

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 024-18

APPLICANT/OWNER: SCOTT CARMEL and MARISSA CARMEL, TRUSTEES
of the Scott Carmel Trust of Needham, MA

SUBJECT PROPERTY: 50 Bay View Avenue, Falmouth, Massachusetts
Assessor's Map: Map 45 Section 07 Parcel 000 Lot 027

DEED/CERTIFICATE: Certificate 213931 – Lot 27, Plan 314D (Sheet 2)

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 4, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-69 E. of the Code of Falmouth to construct a pool exceeding the 20% lot coverage by structures on subject property known as 50 Bay View Avenue, 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 17, 2018.
4. The public hearing was closed on May 17, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Attorney 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

05/16/2018 Letter submitted to the file dated May 16, 2018 from Robert Quirk of 31 Vineyard Street stating concerns with sensitive environmental features, relocating dwelling and removal of trees through the proposed pool addition (Note: the only aspect of the property before this Board is the pool – the dwelling that is being reconstructed is within all dimensional requirements as required by Town Code.)

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

03/23/2018 Attorney Klauer submitted along with the application and plans a 'Lot Coverage Calculations' sheet for proposed on subject property in relation to neighborhood

Letters/Referrals/E-mails from Town Departments

03/27/2018 Referral submitted to the file by Water Department that states: *Water service needs to be upgraded to 1" service and on plan to Water Department. Applicant must get sign off by all departments before permit issued.*

03/27/2018 Referral submitted to the file from Director of Assessing with no comment

03/27/2018 Referral submitted to the file from Planning Department staff with no comment

03/29/2018 Referral submitted to the file from Falmouth Fire Rescue with no comment

04/04/2018 Referral submitted to the file from Conservation Commission Agent that states: *A Notice of Intent to be filed, not scheduled yet.*

04/27/2018 Referral submitted to the file from Engineering Department with standard comments and additional note: *To obtain an approved driveway permit, this driveway must either be constructed of pervious material, or if impervious, the grading must be changed to prevent stormwater runoff discharging to the public right of way (or stormwater measures that collect and divert from the right of way such as a catch basin and leaching structure). See driveway permit requirements available on our web site or at our office.*

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

Plans submitted by Applicant/Applicant's Representative

"Existing Conditions Plan for #50 Bay View Avenue" prepared for Scott Carmel in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 3 dated March 20, 2018 – plan is stamped, signed and dated by Gary S. Labrie, PLS on 3/22/2018 and has a Board date 'received' stamp of March 23, 2018;

"Plot Plan for #50 Bay View Avenue" prepared for Scott Carmel in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 3 dated March 20, 2018 with a final revision date of 6/7/2018 – Plan is stamped, signed and dated by Gary S. Labrie, PLS on 5/14/2018 and stamped and signed by Michael J. Borselli, PE with a Board date 'received' stamp of May 14, 2018;

"Septic System Details for #50 Bay View Avenue" prepared for Scott Carmel in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 3 of 3 dated March 20,

2018 – plan is stamped and signed by Michael J. Borselli, PE and has a Board date ‘received’ stamp of March 23, 2018;

“Typical Details of Gunite Pool Construction” by Easton Pool & Spa, Inc. as Drawing No: SP 1 of 1 – plan is not dated – it is stamped and signed by Arthur R. Cripps, Jr., PE and has a Board date ‘received’ stamp of April 27, 2018; and

“50 Bay View Ave, Falmouth, MA” Landscape Plan consisting of Drawing A01, A02 and A03 – all Dated April 26, 2018 and with a Board date ‘received’ stamp of April 27, 2018.

Hearing:

Attorney Klauer reviewed the subject property noting that the dwelling was razed and reconstructed within all dimensional requirements of the Code of Falmouth and that the applicant is now proposing a 12’ x 24’ in-ground pool that will exceed the lot coverage by structures from 19.9% to 21.4% thus requiring a special permit under Section 240-69 E. of the Code of Falmouth. Attorney Klauer reviewed the proposed pool and patio area as well as the ‘Lot Coverage Calculations’ sheet that he submitted with the application that shows the property with the pool included, ranks 6th in lot coverage out of the 20 properties shown.

