaced or relocated on subject property.
- 3. The lot coverage by structures on subject property shall not exceed 19.6% as shown on the plan submitted and noted above.
- 4. The applicant shall install at least two drywells on subject property to insure stormwater runoff is maintained on site. The project engineer will locate the drywells as appropriate on subject property and may increase the number of dry wells if necessary.
- 5. There shall be no more than three (3) bedrooms allowed on subject property. Testimony by the applicant's representative was that the homeowner had no intention to attach to the sewer system at this time, so it is imperative that the bedroom count does not increase. Any additional bedroom or change in floor plan, elevation and use of structure shall require a modification of this special permit.
- 6. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.
- 7. The Applicant shall meet the requirements of the DPW Water Division.
- 8. 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.)
- 9. This 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 Board of Appeals.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: **024-17**

Applicant: **C. DANIEL HARON and MARY G. HARON of Nashville, TN**

Subject Property: **8 Brockton Street, Teaticket, Massachusetts
Map 46A, Section 08, Parcel 000, Lot 049**

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

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



Terrence J. Hurrie, Clerk, Board of Appeals

RECEIVED

JUN - 2 2017

FALMOUTH TOWN CLERK

ap@840am

Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.