

Zoning Board of Appeals Decisions Decisions for: 03-06-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 9-14

APPLICANT: DANIEL A. WALSH of Waltham, MA

OWNER: DANIEL A. WALSH and BARBARA A. WALSH

DEED/CERTIFICATE: Certificate 188904, Lot 251 – Plan 314-E (Sheet 2)

SUBJECT PROPERTY: 198 Acapesket Road, East Falmouth, MA
Map 33, Section 08, Parcel 019, Lot 251

Under a date of January 15, 2014, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-68 A. (8) of the Code of Falmouth to construct a detached two-car garage in a front yard no closer than 50' to the front property line off Acapesket Road on subject property located at 198 Acapesket Road, East Falmouth, Massachusetts.

A public hearing was held on March 6, 2014. 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.

Board Members sitting: Chairman David Haddad, Clerk Scott Zylinski, Member Patricia Johnson, Associate Mark Cool and Kimberly Bielan

Clerk Zylinski read the Notice of Public Hearing into the record.

Daniel Walsh, applicant/owner, was present and reviewed the existing site and proposed location for a two-car garage within a front yard but no closer than 50' to front property line off Acapesket Road – the plans show the garage to be 56' from the front property line. He explained that it would be used as storage and has no habitable space within it and it is 16'10" in height. The subject property backs up to Green Pond so it cannot be located in the back yard and a side yard location would not allow a 10' setback to the side yard property line as required.

Clerk Zylinski read the Town Department referrals into the record.

A referral from the Engineering Department had standard comments with the addition of: There doesn't appear to be any stormwater provisions for the new garage and it appears from the topography that runoff would potentially run down the driveway and into Acapesket Road.

A referral from the Conservation Commission states: Outside Conservation Commission jurisdiction.

Referrals submitted from the Building Department, Board of Health, Planning Department and Water Department had no comment.

Board Questions:

Member Zylinski asked Mr. Walsh if he understood the Engineering Department's comments.

Mr. Walsh stated he believes so and said the garage will be built in compliance.

Member Bielan asked if the upstairs would be unfinished storage and unheated.

Mr. Walsh stated it would be unfinished and unheated – no habitable space proposed.

Chairman Haddad asked if there was any plumbing proposed inside of garage.

Mr. Walsh stated no only water spigots on the exterior.

Chairman Haddad asked if anyone present would like to speak in favor or opposition.

There was no public comment.

Member Zylinski made a motion to close the hearing. Member Cool seconded the motion. Motion carried 5 – 0.

Chairman Haddad 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 198 Acapesket Road in East Falmouth contains 30,000 square feet of Residential C zoned land that is located within the Green Pond Coastal Pond Overlay District. There are no dimensional nonconformities except that the land is less than 40,000 square feet in size. All existing setbacks comply with Section 240-68 A. and B. of the Code of Falmouth; and the lot coverage by structures and structures, parking and paving comply with Section 240-69 A. of the Code of Falmouth. The applicant applied under Section(s) 240-68 A. (8) of the Code of Falmouth to construct a two-car detached garage structure in the front yard of subject property with a 56' setback from the proposed garage structure to the front property line off Acapesket Road. Section 240-68 A. (8) requires that no accessory structure can be in a front yard unless it is 50 feet from the front property line and has to be approved by special permit from the Board of Appeals.

The Board finds through testimony by the applicant that there is no intent to create habitable space as the garage will be unfinished and there will be no heat installed. The Board further finds through testimony that the applicant will insure that stormwater runoff will be maintained on site.

In addition to the above findings, the Board finds that the proposed two-car garage no closer than 50' to the front yard property line 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 two-car garage with a 56' setback to the front property line off Acapesket Road as it complies with Section 240-68 A. (8) and property will maintain compliance with Section 240-68 A. and B. and Section 240-69 A. of the Code of Falmouth.

B. The site is suitable for the proposed two-car garage with a 56' setback to the front property line as the garage structure is an accessory use to the primary residential use in this residential zoned district.

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 altered but there does not appear to be any impact on the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is not affected through the proposed two-car detached garage as there is no habitable space created in said structure.

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

G. The proposed detached two-car garage construction 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 Bielan made a motion to Grant the Special Permit with conditions. Member Zylinski 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 Daniel

A. Walsh (herein referred to as Applicant) under Section(s) 240-68 A. (8) of the Code of Falmouth to construct a detached two-car garage in a front yard no less than 50' from the front property line on subject property known as 198 Acapesket Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

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

- "Site Plan – Proposed Garage" for #198 Acapesket Road prepared for Dan Walsh in Falmouth, MA as drawn by Falmouth Engineering, Inc., Sheet 1 of 1 dated December 20, 2013 and with a Board date 'received' stamp of January 15, 2014; and
- "Walsh Residence – Garage Addition 198 Acapesket Road East Falmouth, MA" drawn by GF Architecture consisting of Drawing A 3.2 'Proposed Section' with final date of 12/12/13, Drawing A 1.1 'Proposed Plan and Elevations' with a final date of 12/12/13, Drawing A 3.1 'Proposed Section' with a final date of 12/12/13 and Drawing A1.2 'Electrical Plan – Foundation Plan' with a final date of 12/12/13 and all Drawings having a Board date 'received' stamp of January 15, 2014.

2. There shall be no habitable space created within the garage structure approved herein.

3. The applicant will maintain stormwater runoff on site.

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. 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 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: 9-14

Applicant: DANIEL A. WALSH of Waltham, MA

Subject Property: 198 Acapesket Road, East Falmouth, MA
Map 33, Section 08, Parcel 019, Lot 251

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.

David Haddad, Board Chairman

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 9-14 Walsh / 198 Acapesket Rd / garage in front yd posted to web 3/11/14