

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 083-18

**APPLICANT/OWNER:** NICOLE B. and PATRICK MORRISEY of Southborough, MA

**SUBJECT PROPERTY:** 53 Grove Street, North Falmouth, Massachusetts  
**Assessor's Map:** Map 04A Section 01 Parcel 000 Lot 007

**DEED/CERTIFICATE:** Book 28935 / Page 158

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of September 14, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling and construct a detached garage on subject property known as 53 Grove Street, North 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 opened on November 1, 2018.
4. The public hearing was closed on November 1, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, 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 present at the hearing and 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**

- 10/26/2018 Letter submitted to the file from Paul Cincotta and Irene Cincotta dated 10/23/18 and addressed to the Board of Appeals. The letter states support of the project.
- 10/31/2018 Letter submitted to the file from George Bertsch III of 12 Cove Road in opposition to the increase of lot coverage above 20% (letter was revised 11/1/2018 and re-submitted)

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

None

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

- 09/18/2018 Referral submitted to the file from the Planning Department staff with no comment
- 09/19/2018 Referral submitted to the file from Town Water Department that states: *¾" Copper Service line needs to be upgraded to 1" service to property line.*
- 09/20/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 09/24/2018 Referral submitted to the file from Town Engineering Department with standard comments and concern with the proposed driveway and closing of existing driveway – gave recommendations on what they would approve for a driveway; recommended drywells or some type of stormwater measure for roof runoff; and direction to the applicant for the existing retaining wall within the public right of way. NOTE: The Engineering Department on 10/2/2018 forwarded revised comments to the Board of Appeals based on revised plans submitted – issues were addressed by applicant.
- 09/24/2018 Referral submitted to the file from Director of Assessing noting that property includes Lots 7 & 8
- 10/16/2018 Referral submitted to the file from Conservation Commission with no comment
- 10/18/2018 ZBA staff submitted ‘Lot Coverage / Bulk Calculations’ prepared showing subject property existing and proposed as well as other properties within the general area for Board review
- 10/23/2018 Email from Board of Health Agent in response to question from Zoning Administrator regarding bonus room above proposed garage structure and requirements of three bedroom dwellings only in this sewer district

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**

“53 Grove Street in Falmouth, Massachusetts” – ‘Raze and Replace’ prepared for Patrick & Nicole Morrissey 7 Saddle Hill Road Southborough, MA 01772 as drawn by Cape & Islands Engineering on a plan dated September 6, 2018 with a final revision date of 9/28/2018 – plan is stamped and signed by Raul Lizardi-Diaz, PE and Matthew C. Costa, PLS and has a Board date ‘received’ stamp of October 11, 2018;

“53 Grove Street, No. Falmouth, MA” hand drawn first and second floor plans (2 pages) and 2 pages of photos of existing dwelling used for elevation shots – plans have a Board date ‘received’ stamp of September 14, 2018;

“Morrissey Residence 53 Grove Street Falmouth, MA” architectural plans drawn by Yarosh Associates, Inc. consisting of coverage sheet and:

- Drawing A-1 ‘Elevations’ with a date of 3/2/2018
- Drawing A-2 ‘First Floor Plan & Second Floor Framing Plan’ dated 10/2017 with a revision date of 3/2/2018
- Drawing A-3 ‘Second Floor Plan & Ceiling Framing Plan’ dated 10/2017 with a revision date of 3/2/2018
- Drawing A-4 ‘Foundation Plan & First Floor Framing Plan’ dated 10/2017 with a revised date of 3/2/2018
- Drawing A-5 ‘Roof Framing Plan’ dated 10/2017 with a revision date of 3/2/2018
- Drawing A-6 ‘Sections’ dated 10/2017 with a revision date of 3/2/2018

Note: All above drawings are stamped by Walter M. Yarosh, RA and with a Board date ‘received’ stamp of September 14, 2018.

“New Detached Garage Construction for Morrissey Residence 53 Grove Street North Falmouth, MA” as drawn by Custom Home Design, Inc. – Drawing A-1 ‘Floor Plans’ dated October 9, 2018 and Drawing A-2 ‘Elevations’ dated October 9, 2018 – both have a Board date ‘received’ stamp of October 11, 2018.

#### Hearing:

Nicole and Patrick Morrissey reviewed the existing site and conditions with the Board and then reviewed proposed razing of an existing two-bedroom dwelling with below grade one-car garage, reconstructing a single-family dwelling and constructing a detached two-car garage with a second floor. The proposed dwelling will have three (3) bedrooms – the proposed detached two-car garage has a bonus room above.

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

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

‘Hank’ Bertsch III of 12 Cove Road stated he is not in opposition to the dwelling but he is in opposition to the two-car garage. Asked why it could not be attached to dwelling or a one-car garage. Interrupts his view of the water.

The Morrissey’s explained that they have tried several ways to accommodate the garage attached to the dwelling or under the dwelling and noted that a one-car garage is not feasible for their family and looks awkward on site.

Member Murphy made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 - 0.

