

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPEAL NO: 008-17

APPLICANT/OWNER: MICHAEL A. FARIA and DONNA J. FARIA of E. Taunton, MA

SUBJECT PROPERTY: 111 Lake Shore Drive, Hatchville, Massachusetts
Assessor's Map: Map 22, Section 07, Parcel 021, Lot 006J

DEED/CERTIFICATE: Book 5469 / Page 197

SUMMARY: Variance Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of February 1, 2017, the applicant applied to the Zoning Board of Appeals for a Variance pursuant to Section(s) 240-68 A. (8) of the Code of Falmouth to construct a detached garage in the front yard less than 50' from the front property line on subject property known as 111 Lake Shore Drive, Hatchville, 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 March 16, 2017.
4. The public hearing was terminated on March 16, 2017, 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 Variance with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Joel Kubick, P.L.S. and P.E., with Holmes & McGrath, Inc. 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

- 03/08/2017 Letter submitted to the file from Peter and Laura Ragonese dated March 2, 2017 stating support of the proposed detached garage in the front yard of subject property
- 03/08/2017 Applicant's representative submitted to the file a letter from Dave Minutti of 107 Lakeshore Drive dated March 1, 2017 stating support of construction of a garage with doors facing street

Letters/E-mails/Information from Applicant/Representative(s)

03/16/2017 E-mail submitted to the file from the applicant's representative noting that the building height of the existing dwelling is 12.7' and the proposed height of the reconstructed dwelling will be 35.0' in height

Letters/Referrals/E-mails from Town Departments

02/02/2017 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment

02/06/2017 Referral submitted to the file from the Director of Assessing with no comment

02/06/2017 Referral submitted to the file from the Planning Department staff with no comment

02/07/2017 Referral submitted to the file from Conservation Commission that states: *An Order of Conditions was issued by ConCom in December 2016. Courtney to send copy of OOC to ZBA via e-mail. ZBA received a copy of the Order of Conditions on February 7, 2017.*

02/27/2017 Referral submitted to the file from the Engineering Department states: *This application was reviewed only for impacts to public right of ways and public utilities. Lakeshore Drive is a Public right of way in this area. The alterations proposed for the driveway will require filing a permit with the Engineering Division. What is shown appears to meet our standards, we would need to approve a Permit prior to sign off of a Building Permit. 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.*

Plans submitted by Applicant/Applicant's Representative

"Faria Residence 111 Lake Shore Drive Falmouth, MA" drawn by ASAP Engineering & Design Co., Inc. consisting of Sheet A0.00 'Cover Sheet', Sheet G0.00 'General Notes', Sheet A1.00 'Floor Plans', Sheet A2.00 'Exterior Elevations', Sheet A3.00 'Building Sections', Sheet S-1 'Foundation & Framing Plans' and S-2 'Details – all plans dated 11/04/2016, stamped, signed and dated by Robert M. Desrosier, P.E. on 11/4/2016 and with a Board date 'received' stamp of February 1, 2017;

"111 Lake Shore Drive Falmouth, Massachusetts" existing floor plan and elevation of dwelling (to be razed – not part of this application), no author/creator, dated January 20, 2017 and with a Board date 'received' stamp of February 1, 2017;

"Plan of Existing Conditions" prepared for Michael & Donna Faria for Lot 6, #111 Lake Shore Drive in East Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated September 22, 2015 – stamped and signed by Joel R. Kubick, PLS and with a Board date 'received' stamp of February 6, 2017;

“Plan of Proposed Sewage Disposal System” prepared for Michael & Donna Faria for Lot 6, #111 Lake Shore Drive in East Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 2 dated November 8, 2016 with a revision date of 2/22/17 – stamped and signed by Raul Lizardi-Rivera, PE and with a Board date ‘received’ stamp of February 23, 2017;

“Construction Details of Proposed Sewage Disposal System” prepared for Michael & Donna Faria for Lot 6, #111 Lake Shore Drive in East Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 2 of 2 dated November 8, 2016 – stamped and sign by Raul Lizardi-Rivera, PE and with a Board date ‘received’ stamp of February 23, 2017; and

“Proposed dwelling for Faria 111 Lake Shore Dr Falmouth, MA” as drawn by J. Rogers dated 8/12/16 consisting of Drawings 1 of 8 through 8 of 8 – all with a Board date ‘received’ stamp of February 1, 2017.

Hearing:

Joel R. Kubick, PLS, PE spoke on behalf of the applicant (who are present) and reviewed the existing site that is proposing to raze and reconstruct a single-family dwelling that will conform to all dimensional requirements. He then reviewed the proposed request of a variance to locate and construct a detached two-car garage with workshop approximately 26’ from the front property line off Lake Shore Drive that requires a 50’ setback pursuant to Section 240-68 A. (8) of the Code of Falmouth. Mr. Kubick cited site conditions that includes elevations that go from 46’ (where proposed garage will be located) to approximately 30’ where the house is proposed; and the ‘cone’ shape of the property. The property abuts Jenkins Pond – the elevations from the rear of the dwelling go from approximately 30’ to 20’ grades to pond. He explained that the dwelling and septic had to be cited according to Conservation Commission regulations leaving only the area where the garage is proposed to construct said garage. He asked for the Board to grant the variance based on the shape, topography and soil conditions of the property; and the hardship is that with elevations on property the driveway is too steep to drive down.

