

## Zoning Board of Appeals Decisions Decisions for: 02-20-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 123-13

APPLICANT/OWNER: ALBERT ZAKARIAN and BARBARA A. ZAKARIAN  
of Simsbury, CT

DEED/CERTIFICATE: Book 6440 / Page 304

SUBJECT PROPERTY: 18 Old Mystic Circle, North Falmouth, MA  
Map 13, Section 09, Parcel 000, Lot 008

Under a date of December 30, 2013, 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 construct a second story addition to the existing garage attached to the existing single-family dwelling on subject property located at 18 Old Mystic Circle, North Falmouth, Massachusetts.

A public hearing was held on February 20, 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, Clerk Scott Zylinski, Member Matthew McNamara, Member Patricia Johnson and Associate Mark Cool

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

Susan Ladue was present on behalf of the Applicants to review the proposed project to the Board. Applicants Albert and Barbara Zakarian were also present.

Ms. Ladue stated that the applicants would like to create a second story addition above the attached garage to create a new master bedroom that will incorporate an existing bedroom as a sitting room for the new master. Ms. Ladue reviewed the site plan that shows no increase to existing footprint and therefore no increase in lot coverage; and reviewed Section 240-216 of the Code of Falmouth and how the proposed second floor addition to the garage meets all aspects of said bylaw. She further commented that all vegetation will remain the same on subject property.

Clerk Zylinski read the Town Department referrals into the record.

- A referral from the Board of Health Agent David Carignan states: Existing four bedroom dwelling. No apparent increase in bedrooms. The addition does not impact the existing septic system and does not consume lot area necessary for future septic upgrades.

Referrals submitted from the Building Department, Conservation Commission, Engineering Department, Planning Department and Water Department had no comment.

Clerk Zylinski noted that there are three (3) letters of support submitted to the file from: Kathleen Ambrosini of 14 Old Mystic Circle; Constance and Frances Brown of 20 Old Mystic Circle; and Claire Bishop and Bill Green of 11 Old Mystic Circle.

Board discussed with representative Ladue who addressed all questions and concerns.

Chairman Haddad asked if anyone present would like to speak in favor or opposition.

There was no public comment in support or opposition to the proposed addition of a second floor to the existing attached garage.

Member Zylinski 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 18 Old Mystic Circle contains 15,516 square feet of Residential C zoned land that is located within the Wild Harbor River Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to allow construction of a second story addition above the existing attached garage. The subject property is pre-existing nonconforming due to lot coverage by structures exceeding the 20% maximum allowed in a residential district according to Section 240-69 A. of the Code of Falmouth. Section 240-69 E. of the Code of Falmouth allows the Board to give permission to increase lot coverage by structures up to 25% after consideration of criteria set forth in said section. However, in this case the lot coverage by structures of 25.8% already exists and is not being increased through this special permit request. The applicant did not need to seek relief of Section 240-69 E. of the Code of Falmouth.

The proposed plan is to create a new master bedroom that will incorporate an existing bedroom as a sitting room for the new master bedroom. There are four bedrooms existing and there will remain only four bedrooms on subject property through this special permit. The "Plot Plan" submitted with the application varies slightly from the 2004 pre-construction plan approved by the Board for a one-story addition at the rear of the dwelling to increase dining area. The Board understands that there may be a slight change due to construction, excavation and so forth; in this case the 2004 plan showed 26.1% lot coverage and is now corrected for the proposed application as 25.8% [same engineering firm on both plans].

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 second floor addition above existing attached garage to the existing single-family dwelling is not substantially more detrimental than what currently exists. The Board further finds that the addition is in keeping with neighborhood as several of the homes within the general area are similar with living space above attached garages. Furthermore, the Board finds that the proposed addition above the attached garage does not increase the nonconforming lot coverage by structures and it will not create any new dimensional nonconformities.

In addition to the above findings, the Board finds that the proposed construction of a second floor above the existing attached garage 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 and bulk for the proposed second floor above garage as it does not increase the nonconforming lot coverage by structures percentage existing at 25.8%.

B. The site is suitable for the proposed use as the property is zoned residential and has been used as such since inception and said use will not change through the proposed addition above the attached garage.

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 as there are several houses in the surrounding area that have similar facades; 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.

G. The proposed dwelling addition 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 Cool made a motion to Grant the Special Permit with conditions. Member Zylinski 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 Albert and Barbara Zakarian (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to construct a second story addition above the existing attached garage to create a new master bedroom in the single-family dwelling located at 18 Old Mystic Circle, North Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the second floor above the existing attached garage, lot coverage, setbacks, number of bedrooms in dwelling and use of addition shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan Showing Existing Structures on Lot 8 – 18 Old Mystic Circle, North Falmouth, MA" prepared for Barbara Zakarian drawn by J.M. O'Reilly & Associates, Inc. dated November 20, 2013 and with a Board date 'received' stamp of December 30, 2013;
- Seven pages of 'Existing' Elevations and floor plans not dated and unknown with a Board date 'received' stamp of December 30, 2013; and
- Proposed Architectural Plans entitled "Zakarian Residence" drawn by Karen B. Kempton consisting of Drawings A-1 through A-5 showing elevations, floor plans and sections all dated 9/18/2013 except for Drawing A-2 dated 10/15/2013, and with a Board date 'received' stamp of December 30, 2013.

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

3. 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.

4. The Applicant shall meet the requirements of the DPW Water Division.

5. 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.)

6. 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: 123-13

Applicant: ALBERT ZAKARIAN and BARBARA A. ZAKARIAN  
of Simsbury, CT

Subject Property: 18 Old Mystic Circle, North Falmouth, Massachusetts  
Map 13, Section 09, Parcel 000, Lot 008

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.

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David Haddad, Board Chairman

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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 #123-13 Zakarian / 18 Old mystic Circle, N. Fal / 2nd story add'n to existing garage - posted to web 2/26/14 mm