

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 072-17

**APPLICANT/OWNER:** ROBERT FURST and CAROL C. FURST of East Falmouth, MA

**SUBJECT PROPERTY:** 25 Half Moon Circle, East Falmouth, Massachusetts  
**Assessor's Map:** Map 40, Section 02A, Parcel 000, Lot 171B

**DEED/CERTIFICATE:** Book 28242 / Page 99

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of August 22, 2017, 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 a laundry room/mud room with covered porch entrance and garage addition with habitable space above and an addition to the rear of the dwelling exceeding 20% lot coverage by structures on subject property known as 25 Half Moon Circle, East Falmouth, MA.
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 October 5, 2017.
4. The public hearing was closed on October 5, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren and Alternate Robert Dugan (sitting as voting member) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Attorney Kevin P. Klauer, II with Ament Klauer LLP, 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**

- 10/06/2017 Attorney Klauer submitted letters to the file that he received via e-mail as follows:
- John Pirani of 59 Sally Lane stated he and Bonnie support the Furst (applicant) project;
  - Paul Harvey of 43 Joyce Street stated support of the Furst project;
  - Joan Breslow of 40 Sandpiper Circle stated she is in favor of the proposed project;
  - Mary Doyle of 33 Sandpiper Circle stated support of the proposed project; and

- Suzanne Interrante of 30 Half Moon Circle stated no opposition to the proposed project.

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

- 09/28/2017 Attorney Klauer submitted a letter dated September 28, 2017 to the Zoning Administrator with attachments and information on proposed project
- 09/28/2017 Attorney Klauer submitted a copy of lot coverage and bulk information on properties within the general area of the applicant's property for Board's review

**Letters/Referrals/E-mails from Town Departments**

- 08/23/2017 Referral submitted to the file from the Planning Department staff with no comment
- 08/24/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 08/28/2017 Referral submitted to the file from Director of Assessing with no comment
- 09/06/2017 Referral submitted to the file from Conservation Commission with no comment
- 09/26/2017 Referral submitted to the file from Town Engineering Department that states: *This application was reviewed only for impacts to public right of ways and public utilities. Half Moon Circle is a Private right of way in this area. Any connections or alterations to public utilities would require permission from the appropriate Town Department. The project must not direct any stormwater runoff to public property, abutters, or right of ways. We recommend adding drywells, rain garden, or other stormwater measure for the roof.*

Note: Request for referrals were sent from Board of Appeals to Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department.

**Plans submitted by Applicant/Applicant's Representative**

"Plot Plan – Proposed Additions" prepared for Carol Furst 25 Half Moon Circle East Falmouth, Massachusetts as drawn on a plan by BSS Design, Inc. dated August 18, 2017 – plan is stamped and signed by Thomas Jackson Bunker, P.L.S. and has a Board date 'received' stamp of September 28, 2017;

"Furst House 25 Half Moon Circle Falmouth, MA" as drawn by Denise D'Ambrosi Bonoli, Architect – plans are not dated or stamped – plans consist of four pages - 1. 'Existing Floor Plan', 2. 'Existing Basement Plan', 3. 'Existing Front and Back Elevation' and 4. 'Existing Right and Left Side Elevation' – all plans have a Board date 'received' stamp of August 22, 2017; and

“Furst House 25 Half Moon Circle Falmouth, MA” as drawn by Denise D’Ambrosi Bonoli, Architect – plans are not dated or stamped – plans consist of six pages – 1. ‘Proposed First Floor Plan’, 2. ‘Proposed Second Floor Plan’, 3. ‘Proposed Basement’, 4. ‘Proposed Front Elevation’, 5. ‘Proposed Back Elevation’ and 6. ‘Proposed Right and Left Elevation’ – all plans have a Board date ‘received’ stamp of August 22, 2017.

