

## Zoning Board of Appeals Decisions Decisions for: 01-22-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 102-14

APPLICANT(S): ROBERT L. KLIEWE, TRUSTEE of East Falmouth, MA

OWNER: Robert L. Kliewe 2013 Trust

DEED/CERTIFICATE: Book 27935 / Page 109

SUBJECT PROPERTY: 473 Shorewood Drive, East Falmouth, Massachusetts  
Assessor's Map: Map 40, Section 02A, Parcel 000, Lot 011

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of December 17, 2014, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-69 E. of the Code of Falmouth to construct an addition to the existing single-family dwelling that will exceed the maximum 20% lot coverage by structure allowed by right in a residential district on subject property located at 473 Shorewood Drive, East Falmouth, Massachusetts. The property is located within the Green Pond Coastal Pond Overlay District. The existing lot coverage by structures is 18.5% and 21.5% by structures, parking and paving, which are both in compliance with Section 240-69 A. of the Code of Falmouth.

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 January 22, 2015.

4. The public hearing was terminated on January 22, 2015 with a decision rendered by the Board. Members sitting were Chairman Kenneth Foreman, Vice Chair Kimberly Bielan, Clerk Terrence Hurrie, Associate Member Mark Cool and Associate Member John Sutherland [both Associates sitting as voting members].

5. The Board received documents and exhibits, prior to and during the public hearing which 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

Received 1/22/15 Letter via e-mail from Nicole Mele of 375 Shorewood Drive stating her support of the proposed addition to subject dwelling

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

Received 12/17/14 Letter from Holmes and McGrath, Inc. on behalf of the applicant as a narrative for what is being requested; with photos showing elevation of subject dwelling and a GIS map with data regarding surrounding neighborhood

12/17 to 12/18/14 E-mail between applicant's representatives [Homes and McGrath, Inc.] and ZBA's staff regarding elevation and floor plans

Received 12/18/14 Letter from Holmes and McGrath, Inc. to Building Commissioner Gore regarding designation of front yard for subject property

Received 1/22/14 Letter from Holmes and McGrath, Inc. to Building Commissioner Gore [duplicate copy submitted on 12/18/14] regarding designation of front yard for subject property with attached color copy of subject site

Letters/Referrals/E-mails from Town Departments

Received 1/22/2015 Referral submitted to the file by the Engineering Department – standard comments

Received 1/15/2015 Referral submitted to the file by the Building Commissioner – no comment

Received 12/20/2013 Referral submitted by the Board of Health Agent stating no objections provided the septic upgrade is constructed

Received 12/22/2014 Referral submitted by the Conservation Commission Agent with no comment

Received 12/18/2014 Referral submitted by the Assistant Town Planner with no comment.

Plans submitted from Applicant

Received 12/19/2014 "Plan of Proposed Sewage Disposal System" prepared for Harbor Homes (Contractor) for Lot 11, #473 Shorewood Drive in Falmouth, MA – Sheet 1 of 2 dated Dec. 15, 2014 with a Board date 'received' stamp of December 19, 2014

Received 12/19/2014 "Construction Details of Proposed Sewage Disposal System" prepared for Harbor Homes (Contractor) for Lot 11, #473 Shorewood Drive in East Falmouth, MA - Sheet 2 of 2 dated Dec. 15, 2014 with a Board date 'received' stamp of December 19, 2014

Received 12/17/2014 "Addition Design/Renovations Kliewe Residence 473 Shorewood Drive Falmouth, MA" drawn by Architecture by SPB and consisting of Drawings A1, A2 and S1 (Elevations, floor plans and foundation), all dated 12/17/2014 and with a Board date 'received' stamp of December 17, 2014

Hearing:

Raul Lizardi-Rivera, P.E. with Holmes and McGrath, Inc. was present on behalf of the applicant and discussed the existing site conditions and the proposed addition to renovate an existing bedroom into a master bedroom, increase the kitchen and dining areas and change the roofline. The dwelling will remain a one-story, three-bedroom single-family dwelling. Mr. Rivera submitted information regarding the surrounding neighborhood in relation to lot coverage above 20% - 17 out of the 38 properties shown on the information he submitted are at or above the 20% lot coverage by structures allowed by right in a residential zoned district.

The Board asked Mr. Rivera questions and Mr. Rivera addressed the questions.

Public Comment:

There was no public in support or opposition of the application.

