



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 103-18

APPLICANT/OWNER: RICHARD D. AUGUSTA, 12 Meadowview Drive, East Falmouth, MA

SUBJECT PROPERTY: 15 Clark Street, East Falmouth, MA 02536

Assessor's Map: Map 28, Section 02, Parcel 006, Lot 002B

DEED/CERTIFICATE: Book 21583; Page 276

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. Under a date of October 25, 2018, the Applicant filed an application with the Zoning Board of Appeals for a Special Permit, pursuant to Section(s) 240-23(G) (1) (b) of the Code of Falmouth to construct a detached garage, exceeding 900 square feet, on subject property known as 15 Clark Street, East Falmouth, Massachusetts.
2. Notice was duly given, as required by M.G.L. Ch. 40A, § 11, as well as notices mailed 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 originally scheduled to open on December 20, 2018. However, the Zoning Board of Appeals lacked a quorum to hold the public hearing. The hearing was rescheduled to be heard on January 10, 2019. Randy Collette, Agent for the Applicant, signed an extension for the opening of the hearing, which was dated December 18, 2018, and filed with the Town

Clerk, on December 18, 2018. The hearing was re-advertised in a local newspaper, with notices mailed to abutters. The advertised public hearing was opened on January 10, 2019.

4. The public hearing was closed on January 10, 2019, wherein the Zoning Board of Appeals, consisting of Chairman Terrence J. Hurrie, Vice Chairman Kenneth H. Foreman, Member Edward Van Keuren, Member Paul Murphy, and Associate Member Robert B. Dugan (appointed as voting member by Mr. Hurrie), 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 Randall Collette, who reviewed and discussed the request for special permit with the Board.

6. The documents and information received by the Zoning Board of Appeals prior to, and during the public hearing, 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)

- "RE: Special Permit to construct a detached garage structure over 900 s²", extension agreement, signed by Randy Collette, Agent, dated 12/18/2018
- Letter, with Exhibits 1-15, "Application for Special Permit, 15 Clark Street, East Falmouth", from Randy Collette, Esq., Bean & O'Connor, LLC, 118 Waterhouse Road, Suite E, Bourne, MA, dated December 13, 2018

Letters/Referrals/E-mails from Town Departments

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

- Engineering comments, dated 11/29/18
- Conservation Commission, no comments, dated 11/5/18
- Board of Health, no comments, dated 11/27/18
- Water, no comments, dated 11/7/2018
- Assessors, no comments, dated 11/6/18
- Fire Department, no comments, dated 11/1/18
- Planning, no comments, dated 10/26/18
- "Plot Plan of Land Prepared for Richard D. Augusta, showing Proposed Garage, 15 Clark Street, Falmouth, MA, prepared by John Doyle, PLS, 170 Cloverfield Way, E. Falmouth, MA, dated May 28, 2018, with notation: " Clark Street to be designated as primary front yard", signed by Rod Palmer, dated 12-1-2018

Plans submitted by Applicant/Applicant's Representative

- "Rich Augusta/Garage, 15 Clark Street, Falmouth, MA", including Elevations, Foundation (drawing 2 of 4), and Floor Plans (drawing 3 of 4), prepared by David McLean, Architectural Design Services, 78 Scraggy Neck Road, Cataumet, MA, dated 12/16/16
- "Plot Plan of Land Prepared for Richard D. Augusta, showing Proposed Garage, 15 Clark Street, Falmouth, MA, prepared by John Doyle, PLS, 170 Cloverfield Way, E. Falmouth, MA, dated May 28, 2018

Hearing:

Appearing before the Board was Randall Collette, Esq., Bean & O'Connor, LLC, 118 Waterhouse Road, Suite E, Bourne, MA. Board chairman Hurrie disclosed that he previously worked for a law firm preceding Bean and O'Connor, but that he had not been connected with that firm for over five years. Mr. Hurrie stated he could review this petition fairly and impartially. Mr. Van Keuren stated that he knows Mr. Collette from a veteran's organization. Mr. Van Keuren stated that he could also review this petition fairly and impartially. Neither Mr. Collette, nor any person attending the hearing, stated any opposition to the hearing continuing.

