

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 025-18  
**APPLICANT/OWNER:** CARL E. JOHNSON, JR. of Waquoit, MA  
**SUBJECT PROPERTY:** 136 Carriage Shop Road, Waquoit, Massachusetts  
**Assessor's Map:** Map 29 Section 08 Parcel 008 Lot 002  
**DEED/CERTIFICATE:** Book 22440 / Page 2580  
**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of April 3, 2018, the applicant applied to the Zoning Board of Appeals for a Modification of Special Permit #105-03 pursuant to Section(s) 240-38 G. (1)(b) of the Code of Falmouth to construct a metal garage building on subject property known as 136 Carriage Shop 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 May 17, 2018.
4. The public hearing was closed on May 17, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren and Member Paul Murphy voted to direct the Zoning Administrator to draft an affirmative decision to bring back to the Board on May 24, 2018 for review and possible vote of approval. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was present at the hearing and reviewed and discussed proposed plans with the Board relative to his Home-based Landscape Business and the proposed detached garage.
6. 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**

05/14/2018 Letter submitted to the file from Dianne M. Hazleton of 144 Carriage Shop Road stating concerns of repairs to motorized equipment, increase volume of traffic to subject property and employee parking

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

None

**Letters/Referrals/E-mails from Town Departments**

- 04/04/2018 Email reply from Wastewater Superintendent submitted to the file that states no municipal sewer at subject property
- 04/04/2018 Referral submitted to the file from Planning Department staff with no comment
- 04/05/2018 Referral submitted to the file from Director of Assessing with no comment
- 04/05/2018 Referral submitted to the file from Water Superintendent that states: *No Town water at this location*
- 04/10/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 05/07/2018 Referral submitted to the file from Town Engineering Department with standard comments and a recommendation to add drywells, rain garden or other stormwater measure for the roof

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

**Plans submitted by Applicant/Applicant's Representative**

“Proposed Site Plan” prepared for Carl & Karen Johnson as Proposed Addition for 136 Carriage Shop Road in Falmouth, MA 02536 on a plan drawn by Cape & Islands Engineering dated December 20, 2017 with a final revision date of 5/10/2018 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of May 11, 2018; and

Construction plans for a detached 40’ x 60’ metal garage structure as designed by Metal Building Outlet Corp. for Carl Johnson – plans consist of engineered plans with several stamped, signed and dated 3/26/18 by Ramakanta Adhikary Structure, PE with a Board date ‘received’ stamp of April 3, 2018.

Hearing – May 17, 2018:

Mr. Johnson was present and reviewed the proposed detached 40’ x 60 metal garage structure on his property (southwest corner) to house the landscape equipment he uses in his Home-based Landscape Business as approved in previous special permit (105-03). The building is in compliance with all setbacks and is 17’ in height.

The Board discussed plans with Mr. Johnson including previous cleaning business that was on subject property that is now eliminated, type of repairs and to what equipment, screening and employee parking. Applicant responded to Board's questions.

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

Michael Domingues of 134 Carriage Shop Road stated he is in support of the proposed garage but had concerns on how equipment was to be stored, number of employees and employee parking.

Thomas Fuller of 100 Parsons Lane stated support of the project as long as all conditions are met.

Susan Derome of 120 Carriage Shop Road stated concerns regarding possible noise, sparks from repairs and additional traffic in a residential area.

Isabella Derome of 120 Carriage Shop Road asked about impact of proposed on natural habitat (animals).

The Board reviewed previous conditions set forth in Special Permit #105-03 that approved the Home-based Landscape Business on subject property.

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

Chairman Foreman closed the hearing.

Board members discussed proposed garage relative to the existing landscape operation approved in previous special permit. Consensus was to direct the Zoning Administrator to draft an affirmative decision and forward to Board for review and possible vote at next scheduled meeting.

Member Hurrie made a motion to direct the Zoning Administrator to draft an affirmative decision based on Board's comments and concerns and return to the Board. Member Van Keuren seconded the motion. Motion carried 5 – 0.

Open Meeting – May 24, 2018:

Member Murphy was absent. The Board became a quorum of four (4).