Chairman Hurrie 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 53 Grove Street in North Falmouth contains 10,000 square feet of Residential C zoned land that is located within the Wild Harbor River Coastal Pond Overlay District. The property is connected to the Town sewer. The applicant applied under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to raze the existing two-bedroom single-family dwelling with below grade garage and to construct a three-bedroom two-story dwelling with a detached two-car garage structure with a second floor. The plan submitted shows the existing dwelling to have a nonconforming setback to the front property line of 14.3' where a 25' setback is required pursuant to Section 240-68 A. of the Code of Falmouth. The plan does not show what the existing setback to the westerly side yard property line is. The existing lot coverage is in compliance with Section 240-69 A. of the Code of Falmouth. The proposed dwelling will only slightly improve the front yard setback from 14.3' to 14.8', and the side yard setbacks – both east and westerly – will be in compliance with Section 240-68 B. of the Code of Falmouth. The lot coverage by structures will become nonconforming through the proposed raze and reconstruction of the single-family dwelling as the existing lot coverage by structures of 10.2% will be increased to 23.9% under 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 razing of the existing two-bedroom single-family dwelling with below grade garage attached and the reconstruction of a two-story three-bedroom dwelling and detached two-car garage on subject property will not be substantially more detrimental than what currently exists as the setback from the proposed structure to the front property line off Grove Street will be slightly improved from 14.3' to 14.8' and the side and rear setbacks for both the dwelling and proposed garage structures will be in compliance with Section 240-68 B. of the Code of Falmouth. It is noted that the applicant wanted to keep the same line of the front of the dwelling as the other properties along Grove Street (see map all approximately the same distance from front property lines). The Board further finds that the proposed reconstructed three-bedroom dwelling is an enhancement of utilization for the residents of the dwelling as well as an improvement to the site. Furthermore, the Board finds that there are several properties in the general Silver Beach area that have been reconstructed and similarly improved.

The Board finds that the applicant also applied under Section 240-69 E. to request lot coverage by structures to exceed the 20% maximum allowed by right under Section 240-69 A. of the Code of Falmouth. The Board further finds that the criteria under Section 240-69 E. of the Code of Falmouth has been reviewed by the Board and taken under consideration. Furthermore, the Board finds that the proposed raze and reconstruction (under Section 240-69 E.) will be in keeping with the character of the property and the general area of the neighborhood; that the proposed dwelling and detached garage structure does not appear to have any shadow effect on adjacent properties (closest dwelling is at 55

Grove Street that is more on the western side of that property); that the proposed dwelling and detached garage structure will not impact a view or vista from a public way; and that there will be effect of nitrogen on a coastal embayment for the proposed reconstruction of dwelling and detached garage structure.

The Board finds that the applicant revised plans after reviewing referral from the Town Engineering Department and that the Town Engineering Department submitted comments on the revised with recommendation to the Board for stormwater runoff measures on subject property (plan notes two drywells on said property property). The Board further finds that the revised plans show that the retaining wall that was located in the public right of way will be removed. Furthermore, the Board finds through testimony by the applicants that they have worked on the plan for two (2) years trying to situate the garage so as not to interfere with abutter's view from 12 Cove Road and believe the plan before the Board shows the property to be in keeping with the neighborhood, including design of dwelling and setback to front property line.

The Board finds that the proposed two-car garage with driveway will eliminate any parking on the roadway and accommodate family vehicles and guests on site.

The Board finds that the height of the proposed new dwelling is 31.2' which is below the maximum 35' allowed under Section 240-70 of the Code of Falmouth. The Board further finds that the proposed detached garage has a height of 21.11' which is at the limit of the allowed height of 22' under Section 240-70 of the Code of Falmouth.

In addition to the above findings, the Board finds that the proposed 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 raze and reconstruction of dwelling and garage as there will be no new nonconforming setbacks created and the existing nonconforming front property line setback will be slightly improved. The lot coverage by structures increase beyond the 20% maximum by right is approvable by the Board under Section 240-69 E. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential, is a double lot in this area and will continue to be used and maintained as a single-family dwelling.

C. There will be no impact on traffic flow and safety with the increase of one bedroom on subject property, which is right due to property being on Town sewer; and the relocation of the driveway is approvable by the Engineering Department (see referral submitted to the file) with certain requirements; and the new driveway appears to be an improvement to the property with appropriate parking.

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 as there are several houses in the surrounding area that have been improved such as this; and there is no impact on any view or vista from the public way as noted under Section 240-69 E. of the Code of Falmouth.

E. The subject property is connected to Town sewer with a limit of three (3) bedrooms per lot.

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 system.

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 and garage 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 Nicole D. and Patrick J. Morrissey (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling with attached one-car garage to a two-story three-bedroom single-family dwelling with a detached garage with space above on subject property known as 53 Grove Street, North Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of existing two-bedroom dwelling with garage below grade and construction of a two-story, three-bedroom single-family dwelling with a detached two-car garage with space above, all setbacks, lot coverage, height of dwelling, drainage, curb cut and use of dwelling and garage structures shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

“53 Grove Street in Falmouth, Massachusetts” – ‘Raze and Replace’ prepared for Patrick & Nicole Morrissey 7 Saddle Hill Road Southborough, MA 01772 as drawn by Cape & Islands Engineering on a plan dated September 6, 2018 with a final revision date of 9/28/2018 – plan is stamped and signed by Raul Lizardi-Diaz, PE and Matthew C. Costa, PLS and has a Board date ‘received’ stamp of October 11, 2018;

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2. There shall be no more than three (3) bedrooms allowed on subject property.
3. The Board finds that the habitable space above the garage (2<sup>nd</sup> level) shall not be used as a bedroom or for sleeping accommodations and that testimony was that there would be no heat within the garage structure.
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 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: **083-18**

Applicant/Owner: **NICOLE D. MORRISSEY and PATRICK J. MORRISSEY  
of Southborough, MA**

Subject Property: **53 Grove Street, North Falmouth, Massachusetts  
Map 04A Section 01 Parcel 000 Lot 007**

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 Hurrie, Chairman, Board of Appeals**

**RECEIVED**

**NOV -2 2018**

**FALMOUTH TOWN CLERK  
FALMOUTH.TOWN.CLERK**

*ADD 10:45 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.