



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO.: 011 -19

APPLICANT/OWNER: David and Sherry Noon
53 Edgewater Drive, Needham, Massachusetts

SUBJECT PROPERTY: 2 Naushon North, West Falmouth, Massachusetts
Assessor's Map: Map 14, Section 02, Parcel 027, Lot 176

DEED/CERTIFICATE: Certificate: 217387

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. On March 5, 2019, the Applicant filed an application with 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 on subject property at 2 Naushon North, West Falmouth, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the tax list.
3. The advertised public hearing was opened on April 18, 2019, at which hearing, relevant testimony was heard.
4. The public hearing was closed on April 18, 2019, wherein the Zoning Board of Appeals, consisting of Terrence J. Hurrie, Chairman, Kenneth H. Foreman, Vice Chairman, Edward Van Keuren, Acting Clerk, Robert B. Dugan, Member, and Gerald Potamis, Associate Member, (appointed as voting

member by Mr. Hurrie) 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 Matthew M. Terry, Esq., of Ament Klauer, 39 Town Hall Square, Falmouth, MA, who reviewed and discussed the request for special permit with the Board.

6. The following documents and information are on file in the office of the Zoning Board of Appeals at Town Hall, as set forth below:

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

- March 5, 2019 letter of representation, signed by David Noon, Trustee, and Sherri Noon, Trustee
- "Lot Comparison Worksheet, 2 Naushon North, Falmouth, MA", date stamped received Mar 5, 2019

Letters/Referrals/E-mails from Town Departments

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

- Engineering comments, dated 4/8/19 (must not direct stormwater runoff off property)
- Conservation Commission, no reply
- Board of Health, comments, dated 4/2/19, (requires relocation septic tank)
- Water, no comments, dated 3/7/2019
- Assessors, no comments, dated 3/7/19
- Fire Department, no comments, dated 3/7/19
- Planning, no comments, dated 3/11/19

Plans submitted by Applicant/Applicant's Representative

- "Plan of Proposed Pool", prepared by Holmes and McGrath, Inc., 205 Worcester Court, Suite a4, Falmouth, MA dated Feb 28, 2019
- "South Shore Gunitite Pool & Spas, Inc., 12 Esquire Road, Billerica, MA", structural engineering, by Tim Walker, 19 Woodside Ave, Westport, CT, date stamped received Mar 5, 2019

Hearing:

April 18, 2019

Matthew M. Terry appeared before the Board, representing David and Sherry Noon, 53 Edgewater Drive, Needham, Massachusetts (the "Applicants"), regarding 2 Naushon North, West Falmouth, Massachusetts. Mr. Terry reported that the Premises is south of Old Silver Beach, and is sited in the Single Residence B zoning district. He stated that the four bedroom home conforms to setbacks and lot coverage. However, the Applicants seek to install a pool and hot tub, comprising 480 square feet, which requires a special permit, for lot coverage by structures to exceed 20 %. The proposed lot coverage by structures would be 22.8%; within the 25% coverage allowed by special permit.

The lot coverage includes the tarmac around the pool, the replacement of a raised patio. He stated that the total lot coverage by structures/paving and parking will be 39.7%, which is below the 40% coverage provided for in the By-Law. Mr. Terry stated that there will be retaining walls installed at the north and west sides of the lot. He reported that the installation will not result in any drainage issues. Mr. Terry stated that there would be no impact on neighborhood, including views or vistas, and that the proposal fits within the lot coverage of the neighborhood.

Chairman Hurrie asked for any public comment in support of, or opposition to, the proposed project. No one appeared.

Mr. Potamis made a motion to close the hearing. Mr. Foreman seconded the motion. The motion carried 5-0. Chairman Hurrie closed the hearing.

