

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 6-14

APPLICANT/OWNER: LORRAINE LUCHNER of Braintree, MA

DEED/CERTIFICATE: Book 15833 / Page 177

SUBJECT PROPERTY: 15 Pennsylvania Avenue, Falmouth, MA  
Map 46B, Section 18, Parcel 013, Lot 015

Under a date of January 10, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C., 240-68 B. and 240-69 A. of the Code of Falmouth to raze and reconstruct within same footprint, the existing detached garage with storage above on subject property located at 15 Pennsylvania Avenue, 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 Associate Kimberly Bielan

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

Joel Kubick, P.L.S. with Holmes and McGrath, Inc. was present on behalf of the applicant and reviewed the existing site conditions and the proposed razing and reconstruction of a detached garage structure. The proposed garage will be constructed within the existing footprint and will have space above for storage. The existing garage structure is 12' 7.5" in height; the proposed garage structure will be 17'9" in height. The ½ floor above the garage will be unfinished and will be used for storage with access via stairs from the main floor of garage.

Mr. Kubick noted that the lot coverage by structures, which includes existing pool is at 38.3% - well over the 20% maximum allowed by code currently, and the proposed will not increase that nonconformity. He believes the proposed reconstruction of the detached garage structure will not be more detrimental to the lot and the neighborhood.

Clerk Zylinski read the Town Department referrals into the record.

A referral from the Board of Health Agent David Carignan states: If the footprint does not change and the room above the garage remains uninhabitable – that is floor to ceiling height remains less than seven feet and the building code is not satisfied with respect to the minimum standards for a habitable room, the no new sleeping room will be created and no negative comment.

A referral submitted from the Engineering Department had standard comments regarding any alteration or change in driveway or utilities will require a permit through appropriate department.

A referral from the Conservation Commission states: Approved by ConComm under an RDA 1/15/14: stormwater to stay on property.

Referrals submitted by the Building Department, Planning Department and Water Department had no comment.

Clerk Zylinski noted that a signed Determination of Applicability from the Conservation Commission was submitted to the file on January 24, 2014.

Board Questions:

Member Johnson asked if there will be heat or plumbing in the proposed garage structure and if the ½ floor would be for storage only.

Mr. Kubick stated there will be no heat or plumbing and that it would be used for storage only.

Member Bielan questioned the square footage noted on application vs. what is on the plan.

Mr. Kubick stated that the application is footprint square foot and the plan is overall square footage.

Chairman Haddad asked square footage of garage space and square footage of second floor.

Mr. Kubick stated 285 sf for first floor (interior measurement) and 245 sf of second floor, with head room less height than required by building code to be habitable space.

Chairman Haddad asked if stormwater will be contained on site.

Mr. Kubick stated yes.

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 15 Pennsylvania Avenue in Falmouth contains 8,204 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C., 240-68 B. and 240-69 A. of the Code of Falmouth to raze and reconstruct the detached garage structure within existing footprint. The existing height of the garage structure is 12'7.5" and the proposed will be 17'9". There will be a ½ floor above the garage space that will be used for storage and will be accessed through interior stairs from garage space. The applicant's representative stated at the hearing that there will be no heat or plumbing within the garage structure and that the space would be used as garage and storage only. The existing lot coverage exists at 38.3% which is well over the 20% maximum allowed in a residential district pursuant to Section 240-69 A. of the Code of Falmouth. The total lot coverage is also nonconforming at 67.6% which exceeds the 40% maximum allowed under same bylaw. The setbacks from the garage to the rear and side yard property lines require a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The existing setback from the garage structure to the rear property line is nonconforming at 2'3" and the existing setback from the garage structure to the side yard is nonconforming at 4'3". The proposed plan is to construct the garage structure within the existing footprint and therefore the nonconforming setbacks will remain the same and not be more nonconforming.

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 razing and reconstruction of the pre-existing nonconforming detached garage structure does not appear to be substantially more detrimental than what currently exists. The Board further finds that the reconstruction of the detached garage structure will be within the same footprint as existing garage structure and therefore not increasing the nonconforming setbacks or lot coverage. Furthermore, the Board finds through testimony by the applicant's representative that the proposed detached garage structure will not be heated or have plumbing and that the use will be as a garage with storage; it will not have any habitable space.

The Board finds that the applicant applied under Sections 240-68 B. 'Minimum setbacks from side and rear lot lines' and 240-69 A. "Maximum lot coverage" for relief, when in fact both setbacks and lot coverage have been nonconforming for many years as existing and are not increasing in nonconformity through this special permit approval. Therefore, the Board further finds that application only required filing under Section 240-3 C. of the Code of Falmouth.

In addition to the above findings, the Board finds that the proposed raze and reconstruction of the detached garage structure as discussed and 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 reconstruction of the pre-existing nonconforming detached garage structure as it will be constructed within the existing footprint with no increase to existing nonconformities and with no new nonconformities created.
- B. The site is suitable for the proposed use as the property is zoned residential and the proposed reconstruction of the detached garage structure is an accessory use to the primary use of the single-family dwelling on subject property and is in keeping with said existing use.
- 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 sewage disposal system is unaffected through this special permit as there will be no additional habitable space created through this approval of the reconstruction of the detached garage structure.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed detached garage 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.

Member Cool 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 Lorraine Luchner (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming detached garage structure within the existing footprint on subject property located at 15 Pennsylvania Avenue, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The raze and reconstruction of the pre-existing nonconforming detached garage structure, all setbacks, lot coverage, height of proposed garage structure and use of proposed 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 of Existing Conditions" prepared for Bruce & Lorraine Luchner for Lots 15 & 17, Pennsylvania Avenue in Falmouth, MA, Sheet 1 of 1 drawn by Holmes and McGrath, Inc. dated September 10, 2007 with a final revision date of 8/12/13 and a Board date 'received' stamp of January 10, 2014 [Board approved date of 3/6/14]; and
- "Addition & Alterations to: Luchner Residence 15 Pennsylvania Ave, Falmouth, MA" architectural plans drawn by Giampietro Architects consisting of Drawing AB1 'Existing Garage Floor Plan/Elevations dated 11/1/13 with a Board date 'received' stamp of January 10, 2014 and Drawing A1 'Floor Plans, Elevations & Sections dated 1/31/14 with final revision date of 3/6/14 and a Board date 'received' stamp of March 6, 2014 [both drawings approved by Board on 3/6/2014].

2. As testified to at the hearing, there shall be no heat or plumbing installed within the proposed detached garage approved herein.

3. There shall be no habitable space created within the proposed detached garage structure approved herein.

4. All stormwater runoff shall be contained on site as agreed to by the applicant's representative at the hearing for this special permit approval.

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. 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 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: 6-14

Applicant: LORRAINE LUCHNER of Braintree, MA

Subject Property: 15 Pennsylvania Avenue, Falmouth, MA  
Map 46B, Section 18, Parcel 013, Lot 015

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 6-14 Luchner / 15 Pennsylvania Ave., Falmouth / R&R garage posted to web 3/13/14 mm