

## Zoning Board of Appeals Decisions Decisions for: 05-12-2016

[Close Window](#)

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 040-16

APPLICANT/OWNER(S): FRANK MYLONAS of Foxboro, MA

SUBJECT PROPERTY: 17 Hudson Street, Falmouth, Massachusetts  
Assessor's Map: Map 46, Section 00F, Parcel 000, Lot 003

DEED/CERTIFICATE: Book 10112 / Page 0213

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of March 25, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to construct an in-ground pool on subject property known as 17 Hudson Street, Falmouth, MA.
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 May 12, 2016.
4. The public hearing was terminated on May 12, 2016, 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 represented at the hearing by Steven Senna with Swimming Pool and Spa Design, who 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)

3/25/2016 Steve Senna with Swimming Pool and Spa Design submitted on behalf of the applicant, an application, fee, plot plans and pool plans.

Letters/Referrals/E-mails from Town Departments

3/29/2016 Referral submitted to the file from the Planning Department staff that has no comment.

3/31/2016 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment.

4/7/2016 Referral submitted to the file from the Engineering Department (S. Schluter) with standard comments about right ways, any connections or alterations to public utilities will require permit from Town Departments and the proposed must not direct any stormwater runoff to abutting properties, right

of rights or public property.

4/22/2016 Referral submitted to the file by Conservation Agent Mark Kasprzyk that states: Install dry well for pool unless already proposed.

4/29/2016 Referral submitted to the file by Interim Building Commissioner Brandolini with no comment.

Plans submitted by Applicant/Applicant's Representative

"Certified Plot Plan" prepared for Frank Mylonas, 6 Crosswoods Path Walpole, MA 02081 drawn by Cape & Islands Engineering – Sheet 1 of 1 dated 3/21/16 with a final revision date of 3/24/16 and with a Board date 'received' stamp of Mar. 25, 2016; and

"Non-Diving Pool" – 'Celebrity 16-0 x 32-0 Left' plans by Latham Steel – Sheets 1 through 3, dated 3/24/2016 and with a Board date 'received' stamp of Mar. 25, 2016.

Hearing:

Mr. Senna reviewed existing site and noted that all setbacks from structures on subject property are in compliance with the Town bylaws and that the reason the proposed in-ground pool is before this Board is due to the lot coverage existing at 20.9%. The proposed in-ground pool will increase the lot coverage by structures to 24.9%. No other nonconformities will be created through the construction of the proposed in-ground pool.

The Board discussed plans with Mr. Senna. All concerns and questions were addressed.

Chairman Bielan asked for any public comment in support or opposition of the proposed project.

Cornelia Kulczyk of 24 Lucerne Avenue (abutter at rear of property) stated concern with trees being removed, possible noise, splash over from pool and runoff – asked if any drainage and what lighting for pool area is proposed.

David Buzanoski of 32 Lucerne Avenue stated same concerns as Ms. Kulczyk and spoke of possible noise from pool activity late at night, no drywells shown on plan and questioned the fence.

Mr. Mylonas stated he and his wife have no children and there should not be any noise. He explained the fence will be a 6' vinyl fence and he will have drywells installed. He further stated that when they get hooked to Town sewer he would like to use the existing septic system as drainage for pool water and he will discuss with Board of Health.

Member Murphy made a motion to close the hearing. Member Van Keuren 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 17 Hudson Street contains 11,812 square feet of Residential C zoned land that is located in the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to construct an in-ground pool in the back yard of subject property. The property is nonconforming due to lot coverage by structures that is 20.9% due to an addition of a back door landing with steps. The proposed pool will increase lot coverage to 24.9%, just slightly below the 25% maximum allowed pursuant to Section 240-69 E. of the Code of Falmouth.

Section 240-3 C. 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 in-ground pool on subject property will not be substantially more detrimental than what currently exists as the pool will be located in the back yard and not visible from the roadway. The Board further finds that the in-ground pool meets setback requirements under Section 240-68 B. of the Code of Falmouth.

The Board finds through testimony by the applicant that the fence will be a 6' vinyl privacy fence with proper lock mechanism; the height of the proposed fence exceeds the height required by code for a fence around a pool area. The Board further finds that the applicant will be installing drywells based on Board of Health requirement for distance from a septic system. Furthermore, the Board finds that the applicant is proposing that in the event the property is hooked to Town sewer the applicant will procure Board of Health approval to allow the existing septic to be used for drainage of pool water.

The Board finds through testimony by the applicant that there is an existing flood light attached to the rear of the dwelling for backyard lighting and they have no intent to install any other lighting.

In addition to the above findings, the Board finds that the proposed in-ground pool addition 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 as there will be no nonconforming setbacks on subject property; and lot coverage by structures is allowed to be no more than 25% with approval from the Board of Appeals.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception.
- 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 proposed in-ground pool will be located in the back yard and not visible from the roadway.
- E. The septic system will not be impacted by the addition of the in-ground pool and the Board of Health Agent submitted a referral with no comment. In the event the property is tied into Town sewer, the applicant shall request from the Board of Health approval to use the onsite septic system as drainage for the proposed in-ground pool approved hearing. If the Board of Health does not approve said use of the septic system, the applicant shall meet all requirements to remove and/or fill the existing septic system and drain the pool according to regulations.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed in-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.

The Board of Appeals has weighed the effects of the proposed in-ground pool as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Foreman made a motion to Grant the Special Permit with conditions. Member Hurrie 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 Frank Mylonas (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct an in-ground swimming pool on subject property known as 17 Hudson Street, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The construction and location of the in-ground swimming pool, all setbacks, lot coverage and fencing shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Certified Plot Plan" prepared for Frank Mylonas, 6 Crosswoods Path Walpole, MA 02081 drawn by Cape & Islands Engineering – Sheet 1 of 1 dated 3/21/16 with a final revision date of 3/24/16 and with a Board date 'received' stamp of Mar. 25, 2016; and
  - "Non-Diving Pool" – 'Celebrity 16-0 x 32-0 Left' plans by Latham Steel – Sheets 1 through 3, dated 3/24/2016 and with a Board date 'received' stamp of Mar. 25, 2016.
2. The applicant shall install drywells on subject property to maintain stormwater runoff on subject property. The pool, as well as stormwater runoff must not direct any waters to public property, abutters or roadway.
  3. The applicant shall submit revised "Certified Plot Plan" noted in Condition 1 above showing location of drywells on subject property conditioned herein. The revised plan shall be submitted to the Board of Appeals for approval prior to the issuance and sign off of a building permit application for proposed pool.
  4. If the applicant adds lighting to the pool area, it shall be low-level lighting and will illuminate the back yard only and shall not be directed at any abutting property(s).
  5. There shall be no draining of pool water onto subject property or roadway, catch basin or drywell.
  6. 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.
  7. 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.)
  8. 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: 040-16

Applicant: FRANK MYLONAS of Foxboro, MA

Subject Property: 17 Hudson Street, Falmouth, Massachusetts  
Map 46, Section 00F, Parcel 000, 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.

---

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 040-16 / Mylonas / Filed w/Town Clerk 5/18/16