

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 003-17

APPLICANT: PETER W. FUREY of East Falmouth, Massachusetts

OWNER: Peter W. Furey and Heather H. Furey

SUBJECT PROPERTY: 15 Captain Eldredge Way, East Falmouth, Massachusetts
Assessor's Map: Map 21, Section 07, Parcel 010D, Lot 004

DEED/CERTIFICATE: Book 18257 / Page 273

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of January 17, 2017, 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 garage in the front yard more than 50 feet from the front property line on subject property known as 15 Captain Eldredge Way, 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. The applicant signed a Waiver to extend the sixty-five (65) day timeframe to open a hearing for the application. The Waiver was filed with the Town Clerk on January 17, 2017.
4. A duly advertised public hearing was opened on March 23, 2017.
5. The public hearing was terminated on March 23, 2017, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Acting Clerk Paul Murphy and Associates Gerald Potamis and Robert Dugan (sitting as voting members) made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
6. The applicant was present at the hearing to review and discussed proposed plans with the Board.
7. 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)

None

Letters/Referrals/E-mails from Town Departments

- 01/18/2017 Referral submitted to the file from the Planning Department staff with no comment
- 01/23/2017 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment
- 01/23/2017 Referral submitted to the file from the Director of Assessing with no comment
- 02/07/2017 Referral submitted to the file from Conservation Commission noting that property is outside of their jurisdiction
- 02/13/2017 Referral submitted to the file from the Town Engineering Department with standard comments and recommending that the applicant add dry wells, rain garden or other stormwater measure for the increased roof area.

Plans submitted by Applicant/Applicant's Representative

“Certified Plot Plan Showing Proposed Garage” as drawn by Cape & Islands Engineering on a plan dated 11/24/2014 – stamped, signed and dated by Matthew C. Costa, P.L.S. on 2/17/2017 and with a Board date ‘received’ stamp of February 17, 2017; and

“Furey Garage 15 Captain Eldredge Way, E. Falmouth” as drawn by William F. Roslansky Architect consisting of Sheet No. A-1 ‘Floor Plans’ dated 2/16/2017 and Sheet No. A-2 ‘Elevations’ dated 2/16/2017 – both with a Board date ‘received’ stamp of February 17, 2017.

Hearing:

Mr. Furey reviewed the proposed plans to locate a two-car 24’ x 24’ garage structure in the front yard 51.3’ from the front yard property line off Captain Eldredge Way. He explained that there will be no plumbing installed in the structure, but that he would like to have heat strips installed as he will have a work station at the rear of the structure. The second level will be accessed by interior stairs and be for storage – there will be no habitable space created within the garage structure. He also explained that he will put in a dry well on the east side of the garage and add a rain garden to the west side of the garage to maintain any possible roof runoff on site.

The Board discussed plans with Mr. Furey. All concerns and questions were addressed.

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

Member Foreman made a motion to close the hearing. Member Potamis 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 15 Captain Eldredge Way in East Falmouth contains 24,950 square feet of Agricultural A zoned land that is located within the Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-68 A. (8) of the Code of Falmouth to construct a 24' x 24' two-car detached garage in the front yard more than 50' from the front property line off Captain Eldredge Way (cul-de-sac). The proposed garage will be 51.3' from the front property line which meets the criteria of Section 240-68 A. (8) of the Code of Falmouth [no less than 50' setback].

Section 240-68 of the Code of Falmouth "Setbacks." – Sub-section A. (8) requires a special permit from the Board of Appeals to locate an accessory structure in the front yard that can be no closer than 50' to the front yard property line.

The Board finds that the proposed plans submitted, reviewed and discussed herein show the location of the proposed detached garage structure to be 51.3' from the front yard property line off Captain Eldredge Way. The Board further finds according to testimony by the applicant that there will be no plumbing installed within the proposed structure, but that he is planning to insulate and put heat strips in the garage structure to allow year-round use of the workbench that he would like to put in at the inside rear wall of the garage. Furthermore, the Board finds through testimony by the applicant that the second level will be for storage only and there will be no habitable space created within the structure – either level.

The Board finds through testimony by the applicant that he plans to install a drywell on the east side of the proposed garage structure and a rain garden on the west side of said structure to maintain runoff that may occur through the proposed garage.

The Board finds that all other dimensional requirements are in compliance with Sections 240-68 A. and B. and 240-69 A. of the Code of Falmouth.

In addition to the above findings, the Board finds that the proposed detached garage in the front yard of subject property, more than 50' from the front 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 garage as it will be in compliance with Section 240-68 A. (8) and meets all other requirements of the Town Code.

B. The site is suitable for the proposed use as the property is zoned residential and the proposed detached garage structure is an allowed accessory use to the primary 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 slightly changed and the proposed detached garage structure does not appear to have 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 unaffected by this special permit approval for a detached garage structure with no bathroom proposed.

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.

The Board of Appeals has weighed the effects of the proposed detached garage structure in a front yard more than 50' from the front property line on subject property as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Foreman made a motion to Grant the Special Permit with conditions. Member Murphy 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 Peter W. Furey (herein referred to as Applicant) under Section(s) 240-68 A. (8) of the Code of Falmouth to construct a detached garage in the front yard more than 50 feet from the front property line on subject property known as 15 Captain Eldredge Way, East Falmouth, MA. This special permit is subject to the following conditions:

1. The construction, location, height, setbacks and use of the detached garage structure approved herein 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 Garage" as drawn by Cape & Islands Engineering on a plan dated 11/24/2014 – stamped, signed and dated by Matthew C. Costa, P.L.S. on 2/17/2017 and with a Board date 'received' stamp of February 17, 2017; and
 - "Furey Garage 15 Captain Eldredge Way, E. Falmouth" as drawn by William F. Roslansky Architect consisting of Sheet No. A-1 'Floor Plans' dated 2/16/2017 and Sheet No. A-2 'Elevations' dated 2/16/2017 – both with a Board date 'received' stamp of February 17, 2017.
2. There shall be no habitable space allowed within the detached garage structure approved herein.

3. There shall be no plumbing installed within the proposed detached garage structure approved herein.
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 three 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: **003-17**

Applicant: **PETER W. FUREY of East Falmouth, Massachusetts**

Subject Property: **15 Captain Eldredge Way, East Falmouth, Massachusetts
Map 21, Section 07, Parcel 010D, Lot 004**

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.

Paul Murphy, Acting Clerk, Board of Appeals

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.