

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 044-17

APPLICANT/OWNER: DAVID W. TUCKER and PATRICIA A. TUCKER, TRUSTEES of David W. and Patricia A. Tucker 2016 Family Trust of San Francisco, CA

SUBJECT PROPERTY: 1 Buzzards Bay Avenue, Woods Hole, Massachusetts
Assessor's Map: Map 49A, Section 05, Parcel 001, Lot 034

DEED/CERTIFICATE: Book 30175 / Page 108

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 7, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming detached garage structure on subject property known as 1 Buzzards Bay, Woods Hole, 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 opened on July 20, 2017.
4. The public hearing was terminated on July 20, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Paul Murphy, Member Ed Van Keuren and Associate Robert Dugan (sitting as voting member) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Architect William Roslansky 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

07/03/2017 E-mail sent to Zoning Administrator from Andrew Solow & Margaret McCormick of 44 Quissett Avenue stating no problem with the application

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

06/07/2017 William Roslansky, on behalf of applicant, submitted a completed application with letter of authorization, fee and copies of site and architectural plans

Letters/Referrals/E-mails from Town Departments

- 06/08/2017 Referrals submitted to the file from the Planning Department staff with no comment
- 06/12/2017 Referral submitted to the file from the Director of Assessing with no comment
- 06/19/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 06/20/2017 Referral submitted to the file from Conservation Commission that states: *Keep stormwater on property; drainage onto Bowditch Road flows down Quissett Avenue towards wetlands.*
- 06/11/2017 Referral submitted to the file from Town Engineering Department states: *This application was reviewed only for impacts to public right of ways and public utilities. Buzzards Bay Ave, Quissett Ave, and Bowditch Rd are Public right of ways in this area. No alterations are proposed to the right of way; any changes within the right of way would require filing a permit with the Engineering Division. 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. We recommend adding dry wells, rain garden, or other stormwater measure for the roof.*

Plans submitted by Applicant/Applicant's Representative

“Site Plan for Proposed Garage” prepared for David and Patricia Tucker 1 Buzzards Bay Road Falmouth, MA drawn by All Cape Septic LLC dated May 25, 2017 – plan is stamped, signed and dated by Stephen B. Moore, P.L.S. on 5/25/2017;

“Existing Garage 1 Buzzards Bay” – hand drawn plan consisting of two pages – floor plan and elevation plan – with a Board date ‘received’ stamp of June 7, 2017; and

“Garage – Tucker Garage 1 Buzzards Bay Ave., Woods Hole, MA” drawn by William F. Roslansky, Architect consisting of three Drawings showing floor plan, elevation, framing and cross sections of proposed garage dated 6/6/2017 and with a Board date ‘received’ stamp of June 7, 2017.

Hearing:

William Roslansky reviewed the “Site Plan” that shows the nonconforming setback of 1.6’ from the existing detached garage to Bowditch Road and the proposed setback of 2.6’ from the reconstructed garage. The nonconforming setback to the northerly side yard property line of 5’ will remain the same. The height of the existing garage is 13’ the proposed reconstructed garage will be 17’11”. The proposed garage will be slightly larger than the existing garage and will accommodate two (2) vehicles. There will be a second floor to be used for storage only; and there will be no heat installed and no basement.

The Board discussed plans with Mr. Roslansky and noted that an elevation was mislabeled on the plan. All concerns and questions were addressed and Mr. Roslansky stated he would correct the error on the elevation plan.

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

Member Van Keuren made a motion to close the hearing. Member Murphy 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 1 Buzzards Bay Avenue contains 12,900 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming detached garage structure on subject property. The subject property has three (3) front yards as it is located on Buzzards Bay Avenue to the west, Quissett Avenue on the south and Bowditch Road to the east. The existing detached garage structure has a nonconforming setback of 1'6" to the front property line off Bowditch Road that requires a 50' setback pursuant to Section 240-68 A. (8) of the Code of Falmouth as it is an accessory structure located in a front yard (without designation by the Building Commissioner of Buzzards Bay Avenue being the front yard and Bowditch Road a rear yard and Quissett Avenue a side yard); the existing garage predates this bylaw. Through reconstruction of the detached garage structure, the nonconforming setback to Bowditch Road will be slightly improved to a 2'6" setback. The north side of the existing garage structure is nonconforming with a 5' setback that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth – this setback will remain at 5' through reconstruction. The driveway utilizing the reconstructed garage will remain off from Quissett Avenue; the existing driveway has a small paved area on site.

