

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 030-17

APPLICANT/OWNER: MICHAEL A. NAMETZ, and ELIZABETH G. NAMETZ, TRUSTEES
of Nametz Family Living Trust of Houston, TX

SUBJECT PROPERTY: 46 School Street, Woods Hole, Massachusetts
Assessor's Map: Map 49A, Section 01, Parcel 054, Lot 000

DEED/CERTIFICATE: Book 26493 / Page 224

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 18, 2017, the applicant applied to the Zoning Board of Appeals for a Modification of Special Permits #116-03 and #40-05 pursuant to Section(s) 240-3 of the Code of Falmouth to construct a 20' x 22' detached garage structure on subject property known as 46 School Street, Woods Hole, 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 June 15, 2017.
4. The public hearing was terminated on June 15, 2017, wherein the Board consisting of Acting Chairman Paul Murphy, Acting Vice Chairman Edward Van Keuren, Acting Clerk Robert Dugan (Associate Member sitting as voting Member) and Gerald Potamis (Associate Member 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 was represented at the hearing by Attorney Kevin P. Klauer, II, with Ament Klauer LLP, 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

04/24/2017 E-mail letter to Attorney Ament on April 24, 2017 from James and Cynthia Limberakis of 55 School Street; and forwarded to ZBA staff same date via e-mail – the letters states support of the proposed garage on subject property

- 06/13/2017 E-mail to ZBA staff from Anne Kent of 59 School Street stating support of the proposed garage on subject property
- 06/13/2017 A letter submitted to the file from Daniel Ibaniz of 32 Buzzards Bay Avenue with comments and concerns regarding proposed garage
- 06/15/2017 A letter with attachments, dated June 15, 2017 from Attorney Jonathan Polloni, as representative for James Clark, Manager of Clarksons LLC – Attorney Polloni reviewed the letter that contained comments and concerns with the proposed garage on subject property

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

- 04/18/2017 Attorney Robert Ament submitted to the file a copy of the Order of Conditions dated 10/30/2014 and one dated 3/20/2013 approved by Conservation Commission; and a copy of the Certificate of Appropriateness dated December 3, 2014 from the Historic District Commission regarding a 2-car garage
- 06/07/2017 Raul Lizardi Rivera, P.E. with Holmes and McGrath, Inc. submitted a letter dated June 7, 2017 to the file in response to the Engineering Referral
- 06/07/2017 Letter submitted to the file by Attorney Ament to Zoning Administrator dated June 7, 2017 regarding correspondence on referral from Engineering Department
- 06/13/2017 Letter submitted to the file by Attorney Ament to Zoning Administrator with attachments of two letters of support from 2014 (Corwin and Gura) for a proposed two-car detached garage and a copy of a letter from Building Commissioner Gore (not dated) regarding his opinion that the garage is not in the front yard and shall not be subject to Section 240-68 A.(8) of the Code of Falmouth

Letters/Referrals/E-mails from Town Departments

- 04/20/2017 Board of Appeals Staff submitted to the file copies of previous Special Permits #40-05 and #116-03 granted for subject property
- 04/25/2017 Referral submitted to the file from the Planning Department with no comment
- 04/25/2017 Referral submitted to the file from the Director of Assessing with no comment
- 04/27/2017 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment
- 05/01/2017 Referral with attachments submitted to the file from the Historic District – attachments include a copy of the Certificate of Appropriateness dated December 3, 2014 for a two-car garage and a letter from Historical Commission dated April 26, 2017 stating that they tolled the 2 year timeframe due to litigation and that the Certificate of Appropriateness is valid now until December 8, 2018

- 05/17/2017 Referral submitted to the file from the Engineering Department with comments and photos attached – comment referred to Section 140-109 ‘Parking area design and location’
- 05/22/2017 Referral submitted to the file from Conservation Commission that states: *An Order of Conditions was issued years ago. Case was in litigation for years. The ConCom permit has expired but Town Counsel is reviewing tolling period to assess if permit may still be considered valid under the circumstances.*

Plans submitted by Applicant/Applicant’s Representative

“Plan of Proposed Garage” prepared for Elizabeth G. & Michael A. Nametz for Lot 20, #46 School Street in Woods Hole Falmouth, MA as drawn by Holmes and McGrath, Inc. Sheet 1 of 1 dated November 19, 2012 with a final revision date of 6/6/2017, stamped and signed by Michael B. McGrath, P.L.S. and with a Board date ‘received’ stamp of June 7, 2017; and

“Proposed Garage Nametz Residence” drawn by Gregory Jones – Architect consisting of drawing SK-01 ‘Proposed Plan and Elevations’ dated June 24, 2014 with revision date of July 7, 2014.

Hearing:

Attorney Klauer reviewed the existing site and proposed detached two-car garage that will be one-story and 17.2’ in height. He reviewed the Historic Commission’s determination on the Certificate of Appropriateness being tolled due to litigation and expiring in December of 2018. He stated that the applicant is awaiting a determination from Conservation Commission as to whether the Order of Conditions from 2014 will also be tolled due to litigation.

The Board discussed plans with Attorney Klauer. All concerns and questions were addressed.

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

Attorney Pollini spoke on behalf of James Clark (56 School St.) citing School Street being a busy street for both cars and pedestrians and is a scenic road with a historic view that people enjoy and that the garage structure will ‘upset the setting’. He submitted letter with minutes from Historical Commission’s meeting from 4/2/2013 and 11/6/2014 regarding comments made by public.

