



TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

CASE NO: 017-20

APPLICANT/OWNER: Neil Geary, Applicant / Christine Southall, Owner

SUBJECT PROPERTY: 77 Brick Kiln Road, Hatchville, Massachusetts

Assessor's Map: Map 34 Section 05 Parcel 009 Lot 000

DEED/CERTIFICATE: Book 31256 Page 0262

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. On March 4, 2020, an application was filed by Neil Geary, 77 Brick Kiln Road, Hatchville, Massachusetts, (the "Applicant") with the Zoning Board of Appeals, requesting a special permit to construct a garage/workshop and carport at 77 Brick Kiln Road, Hatchville, 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 9, 2020. Board members present included Terrence J. Hurrie, Kenneth Foreman, Robert B. Dugan, Edward Van Keuren, and Mary P. Barry.
4. Neil and Christine Geary, 77 Brick Kiln Road, Hatchville, Massachusetts, homeowners, appeared before the Board.

5. The public hearing was closed on April 9, 2020, following a 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.

The following documents are entered into the record:

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

- Neil Geary, Applicant submitted an application for special permit, filing fee and appropriate plans; application was filed with the Town Clerk on March 4, 2020

Letters/Referrals/E-mails from Town Departments

- Referral dated March 9, 2020 from the Water Department signed by Greg Powers: *Water to new building must be applied for at water dept. plus applicable fees*
- Referral dated March 6, 2020 from the Planning Department – no comment
- Referral dated March 9, 2020 from the Assessors signed by Patricia Favulli, Director: *Assessors request inspection prior to sign off*
- Referral dated March 10, 2020 from the Fire Department – no comment
- Referral dated April 1, 2020 from the Engineering Department signed by Scott Schluter, PE with standard comments; recommendation to add drywells or stormwater infiltration measure
- Email dated March 6, 2020 from ZBA staff regarding future hearing date

Letters/E-mails from Abutters/Interested Parties

None

Plans submitted by Applicant/Applicant's Representative

- 'Plan of Proposed Accessory Structure' sheet 1 of 1 prepared for Neil Geary, lot #9, 77 Brick Kiln Road, Falmouth dated February 25, 2020 – as draw by Holmes and McGrath, Inc. 205 Worcester Court -Suite A4, Falmouth, Ma; plan is stamped and signed by Michael B. McGrath, PLS; and
- 'Proposed Detached Garage, Shop' consisting of 5 pages – plans are not dated or authored, all plans have a Board date received stamp of March 5, 2020

Hearing:

The Notice of Hearing and referrals were read into the record. Appearing before the Board were Neil and Christine Geary. Mr. Geary stated that the proposed location of the garage was in the low point of the neighborhood, and that no water would drain away. Mr. Geary reported that his plan included workshop space for wooden boat restoration.

There was no public comment. Following a motion made by Mr. Dugan, and seconded by Mr. Van Keuren, the Board voted unanimously to close the hearing, and begin deliberations.

Findings:

The subject lot, 77 Brick Kiln Road, Hatchville, Massachusetts (the "Premises") is sited in the Agricultural B zoning district, and comprises 21,619 square feet of area, in a district now requiring 40,000 square feet. The Premises has 100 feet of street frontage, conforming to the 100 foot minimum requirement.

However, the lot is only 103.18 feet wide at the rear (northerly side) of the lot, and therefore does not comply with the minimum lot width of 125 feet. The Premises is current improved with a nonconforming dwelling sited 16 feet from the street, in a district requiring a minimum of 25 feet from the street. The Premises is also located within the Great Pond Coastal Pond Overlay District. The Premises has 15 foot wide right-of-way at the northwest corner of the Premises.

