



TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

SPECIAL PERMIT NO: 059-19

APPLICANT/OWNER: Paul and Ellen Pendleton

SUBJECT PROPERTY: 18 Locust Street, Falmouth, Massachusetts

Assessor's Map: Map 47A Section 06 Parcel 080 Lot 000

DEED/CERTIFICATE: Book 25170, Page 216

SUMMARY: Special Permit issued, with conditions

PROCEDURAL HISTORY

1. On August 29, 2019, an application was filed with the Zoning Board of Appeals for a Special Permit, pursuant to Section 240-3 C of the General Code of the Town of Falmouth, to allow reconstruction of the nonconforming garage, at 18 Locust Street, Falmouth, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the tax list.
3. The previous Zoning Board of Appeals case for the Premises involved approval for a covered porch addition on the northwest side of the dwelling, on December 30, 2011.
4. The advertised public hearing was opened on October 17, 2019. Board members present included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Gerald Potamis. The notice of hearing and referrals were read into the record.

5. Paul Pendleton, 18 Locust Street, Falmouth, MA, homeowner, appeared before the Board on the application.
6. The public hearing was closed on October 17, 2019, following motion made by Mr. Dugan, seconded by Mr. Van Keuren, and unanimously voted. Minutes of the hearing(s) are on file in the Board of Appeals.
7. The following documents and information are on file in the office of the Zoning Board of Appeals at Town Hall, as set forth below:

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

- Email from ZBA staff to applicant dated September 4, 2019
- 'Certificate of Appropriateness' dated September 24, 2019
- Two (2) pictures of existing garage; with Board 'received' stamp of September 3, 2019

Letters/Referrals/E-mails from Town Departments

- Referral from the Health Department dated September 4, 2019 signed by Scott McGann stating: *Proposed garage is sufficiently away from the existing cesspool. No increase in flow shown. If any habitable space is being created above the garage, the septic system may need to be upgraded. Use caution with heavy machinery building the garage as it could cause a collapse of the cesspool.*
- Referral from the Water Department, dated September 6, 2019 – no comment
- Referral from the Fire Department, dated September 5, 2019 – no comment
- Referral from the Historical Commission, dated September 6, 2019 – the Historical Commission approved this at their 9/3/19 mtg [sic]. Once the decision is written (once revised plans are submitted) I'll send it to you.
- Referral from the Planning Department, dated September 4, 2019 – no comment
- Referral from Assessor's, dated September 9, 2019, no comment
- Referral from Conservation, dated September 16, 2019, signed by Conservation Agent stating: *Recommend controlling storm water on property*

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

Letters/E-mails from Abutters/Interested Parties: None

Plans submitted by Applicant/Applicant's Representative

- 'Plot Plan – Proposed Garage' at 18 Locust Street, Falmouth Massachusetts prepared for Longfellow Design Build dated January 2, 2018 with a final revision date of February 13, 2019 as drawn by BSS Design 164 Katharine Lee Bates Road, Falmouth Massachusetts 02540 – plan is stamped and signed by Thomas Jackson Bunker, PLS; and

- 'Cover' sheet A0.0, 'Garage Floor Plan – proposal ' sheet A1.0, 'Exterior Elevations' sheet A2.0 all plans dated October 16,2018 with a final revision of September 23,2019; 'Foundation Plan' sheet F1.1 stamped and signed by Michele Cudilo dated November 28,2018 – all plans were drawn by Longfellow Design Build 367 Main Street, Falmouth, MA 02540

October 18, 2019 Hearing:

Appearing before the Board was Paul Pendleton, 18 Locust Street, Falmouth, Massachusetts, owner (the "Applicant"). Mr. Pendleton stated that he grew up on the property, which is sited in the Historical District. He reported that a tree destroyed the existing garage; therefore he seeks a special permit to reconstruct the garage, to be slightly increased in size. Mr. Pendleton reported that he had a historical design created for the new garage, to match the dwelling and neighborhood, for which the Historical Commission was issued a Certificate of Appropriateness on September 24, 2019.

The southerly lot line angles slightly toward the north, as it runs from west to east. The existing garage is sited toward the southerly (rear) side of the lot, being 5 feet from the westerly side lot line, and 3.9 feet from the south. The replacement garage will maintain the 5 foot setback from the west, and will improve the setback from the south to 5 feet. The existing cesspool is sited 13 feet from the northeast corner of the new garage, therefore, the owner cannot move the garage further away from the lot lines.

Mr. Pendleton stated that the 20-foot, 8-inch by 23-foot, 8-inch garage will contain space for storage above, but no habitable space. There will be electricity for lighting and outlets, but no plumbing.

