

Zoning Board of Appeals Decisions Decisions for: 03-12-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 8-15

APPLICANT(S)/OWNER(S): JEFF D. CONWAY and SHANNON F. CONWAY
of Hingham, MA

DEED/CERTIFICATE: Certificate # 204902 – Plan 6531-19 – Lots 244 and 245

SUBJECT PROPERTY: 11 Onawa Lane, Falmouth, MA
Assessor's Map: Map 48, Section 13A, Parcel 008B, Lot 244

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of January 20, 2015 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 remove the pre-existing nonconforming swimming pool and shed and construct a new swimming pool and shed in the front yard, no closer than 50' to the front property line on subject property located 11 Onawa Lane, 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 scheduled for March 5, 2012 at 6:30 PM and was rescheduled for March 12, 2015 at 6:30 PM due to weather conditions in the Town of Falmouth. The hearing was opened on March 12, 2015 and testimony and public comment were heard.
4. The public hearing was terminated on March 12, 2015 with a Board voted of 5 – 0 to Grant the Special Permit. Board members sitting were Chairman Kenneth Foreman, Vice Chair Kimberly Bielan, Clerk Terrence Hurrie, Associate Mark Cool (sitting as voting member) and Associate John Sutherland (sitting as voting member).
5. The Board received documents and information prior to and during the public hearing which 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

3/5/2015 Letter in support of application/plans from H. Russel Lemcke of 63 Quonset Road, Falmouth

2/26/2015 Letter in support of application/plans from Daniel Vlock/Joyce Myers of 53 Quonset Road, Falmouth

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

1/20/2015 Letter from Attorney Kevin Klauer, II – narrative submitted with application and plans

2/18/2015 Letter from Attorney Kevin Klauer, II – cover letter submitted with revised plans for project

Various e-mails between Attorney Klauer and ZBA office staff regarding needed information

Letters/Referrals/E-mails from Town Departments

1/20/2015 Copy of Special Permit 196-81 Denial for subject property submitted to file by ZBA staff

1/22/2015 Referral submitted by the Planning Department with no comment

1/22/2015 Referral submitted by the Building Department with no comment

1/22/2015 Referral submitted by the Conservation Commission that states: An Order of Conditions (DEP 25-4002) had been issued 5/8/14 to raze and rebuild with extensive work. The Conways are applying to amend the Order for further extensive work. Just advertised for 2/4/15. May have to file new NOI for work – unsure.

2/2/2015 Referral submitted by the Board of Health Agent states: No objections, provided pool shed remains inhabitable space.

Plans submitted from Applicant

2/18/2015 "Existing Conditions Plan for #11 Onawa Lane" prepared for Shannan & Jeff Conway in Falmouth MA – Sheet 1 of 3 drawn by Falmouth Engineering, Inc. dated January 7, 2015, revised 2/10/15 and with a Board date 'received' stamp of February 18, 2015

2/18/2015 "Site Plan for #11 Onawa Lane" prepared for Shannan & Jeff Conway in Falmouth MA – Sheet 2 of 3 drawn by Falmouth Engineering, Inc. dated January 7, 2015, revised 2/10/15 and with a Board date 'received' stamp of February 18, 2015

2/18/2015 "Landscape Plan" for Conway Residence 11 Onawa Lane, Falmouth, MA – Drawing L1 dated February 11, 2015 drawn by Centerline Studios Inc. with a Board date 'received' stamp of February 18, 2015

2/18/2015 "Pool Shed Plans" for the Conway Residence 11 Onawa Lane Falmouth, Massachusetts – Drawing Number PA-01 drawn by John Dvorsack Architect, LLC, dated 12/23/2014, revised 2/13/2015 with a Board date 'received' stamp of February 18, 2015

3/2/2015 "Pool Layout" for the Conway Residence 11 Onawa Lane, Falmouth, MA – Drawing L5-02 and L5-03 drawn by Centerline Studios Inc. dated February 28, 2015 and with a Board date 'received' stamp of March 2, 2015

Hearing:

Attorney Kevin Klauer, II with Ament Law Firm was present on behalf of the applicant and reviewed the existing site conditions and the proposed removal of the existing pool and shed and the construction of a new pool and shed in a different location on subject property. Attorney Klauer explained that the applicants have merged the lot with adjacent lot and will be removing existing nonconforming structures that include the dwelling, shed, garage and pool and reconstructing all structures with conforming setbacks. Currently the dwelling and pool have nonconforming setbacks to Oyster Pond. The proposed pool and pool shed will be located in the front yard more than 50 feet from the front property line off Onawa Lane. The proposed pool shed will not be heated and will be used for storage and have a bathroom – there will be no habitable space within the shed.

