

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

BK 31151 Pg 67
3-22-18

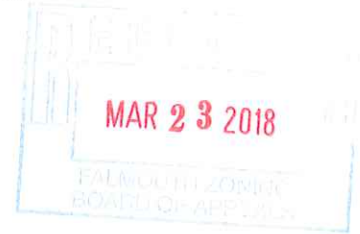
SPECIAL PERMIT NO: 099-17

APPLICANT/OWNER: JOHN P. MAGUIRE and KATHRYN B. MAGUIRE of Needham, MA

SUBJECT PROPERTY: 38 Worcester Court, Falmouth, Massachusetts
Assessor's Map: Map 46B Section 16 Parcel 015 Lot 000A

DEED/CERTIFICATE: Book 8059 / Page 322

SUMMARY: Special Permit with Conditions



PROCEDURAL HISTORY

1. Under a date of November 7, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-69 E. of the Code of Falmouth to construct a detached garage with habitable space on the 2nd level, exceeding the 20% lot coverage by structures on subject property known as 38 Worcester Court, 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 January 28, 2018.
4. The public hearing was closed on February 15, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Member Paul Murphy and Alternate 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 Attorney Jonathan M. Polloni, 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

Letters and emails with concerns, comments and one opposition were received and submitted to the file from Michael and Elaine Coyne of 48 Little Rock Ave. (comments and concerns), Falmouth; Norine & Juri Vancans of 81 Jericho Path (concerns); Bonnie and Jerry O'Neill of 29 Pennsylvania Ct. (comments); and Siobhan Tautkus of 77 Jericho Path (opposed).

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

02/13/2018 Letter submitted to the file from Attorney Polloni to Zoning Administrator with attached map and photos of other garages in the general neighborhood of subject property

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02/15/2018 Attorney Polloni submitted additional photos of garages with habitable space above within the general neighborhood of subject property

Letters/Referrals/E-mails from Town Departments

11/07/2017 Referral submitted to the file from Conservation Commission with the note to control stormwater on property

11/09/2017 Referral submitted to the file from Planning Department staff with no comment

11/09/2017 Referral submitted to the file from Director of Assessing with no comment

11/14/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment

12/08/2017 Referral submitted to the file from Town Engineering Department with standard comments and a note that they recommend adding drywells, rain garden or other stormwater measure for the roof and also that there will be a road cut moratorium starting within the month once the topcoat surface is placed

01/10/2018 ZBA staff prepared lot coverage calculations sheet of the general neighborhood and submitted it to the file along with photos of the homes/property noted on said sheet

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

Plans submitted by Applicant/Applicant's Representative

“Site Plan Showing Proposed Garage” prepared for John & Kathryn Maguire as drawn by D.H. Martin Engineering, Inc. on a plan dated October 23, 2017 with a revision date of February 7, 2018 and with a Board date ‘received’ stamp of February 8, 2018; and

“Maguire Accessory Structure New Construction” drawn by Williams Design Studio consisting of two drawings – First Floor and Foundation Plan with a Board date ‘received’ stamp of November 6, 2017 and Second Floor Plan and Elevations with a Board date ‘received’ stamp of February 8, 2018.

Hearing:

Attorney Polloni reviewed the proposed plan to construct a detached garage structure on subject property that will increase the conforming lot coverage from 18.6% to 23.8% which requires a special permit application to the Board of Appeals for approval. He explained that the property is undergoing construction as the main dwelling was razed and reconstructed as a by right with a building permit. The proposed garage is designed to be in keeping with the single-family dwelling design. The habitable space proposed on the second level of the garage will be an office. Attorney Polloni reviewed the lot coverage calculation sheet submitted to the file regarding other properties in the general area, citing those specifically with those with garages. All parking will be on subject property and not in the roadway. There are no other accessory structures proposed or intended on subject property. There is no intent to use the space above the garage as a bedroom; it will be an office and the only access is through the exterior set of stairs proposed.

The Board discussed plans with Attorney Polloni including the stairway and screening along property line to buffer the proposed garage. All concerns and questions were addressed.

Contractor Don Deveny spoke to the Board about heating of the 'office' space proposed by a mini split system.