Albert Fertel stated he works for the Clark Family and has seen many times cars on this lot that are blocking the sidewalk and that a garage will block the view in the winter.

Attorney Klauer noted that he submitted pictures from School Street showing the landscape on the property behind where garage is proposed that blocks the view from the roadway currently (see file).

Member van Keuren made a motion to close the hearing. Member Potamis seconded the motion. Motion carried 4 - 0.

Chairman Murphy 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 46 School Street in Woods Hole contains 25,900 square feet of Residential C zoned land that is located within the Historic District. The applicant applied for modification of previous Special Permits #116-03 and #40-05 under Section(s) 240-3 of the Code of Falmouth to construct a 20' x 22' detached two-car garage on subject property. The property is pre-existing nonconforming as there are two dwelling structures existing on subject property. The Board of Appeals through the public hearing process for Special Permit #116-03 found that there were three dwellings within two structures on subject property and that were constructed approximately in 1848 and 1870 – which predates zoning. Evidence was submitted to the file showing approval by the Historic Commission in a 'Certificate of Appropriateness' (submitted to the file) for the proposed detached garage structure with a letter explaining tolling of the approval through litigation that occurred.

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 two-car garage on subject property will not be substantially more detrimental to the subject property or the neighborhood than what currently exists. The Board further finds that the proposed two-car garage meets the setback requirements pursuant to Section 240-68 A. and B. of the Code of Falmouth, as well as lot coverage under Section 240-69 A. of the Code of Falmouth. Furthermore, the Board finds that the proposed detached two-car garage will eliminate confusion with parking on subject property as there will now be formal driveway and garage on subject property.

The Board finds that the Historical Commission did approve the proposed garage under a Certificate of Appropriateness. The Board further finds that no 'view easements' were submitted to the file from any interested party or abutter regarding disruption of a view through subject property. Furthermore, the Board finds that the existing landscape on subject property along the coastal bank on subject property has existed for years and partially impacts view from roadway currently.

The Board finds that a determination was made by the previous Building Commissioner (Eladio Gore), prior to litigation of approval by Historical Commission in 2014, that the proposed detached two-car garage is not subject to Section 240-68 A. (8) of the Code of Falmouth (accessory structure in a front yard). The Board further finds that the proposed detached two-car garage, that will not create any habitable space, is an allowed accessory structure to the existing principal single-family dwelling on subject property.

In addition to the above findings, the Board finds that the proposed detached two-car garage 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 two-car garage as it is in compliance with all setback requirements under Section 240-68 A. and B. and lot coverage requirements under Section 240-69 A. and will not create any new nonconformities on subject property.

B. The site is suitable for the proposed use as the property is zoned residential and the proposed detached two-car garage is an allowed accessory use to the primary residential use on subject property.

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 the proposed detached two-car garage and driveway will enhance the parking on subject property from what currently exists.

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 of the surrounding area. There may be minimal impact on the view from the proposed garage – however there is existing landscape that blocks the view not only during the summer, but natural vegetation on the coastal bank along the rear of the property that may be year round impact. The view from the roadway is not obliterated by the proposed garage as there is still view from the sidewalk and roadway along the front of the subject property off School Street.

E. The sewage disposal system is unaffected through this Special Permit approval.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed detached two-car 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 two-car garage 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 Dugan made a motion to Grant the Special Permit with conditions. Member Potamis 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 **4 – 0 to Grant the Modification of Special Permits #116-03 and #40-05** to Michael A. and Elizabeth G. Nametz, Trustees of Nametz Family Living Trust (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct a detached two-car garage on subject property known as 46 School Street, Woods Hole, Massachusetts. This special permit is subject to the following conditions:

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

- “Plan of Proposed Garage” prepared for Elizabeth G. & Michael A. Nametz for Lot 20, #46 School Street in Woods Hole Falmouth, MA as drawn by Holmes and McGrath, Inc. Sheet 1 of 1 dated November 19, 2012 with a final revision date of 6/6/2017, stamped and signed by Michael B. McGrath, P.L.S. and with a Board date ‘received’ stamp of June 7, 2017; and
 - “Proposed Garage Nametz Residence” drawn by Gregory Jones – Architect consisting of drawing SK-01 ‘Proposed Plan and Elevations’ dated June 24, 2014 with revision date of July 7, 2014.
2. There shall be no parking of any vehicles from tradesman or others on the sidewalk along the front property line of subject property off School Street during the construction and landscaping of the proposed detached two-car garage approved herein.
 3. The applicant shall submit an as-built plan for Board approval verifying setbacks and lot coverage as proposed and approved herein. The as-built plan shall be submitted to the Board of Appeals prior to final sign-off of the construction by the building department and/or 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. 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:

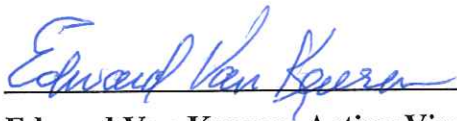
Special Permit Number: **030-17**

Applicant: **MICHAEL A. NAMETZ, and ELIZABETH G. NAMETZ, TRUSTEES
of Nametz Family Living Trust of Houston, TX**

Subject Property: **46 School Street, Woods Hole, Massachusetts
Map 49A, Section 01, Parcel 054, Lot 000**

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 0 to Grant the Modification of Special Permits as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



Edward Van Keuren, Acting Vice Chairman, Board of Appeals

RECEIVED

JUN 22 2017

FALMOUTH TOWN CLERK



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.