

Zoning Board of Appeals Decisions Decisions for: 10-08-2015

[Close Window](#)

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 77-15

APPLICANT(S)/OWNER: RALPH J. VATALARO & SUSAN A. VATALARO
of North Easton, MA

DEED/CERTIFICATE: Certificate 165133 – Lot 34, Plan 14471-B

SUBJECT PROPERTY: 49 Green Harbor Road, East Falmouth, Massachusetts
Assessor's Map: Map 45, Section 15A, Parcel 000, Lot 034

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of August 7, 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 add a dormer and second floor deck to the detached pre-existing nonconforming garage structure and install an in-ground pool on subject property known as 49 Green Harbor Road, 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 September 24, 2015.
4. The public hearing was terminated on October 8, 2015, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was present at the hearing and 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

None

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

8/4/2015 E-mail response from applicant to staff regarding application for special permit through 8/7/2015

Letters/Referrals/E-mails from Town Departments

10/6/2015 E-mail from Board of Health Agent to Zoning Administrator regarding walk-through of existing structures noting bedroom count; it states that the proposed project is not in conflict with the septic system as long as existing room in garage on first level is eliminated as the proposed area on second level of garage meets criteria of bedroom.

10/8/2014 Memo from Conservation Commission stating an RDA application had been filed by applicant and approved by Conservation Commission in July 2014.

8/12/2015 Referral submitted by the Planning Department with no comment.

8/12/2015 Referral submitted by the Building Commissioner (Gore) with no comment.

8/12/2015 Referral submitted by the Falmouth Fire Rescue Department (Trott) with no comment.

Plans submitted by Applicant/Applicant's Representative

8/7/2015 "Plan of Proposed Pool and Garage Renovations prepared for Susan A. & Ralph J. Vatalaro for Lot 34, #49 Green Harbor Road in East Falmouth, MA" drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated August 5, 2015 and with a Board date 'received' stamp of August 7, 2015;

"Typical Details of Concrete Pool Construction" drawn by Easton Pool & Spa, Inc. – SP 1 of 1 – not dated stamped and signed by Arthur P. Cripps, PE (stamp not dated as well) with a Board date 'received' stamp of August 7, 2015; and

"Garage/Workshop Vatalaro Residence 49 Green Harbor Road Falmouth, Massachusetts" drawn by Annino Incorporated consisting of Drawing A2.0 'Exterior Elevations' dated 12/20/2013 with a Board date 'received' stamp of August 3, 2015; and

"Garage/Workshop Vatalaro Residence 49 Green Harbor Road Falmouth, Massachusetts" drawn by Annino Incorporated consisting of Drawing A1.0 'Floor Plans Framing Plans' with final revision date of 9/25/2015 and a Board date 'received' stamp of October 5, 2015.

Hearing:

Ralph Vatalaro, applicant, reviewed the existing site conditions and the proposed addition of a dormer and deck at the second level of the pre-existing nonconforming detached garage structure located in the easterly side yard of subject property and the proposed pool. Mr. Vatalaro stated that the second floor will be 295 square feet in size (half of the 624 square foot first floor); and that the room used as a bedroom in the first floor of the garage will be eliminated and the first floor of the garage will now be used for garage space/storage space only. He stated that the second level of the garage will become a workshop/office space. He said it is was previously used as a recreation area for his children. There is a proposed deck on the second level at the rear of the structure (above an existing patio) and one existing on the west side of the structure – second level. He explained the proposed additional lot coverage due to the proposed pool and stairs from proposed deck will not exceed the 20% maximum lot coverage by structures allowed by right.

The Board discussed plans with Mr. Vatalaro and asked about the existing shed at the rear corner of the detached garage and current size of second floor of garage. All concerns and questions were addressed and Mr. Vatalaro stated that the shed will be removed and not replaced and explained that the second level is full size and will be reduced to meet the criteria of 1.5 story accessory structure that will become a workshop/office space for he and his wife.

Chairman Bielan asked for any public comment in support or opposition of the proposed additions. 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 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 49 Green Harbor Road in East Falmouth contains 16,263 square feet of Residential B zoned land that is located within the Green Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to construct an in-ground pool and to

construct a second deck to the second floor of the detached garage structure as well as a dormer. The dwelling structure has a nonconforming setback of 22.2' from the front property line off Green Harbor Road that requires a 25' setback under Section 240-68 A. of the Code of Falmouth; and the detached garage structure has a nonconforming setback to the easterly side yard property line of 5.8' that requires a 10' setback under Section 240-68 B. of the Code of Falmouth. Lot coverage by structures is in compliance with Section 240-69 A. according to the "Plan" signed and stamped by Michael B. McGrath, PLS submitted to the file and noted herein.

