



TOWN OF YARMOUTH  
BOARD OF APPEALS  
DECISION

**FILED WITH TOWN CLERK: September 6, 2013**

**PETITION NO. #4471**

**HEARING DATE: August 22, 2013**

**PETITIONER: Jacqueline Hughes, Trustee of Bluefin Realty Trust**

**PROPERTY: 11 Kelp Lane, South Yarmouth  
Map and Lot #:0025.20; Zoning District: R 25  
Book & Page: 25984/33**

**MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Sean Igoe, Debra Martin, Bryant Palmer and Gerald Garnick.**

It appearing that notice of said hearing has been given by sending notice thereof to the Petitioner and all those owners of property deemed by the Board to be affected thereby, and to the public by posting notice of the hearing and published in The Register, the hearing was opened and held on the date stated above.

The Petitioner is Jacqueline Hughes, Trustee of the Bluefin Realty Trust, who was represented by Andrew Singer, Esq. The Petitioner seeks a Special Permit or in the alternative a Variance to alter and extend a pre-existing, nonconforming, single-family dwelling within the front setback by constructing a one-story addition at the front of the house on a cul-de-sac circle at 11 Kelp Lane in South Yarmouth.

A letter from the Yarmouth Conservation Agent indicating that the Yarmouth Conservation Commission has approved of the proposal with conditions was read into the record. There was no further testimony from members of the public at the hearing.

There was a question and answer period and a discussion regarding the Conservation Commission disallowing the addition to be constructed on the side of the house due to the setback from Parker's River and whether the appropriate relief was a Special Permit or a Variance. Thereafter, the Board found that a Variance was the more appropriate form of relief in this instance.

The Board further found that based on the shape and topography of the lot (specifically due to the radius frontage of the end of the cul-de-sac road layout and being bordered by two bodies of water with environmental setback requirements of their own) and the historical location of the dwelling on the lot, this is a unique site worthy of special consideration. These unique conditions preclude constructing a completely conforming addition to provide a handicap-accessible, first-floor bedroom and access in the most environmentally-sensitive manner and result in a substantial hardship to the Applicant if the Zoning By-Law is literally enforced. While the separation to the front property line will be only 20.7 ft. from the closest point of the stepped addition, the physical separation to the cu-de-sac pavement of Kelp Lane will be a conforming 37.3 ft.

The Board additionally found that there will continue to be a substantial separation from all abutting residential neighbors and no negative, visual impact to people travelling down the road. The design of the addition has been made as compact as possible and sited to maximize separation to Parkers River without losing the needed first-floor bedroom space and handicap ramp. Although the addition conforms to the side zoning setback, it is still located within 50 ft. of the wetland. The proposal will not result in a substantial detriment to the public good and will not nullify or substantially derogate from the intent or purpose of the Zoning By-Law.

On Motion made by Mr. Igoe, seconded by Ms. Martin, the Board voted unanimously in favor of granting a Variance on the condition that all conditions of the Conservation Commission Order of Conditions be satisfied.

On Motion made by Mr. Igoe, seconded by Ms. Martin, the Board voted unanimously in favor of the Applicant withdrawing the Special Permit request without prejudice.

No permit shall issue until 20 days from the filing of this decision with the Town Clerk. Appeals from this decision shall be made pursuant to MGL c40A section 17 and must be filed within 20 days after filing of this notice/decision with the Town Clerk. Unless otherwise provided herein, a Variance shall lapse if the rights authorized herein are not excised within 12 months. (See MGL c40A §10)

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Steven DeYoung, Chairman