

Zoning Board of Appeals Decisions Decisions for: 07-23-2015

[Close Window](#)

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 45-15

APPLICANT(S): KEVIN T. HINES, TRUSTEE of North Falmouth, MA

OWNER(S): Kevin T. Hines, Trustee & Mary E. Hines, Trustee

DEED/CERTIFICATE: Book 9813 / Page 117

SUBJECT PROPERTY: 90 Highland Avenue, North Falmouth, MA
Assessor's Map: Map 04A, Section 19, Parcel 000, Lot 174

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of May 22, 2015, 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 16' x 13.5' addition over existing deck area to create additional living space for the pre-existing nonconforming single-family dwelling on subject property known as 90 Highland Ave., North Falmouth, Massachusetts.
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 July 23, 2015.
4. The public hearing was terminated on July 23, 2015 wherein the Board consisting of Chairman Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Mark Cool made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals office.
5. The applicant was represented at the hearing by Attorney Kevin Klauer, II with Ament Law Firm who 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

7/22/2015 Letter received from Elizabeth Craig of 86 Hillside Avenue stating support of the special permit request.

7/23/2015 At the hearing held on July 23, 2015, Attorney Kevin Klauer, on behalf of the applicant submitted six form letters in support of the special permit application from: John P. Wellington, Clifford Sullivan, Jean Pochebit, Richard Pond, Stephen Affanto and Sean Rizzo.

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

7/23/2015 Letter of authorization signed by applicant allowing Attorney Kevin Klauer to represent them at the hearing.

Letters/Referrals/E-mails from Town Departments

5/22/2015 Referral submitted to the file from the Planning Department with no comment.

6/7/2015 Referral submitted to the file from the Building Department with no comment.

6/15/2015 Referral submitted to the file from the Board of Health Agent with no comment.

Plans submitted by Applicant/Applicant's Representative

5/22/2015 "Plot Plan for #90 Highland Avenue Prepared for Kevin Hines in Falmouth, MA" Sheet 1 of 1 drawn by Falmouth Engineering, Inc. dated May 19, 2015, stamped and signed by Gary S. Labrie, PLS on 5/20/2015 and with a Board date 'received' stamp of May 22, 2015; and

"Hines Addition – 90 Highland Ave." architectural plans consisting of six (6) pages showing elevations and floor plans dated 4/16/2015 drawn by Chris Warner Architect and with a Board date 'received' stamp of May 22, 2015.

Hearing:

Attorney Kevin Klauer was present on behalf of the applicant and reviewed the existing site conditions and the proposed addition at the rear of the dwelling to be constructed over the majority of the existing deck and to enclose bulk head adjacent to proposed addition. The addition will add to the living space of the first floor – plan shows new living room area.

The Board discussed plans with Attorney Klauer. All concerns and questions were addressed.

Chairman Bielan asked for any public comment in support or opposition of the proposed additions.

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

Chairman Bielan 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 90 Highland Avenue in North Falmouth contains 5,228 square feet of Residential C zoned land that is located within the Wild Harbor River Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct an addition over the existing deck at the rear of the dwelling to create additional living space [living room]. The subject property had a special permit granted in 2004 [#60-04] that allowed two additions to the dwelling on subject property. The previous special permit notes that the house was constructed in 1954 and at that time a side yard setback requirement was ten (10) feet; the house was constructed with a 3.9' setback making the dwelling structure noncompliant. However, ten years passed without noted violation of the noncomplying setback and therefore the structure is deemed nonconforming [240-3 B.]. The lot coverage by structures on subject property is also nonconforming at 23.9% according to Section 240-69 A. of the Code of Falmouth that requires a maximum of 20% by structures for a lot that is residential. The lot coverage on subject property was rendered nonconforming due to a zoning change in 2003 wherein the Town voted at the Annual Town Meeting to decrease lot coverage by structures from 35% to 20%.

Section 240-3 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 addition of living space being created over an existing deck at the rear of the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the addition will not increase lot coverage by structures as it will be constructed over existing deck structure; and it will not be seen from the public roadway as it will be located at the rear of the existing dwelling. Furthermore, the Board finds that the addition will enhance

the utilization of the dwelling by its residents.

The Board finds that the proposed addition does not create any new nonconforming setbacks or increase the existing nonconforming setback. The Board further finds that the minimal increase in the lot coverage by structures of 23.9% to 24% is benign and does not adversely impact the subject property. Furthermore, the lot coverage by structures is nonconforming and applied for herein under Section 240-3 [pre-existing nonconforming] and may be increased up to 25% based on criteria as set forth in Section 240-69 E. of the Code of Falmouth.

The Board finds through testimony by Attorney Klauer that there are four bedrooms within the existing dwelling on subject property and that there will be no increase in that number of bedrooms through this special permit request. The Board further finds through testimony by Attorney Klauer that the existing shed on site encroaches onto the abutting property and that it will be moved to subject property within setback compliance [Section 240-68 B.] as shown on the plan submitted and noted below.

The Board finds that the seven (7) letters submitted to the file (one by mail and six hand delivered at hearing by Attorney Klauer) all state support of the proposed additional living space and are from abutters listed on the certified abutter's list in the file.

The Board finds through testimony by Attorney Klauer that there are no additional accessory structures proposed for subject property.

In addition to the above findings, the Board finds that the proposed additional living space 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 additional living space created over existing deck will not increase the existing nonconforming setback and will not create any new nonconforming setback; and that the increase in lot coverage by structures is minimal and will not impact the property.
- 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 unchanged 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 signed off as a four bedroom system by the Board of Health – see referral from the Board of Health with no comment that was submitted to the file.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed additional living space 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 Murphy 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 Kevin T. Hines, Trustee (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct additional living space over the existing rear deck and enclose the bulk head adjacent to said deck on subject property known as 90 Highland Avenue, North Falmouth, Massachusetts. This special permit is subject to the following conditions:

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

- "Plot Plan for #90 Highland Avenue Prepared for Kevin Hines in Falmouth, MA" Sheet 1 of 1 drawn by Falmouth Engineering, Inc. dated May 19, 2015, stamped and signed by Gary S. Labrie, PLS on 5/20/2015 and with a Board date 'received' stamp of May 22, 2015; and

- "Hines Addition - 90 Highland Ave." architectural plans consisting of six (6) pages showing elevations and floor plans dated 4/16/2015 drawn by Chris Warner Architect and with a Board date 'received' stamp of May 22, 2015.

2. There shall be no more than four (4) bedrooms allowed on subject property.

3. There shall be no additional accessory structures allowed on subject property outside of the one shed existing at the rear of the property without further review and approval by the Board of Appeals. The existing shed will be relocated on subject property as shown on the "Plot Plan" noted in Condition 1 above.

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. 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.)

6. 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: 45-15

Applicant: KEVIN T. HINES, TRUSTEE of No. Falmouth, MA

Subject Property: 90 Highland Avenue, North Falmouth, MA
Map 40A, Section 19, Parcel 000, Lot 174

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.

Terrence J. Hurrie, Clerk of the Board of Appeals

_____ 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 45-15 Hines, Tr / Filed w/Town Clerk on 7/30/15