1. The current lot coverage by structures is 5.1%, which will increase to 15.5%, but still remain below the maximum 20% lot coverage.
2. The current lot coverage by structures/parking/paving is 7.8%, which will increase to 18.2%, but will remain below the maximum 40% lot coverage.
3. The garage/workshop will be dimensioned 40 feet by 32 feet, with a 24-foot by 40-foot carport. The structure will be sited 11 feet from the north (rear) lot line, and 13 feet from the westerly side, and 35 feet from the easterly side lot lines, conforming to the minimum 10 foot required setback.
4. According to the renderings submitted, the maximum height of the structure will be 22 feet.
5. There is a 10-foot by 12-foot greenhouse listed as "under construction" on the February 25, 2020 plot plan, at the southerly area of the easterly side of the lot. According to the By-Law 240-68, accessory structures in excess of 100 square feet must be sited a minimum of 10 feet from the side lot line.
6. There is an 8.3-foot by 12.3-foot shed sited toward the northerly area of the east side of the lot. The date of this structure is unknown. Structures in excess of 100 square feet shall be sited 10 feet from a side lot line, unless pre-existing, nonconforming.

In addition to the above findings, the Board finds that the proposed detached garage/workshop/carport 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/workshop/carport 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) 240-3C and 240-38G of the General Code of Falmouth, following a motion made by Mr. Dugan, and seconded by Mr. Van Keuren, voted unanimously to grant a special permit, for the garage/workshop with carport at 77 Brick Kiln Road, Hatchville, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

Conditions:

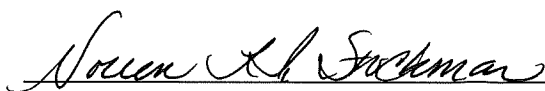
1. The construction shall be substantially as shown on the plans:
  - 'Plan of Proposed Accessory Structure' sheet 1 of 1, prepared for Neil Geary, lot #9, 77 Brick Kiln Road, Falmouth dated February 25, 2020 – as draw by Holmes and McGrath, Inc. 205 Worcester Court - Suite A4, Falmouth, Ma; plan is stamped and signed by Michael B. McGrath, PLS; and

• 'Proposed Detached Garage, Shop' consisting of 5 pages – plans are not dated or authored; all plans have a Board date received stamp of March 5, 2020

2. The lot coverage by structures shall be 15.5%.
3. The lot coverage by structures/parking/paving shall be 18.2%.
4. The garage/workshop shall be dimensioned 40 feet by 32 feet, with a 24-foot by 40-foot carport. The structure shall be sited 11 feet from the north (rear) lot line, and 13 feet from the westerly side, and 35 feet from the easterly side lot lines.
5. The garage/workshop/carport shall have neither heat nor water, and shall not contain habitable space.
6. The garage/workshop/carport shall not exceed 22 feet in height; the owner shall provide an As-built plan with height certification to the Zoning Board of Appeals
7. The greenhouse structure at the southeast lot line area, exceeding 100 square feet, is required to be a minimum of ten feet from the lot line, and shall be brought into compliance with the By-Law.
8. Prior to the issuance of a Certificate of Occupancy for the garage/workshop/carport, the homeowner shall contact the Assessor to view the construction.
9. Statutory appeal periods, and thus the issuance of Certificates of No Appeal, have been temporarily affected by Court Standing Orders, available at [www.mass.gov/guides/court-system-response-to-covid-19](http://www.mass.gov/guides/court-system-response-to-covid-19). Applicants, abutters and interested parties should consult the Standing Orders to determine their next actions. Any decision by a permit holder to proceed is at their own risk, and the permit holder is urged to consult their own legal counsel.
10. Under Section 17 of Chapter 53 of the Acts of 2020, the requirement to record permit decisions with the Registry is suspended for so long as the Registry is "closed or subject to rules and procedures restricting public in-person access." However, such recording will still be required upon the full reopening of the Registry. The Barnstable County Registry of Deeds continues to accept filings by postal mail during this period, and permit holders are requested to file for recording through this method to the extent possible.
11. 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.
12. 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:

RECEIVED  
APR 30, 2020 PM 3:16  
TOWN CLERK

  
Noreen H. Stockman, Zoning Administrator

\_\_\_\_\_  
Date Filed With Town Clerk