Hearing:

Attorney Klauer reviewed the existing conditions on site and the existing one-story, three-bedroom single-family dwelling that has a height of 18’. He noted that all setbacks are in compliance with the regulations as well as lot coverage. He then reviewed the proposed additions to the existing dwelling that includes a new covered porch at the rear of the dwelling and an attached one-car garage with living space above. The first floor will be renovated remodeling the existing master bedroom, bedroom #3 (see existing plan) will be renovated into an office with a 5’ cased opening and the existing family room will become a new mudroom, laundry room and will have a stairway to the proposed ‘bunk room’ over the proposed attached garage. The home will remain a three-bedroom home; all setbacks will remain conforming; and the lot coverage, as applied under herein, will be increased from 19.53% to 23.02%. Attorney Klauer reviewed the information he submitted relative to the neighborhood and the size of lots in the area and the size of homes on those lots in comparison to what is proposed on subject property. The existing basement will remain unfinished and the existing shed will be removed and not replaced or relocated. He noted that the subject dwelling is a one-story home and out of the 42 properties reviewed, 16 are 1.5 or 2 story structures; 6 of these homes have a higher gross building area. He reviewed the proposed additions and subject property under Section 240-216.

The Board discussed plans, lot coverage, existing cesspool and uses within the dwelling with Attorney Klauer. Attorney Klauer responded that relative to the cesspool and any upgrade of a system, the Board of Health reviews the application prior to issuance of a building permit – so any concerns of sewage will be addressed prior. All concerns and questions were addressed.

Chairman Foreman asked for any public comment in support or opposition of the proposed project.

There was no public comment.

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

Chairman Foreman 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 25 Half Moon Circle in East Falmouth contains 14,306 square feet of Residential B zoned land that is located within Green Pond and Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-69 E. of the Code of Falmouth to allow lot coverage by structures to exceed the maximum 20% allowed by right after consideration of certain

aspects is reviewed by the Board. The existing one-story, three-bedroom dwelling that has a height of 18' is in compliance with all setbacks pursuant to Section 240-68 A. and B. of the Code of Falmouth; the height of the existing structure is in compliance with Section 240-70 of the Code of Falmouth; and the subject property, as existing, is in compliance with lot coverage pursuant to Section 240-69 A. of the Code of Falmouth. The proposed addition of a new covered porch at the rear of the property and the addition of an attached one-car garage will create an increase of lot coverage by structures from 19.53% to 23.02%, which will exceed the 20% maximum allowed by right, and may be increased up to, but not exceed, 25% if the Board determines under the criteria of said sub-section, that the application for additions is appropriate for subject property. The single-family dwelling will remain a three-bedroom dwelling through this special permit and the height for the proposed attached garage with habitable space above will remain below the required height under Section 240-70 of the Code of Falmouth.

Section 240-69 E. of the Code of Falmouth allows the Board of Appeals to approve a special permit for a property to exceed the 20% maximum lot coverage by structures in a residential zone, not to exceed 25%, after consideration of the size and height of a proposed structure in relation to the neighborhood structures, any shadowing effect on an adjacent property by a proposed structure, any impact on a view or vista from a roadway due to a proposed structure or any impact of nitrogen on a coastal embayment.

The Board finds that the proposed one-car garage structure with habitable space above with a height of 21', being attached to the existing single-family dwelling structure with a height of 18' is in keeping with the general neighborhood as to size and height of said structure (see calculation sheet submitted to file of 42 structures in the general area of subject property); that there is no shadow effect by the proposed garage addition to adjacent property(s); that there is no impact on any view or vista from a roadway; and that there is no impact with nitrogen on a coastal embayment. The Board further finds that the subject property and its structures as proposed herein meets the requirement of Section 240-69 E. and is appropriate for increase of lot coverage by structures from 19.53% to 23.02% as requested and shown on the "Plot Plan" submitted and noted herein.

The Board finds that the proposed additions to the existing single-family dwelling will increase and improve the utilization of the dwelling by its residents. The Board further finds that the existing three-bedroom dwelling represented herein will remain a three-bedroom dwelling through this special permit approval. Furthermore, the Board finds that the bedroom (#3 shown on existing plans submitted) will be relocated to above the garage proposed and the vacated bedroom space will become an office with a 5' opening as shown on the proposed plans submitted and noted herein.

The Board finds that the referral submitted by the Engineering Department recommend adding drywells or other stormwater measure for roof runoff. The Board further finds through testimony by the applicant's representative that the applicant is amenable to allow the project engineer to review stormwater runoff on subject property and determine, if necessary, location of drywells on subject property.

