

Zoning Board of Appeals Decisions Decisions for: 01-23-2014

[Close Window](#)

DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 120-13

APPLICANT: KENT H. CLARKSON, II, TRUSTEE of Teaticket

OWNER: H & K Real Estate Trust – Harry W. Turner, Jr., Trustee
And Kent H. Clarkson, II, Trustee

DEED/CERTIFICATE: Book 27481 / Page 221

SUBJECT PROPERTY: 15 Sharon Avenue, Teaticket, MA
Map 39, Section 23, Parcel 012J, Lot 005

Under a date of December 23, 2013, the Applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to construct a one-car garage with storage above attached to the pre-existing nonconforming single-family dwelling on subject property located 15 Sharon Avenue, Teaticket, Massachusetts.

A public hearing was held on January 23, 2014. 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.

Member Scott Zylinski recused himself from this hearing.

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Acting Clerk Patricia Johnson and Associate Mark Cool

Clerk Johnson read the Notice of Public Hearing into the record.

Kent H. Clarkson, II was present and explained that he has recently purchased the property and that he and his wife are planning to move here from a larger home to this three bedroom dwelling (sizing down) and need a garage for wife's vehicle and storage area. He noted that there are similar homes in the neighborhood with garages. He referred to the plan that shows the garage is in compliance with all setbacks and lot coverage.

Clerk Johnson read the Town Department referrals into the record.

A referral from the Board of Health Agent states: The plan in the file shows a location for a septic component, but only one point is identified. Septic systems usually have more than one structure. In addition, no information is provided as to the capacity of the system. This is not a problem at the moment since the room above the garage is proposed to be unfinished, although the windows specified would indicate a possibility that the room could be finished in the future. If the property owner submitted an application to finish this room, the Health Department would consider it to be a bedroom. This would trigger a septic system review. Little is known about the system capacity, the whereabouts of all the components and the area available on the lot for upgrading the existing system or showing a 100% reserve area if an increase in flow is proposed.

A referral submitted by the Engineering Department had standard comments and noted: It does not appear that the house number was conspicuously placed as required by Town Code.

Referrals submitted by the Building Department, Conservation Commission, Planning Department and Water Department had no comment.

Board Questions:

Member Foreman asked Mr. Clarkson what his plan for the room above the garage is and how will it be accessed.

Mr. Clarkson said it will be accessed off the house with a stairway up to second level. He said there will be no apartment – it will be used for storage as they need the space.

Member Cool asked if the garage and second floor will be heated.

Mr. Clarkson stated said no; windows are aesthetic.

Member Cool asked if water runoff will be contained on site.

Mr. Clarkson stated yes.

Chairman Haddad reiterated that there is no heat proposed in garage and second level.

Mr. Clarkson said that is correct. He explained that there is a door from the house into the garage area and stairs are right there up to second level.

Chairman Haddad asked if anyone present would like to speak in support or opposition.

There was no comment in support or opposition.

Abutter, Mary Romiza of 19 Sharon Avenue asked what the height of the garage structure will be and said he has concerns about the windows on the second level. She asked if any trees will be removed through this construction.

Mr. Clarkson stated that the height is approximately 27.5'. He further commented that they will be cleaning up trees on site that are damaged.

Member Foreman made a motion to close the hearing. Member Cool seconded the motion. Motion carried 4 – 0.

Chairman Haddad 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 15 Sharon Avenue contains 11,259 square feet of Agricultural B zoned land that is located within the Little Pond Coastal Pond Overlay District and may be partially located within the Natural Heritage for Endangered Species Plan. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct a one-car garage with space above attached to the existing single-family dwelling on subject property that has a nonconforming front yard setback of 23.3' to Sharon Avenue, that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. Lot coverage on subject property is and will remain, in compliance with Section 240-69 A. of the Code of Falmouth.

Section 240-3 of the Code of Falmouth "Preexisting structures and uses.", sub-section C. 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 garage attached to the pre-existing nonconforming single-family dwelling is not substantially more detrimental than what currently exists. The Board further finds that the proposed garage addition, with a room above, does not increase the existing nonconforming front yard setback, nor does it create any further nonconformities on subject property. Furthermore, the Board finds that the proposed garage structure to be attached to the existing single-family dwelling is in keeping with the neighborhood.

The Board finds through testimony of the applicant that the room above the garage proposed will be for storage. The Board further finds that the garage and the room above it will not be heated; and the room

above will be unfinished.

In addition to the above findings, the Board finds that the proposed 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 attached one-car garage with a room above as it does not impact existing nonconformity, does not create any new nonconformity and will be maintained below the 20% maximum lot coverage for structures in this Agricultural B zoned district according to Section 240-69 A.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception and the proposed garage with storage above is an accessory use to the primary use of the single-family dwelling.
- 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; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is in place and construction of the proposed garage as represented herein will not affect the existing system [see Board of Health referral submitted].
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed one-car garage 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.

Member Cool made a motion to Grant the Special Permit with conditions. Member Foreman 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 Kent H. Clarkson, II (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a one-car garage with room above attached to the single-family dwelling on subject property located at 15 Sharon Avenue, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the one-car garage with room above, all setbacks, lot coverage and use of the garage and room above shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Plot Plan for #15 Sharon Avenue" prepared for Kent Clarkson in Falmouth, MA – Sheet 1 of 1 drawn by Falmouth Engineering, Inc. dated November 5, 2013 with a Board date 'received' stamp of December 23, 2013; and
 - "Clarkson House Addition" architectural plans drawn by Denise D'Ambrosi Bonoli, AIA, consisting of Drawn A0, A1, A2, A3, A4 and A5 showing floor plans, elevations, cross sections and framing plans – all dated 10/29/13 and with a Board date 'received' stamp of December 23, 2013.
2. The Applicant shall submit to the Board of Appeals verification of the height of the proposed garage with room above. Said verification shall be submitted prior to the issuance of any building permit on subject property.
3. There shall be no bedrooms or sleeping accommodations created within the garage structure including the room above.
4. All stormwater runoff shall be contained on subject property.
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. 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.)

7. This permit shall lapse two 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: 120-13

Applicant: KENT H. CLARKSON, II, TRUSTEE

Subject Property: 15 Sharon Avenue, Teaticket, Massachusetts
Map 39, Section 23, Parcel 012J, Lot 005

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.

David Haddad, Board Chairman

_____ 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.

Notes:

SP #120-13 Clarkson / 15 Sharon Ave. / garage posted to web 1/29/14 by mm