FINDINGS

The Zoning Board of Appeals carefully considered the facts and evidence submitted for the hearing, and made the following findings:

There were no previous Zoning Board of Appeals cases for the subject lot. The Premises is sited in the Single Residence District B, and comprises 15,010 square feet of area. Existing lot coverage by structures is 19.6%; the proposed lot coverage is 22.8%. Lot coverage greater than 20% and up to 25% is permissible by special permit. The lot coverage by structures/parking/paving is 27.6%; the proposed is 39.7%. Total lot coverage by structures, paving and parking up to 40% is allowed by right. The lot comparison data submitted into the record indicates 6 neighboring dwellings that exceed the lot coverage by structures of 20%.

In addition to the above findings, the Board finds that the proposed construction will be in harmony with the general purpose and intent of the By-Law, and does include consideration, as 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 use. The lot coverage by structures will be less than the 25% maximum, allowed by special permit, and lot coverage by structures/paving/parking will be less than the maximum 40% allowed.
- B. The site is suitable for the proposed use, as the property is zoned Single Residence B, with neighboring single-family residences.
- C. There will be no impact on traffic flow and safety.
- D. There will not be any impact on the visual character of the neighborhood, or view or vista from the roadway or abutting properties, given that the pool and hot tub will be low structures.
- E. There will be no impact on sewage disposal, source of water, and drainage; the Applicant will be relocating the septic tank, and will follow up with the Board of Health regarding permitting.
- G. The construction discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was no requirement for site plan review by the Planning Board, and they issued no comment on March 11, 2019.

I. The application is in compliance with all applicable sections of the Zoning By-Laws as represented, except for the nonconformities stated herein.

J. The approval of this special permit does not include any affordable housing.

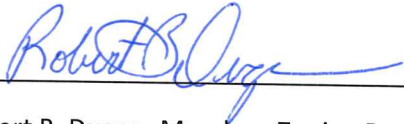
The Zoning Board of Appeals weighed the effects of the proposed pool and hot tub at the Premises, as discussed herein, and found that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further found that the granting of this permit will be in harmony with the purpose and intent of the Zoning By-Law, and that the change, extension or alteration shall not be substantially more detrimental to the neighborhood.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals (herein referred to as the "Board") being of the opinion aforesaid, and acting under the provisions of the Code of Falmouth, voted 5 to 0, following a motion made by Mr. Potamis, and seconded by Mr. Van Keuren, to grant a special permit, with conditions, under Section(s) 240-69 E. of the Code of Falmouth, at 2 Naushon North, West Falmouth, Massachusetts (the "Premises"), to allow installation of a pool and hot tub, sited 11.1 feet from the northwesterly side, and 20 feet from the northeasterly side of the Premises. This special permit shall be subject to the following conditions:

1. The construction shall be substantially as shown on the plans submitted and reviewed by the Board, as follows:
 - "Plan of Proposed Pool", prepared by Holmes and McGrath, Inc., 205 Worcester Court, Suite a4, Falmouth, MA dated Feb 28, 2019
 - "South Shore Gunitite Pool & Spas, Inc., 12 Esquire Road, Billerica, MA", structural engineering, by Tim Walker, 19 Woodside Ave, Westport, CT, date stamped received Mar 5, 2019
2. The 20-foot by 30-foot pool will be sited 11.1 feet from the northwesterly side lot line, and 20 feet from the northeast side lot line.
3. The existing first floor deck and patio will be removed, and replaced with a raised terrace.
4. The septic tank shall be relocated.
5. Any deviation, no matter how minor, from plans submitted and approved, shall be submitted to the Board for approval, prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.
6. The Applicant shall insure that stormwater is not discharged from the Premises.
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, is recorded in Barnstable Registry of Deeds, or that an appeal has been filed within such time. (Any person exercising rights under a duly appealed special permit does so at risk that a court may reverse the permit, and that any construction performed under the permit may be ordered undone.)
8. 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 Zoning Board of Appeals.

Action: The Board of Appeals, by the signature below, certifies the vote of the Board, as follows, for the above referenced hearing:

Vote: 5 to 0 to grant the Special Permit, as represented to the Board, based on the Findings stated herein, and with the above stated Conditions.



Robert B. Dugan, Member, Zoning Board of Appeals

RECEIVED

APR 29, 2019 PM 3:48

TOWN CLERK

Date Filed With Town Clerk