No one further appeared on the application. The hearing closed, and the Board proceeded to deliberate.

Findings:

The subject site, 18 Locust Street, Falmouth, Massachusetts (the "Premises") is sited in the General Residence Zoning District, the Historical District, and is within a neighborhood of single family dwellings. The existing dwelling is nonconforming, in that it is sited 8.6 feet from the street, where 25 feet is required. The existing garage is nonconforming, in that it is sited 3.9 feet from the southerly rear lot line, and 5 feet from the westerly side lot line, where 10 feet is required. The proposed reconstructed garage will remain at 5 feet from the west, but will be slightly less nonconforming, at 5 feet from the south side. The reconstructed garage will be 21 feet, 6.5 inches in height. The lot coverage by structures will be 18.17%. Lot coverage by structures/parking/paving will be 37.35%.

In addition to the above findings, the Board finds that the proposed addition will be in harmony with the general purpose and intent of the By-Law, and does include consideration, as 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 use, comprising 13,833 square feet.
- B. The site is suitable for the proposed use, as the property is zoned General Residence, with similarly sized neighboring dwellings.
- C. There will be no impact on traffic flow and safety, given that the reconstruction is for a garage at the rear of the Premises.
- D. There will not be any impact on the visual character of the neighborhood, or view or vista from the roadway or abutting properties, given that the garage is a replacement, and will be sited in

approximately the same location as the existing garage. There was no opposition expressed for the proposal.

E. There will be no impact on sewage disposal, source of water, where the garage will contain no living space.

F. Utilities and public services are adequate.

G. The proposal discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. No Site Plan Review was required, and the Planning Board issued no comment.

I. The application is in compliance with all applicable sections of the Zoning By-Laws as represented.

J. The approval of this special permit does not include any affordable housing.

The Zoning Board of Appeals weighed the effects of the proposed reconstruction of the garage at the Premises, as discussed herein, and found that the beneficial effects of granting this special permit outweigh any negative effects there may be. The Board further found that the granting of this special permit will be in harmony with the purpose and intent of the Zoning By-Law, and that the change, extension or alteration shall not be substantially more detrimental to the neighborhood, and will not nullify or substantially derogate from the intent of purpose of the By-Law.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under Section 240-3 C of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Potamis, voted 5 to 0, to grant a special permit, for the replacement garage, at 18 Locust Street, Falmouth, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

1. The construction shall be as shown on the plans:
  - 'Plot Plan – Proposed Garage' at 18 Locust Street, Falmouth Massachusetts, prepared for Longfellow Design Build, dated January 2, 2018 with a final revision date of February 13, 2019, as drawn by BSS Design, 164 Katharine Lee Bates Road, Falmouth Massachusetts 02540 – plan is stamped and signed by Thomas Jackson Bunker, PLS; and
  - 'Cover' sheet A0.0, 'Garage Floor Plan – proposal,' sheet A1.0, 'Exterior Elevations' sheet A2.0, all plans dated October 16, 2018 with a final revision of September 23, 2019; 'Foundation Plan' sheet F1.1, stamped and signed by Michele Cudilo, dated November 28, 2018 – all plans were drawn by Longfellow Design Build, 367 Main Street, Falmouth, MA 02540
2. The garage shall be dimensioned 20-feet, 8-inches, by 23-feet, 8-inches, and be 21-feet, 6.5 inches in height.
3. A final As-Built shall be provided to the Zoning Board of Appeals, to confirm conformance with setbacks.
4. The Applicant shall provide for dry wells, a rain garden, or other stormwater measure for roof runoff, as approved by Town Engineering. Any change to the driveway will require permitting through Engineering.

5. Any deviation, no matter how minor, from plans submitted and approved by this Board, shall be submitted to the Board for approval, prior to implementation of said change. The Zoning Administrator may make a determination as to whether the changes are minor in nature, and can be approved administratively, or whether they will require a hearing for an amendment. Changes made prior to an approval may be subject to a full hearing, and are at risk that the ZBA may deny the request.

6. 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.)

7. This special 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 Zoning Board of Appeals.

8. The Zoning Board of Appeals reserves the right to recall the Applicant, with such notice as the Board deems proper, to discuss any unresolved matters of concern. The Zoning Administrator has the authority to reissue the permit at that time, absent complaints.

Action: The Zoning 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.



Robert B. Dugan, Zoning Board of Appeals

RECEIVED  
OCT 28, 2019 AM 8:11  
TOWN CLERK

Date filed with Town Clerk