



TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

CASE NO: 069-19

APPLICANT/OWNER: 331 Edgewater LLC, 144 Winter Street, Wrentham, Massachusetts

SUBJECT PROPERTY: 331 Edgewater Drive West, East Falmouth, Massachusetts

Assessor's Map: Map 41 Section 06 Parcel 000 Lot 062

DEED/CERTIFICATE: Book 30777 Page 140

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. On October 10, 2019, an application was filed with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-3 C. and 240-68 A (8) of the General Code of the Town of Falmouth, to allow a replacement detached garage at 331 Edgewater Drive West, 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 21, 2019. Board members present included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Gerald Potamis.

5. Kevin P. Klauer II, Ament Klauer LLP, 59 Town Hall Square, Falmouth, Massachusetts, appeared before the Board, representing the Applicant.

6. The public hearing was closed on November 21, 2019, following a motion made by Mr. Foreman, which was seconded by Mr. Potamis, 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)

- Attorney Klauer submitted an application, filing fee, owner authorization letter and plans on October 10, 2019
- Two (2) pictures of existing garage, not dated – Board ‘received’ stamp of October 10, 2019
- Copy of letter to Health Agent, Scott McGann dated November 21, 2019

Letters/Referrals/E-mails from Town Departments

- Referral from Assessor’s dated October 16, 2019 signed by Director of Assessing, Patricia Favulli; *Assessor’s requests a final inspection prior to sign off*
- Referral from the Fire Department dated October 17, 2019 – no comment
- Referral from the Planning Department dated October 15, 2019 - no comment
- Referral from the Water Department dated October 17, 2019 signed by Water Superintendent, Stephen Rafferty: *Per Water Department regulations available online at department’s webpage, all occupied structures need a dedicated water service. Proponent shall apply for a new service for the detached garage structure w/ habitable space*
- Referral from Conservation dated November 8, 2019 signed by Conservation Agent: *Project approved on 11/6/19. (OOC) Order of Conditions pending. Please see attached approved plan and staff report*
- Referral from Engineering dated November 14, 2019 signed by Scott Schluter, P.E. with standard comments and recommendations
- Email from Scott McGann, Health Agent, dated November 18, 2019: *“Rec” room over the proposed garage meets Title 5 and Falmouth’s local septic regulations definition of a bedroom. This would be considered a bedroom requiring an upgrade to the septic system. The currently [sic] septic system is sized for 2 bedrooms with a current assessment of 2 bedrooms.*

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

- ‘Existing garage – floor plan’ plan is not dated or authored; Board date ‘received’ stamp of October 10, 2019;

- ‘Site Plan – Existing Conditions’ sheet 1 of 2, dated May 11, 2019 for #331 Edgewater Drive West prepared for Michael O’Brien in Falmouth as drawn by Falmouth Engineering, Inc 17 Academy Lane, Suite 200 – Falmouth, MA – 02540;
- ‘Site Plan – Proposed Garage’ sheet 2 of 2, dated October 7, 2019 for #331 Edgewater Drive West prepared for Michael O’Brien in Falmouth as drawn by Falmouth Engineering, Inc 17 Academy Lane, Suite 200 – Falmouth, MA – 02540;
- ‘Detached Garage Floor Plans’ sheet A-1.1, dated October 2, 2019 with a final revision date of November 20, 2019 – New garage prepared for 331 Edgewater Drive West, East Falmouth, Ma as drawn by McKay Architects, 35 Bryant Street, Dedham, Ma; and
- ‘Detached Garage Elevations’ sheet A-2.1, dated October 2, 2019 – New garage prepared for 331 Edgewater Drive West, East Falmouth, Ma as drawn by McKay Architects, 35 Bryant Street, Dedham, Ma

Hearing:

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

Appearing before the Board was Kevin P. Klauer, II who reported that the Premises comprises 13,200 square feet of area, located in the Single Residence C district and within a velocity and AE 15 flood zone. The owner wants to reconstruct the detached garage with a recreation room above, as the existing house is small. The existing garage is nonconforming where it encroaches into the required 25-foot front (street) setback and also encroaches into the required 10-foot southerly side yard setback. The reconstruction will eliminate the encroachment into the southerly side lot line. The setback from the street will be slightly improved by 0.3 feet. The number of bedrooms will remain at two, and not increase. The lot coverage by structures is 12.8% and will be increasing to 16.2%. The ridge height will be 23 feet. The Health Department originally determined that the space above the garage would be considered a bedroom if it was going to be heated. Mr. McGann, Health Agent, subsequently agreed that if the room above the garage was not heated, it would not be considered a bedroom. Mr. Klauer II noted that this extra space for the family would increase the utilization of the property.