The Board reviewed and discussed the draft affirmative decision they directed the Zoning Administrator to draft and bring back to the Board for possible vote of approval.

### **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 136 Carriage Shop Road in Waquoit contains 57,140 square feet of Agricultural A zoned land that is located within the Childs River Coastal Pond Overlay District. The

applicant applied under Section(s) 240-38 G. (1)(b) of the Code of Falmouth to modify previous Special Permit #105-03 to construct a 40' x 60' metal garage structure on subject property. Special Permit #105-03 allowed the applicant to operate a home-based landscape business with conditions pursuant to Section 240-162 of the Code of Falmouth. This request for modification will allow a metal garage structure to store the landscape equipment from outdoor elements and a place for the applicant to repair and maintain landscape equipment such as lawn mowers, weed whackers, etc. and as the Board discussed and applicant agreed to, there will be no maintenance of any vehicles conducted on subject property pursuant to Section 240-162 of the Code of Falmouth as conditioned previously.

Section 240-38 G. (1)(b) of the Code of Falmouth allows the Board of Appeals to approve a special permit for an applicant to construct a garage structure for more than two vehicles if the garage structure is over 900 square feet or the property is less than 30,000 square feet.

The Board finds that the subject property is 57,140 square feet in size, exceeding the 30,000 square feet as required in sub-section (a) of Section 240-38 G. (1). The Board further finds that the proposed garage structure is more than 900 square feet in size and therefore is appropriately in front of the Board for approval of said structure and modification of existing special permit. Furthermore, the Board finds that the proposed metal garage structure will be constructed to allow storage for landscape equipment and minor repairs to said equipment and will remain accessory to the existing primary dwelling and not create any habitable space within said garage structure.

The Board finds through testimony by the applicant that there will be no increase in the number of employees to and from the subject property for the existing home-based landscape operation. The Board further finds through testimony by the applicant that he believes the traffic to and from the subject property may be decreased slightly due to the proposed garage and onsite landscape equipment repair. Furthermore, the Board finds that the applicant, through his testimony, is aware that the abutters are concerned with the number of trips to and from the subject property with the landscape equipment and will try to reduce the number of trips to a daily minimum, as well as adhere to the hours of operations as set forth in Section 240-162 F. (3)(d)[1] of the Code of Falmouth (7:00 AM to 7:00 PM Monday through Saturday – no operation on Sundays).

The Board finds that the right of way leading to the dwelling on subject property is over 250 feet and that the proposed garage is located to the rear of the dwelling near the southwest corner of subject property and therefore there will be no visual impact from the roadway or from any abutting properties (the entire westerly property line of subject property abuts conservation land owned by the Commonwealth of Massachusetts). The Board further finds that the previous special permit authorizing the home-based landscape business required complete buffering of the easterly property line abutting the Domingues property and is herein noted. Testimony from the applicant (Mr. Johnson) was that the entire property was screened as required and was verified through site visit.

The Board finds that the applicant is amenable to having a Hazmat kit of some kind within the proposed metal garage to control any spill of gas or oil that may occur. The Board further finds that the only type of repair to equipment is that of repair to a lawnmower such as changing oil, sharpening blades and filter changes. Repairs will be strictly for landscape equipment and not be conducted on any vehicle such as trucks or trailers used in the landscape operation. Furthermore, the Board finds that all repairs to equipment for landscape operation will be done within the hours of 7:00 AM to 7:00 PM and shall be conducted within the proposed metal garage.

The Board finds that the previous secondary home occupation on subject property for a cleaning business is no longer existing on subject property and that the van used in said cleaning business was also removed from subject property. The Board finds that the applicant is desirous of keeping the existing three (3) trucks and two (2) trailers currently used in the operation and would like to add an additional trailer used for transporting the landscape equipment.

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 as the subject property is over an acre in size, the proposed garage will be in compliance with all setback requirements and the lot coverage on subject property will remain below the maximum percentage allowed pursuant to Section 240-69 A. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned Agricultural A with a residence and previous approval for the Home-based Landscape Business.

C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property, there will be no increase to the number of employees allowed to and from the subject 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 metal garage structure will not be visible from the roadway and; and there is no impact on any view or vista from the abutting properties.

