

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 114-17

**APPLICANT/OWNER:** CHARLES D. BURGESS and CATHERINE V. BURGESS of  
Norwood, MA

**SUBJECT PROPERTY:** 74 and 76 Randolph Street, Teaticket, Massachusetts  
**Assessor's Map:** Map 39A Section 14 Parcel 000 Lot 102A

**DEED/CERTIFICATE:** Certificate 128254, Lots 102, 103 & 104 – Plan 4286-A (Plate 7)

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of December 14, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth to acknowledge two (2) dwellings existing prior to May 19, 1959 and to allow the raze and reconstruction of one of said dwellings known as #76 on subject property known as 74 & 76 Randolph Street, Teaticket, 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 January 25, 2018.
4. The public hearing was closed on January 25, 2018, wherein the Board consisting of Acting Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Member Paul Murphy and Alternates Gerald Potamis and Robert Dugan (sitting as voting members) made a decision to Grant the Special Permit with conditions. Note: Member Bielan recused from the hearing. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Dennis Cenzalli of 5 C's Builders, 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)**

- 12/14/2017 Dennis Cenzalli submitted on behalf of the applicant, an application, fee, authorization of representation, plans (site and architectural), photos of abutters
- 12/14/2017 Letter submitted to the file by the applicant from Matt Gelso Real Estate to Board of Appeals dated October 17, 2017 stating acknowledgement of the two (2) cottages (known as the "Twin Cottages" on subject property in the mid 1950's
- 12/14/2017 Applicant submitted to the file an advertisement from 1948 showing building permits being issued to Walter Elliott, Contractor/Daniel Beltz (owner) for two dwellings on Randolph and Maravista
- 12/14/2017 Aerial photo from 1950 showing the two dwelling structures on subject property

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

- 12/15/2017 Referral submitted to the file from Falmouth Fire Rescue with no comment
- 12/18/2017 Referral submitted to the file from Planning Department staff with no comment
- 12/21/2017 Referral submitted to the file from Director of Assessing with no comment
- 01/18/2018 Referral submitted to the file from Town Engineering with standard comments and additional note of: *The project must not direct any stormwater runoff to public property, abutters or right of ways. We recommend adding dry wells, rain garden, or other stormwater measure for the roof. Attached are images from our aerial photography records. The two structures appear to be visible in the 1950 aerial; the 1960 was included for reference. Please clearly post # on new house.*
- 01/03/2018 ZBA staff submitted to the file a copy of Special Permit #86-93 for subject property that approved replacement of existing decks and doors and windows

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

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

"Proposed Dwelling 74-76 Randolph Street in Falmouth, Massachusetts" as drawn by Cape & Islands Engineering on a plan dated December 7, 2017 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date 'received' stamp of December 14, 2017;

Hand drawn floor plans on #74 and #76 Randolph Street – 1 page – with a Board date 'received' stamp of December 14, 2017; and

“Burgess Residence 76 Randolph Rd. Falmouth, MA” as drawn by JB Designs, consists of Page 1 of 6 through 4 of 6, all dated 12/2/2017 showing proposed floor plans, elevations, framing plans and cross sections for proposed dwelling – all have a Board date ‘received’ stamp of 12/14/2017.

Hearing:

Dennis Cenzalli briefly explained the site conditions wherein two dwellings have been located on subject property, consisting of 7,200 square feet of land, prior to May 1959. He reviewed #76 on the property that is a two bedroom ranch that the applicant would like to raze and reconstruct as a two-story, four-bedroom dwelling. He explained that the bedroom on the first floor will be used as a den until such time, due to age, the owners will need a bedroom on the first floor. The dwelling is proposed within substantially the same footprint as existing, with improvement to the two nonconforming setbacks (front and side). Mr. Cenzalli explained that there are two betterments for sewer hookup on subject property, so that both dwellings will be allowed four (4) bedrooms.

The Board discussed plans with Mr. Cenzalli including what the height of the proposed dwelling will be, and the removal of one of the two sheds. Mr. Cenzalli stated that the existing dwelling is 14.7’ in height and the proposed dwelling will have a height of 31.3’; and Mr. Burgess, applicant, explained that the 10’ x 12’ shed will be relocated to the northwest corner of the lot and the existing 8’ x 8’ shed in that location will be removed and not replaced.

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

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

Chairman Hurrie 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 74 Randolph Street (includes both 74 and 76 Randolph St) contains 7,200 square feet of Residential C zoned land that is located within the Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth to acknowledge two (2) dwellings existing on subject property prior to May 19, 1959 and to allow the raze and reconstruction of one of said dwellings known as #76 on said property. The subject property was granted a special permit (86-93) to allow replacement of decks (larger in size), reshingle, install new windows and doors on both dwellings on subject property. The subject property is nonconforming in that there are two (2) dwellings on subject property, both of which have nonconforming setbacks to the front property line of less than 25’ as required in Section 240-68 A. and B. of the Code of Falmouth and lot coverage by structures exceeds the 20% maximum allowed in a residential district under Section 240-69 A. of the Code of Falmouth and also exceeds the 25% allowed by special permit under Section 240-69 E. of the Code of Falmouth. The existing dwelling proposed to

be razed, #76 on subject property, has a height of 14.7', has two-bedrooms and is located on the easterly side of the property. The proposed dwelling will be a two-story, four-bedroom dwelling with a height of 31.3' and will slightly improve the two (2) nonconforming setbacks – 16.6' setback to front property line improved to 17.2' and the 3.9' nonconforming setback to the side (easterly) property line will be improved to 7.8'. The lot coverage by structures will remain the same at 28.5%; lot coverage by structures, parking and paving is in compliance at 37.1% (40% maximum allowed).

