

## Zoning Board of Appeals Decisions Decisions for: 01-21-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 129-15

APPLICANT/OWNER(S): GEORGE P. RUSNAK & CAROL SLATKIN of Washington, DC

SUBJECT PROPERTY: 75 Red Brook Road, Waquoit, MA  
Assessor's Map: Map 30, Section 07, Parcel 004, Lot 001

DEED/CERTIFICATE: Book 26461 / Page 297

SUMMARY: Granted With Conditions

PROCEDURAL HISTORY

1. Under a date of December 18, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-68 A. (8) of the Code of Falmouth to construct a garage in the front yard more than fifty (50) feet from the front property line on subject property known as 75 Red Brook Road, Waquoit, MA.
2. 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.
3. A duly advertised public hearing was opened on January 21, 2016.
4. The public hearing was terminated on January 21, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Matthew Tardip, who reviewed and discussed proposed plans with the Board.
6. The Zoning Administrator requested that the Board vote to amend the application to include Section 240-23 G. (1) of the Code of Falmouth as there is an existing attached two-car garage on subject property; this would be additional garage space for more than two (2) cars and requires approval by the Board in a public hearing. Member Murphy made a motion to amend the application to include Section 240-23 G. (1) of the Code of Falmouth [garage space for more than two cars]. Member Van Keuren seconded the motion. Motion carried 5 – 0 to amend the application.
7. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

None

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

None

Letters/Referrals/E-mails from Town Departments

12/18/2015 Referral submitted to the file from the Water Superintendent with no comment.

12/22/2015 Referral submitted from the Falmouth Fire Rescue Department with no comment.

12/22/2015 Referral submitted from the Planning Department with no comment.

1/8/2016 Referral submitted from the Marine & Environmental Services with no comment.

1/8/2016 Referral submitted from the Engineering Department with standard comments regarding any change in utility lines require a permit and project must not direct any stormwater off site.

1/20/2016 Referral submitted by the Board of Health Agent Carignan with no comment.

Plans submitted by Applicant/Applicant's Representative

12/18/2015 "Site Plan Proposed Garage" for George Rusnak 75 Red Brook Road Waquoit – Falmouth, MA as drawn by Warwick & Associates Inc. dated 11/24/2015 with a final revision date of 12/4/2015 – stamped and signed by Gary S. Labrie, PLS and with a Board date 'received' stamp of December 18, 2015.

"Proposed Two Car Garage" for Rusnak Residence 75 Red Brook Road, Waquoit, MA drawn by JB Designs – Pages 1 through 3 showing elevations, floor plans (first and second floor), foundation plan, framing plans and cross sections – plans dated 11/17/2015 with a Board date 'received' stamp of December 18, 2015.

Hearing:

The Board discussed plans with Matthew Tardip the contractor for the applicant. Mr. Tardip stated that the second level of the detached garage structure will be for storage and remain unfinished. He further stated that the construction will be slab on grade foundation, the structure will have a height of no more than 18' and there will be no plumbing or heating within the garage structure.

All concerns and questions from the Board were addressed by the applicant's representative.

Chairman Bielan asked for any public comment in support or opposition of the proposed project.

Member Murphy made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 - 0.

Chairman Bielan 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 75 Red Brook Road contains 67,300 square feet of Residential A zoned land that is located with the Quashnet River Coastal Pond Overlay District. The applicant applied under Section(s) 240-68 A. (8) of the Code of Falmouth to allow an accessory structure to be located in the front yard more than fifty (5) feet from the front property line of subject property; and the Board amended the application by unanimous vote to include Section 240-23 G. (1) of the Code of Falmouth to allow garage space for more than two cars on a subject property [existing garage attached to existing dwelling].

Section 240-68 A. (8) of the Code of Falmouth allows the Board of Appeals to approve a special permit for an accessory structure [accessory to the primary structure] to be located in the front yard of a property more than fifty (50) feet from the front property line.

The Board finds that the proposed detached three-car garage will be located and constructed 158.1' from the front property line of subject property off Red Brook Road. The Board further finds that the proposed detached three-car garage will not create a nonconforming setback or increase lot coverage beyond what

is allowed under Section 240-69 A. of the Code of Falmouth.

Section 240-23 G. (1) requires a special permit for garage space for more than two cars if the lot is 30,000 square feet or less or if the footprint of the garage is more than 900 square feet or 50% of the footprint of the principal structure – whichever is less.

The Board finds that the subject property is greater than 30,000 square feet in size. The Board further finds that there is an existing two-car garage attached to the dwelling and the proposed garage space will add an additional 864 square feet of garage space. Furthermore, the Board finds that the proposed garage footprint is 864 square feet which is 51% of the total square foot of the principal structure [1700.7 footprint] and is therefore properly before this Board.

The Board finds that the proposed three-car garage has a second story with interior stairs to the second floor. The Board further finds through testimony that the second floor space will be for storage only with no heating or plumbing installed within any of the garage structure.

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 garage as it will not create any nonconformities and meets the criteria of Section 240-68 A. (8) in its setback to the front property line and meets Section 240-70 in its height [ $< 18'$ ].
- B. The site is suitable for the proposed use as the property is zoned residential and an accessory structure to the primary structure is allowed in a residential zoned district.
- 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 due to the setback from the front property line of more than 150'; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is unaffected by the proposed accessory structure as it will not contain a bedroom.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed accessory garage structure 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 Murphy made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 a Special Permit to George P. Rusnak & Carol Slatkin (herein referred to as Applicant) under Section(s) 240-68 A. (8) and 240-23 G. (1) of the Code of Falmouth to allow construction of a second detached garage that will be located more than 50 from the front property line of subject property known as 75 Red Brook Road, Waquoit, Massachusetts. This special permit is subject to the following conditions:

1. The location, height of structure, setbacks and lot coverage shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Site Plan Proposed Garage" for George Rusnak 75 Red Brook Road Waquoit – Falmouth, MA as drawn by Warwick & Associates Inc. dated 11/24/2015 with a final revision date of 12/4/2015 – stamped and signed by Gary S. Labrie, PLS and with a Board date 'received' stamp of December 18, 2015.

- "Proposed Two Car Garage" for Rusnak Residence 75 Red Brook Road, Waquoit, MA drawn by JB Designs – Pages 1 through 3 showing elevations, floor plans (first and second floor), foundation plan, framing

plans and cross sections – plans dated 11/17/2015 with a Board date ‘received’ stamp of December 18, 2015.

- 2. There shall be no heat or plumbing installed in the subject detached garage structure.
- 3. There shall be no habitable space created within the subject detached garage structure.
- 4. 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.
- 5. 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.)
- 6. 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: 129-15

Applicant: GEORGE P. RUSNAK & CAROL SLATKIN of Washington, DC

Subject Property: 75 Red Brook Road, Waquoit, Massachusetts  
Map 30, Section 07, Parcel 004, Lot 001

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.

\_\_\_\_\_  
Terrence J. Hurrie, Clerk, Board of Appeals

\_\_\_\_\_ 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 129-15 Rusnak / Slatkin - Filed w/Town Clerk 1/28/16