



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

CASE NO: 013-20

APPLICANT/OWNER: Roderic Komar

164 Acapesket Road, East Falmouth, Massachusetts

SUBJECT PROPERTY: 164 Acapesket Road, East Falmouth, Massachusetts

Assessor's Map: Map 33 Section 08 Parcel 025 Lot 257

DEED/CERTIFICATE: Certificate No. 207564

SUMMARY: Special Permit granted with Conditions

PROCEDURAL HISTORY

1. On February 18, 2020, an application was filed by Roderic Komar, 164 Acapesket Road, East Falmouth, Massachusetts, Massachusetts (the "Applicant") with the Zoning Board of Appeals, requesting a special permit to construct a garage in the front yard at 164 Acapesket 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 advertised public hearing was opened on April 2, 2020. Board members present included Terrence J. Hurrie, Kenneth Foreman, Robert B. Dugan, Edward Van Keuren, and Mary P. Barry.
4. Roderic Komar, 164 Acapesket Road, East Falmouth, Massachusetts, homeowner, appeared before the Board.

5. The public hearing was closed on April 2, 2020, following a motion made by Mr. Foreman, seconded by Mr. Van Keuren, and unanimously voted. Minutes of the hearing(s) are on file with the Zoning Board of Appeals.

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

- Roderic Komar, Applicant – submitted an application for a special permit, filing fee and appropriate plans; application was filed with the Town Clerk on February 18, 2020

Letters/Referrals/E-mails from Town Departments

- Referral from the Health Department dated February 25, 2020 signed by Scott McGann, Health Agent: *No issues with project*
- Referral from the Planning Department dated February 27, 2020 – no comment
- Referral from the Fire Department dated February 26, 2020 – no comment
- Referral from the Water Department dated February 28, 2020 signed by Greg Powers: *Will required [sic] 1" water service install, if owner wants water to structure*
- Referral from the Conservation Commission dated March 9, 2020 signed by Conservation Agent: *Proposed garage located outside of resource area buffer zones. No filing with ConCom required*
- Referral from Assessors dated March 9, 2020 – no comment
- Referral from Engineering dated March 19, 2020 signed by Scott Schluter, PE with standard comments

Letters/E-mails from Abutters/Interested Parties –

Email received from Katherine Hirtle, 4 Lt Pafford Road, East Falmouth, MA, dated April 2, 2020 expressing concern about large pieces of equipment stored in the front yard of the Premises, and use of garage.

Plans submitted by Applicant/Applicant's Representative

- 'Proposed Septic Upgrade Plan' sheet 1 of 1 dated February 17, 2020 with a final revision date of March 30, 2020 prepared for Roderic and Marylyn Komar, PO Box 589 Marstons Mills, Ma as drawn by Warwick and Associates, Box 801 – 63 County Road, North Falmouth, Ma and Engineering Works, Inc. – plan is stamped and signed by Gary S. LaBrie, PLS 2/17/20 and Peter T. McEntee, PE 3/30/20; and
- 'New Garage' sheets A1 and A2, dated February 14, 2020, prepared for Komar Residence 163 Acapesket Road, East Falmouth, Ma – as drawn by Cotuit Bay Design, LLC, 43 Brewster Road, Mashpee, Ma – plans are not stamped or signed

Hearing:

The Notice of Hearing and referrals were read into the record. Appearing before the Board was Roderic Komar, 164 Acapesket Road, East Falmouth, Massachusetts, homeowner (the "Applicant"). Mr. Komar stated that he seeks to add a 20-foot by 36-foot detached garage in the front yard at 164 Acapesket Road, East Falmouth, Massachusetts (the "Premises"), to provide storage space for a boat, and a hobby/workshop area. The garage will comply with all setback requirements. He stated that there will

be no living space in the garage. Mr. Komar noted that he would like to add gas heat in the future, but that there would be no water service to the new garage.

Mr. Komar reported that the existing garage contains his tools, and utilizes a wood stove to provide heat.

