

Zoning Board of Appeals Decisions Decisions for: 03-12-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 12-15

APPLICANT/OWNER: PAMELA L. PETERS of West Falmouth, MA

DEED/CERTIFICATE: Book 26325 / Page 179

SUBJECT PROPERTY: 368 Central Avenue, East Falmouth, MA
Assessor's Map: Map 41, Section 05, Parcel 004A, Lot 001

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of January 26, 2015 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 garage in a front yard more than 50' from the front property line on subject property located 368 Central Avenue, East Falmouth, 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 scheduled for March 5, 2012 at 6:30 PM and was rescheduled for March 12, 2015 at 6:30 PM due to weather conditions in the Town of Falmouth. The hearing was opened on March 12, 2015 and testimony and public comment were heard.
4. The public hearing was terminated on March 12, 2015 with a Board voted of 5 – 0 to Grant the Special Permit. Board members sitting were Chairman Kenneth Foreman, Vice Chair Kimberly Bielan, Clerk Terrence Hurrie, Associate Mark Cool (sitting as voting member) and Associate John Sutherland (sitting as voting member).
5. The Board received documents and information prior to and during the public hearing which 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 from Applicant/Representative(s)

None relative to project (regarding application fee only)

Letters/Referrals/E-mails from Town Departments

March 4, 2015 A Referral submitted by the Engineering Department with standard comments relative to any changes to utilities or right of way will require application to appropriate department and there is to be no stormwater runoff from property onto abutter's property or right of ways.

February 12, 2015 A Referral submitted by Conservation Commission notes that an NOI application must

be filed with them to determine if buffer regulations will be met.

February 2, 2015 A Referral submitted by Board of Health had no comment.

January 30, 2015 A Referral submitted by the Building Commissioner had no comment.

January 29, 2015 A Referral submitted by the Planning Department had no comment.

Plans submitted from Applicant/Applicant's Representatives

January 26, 2015 Architectural Plans drawn by Residential Plans dated 1/12/2015, consisting of 5 pages with Drawings: 1A 'Floor Plan', 1B 'Foundation Plan', A. 'Front Elevation', B. 'Side Elevation', C. 'Back Elevation', D. 'Side Elevation', E. 'Framing Section', F. Window/Door Details' and G. 'Notes' – all with a Board date 'received' stamp of January 26, 2015.

March 2, 2015 "Plot Plan – Proposed House & Garage and Subsurface Sewage Disposal System" at 368 Central Avenue Falmouth, Massachusetts prepared for Pam Peters, drawn by BSS Design, Inc. with a date of January 26, 2015 and final revision dated of March 2, 2015 – signed by Jeffrey Edwin Ryther, P.E. with a Board date 'received' stamp of March 2, 2015.

March 12, 2015 Hearing:

Thomas J. Bunker with BSS Design, Inc. was present on behalf of the applicant Pamela Peters, who was also present. Mr. Bunker reviewed the existing site conditions and the proposed detached two-car garage. He explained that the 300 Committee previously owned subject property, owns abutting property and governs a 'Conservation Restriction' for subject property. A portion of subject property is restricted as a green area that is a 'no structure zone'; and there is a condition of the restriction that the single-family dwelling on subject property cannot have an attached garage. The existing nonconforming single-family dwelling that is not part of this application, will be reconstructed and brought into compliance with all setbacks. Because of the condition of 'no attached garage', the applicant is requesting a special permit for the detached garage structure that will be located slightly in the front yard of subject property, but will be 226' from the front property line off Central Avenue. Mr. Bunker stated that the lot is wooded with restrictions on cutting down trees; the trees create a buffer so that the garage is not visible from the roadway and said that the project meets the criteria of Section 240-216 of the Code of Falmouth.

The Board discussed plans with Mr. Bunker and asked what the space above the garage will be used for. Mr. Bunker stated that it will be used for storage as it has a pull down hatch.

Chairman Foreman 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 Bielan seconded the motion. Motion carried 5 – 0.

