

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

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 11-15

APPLICANT(S)/OWNER: ANN K. DAVIES and SANDERS DAVIES of Norwalk, CT

DEED/CERTIFICATE: Book 15635 / Page 54

SUBJECT PROPERTY: 141 Ostrom Road, Waquoit, MA
Assessor's Map: Map 31, Section 04, Parcel 018, Lot 003

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of January 26, 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 construct a pool in a front yard more than 50 feet from the front property line off Ostrom Road on subject property located at 141 Ostrom Road in Waquoit, 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 vote 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 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 from Applicant/Representative(s)

None relevant to application (application fee info only)

Letters/Referrals/E-mails from Town Departments

3/4/2015 A referral was submitted by the Engineering Department that had standard comments regarding any changes within the right of way or to utilities will require a permit from appropriate town department and that the project must not direct stormwater runoff to public property, abutters or right of ways.

3/2/2015 A referral was submitted by the Conservation Commission Agent that stated concerns with project which was later clarified in an e-mail of same date attached to the referral – no issues.

2/29/2015 A referral submitted by the Board of Health Agent had no comment.

1/30/2015 A referral submitted by the Building Commissioner had no comment.

1/29/2015 A referral submitted by the Planning Department had no comment.

Plans submitted by Applicant/Applicant's Representative

1/26/2015 "Standard Construction Drawing" by Bella Pools for Mr. and Mrs. Davies of 141 Ostrom Road, Waquoit – stamped by Timothy Walker, P.E. – not signed or dated – with a Board date 'received' stamp of January 26, 2015.

2/3/2015 "Proposed Swimming Pool" prepared for Sanders Davies 141 Ostrom Road, Waquoit, East Falmouth, Massachusetts drawn by BSS Design, Inc. dated and final revision date of January 26, 2015 – stamped and signed by Thomas J. Bunker, PLS and with a Board date 'received' stamp of February 3, 2015.

March 12, 2015 Hearing:

Thomas J. Bunker, PLS with BSS Design, Inc. was present on behalf of the applicant and reviewed the existing site conditions and the proposed construction of an in-ground pool that will be located 147 feet from the front property line off Ostrom Road. The pool will have a setback of 11.4 feet from the easterly side yard property line and will be located between the garage and dwelling. The concrete pad around the pool will be closer than ten feet to the side yard property line that is allowed as it is not considered part of the structure [pool structure]. Mr. Bunker further stated that the lot coverage by structures will be increased through the pool construction to 9.8% and total coverage will be 11.48%, which will be in compliance with the Town Code. He reviewed criteria under Section 240-216 stating that the pool and subject property meet relevant requirements.

The Board discussed plans with Mr. Bunker. Member Cool asked for clarification of plans as the "Proposed Swimming Pool" plan states that there will be a 5' fence around the pool and the "Standard Construction Drawing" states there will be a 4' fence around the pool.

Mr. Bunker stated that the Building Code requires a 4' fence and that will be minimum size.

Member Cool asked if Conservation Commission is satisfied with plan.

Mr. Bunker stated yes.

Member Foreman asked if screening is proposed.

Mr. Bunker stated no and explained that the pool is not visible from the roadway and on the abutting property to the north the house is set back near the water and will not have a view of the pool.

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

Member Cool made a motion to close the hearing. Member Bielan 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 141 Ostrom Road in Waquoit contains 46,200 square feet of Residential A zoned land that is located within the Quashnet River Coastal Pond Overlay District. The subject property had a previous special permit granted in 2000 (#145-00) to allow the construction of a detached garage in the front yard more than 50 feet from the front property line off Ostrom Road. The applicant applied under Section(s) 240-68 A. (8) of the Code of Falmouth to now construct a pool in the front yard no closer

than 50 feet to the front property line off Ostrom Road. The proposed pool will be located between the detached garage structure and the existing dwelling and the plans submitted and noted herein show the pool to be 144.2 feet from the front property line.

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 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 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 there are no other accessory structures proposed on subject property.

The Board finds that there are no nonconformities created through this special permit.

In addition to the above findings, the Board finds that the proposed pool in the front yard no closer than 50' to 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 as there are no new nonconformities created through this proposal and the location of the pool meets criteria of Section 240-68 A. (8) of the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned residential and the proposed pool is an accessory use to the existing primary dwelling.
- 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 unchanged as the pool will not be visible from the public way; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system will not be affected by the proposed pool – see referral submitted to the file from the Board of Health with 'no comment'.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed 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 Bielan made a motion to Grant the Special Permit with conditions. Member Cool 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 Ann K. Davies and Sanders Davies (herein referred to as Applicant) under Section(s) 240-68 A. (8) of the Code of Falmouth to construct a pool in the front yard more than 50 feet from the front property line on subject property known as 141 Ostrom Road, Waquoit, Massachusetts. This special permit is subject to the following conditions:

1. The location, setback(s), lot coverage and use of the pool shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Standard Construction Drawing" by Bella Pools for Mr. and Mrs. Davies of 141 Ostrom Road, Waquoit – stamped by Timothy Walker, P.E. – not signed or dated – with a Board date 'received' stamp of January 26, 2015.

- "Proposed Swimming Pool" prepared for Sanders Davies 141 Ostrom Road, Waquoit, East Falmouth, Massachusetts drawn by BSS Design, Inc. dated and final revision date of January 26, 2015 – stamped and signed by Thomas J. Bunker, PLS and with a Board date 'received' stamp of February 3, 2015.

NOTE: The testimony by the applicant’s representative was that the fence surrounding the pool will be 4’ in height – the "Proposed Swimming Pool" plan shows 5’ in error.

- 2. 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.
- 3. The Applicant shall meet the requirements of the DPW Water Division.
- 4. 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.)
- 5. 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: 11-15

Applicant: ANN K. DAVIES and SANDERS DAVIES of Norwalk, CT

Subject Property: 141 Ostrom Road, Waquoit, Massachusetts
Map 31, Section 04, Parcel 018, Lot 003

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:
11-15 Davies SP grnted 3/12 - filed w/Clrk 3/20