Mr. Collette presented the case information, and discussed the plans for the 32-foot by 40-foot detached garage, to comprise 1,280 square feet, resulting in 16.77% lot coverage, in the Residential C District. He noted that there is an existing multifamily dwelling on the subject lot, and that the applicant also owns the abutting lots, to the north and west. Mr. Collette reported that the new structure would be slab on grade, with white siding and a black roof. There will be electric and gas service, but no bathroom, and no habitable space. The proposed height will be 17 feet, but will be screened by 10-15 feet tall hedges. Mr. Collette stated that the proposal meets setback, height and lot coverage requirements. The new garage is intended to provide storage space for a boat and equipment.

Chairman Hurrie asked for any public comment in support of, or opposition to the proposed project. Deborah Aguiar, 10 Sharon Drive, East Falmouth abutter, stated that the proposed garage appeared large for the area.

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

Chairman Hurrie closed the hearing.

FINDINGS

The Zoning Board of Appeals carefully considered the facts and evidence submitted at the hearing, and made the following findings:

The subject property located at 15 Clark Street, East Falmouth, Massachusetts contains 20,425 square feet of Residence C zoned land, within the Great Pond Coastal Overlay District, and Search and Rescue Overlay District. The applicant applied under Section(s) 240-23 (G) (1) (b) of the Code of Falmouth to allow construction of a detached garage exceeding 900 square feet, on a lot that is less than 30,000 square feet.

The Board finds that the proposed change to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists.

In addition to the above findings, the Board finds that the proposed 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 garage, with the lot coverage being less than 20%.

B. The site is suitable for the proposed use, as the property is zoned residential and has been used as such since its inception.

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 driveways on site.

D. The visual character of the subject property will be screened with a vegetative screen, and improved, due to storage of equipment inside the garage. 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 will not be impacted, as there will be neither habitable space nor a bathroom added.

F. New electric and gas lines will be added.

G. The proposed detached garage 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 in compliance with 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 Zoning Board of Appeals weighed the effects of the proposed detached garage at 15 Clark Street, East Falmouth, MA as discussed herein, and found that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further found that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw, and that the change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

Member Foreman made a motion to grant the Special Permit with conditions. Member Van Keuren seconded the motion; with a unanimous 5-0 vote.

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals (herein referred to as the "Board") being of the opinion aforesaid, and acting under the provisions of the Code of Falmouth, voted 5 to 0 to grant a special permit under Section(s) 240-23(G)(1)(b) of the Code of Falmouth to allow the detached garage. This special permit shall be subject to the following conditions:

1. The 32-foot by 40-foot detached garage shall be as represented to the Board, being no closer than 11 feet from Meadowview Drive, and substantially as shown on the plans submitted and reviewed by the Board as follows:

- "Rich Augusta/Garage, 15 Clark Street, Falmouth, MA", including Elevations, Foundation (drawing 2 of 4), and Floor Plans (drawing 3 of 4), prepared by David McLean, Architectural Design Services, 78 Scraggy Neck Road, Cataumet, MA, dated 12/16/16
- "Plot Plan of Land Prepared for Richard D. Augusta, showing Proposed Garage, 15 Clark Street, Falmouth, MA, prepared by John Doyle, PLS, 170 Cloverfield Way, E. Falmouth, MA, dated May 28, 2018

2. Any deviation, no matter how minor, from plans submitted and approved, shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.

3. There shall be neither habitable space nor a bathroom in the detached garage structure.

4. The Applicant shall comply with the Engineering referral recommendations of 11/29/18.

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, is recorded in Barnstable Registry of Deeds, or that an appeal has been filed within such time, (Any person exercising rights under a duly appealed special permit does so at risk that a court may reverse the permit, and that any construction performed under the permit may be ordered undone.)

6. 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 Zoning Board of Appeals.

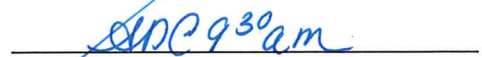
Action: The Board of Appeals, by the signature below, certifies the vote of the Board, as follows, for the above referenced hearing:

Vote: 5 to 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, Chairman, Board of Appeals

RECEIVED
JAN 18 2019
FALMOUTH TOWN CLERK
RECEIVED
JAN 18 2018
FALMOUTH TOWN CLERK
edc 11:00 a.m.



Date Filed With Town Clerk