

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 035-17

**APPLICANT/OWNER:** WILLIAM F. BALUTIS & JAMES S. BALUTIS, TRUSTEES  
of the Balutis Realty Trust

**SUBJECT PROPERTY:** 21 Bay Shore Drive, North Falmouth, Massachusetts  
**Assessor's Map:** Map 13, Section 07, Parcel 000, Lot 081

**DEED/CERTIFICATE:** Certificate 128661 – Plan 10528-B (Sheet 4)

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of May 16, 2017, 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 raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 21 Bay Shore Drive, North 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 July 6, 2017.
4. The public hearing was terminated on July 6, 2017, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate Member Robert Dugan, sitting as a voting member, 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 Kevin P. Klauer, II with Ament Klauer LLP, 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)**

None

**Letters/Referrals/E-mails from Town Departments**

05/18/2017 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment

- 05/18/2017 Referral submitted to the file from the Director of Assessing with no comment
- 05/18/2017 Referral submitted to the file from the Planning Department staff with no comment
- 06/16/2017 Referral submitted to the file from the Town Engineering Department with standard comments regarding drainage and stormwater runoff to be maintained on site
- 07/06/2017 Board of Appeals submitted a copy of the Order of Conditions approved by Conservation Commission into the file

**Plans submitted by Applicant/Applicant's Representative**

“Existing Conditions Plan for #21 Bay Shore Drive” prepared for William Balutis in Falmouth, MA, as drawn by Falmouth Engineering, Inc. on Sheet 1 of 3 dated May 5, 2017 stamped, signed and dated by Gary S. Labrie, P.L.S. on 5/11/2017 and with a Board date ‘received’ stamp of May 24, 2017;

“Plot Plan for #21 Bay Shore Drive” prepared for William Balutis in Falmouth, MA, as drawn by Falmouth Engineering, Inc. on Sheet 2 of 3 dated May 5, 2017 stamped, signed and dated 5/12/2017 by Gary S. Labrie, P.L.S. and stamped and signed by Michael J. Borselli – plan has a Board date ‘received’ stamp of May 24, 2017; and

“Proposed Single Family Home Balutis Residence 21 Shore Drive Falmouth, MA” plans drawn by Jo Ann Bentley Architect Inc. consisting of Drawings A-2 through A-6 all with a Board date ‘received’ stamp of May 16, 2017 and a computer generated existing floor plan, also with a Board date ‘received’ stamp of May 16, 2017.

**Hearing:**

Attorney Klauer reviewed the existing site noting the nonconforming setback of 23’1” to the front property line that requires a 25’ setback. The applicant plans to raze the existing three-bedroom one-story dwelling and reconstruct a three-bedroom, two-story single-family dwelling with an attached one-car garage, and the structure will be constructed with a slightly improved nonconforming front yard setback of 23’5”. A new three-bedroom septic system has been reviewed by the Board of Health. The height of the new dwelling structure will be 26’7.5”. The basement is unfinished primarily with a finished area that will not be a bedroom. The plans have been approved by Conservation Commission with a copy of the Order of Conditions in the file.

The Board discussed plans with Attorney Klauer and asked about the drainage issue noted in the referral from the Town Engineering Department, basement use and why the front yard setback cannot be conforming at 25’. Attorney Klauer stated that drywells are indicated on the proposed plan submitted; the basement has one area finished that will not be a bedroom and the rest is unfinished and used as storage; and that to meet compliance with Conservation Commission and the location of the coastal bank just behind the dwelling, the setback can only be slightly improved.

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

Member Foreman 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 21 Bay Shore Drive in North Falmouth contains 37,033 square feet of Residential B zoned land that is located within the Wild Harbor Coastal Pond overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze the pre-existing nonconforming three-bedroom, one-story single-family dwelling with a nonconforming front yard setback and construct a two-story three-bedroom single-family dwelling with attached garage and with a slightly improved front yard setback. The existing structure has a nonconforming setback to the front property line of 23'1" that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; the nonconforming setback will be slightly improved to 23'5". The lot coverage on subject property is in compliance with Section 240-69 A. of the Code of Falmouth. According to applicant's representative a new three-bedroom septic system will be installed on subject property and located as shown on the "Plot Plan" – Sheet 2 of 3.

