

Zoning Board of Appeals Decisions Decisions for: 12-18-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 92-14

APPLICANT/OWNER: ROBERT LUCKRAFT & SUSAN M. RAU of Waquoit, MA

DEED/CERTIFICATE: Certificate 202138 – Lot 33, Plan 11533 - I

SUBJECT PROPERTY: 90 Whistlers Way, Waquoit, MA
Map 30, Section 01, Parcel 021, Lot 033

Under a date of November 5, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-68 A. (8) and 240-216 of the Code of Falmouth to construct a garage in a front yard more than 50' from the front property line off Whistlers Way on subject property known as 90 Whistlers Way, Waquoit, Massachusetts.

A public hearing was opened on December 18, 2014. Notice was duly given as required by Section 11 of Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Terrence Hurrie and Associate Mark Cool

Clerk Bielan read the Notice of Public Hearing into the record.

Raul Lizardi-Rivera with Holmes and McGrath, Inc. was present on behalf of the applicant and reviewed the existing site conditions and the proposed two-car garage to be located in the front yard, three hundred and three feet (303') from the front property line off Whistler's Way; the principal dwelling is over 400' from the front property line. He explained that the elevations of the property change from the driveway at 32 feet to the dwelling at 18 feet – a 9% slope, which makes traversing the driveway with a vehicle problematic during winter weather. The proposed garage is one-story with no loft or attic space and will be 18 feet in height and will be no less than 10 feet from the side yard property line. Mr. Rivera explained there is a semi-attached garage to the existing dwelling that is a workshop with no possibility of a vehicle being parked in it; he submitted pictures of the workshop for the file. He also noted a separate accessory structure that is used to house kayaks, canoes, patio furniture and yard maintenance equipment. The lot coverage through this request will remain well below the maximum percentage allowed under the code.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted by the Engineering Department notes that Whistler's Way is a private right of way, any connections or alterations to public utilities would require permission from appropriate Town Department and that the project must not direct any stormwater runoff to public property, abutters or right of ways.

Referrals received from the Building Department and Planning Department had no comment.

Clerk Bielan noted an e-mail submitted to the file from Conservation Commission stating that the proposed garage is outside Conservation jurisdiction according to the plan submitted.

Board Questions:

Member Foreman asked if there was a loft or attic and if the space will be heated.

Mr. Rivera stated there is no loft or attic space and the garage will not be heated.

Member Foreman asked how the residents get to the dwelling.

Mr. Rivera stated that they will walk to dwelling from garage.

Member Hurrie asked about the other accessory structures on subject property.

Mr. Rivera explained that the shed for storing yard cleaning implements, kayaks, lawn furniture, etc. He stated that the existing attached garage is a workshop and had submitted pictures showing a workshop with no vehicle parking capability.

Member Bielan asked if drywells will be installed and how many stalls proposed garage has.

Mr. Rivera stated that the plan shows a drywell behind proposed garage to maintain stormwater on site; and that there are two stalls in proposed garage [two-car garage] – it is noted that there is a door on the south side to remove stored items easily.

Chairman Haddad reiterated that there is no heat, no loft or attic, that the workshop will remain a workshop and that there will be no cooking facilities within the proposed garage.

Mr. Rivera agreed to all as stated.

Chairman Haddad asked what the driveway material is.

Mr. Rivera stated it is paved.

Chairman Haddad asked if anyone present would like to speak in favor or opposition.

Member Foreman made a motion to close the hearing. Member Cool seconded the motion. Motion carried 5 – 0.

Chairman Haddad closed the Hearing.

Findings:

The Board of Appeals, after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

The subject property located at 90 Whistler's Way in Waquoit contains 47,800 square feet of Residential A zoned land that is located within the Head of Waquoit Bay Coastal Pond Overlay District. The applicant applied under Section(s) 240-68 A. (8) of the Code of Falmouth to construct a detached two-car garage in the front yard of subject property more than 50' from the front property line off Whistler's Way. The proposed detached two-car garage will be located 303' feet from the front property line off Whistler's Way. The proposed detached two-car garage will be no more than 18' in height, 10' minimum setback to the side yard and will have no heat, loft area or attic space.

