



TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

CASE NO: 025-20

APPLICANT/OWNER: CMM Ventures LLC, Christine M. DeVirgilio, Manager  
14 Strawberry Hill Lane, Reading, Massachusetts

SUBJECT PROPERTY: 335 Shore Street, Falmouth, Massachusetts  
Assessor's Map: Map 47 Section 06 Parcel 001 Lot 000F

DEED/CERTIFICATE: Book 29280 Page 82

SUMMARY: Special Permit granted with Conditions

PROCEDURAL HISTORY

1. On April 10, 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 raze and rebuild a single family dwelling at 335 Shore Street, 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 28, 2020. Voting 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, Massachusetts, appeared before the Board on the application.

6. The public hearing was closed on May 28, 2020, following motion made by Mr. Foreman, seconded by Mr. Zylinski, 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 Kevin P. Klauer II submitted an application for a special permit, filing fee, plans and supporting documentation; application was filed with the Town Clerk's office of April 10, 2020
- Owner authorization dated April 8, 2020
- Lot Comparison Worksheet, not dated – Board date 'received' stamp of April 10, 2020
- Three (3) photos of existing dwelling  
Letters/Referrals/E-mails from Town Departments
- Referral dated April 10, 2020 from the Health Department, signed by Scott McGann, Health Agent: *Property on Town sewer defer to Wastewater Dept.*
- Referral dated April 13, 2020 from the Fire Department – no comment
- Referral dated April 14, 2020 from the Planning Department – no comment; Referral from the Historical Commission (on same page) signed by Planning Staff: *The applicant filed an application for a Certificate of Appropriateness and is scheduled for the May Agenda.*
- Referral dated April 13, 2020 from the Assessors – no comment
- Referral dated April 21, 2020 from the Engineering Department signed by Scott Schluter, PE, required permit from the Engineering Division, comply with section 99-1 "Affixing of Legible Numbers required; time limit for compliance", request an address change to Boyer Road from the Engineering Division; a portion of the driveway on abutting property; no stormwater runoff from Premises; suggest abandon Shore Street driveway, and post bond for work.
- Email from Wastewater Superintendent, Amy Lowell dated May 27, 2020: *Looks like proposed new house has 4 bedrooms, which is allowed by right in the sewer service area. No flow neutral bylaw variance is required.*
- Order of Conditions submitted by the Conservation Department dated May 13, 2020
- Email to Planning Staff dated May 27, 2020
- Email to Amy Lowell, Wastewater Superintendent dated May 27, 2020

Letters/E-mails from Abutters/Interested Parties

None

Plans submitted by Applicant/Applicant's Representative

- 'Site Plan' sheet 1 of 1 with a plan date of March 13, 2020 prepared for The Christine M. Moynihan Trust, 335 Shore Street, Falmouth, Massachusetts as drawn by Cape and Island Engineering, 800 Summerfield Park Suite 301C, Mashpee, Ma. – plans are stamped and signed by Matthew Costa, PLS and Raul Lizardi-Rivera, PE; and

- 'Cover Sheet' sheet A0.0,' Abbreviations and Symbol Legend', 'Existing Floor Plans' sheet A0.3,'Ground Floor Plan' sheet A1.0,'First Floor Plan' sheet A1.1,'Second Floor Plan' sheet A1.2,'Roof Plan' sheet A1.4,' Exterior Elevations' sheet A2.0,'Exterior Elevations' sheet A2.1,'Area Plans' sheet A5.0,'Window and Door Schedule' sheet A6.0,' 3D Views sheet A9.0; all plans are dated February 18,2020 as drawn by Longfellow Design Build, 367 Main Street, Falmouth, Massachusetts – plans are not stamped or signed

Hearing:

May 28, 2020:

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

Kevin P. Klauer, II, attorney for the Applicant, appeared before the Board. Mr. Klauer noted that at the time the application was submitted, the deed was under CMM Ventures, which has now been changed to Christine M. DeVirgilio. He stated that the Applicant seeks permission to raze and reconstruct the dwelling. The property comprises 8,088 square feet of area, is sited within the Single Residence C zoning district, and within the velocity (VE15) flood zone. Mr. Klauer reported that the Applicant has owned the property for a few years, and would like to make alterations. The footprint of the existing dwelling is 1,545 square feet. The dwelling is nonconforming to the westerly side yard setback being 0.0 feet, with a further encroachment over the lot line. The current lot coverage is 19.1%. In order to comply with flood zone regulations, the structure must be elevated 2 feet above elevation 15, to elevation 17. The proposed ridge height will be 34'10", and the westerly side yard setback will be improved to 4.7 feet. Lot coverage by structures will slightly increase to 20.7%. Mr. Klauer stated that the Applicant would not be able to shift the dwelling closer to the front yard setback due to Conservation Commission issues. Mr. Klauer reported that the replacement dwelling will be a 4-bedroom house, and opined that the proposal meets the criteria of By-Law §240-216. Mr. Klauer stated that of the 23 neighboring structures, 10 have higher lot coverage percentages, 19 have larger footprints, and 19 have larger gross building areas. He stated that the driveway will be relocated onto Boyer Road, and that the replacement dwelling will remain a modest home in the area, in compliance with flood zone requirements.

The Board discussed the lack of a letter from the Historical Commission; Mr. Klauer reported that they would meet with the Historical Commission in July 2020. The Board discussed the change in height from approximately 21 feet to the proposed 34 feet, 10 ¼ inches, noting that there is also a cupola planned above the peak of the roof. The Board requested that the cupola not be added as a decorative feature, due to the height of the dwelling being so close to the maximum allowed. The Applicant consented to remove the cupola. Mr. Klauer noted that the driveway does encroach on the abutting parcel to the west, but that the Applicant has an easement over that area.

There was no public comment.

Mr. Foreman made a motion to close the hearing, which was seconded by Mr. Zylinski, and unanimously voted.

Findings:

The subject lot, 335 Shore Street, Falmouth, Massachusetts (the "Premises"), is located in the Single Family Residential C zoning district, and comprises 8,088 square feet of area, in a district now requiring

40,000 square feet. The Premises is bound by streets on three sides: including 105.29 feet of frontage on Surf Drive (south side), 99.14 feet of frontage on Shore Street (east side), and 42.86 feet of frontage on Boyer Road (north side). The Premises is also located in the Historic District, the buffer zone to a coastal bank, and VE elevation 15. The lot coverage by structures is proposed to be 20.7%, in a district where the maximum allowed is 25% by special permit. The lot coverage by parking/paving/structures is proposed to be 27.2%, in a district where the By-Law maximum allowed is 40%. The footprint of the replacement dwelling will be 1,677 square feet. The proposal increases utilization of the Premises.

1. The existing septic system will be removed, and the 4-bedroom property shall be connected to Town sewer.
2. The dwelling will be constructed at elevation 17 to comply with FEMA flood zone regulations.
3. The increase in lot coverage is minimal, and comports with submitted comparisons of the neighborhood.
4. Access to the Premises shall be improved by moving the driveway to Boyer Road.
5. The new driveway from Boyer Road exceeds the lot; however the Applicant has an easement over the affected area.
6. The address will be changed to Boyer Road, and the address shall be properly posted in accordance with §99-1.
7. The Applicant shall comply with Conservation Commission and Town Engineering regarding management of erosion and sediment control.
8. The berm toward Surf Drive will remain.
9. Engineering has requested the abandonment and closing of the existing driveway from Shore Street, with conditions.
10. The proposed ridge height is 34 feet, 10 ¼ inches, which is within the By-Law maximum of 35 feet.
11. The Applicant has agreed to remove the cupola from the plans, to maintain a height below 35 feet.
12. The setback to the westerly side is being improved from 0.0 feet to 4.7 feet. The dwelling is not being moved closer to any resource areas.
13. The Applicant intends to meet with the Historical Commission in July 2020.

