

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 032-17

**APPLICANT/OWNER:** LAURIE A. BENTON and DAVID H. BENTON, JR. of Norfolk, MA

**SUBJECT PROPERTY:** 8 Walden Avenue, Falmouth, Massachusetts  
**Assessor's Map:** Map 46B, Section 09, Parcel 011, Lot 001

**DEED/CERTIFICATE:** Book 26205 / Page 230

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of April 28, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling and garage structure on subject property known as 8 Walden Avenue, 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 June 15, 2017.
4. The public hearing was terminated on June 15, 2017, wherein the Board consisting of Acting Chairman Paul Murphy, Acting Vice Chairman Ed Van Keuren, Acting Clerk Robert Dugan and Gerald Potamis (Members Dugan and Potamis are Associate Members sitting as voting Members) 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 Gregory Jones, Architect, 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**

None

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

- 04/28/2017 Greg Jones, Architect, on behalf of the applicant, submitted photos of existing dwelling and garage as well as lot coverage calculation sheet along with the application, plans and fee for public hearing process
- 06/15/2017 Greg Jones, Architect, submitted lot coverage comparison sheet along with bulk percentages

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

- 05/01/2017 Referral submitted to the file from the Planning Department staff with no comment
- 05/05/2017 Referral submitted to the file from the Director of Assessing that notes: *Includes Lots 1, 2 and 3*
- 05/18/2017 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment
- 05/22/2017 Referral submitted to the file from Conservation Commission that states: *Project is outside ConCom jurisdiction, but, extremely important that stormwater contained on the property. Discharge down road may contribute to runoff into wetlands near the Casino.*
- 05/23/2017 Referral submitted to the file from Engineering Department with standard comments and attached additional comments regarding angle of driveway and stormwater runoff mitigation

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

Computer generated Existing Floor Plans with a Board date 'received' stamp of May 1, 2017;

"Existing Conditions Plan for #8 Walden Avenue" prepared for David Benton in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 2 dated April 20, 2017, stamped and signed by Michael J. Borselli, P.E. with a Board date 'received' stamp of April 28, 2017;

"Site Plan – Proposed House for #8 Walden Avenue" prepared for David Benton in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 2 dated April 20, 2017, stamped and signed by Michael J. Borselli, P.E. with a Board date 'received' stamp of April 28, 2017; and

"New Residence for the Benton Family 8 Walden Avenue Falmouth, MA" drawn by Gregory Jones – Architect consisting of Drawing sk-01 'Basement Floor Plan', Drawing sk-02 'First Floor Plan', Drawing sk-03 'Second Floor Plan', Drawing sk-04 'Schematic Elevations' and Drawing sk-05 'Schematic Elevations' – all Drawings dated April 25, 2017 and has a Board date 'received' stamp of May 1, 2017.

Hearing:

Greg Jones, Architect, reviewed existing site conditions showing a pre-existing nonconforming single-family dwelling, detached garage structure and shed on subject property that all have nonconforming setbacks. He then reviewed the proposed reconstructed dwelling with an attached garage with the shed removed from subject property. The proposed dwelling with attached garage will meet all setback requirements except for the setback from the structure to the front property line off Walden Avenue that will be maintained with the same nonconforming 6.6' setback as existing. He stated that the septic system existing has a capacity (according to Board of Health) for four bedrooms; there are seven bedrooms existing. A new five-bedroom septic system is proposed. The plans submitted for approval show a four-bedroom dwelling with a 'bonus room' over the proposed garage that Board of Health feels meets the criteria of a bedroom, so the proposed septic system will be adequate for the proposed plans. Mr. Jones reviewed the proposed elevations noting that the existing is a 1.5 story structure and the proposed is a 1.5 story structure as well.

The Board discussed plans with Mr. Jones, including basement and installation of drywells. Mr. Jones stated that the basement is unfinished and there will be onsite drainage. He also stated he would submit a septic plan.

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

Tony Zahariadis of 12 Walden Avenue stated support of the plan.

Paul Caldera of 11 Quinapoxet and 24 Forest Avenue stated support of the plan.

Member Van Keuren made a motion to close the hearing. Member Potamis seconded the motion. Motion carried 4 - 0.

Member Murphy 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 8 Walden Avenue in Falmouth contains 10,242 square feet of Residential C zoned land that is not within any overlay district. The applicant applied under Section(s) 240-3 C., 240-68 and 240-69 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling and garage structure on subject property. The existing single-family dwelling has a nonconforming setback of 3.7' to the rear property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth and a 6.6' setback to the front property line off Walden Avenue that requires a 25' setback under Section 240-68 A. of the Code of Falmouth; and the existing detached garage and shed structures have nonconforming setbacks of less than 10' to the side/rear property lines. The lot coverage by structures of 22% was made nonconforming in 2003 when the Town voted to reduce lot coverage by structures from 35% to 20% under Section 240-69 A. of the Code of Falmouth. The existing shed shall be removed through the proposed plans and not relocated or replaced on site.

The garage will be attached with habitable space above. The bedroom count currently is six (6), according to testimony and existing floor plans, and will be reduced to no more than five (5) bedrooms in the proposed dwelling.