Member Cool made a motion to close the hearing. Member Sutherland seconded the motion. Motion carried 5 – 0. Hearing closed

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 473 Shorewood Drive contains 12,490 square feet of Residential B zoned land that is located within the Green Pond Coastal Pond Overlay District. There are no previous special permits on subject property. The applicant applied under Section(s) 240-69 E. of the Code of Falmouth to

allow the lot coverage by structures to exceed the 20% maximum allowed by right up to no more than 25%. The existing lot coverage on subject property is conforming at 18.5% and will be increased to 21.5% through the proposed addition represented herein. The existing dwelling is a three-bedroom, one-story dwelling with a detached one-car garage and said dwelling will remain a three-bedroom, one-story garage through the proposed addition.

Section 240-69 of the Code of Falmouth - "Maximum lot coverage", subsection E. allows the Board of Appeals to grant a special permit to increase lot coverage by structures beyond the 20% maximum allowed by right in certain districts after the Board has taken into consideration the size and height of the structure in relation to the average size and height of structures in the neighborhood, any effect of shadow on adjacent properties, any impact on views or vistas from a roadway or if there will be any effect of nitrogen on a coastal embayment.

The Board finds through information submitted by the applicant's representative that the proposed addition to the existing dwelling will increase the conforming lot coverage by structures of 18.5% to 21.5%. The Board further finds that the increase, after taking into consideration the criteria in Section 240-69 E., that the proposed 21.5% lot coverage by structures is in keeping with the neighborhood as 17 out of 38 properties in the area shown on the GIS map submitted have, or exceed, the 20% maximum allowed; and the proposed will not adversely impact any abutter or neighborhood property. Furthermore, the Board finds that the total lot coverage by structures, parking and paving will remain in compliance with Section 240-69 A. of the Code of Falmouth.

The Board finds through testimony of the applicant's representative that the existing stormwater run-off control is adequate. The Board further finds through testimony by the applicant's representative that there will not be any accessory structures located on the subject site.

The Board finds that the roofline is being changed through the proposed addition and the roof will have a 24' ridge line.

In addition to the above findings, the Board finds that the proposed addition to the existing single-family 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 addition as all setbacks meet the required setbacks under Section 240-68 A. and B. of the Code of Falmouth; and that lot coverage by structures may exceed the 20% maximum by right in a residential zoned district, by special permit approval from the Board of Appeals and said lot coverage may not exceed 25%.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception.
- 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 as the roofline will enhance the existing structure and will be in keeping with the neighborhood with no adverse impact 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 will be upgraded according to the plans submitted (see Sheet 2 of 2 "Construction Details of Proposed Sewage Disposal System") and noted in the Board of Health referral.
- 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 the possibility of updating the water system if necessary.
- G. The proposed 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 Hurrie 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 Robert L. Kliewe, Trustee (herein referred to as Applicant) under Section(s) 240-69 E. of the Code of Falmouth to construct an addition to the existing single-family dwelling known as 473 Shorewood Drive, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The proposed addition, all setbacks, lot coverage, height of dwelling and use of the dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- Construction Details of Proposed Sewage Disposal System” prepared for Harbor Homes (Contractor) for Lot 11, #473 Shorewood Drive in East Falmouth, MA - Sheet 2 of 2 dated Dec. 15, 2014 with a Board date ‘received’ stamp of December 19, 2014; and

- “Addition Design/Renovations Kliewe Residence 473 Shorewood Drive Falmouth, MA” drawn by Architecture by SPB and consisting of Drawings A1, A2 and S1 (Elevations, floor plans and foundation), all dated 12/17/2014 and with a Board date ‘received’ stamp of December 17, 2014

2. There shall be no accessory structures added to the subject property without approval from the Board of Appeals.

3. The ‘Den’ noted in the proposed floor plan on Drawing A2 noted in Condition 1 above, shall maintain the 5’ cased opening as shown on the drawing.

4. 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.

5. The Applicant shall meet the requirements of the DPW Water Division.

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: 102-14

Applicant: ROBERT L. KLIEWE, TRUSTEE of East Falmouth, MA

Subject Property: 473 Shorewood Drive, East Falmouth, MA  
Map 40, Section 02A, Parcel 000, Lot 011

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.

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Kenneth Foreman, 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 this Decision in the office of the Falmouth Town Clerk.

**Notes:**

SP #102-14 Kliewe - 473 Shorewood Dr. / Addition posted 2/3/15 mm