Mr. Komar acknowledged that he had several pieces of large equipment stored in his front yard from his previous business. He stated that he would keep this equipment to assist with the landscaping and preparation for the new garage, and that he would subsequently remove the pieces of equipment from the Premises.

Findings:

The subject lot, 164 Acapesket Road, East Falmouth, Massachusetts (the "Premises") comprises 35,395 square feet of area, in the Single Residence C zoning district, where the minimum lot size is now 40,000 square feet. The minimum street frontage and lot width within the district is 100 feet, and the Premises meets that requirement. The Premises is currently improved by a single family dwelling and detached garage/shed. This application requests an additional detached garage, to be sited 13 feet from the northerly side lot line, and 98.8 feet from the westerly (street) lot line, in conformance with the 10 foot setback from a side lot line, and 25 foot setback from the street. However, the garage will be sited in the front yard of the lot. The Zoning Board of Appeals may grant such permission for the accessory structure in the front yard, under By-Law section 240-68 A. (8), but no closer than 50 feet from the street. This condition is met. The Premises is also located in the Green Pond Coastal Pond Overlay District, and the easterly side of the Premises fronts on Green Pond, with associated State and local wetland areas. This proposed garage is beyond wetland areas under the jurisdiction of the Conservation Commission.

1. The 20-foot by 36-foot detached garage will be sited in the front yard, but greater than 50 feet from the street. There is limited visibility of the garage from the street.
2. The lot coverage by structures will increase from 6.1% to 11.1%, but still remain below the 20% district maximum. The lot coverage by structures/parking/paving will increase to 22.4%, but still remain below the 40% district maximum.
3. The garage is planned for boat storage and workshop area, and may be heated. There will be no habitable space in the garage, and the garage is not for a business use.
4. The Applicant has agreed to remove the large pieces of equipment stored in the front yard following the completion of the garage, to address abutter concern.
5. The garage will be approximately 18 feet, 6 inches in height, and will feature one 14-foot by 14-foot garage bay door.
6. The applicant has included a leaching catch basin on the plan to manage stormwater runoff from the new roof area.

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 detached 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) 240-68 A. (8) of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Foreman, voted unanimously to grant a special permit, for the garage at 164 Acapesket Road, East Falmouth, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

Conditions:

1. The construction shall be substantially as shown on the plans:
 - 'Proposed Septic Upgrade Plan', sheet 1 of 1, dated February 17, 2020, with a final revision date of March 30, 2020, prepared for Roderic and Marylyn Komar, PO Box 589 Marstons Mills, MA as drawn by Warwick and Associates, Box 801 – 63 County Road, North Falmouth, MA and Engineering Works, Inc. – plan is stamped and signed by Gary S. LaBrie, PLS 2/17/20 and Peter T. McEntee, PE 3/30/20; and
 - 'New Garage' sheets A1 and A2, dated February 14, 2020, prepared for Komar Residence, 163 Acapesket Road, East Falmouth, MA – as drawn by Cotuit Bay Design, LLC, 43 Brewster Road, Mashpee, MA – plans are not stamped or signed
2. The project must not direct stormwater runoff off the Premises; Town Engineering has approved a leaching catch basin to be sited at the southerly side of the garage, substantially as shown on the plot plan, dated 2/7/20, and stamped by Peter T. McEntee, CE, dated 3/30/20.
3. The garage shall be dimensioned 20 feet by 36 feet, and be approximately 18 feet, 6 inches in height. The garage shall be 98.8 feet from the street, and 13 feet from the northerly side lot line.
4. The garage will be approximately 18 feet, 6 inches in height, and will feature one 14-foot by 14-foot garage bay door.
5. The garage may be heated, however, there will be no habitable space in the garage, and the garage may not be a business use.
6. The Applicant shall remove the large pieces of equipment stored in the front yard within four months following the completion of the garage.
7. 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 Zoning Board of Appeals may deny the request.
8. 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.)

9. 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.

True Copy Attest:



Noreen H. Stockman, Zoning Administrator

RECEIVED
APR 24, 2020 PM 1:58
TOWN CLERK

Date Filed With Town Clerk