Chairman Foreman 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 368 Central Avenue contains 40,032 square feet of Residential B zoned land that is located primarily in the Eel Pond Coastal Pond Overlay District. The subject property was granted a Special Permit in 1993 adding a deck and addition to the pre-existing nonconforming dwelling structure. The dwelling structure, according to testimony given and as shown on the plan submitted and noted herein, will be reconstructed with setbacks that will be in compliance with Section 240-68 A. and B. 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 garage in the front yard with a setback of 226' from the front property line off Central Avenue. The subject property has a Conservation Restriction that limits the location of structures and has a condition that the dwelling cannot have an attached garage. The proposed two-car garage is slightly in the front yard as shown on the plans submitted and noted herein.

Section 240-68 of the Code of Falmouth "Setbacks", subsection A. (8) allows the Board of Appeals to issue a special permit for an accessory structure in a front yard, but not closer to the street frontage than 50 feet.

The Board finds that the proposed detached two-car garage in the front yard of subject property will be setback more than 50 feet from the front property line off Central Avenue. The Board further finds that the proposed detached two-car garage will be 226' from the front property line off Central Avenue. Furthermore, the Board finds that there is a Conservation Restriction on subject property that does not allow the applicant to attach a garage to the dwelling and restricts location of other structures on said property.

The Board finds according to the plans submitted and from testimony of the applicant's representative that the proposed detached garage structure will be a 1.5 story structure and have a maximum height of 18' pursuant to Section 240-70 of the Code of Falmouth - "Maximum building height". The Board further finds that there is no habitable space intended within the proposed garage structure.

The Board finds through testimony by the applicant's representative that application has been made to Conservation Commission and the 300 Committee. The Board further finds through testimony by the applicant's representative that the Conservation Commission is requiring installation of drywells on subject property to prevent stormwater runoff from site (see plan on file).

In addition to the above findings, the Board finds that the proposed 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 as all setbacks are in compliance with Section 240-68 A. and B. of the Code of Falmouth; and lot coverage is well below the maximum percentage allowed in a residential district 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 is used as a single residence with the proposed accessory structure [garage] to the primary dwelling structure.
- C. There will be no impact on traffic flow and safety as 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 the property is wooded which is a natural screening so that the proposed detached garage structure is not visible from the public way; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The proposed detached garage structure approved herein does not affect the sewage disposal system as it has no habitable space or bathroom proposed within it.
- 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 Bielan 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 Pamela L. Peters (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 more than 50 feet from the front property line off Central Avenue on a parcel known as 368 Central Avenue, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The location, construction, footprint, height, setback, lot coverage and use of the detached two-car

garage shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- Architectural Plans drawn by Residential Plans dated 1/12/2015, consisting of 5 pages with Drawings: 1A 'Floor Plan', 1B 'Foundation Plan', A. 'Front Elevation', B. 'Side Elevation', C. 'Back Elevation', D. 'Side Elevation', E. 'Framing Section', F. Window/Door Details' and G. 'Notes' – all with a Board date 'received' stamp of January 26, 2015.

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2. The applicant shall submit an 'as-built' plan - post construction, of the garage approved herein that certifies the setbacks as proposed in the plan noted in Condition 1 above. The 'as-built' shall be submitted to the Board of Appeals prior to final sign off of the garage construction by the Building Department or the Board of Appeals Zoning Administrator.

3. It is noted above that the applicant, at the time of this decision, is in hearing process with the Conservation Commission. Any minor changes made to the plans approved herein through the hearing process with Conservation Commission, may be administrative approved by the Zoning Administrator.

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 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: 12-15

Applicant: PAMELA L. PETERS, of West Falmouth, MA

Subject Property: 368 Central Avenue, East Falmouth, MA
Map 41, Section 05, Parcel 004A, Lot 001

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.

Kenneth Foreman, 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:

12-15 Peters SP granted 3/12 filed w/Clerk 3/20