

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

SPECIAL PERMIT NO: 095-18

APPLICANT/OWNER: JOHN F. KILEY, TRUSTEE of John Kiley 2014 Family Trust of Westwood, MA

SUBJECT PROPERTY: 5 Plymouth Drive, East Falmouth, Massachusetts
Assessor's Map: Map 32 Section 17 Parcel 000H Lot 025

DEED/CERTIFICATE: Book 28754 / Page 345

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of October 12, 2018, the applicant filed with the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to remove an existing deck and construct an addition to the pre-existing nonconforming single-family dwelling on subject property known as 5 Plymouth Drive, East 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 November 29, 2018.
4. The public hearing was closed on November 29, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, Acting Clerk Paul Murphy and Associates Gerald Potamis and Robert Dugan (appointed as a 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 appellant was present at the hearing to review and discuss the special permit request 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

None

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

None

Letters/Referrals/E-mails from Town Departments

- 10/17/2018 Referral submitted to the file from Water Department with no comment
- 10/18/2018 Referral submitted to the file from Planning Department staff with no comment
- 10/18/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 10/22/2018 Referral submitted to the file from Director of Assessing with no comment
- 10/22/2018 Referral submitted to the file from Conservation Commission with no comment
- 10/29/2018 Referral submitted to the file from Town Engineering Department with standard comments and a note that the project must not direct any stormwater runoff to public property, abutters or right of ways.
- 11/28/2018 ZBA staff submitted a photo of the existing deck on subject property to be removed as proposed in application

Note: ZBA sent Referral requests 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

“Certified Plot Plan – Proposed Renovations” prepared for John Kiley 5 Plymouth Drive Falmouth, Mass. As drawn by Warwick & Associates Inc. dated 02/05/2018 with a final revision date of 08/10/2018 – plan is stamped, signed and dated by Gary S. Labrie on 8/13/2018 and has a Board date ‘received’ stamp of October 12, 2018; and

“Kiley Cape House 5 Plymouth Drive – Falmouth, MA” – computer generated plans consisting of ‘Existing First Floor’, ‘Existing Second Floor’, ‘First Floor Plan’, ‘Basement Plan’, ‘Front Elevation’, ‘Side yard Elevation’, ‘Driveway Side Elevation’ and ‘Backyard Elevation’ – all plans are not authored and have a date of 10/5/2018 – all with a Board date ‘received’ stamp of October 12, 2018.

Hearing:

Mr. Kiley reviewed his subject property with the Board noting that he is proposing to remove the existing deck at the rear of the dwelling and construct an addition to the east façade of the existing dwelling to create additional habitable space. He explained that the addition will allow him to renovate the existing living room and kitchen and create new living room and dining area. The proposed addition will have cathedral ceilings and tie the roof ridge into existing dwelling height. He noted there will be no increase in the number of existing four (4) bedrooms and no new bathrooms proposed – just increasing living space on first floor. Mr. Kiley stated that the existing nonconforming lot coverage by structures would be slightly increased from 20.64% to 20.9% (includes removal of deck).

The Board discussed plans with Mr. Kiley. All concerns and questions were addressed.

Chairman Hurrie asked for any public comment in support or opposition of the proposed project. There was no public comment.

Member Foreman made a motion to close the hearing. Member Potamis seconded the motion. Motion carried 5 - 0.

Chairman Hurrie 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 5 Plymouth Drive in East Falmouth contains 7,710 square feet of Residential C zoned land that is located within the Eel Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. (pre-existing nonconforming) and 240-69 E. (increase lot coverage by structures) of the Code of Falmouth to remove existing deck at the rear of the dwelling off the concrete patio and construct a 14' x 24' addition to the east side of the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling has a nonconforming setback to the front property line off Plymouth Drive of 24.4' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth and a nonconforming setback of 9.1' at the westerly side yard property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage by structures is nonconforming at 20.64% as it exceeds the 20% maximum allowed by structures in a residential district under Section 240-69 A. of the Code of Falmouth. The proposed removal of the deck and the addition of habitable space will slightly increase the lot coverage by structures to 20.9%. There is no intent to add additional bedrooms – the count will remain at four (4). The proposed addition will tie into the existing roof line as the proposed addition will have cathedral ceilings.

Section 240-3 C. 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 removal of existing deck and proposed addition to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as there will be no increase to the existing nonconforming setbacks and the existing nonconforming lot coverage will be only slightly increased. The Board further finds that the proposed addition will be an enhancement to the utilization of the dwelling by its occupants. Furthermore, the Board finds that there was no opposition from abutters or interested parties regarding the proposed addition.

The Board finds through the plans submitted and testimony by the applicant that the bedroom count will remain at four (4) with no increase.

In addition to the above findings, the Board finds that the proposed addition to the pre-existing nonconforming 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 to the dwelling as it will not increase the existing nonconforming setbacks, it will not create any new nonconforming setbacks and the existing nonconforming lot coverage will be increased minimally.

B. The site is suitable for the proposed use as the property is zoned residential and will continue to be used 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 as there are several houses in the surrounding area that have been improved such as this; 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 will not be affected by the addition as there is no increase in the number of bedrooms existing on subject property.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed dwelling reconstruction 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 removal of the ground level deck off the existing concrete patio and the construction of the addition to the dwelling on subject property 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 Murphy made a motion to Grant the Special Permit with conditions. Member Dugan 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 John F. Kiley, Trustee (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to remove existing deck and construct addition to the pre-existing nonconforming single-family dwelling on subject property known as 5 Plymouth Drive, East Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The removal of existing deck, construction of addition at east side of dwelling, all setbacks, lot coverage, height of addition 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:

“Certified Plot Plan – Proposed Renovations” prepared for John Kiley 5 Plymouth Drive Falmouth, Mass. As drawn by Warwick & Associates Inc. dated 02/05/2018 with a final

revision date of 08/10/2018 – plan is stamped, signed and dated by Gary S. Labrie on 8/13/2018 and has a Board date ‘received’ stamp of October 12, 2018; and

“Kiley Cape House 5 Plymouth Drive – Falmouth, MA” – computer generated plans consisting of ‘Existing First Floor’, ‘Existing Second Floor’, ‘First Floor Plan’, ‘Basement Plan’, ‘Front Elevation’, ‘Side yard Elevation’, ‘Driveway Side Elevation’ and ‘Backyard Elevation’ – all plans are not authored and have a date of 10/5/2018 – all with a Board date ‘received’ stamp of October 12, 2018.

2. The bedroom count shall remain at four (4) bedrooms within subject dwelling with no increase.
3. The deck shall be removed prior to final inspection of the addition to the dwelling approved herein. There shall be no deck on subject property without prior approval by the Board of Appeals.
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 three (3) 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: **095-18**

Applicant/Owner: **JOHN F. KILEY, TRUSTEE of John Kiley 2014 Family Trust
Of Westwood, MA**

Subject Property: **5 Plymouth Drive, East Falmouth, Massachusetts
Map 32 Section 17 Parcel 000H Lot 025**

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 Hurrie, Chairman, Board of Appeals

RECEIVED

DEC - 4 2018

FALMOUTH TOWN CLERK



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.