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 raze and reconstruction of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the nonconforming front yard setback cannot be brought into compliance due to a necessary restraint on the developable area by Conservation Commission. Furthermore, the Board finds that the proposed dwelling as reconstructed improves the functionality of the dwelling by its residents.

The Board finds that there is no increase in the number of bedrooms from the existing dwelling to the proposed plans represented herein; the bedroom count will remain at three (3).

The Board finds that there are drywells proposed on the "Plot Plan" submitted and reviewed by the Board (Sheet 2 of 3) to maintain stormwater runoff on subject property. The Board further finds that the plan shows that the driveway will be pitched away from the roadway to insure runoff is maintained on site.

The Board finds through testimony by the applicant's representative that the basement areas shown on Drawing A-2 of the architectural plans and noted as 'Mechanical Room' and 'Storage' will be unfinished space; and that the 'Bonus Room' – finished area will not become a bedroom.

The Board finds that the Conservation Commission has issued an "Order of Conditions" for this reconstruction of the dwelling on subject property.

In addition to the above findings, the Board finds that the proposed raze and reconstruction of the single-family dwelling represented above 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 reconstructed dwelling as the nonconforming front yard setback will be slightly improved, there will be no new nonconformities created and the lot coverage will remain in compliance with Section 240-69 A. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and will continue to be used as a single-family dwelling on said 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 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. Testimony by applicant's representative was that a new three-bedroom septic system will be installed and has been reviewed by the Board of Health. Note: The Board of Health did not submit a referral and the applicant did not submit a plan (Sheet 3 of 3) drawn by Falmouth Engineering, Inc. to the file.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant will have to contact the Town Water Department regarding updating of water service lines as there was no referral submitted to the file from the Water Department.

G. The proposed dwelling reconstruction 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 raze and reconstruction of the single-family dwelling on subject property 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 William F. Balutis and James S. Balutis, Trustees (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze the pre-existing nonconforming one-story three-bedroom single-family dwelling and reconstruct a two-story three-bedroom single-family dwelling and attached garage with slightly improved nonconforming front setback on subject property known as 21 Bay Shore Drive, North Falmouth, MA. This special permit is subject to the following conditions:

1. The raze and reconstruction of the single-family dwelling, drywells, driveway, all setbacks, height of dwelling, lot coverage and use of the three-bedroom single-family dwelling 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 #21 Bay Shore Drive" prepared for William Balutis in Falmouth, MA, as drawn by Falmouth Engineering, Inc. on Sheet 1 of 3 dated May 5, 2017 stamped, signed and dated by Gary S. Labrie, P.L.S. on 5/11/2017 and with a Board date 'received' stamp of May 24, 2017;
  - "Plot Plan for #21 Bay Shore Drive" prepared for William Balutis in Falmouth, MA, as drawn by Falmouth Engineering, Inc. on Sheet 2 of 3 dated May 5, 2017 stamped, signed and dated 5/12/2017 by Gary S. Labrie, P.L.S. and stamped and signed by Michael J. Borselli – plan has a Board date 'received' stamp of May 24, 2017; and

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2. There shall be no more than three (3) bedrooms allowed on subject property.
  3. There shall be no bedroom(s) created within any basement area within the dwelling, which shall include the 'Bonus Room'.
  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. The Applicant shall meet the requirements of the DPW Water Division.
  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:       **035-17**

Applicant:                   **WILLIAM F. BALUTIS and JAMES S. BALUTIS, TRUSTEES  
  Of the Balutis Realty Trust**

Subject Property:           **21 Bay Shore Drive, North Falmouth, Massachusetts  
  Map 13, Section 07, Parcel 000, Lot 081**

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**

**RECEIVED**

**JUL 14 2017**

**FALMOUTH TOWN CLERK**

*dd@8:42 am*

**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.