Mr. Klauer stated that the room above the garage was intended to be useable space for storage, and a recreation room for children. He also stated that the space above the garage was not intended to be utilized as a bedroom. Mr. Klauer stated he was not in favor of a bedroom deed restriction for the Premises at this time because the owners may consider an addition in the future, at which point in time the Board of Health would further review.

The Board discussed their concerns about the space above the garage being used as a bedroom, given that the garage below is heated. The size of the garage is close to the size of the existing dwelling. The existing dwelling has a two-bedroom septic system.

There was no public comment. Mr. Foreman made a motion to close the hearing, which was seconded by Mr. Potamis, and unanimously voted. The Board proceeded to deliberate.

Findings:

The subject property, 331 Edgewater Drive West, East Falmouth, Massachusetts (the “Premises”) is located in the Single Residence C zoning district, the Waquoit Bay Coastal Pond Overlay District, and the flood hazard zone AE 14. The proposal involves reconstructing the garage to be 14 feet from the street

lot line (east) and 10 feet from the southerly side lot line, conforming to the 10-foot side lot line setback requirement, and slightly improving the existing encroachment into street setback. The ridge height will be 23 feet. The existing lot coverage by structures is 12.8%, which will be increased to 16.2%. The lot coverage by structures/parking/paving is currently 20.7%, which will be decreased to 19.9%.

The project was approved by the Conservation Commission on November 6, 2019, and has an Order of Conditions pending.

The Premises is limited to two bedrooms given the current septic system. The Board of Health has determined that the space above the garage would not constitute a bedroom where it is unheated, and not designed for sleeping.

In addition to the above findings, the Board finds that the proposed dwelling 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.

The Zoning Board of Appeals weighed the effects of the replacement 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 or 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 240-68 A (8) of the General Code of Falmouth, following a motion made by Mr. Foreman, and seconded by Mr. Van Keuren, voted 5 to 0, to grant a special permit, for the garage to be reconstructed at 331 Edgewater Drive West, 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:
  - 'Site Plan – Proposed Garage' sheet 2 of 2, dated October 7, 2019 for #331 Edgewater Drive West prepared for Michael O'Brien in Falmouth as drawn by Falmouth Engineering, Inc 17 Academy Lane, Suite 200 – Falmouth, MA – 02540;
  - 'Detached Garage Floor Plans' sheet A-1.1, dated October 2, 2019 with a final revision date of November 20, 2019 – New garage prepared for 331 Edgewater Drive West, East Falmouth, Ma as drawn by McKay Architects, 35 Bryant Street, Dedham, MA; and
  - 'Detached Garage Elevations' sheet A-2.1, dated October 2, 2019 – New garage prepared for 331 Edgewater Drive West, East Falmouth, MA as drawn by McKay Architects, 35 Bryant Street, Dedham, MA
2. The 30-foot by 28-foot garage shall be sited no closer to the street than 14 feet, and no closer than 10 feet from the southerly side lot line. The ridge height will be 23 feet. The lot coverage by structures will be 16.2%. The lot coverage by structures/parking/paving will be 19.9%.

3. The Applicant shall meet with Town Engineering regarding the garage elevation and driveway grades to insure that no stormwater is directed off the Premises with an impervious driveway. Per §240-112 B.3., the Applicant shall demonstrate to Engineering that stormwater is recharged within the Premises.

4. Comply with Conservation Commission requirements.

5. The Premises is limited to two bedrooms with the current septic system. The room above the garage shall not be heated, nor used as a bedroom. The Applicant shall provide a recorded copy of this Decision to the Board of Health.

6. Comply with Water Department requirements regarding water service.

7. The owner shall submit a final As-Built to the Zoning Board of Appeals upon completion of the structure.

8. 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.

9. 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.)

10. 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.

11. 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:

RECEIVED

DEC 30, 2019 PM 3:11

TOWN CLERK



Robert B. Dugan, Falmouth Zoning Board of Appeals

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Date Filed With Town Clerk