

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

SPECIAL PERMIT NO: 067-18

APPLICANT/OWNER: GEORGE HEUFELDER of Falmouth, MA

SUBJECT PROPERTY: 78 Oakwood Avenue, Falmouth, Massachusetts
Assessor's Map: Map 38 Section 06 Parcel 014 Lot 017A

DEED/CERTIFICATE: Book 3741 / Page 307

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of August 2, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C., 240-23 I. and 240-69 E. of the Code of Falmouth to construct a detached accessory apartment, increasing lot coverage by structures over 20% on subject property known as 78 Oakwood Avenue, Falmouth, 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 September 20, 2018.
4. The public hearing was closed on October 11, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, Acting Clerk Ed Van Keuren, Associate Members Gerald Potamis and Robert Dugan (sitting as voting members) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was present at the hearing and 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)

08/02/2018 The applicant submitted to the Board of Appeals an application, plans, fee and a copy of the application to Planning Board for Plan Site Review and Design for the proposed accessory apartment

- 09/10/2018 The applicant submitted revised Site Plan showing removal of existing deck on subject property
- 09/17/2018 The applicant submitted revised elevation plans – changing roof line of proposed structure and photos of subject property and dwelling and other accessory structures in the general area
- 10/12/2018 Email submitted to the file from applicant notifying ZBA staff of the Planning Board meeting held on 10/9/2018 wherein he had questions and acquiesced to the Planning Board’s insistence of shortening the proposed structure to meet proposed amended bylaw to be voted on at November 2018 Town meeting

Letters/Referrals/E-mails from Town Departments

- 08/03/2018 Referral submitted to the file from Board of Health Agent that states: *Current accessory bylaw (3)(f) requires an I/A technology be installed when density exceeds 1br/10,000 sf of lot space. Would not be required if proposed bylaw language changes are approved.*
- 08/07/2018 Referral submitted to the file from Water Department that states: *Per water regulations all occupied structures shall have their own water service. Water service application will have to be submitted and approved for water service line installation as well an access to installed water meter.*
- 08/08/2018 Referral submitted to the file from Director of Assessing that notes property includes Lots 17 and 18A
- 08/08/2018 Referral submitted to the file from Planning Department staff states: *The applicant filed a Site Plan Review application with the Planning Board. Scheduled for 9/11/18 agenda.*
- 08/10/2018 Referral submitted to the file from Conservation Commission with no comment
- 08/16/2018 Referral submitted to the file Falmouth Fire Rescue Department with no comment
- 08/31/2018 Referral submitted to the file Town Engineering Department with standard comments with a note that states they defer to the Falmouth Fire Rescue for adequacy to the detached accessory apartment
- 09/25/2018 ZBA staff submitted a copy of an email to applicant (George Heufelder) regarding dates of proposed accessory apartment bylaw amendment notifying applicant that he applied before publication of the public hearing for bylaw amendment so as not to be held to the proposed bylaw before Town Meeting in November of 2018
- 10/11/2018 Planning Department submitted to the file a draft decision of approval for applicant’s accessory apartment with conditions including that the square footage of said apartment be held to the proposed bylaw for November 2018 Town Meeting vote (footprint of 800 sf – not living space of 800 sf)

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

Plans submitted by Applicant/Applicant's Representative

“Site Plan of Proposed Accessory Apartment” prepared for George & Kathleen T. Heufelder for Lots 17A & 18A, #78 Oakwood Avenue in Falmouth, MA as drawn by Holmes and McGrath, Inc. dated July 11, 2018 with a final revision date of 9/17/18 – Sheet 1 of 1 is stamped and signed by Joel R. Kubick, PLS and has a Board date ‘received’ stamp of September 28, 2018;

“Proposed Accessory Apartment – 78 Oakwood Avenue Map 38 Section 06 Parcel 014 Lot 017A George and Kathleen Heufelder” revised 9/15/18 – ‘Floor Plan’ with a Board date ‘received’ stamp of September 17, 2018; and

“Existing floor plans – 78 Oakwood Avenue – George and Kathy Heufelder” – plans shows existing principal dwelling floor plan and proposed accessory apartment floor plan with calculations of square footage – plan has a Board date ‘received’ stamp of August 2, 2018.