There was no opposition expressed regarding the proposal. The Board found that the application met the criteria of By-Law §240-216.

The Zoning Board of Appeals weighed the effects of the proposed raze and reconstruction of the dwelling 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. Foreman, and seconded by Mr. Dugan, voted unanimously to grant a special permit to raze and reconstruct the dwelling at 335 Shore 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:
  - 'Site Plan' sheet 1 of 1 with a plan date of March 13, 2020 prepared for The Christine M. Moynihan Trust, 335 Shore Street, Falmouth, Massachusetts as drawn by Cape and Island Engineering, 800 Summerfield Park Suite 301C, Mashpee, Ma. – plans are stamped and signed by Matthew Costa, PLS and Raul Lizardi-Rivera, PE; and
  - 'Cover Sheet' sheet A0.0,' Abbreviations and Symbol Legend', 'Existing Floor Plans' sheet A0.3,'Ground Floor Plan' sheet A1.0,'First Floor Plan' sheet A1.1,'Second Floor Plan' sheet A1.2,'Roof Plan' sheet A1.4,' Exterior Elevations' sheet A2.0,'Exterior Elevations' sheet A2.1,'Area Plans' sheet A5.0,'Window and Door Schedule' sheet A6.0,' 3D Views sheet A9.0; all plans are dated February 18, 2020 as drawn by Longfellow Design Build, 367 Main Street, Falmouth, Massachusetts – plans are not stamped or signed
2. The dwelling shall be sited 10.5 feet from the closest northerly point, 29.3 feet from Shore Street, 26.6 feet from Surf Drive, and 4.7 feet from the west side lot line. The setback from the streets complies with the By-Law minimum requirement of 25 feet. The distance from the westerly side lot line encroaches into the 10 foot minimum setback, but is less of an encroachment than the existing dwelling.
3. Lot coverage by structures will be increasing from 19.1% to 20.7%. Lot coverage by parking/paving/structures will be increasing from 26.3% to 27.2%.
4. The number of bedrooms is limited to four within the Town's sewer system.
5. The existing berm toward Surf Drive will remain.
6. The driveway off Shore Street shall be abandoned; the new driveway shall be off Boyer Road. The Applicant shall seek a permit from the DPW Engineering Division and post any required bond to close the existing driveway, including sidewalk and curbing. The closing of the driveway shall comply with Engineering's erosion and sediment control requirements, as well as any permitting requirements of the Conservation Commission.
7. The address of the Premises shall be changed to Boyer Road. The Applicant shall request an address change from the Engineering division. Thereafter, the address shall be properly posted at the end of the driveway and on the structure, as requested by Falmouth Fire Rescue, in compliance with §99-1, requiring the affixing of legible numbers, prior to the Certificate of Occupancy.
8. A portion of the proposed new driveway falls on the abutting property at 16 Boyer Road. The Applicant has stated that they have an easement which allows this encroachment.
9. The Applicant consented to removal of the cupola from the plans, and plans shall be amended to reflect that change.
10. The Applicant shall have a height certification performed at framing, to insure compliance with the 34 feet, 10 ¼ inch height reported, and not exceeding the maximum allowed under the By-Law. Height certification shall be provided to the Building Department and the Zoning Board of Appeals.
11. The Applicant shall meet with the Historical Commission regarding a Certificate of Appropriateness.

12. The Applicant shall discuss a police detail with the Police Department to insure that traffic is properly managed during construction activities.
13. All construction vehicles and materials shall be maintained within the Premises, and dust shall be controlled during demolition.
14. Construction hours shall be limited to 7:00 a.m. through 7:00 p.m., Monday through Saturday. There shall be no construction on Sundays or holidays absent an emergency.
15. 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.
16. 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 of the recorded decision 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.
17. 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.
18. 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  
JUL 13, 2020 AM 10:37  
TOWN CLERK

Date Filed With Town Clerk