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

Michael Coyne of 48 Little Rock Avenue (abutter at the rear of the subject property) stated he is in opposition to the size and location of the proposed garage structure as it impacts them – especially the exterior stairway.

Elaine Coyne of 48 Little Rock Avenue spoke on the area and lots that are undersized and she believes the subject property is not substandard.

Zoning Administrator clarified that the subject property is a substandard size lot at 9,915 square feet – current zoning requires 40,000 square feet in size.

The Board discussed the stairway location for the proposed garage, screening, buffering and 'bulk' of the structure and whether the design can be changed based on concerns heard at the hearing.

The Board discussed continuation of the hearing and asked the applicant to take into consideration the Board's questions and concerns.

Member Bielan made a motion to continue the hearing to February 15, 2018. Member Van Keuren seconded the motion. Motion carried 5 – 0.

Hearing February 15, 2018:

Attorney Jonathan Polloni explained to the Board the revised plan of the detached garage noting that the exterior stairway to the second level of the garage was relocated to the interior of the garage with a slight increase to the footprint of the garage to accommodate relocation of the stairway. He further noted that the exterior door from the garage to the yard was relocated to south facing side of the garage. Attorney Polloni submitted photos of other garages in the general neighborhood that show two-car garages and garages with habitable space on the second level. He reminded the Board that the garage is within compliance of setbacks and height as set forth in the Code of Falmouth and that the garage is designed in keeping with the architectural integrity of the dwelling on the property.

Chairman Foreman asked if there was any public comment in support or opposition.

Michael Coyne of 48 Little Rock spoke again with concern of size of garage that will tower over his house, reduce air circulation, parking issues and septic concerns.

Attorney Polloni reiterated that all parking will be on subject property as, when the house was razed and reconstructed, parking was accommodated on site. He also stated that the bulk of the garage did not increase by enclosing the stairway within the structure, it was lengthened, not made wider.

Board discussed the application and revised plans and landscaping proposed.

Member Murphy made a motion to close the hearing. Member Van Keuren 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 38 Worcester Court in Falmouth contains 9,915 square feet of Residential C zoned land that is not located within any coastal overlay district. The applicant applied under Section(s) 240-69 E. of the Code of Falmouth to construct a 1.5 story detached garage structure that will increase lot coverage beyond the 20% maximum allowed in this district. The property has recently undergone a change with the raze and reconstruction of the single-family dwelling which was reconstructed in compliance with all setbacks pursuant to Section 240-68 A. and B. of the Code of Falmouth as well lot coverage under Section 240-69 A. The proposed garage structure will increase lot coverage to 23.8% thereby requiring a special permit by the Board of Appeals.

Section 240-69 of the Code of Falmouth "Maximum lot coverage.", sub-section E. allows the Board of Appeals to grant a special permit to exceed the maximum 20% lot coverage by structures, up to, and not to exceed 25% after the Board takes into consideration the size and height of the structure in relation to the average size and height of structures in the general neighborhood, the effects of any shadowing on adjacent properties, any impact on a view or vista from a public way and any effect of nitrogen on a coastal embayment.

The Board finds in reviewing Section 240-69 E. of the Code of Falmouth that the proposed detached 1.5 story garage structure is in keeping with accessory structures in the general neighborhood as shown on photos submitted to the file of other detached garage structures existing within the Falmouth Heights area. The Board further finds under said section that there is no shadow effect from the proposed detached garage structure that is 18' in height is located 10' from both rear and side yard of subject property and abutter's structures at 48 Little Rock Avenue and 81 Jericho Path appear to be more than 20' from shared rear and side yard property lines. Furthermore, the Board finds that under same section there is no impact on any view or vista from a roadway and there is no effect of nitrogen on a coastal embayment.

The Board finds that the proposed detached garage structure is in keeping with the architectural integrity of the dwelling on subject property. The Board further finds that the proposed two-car garage structure with habitable space above is not uncommon to the Falmouth Heights area in general (see file for photos with addresses of comparable structures).

The Board finds that the applicant is amenable to adding cedar trees to the west side of the lot to further screen the proposed garage structure from abutter's view. The cedar trees will be no less than 6' in height as planted and shall be planted on the inside of the existing 6' stockade fence on subject property. Furthermore, the Board finds that the existing 6' stockade fence is the property of the applicant and shall be maintained on subject property to perform as a buffer on subject property.

