

**FALMOUTH ZONING BOARD OF APPEALS  
FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 092-18

**APPLICANT/OWNER:** JOHN L. BANNER, III of Teaticket, MA

**SUBJECT PROPERTY:** 7 Toledo Street, Teaticket, Massachusetts  
**Assessor's Map:** Map 39A Section 22 Parcel 000 Lot 004

**DEED/CERTIFICATE:** Book 0715 / Page 097

**SUMMARY:** Special Permit Granted

**PROCEDURAL HISTORY**

1. Under a date of October 9, 2018 the applicant filed with the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C., 240-69 E. and 240-23 I. of the Code of Falmouth to construct a detached accessory garage structure with an accessory apartment on second level with lot coverage by structures increase above 20% on subject property known as 7 Toledo Street, Teaticket, 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 December 13, 2018.
4. The public hearing was closed on December 13, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Acting Clerk Paul Murphy and Associates Gerald Potamis and Robert Dugan (sitting as voting members) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was present at the hearing and reviewed and discussed the request for special permit 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)**

10/12/2018	Email from applicant to ZBA staff regarding continuation of hearing
10/22/2018	Waiver signed by applicant to extend the sixty-five day hearing process

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

- 10/11/2018 Referral submitted to the file from the Planning Department staff that states: *The applicant filed a Site Plan Review application with the Planning Board and is scheduled for the November 20<sup>th</sup> PB agenda.*
- 10/15/2018 Referral submitted to the file from the Water Department that states: *Per water regulators all occupied structures must have their own water service – have proponent apply for a new water service to the detached structure.*
- 10/16/2018 Referral submitted to the file from Director of Assessing that notes the property includes Lots 4, 5 and 6
- 10/18/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 10/22/2018 Referral submitted to the file from Conservation Commission with no comment
- 10/24/2018 ZBA staff submitted to the file Special Permit #145-99 which granted the applicant to build a dwelling on this undersized lot
- 10/29/2018 Referral submitted to the file from the Town Engineering Department with standard comments and a recommendation to have applicant add drywells, rain garden or other stormwater measure for the proposed roof.
- 11/23/2018 ZBA staff prepared and submitted to the file a “Lot Coverage/Bulk Calculations” analysis for subject property and surrounding properties

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**

“Plot Plan” for 7 Toledo Street, Falmouth, MA as drawn by Stephen Doyle & Associates – plan dated September 15, 2018 – plan is stamped, signed and dated by Stephen J. Doyle, PLS and has a Board date ‘received’ stamp of October 9, 2018;

“Banner’s Garage 7 Toledo St – Falmouth” architectural plans drawn by Longfellow Design-Build dated 9/18/2018 and with a Board date ‘received’ stamp of October 9, 2018 consisting of:

- Drawing A0.0 ‘Cover’
- Drawing A1.0 ‘First Floor Plan – Garage Proposal’ (shows second floor proposed as well)
- Drawing A2.0 ‘Exterior Elevations’
- Drawing A3.0 ‘Door and Window Schedule’

Hearing:

John Banner reviewed the application informing the Board that due to the amended bylaw as Section 240-23 I. being amended at this November Town Meeting [2018], the application cannot be for the accessory apartment due to the requirement now of a 7,500 square foot minimum size property as the subject property is 7,200 square feet. He stated he would like to move forward with construction the one-car garage with habitable space above with the proposal of removing the cooking facilities – thus requesting an additional bedroom. Mr. Banner explained the existing two-story dwelling has three (3) bedrooms and with the capability of being on Town sewer he is allowed a fourth bedroom, which is being proposed as the second floor above the detached garage shown in the plans submitted. The habitable space will be approximately 260 square feet in size with and set up as a studio unit. He said he understands that the cooking facilities will not be allowed, but the refrigerator and sink will be remain. He then reviewed the increase in lot coverage from 21.5% to 24.8% which includes the removal of the existing shed in the southeast corner of the lot and removing the stairs off the south side of the existing deck.

The Board discussed plans with Mr. Banner, including the referral from Water and Engineering. Mr. Banner stated he understands the referrals from both Water and Engineering. Mr. Banner stated relative to the connection to Town sewer, he has connected at this time in the event he was required to move the structure he has applied for – he said his intent is to connect after approval of the Special Permit.

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

Member Murphy made a motion to close the hearing. Member Potamis seconded the motion. Motion carried 4 - 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 7 Toledo Street in Teaticket contains 7,200 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. (pre-existing nonconforming setbacks and lot coverage by structures) of the Code of Falmouth, Section 240-69 E. (increase to lot coverage by structures up to 25%) of the Code of Falmouth and Section 240-23 I. (special permit for an accessory apartment in a detached structure) of the Code of Falmouth. Due to the size of the subject property being 7,200 square feet and the amendment to Section 240-23 I. of the Code of Falmouth voted at the November 2018 Town Meeting that requires a lot to be no less than 7,500 square feet in size to allow for an accessory apartment, the application for an accessory apartment is not appropriate. Note: Testimony by the applicant was that the Planning Board denied the application for accessory apartment.