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 installation of an in-ground pool and the dormer and deck addition to the second floor of the existing detached garage structure does not appear to be substantially more detrimental than what currently exists. The Board further finds that the existing nonconforming setbacks on the property will not be increased, and there will be no new nonconformities created. Furthermore, the Board finds that the proposed addition of a deck and dormer to the detached garage structure will create a half-story to bring structure in compliance with Section 240-70 of the Code of Falmouth (1.5 story for accessory structures) and will also improve the utilization and use of second floor by family members.

The Board finds through testimony by the applicant that the room in the first floor of the garage that meets the criteria of a bedroom will be removed and the first floor of said garage will be used solely as a garage and/or storage space for personal items. The Board further finds through testimony by the applicant that he may install heat within the second floor of the garage structure discussed herein.

The Board finds through submission of an e-mail by the Board of Health Agent to the Zoning Administrator on October 6, 2015, that a walk through was conducted [by the Board of Health] on subject property and verified that three (3) bedrooms exist within the dwelling structure. The Board further finds that the Board of Health states in the e-mail sent to Zoning Administrator on October 6, 2015 that the septic system on subject property has a capacity for four (4) bedrooms and the proposed room on the second level of the garage (with the removal of the one on the first level of said garage) will be considered a fourth bedroom; and based on that, the Board of Health has no objections.

The Board finds through testimony by the applicant that the shed at the rear of the property will be removed and not replaced to any location on subject property.

In addition to the above findings, the Board finds that the proposed pool addition and additions to the detached garage structure 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 in-ground pool installation in the back yard and a deck and dormer addition to the second level of the detached garage structure as there is no increase in the existing nonconforming setbacks and no new nonconformity created through this special permit.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such and that the additions discussed herein are accessory to the primary use of the residence on subject property.
- 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 slightly changed but 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.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed in-ground pool and additions to the detached garage structure 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Foreman 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 Ralph J. and Susan A. Vatalaro (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to add dormer and deck to detached garage and install an in-ground pool on subject property known as 49 Green Harbor Road, East Falmouth, MA. This special permit is subject to the following conditions:

1. The in-ground pool installation, addition of deck and dormer to the second floor of the detached garage structure, lot coverage, setbacks and use of detached garage structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plan of Proposed Pool and Garage Renovations prepared for Susan A. & Ralph J. Vatalaro for Lot 34, #49 Green Harbor Road in East Falmouth, MA" drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated August 5, 2015 and with a Board date 'received' stamp of August 7, 2015;

- "Typical Details of Concrete Pool Construction" drawn by Easton Pool & Spa, Inc. – SP 1 of 1 – not dated stamped and signed by Arthur P. Cripps, PE (stamp not dated as well) with a Board date 'received' stamp of August 7, 2015; and

- "Garage/Workshop Vatalaro Residence 49 Green Harbor Road Falmouth, Massachusetts" drawn by Annino Incorporated consisting of Drawing A2.0 'Exterior Elevations' dated 12/20/2013 with a Board date 'received' stamp of August 3, 2015; and

- "Garage/Workshop Vatalaro Residence 49 Green Harbor Road Falmouth, Massachusetts" drawn by Annino Incorporated consisting of Drawing A1.0 'Floor Plans Framing Plans' with final revision date of 9/25/2015 and a Board date 'received' stamp of October 5, 2015.

2. There shall be no more than four (4) bedrooms allowed on subject property, which shall include the proposed room on the second level of the detached garage as discussed and represented herein.

3. The separate room on the first floor of the garage structure shall be eliminated and the first floor of the garage shall be used solely as a garage and/or for personal storage.

4. The existing shed at the rear of the detached garage structure shall be removed and not replaced or located anywhere on subject property.

5. 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.

6. 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.)

7. 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: 77-15

Applicant: RALPH J. VATALARO & SUSAN A. VATALARO
of North Easton, MA

Subject Property: 49 Green Harbor Road, East Falmouth, Massachusetts
Map 45, Section 15A, Parcel 000, Lot 034

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, 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 77-15 Vatalaro - Filed w/ Town Clerk 10/20/15