Section 240-3 A. of the Code of Falmouth states that two or more dwellings on a single lot shall be deemed a pre-existing nonconforming use if commenced prior to May 19, 1959, and may only be altered, extended or modified by special permit pursuant to this section provided the Board finds through a preponderance of credible evidence that the use commenced prior to May 19, 1959 and has not been abandoned or not used for a period of two years.

The Board finds through credible evidence submitted in the form of a letter from Matt Gelso, aerial photos from 1950 submitted by two different sources (applicant and Town Engineering Department) and Old Assessors' cards maintained by ZBA that notes both structures and assessed value from 1957, that both dwelling structures existed on subject property prior to May 19, 1959 and have been used by family or as rentals consistently over the years since.

Section 240-3 C. 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 one of the two (2) dwellings on subject property known as #76 will not be substantially more detrimental than what currently exists as the two nonconforming setbacks (front and side yard) will be slightly improved and the lot coverage by structures on subject property will remain the same at 28.5% as the proposed dwelling will be constructed substantially within the same footprint as the existing dwelling and combined with the removal of the 8' x 8' shed, the lot coverage will not be increased. Furthermore, the Board finds that the proposed dwelling will be a great improvement and enhancement to the utilization of the dwelling by its occupants.

The Board finds through testimony that the subject property has two betterments assessed, one for each dwelling on said property. The Board further finds that a dwelling that is served by Town sewer in this district has the right to have four (4) bedrooms, which is the case in the subject dwelling that is currently a two-bedroom dwelling that will be increased to a four-bedroom dwelling. The Board further finds through testimony by the applicant who has owned the property since 1992, that the one bedroom on the first floor as proposed will be a study until such time that they (applicants) need a first floor bedroom.

The Board finds that there was no opposition submitted to the file regarding the proposed raze and reconstruction of one of the two dwellings on subject property. The Board further finds that the proposed dwelling to be razed has a height of 14.7' and the proposed dwelling will have a height of 31.3' which height does not appear to have an impact on the abutter to the east as the dwelling on abutting property known as 82 Randolph is of similar height as well as the two-story dwelling directly behind subject property located on Oak Street.

In addition to the above findings, the Board finds that the proposed raze and reconstruction of one of the two dwellings on subject property known as #76 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 reconstruction on #76 as the proposed will be constructed substantially within the existing dwelling's footprint and there will be no increase to existing nonconforming setbacks and the nonconforming lot coverage by structures will remain as existing with no increase.

B. The site is suitable for the proposed use as the property is zoned residential and credible evidence has been submitted to the file that proves that both dwellings existed on subject property prior to May 19, 1959 and therefore renders the dwellings pre-existing nonconforming; and both dwelling units on subject property have been and will continue to be maintained as single-family dwellings.

C. There will be a slight impact on traffic flow as the proposed will increase the bedroom count of the single-family dwelling from two (2) bedrooms to four (4) bedrooms; the location of the driveway remains as existing with no change...

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 served by Town sewer and it is noted herein that the subject property was assessed two (2) betterments.

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.

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 one (1) of the two (2) dwellings 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 Murphy 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 **5 - 0 to Grant the Special Permit** to Charles D. and Catherine V. Burgess (herein referred to as Applicant) under Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth to acknowledge the two (2) separate dwellings on a residential lot prior to May 19, 1959 and to allow the raze and reconstruction of one (1) of the two (2) dwellings on

subject property known as 74 and 76 Randolph Street, Teaticket, Massachusetts. This special permit shall be subject to the following conditions:

1. The razing of existing one-story, two-bedroom dwelling on subject property known as #76, the construction of a new #76 two-story, four-bedroom dwelling, all setbacks, lot coverage, height of dwelling and use of dwelling on subject property shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - “Proposed Dwelling 74-76 Randolph Street in Falmouth, Massachusetts” as drawn by Cape & Islands Engineering on a plan dated December 7, 2017 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of December 14, 2017;
  - Hand drawn floor plans on #74 and #76 Randolph Street – 1 page – with a Board date ‘received’ stamp of December 14, 2017; and
  - “Burgess Residence 76 Randolph Rd. Falmouth, MA” as drawn by JB Designs, consists of Page 1 of 6 through 4 of 6, all dated 12/2/2017 showing proposed floor plans, elevations, framing plans and cross sections for proposed dwelling – all have a Board date ‘received’ stamp of 12/14/2017.
2. There shall be no more than four (4) bedrooms allowed within the proposed reconstructed dwelling represented herein.
3. The 8’ x 8’ shed shall be removed from subject property and not be replaced. The 10’ x 12’ shed shall be relocated to the northwest corner of subject property (rear corner).
4. 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.
5. The Applicant shall meet the requirements of the DPW Water Division.
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 three (3) 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: **114-17**

Applicant: **CHARLES D. BURGESS and CATHERINE V. BURGESS of Norwood, MA**

Subject Property: **74 and 76 Randolph Street, Teaticket, Massachusetts  
Map 39A Section 14 Parcel 000 Lot 102A**

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, Acting Chairman, Board of Appeals**

**RECEIVED**

**FEB - 7 2018**

FALMOUTH TOWN CLERK

*apc 11:50am*

**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.