



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 070-19

APPLICANT/OWNER: Joseph M. and Marjorie K. Clancy

SUBJECT PROPERTY: 457 Currier Road, East Falmouth, Massachusetts (the "Premises")

Assessor's Map: Map 09 Section 01 Parcel 015 Lot 178

DEED/CERTIFICATE: Cert No. 144255

SUMMARY: Special Permit granted

PROCEDURAL HISTORY

1. On October 15, 2019, an application was filed with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-3 C, 240-38 G(1), and 240-68A (8) of the General Code of the Town of Falmouth, to remove the existing in ground pool, patio and shed and construct a garage with an attached shed at 457 Currier Road, 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. The previous Zoning Board of Appeals case for the Premises:
 - A special permit (#72-80) was granted on September 19, 1980 to construct a dwelling on 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. Thomas Bunker, BSS Design, Engineering & Surveying, 164 Katharine Lee Bates Road, Falmouth, Massachusetts, appeared before the Board, with the Applicant.
6. The public hearing was closed on November 21, 2019, following a motion made by Mr. Foreman, which was 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)

- Applicant / Owner filed application and filing fee on October 15, 2019
- Email dated November 19, 2019 from Thomas J. Bunker, applicant's representative
- 'Plot Plan' proposed subsurface sewage disposal system plan dated November 7, 2019 – submitted for informational purposes only

Letters/Referrals/E-mails from Town Departments

- Referral from Falmouth Fire Department dated October 17, 2019 – no comment
- Referral from Assessors dated October 21, 2019 – no comment
- Referral from Planning dated October 16, 2019 – no comment
- Referral from Engineering dated November 16, 2019 signed by Scott Schluter P.E. with standard comments and a recommendation: *The project must not direct any stormwater runoff to public property, abutters or right of ways. We recommend that the Board add a condition that requires the addition of dry wells, rain garden or other stormwater measure for the new roof areas at a minimum.*
- Referral from Conservation dated November 18, 2019 signed by Conservation Agent; *proposed work is outside of Conservation jurisdiction.*
- Referral from the Health Department dated November 18, 2019 signed by Health Agent Scott McGann; *Existing septic system in[sic] close proximity to the proposed garage as shown in Health's records. However, a perc test was done recently, in preparation for a new septic design. Applicant would need to show that there is 10' of separation between the existing septic leaching and the proposed garage – or – obtain a disposal works permit for the new septic system, before Health can sign on the building permit. The plans also do not show habitable space over the garage, and appears they [sic] not requesting for an increase in flow.*
- Email from Health Department dated November 19, 2019 regarding referral of November 18, 2019: compliant 3-bedroom septic design
- ZBA staff submitted previous special permit No.72-80

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' prepared for Joseph & Marjorie Clancy, #457 Currier Road, Hatchville, East Falmouth, Massachusetts dated October 15, 2019, as drawn by BSS Design Engineering and Surveying, 164 Katharine Lee Bates Road, Falmouth, Massachusetts 02540; and
- 'Elevations' Proposed detached garage, sheet A.1 of 5, 'Floor Plan/Foundation Plan & Section, sheet A.2 of 5, 'Roof Framing & Building Details, sheet A.3 of 5, Clancy Residence, 457 Currier Road, East Falmouth, MA plans are dated September 5, 2019, with a final revision date of October 2, 2019

Hearing:

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

Appearing before the Board was Joseph Clancy, 457 Currier Road, East Falmouth, Massachusetts, owner, the "Applicant", who stated that his dwelling was built in 1980 according to a special permit. Mr. Clancy also stated that the Premises is improved by a pool and shed in the front yard placed years ago. He noted that they now determined that they would prefer a garage in place of the pool. Mr. Clancy noted that it was not possible to attach the garage to the house. Mr. Clancy reported that there will be no habitable space above the garage, and that with the shed space, there was no need for a level above the garage. The attached 12-foot by 20-foot shed portion of the garage will be for storage of gardening tools. He considered that the garage may be heated, but will not have plumbing.

Mr. Clancy stated that at the most recent survey, it was discovered that the existing dwelling is sited 9 feet from the southerly lot line, encroaching one foot into the minimum required side lot line setback. Mr. Clancy reported that they have had a perc test done, and plan to place a new leaching field for the septic system at the time of construction.

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

Findings:

The subject property, 457 Currier Road, East Falmouth, Massachusetts (the "Premises") is located in the Agricultural A zoning district, the Waquoit Bay Coastal Pond Overlay District, the flood zone X, and the Endangered Species Habitat Wildlife Corridor overlay districts. The proposal involves replacing an existing swimming pool and shed with a detached two bay garage, with attached shed space. The garage will be 26-feet by 26-feet, with an attached 12-foot by 20-foot shed area. The ridge height will be 20 feet, 1.5 inches. The existing lot coverage by structures is 15.74%, which will be increased to 18.36%. The lot coverage by structures/parking/paving is currently 24.64%, which will be increased to 26.01%. The garage will be sited 11.1 feet from the southerly side lot line, 52.8 feet from the northerly side lot line, and 50.1 feet from the westerly street lot line. The project includes the removal of a nonconforming pool and shed.

In addition to the above findings, the Board finds that the proposed garage 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 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, 240-38 G(1) 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 constructed at 457 Currier Road, 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:
 - 'Plot Plan – Proposed Garage' prepared for Joseph & Marjorie Clancy, #457 Currier Road, Hatchville, East Falmouth, Massachusetts dated October 15, 2019 as drawn by BSS Design Engineering and Surveying, 164 Katharine Lee Bates Road, Falmouth, Massachusetts 02540; and
 - "Proposed Detached Garage, Clancy Residence", 'Elevations', sheet A.1 of 5, 'Floor Plan/Foundation Plan & Section' sheet A.2 of 5, 'Roof Framing & Building Details' sheet A.3 of 5, Clancy Residence, 457 Currier Road, East Falmouth, MA, prepared by Main Street Custom Design, LLC, 86 Willow Street, Yarmouth Port, MA, plans are dated September 5, 2019, with a final revision date of October 2, 2019
2. The garage will be 26-feet by 26 feet, with an attached 12-foot by 20-foot shed area. The ridge height will be 20 feet, 1.5 inches. The existing lot coverage by structures will be increased to 18.36%. The lot coverage by structures/parking/paving will be increased to 26.01%. The garage will be sited 11.1 feet from the southerly side lot line, 52.8 feet from the northerly side lot line, and 50.1 feet from the westerly street lot line. The garage may be heated, but will contain no habitable space.
3. The Applicant shall meet with Town Engineering to insure that no stormwater is directed off the Premises, and, per §240-112 B.3., the Applicant shall demonstrate to Engineering that stormwater is recharged within the Premises.
4. The owner shall submit a final As-Built to the Zoning Board of Appeals upon completion of the structure.
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:



Robert B. Dugan, Falmouth Zoning Board of Appeals

RECEIVED

DEC 31, 2019 PM 12:17

TOWN CLERK

Date Filed With Town Clerk