The Board finds that the applicant revised the plan to relocate the exterior stairway to the inside of the proposed garage based on comments from the abutters at 48 Little Rock stating concern of privacy. The Board further finds that applicant also relocated the passageway door to the south side of the garage to further accommodate concerns of abutters.

The Board finds through testimony by the applicant's representative and as shown on the plan submitted, that the habitable space on the second level of the proposed garage will be an office and that there is no intent to create a bedroom in said space. The Board further finds through testimony by the applicant's representative that there will not be any cooking facilities whatsoever on either level of the proposed garage approved herein.

Based on the above findings the Board finds that the application with below conditions is approvable.

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 it is approvable under Section 240-69 E. of the Code of Falmouth and is in compliance with setbacks under Section 240-68 B. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and the proposed detached garage structure is an acceptable accessory use to the existing primary dwelling 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 if the location of the driveway is changed, it will be reviewed and approved under permit to the Town Engineering Department.

D. The visual character of the subject property has been improved as the dwelling (circa 1954) was recently razed and reconstructed; several houses in the surrounding area have also been improved such as this; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is in place and signed off by the Board of Health who will also review the building permit for this proposed detached garage structure for appropriateness to habitable space prior to the issuance of a building permit.

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

G. The proposed 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 with habitable space on second level 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 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 John P. and Kathryn B. Maguire (herein referred to as Applicant) under Section(s) 240-69 E. of the Code of Falmouth to construct a detached garage with habitable space on the 2nd level, exceeding the 20% lot coverage by structures on subject property known as 38 Worcester Court, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The construction of the detached garage, height of the garage, lot coverage, setbacks, landscaping (cedar trees) and use of the garage structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Site Plan Showing Proposed Garage” prepared for John & Kathryn Maguire as drawn by D.H. Martin Engineering, Inc. on a plan dated October 23, 2017 with a revision date of February 7, 2018 and with a Board date ‘received’ stamp of February 8, 2018; and

- "Maguire Accessory Structure New Construction" drawn by Williams Design Studio consisting of two drawings – First Floor and Foundation Plan with a Board date 'received' stamp of November 6, 2017 and Second Floor Plan and Elevations with a Board date 'received' stamp of February 8, 2018.
2. The applicant shall plant no less than two (2) 6' cedar trees at the rear of subject property as shown on the plan submitted entitled "Site Plan Showing Proposed Garage" with a revised date of February 7, 2018 (noted in Condition 1 above).
 3. 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.
 4. 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.)
 5. This permit shall lapse three (3) 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: **099-17**

Applicant: **JOHN P. MAGUIRE and KATHRYN B. MAGUIRE of Needham, MA**

Subject Property: **38 Worcester Court, Falmouth, Massachusetts
Map 46B Section 16 Parcel 015 Lot 000A**

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

FEB 28 2018

FALMOUTH TOWN CLERK

ADC10⁰⁰am

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.



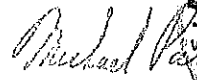
Town of Falmouth

MICHAEL PALMER
TOWN CLERK

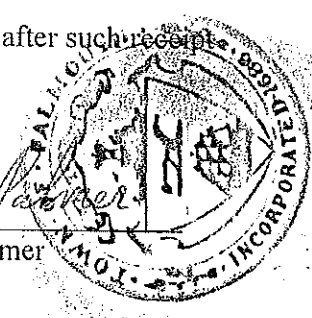
59 Town Hall Square, Falmouth, Massachusetts 02540
(508) 495-7353 Fax (508) 457-2511

CERTIFICATION OF NO APPEAL

I, Michael Palmer, Town Clerk of the Town of Falmouth, hereby certify that the Board of Appeals vote was filed in this office on FEBUARY 28, 2018 and that no Notice of Appeal on this vote was received during the twenty days (20) next after such receipt and recording of said vote.



Michael Palmer
Town Clerk



Date: March 21, 2018

RE: SP #99 -17 John P. and Kathryn B. Maguire, 38 Worcester Ct, Falmouth

BARNSTABLE REGISTRY OF DEEDS
John F. Meade, Register