

## Zoning Board of Appeals Decisions Decisions for: 11-17-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 105-16

APPLICANT/OWNER: WILLIAM ZACZYNSKI and SUSAN M. ZACZYNSKI, of Suffield, CT

SUBJECT PROPERTY: 114 Silver Beach Avenue, North Falmouth, Massachusetts  
Assessor's Map: Map 04A, Section 44, Parcel 000, Lot 374

DEED/CERTIFICATE: Book 12340 / Page 296

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of October 4, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-69 E. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 114 Silver Beach Avenue, North Falmouth, MA.
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 17, 2016.
4. The public hearing was terminated on November 17, 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, as well as copies of requests from applicant's representative to continue the hearings to certain dates.
5. The applicant was represented at the hearing by Attorney Laura Moynihan, 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

10/05/2016 Letter of support dated September 2, 2016 to ZBA signed by Paul Vincent and Gayle Webster of 120 Silver Beach Avenue

Letter of support dated September 2, 2016 to ZBA signed by Pamela and Frank Morgan of 112B Silver Beach Avenue

Letter of support dated September 2, 2016 to ZBA signed by Bruce and Mary Parkinson of 109 Silver Beach Avenue

Letter of support dated September 2, 2016 to ZBA signed by Moira McGoldrick of 29 Hunt Street

11/03/2016 Letter of support dated September 2, 2016 to the ZBA signed by Michael G. Guarino of 112A Silver Beach Avenue

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

10/04/2016 Attorney Moynihan submitted on behalf of the applicant (Zaczynski) an application, fee, lot coverage calculations, photos of existing dwelling, existing and proposed floor plans and elevations as required for a public hearing process

10/04/2016 A letter from BSS Design, Inc. to Attorney Moynihan dated September 15, 2016 that states the existing house is at elevation 40.27', the average grade at front of house is 8.3' – therefore existing height is 32'.

10/05/2016 Attorney Moynihan submitted a letter dated same date with four (4) letters of support for the project attached – letters noted above

10/07/2016 E-mail from Attorney Moynihan in response to staff question regarding use of basement – “The basement will be unfinished for storage and garage use.”

11/08/2016 Letter from Attorney Moynihan dated November 7, 2016 to ZBA with four (4) copies of revised site plan for submission to file

11/17/2016 Attorney Moynihan submitted photos of dwellings within the area of subject property during the hearing for subject property – comparison for height of proposed

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

10/05/2016 Referral submitted to the file by the Planning Department staff with no comment

10/07/2016 Referral submitted to the file by the Director of Assessing with no comment

10/11/2016 Referral submitted to the file by Marine & Environmental Services with no comment

10/20/2016 Referral submitted to the file by Falmouth Fire Rescue Department with no comment

10/24/2016 Copy of 'Determination of Applicability' approved by Conservation Commission dated 10/5/16 submitted to the file

10/31/2016 Referral submitted to the file by Conservation Commission that states: RDA approved 10/5/16; must incorporate drywells (not French drains) and trench drain in driveway to control stormwater on the property.

11/07/2016 Referral submitted to the file by Town Engineering Department that states: Driveway permit must be filed with the Engineering Department. Silver Beach Ave. is a Town road.

Note: No referral submitted by Board of Health or Water Department – it is noted that subject property is on Town sewer.

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

“Plot Plan – Existing House” prepared for William & Susan Zaczynski 114 Silver Beach Avenue North Falmouth, Massachusetts as drawn by BSS Design, Inc. – stamped and signed by Thomas Jackson Bunker, PLS dated April 27, 2015 – with a Board date 'received' stamp of October 4, 2016;

“Plot Plan – Proposed House” prepared for William & Susan Zaczynski 114 Silver Beach Avenue North Falmouth, Massachusetts as drawn by BSS Design, Inc. – stamped and signed by Thomas Jackson Bunker, PLS dated September 21, 2016 with a revision date of 11/01/2016 – with a Board date 'received' stamp of November 8, 2016;

Hand drawn existing floor plans – 3 pages – showing crawl space and first and second floor plans (4 beds on 2nd floor – 0 on 1st floor ) – with a Board date 'received' stamp of October 4, 2016; and

“Zaczynski Residence, 114 Silver Beach Ave. North Falmouth, MA” – Custom Two-story Home – drawn by JB Designs consisting of Page 2 of 7 Foundation and Floor Plans (3 beds on 2nd floor – 0 on 1st floor with den) proposed dated 8/29/2016 and Page 1 of 7 Elevations dated 8/29/2016 and both with a Board date 'received' stamp of October 4, 2016.