The Board discussed plans with Attorney Klauer, including possible screening along westerly rear property line. All concerns and questions were addressed.

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

Member Bielan made a motion to close the hearing. Member Van Keuren 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 50 Bay View Avenue in East Falmouth contains 19,206 square feet of Residential B zoned land that is located within the Green Pond Overlay District. The applicant applied under Section(s) 240-69 E. of the Code of Falmouth to construct a pool on subject property. The applicant is in the process of razing and reconstructing the dwelling which is in compliance with all Town Code. The addition of the pool will increase lot coverage by structures from 19.9% to 21.4% which exceeds to the 20% maximum allowed pursuant to Section 240-69 A. of the Code of Falmouth. The applicant applied under Section 240-69 E. which allows the Board of Appeals to approve an increase of lot coverage by structures up to, but not to exceed, 25% on a given residential zoned property after consideration of the criteria set forth in said section.

Section 240-69 E. of the Code of Falmouth allows the Board of Appeals to approve an increase of lot coverage by structures from the maximum 20% by right up to 25% through a special permit after the Board considers the criteria set forth in said section.

The Board finds that all criteria under Section 240-69 E. of the Code of Falmouth was reviewed by the Board members. The Board further finds that based on the criteria under sub-section E. of Section 240-69 of the Code of Falmouth that the proposed pool is an in-ground structure that will not have any impact on the typical height of structures within the neighborhood; there will be no effects of shadowing on an adjacent property through the proposed in-ground pool structure; there will be no impact on any view or vista from a roadway as the pool is located behind the dwelling structure and not visible from the roadway; and the proposed in-ground pool will have no effect of nitrogen on any coastal embayment. Furthermore, the Board further finds that the proposed in-ground pool will have no negative impact on the character of the neighborhood and is an appropriate application before the Board to approve.

In addition to the above findings, the Board finds that the proposed in-ground pool 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 created and the increase in lot coverage to 21.4% is approved herein by the Board pursuant to Section 240-69 E. 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 with an appropriate accessory structure of an in-ground pool.
- 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 by virtue of the existing dwelling receiving approval from the Building Department to raze and reconstruct a dwelling that will be in compliance with all setbacks pursuant to Section 240-68 A. and B. and 240-70 of the Code of Falmouth; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system will not be impacted through this approval of in-ground pool. However, the plans for the reconstruction of the dwelling has been reviewed by the Board of Health prior to any issuance of a building permit as is required.
- 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 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 Bielan made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 Scott and Marissa Carmel, Trustees (herein referred to as Applicant) under Section(s) 240-69 E. of the Code of Falmouth to construct and in-ground pool, exceeding the lot coverage by structures on subject property known as 50 Bay View Avenue, East Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The in-ground pool, all setbacks, lot coverage by structures of no more than 21.4% and use of property 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 #50 Bay View Avenue” prepared for Scott Carmel in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 3 dated March 20, 2018 – plan is stamped, signed and dated by Gary S. Labrie, PLS on 3/22/2018 and has a Board date ‘received’ stamp of March 23, 2018;
 - “Plot Plan for #50 Bay View Avenue” prepared for Scott Carmel in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 3 dated March 20, 2018 with a final revision date of 6/7/2018 – Plan is stamped, signed and dated by Gary S. Labrie, PLS on 5/14/2018 and stamped and signed by Michael J. Borselli, PE with a Board date ‘received’ stamp of May 14, 2018;
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 - “50 Bay View Ave, Falmouth, MA” Landscape Plan consisting of Drawing A01, A02 and A03 – all Dated April 26, 2018 and with a Board date ‘received’ stamp of April 27, 2018.
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 three (3) 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: **024-18**

Applicant: **SCOTT CARMEL, TRUSTEE and MARISSA CARMEL, TRUSTEE
Of the Scott Carmel Trust of Needham, MA**

Subject Property: **50 Bay View Avenue, East Falmouth, MA
Map 45 Section 07 Parcel 000 Lot 027**

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, Vice Chairman, Board of Appeals

RECEIVED

MAY 24 2018

FALMOUTH TOWN CLERK

dp @ 11:20 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.