The Board discussed plans with Mr. Kubick and asked questions on the setbacks and requirements necessary for the septic system to be installed and be functional, buffering of adjacent lot to the west, if any utilities in the proposed garage and workshop. The Board further noted that there are two kitchens in the dwelling – one being in the basement where there is a full bathroom, living space and walkout to back yard. The property owner, Donna Faria, stated that when they cook out on the patio area they don’t want to have to carry large pots and food up and down the stairs; she further stated that it is open to the stairway and is not and will not be an apartment. All concerns and questions were addressed.

Chairman Bielan asked for any public comment in support or opposition of the proposed project.

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

Chairman Bielan closed the hearing.

Board discussed. Consensus of the Board was that the steep grade of the property, the shape and soil conditions of the property abutting Jenkins Pond, which is within Conservation Commission jurisdiction, requires that the septic system meet certain requirements and have a certain location, meets the criteria of a variance.

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 111 Lake Shore Drive in Hatchville contains 16,000 square feet of Residential C zoned land that is located within the Great Pond Coastal Pond Overlay District and the Water Resource Protection Overlay District. The applicant applied under Section(s) 240-68 A. (8) of the Code of Falmouth to construct a detached accessory garage structure less than 50' from the front yard property line off Lake Shore Drive. The Board took into consideration issues raised due to the topography, shape and soil conditions on subject property and its location abutting Jenkins Pond that is within the jurisdiction of the Conservation Commission. The Conservation Commission and the Title V Regulations dictate where the septic system may be located on subject property, thereby limiting the location of a detached garage structure. The proposed detached accessory garage structure is proposed 26' from the front yard property line; and due to elevation changes on subject property noted herein steps leading from the garage to the principal dwelling will be landscape steps and not wood structures.

Section 240-68 of the Code of Falmouth – “Setbacks.”, Sub-section A. (8) requires: *The Zoning Board of Appeals, as the special permit granting authority, may issue a special permit for an accessory structure in a front yard, but not closer to the street frontage than 50 feet.*

The Board of Appeals finds through testimony by the applicant’s representative and by information submitted to the file, that the area in which the detached accessory garage structure can be located is limited due to the topography and shape of the subject property and with noted soil conditions at the rear of the property that abuts Jenkins Pond and is within the jurisdiction of the Conservation Commission. The Board further finds through submission of an ‘Order of Conditions’ approved by the Conservation Commission that the proposed location of the detached accessory garage structure was reviewed and approved as part of their ‘Order of Conditions’. The Board also took into consideration how steep the driveway is with elevation changes on subject property and the fact that the septic system cannot be located any closer to Jenkins Pond than what is proposed thereby also requiring that the dwelling to be razed and reconstructed will be located as shown on the plan submitted, reviewed by this Board and noted herein.

The Board of Appeals has weighed the effects of the proposed detached accessory garage structure as discussed herein and finds that pursuant to Section 240-203 of the Code of Falmouth the request for a variance is owing to circumstances relating to soil conditions, shape and topography of said land with a hardship of travel to the dwelling down a steep grade. The Board further finds that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter and that the granting of this variance will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Murphy made a motion to Grant the Variance 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 this Variance** to Michael and Donna Faria (herein referred to as Applicant) under Section(s) 240-68 A. (8) of the Code of Falmouth to construct a detached garage structure in the front yard less than 50’ from the front property line on subject property known as 111 Lake Shore Drive, Hatchville, MA. This variance is subject to the following conditions:

1. The location of the detached accessory garage structure, all setbacks, lot coverage and use of the subject garage structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Faria Residence 111 Lake Shore Drive Falmouth, MA” (proposed garage plans) drawn by ASAP Engineering & Design Co., Inc. consisting of Sheet A0.00 ‘Cover Sheet’, Sheet G0.00 ‘General Notes’, Sheet A1.00 ‘Floor Plans’, Sheet A2.00 ‘Exterior Elevations’, Sheet A3.00 ‘Building Sections’, Sheet S-1 ‘Foundation & Framing Plans’ and S-2 ‘Details – all plans dated 11/04/2016, stamped, signed and dated by Robert M. Desrosier, P.E. on 11/4/2016 and with a Board date ‘received’ stamp of February 1, 2017;
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2. The applicant shall have the architect revise drawing A2.00 noted in Condition 1 above so that the front façade of the garage structure facing the street scape shall have a height of no more than 18' measured from the base of the structure to the highest point as required in Section 240-70 of the Code of Falmouth.
3. The detached accessory garage structure shall be no closer than 26' to the front property line off Lake Shore Drive.
4. There shall be no habitable space created within the proposed garage and workshop space. It is noted that the workshop is below grade and will have a walk out egress.
5. There shall be no home business or occupation operated from the detached accessory garage approved herein through this Variance.
6. The applicant shall install evergreen plantings within the west side property line of subject property with evergreens to create a buffer for the proposed detached accessory garage structure from the abutting property of 113 Lake Shore Drive.
7. 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.
8. The Applicant shall meet the requirements of the DPW Water Division.
9. 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.)
10. This permit shall lapse one (1) year 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:

Appeal Number: **008-17**

Applicant: **MICHAEL A. and DONNA J. FARIA of East Taunton, MA**

Subject Property: **111 Lake Shore Drive, Hatchville, Massachusetts
Map 22, Section 07, Parcel 021, Lot 006J**

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 Variance as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

Terrence J. Hurrie, 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.