



TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

CASE NO: 012-20

APPLICANT/OWNER: Thomas R. McDonald and Isabelle McDonald

31 Apache Trail, Arlington, Massachusetts

SUBJECT PROPERTY: 83 Queen Street, Falmouth, Massachusetts

Assessor's Map: Map 47B Section 07 Parcel 017 Lot 000

DEED/CERTIFICATE: Book 26308 page 61

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. On February 19, 2020, an application was filed by Kevin P. Klauer II for Thomas R. McDonald and Isabelle McDonald, 31 Apache Trail, Arlington, Massachusetts, (the "Applicants") with the Zoning Board of Appeals, requesting a Special Permit to construct an addition at the southerly side of the dwelling at 83 Queen Street, Falmouth, Massachusetts (the "Premises"), under By-Law Sections 240-3C and 240-69E.
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. The advertised public hearing was opened on April 2, 2020, and continued to April 30, 2020. Board members present included Terrence J. Hurrie, Robert B. Dugan, Edward Van Keuren, Mary P. Barry and James T. Morse.
4. Kevin P. Klauer II, Ament Klauer LLP, Falmouth, MA appeared before the Board as representative for the Applicants.

5. The public hearing was closed on April 30, 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.

The following documents were entered into the record:

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

- Kevin P. Klauer, Attorney for Applicant's submitted an application for a special permit, filing fee, owner authorization letter and appropriate plans; application was filed with the Town Clerk's office on February 19, 2020
- Seven (7) pictures of existing dwelling
- 'Lot Comparison' worksheet, not dated – Board date 'received' stamped of February 19, 2020

Letters/Referrals/E-mails from Town Departments

- Referral from the Planning Department dated February 24, 2020 – no comment
- Referral from the Assessor's dated February 25, 2020 – no comment
- Referral from the Water Department dated February 25, 2020 signed by Greg Powers: *N/A property had existing 1' service line*
- Referral from the Fire Department dated February 24, 2020 – no comment
- Referral from Conservation Commission dated March 6, 2020 signed by Conservation Agent: *Outside jurisdiction*
- Referral from the Engineering Department dated March 18, 2020 signed by Scott Schluter, PE with standard comments and a recommendation to include a condition regarding a sign to show house numbers at the shared driveway
- Email dated February 20, 2020 to Attorney Klauer from ZBA staff re: future hearing date

Letters/E-mails from Abutters/Interested Parties

None

Plans submitted by Applicant/Applicant's Representative

- 'Proposed Addition Plan' sheet 1 of 1 dated January 31, 2020 prepared for Thomas R. and Isabelle McDonald, 31 Apache Trail, Arlington, Ma – as drawn by Cape and Island Engineering, Summerfield Park, 800 Falmouth Road Suite 301C, Mashpee, Ma; plan is stamped and signed by Matthew C. Costa, PLS; and
- 'Cover Sheet' sheet A0.0, 'Existing Plans' sheet A0.2, 'First Floor Plan' sheet A1.1, 'Second Floor Plan' sheet A.2, 'Roof Plan' sheet A1-4, 'Exterior Elevations' sheet A2.0, 'Exterior Elevations' sheet A2.1 and '3D Views' sheet A15.0 – all plans are dated January 31, 2020 prepared for McDonald, 83 Queen Street, Falmouth as drawn by Longfellow Design Build, 367 Main Street, Falmouth, Ma; plans are not stamped or signed

Hearing:

April 2, 2020

The Notice of Hearing and referrals were read into the record. Kevin P. Klauer II appeared before the Board, representing the Applicants. Mr. Klauer II reported that the existing dwelling is nonconforming due to encroachment into the front yard setback, lot coverage by structures, and lot coverage by structures/parking/paving. The existing deck and rinse station will be removed for the proposed addition, which will slightly decrease the lot coverage by structures and lot coverage by structures/parking/paving. The existing height is 23.8 feet, and the proposed addition will be 22 feet in height. The lot coverage by structures will be 24.7%, and the total lot coverage will be 42.1%. Mr. Klauer II stated that of dwellings in the neighborhood, 15 had larger footprints than the subject lot.

The Board inquired about maintaining the existing shed, due to lot coverage. The Board expressed concern about the lack of staking at the Premises to show where the work was proposed. There was also discussion about the office and playroom on the second floor, and whether those rooms would constitute a bedroom under the Board of Health.

The Applicant reported that the basement had only a 6-foot height, and that there was no bulkhead access to the basement. They also stated that there is no garage. Mr. Klauer II stated that a 4-foot cased opening could be provided for the office and the playroom.

Mr. Foreman made a motion to continue the hearing to April 30, 2020, which was seconded by Mr. Dugan, and unanimously voted. Notice of the continued hearing was posted with the Town Clerk, and on the Town's website.

