

## Zoning Board of Appeals Decisions Decisions for: 09-04-2014

[Close Window](#)

DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 60-14

APPLICANT/OWNER: PAULINE T. GIABBAI of East Falmouth, Massachusetts

DEED/CERTIFICATE: Book 7973 / Page 283

SUBJECT PROPERTY: 63 Andrews Street, East Falmouth, Massachusetts  
Map 28, Section 02, Parcel 012, Lot 013

Under a date of July 7, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-68 A. (8) of the Code of Falmouth to construct an above-ground pool in a front yard more than 50' from front property line on subject property located at 63 Andrews Street, East Falmouth, Massachusetts.

A public hearing was held on September 4, 2014. 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.

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Matthew McNamara, Member Patricia Johnson

Clerk Bielan read the Notice of Public Hearing into the record.

Pauline Giabbai the applicant was present and reviewed the plan for an above-ground pool in her front yard approximately 89 feet from the front yard property line off Andrews Street. She explained that there is an existing chain link fence where the pool will be constructed inside of.

Clerk Bielan read the Town Department referrals into the record.

Referrals were received from the Building Department, Engineering Department and the Board of Health that had no comment.

Chairman Haddad asked if there was going to be any lighting at the pool area.

Ms. Gaibbai said there will only be a front porch light.

Chairman Haddad asked if anyone present would like to speak in favor or opposition.

There was no public comment in support or opposition of the proposed pool in a front yard.

Member McNamara made a motion to close the hearing. Member Johnson seconded the motion. Motion carried 5 - 0.

Chairman Haddad 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 63 Andrews Street in East Falmouth contains 20,290 square feet of

Residential C zoned land. The applicant applied under Section(s) 240-68 A. (8) of the Code of Falmouth to construct an accessory structure [above-ground pool] in a front yard more than 50' from the front property line. The proposed above-ground pool is approximately 89' from the front property line off Andrews Street.

Section 240-68 A. (8) of the Code of Falmouth allows the Board of Appeals to approve an accessory structure in a front yard that is more than 50' from the front property line.

The Board finds that the proposed above-ground pool in the front yard approximately 89' from the front property line of subject property meets the criteria of Section 240-68 A. (8) of the Code of Falmouth. The Board further finds that the pool shall be constructed according to the current Massachusetts Building Code as permitted by the Building Department.

The Board finds that there was no correspondence submitted to the file from any abutter or interested party. The Board further finds that the pool is located back on the property and is not impacting a view of the street.

The Board finds through testimony of the applicant that there is no intent at this time to have lighting installed around the pool as she stated that existing front porch lighting exists.

In addition to the above findings, the Board finds that the proposed above-ground pool is 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 above-ground pool as it does not create a nonconformity.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception and the pool is an accessory to the primary residential use and allowed through zoning.
- 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 the pool in the front yard does not impact the view of traffic on roadway. The applicant has submitted to the file an easement for access to subject property from a driveway of abutter.
- D. The visual character of the subject property will not be negatively impacted by the above-ground pool discussed herein; and there is no impact on any view or vista from the roadway or abutting properties.
- E. There was no referral submitted by the Board of Health. The location of the above-ground pool will require approval by the Board of Health for septic components location prior to construction of said pool.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed construction of an above-ground pool 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 Johnson made a motion to Grant the Special Permit with conditions. Member McNamara 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 Pauline T. Giabbai (herein referred to as Applicant) under Section(s) 240-68 A. (8) of the Code of Falmouth to construct an above-ground pool in the front yard approximately 89' from the front property line off Andrews Street for subject property located at 63 Andrews Street, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The location, setback, size and use of the above-ground pool shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Certified Plot Plan Showing Proposed Pool" for 63 Andrews Street, East Falmouth, MA dated 7/1/2014 drawn by Cape & Islands Engineering with a Board date received stamp of July 7, 2014.

- 2. The above-ground pool approved herein shall be constructed according to the current Massachusetts Building Code. It is noted that the plan does not show any accessory structure to house a pool pump or accessory pool items.
- 3. The Board of Health shall review the plan to insure that the above-ground pool does not compromise any septic components.
- 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: 60-14

Applicant: PAULINE T. GIABBAI of East Falmouth, MA

Subject Property: 63 Andrews Street, East Falmouth, Massachusetts  
Map 28, Section 02, Parcel 012, Lot 013

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.

\_\_\_\_\_  
Kimberly Bielan, Board 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.

**Notes:**

60-14 Giabbai SP - 63 Andrews St, E. Fal - front yard abvgrnd pool