Hearing:

George Heufelder (applicant) reviewed the proposed detached accessory apartment and site conditions with the Board. He explained that there would be no increase in lot coverage as he is removing some sheds and a deck that is currently on-site and that the proposed structures equals out to what is being removed. He informed the Board that he has an application before the Planning Board for Site Plan Review and Design and that the Planning Board continued the meeting as they object to the architectural style proposed for the apartment and feel that it is not in harmony with the neighborhood. He stated that he understands the criteria and requirements of the bylaw allowing the accessory apartment and noted that the apartment will be for him and his wife so that their daughter and family can reside in the main dwelling (they currently share the dwelling). Mr. Heufelder reviewed the landscape plan and fence that will buffer the parking, apartment and keep vehicles headlights from affecting abutters.

Zoning Administrator Budrow explained that if the applicant applied for the accessory apartment prior to the publication of the notice of public hearing for the proposed amended accessory apartment bylaw for November Town Meeting vote, then the applicant will not be held to the amended bylaw relative to the 800 square feet being measured from exterior footprint vs. the current bylaw that allows 800 square feet of living space within an accessory apartment.

Mr. Heufelder stated that if required, he will reduce dimensions to meet the 800 square foot as proposed amendment. He also stated that he will meet the requirements to address nitrogen loading.

The Board discussed plans with Mr. Heufelder.

Chairman Hurrie asked for any public comment in support or opposition of the proposed project.

Member Foreman made a motion to continue the hearing to October 11, 2018 at 6:15 PM. Member Potamis seconded the motion. Motion carried 5 – 0.

Hearing – October 11, 2018: Member Foreman absent – Quorum of four (4) to proceed

George Heufelder (applicant) was present and explained that he had his final meeting with the Planning Board and reviewed the revised architectural style (roof pitch and design) of the detached accessory apartment, added landscaping to shield headlights and additional vegetation. He noted that the Planning Board is holding him to the proposed bylaw that is not yet approved by Town Meeting and regardless of submitting application prior to the notice advertised for said bylaw amendment and that the plan reflects the decrease in square footage.

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

Chairman Hurrie 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 78 Oakwood Avenue in Falmouth contains 12,176 square feet of Residential C zoned land that is located within the Siders Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C., 240-69 E. and 240-23 I. of the Code of Falmouth to construct a detached accessory apartment (Section 240-23 I.) on subject property that is nonconforming due to the setback from existing dwelling to the front property line off Oakwood Avenue that is 21.6' where a 25' setback is required (240-3 C.) pursuant to Section 240-68 A. of the Code of Falmouth. The applicant applied under Section 240-69 E. of the Code of Falmouth to allow lot coverage by structures to exceed the maximum of 20% allowed in a residential zoned district. However, the applicant was able to keep the lot coverage by structures conforming and thereby not need relief under said section. The existing dwelling has four (4) bedrooms and is a one and one-half story structure. The applicant is proposing to relocate one of the four (4) existing bedrooms in dwelling to the proposed accessory structure on subject property so that there will be no increase in the number of bedrooms on said property. The proposed accessory apartment will be a one-story, one-bedroom structure with an unfinished basement.

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 detached accessory apartment will not be substantially more detrimental than what exists as the detached apartment will not create any new nonconformities, it will not impact the existing nonconforming front yard setback and it will not increase lot coverage by structures above the 20% maximum allowed pursuant to Section 240-69 A. of the Code of Falmouth. The Board further finds that the applicant's intent is to reside in the proposed accessory apartment to allow their child's family to reside in the main dwelling as is the intent of the bylaw. Furthermore, the

Board finds that the proposed detached accessory apartment is in keeping with the character of the neighborhood and that the impact to said neighborhood will be minimal through this change.

Section 240-23 I. of the Code of Falmouth allows the Board of Appeals to issue a special permit for a detached accessory apartment if the criteria set forth in sub-sections (1) through (7) of said bylaw are met.

The Board finds through testimony by the applicant that he is aware of the criteria of the bylaw and will comply with all requirements of the bylaw. The Board further finds that the applicant has been before the Planning Board pursuant to sub-section (4), (a) and (b) and has received a 'draft' decision affirming the proposed accessory apartment (see file for draft received from Town Planner Thomas Bott).