Section 240-68 A. (8) of the Code of Falmouth states: The Zoning Board of Appeals, as the special permit granting authority, may issue a special permit for an accessory structure in a front yard, but not closer to the street frontage than 50 feet.

The Board finds that the proposed detached two-car garage will be three-hundred and three feet (303') from the front property line off Whistler's Way, which is in compliance with Section 240-68 A. (8) of the Code of Falmouth.

The Board finds through testimony by the applicant's representative that there is no intention to install heat within the proposed detached garage structure. The Board further finds through testimony of the applicant's representative and according to plans submitted, that there is no storage loft or attic space within the proposed detached garage structure. Furthermore, the Board finds through testimony by the applicant's representative that there will be no habitable space created within the proposed detached garage structure, which includes no cooking facilities and no creation of bedrooms or sleeping

accommodations of any kind.

The Board finds through plans submitted and testimony that there will be a drywell at the rear of the proposed detached garage structure to contain any stormwater runoff.

The Board finds that the proposed change to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists.

In addition to the above findings, the Board finds that the proposed will be in harmony with the general purpose and intent of this chapter and does include consideration set forth in Section 240-216 of the Code of Falmouth as follows:

- A. The site is adequate in terms of size for the proposed detached two-car garage structure as the structure will meet all required setbacks pursuant to Sections 240-68 A. and B. and 240-68 A. (8) of the Code of Falmouth; and that the lot coverage on subject property will remain well below the maximum allowed percentages under Section 240-69 A. of the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned residential and the proposed detached two-car garage is an accessory use to the principal single-family dwelling on said property.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be unchanged as the proposed garage structure is 303' off Whistler's Way and does not appear to impact the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system will not be affected through this special permit as there will be no additional bedrooms.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed detached two-car garage discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was no Site Plan Review required by the Planning Board and the referral submitted to the file from the Planning Department had no comment.
- I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformities stated herein.
- J. The approval of this special permit does not include any affordable housing.

Member Bielan made a motion to Grant the Special Permit with conditions. Member Cool seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted 5 – 0 to Grant the Special Permit to Robert Luckraft and Susan M. Rau (herein referred to as Applicant) under Section(s) 240-68 A. (8) of the Code of Falmouth to construct a detached two-car garage structure 303' from the front property line on subject property located at 90 Whistler's Way, Waquoit, Massachusetts. This special permit is subject to the following conditions:

1. The location of the proposed detached two-car garage, all setbacks, height of proposed garage structure, lot coverage and use of the proposed garage structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Plan of Proposed Garage" prepared for Susan Rau and Robert Luckraft for Lot 33, #90 Whistler's Way in Waquoit, MA as drawn by Holmes and McGrath, Inc. on Sheet 1 of 1 dated November 4, 2014 and with a Board date 'received' stamp of November 5, 2014; and
 - "New Garage For Luckraft Residence 90 Whistlers Way Waquoit, MA" drawn by Cotuit Bay Design, LLC, consisting of Drawings A1 and A2 dated 10/23/2014 showing floor plan and elevations – both with a Board date 'received' stamp of November 5, 2014;
2. There shall be no heat installed within the detached two-car garage.
3. There shall be no bedrooms or sleeping accommodations created within the detached two-car garage structure approved herein.
4. There shall be no cooking facilities whatsoever within the detached two-car garage structure, which

shall include, but not limited to: stove, oven, microwave oven, hot plate or toaster oven.

5. The detached two-car garage structure approved herein shall not be rented separately from the single-family dwelling on subject property.

6. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.

7. The Applicant shall meet the requirements of the DPW Water Division.

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 permit shall lapse two 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 Board of Appeals.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 92-14

Applicant: ROBERT LUCKRAFT and SUSAN M. RAU of Waquoit, MA

Subject Property: 90 Whistler's Way, Waquoit, MA
Map 30, Section 01, Parcel 021, Lot 033

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 5 – 0 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

David Haddad, Board Chairman

_____ Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.

Notes:

SP #92-14 Luckraft - 90 Whistlers Way / Garage in front yard posted 12/30/14 mm