The Board finds through testimony by the applicant's representative and as shown on the plan submitted, that the existing shed in the northeast corner of subject property shall be removed and not replaced or relocated on subject property.

In addition to the above findings, the Board finds that the proposed additions to the existing one-story 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 additions as all setbacks on subject property are in compliance with Section 240-68 A. and B. and the increase in the lot coverage by structures is approvable under Section 240-69 E. as applied for by the applicant.

B. The site is suitable for the proposed use as the property is zoned residential and will be maintained as a single-family dwelling through this special permit approval.

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. There are existing cesspools on subject property with no change in the number of bedrooms on subject property; however, the Board of Health is required to review applications prior to issuance of a building permit (such as in this case). The determination of adequate sewage disposal on subject property will be determined by the Board of Health prior to issuance of a building permit; and in the event changes occur relative to the structures approved herein, the applicant shall return to the Board of Appeals for approval of said change prior to implementation.

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 updating of water service as there was no referral from the Water Department submitted to the file.

G. The proposed additions 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.

The Board of Appeals has weighed the effects of the proposed additions to the existing one-story, three-bedroom single-family dwelling as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Hurrie made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 and Carol C. Furst (herein referred to as Applicant) under Section(s) 240-69 E. of the Code of Falmouth to construct a laundry room/mud room with covered porch entrance and garage addition with habitable space above, exceeding 20% lot coverage by structures on subject property known as 25 Half Moon Circle, East Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The garage and other additions to the existing dwelling, all setbacks, height of proposed garage, all setbacks and use of dwelling/garage shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - "Plot Plan – Proposed Additions" prepared for Carol Furst 25 Half Moon Circle East Falmouth, Massachusetts as drawn on a plan by BSS Design, Inc. dated August 18, 2017 – plan is stamped and signed by Thomas Jackson Bunker, P.L.S. and has a Board date 'received' stamp of September 28, 2017;
  - "Furst House 25 Half Moon Circle Falmouth, MA" as drawn by Denise D'Ambrosi Bonoli, Architect – plans are not dated or stamped – plans consist of four pages - 1. 'Existing Floor Plan', 2. 'Existing Basement Plan', 3. 'Existing Front and Back Elevation' and 4. 'Existing Right and Left Side Elevation' – all plans have a Board date 'received' stamp of August 22, 2017; and
  - "Furst House 25 Half Moon Circle Falmouth, MA" as drawn by Denise D'Ambrosi Bonoli, Architect – plans are not dated or stamped – plans consist of six pages – 1. 'Proposed First Floor Plan', 2. 'Proposed Second Floor Plan', 3. 'Proposed Basement', 4. 'Proposed Front Elevation', 5. 'Proposed Back Elevation' and 6. 'Proposed Right and Left Elevation' – all plans have a Board date 'received' stamp of August 22, 2017.
2. There shall be no more than three (3) bedrooms allowed on subject property without further review by the Board of Appeals as a modification to this special permit.
3. The existing shed at the northeast corner of subject property shall be removed and not replaced or relocated on subject property.
4. The applicant or his/her designee (contractor) shall get verification from the Board of Health for existing cesspools to be allowed to remain or if an upgrade to a septic system is required. Said verification by the Board of Health shall be submitted to the Board of Appeals prior to issuance of a building permit. In the event a septic system upgrade is required and there is a change in the location of a structure approved herein, the applicant shall return to the Board of Appeals before said change is implemented.
5. The applicant will consult the project engineer as to the appropriateness and placement of drywells on subject property to maintain stormwater runoff. All stormwater runoff shall be maintained on subject property.
6. The proposed 'office' that is being created from where a bedroom once existed (relocated to above proposed garage) as shown on 'Proposed First Floor Plan' submitted, shall maintain the 5' cased opening as shown at all times.
7. 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.

8. The Applicant shall meet the requirements of the DPW Water Division.
9. 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.)
10. 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: **072-17**

Applicant: **ROBERT FURST and CAROL C. FURST of East Falmouth, MA**

Subject Property: **25 Half Moon Circle, East Falmouth, Massachusetts  
Map 40, Section 02A, Parcel 000, Lot 171B**

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, Vice Chairman, Board of Appeals**

RECEIVED

OCT 18 2017

FALMOUTH TOWN CLERK

*doc 330 pm*

**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.