

Zoning Board of Appeals Decisions Decisions for: 10-08-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 84-15

APPLICANT(S)/OWNER: THERESA J. DUMAIS, TRUSTEE of Dumais Family Nominee Trust of Walpole, MA

DEED/CERTIFICATE: Book 28035 / Page 118

SUBJECT PROPERTY: 100 Seatucket Road, East Falmouth, Massachusetts
Assessors Map: Map 40, Section 11, Parcel 001, Lot 023

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of September 9, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct a two-car garage to be attached to the pre-existing nonconforming single-family dwelling on subject property known as 100 Seatucket Road, East Falmouth, 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 October 8, 2013.
4. The public hearing was terminated on October 8, 2013, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy 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 was represented at the hearing by John Vidal 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)

10/8/15 Representative Vidal submitted information on lot coverage and bulk for neighborhood.

10/8/2015 Applicant's representative John Vidal submitted a letter of support that had seven (7) signatures from abutters as follows: Mark Peterson of 94 Seatucket Rd., Suze Grenham of 106 Seatucket Rd., Paula Kapulka of 10 Seatucket Rd., Thomas Brennan of 16 Seatucket Rd., JoAnn Poirier of 99 Seatucket Rd., Stephanie Whited of 87 Seatucket Rd., and Angela O'Donnell of 37 Seatucket Rd.

Letters/Referrals/E-mails from Town Departments

9/9/2015 Referral submitted from the Planning Department that states no comment.

9/14/2015 Referral submitted from the Falmouth Fire Rescue Department that states no comment.

9/21/2015 Referral submitted from the Building Commissioner that states no comment.

10/8/2015 Referral submitted by the Conservation Commission that states: Outside of Conservation Commission jurisdiction, but keep stormwater on property off road so no impacts.

10/8/2015 Referral submitted by the Engineering Department with standard comments regarding Seatucket as a public right of way and any alterations to the right of way requires filing a permit with the Engineering Department; the project must not direct any stormwater runoff to public property, abutters or right of ways. Also notes: There is a roadway surface opening moratorium on this road until October 2016.

10/8/2015 Referral submitted by the Board of Health Agent states: The garage is proposed to be less than the minimum 10 foot setback required to the septic tank and the soil absorption system. A Board of Health Variance would be required in order for the Health Department to sign off on a building permit for this project. It appears that the storage above the garage will be accessible only from a pull-down stair so this room would not be considered a possible bedroom.

Plans submitted by Applicant/Applicant's Representative

9/9/2015 - "Certified Plot Plan" Showing Proposed Addition for Theresa Dumais 100 Seatucket Road East Falmouth, Mass. Drawn by Warwick & Associates Inc. dated 9/2/2015, stamped and dated on 9/8/2015 by Gary S. Labrie, PLS with a Board date 'received' stamp of September 9, 2015; and

- "Renovations To: Dumais Residence 100 Seatucket Road East Falmouth, MA" architectural drawn by Giampietro Architects consisting of Drawings T1 'Title Sheet' dated 8/18/15, AB1 'As-Built Elevations & Floor Plans' dated 8/18/15, A1 'New Elevations' dated 8/18/15, A1 'First and Second Floor Plans' dated 7/16/15, A3 'Foundation and Roof Plan' dated 8/18/15 and A4 'Foundation and Roof Plan' dated 8/18/15 - all drawings have a Board date 'received' stamp of September 9, 2015.

Hearing:

John Vidal was present on behalf of the applicant and reviewed the existing site conditions and the proposed addition of an attached two-car garage to the pre-existing nonconforming single-family dwelling. Mr. Vidal explained that the proposed two-car garage would be attached through a 7' x 12' addition attached to the dwelling where existing dining room is located. This addition will marry into existing space and allow for a new covered porch and access area between the garage and the dwelling. The second floor of the garage will be unfinished and accessed via a pull-down hatch and will allow for storage only. The proposed garage will be unheated. Mr. Vidal submitted a letter of support that seven (7) abutters [on Seatucket Road] signed. He then reviewed the calculations of lot coverage in the neighborhood that shows 2 properties on Seatucket Road that exceeds 20% lot coverage by structures; and that twenty-three (23) homes on Seatucket Road have no garage and nine (9) homes on Seatucket Road that have garages.

The Board discussed plans and lot coverage percentages with Mr. Vidal. 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 Murphy 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 100 Seatucket Road contains 10,005 square feet of Residential C zoned land that is located mostly in the Bournes Pond Coastal Pond Overlay District and slightly within the Green Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct a two-car garage addition to the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling structure has a nonconforming 23.5' setback to the front property line off Seatucket Road that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; and the shed at the rear of the property has a 2.5' setback to the rear property line that requires a 3' setback according to the "Fences, Sheds & Greenhouses" guidelines by Inspectional Services Department. The lot coverage is currently in compliance with Section 240-69 A. of the Code of Falmouth, however, the proposed two-car garage addition will increase the lot coverage by structures from 15.17% to 22.24% - exceeding 20% maximum - and increase the total lot coverage from 25.75% to 36.94% - still in compliance with 40% total maximum. The applicant applied under Section 240-69 E. of the Code of Falmouth that allows the Board to give relief up to 25% coverage by structures. There will be no increase to the number of four bedrooms existing.