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 raze and reconstruction of the detached garage structure on subject property will not be substantially more detrimental than what current exists. The Board further finds that reconstruction is a definite improvement with a more substantial structure and for better utilization of the garage. Furthermore, the Board finds that one setback will be slightly improved and the reconstruction will not increase the side nonconforming setback and will not create any new nonconformity.

The Board finds through testimony by the applicant's representative that there will be no heat installed within the proposed reconstructed detached garage. The Board further finds that according to the plans submitted, the height of the proposed reconstructed detached garage structure will be 17'11", which is slightly below the maximum height of 18' allowed pursuant to Section 240-70 of the Code of Falmouth.

The Board finds that the proposed reconstructed detached garage structure will not be moved further away from Bowditch Road due to undulating grades just to the west of the structure on subject property. The Board further finds that this special permit shall be for the reconstruction of the detached garage

structure as proposed and shall not be considered approval for any other addition, renovation or alteration conducted on subject property.

In addition to the above findings, the Board finds that the proposed reconstruction of the detached garage structure 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 reconstructed detached garage structure as the plans show that the nonconforming setback off Bowditch Road will be slightly improved, the other existing nonconforming setback will remain the same and will not be increased in nonconformity and the lot coverage on subject property will remain below the maximum allowed under 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 the use of an accessory detached garage is an allowed accessory use to the primary use of a single-family dwelling in this zoning district.

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 improved 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 unaffected by this special permit approval as there are no additional bedrooms or bathrooms proposed within this detached garage structure.

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

G. The proposed reconstruction of the 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 reconstruction of the detached garage on subject property 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 Murphy 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 David W. and Patricia A. Tucker, Trustees (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming detached garage structure on subject property known as 1 Buzzards Bay, Woods Hole, Massachusetts. This special permit is subject to the following conditions:

1. The razing of the existing detached garage, construction of the proposed detached garage, all setbacks, lot coverage, height of garage structure and use of garage structure proposed shall

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

- “Site Plan for Proposed Garage” prepared for David and Patricia Tucker 1 Buzzards Bay Road Falmouth, MA drawn by All Cape Septic LLC dated May 25, 2017 – plan is stamped, signed and dated by Stephen B. Moore, P.L.S. on 5/25/2017;
 - “Existing Garage 1 Buzzards Bay” – hand drawn plan consisting of two pages – floor plan and elevation plan – with a Board date ‘received’ stamp of June 7, 2017; and
 - “Garage – Tucker Garage 1 Buzzards Bay Ave., Woods Hole, MA” drawn by William F. Roslansky, Architect consisting of three Drawings showing floor plan, elevation, framing and cross sections of proposed garage dated 6/6/2017 and with a Board date ‘received’ stamp of June 7, 2017. NOTE: First page of plans will be revised with accurate Elevation labels.
2. There shall be no habitable space created within the detached garage structure herein approved.
 3. The applicant shall have the Elevations of detached garage structure approved herein revised with correct Elevation labels. The revised plans shall be submitted prior to issuance of a building permit for the detached garage structure.
 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: **044-17**

Applicant: **DAVID W. TUCKER and PATRICIA A. TUCKER, TRUSTEES of
David W. and Patricia A. Tucker 2016 Family Trust of San Francisco, CA**

Subject Property: **1 Buzzards Bay Avenue, Woods Hole, Massachusetts
Map 49A, Section 05, Parcel 001, Lot 034**

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.


Terrence J. Hurrie, Vice Chairman, Board of Appeals

RECEIVED
JUL 31 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.