Board members asked about the height of the pool shed and if the pool area will be fenced and the height of said fence.

Attorney Klauer responded that the height of the pool will be 13' from ground level; the pool will have a 48" [4'] fence according to building code.

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

Member Bielan made a motion to close the hearing. Member Cool 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 11 Onawa Lane in Falmouth contains 1.47 acres of Residential B zoned land that is located in the Oyster Pond Coastal Pond Overlay District. The subject property had a special permit granted in 1981 (#196-81) for living quarters above the detached garage for a caretaker. The applicant applied under Section(s) 240-68 A. (8) of the Code of Falmouth to construct a pool and pool shed in the front yard more than 50 feet from the front property line off Onawa Lane (a private way). The proposed pool shed is 52 feet from the front property line and the pool is behind the shed making it approximately 65 feet from the front property line [shed is 13' x 16']. The existing shed with deck, pool and dwelling on subject property will all be razed. The reconstruction of the dwelling is not part of this special permit as it is being razed and reconstructed in conformance with all setbacks pursuant to Section 240-68 A. and B. of the Code of Falmouth. The lot coverage by structures proposed will be 6.8% and total lot coverage will be 17.1% - both well below the maximum percentage allowed in a residential district pursuant to Section 240-69 A. of the Code of Falmouth.

Section 240-68 of the Code of Falmouth "Setbacks", subsection A. (8) allows the Board of Appeals to issue a special permit for an accessory structure in a front yard, but not closer to the street frontage than 50 feet.

The Board finds that the proposed pool and pool shed meets the requirements of Section 240-68 A. (8) of the Code of Falmouth based on testimony and as shown on the plans submitted and reviewed by the Board. The Board further finds through testimony of the applicant's representative that the pool shed contains a bathroom and that said shed will be used for storage and remain unheated. Furthermore, the Board finds according to testimony by the applicant's representative and according to plans submitted and reviewed by the Board that the shed height meets the requirements of Section 240-70 of the Code of Falmouth - "Maximum building height".

The Board finds that the entire site will be improved and that the landscape plan submitted to the file and approved by Conservation Commission contains substantial screening of the pool, pool shed and dwelling.

The Board finds through testimony by the applicant's representative that the fence surrounding the proposed pool will be no less than 4 feet in height as required by the current Massachusetts Building Code.

The Board finds through testimony by the applicant's representative that the application has been before the Conservation Commission and received approval.

In addition to the above findings, the Board finds that the proposed pool and pool shed in the front yard more than 50 feet from the front property line 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 pool and pool shed and do not create any nonconforming setbacks and the lot coverage on subject property is well below the maximum percentage allowed in a residential district.
- B. The site is suitable for the proposed use as the property is zoned residential and a pool and pool shed are acceptable accessory structures to the primary dwelling on a property.
- C. There will be no impact on traffic flow and safety through the construction of the proposed pool and pool shed.
- 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. The sewage disposal system is not affected through the construction of the proposed pool and pool shed and the construction of these structures requires sign off by the Board of Health prior to construction.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed pool and pool shed in the front yard of subject property 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 Cool made a motion to Grant the Special Permit with conditions. Member Bielan 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 Jeff and Shannon Conway (herein referred to as Applicant) under Section(s) 240-68 A. (8) of the Code of Falmouth to construct a pool and pool shed in the front yard more than 50' from the front property line for subject property known as 11 Onawa Lane, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The location, construction, setbacks, lot coverage and use of pool and pool shed shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Existing Conditions Plan for #11 Onawa Lane" prepared for Shannan & Jeff Conway in Falmouth MA – Sheet 1 of 3 drawn by Falmouth Engineering, Inc. dated January 7, 2015, revised 2/10/15 and with a Board date 'received' stamp of February 18, 2015

- "Site Plan for #11 Onawa Lane" prepared for Shannan & Jeff Conway in Falmouth MA – Sheet 2 of 3 drawn by Falmouth Engineering, Inc. dated January 7, 2015, revised 2/10/15 and with a Board date 'received' stamp of February 18, 2015

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2. There shall be no habitable space created and no heat installed within the pool shed approved herein.

3. 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.

4. The Applicant shall meet the requirements of the DPW Water Division.

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: 8-15

Applicant: JEFF D. CONWAY and SHANNON F. CONWAY
of Hingham, MA

Subject Property: 11 Onawa Lane, Falmouth, Massachusetts
Map 48, Section 13A, Parcel 008B, Lot 244

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.

Kenneth Foreman, Board Chairman

_____ 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:

8-15 Conway SP grnted 3-12, filed w/Clrk 3-20