The Board finds that the application is not appropriate under Section 240-23 I. of the Code of Falmouth as the subject property is 7,200 square feet in size thus not meeting the most recent amendment to the

bylaw approved by Town Meeting vote in November 2018 that requires a property to be 7,500 square feet in size. The Board further finds through testimony by the applicant that there is no intent to have any cooking facilities within the habitable space of the garage structure proposed herein.

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 detached accessory garage structure will not be substantially more detrimental than what currently exists on subject property as the proposed will not increase the existing nonconforming setbacks, the proposed structure will not create any new nonconforming setbacks and, based on the 'Lot Coverage/Bulk Calculations' analysis submitted to the file, the proposed is in keeping with the character of the neighborhood as most of the dwellings are 1.5 up to 2 story dwellings, some with detached garages and a couple dwellings with attached garages and five (5) of the lots have greater lot coverage on same size or larger lots. The Board further finds that the proposed detached one-car garage will enhance the utilization of the property by its residents.

Section 240-69 E. of the Code of Falmouth allows the Board of Appeals to give approval for lot coverage by structures to be increased above the 20% maximum allowed by right under Section 240-69 A. up to, but not to exceed, 25% and that said approval is based on the Board's consideration of the criteria of Section 240-69 E.

The Board has reviewed the criteria outlined in Section 240-69 E. and finds that the height and size of the proposed one-car garage with habitable space above on subject property is in keeping with the general neighborhood's character; that the proposed one-car garage does not have any shadow effect on adjacent properties; that the proposed one-car garage does not impact any view or vista from the public way; and that there is no effect of nitrogen on a coastal embayment from the proposed detached garage structure.

The Board finds through testimony by the applicant that he intends to connect to the Town sewer if and when this special permit is approved. The Board further finds that the proposed fourth bedroom in the second floor of the proposed garage structure may not be used or occupied until such time that the property is connected to the Town sewer.

The Board finds that the proposed detached garage structure is in compliance with Section 240-70 as the height of the accessory structure is 20.4', less than the maximum of 22' maximum allowed.

In addition to the above findings, the Board finds that the proposed detached garage structure with habitable space on the second level 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 detached garage structure with habitable space above as there is no increase to the existing nonconforming setbacks, there are no new nonconforming setbacks and the increase to the lot coverage by structures is approvable herein by the Board under Section 240-69 E. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and the detached garage structure is an accessory use allowed with an existing principal dwelling and said detached garage structure shall remain accessory to the primary and shall not become a separate dwelling.

C. There will be no impact on traffic flow and safety as the increase of bedrooms from three (3) to four (4) is minimal and there is no change in the location of the existing driveway on site.

D. The visual character of the subject property will be changed but remain in keeping with the character of the neighborhood 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. Testimony by the applicant was that the property will be connected to Town sewer prior to the occupancy of the habitable space within the approved detached garage structure.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed dwelling reconstruction discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. There was Site Plan Review by the Planning Board and testimony by the applicant was that the Planning Board denied the accessory apartment as the subject property is undersized according to the amendment to the bylaw approved by Town Meeting in November 2018 requiring a minimum of 7,500 square feet of a lot.

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 detached garage structure with habitable space on the second level as discussed and represented 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 Murphy 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 John L. Banner, III (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct a detached garage structure with habitable space on the second level on subject property known as 7 Toledo Street, Teaticket, Massachusetts. The Board determined that the application was not appropriately before the Board for an accessory apartment under Section 240-23 I. of the Code of Falmouth. This special permit shall be subject to the following conditions:

1. The detached garage structure, all setbacks, lot coverage, height of structure and use of the detached garage structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

“Plot Plan” for 7 Toledo Street, Falmouth, MA as drawn by Stephen Doyle & Associates – plan dated September 15, 2018 – plan is stamped, signed and dated by Stephen J. Doyle, PLS and has a Board date ‘received’ stamp of October 9, 2018;

“Banner’s Garage 7 Toledo St – Falmouth” architectural plans drawn by Longfellow Design-Build dated 9/18/2018 and with a Board date ‘received’ stamp of October 9, 2018 consisting of:

- Drawing A0.0 ‘Cover’
  - Drawing A1.0 ‘First Floor Plan – Garage Proposal’ (shows second floor proposed as well)
  - Drawing A2.0 ‘Exterior Elevations’
  - Drawing A3.0 ‘Door and Window Schedule’
2. The applicant shall revise Drawing A1.0 (noted in Condition 1 above) and remove the title of ‘Studio Apto’. The application did not meet requirement of Section 240-23 I. of the Code of Falmouth to allow an accessory apartment or studio. The space will be for a bedroom, full bathroom and may be allowed a wet bar, but not cooking facilities. The revised Drawing shall be submitted to the Board of Appeals prior to issuance and sign off of a Building Permit.
  3. There shall be no cooking facilities whatsoever allowed in the garage structure, first or second level, which shall include no stove, oven, microwave oven or hotplate.
  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: **092-18**

Applicant/Owner: **JOHN L. BANNER, III of Teaticket, MA**

Subject Property: **7 Toledo Street, Teaticket, Massachusetts  
Map 39A Section 22 Parcel 000 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: 4 – 0 to Grant the Special Permit in part as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



**Terrence Hurrie, Chairman, Board of Appeals**

RECEIVED

DEC 20 2018

FALMOUTH TOWN CLERK

*aweg30am*

**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.