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 raze and reconstruction of the pre-existing nonconforming dwelling and garage structure on subject property will not be substantially more detrimental than what currently exists. The Board further finds that the proposed reconstruction of the dwelling and attached garage reduces the nonconforming setbacks on subject property; does not create any new nonconformity; maintains the nonconforming lot coverage by structures as existing at 22%; and is a nice improvement to the property and the neighborhood. Furthermore, the dwelling is being reduced from six (6) bedrooms to five (5) bedrooms (which includes the bonus room over the garage).

The Board finds that the architectural plans, specifically Drawing sk-03 'Second Floor Plan' shows a home office with a cased opening of approximately 5' and will remain as such. The Board further finds that on same Drawing a 'bonus room' with a bathroom that, according to testimony by the applicant's representative, the Board of Health determined this room meets the criteria of a bedroom according to 310 CMR 15 regulations. Furthermore, the Board finds that according to the architectural plans submitted and noted herein there are four (4) bedrooms proposed and a bonus room that meets the criteria of a bedroom according to Board of Health, thus the proposed dwelling has five (5) bedrooms.

The Board finds through testimony by the applicant's representative that there is a five (5) bedroom septic system proposed for subject property and that he will submit a copy of said plan to the Board of Appeals. The Board further finds that the five (5) bedroom system that applicant's representative stated is proposed is adequate for the proposed five (5) bedroom dwelling discussed herein. Furthermore, the Board finds through testimony by the applicant's representative that there will be onsite drainage that should address the Engineering Department's concern of stormwater runoff and how it will be maintained on subject property.

The Board finds according to the "Site Plan – Proposed House" submitted to the file, that the shed will be removed and not replaced or relocated on subject property.

The Board further finds through testimony by the applicant's representative that the basement is unfinished and will remain unfinished.

In addition to the above findings, the Board finds that the proposed project represented herein 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 raze and reconstruct of the dwelling and garage as there will be a reduction in the existing nonconforming setbacks, reduction of the bedroom count, no new nonconformities created and the lot coverage by structures will not be increased.

B. The site is suitable for the proposed use as the property is zoned residential and the proposed will be maintained as a single-family dwelling through this special permit approval.

C. There will be no impact on traffic flow and safety as there is a reduction 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 sewage disposal system for the five (5) bedroom septic system noted at the hearing shall be approved by the Board of Health prior to the issue of a building permit.

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 service as the Board did not receive a referral from the Water Department regarding existing 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 raze and reconstruction of the pre-existing nonconforming single-family dwelling and garage structures 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 Potamis made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 **4 – 0 to Grant the Special Permit** to Laurie A. Benton and David H. Benton, Jr. (herein referred to as Applicant) under Section(s) 240-3 C, 240-68 and 240-69 of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming single-family dwelling and garage structure on subject property known as 8 Walden Avenue, Falmouth, MA. This special permit is subject to the following conditions:

1. The razing of the existing dwelling and garage structure, removal of the existing shed, reconstruction of the dwelling with attached garage, number of bedrooms, all setbacks, height of structure, lot coverage and use of dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - Computer generated Existing Floor Plans with a Board date 'received' stamp of May 1, 2017;

- “Existing Conditions Plan for #8 Walden Avenue” prepared for David Benton in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 2 dated April 20, 2017, stamped and signed by Michael J. Borselli, P.E. with a Board date ‘received’ stamp of April 28, 2017;
  - “Site Plan – Proposed House for #8 Walden Avenue” prepared for David Benton in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 2 dated April 20, 2017, stamped and signed by Michael J. Borselli, P.E. with a Board date ‘received’ stamp of April 28, 2017; and
  - “New Residence for the Benton Family 8 Walden Avenue Falmouth, MA” drawn by Gregory Jones – Architect consisting of Drawing sk-01 ‘Basement Floor Plan’, Drawing sk-02 ‘First Floor Plan’, Drawing sk-03 ‘Second Floor Plan’, Drawing sk-04 ‘Schematic Elevations’ and Drawing sk-05 ‘Schematic Elevations’ – all Drawings dated April 25, 2017 and has a Board date ‘received’ stamp of May 1, 2017.
2. The shed shall be removed as shown on the “Site Plan – Proposed House” noted in Condition 1 above. The shed shall not be replaced and there shall be no other accessory structure(s) allowed on subject property without prior approval from the Board of Appeals.
  3. The applicant shall submit to the Board of Appeals a revised plan showing stormwater mitigation on site and confirmation of lot coverage by structures not to exceed the 22% as shown on approved plan herein. The stormwater mitigation will be installed as deemed appropriate by the project Engineer. The reviewed plan shall be submitted to the Board prior to the final inspection sign-off by the Building Inspector and/or Zoning Administrator.
  4. There shall be no more than five (5) bedrooms allowed on subject property, which includes the bonus room above the garage as Board of Health determined that said room meets the criteria of a bedroom under 310 CMR 15.00 Regulations.
  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. The Applicant shall meet the requirements of the DPW Water Division.
  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, 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.)
  8. 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:       **032-17**

Applicant:                   **LAURIE A. BENTON and DAVID H. BENTON, JR. of Norfolk, MA**

Subject Property:           **8 Walden Avenue, Falmouth, Massachusetts  
Map 46B, Section 09, Parcel 011, Lot 001**

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

Vote:                      4 – 0 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



**Edward Van Keuren, Acting Vice Chairman, Board of Appeals**

**RECEIVED**

**JUN 26 2017**

FALMOUTH TOWN CLERK

*10:32<sup>5</sup> pm*

**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.