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 addition of a two-car garage to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the proposed garage addition does not increase the existing nonconforming front yard setback, nor does it create any new nonconforming setbacks. Furthermore, the Board finds that the proposed garage will enhance the utilization of the property by the residents.

Section 240-69 - "Maximum lot coverage." of the Code of Falmouth states in sub-section E.: In Residence B, C and Agricultural B Zoning Districts maximum percent lot coverage by structures of up to 25% may be allowed by special permit by the Board of Appeals. In issuing the special permit the Board of Appeals shall take into consideration the size and height of the structure, in relation to the average size and height of structures in the neighborhood, the effects of shadow on adjacent properties, the impact on views and vistas from public ways, and the effect of nitrogen on coastal embayments.

The Board finds after consideration of Section 240-69 E. of the Code of Falmouth, that the proposed height and size of the two-car garage is in keeping with the neighborhood character and height of surrounding structures; that there is no shadow effect on adjacent properties from the proposed two-car garage; that there will be no impact on any view or vista from the roadway; and that there is no effect of nitrogen on any coastal embayment through the construction of the proposed two-car garage addition. The Board further finds that the lot coverage by structures will be increased from 15.17% to 22.24% through the proposed addition of a two-car garage and that said addition is in keeping with the residential use of the subject property and an appropriate accessory structure. Furthermore, the Board finds that there were seven abutters to subject property that stated support of the proposed garage addition on subject property.

The Board finds that the proposed two-car garage addition to the existing dwelling will not create any additional habitable space and that the second level of the garage structure, accessed only through a pull-down stairway hatch, will be unfinished and unheated. The Board further finds that the dwelling will remain a four bedroom dwelling and that there is no increase in the number of bedrooms through this special permit.

The Board finds through testimony by the applicant's representative that the applicants wish to keep the shed that is currently exists in the back yard of subject property. The Board further finds that the applicant may move the shed to meet compliance of the 3' setback to side and rear property lines.

The Board finds through testimony by the applicant's representative that they (applicant and representative) will work with the Board of Health to ensure proper setbacks to septic components per CMR regulations. The Board further finds that sign off by the Board of Health regarding the septic system and compliance of setbacks to structures is required by the Building Department prior to issuance of a building permit.

In addition to the above findings, the Board finds that the proposed two-car garage addition 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 garage as there will be no increase in existing nonconforming setback and no new nonconforming setbacks created; and although lot coverage by structures percentage will be increased, it will be done with minimal impact to subject property and neighborhood.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as such and that the proposed two-car garage addition is an appropriate accessory use to the existing residential 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 unchanged and 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 in place and noted as a four bedroom system by the Board of Health and that the concerns of the Board of Health Agent will be addressed prior to issuance of any building permit for the proposed garage.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed two-car garage addition 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 Foreman 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 Theresa J. Dumais, Trustee (herein referred to as Applicant) under Section(s) 240-3 and 240-69 E. of the Code of Falmouth to construct a two-car garage addition to the pre-existing nonconforming single-family dwelling on subject property known as 100 Seatucket Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

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

- "Certified Plot Plan" Showing Proposed Addition for Theresa Dumais 100 Seatucket Road East Falmouth, Mass. Drawn by Warwick & Associates Inc. dated 9/2/2015, stamped and dated on 9/8/2015 by Gary S. Labrie, PLS with a Board date 'received' stamp of September 9, 2015; and

- "Renovations To: Dumais Residence 100 Seatucket Road East Falmouth, MA" architectural drawn by Giampietro Architects consisting of Drawings T1 'Title Sheet' dated 8/18/15, AB1 'As-Built Elevations & Floor Plans' dated 8/18/15, A1 'New Elevations' dated 8/18/15, A1 'First and Second Floor Plans' dated 7/16/15, A3 'Foundation and Roof Plan' dated 8/18/15 and A4 'Foundation and Roof Plan' dated 8/18/15 – all drawings have a Board date 'received' stamp of September 9, 2015.

2. The second floor of the proposed garage shall remain unfinished and not heated.

3. The first floor of the proposed garage shall be solely for the use as a garage or storage.

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: 84-15

Applicant: THERESA J. DUMAIS, TRUSTEE of Walpole, MA

Subject Property: 100 Seatucket Road, East Falmouth, MA
Map 40, Section 11, Parcel 001, Lot 023

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 84-15 Dumais, Tr / Filed w/ Town Clerk 10/19/15