## Hearing:

Attorney Moynihan reviewed the existing site conditions noting the pre-existing nonconforming setback from the structure to the front property line off Silver Beach Avenue of 3.6', the nonconforming setback on the easterly side of dwelling to the side property line of 4.4' and the nonconforming lot coverage by structures of 27.83%. The existing dwelling, circa 1890 is a two-story structure 32' in height, with four bedrooms and attached to Town sewer. There is no existing drainage on site. She reviewed the proposed two-story dwelling with below garage under dwelling, unfinished basement, three bedrooms, a den, sunroom and seasonal room. The applicant is amenable to adding drywells at the front two corners of the dwelling, one at the southeast corner of the dwelling and one on the west side of the dwelling; and a trench drain across the driveway near the dwelling. The setback from the dwelling to the front yard property line will be improved to a 6.1' setback and the east side of the dwelling will have an improved setback of 7.8' to the side yard property line. The lot coverage by structures will be slightly improved at 26.10%. All other setbacks and total lot coverage are in compliance. The height of the proposed dwelling will be 34.8'.

The Board discussed plans with Attorney Moynihan. All concerns and questions were addressed.

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

Jim Murphy of 130 Silver Beach Avenue spoke in support of the project noting an improvement to the property and dwelling.

Ron Johnson of 84 Arlington stated support of the project and noted it meets flood plan regulations.

Member Foreman made a motion to close the hearing. Member Van Keuren 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 114 Silver Beach Avenue in North Falmouth contains 5,454 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 and 240-69 E. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming two-story, four bedroom single-family dwelling and construct a new two-story, three bedroom dwelling with garage and improvements to setbacks, lot coverage and on-site drainage. Testimony from the applicant's representative was that the 'den' shown on the plan could be a bedroom but the applicant has not intent to use it as such at this time.

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 reconstruction of the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the proposed dwelling will have an improved nonconforming front yard setback, an improved nonconforming side yard setback, a slight decrease in the nonconforming lot coverage by structures, conforming lot coverage by structures, parking and paving, and the proposed dwelling will be in keeping with the dwellings within the general area of the neighborhood.

The Board finds that the proposed dwelling and site improvements will be an enhancement to the neighborhood and to the utilization of the dwelling by its residents.

Section 240-69 E. of the Code of Falmouth allows the Board of Appeals to approve an increase of lot

coverage by structures from the allowed by right 20% up to, but not exceeding 25% after consideration of the size and height of a proposed structure, any shadowing onto adjacent property, any impact on a view or vista from a roadway or any impact of nitrogen to a coastal embayment.

The Board finds that the existing structures currently exceed the 25% lot coverage allowed through a special permit and therefore the findings herein under Section 240-3 of the Code of Falmouth apply.

The Board further finds that a Town Meeting vote in 2002 changed the lot coverage requirements in a residential zoned district from 35% to 20%.

The Board finds that the proposed dwelling is a three-bedroom dwelling with a den that meets the criteria of a bedroom. The Silver Beach sewer district limits a dwelling to three bedrooms unless there were more bedrooms when attached to the sewer, however, the number of bedrooms cannot be increased over what is existing. The subject property will be limited to four bedrooms.

The Board finds that the applicant had the proposed plot plan revised to show installation of drywells and a trench drain across the driveway to contain all runoff on site.

In addition to the above findings, the Board finds that the proposed reconstruction of the pre-existing nonconforming dwelling 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 the reconstruction of the dwelling has improved nonconforming setbacks, slight decrease in lot coverage by structures and has proposed drainage for stormwater runoff.
- B. The site is suitable for the proposed use as the property is zoned residential and will be maintained as a single-family dwelling with no more than four bedrooms.
- 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 been improved such as this; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The subject property is on the Town sewer.
- 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 any possible updating of water service.
- 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 reconstruct of the dwelling 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Foreman 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 William and Susan M. Zaczynski (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 114 Silver Beach Avenue, North Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The razing of the existing dwelling, construction of proposed dwelling, all setbacks, height of dwelling, lot coverage, installation of drainage, installation of driveway trenc and use of the dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Existing House" prepared for William & Susan Zaczynski 114 Silver Beach Avenue North Falmouth, Massachusetts as drawn by BSS Design, Inc. – stamped and signed by Thomas Jackson Bunker, PLS dated April 27, 2015 – with a Board date 'received' stamp of October 4, 2016;

- "Plot Plan – Proposed House" prepared for William & Susan Zaczynski 114 Silver Beach Avenue North Falmouth, Massachusetts as drawn by BSS Design, Inc. – stamped and signed by Thomas Jackson Bunker, PLS dated September 21, 2016 with a revision date of 11/01/2016 – with a Board date 'received' stamp of November 8, 2016;

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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 three 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: 105-16

Applicant: WILLIAM ZACZYNSKI and SUSAN M. ZACZYNSKI

Subject Property: 114 Silver Beach Avenue, North Falmouth, Massachusetts  
Map 04A, Section 44, Parcel 000, Lot 374

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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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 # 105-16 Zaczynski / filed w/ Town Clerk 11/23/16