April 30, 2020

Mr. Klauer II appeared before the Board with the homeowners. Mr. Klauer II stated that the Title V certificate was issued for five bedrooms. Following a motion made by Mr. Dugan, and seconded by Mr. Van Keuren, the Board voted unanimously to close the hearing.

Findings:

The subject lot, 83 Queen Street, Falmouth, Massachusetts (the "Premises"), is sited in the Falmouth Inner Harbor Coastal Pond Overlay District, the Windborne Debris Region, and the Single Family Residential C zoning district, comprising 10,347 square feet of area. The dwelling is sited 22 feet from the north, 21 feet from the east, 11.7 feet from the south, and 36.4 feet from the west side lot lines in a district requiring a 10-foot setback. The Premises is also improved by a shed sited at the northwest corner of the lot, 6.8 feet from the west, and 6.1 feet from the north side lot lines, where 3 feet is required. The Premises is nonconforming where it is accessed by a shared driveway, and has no frontage on a street, in a district requiring a minimum 100 feet of street frontage.

The Premises is improved by a 4-bedroom dwelling. The proposal involves removing an existing deck and rinse station at the southerly side of the dwelling, and expanding the master bedroom on the first floor. On the second floor, one bedroom will be converted to office space, and a loft/playroom will be created above the master bedroom.

1. Lot coverage by structures is currently 24.9%, and will be decreased to 24.7%, which is within the 25% maximum allowed by special permit.
2. Lot coverage by structures/parking/paving is currently 42.2%, and will be slightly decreased to 42.1%, which remains slightly above the district maximum of 40%.
3. The Title V inspection dated March 2, 2012 was submitted into the record.
4. The Applicant is agreeable to posting a sign for the address at Queen Street, where the driveway begins.

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 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.

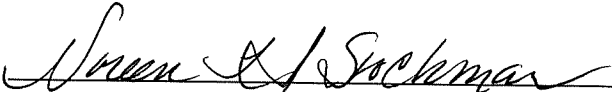
NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under Section(s) 240-3 C. and 240-69E of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Van Keuren, voted unanimously to grant a special permit, for the addition at 83 Queen Street, 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:
  - 'Proposed Addition Plan' sheet 1 of 1 dated January 31, 2020 prepared for Thomas R. and Isabelle McDonald, 31 Apache Trail, Arlington, Ma – as drawn by Cape and Island Engineering, Summerfield Park, 800 Falmouth Road Suite 301C, Mashpee, Ma; plan is stamped and signed by Matthew C. Costa, PLS; and
  - 'Cover Sheet' sheet A0.0, 'Existing Plans' sheet A0.2, 'First Floor Plan' sheet A1.1, 'Second Floor Plan' sheet A.2, 'Roof Plan' sheet A1-4, 'Exterior Elevations' sheet A2.0, 'Exterior Elevations' sheet A2.1 and '3D Views' sheet A15.0 – all plans are dated January 31, 2020 prepared for McDonald, 83 Queen Street, Falmouth as drawn by Longfellow Design Build, 367 Main Street, Falmouth, Ma; plans are not stamped or signed
2. The addition with steps will be 10.3 feet from the southerly (rear) lot line, and 23.6 feet from the easterly side lot line, in compliance with the 10 foot minimum setback.
3. The ridge height of the dwelling shall be 22 feet, 11 inches, which is slightly lower than the existing ridge height of 23 feet, 8 ¾ inches.
4. The office and loft/playroom shall have a minimum 4-foot casied opening.

5. The Applicant shall submit a copy of the final As-built to the Zoning Board of Appeals to demonstrate compliance with the dimensions and lot coverage reported.
6. The Applicant shall provide stormwater measures for minimally the new roof area, as approved by the Engineering department. No stormwater may be directed off the Premises.
7. The address of this house, and all other houses accessed by this shared driveway (75, 77, 79, 81 and 83) shall be properly posted on Queen Street, at the intersection of the driveway, subject to the approval of, and in coordination with Falmouth Fire Rescue, and in compliance with §99-1, prior to the final sign off with the building department.
8. Construction shall not be permitted to block the shared driveway access, and all construction materials shall be maintained on the Premises. Construction is not allowed on Sundays or holidays absent an emergency.
9. Construction shall comply with Town of Falmouth "Soil Erosion & Sediment Control Standard Conditions", issued by the D.P.W.
10. 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.
11. 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](http://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.
12. 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. 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. A copy of this recording shall be provided to the Zoning Board of Appeals.
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  
MAY 22 2020 PM 12:36  
TOWN CLERK

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Date Filed With Town Clerk