The Board finds that the Planning Board asked the applicant to meet the criteria of square footage that is proposed in an amended bylaw for accessory apartments that will be voted at the November 2018 Town Meeting (see finding above that applicant applied prior to advertisement of public hearing for bylaw amendment); the applicant acquiesced and therefore the Board feels that if the applicant is being held to one standard of the proposed bylaw that the applicant also be allowed the same courtesy as to proposed amendment for septic system (3)(i) "*.....Properties that preexist with a density greater than one (1) bedroom per ten thousand (10,000) square feet in a Coastal Pond Overlay District can maintain their existing bedroom count but cannot increase.*"; the applicant designs systems and is amenable to having an I/A system on subject property.

The Board finds that the applicant heard and reviewed comments and concerns made by abutters and has taken care with lighting, landscaping and fencing so as not to impact any abutting property. The Board further finds that the applicant has submitted revised plans, noted herein, based on Planning Board's decision.

In addition to the above findings, the Board finds that the proposed detached accessory apartment 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 detached accessory apartment as it will not create any new nonconformities and subject property and it will not impact the existing nonconforming front yard setback.

B. The site is suitable for the proposed use as the property is zoned residential and is allowed by special permit from the Board of Appeals to have a detached accessory apartment as set forth in Section 240-23 I. of the Code of Falmouth as long as said apartment maintains compliance with said section and remains accessory to the primary dwelling on subject property.

C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms 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 will be approved by the Board of Health if required and said approval will be given prior to the issuance of a building permit for the proposed accessory apartment approved herein.

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.

G. The proposed detached accessory apartment discussed and represented herein will aid in the supply of affordable housing in Falmouth in that it allows a family of three (3) generations to co-existing and reside on subject property. The accessory apartment approved herein will not be included on the Town's subsidized housing inventory.

H. There was Site Plan Review and Design Review by the Planning Board as required in Section 240-23 I. of the Code of Falmouth and the 'draft' decision from the Planning Board has been submitted to the file.

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 units on the Town's subsidized housing inventory.

The Board of Appeals has weighed the effects of the proposed detached accessory apartment 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 Dugan 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 **4 – 0 to Grant the Special Permit** to George Heufelder (herein referred to as Applicant) under Section(s) 240-3 C. and 240-23 I. of the Code of Falmouth to construct a detached accessory apartment on subject property known as 78 Oakwood Avenue, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The detached accessory apartment, all setbacks, lot coverage, height of structure, landscaping and use of the accessory apartment shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Site Plan of Proposed Accessory Apartment" prepared for George & Kathleen T. Heufelder for Lots 17A & 18A, #78 Oakwood Avenue in Falmouth, MA as drawn by Holmes and McGrath, Inc. dated July 11, 2018 with a final revision date of 9/17/18 – Sheet 1 of 1 is stamped and signed by Joel R. Kubick, PLS and has a Board date 'received' stamp of September 28, 2018;
 - "Proposed Accessory Apartment – 78 Oakwood Avenue Map 38 Section 06 Parcel 014 Lot 017A George and Kathleen Heufelder" revised 9/15/18 – 'Floor Plan' with a Board date 'received' stamp of September 17, 2018; and

- “Existing floor plans – 78 Oakwood Avenue – George and Kathy Heufelder” – plans shows existing principal dwelling floor plan and proposed accessory apartment floor plan with calculations of square footage – plan has a Board date ‘received’ stamp of August 2, 2018.
2. There shall be no more than four (4) bedrooms allowed on subject property. One of the four (4) bedrooms in the main dwelling shall be removed and relocated to the accessory apartment approved herein.
 3. The detached accessory apartment shall be remain accessory to the primary dwelling on subject property and not be a separate dwelling.
 4. The applicant shall maintain the detached accessory apartment as required in Section 240-23 I. of the Code of Falmouth.
 5. 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.
 6. The Applicant shall meet the requirements of the DPW Water Division.
 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 permit shall lapse three (3) 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: **067-18**

Applicant/Owner: **GEORGE HEUFELDER of Falmouth, Massachusetts**

Subject Property: **78 Oakwood Avenue, Falmouth, Massachusetts**
 Map 38 Section 06 Parcel 014 Lot 017A

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

Vote: 4 – 0 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



Edward Van Keuren, Acting Clerk, Board of Appeals

RECEIVED

OCT 22 2018

FALMOUTH TOWN CLERK

AK @ 12:20 pm

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.