

Zoning Board of Appeals Decisions Decisions for: 09-25-2014

[Close Window](#)

DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 69-14

APPLICANT/OWNER: RICHARD ZENGA of Teaticket, Massachusetts

DEED/CERTIFICATE: Certificate 168865 – LC Plan 4286-A, Plate 11, Lots 10 & 11

SUBJECT PROPERTY: 59 Toledo Street, Teaticket, Massachusetts
Map 39A, Section 05, Parcel 000, Lot 010

Under a date of August 12, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property located at 59 Toledo Street, Teaticket, Massachusetts.

A public hearing was opened on September 25, 2014. 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.

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Matthew McNamara and Associate Mark Cool

Clerk Bielan read the Notice of Public Hearing into the record.

Jeffrey E. Ryther, P.E. with BSS Design, Inc. was present on behalf of the applicant and reviewed the existing site conditions on this 4,800 square foot lot and the proposed razing of the existing two-story, four-bedroom single-family dwelling and construct a two-story, four-bedroom single-family dwelling. The existing dwelling is 22.8' in height; the proposed will be 26.3' in height. All setbacks will be in compliance with the zoning bylaws through the proposed construction. The lot coverage by structures is nonconforming at 22.7%, but will be reduced slightly to 21.4%. The total lot coverage is nonconforming at 43.1%, but will be decreased to a conforming 34.7%.

Clerk Bielan read the Town Department referrals into the record.

Referrals were sent to the Building Department, Conservation Commission, Engineering Department, Board of Health, Board of Selectmen, Planning Department and Water Department. No referrals from departments were submitted.

The Clerk noted an e-mail from Health Agent Carignan notifying the Administrator that the Health Department has no objections to the proposed scope of work on this property.

Clerk noted that there was no correspondence submitted from any abutter or interested party.

Board Questions:

Member Bielan asked if there was any intent to construct a deck or install a patio.

Mr. Ryther stated no.

Member McNamara asked if there will be a change to the grade through construction.

Mr. Ryther stated there will be a slight increase in grade from 17' elevation to 18.5' elevation to allow for separation of shingles to grade – other than that the lot is quite flat.

Member Cool asked about the basement use.

Mr. Ryther stated it will be unfinished area used for storage and utilities. David Zenga, son of owner, stated there will not be any living space in the basement only utilities and laundry.

Chairman Haddad asked if any dry wells will be installed – none shown on the plan.

Mr. Ryther stated it is a flat lot and does not see any drainage problem.

Chairman Haddad asked for clarification on the height of the structure.

Mr. Ryther stated it will be 26.3' in height.

Member Foreman asked if there will be a bulk head.

Mr. Ryther stated no – interior access only.

Chairman Haddad asked if anyone present would like to speak in favor or opposition. There was no public comment.

Member Foreman made a motion to close the hearing. Member McNamara seconded the motion. Motion carried 5 - 0.

Chairman Haddad 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 59 Toledo Street contains 4,800 square feet of Residential C zoned land that is located within both the Little Pond Coastal Pond Overlay District and the Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 of the Code of Falmouth to raze the pre-existing nonconforming two-story, four-bedroom single-family dwelling and construct almost in the same footprint, a two-story, four-bedroom single-family dwelling with a basement. The height of the proposed dwelling will be 26.3' which is well below the 35' maximum height allowed by Section 240-70 of the Code of Falmouth. The proposed dwelling structure will be in compliance with all setbacks pursuant to Section 240-68 A. and B. of the Code of Falmouth. The lot coverage by structures will be improved from a nonconforming 22.7% to 21.4%; and the total lot coverage overall will be decreased from a nonconforming 43.1% to a conforming 34.7% pursuant to Section 240-69 A. of the Code of Falmouth.

Section 240-3 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 change to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the proposed dwelling's footprint will be slightly smaller to eliminate a nonconforming 3.7' setback at the easterly side yard setback making it conforming at 11' and a 9.9' setback at the rear of the dwelling that will be conforming at 10.5' pursuant to Section 240-68 B. of the Code of Falmouth. Furthermore, the Board finds that the lot coverage by structures, nonconforming at 22.7% will be slightly reduced to 21.4% and the overall lot coverage will be made conforming by reducing the nonconforming coverage of 43.1% to 34.7% [Section 240-69 A. of the Code of Falmouth].

The Board finds through testimony of the applicant's representative that the existing shed shall be removed (see notation on "Plot Plan – Proposed House") and not be replaced.

The Board finds that the existing dwelling has four (4) bedrooms and the proposed new dwelling will also have four (4) bedrooms. The Board further finds that the Board of Health has no objection to the proposed scope of work (see e-mail to Sari Budrow dated September 24, 2014 from Health Agent David Carignan submitted to the file).

The Board finds although, through testimony of the applicant's representative that dry wells were not proposed; the applicant has no issue with installing dry wells on the lot for any potential runoff concern. The Board further finds through testimony of the applicant's son and representative that there will be no bulk head and the use of the basement will be for storage, utilities and laundry with no living space.

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 reconstructed two-story, four-bedroom single-family dwelling as setbacks will be made conforming and lot coverage by structures will be decreased as stated above.
- 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 the change in the location of the driveway will be through a permit with the appropriate Town department.
- 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 other houses in the surrounding area that have been improved such as this; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is in place and signed off as a four bedroom system by the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant should contact the Town Water Department regarding updating of water system as there was no referral from the Water Department submitted to the file.
- 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.

Member Foreman made a motion to Grant the Special Permit with conditions. Member Bielan 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 Richard Zenga (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to raze the pre-existing nonconforming two-story, four-bedroom single-family dwelling and construct a more conforming two-story, four bedroom single-family dwelling at subject property known as 59 Toledo Street, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The razing of the existing two-story, four bedroom dwelling, the construction of the proposed two-story, four-bedroom dwelling with basement, all setbacks, height of structure, lot coverage and use of structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Proposed House" prepared for Richard Zenga Lot 10 (#59) Toledo Street East Falmouth, Massachusetts, drawn by BSS Design, Inc., Site Plan 1 of 1 dated August 12, 2014 with a Board date 'received' stamp of August 12, 2014;
- "Foundation Overhead" Sheet, drawn by Edwin E. Bowers dated August 6, 2014 (basement plan) with a Board date 'received' stamp of August 20, 2014; and
- Architectural plans of proposed dwelling on Drawings 7 through 12 showing elevations and floor plans as drawn by Edwin E. Bowers dated August 6, 2014 with a Board date 'received' stamp of August 20, 2014

2. There shall be no more than four (4) bedrooms on subject property.

3. All setbacks to property lines on subject property shall be in compliance with Section 240-68 A. and B.

of the Code of Falmouth.

- 4. There shall be no accessory structures located on subject property without modification of this Special Permit.
- 5. There shall be dry wells installed on the lot to prevent any roof runoff concerns.
- 6. There shall be no bedrooms or sleeping accommodations created within the basement space of the proposed dwelling.
- 7. 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.
- 8. 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.)
- 9. 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: 69-14

Applicant: RICHARD ZENGA of Falmouth, MA

Subject Property: 59 Toledo Street, Teaticket, Massachusetts
Map 39A, Section 05, Parcel 000, Lot 010

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.

David Haddad, Board Chairman

_____ 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 #69-14 Zenga - 59 Toledo St., Teaticket / R&R posted 10/8/14 mm