

## Zoning Board of Appeals Decisions Decisions for: 01-28-2016

[Close Window](#)

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 120-15

APPLICANT/OWNER(S): DEBRA A. BIRTWELL of Falmouth, Massachusetts

SUBJECT PROPERTY: 15 Tower House Road, Falmouth, Massachusetts  
Assessor's Map: Map 46B, Section 03, Parcel 007, Lot 004

DEED/CERTIFICATE: Book 26858 / Page 252 – Lot 4, Plan Book 2, Page 1

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of December 2, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-69 of the Code of Falmouth to construct an attached garage to the pre-existing nonconforming single-family dwelling on subject property known as 15 Tower House Road, 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 January 28, 2016.
4. The public hearing was terminated on January 28, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Thomas J. Bunker, PLS with BSS Design, Inc. 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

1/26/2016 Letter from Attorney Moynihan dated January 25, 2016 on behalf of abutter Ms. Emigh of 12 Vernon Avenue stating concerns with proposed plan.

1/27/2016 Photos submitted to the file by Ms. Emigh.

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

12/2/2015 Letter of November 4, 2015 from Thomas Bunker of BSS Design, Inc. to Building Commissioner Eladio Gore regarding designation of Irving Avenue as the front property line for subject property [signed and dated by Eladio Gore on November 6, 2015]

1/21/2016 Mr. Bunker submitted to the file copies of "Abutting Lot Coverage Computation 15 Tower House Road, Falmouth – Sorted by Bulk".

1/28/2016 Mr. Bunker submitted to the file two photos showing abutters drainage area at front of

abutter's property.

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

12/3/2015 Submission by staff to the file a copy of Special Permit #155-00 that granted an addition to subject dwelling in 2000.

12/3/2015 Referral submitted to the file by the Planning Department staff with no comment.

12/8/2015 Referral submitted to the file by the Falmouth Fire Rescue Department with no comment.

12/9/2015 Referral submitted to the file by Conservation Agent Mark Kasprzyk that states: Garage should contain gutters to dry wells to keep stormwater on the property and off public road.

12/14/2015 Referral submitted to the file by Building Commissioner Gore that has no comment.

12/14/2015 Referral submitted to the file by Health Agent Carignan that states: No negative comments. The applicant will need a permit to re-route the existing sewer line to the septic tank. See attached location card.

1/5/2016 Referral submitted to the file by the Engineering Department (S. Schluter) with standard comments regarding any changes in the right of way or utility connections require filing for a permit and that the project must not direct stormwater runoff to public property, abutters or right of ways.

#### Plans submitted by Applicant/Applicant's Representative

1/28/2016 "Plot Plan – Proposed Addition" prepared for Greg & Debra Birtwell 15 Tower House Road Falmouth, Massachusetts as drawn by BSS Design, Inc. dated November 30, 2015, stamped and signed by Thomas J. Bunker, PLS with a final revision date of January 28, 2016 [added drainage] with a Board date 'received' stamp of January 28, 2016; and

"Garage Design Birtwell Residence 15 Towerhouse Rd. Falmouth, MA" as drawn by Architecture by SPB consisting of Drawing A1 showing Elevations dated 11/3/15 and Drawing A2 showing floor plan dated 11/30/15 – both with a Board date 'received' stamp of December 2, 2015.

#### Hearing:

Mr. Bunker of BSS Design, Inc. reviewed the existing site conditions and the proposed construction of an attached one-car garage on subject property. He reviewed the lot coverage sorted by bulk for subject property and neighboring properties. He informed the Board that the subject property is surrounded on three sides by roadways and that Building Commissioner Gore designated Irving Avenue as the front property line – all other are side and/or rear property lines. The height of the proposed garage is 15.4'. Mr. Bunker further explained the issue of drainage and noted that the revised plan submitted to the Board this date shows drainage. Mr. Bunker stated he has discussed the drainage with the Town Engineer, Peter McConarty, who said he was aware of the situation and the Town will be looking into the issue in the near future.

The Board discussed with Mr. Bunker, plans and drainage and lot coverage by structures, parking and paving that are being increased from a nonconforming 40.14% to 43.11%; as it will make the total lot coverage more nonconforming. The Board discussed possibly removing some of the asphalt driveway located on the south side of the dwelling. All concerns and questions were discussed.

