



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 068-19

APPLICANT/OWNER: Michael H. and Nancy Fuss, 41 Brush Hill Circle, East Falmouth, Massachusetts

SUBJECT PROPERTY: 41 Brush Hill Circle, East Falmouth, Massachusetts

Assessor's Map: Map 22 Section 01 Parcel 005 Lot 125

DEED/CERTIFICATE: Book 31888, Page 292

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. On October 8, 2019, an application was filed with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-38 G (1) of the General Code of the Town of Falmouth, to allow construction of a detached garage at 41 Brush Hill Circle, East 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. There was no previous Zoning Board of Appeals case for the Premises.
4. The advertised public hearing was opened on November 7, 2019. Board members present included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Mary Barry.
5. Michael Fuss, homeowner, appeared before the Board on the application.

6. The public hearing was closed on November 7, 2019, following motion made by Mr. Dugan, seconded by Mr. Van Keuren, and unanimously voted. Minutes of the hearing(s) are on file with the Zoning 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)

- E-mail from Alex Parsons, Customer Service Specialist at Olympia Steel Buildings, providing the ridge height to be approximately 18-feet, 6 inches, dated October 30, 2019

Letters/Referrals/E-mails from Town Departments

- Verbal referral from Building Commissioner, suggesting provision of approximately 1 foot of height for a slab foundation
- Referral dated October 9, 2019 from the Health Department, no concerns, where there is no plumbing
- Referral dated October 15, 2019 from the Fire Department – no comment
- Referral dated October 10, 2019 from the Planning Department – no comment
- Referral dated September 9, 2019 from the Water Department – no comment
- Referral dated October 16, 2019 from Assessing – no comment
- Referral dated October 6, 2019 from the Engineering Department signed by Scott Schluter, PE with standard comments and recommendations: *We recommend that the Board add a condition that requires the addition of dry wells, rain garden, or other storm water measure for the new roof area at a minimum; stormwater must not be directed off site*

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

- Letter dated November 4, 2019 from Brian Dugan and Jann-Ellen Everson, 45 Brush Hill Circle, and Madeline Tundidor, 46 Brush Hill Circle, in support
- Letter dated November 6, 2019 from Vincent Myette and Mary Kane, 35 Brush Hill Circle, immediate abutter, requesting installation of arborvitae at the shared lot line for screening

Plans submitted by Applicant/Applicant's Representative

- "Building Permit Plot Plan in Falmouth, Massachusetts", prepared by R.A.S. Associates, 30 Carolyn Drive, Plymouth, MA, dated April 22, 2019
- "The Fuse (sic) Garage, Falmouth, Massachusetts", dated June 19, 2019, including sheets A1, Foundation Plan, Sheet A2, Foundation Notes and Details, by Progressive Designs; "Drawings Cover Sheet, sheet CS-1, sheet CS-2W, "Anchor Bolt Plan, Sht E1- of 12", "Anchor Bolt Details & Reactions, Sht E2 of 12, "Rigid Frame Elevation, Sht E3 of 12", Rigid Frame Elevation, sht E4 of 12", "Sidewall Framing, Sht E5 of 12", "Endwall Framing, Sht E6 of 12", "Roof Framing Plan, Sht

E7 of 12", "Sidewall Sheeting, Sht E8 of 12", "Endwall Sheeting, Sht E9 of 12", "Detail Drawings, Sht E10 of 12, "Detail Drawings, Sht E11 of 12, and "Trim Drawings, Sht E12 of 12

Hearing:

The Notice of Hearing and referrals were read into the record.

Appearing before the Board was Michael Fuss, homeowner, with Ron Welch, his contractor. Mr. Fuss stated that he plans to construct a metal detached garage building, to provide for storage for a motorcycle and some antique cars. He reported that his neighbors are in support of the garage, and that he is willing to install arborvitae at the southeast lot line, to provide some screening.

There was no public comment on the application. Mr. Dugan made a motion to close the hearing, which was seconded by Mr. Van Keuren, and unanimously voted.

Findings:

The subject property, 41 Brush Hill Circle, East Falmouth, Massachusetts (the "Premises") is located in the Agricultural AA zoning district. The proposal is to add a 30-foot by 45-foot detached garage to the Premises, which shall be 25.8 feet from the south, 11 feet from the north, and 66.3 feet from the west lot lines. The ridge height of the garage shall be 19-feet, 6-inches, which includes one foot for the slab foundation. The existing lot coverage by structures is 4.83%, which will be increased to 11.16%. The lot coverage by structures/parking/paving is currently 11.42%, which will be increased to 25.93%.

In addition to the above findings, the Board finds that the proposed additions 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 20,493 square feet of area.
- B. The site is suitable for the proposed use, as the property is zoned Agricultural AA, with similar sized neighboring lots, with single family dwellings.
- C. There will be no impact on traffic flow and safety, given that the proposal is for a detached garage.
- 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 set well back from the way, and complies with setback requirements. No abutters appeared in opposition to the proposal; one abutter requested landscape screening.
- E. The Board of Health had no concerns as there is no plumbing proposed.
- F. No impact on utilities.
- 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, 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 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(s) 240-3 C and 240-38 G (1). of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Van Keuren, voted 5 to 0, to grant a special permit, for the garage to be constructed at 41 Brush Hill Circle, East Falmouth, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

Conditions:

1. The construction shall be as shown on the plans:
 - "Building Permit Plot Plan in Falmouth, Massachusetts", prepared by R.A.S. Associates, 30 Carolyn Drive, Plymouth, MA, dated April 22, 2019
 - "The Fuse (sic) Garage, Falmouth, Massachusetts", dated June 19, 2019, including sheets A1, Foundation Plan, Sheet A2, Foundation Notes and Details, by Progressive Designs; "Drawings Cover Sheet, sheet CS-1, sheet CS-2W, "Anchor Bolt Plan, Sht E1- of 12", "Anchor Bolt Details & Reactions, Sht E2 of 12", "Rigid Frame Elevation, Sht E3 of 12", Rigid Frame Elevation, sht E4 of 12", "Sidewall Framing, Sht E5 of 12", "Endwall Framing, Sht E6 of 12", "Roof Framing Plan, Sht E7 of 12", "Sidewall Sheeting, Sht E8 of 12", "Endwall Sheeting, Sht E9 of 12", "Detail Drawings, Sht E10 of 12, "Detail Drawings, Sht E11 of 12, all dated 3/26/19, and "Trim Drawings, Sht E12 of 12, dated 2/8/18. Sheets 1-12 stamped and signed by Mingqiao Zhu, CE, and dated 04/02/2019
2. The 45-foot by 30-foot garage shall be 25.8 feet from the south, 11 feet from the north, and 66.3 feet from the west. The ridge height of the garage shall be 19-feet, 6-inches, which includes one foot for the slab foundation.
3. Abide by Town Engineering requirements, where no stormwater may be directed off the Premises; drywells or other stormwater measures shall be installed, as approved by Town Engineering.
4. Install arborvitae evergreen screening in the area of the southeast lot line, in order to provide screening to 35 Brush Hill Circle.
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.

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.

The Zoning Board of Appeals, by the signature below, certifies the vote of the Board:



Edward Van Keuren, Zoning Board of Appeals

RECEIVED
NOV 20, 2019 PM 3:20
TOWN CLERK

Date Filed With Town Clerk