

Zoning Board of Appeals Decisions Decisions for: 11-12-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 97-15

APPLICANT(S)/OWNER: FREDERICK J. BORGHESI, JR. of Teaticket, MA

DEED/CERTIFICATE: Certificate #201391 – Lot 74, Plan 27680-C (Sheet 2)

SUBJECT PROPERTY: 34 Chestnut Street, Teaticket, MA
Assessor's Map: Map 39A, Section 34, Parcel 000, Lot 122

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of October 14, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to construct a 12' x 34' detached garage on subject property known as 34 Chestnut 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 November 12, 2015.
4. The public hearing was terminated on November 12, 2015, wherein the Board consisting of Chairman Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Mark Cool (sitting as voting member) 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 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)

11/12/2015 Applicant submitted photos of a tent type temporary structure to house vehicles and protect from elements that is existing on site; and a plan of a garage structure by Behm Design similar to what he is proposing.

Letters/Referrals/E-mails from Town Departments

10-15-2015 A referral submitted to the file by the Planning Department has no comment.

10-21-2015 A referral submitted to the file by Conservation Commission states: Install drywells on garage to prevent stormwater from going on driveway, onto Chestnut Street towards wetland stream.

11/3/2015 A referral submitted to the file by the Engineering Department states: This application was reviewed only for impacts to public right of ways and public utilities. Chestnut Street is a Public right of

way in this area, and Bedford Street is a Private right of way in this area. No alterations are proposed to either right of way; any changes within the Public right of way would require filing a permit with the Engineering Division. Any connections or alterations to public utilities would require permission from the appropriate Town Department. The project must not direct any stormwater runoff to public property, abutters, or right of ways.

11/12/2015 A referral submitted to the file by the Board of Health Agent states: No additional habitable space, no interference with septic system, no negative comments.

Plans submitted by Applicant/Applicant's Representative

10-14-2015 "Plot Plan of Land Prepared for Frederick J. Borghesi, Jr. Showing the Proposed Garage" drawn, stamped and signed by John Doyle, PLS 10/11/2015 and with a Board date 'received' stamp of October 14, 2015; and

Hand drawn building plans consisting of four pages showing elevation, cross section, foundation plan and framing – all with a Board date 'received' stamp of October 14, 2015.

Hearing:

Frederick Borghesi, Jr., applicant, reviewed the existing site conditions and the proposed construction of a detached garage that will be located on the northeast corner of subject property. Mr. Borghesi stated he would like to change the 34' length of the garage to 32' so that the stairs coming from the east façade of the dwelling will not be impacted. He also stated that there will be no heat installed in the garage and it will be below the 18' maximum height allowed for an accessory structure.

The Board discussed plans with Mr. Borghesi noting that the change in the length of the garage would make the setback to the front property line from the garage structure would become 38' instead of 36'. Mr. Borghesi agreed. Mr. Borghesi further agreed to install drywells as suggested by the Conservation Commission in their referral. All concerns and questions were addressed.

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

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

Chairman Bielan 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 34 Chestnut Street in Teaticket contains 9,600 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 of the Code of Falmouth to construct a detached garage structure on subject property. The detached garage structure was proposed as a 12' x 34' structure which the applicant changed at the hearing stating the structure will be 12' x 32'. The existing dwelling structure has a nonconforming setback of 18.5' to the front property line off Chestnut Street. The lot coverage, existing and proposed through the construction of the garage, is in compliance with Section 240-69 A. of the Code of Falmouth. The proposed detached garage structure will be in compliance with setbacks. Testimony from the applicant was that there will be no heat installed and the detached garage structure proposed will not be used or created into habitable space.

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 detached garage structure addition to the subject property is not substantially more detrimental than what currently exists. The Board further finds that the proposed

detached garage structure does not increase the nonconforming front yard setback, nor will it create any new nonconformity on subject property.

The Board finds through testimony by the applicant that there will be no heat installed within the garage structure and it will remain as a garage with no habitable space created within it. The Board further finds that the detached garage structure will be an improvement to the utilization of the site. Furthermore, the Board finds that the existing 'tent' type structure will be removed and not replaced on site.

The Board finds that the applicant is amenable to installing a drywell at the westerly side of the garage and the northeasterly portion of the garage to keep roof runoff on subject property and not onto abutter's property or roadway.

In addition to the above findings, the Board finds that the proposed detached garage structure 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 as the structure will meet setback requirements under Section 240-68 B. of the Code of Falmouth and will remain under the 20% maximum lot coverage by structures pursuant to Section 240-69 A. of the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned residential and the proposed detached garage structure is an allowable accessory use to the primary single-family dwelling 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 minimally impacted without 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 impacted or effected by this special approval for a detached garage structure.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed detached garage structure 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 Murphy made a motion to Grant the Special Permit with conditions. Member Hurrie 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 Frederick J. Borghesi, Jr. (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a detached 12' x 32' garage structure on subject property known as 34 Chestnut Street, Teaticket, Massachusetts. This special permit is subject to the following conditions:

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

- "Plot Plan of Land Prepared for Frederick J. Borghesi, Jr. Showing the Proposed Garage" drawn, stamped and signed by John Doyle, PLS 10/11/2015 and with a Board date 'received' stamp of October 14, 2015; and

- Hand drawn building plans consisting of four pages showing elevation, cross section, foundation plan and framing – all with a Board date 'received' stamp of October 14, 2015.

2. The applicant shall submit revised plans showing the change in the footprint of the detached garage structure as discussed and approved herein. The revised plans shall be submitted and approved by the Board prior to issuance of a building permit.

3. The applicant shall install two drywells to keep stormwater runoff onto subject property - one on the westerly side of the garage and one on the northeasterly portion of the garage. The drywells shall be shown on the revised plan noted in Condition 2 above.
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: 97-15

Applicant: FREDERICK J. BORGHESI, JR. of Teaticket, MA

Subject Property: 34 Chestnut Street, Teaticket, Massachusetts
Map 39A, Section 34, Parcel 000, Lot 122

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.

Kimberly Bielan, 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 97-15 / Borghesi, Jr /Filed w/Town Clerk 11/20/15