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

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

Chairman Bielan 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 15 Tower House Road in Falmouth contains 11,512 square feet of Residential C zoned land that is not within any overlay district. The applicant applied under Section(s) 240-3 and 240-69 of the Code of Falmouth to construct an attached one-car garage to the existing family dwelling on subject property. The property is pre-existing nonconforming due to lot coverage in excess of what is maximum allowed under Section 240-69 A. The proposed one-car garage will not have heat or plumbing installed and will not have any habitable space. The setbacks will remain in compliance through this special permit as shown on the plan submitted and pursuant to Sections 240-68 A. and 240-68 B. of the Code of Falmouth. The existing nonconforming lot coverage, for structures and for structures, parking and paving, will be increased through this special permit. It was noted that the total lot coverage [structures, parking and paving] is currently beyond the maximum allowed of 40% and will be further increased through the proposed garage addition. The lot coverage by structures through the proposed garage addition will not exceed 25%.

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 garage addition to the existing single-family dwelling will not be substantially more detrimental than what currently exists. The Board further finds that there will be no nonconforming setbacks through this special permit request; all setbacks will remain in compliance with Sections 240-68 A. and B. of the Code of Falmouth. Furthermore, the Board finds it is a modest increase to the nonconforming lot coverage by structures, which will remain below 25% (see Section 240-69 E. of the Code of Falmouth).

The Board finds through testimony that the applicant is amenable to maintain total lot coverage at its current percentage which is 40.14%. The Board finds through testimony that there is no intent to locate a shed on subject property.

The Board finds through submission of a letter from Attorney Laura Moynihan dated January 25, 2016 that the abutter [Ms. Emigh] has a concern with the drainage from subject property affecting her property. The Board further finds that the applicant revised the "Plot Plan" to include drainage in the form a drywell on the north side of the property near proposed garage and a catch basin on the south side of the property next to improve stormwater runoff and to maintain it on-site. Furthermore, the Board finds through testimony by the applicant's representative that according to Title V regulations a vent pipe for the septic system for subject property is not a requirement.

The Board finds through a letter submitted to the file by Thomas J. Bunker, PLS of BSS Design, Inc., that Building Commissioner Gore, under Section 240-13 "Definitions" 'Yard, Front - designated Irving Avenue as the front yard of subject property (see Mr. Gore's signature on letter dated November 4, 2015 from BSS Design, Inc. to Eladio Gore, Building Commissioner).

In addition to the above findings, the Board finds that the proposed one-car 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 for the proposed as all setbacks will remain in compliance with the bylaw; that lot coverage by structures will remain below 25% as allowed through special permit; and the total lot coverage will be maintained as existing at 40.14%.

B. The site is suitable for the proposed use as the property is zoned residential and the proposed one-car attached garage is an allowed accessory use to the primary residence.

C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property. There will be a new gravel drive area on the north side of subject property leading to proposed attached one-car garage that will require a permit from Engineering.

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 roadway or abutting properties.

E. The sewage disposal system is in place and will not be affected through this special permit approval

for an attached one-car garage with no habitable space.

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 attached one-car garage as 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 Hurrie 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 Debra A. Birtwell (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct an attached one-car garage to the existing single-family dwelling on subject property known as 15 Tower House Road, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the proposed attached one-car garage, all setbacks, lot coverage by structures, height of garage and use of garage shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Proposed Addition" prepared for Greg & Debra Birtwell 15 Tower House Road Falmouth, Massachusetts as drawn by BSS Design, Inc. dated November 30, 2015, stamped and signed by Thomas J. Bunker, PLS with a final revision date of January 28, 2016 [added drainage] with a Board date 'received' stamp of January 28, 2016; and

- "Garage Design Birtwell Residence 15 Towerhouse Rd. Falmouth, MA" as drawn by Architecture by SPB consisting of Drawing A1 showing Elevations dated 11/3/15 and Drawing A2 showing floor plan dated 11/30/15 – both with a Board date 'received' stamp of December 2, 2015.

2. The total lot coverage on subject property shall be maintained at 40.14% and not be increased as shown on the "Plot Plan" noted in condition 1 above. The applicant shall submit a revised plot plan to the Board of Appeals for approval showing how the total lot coverage will be maintained at 40.14% and not increased to 43.11%. The applicant's representative stated at the hearing that the apron at the front of the proposed garage may be removed as well as some of the asphalt driveway existing on the southerly side of the property. The Zoning Administrator may approve the changes proposed to maintain total lot coverage at 40.14%.

3. There shall be no habitable space created within the proposed attached one-car garage.

4. There shall be no sheds allowed on subject property without further approval by the Board of Appeals.

5. 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.

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 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: 120-15

Applicant: DEBRA A. BIRTWELL of Falmouth, MA

Subject Property: 15 Tower House Road, Falmouth, Massachusetts  
Map 46B, Section 03, Parcel 007, Lot 004

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, Clerk, Board of Appeals

\_\_\_\_\_ 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 120-15 Birtwell filed w/ Town Clerk 2/9/16