



TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

CASE NO: 073-19

APPLICANT/OWNER: Gabriele Roggiolani, P.O. Box 195, Falmouth, Massachusetts

SUBJECT PROPERTY: 179 Jones Road, Falmouth, Massachusetts (the "Premises")

Assessor's Map: Map 38 Section 04 Parcel 026 Lot 000

DEED/CERTIFICATE: Book 32053 Page 121

SUMMARY: Special Permit granted

PROCEDURAL HISTORY

1. On October 28, 2019, an application was filed with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-3 C. of the General Code of the Town of Falmouth, to reconstruct the existing garage at 179 Jones Road, 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 December 5, 2019. Board members present included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Gerald Potamis.
5. Gabriele Roggiolani, P.O. Box 195, Falmouth, Massachusetts, property owner, appeared on the application.

6. The public hearing was closed on December 5, 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)

- Gabriele Roggiolani, applicant / owner submitted application, filing fee and appropriate plans

Letters/Referrals/E-mails from Town Departments

- Referral from the Health Department dated October 30, 2019 signed by Scott McGann, Health Agent stating: *Spoke with applicant, the finished space over the garage with a bathroom would be an additional bedroom, for which the existing septic system doesn't have capacity. He proposed no windows to mitigate this room being considered a bedroom under Title 5's definition of a bedroom.*
- Referral from the Planning Department dated October 29, 2019 – no comment
- Referral from Assessors dated November 4, 2019 – no comment
- Referral from Fire Department dated October 31, 2019 – no comment
- Referral from Engineering dated November 6, 2019 signed by Scott Schluter, P.E. with standard comments and: *The project must not direct any storm water 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 area at a minimum. We would like to confirm that there are no changes to the driveway; it isn't clear from the plans. If there are changes, a driveway permit may be applicable.*
- Referral from Conservation dated November 26, 2019 – no comment
- Email from Rod Palmer, Building Commissioner regarding space above proposed garage

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

- 'Site Plan of Land – Existing Conditions' and 'Site Plan of Land – Showing Proposed Garage' prepared for Gabriele Roggiolani, with a plan date of September 23, 2019 as drawn by John Doyle, PLS 170 Cloverfield Way, East Falmouth, Ma 02536 – plan is stamped and signed by John P. Doyle, III PLS; and

- ‘Elevations’ sheet 1 of 5, ‘Foundation’ sheet 2 of 5, ‘Floor Plans’ sheet 3 of 5, ‘Structurals’ sheet 4 of 5, all plans are dated October 16, 2019 with a Board date ‘received’ stamp of November 19, 2019, prepared for Gabriele Roggiolani, 179 Jones Road, Falmouth, Ma as drawn by David McLean – Architectural Design Services

Hearing:

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

Gabriele Roggiolani stated that the existing garage was built in 1926, and is sited slightly over the southerly (rear) property line. The replacement garage will be slightly smaller and will be sited two feet from the southerly lot line, fully on the Premises. Mr. Roggiolani stated that he is planning to utilize office space above the garage, with a bathroom. He reported that there will be only artificial light in the office, where there are no windows. Mr. Roggiolani reported that the space above the garage is not intended to be habitable. The detached garage will be approximately 10 feet from the dwelling on the lot, and will have a side entry, with stairs that will go up to the office. There will be a few windows in the garage area but no windows upstairs.

Jane Ziegenfus – Martin, 14 Daniel Street, abutter to the south, appeared before the Board, and stated that Mr. Roggiolani’s existing garage is slightly on her property. She stated that due to the non-conforming nature of the garage being only two feet from the shared lot line, she would like a 7-foot tall fence installed along the length of the shared property line.

In response to Board inquiries, Mr. Roggiolani reported that the garage would be 21 feet, 11 inches in height. He stated that there were no existing gutters, and that he had not planned to place gutters where the property is flat. He replied that he would install stormwater measures if requested. Mr. Roggiolani stated that the garage and office would be heated, and that plumbing would be installed for the bathroom. He reported that he would return to the Board if he sought to install windows above the garage. Mr. Roggiolani noted that he plans no changes for the existing driveway. He stated that he could not move the garage further onto the lot, due to the location of the septic system.

Mr. Potamis made a motion to close the hearing, which was seconded by Mr. Van Keuren, and unanimously voted.

Findings:

The subject property, 179 Jones Road, Falmouth, Massachusetts (the “Premises”) is located in the Single Residence C zoning district, and comprises 7,470 square feet of area. The proposal involves replacing an existing garage, sited 0.28 feet over the southerly lot line, with a garage that is set 2 feet from the southerly lot line. The garage will be 30 feet by 18.25 feet, and will be 21 feet, 11 inches in height. The existing lot coverage by structures is 17.80%, which will be decreased to 17.78%. The lot coverage by structures/parking/paving is currently 32.01%, which will be increased to 31.44%. The garage will be sited 2 feet from the southerly side lot line, and 23 feet from the northeast side lot line. The garage will be heated and plumbed, and is planned to have office space above.

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 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 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 reconstructed garage at 17 Jones 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:
  - 'Site Plan of Land – Existing Conditions' and 'Site Plan of Land – Showing Proposed Garage' prepared for Gabriele Roggiolani, with a plan date of September 23, 2019 as drawn by John Doyle, PLS, 170 Cloverfield Way, East Falmouth, Ma 02536 – plan is stamped and signed by John P. Doyle, III PLS; and
  - 'Elevations' sheet 1 of 5, 'Foundation' sheet 2 of 5, 'Floor Plans' sheet 3 of 5, 'Structurals' sheet 4 of 5 all plans are dated October 16, 2019 with a Board date 'received' stamp of November 19, 2019 prepared for Gabriele Roggiolani, 179 Jones Road, Falmouth, Ma as drawn by David McLean – Architectural Design Services
2. The garage will be 30 feet by 18.25 feet, and will be 21 feet, 11 inches in height. The existing lot coverage by structures is 17.80%, which will be decreased to 17.78%. The lot coverage by structures/parking/paving is currently 32.01%, which will be increased to 31.44%. The garage will be sited 2 feet from the southerly side lot line, and 23 feet from the northeast side lot line. The garage will be heated and plumbed, but will contain no habitable space. The space above the garage is planned to have no windows, and be used as an office. There will be no change to the driveway. The Board determined that it would not be feasible to install a fence within two feet of the garage. It would not be possible to move the garage further onto the lot, due to the location of the septic system.
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:

  
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Robert B. Dugan, Falmouth Zoning Board of Appeals

RECEIVED  
DEC 31, 2019 PM 12:17  
TOWN CLERK

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Date Filed With Town Clerk