E. The sewage disposal system is in place and should not be affected by the proposed metal garage structure. However, a sign-off on the building permit prior to issuance requires Board of Health review and approval.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed detached metal 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.

The Board of Appeals has weighed the effects of the proposed metal garage as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Bielan 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 **4 – 0 to Grant the Modification of Special Permit #105-03** to Carl E. Johnson, Jr. (herein referred to as Applicant) under

Section(s) 240-38 G. (1)(b) of the Code of Falmouth to construct a 40' x 60' detached metal garage structure on subject property located at 136 Carriage Shop Road in Waquoit, Massachusetts. This special permit shall be subject to the following conditions:

1. The 40' x 60' detached metal garage structure, all setbacks, lot coverage and use of said garage structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - "Proposed Site Plan" prepared for Carl & Karen Johnson as Proposed Addition for 136 Carriage Shop Road in Falmouth, MA 02536 on a plan drawn by Cape & Islands Engineering dated December 20, 2017 with a final revision date of 5/10/2018 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date 'received' stamp of May 11, 2018; and
  - Construction plans for a detached 40' x 60' metal garage structure as designed by Metal Building Outlet Corp. for Carl Johnson – plans consist of engineered plans with several stamped, signed and dated 3/26/18 by Ramakanta Adhikary Structure, PE with a Board date 'received' stamp of April 3, 2018.
2. These conditions shall replace the conditions set forth in previous Special Permit #105-03 for the Home-based Landscape Business. Any deviation from the conditions noted within this Decision shall require approval from the Zoning Administrator or the Board of Appeals prior to any deviation. Further, 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.
3. The previously approved secondary home occupation known as "Magic Clean" has been eliminated from subject property and may no longer be present and operate from subject property. The van that was used in said cleaning operation will also be removed from subject property.
4. This Special Permit and previous Special Permit #105-03 shall be specifically for this applicant and shall not be transferred or inherited and shall not withstand conveyance of subject property.
5. There shall be no more than six (6) employees for the Home-Based Landscape business as approved in Special Permit #105-03.
6. The hours of operation for this Home-Based Landscape Business shall be from 7:00 AM to 7:00 PM Monday through Saturday with no hours of operation on Sundays, except for emergency situations.
7. Visits to subject property by an employee shall be limited to no more than twice a day, no longer than 30 minutes per visit and shall occur only during regular business hours as conditioned herein.

8. Any and all repair of landscape equipment (mowers, mower blades, blowers, etc.) shall be conducted during the hours of operation set forth in Condition 5 above and shall be conducted within the detached metal garage structure approved herein. There shall be absolutely no repair or maintenance to any vehicle or truck conducted on subject property. All repair of vehicles or trucks shall take place off subject property.
9. All landscape equipment and trailers shall be stored within the detached metal garage structure approved herein. All three (3) trucks used in the landscape operation shall be parked either within the garage or adjacent to the garage as represented at the hearing.
10. The applicant shall submit to the Board of Appeals, prior to issuance of occupancy, copies of registration for the three (3) trucks and three (3) trailers used in the landscape operation. There shall be no more than the three (3) trucks and trailers on subject property. The three (3) trailers shall be limited to sixteen feet (16') in length.
11. Access to the dwelling and proposed garage on subject property is through benefit of a 50' layout driveway, which only 15' in width is paved. No company vehicle or employee vehicles shall be located within the 50' wide driveway of subject property. All employee vehicles will be parked south and southwest of the existing dwelling on subject property. The driveway shall not be blocked by vehicles or materials.
12. There shall be no vehicles in excess of 13,000 GVW on subject property. Also, no vehicles used for delivery or pickup purposes relative to the landscape operation shall exceed 13,000 GVW.
13. Materials that require use of a motorized device to load or off-load shall not be stored on premises.
14. There shall be no landscape debris (clippings and plantings) stored or dumped on subject property. Any exterior storage of landscape materials shall not exceed 10 percent of lot area and shall be required to be located at the southwest corner of the lot adjacent to the proposed garage structure.
15. There shall be no stockpiling or storage of landscape media for re-sale including, but not limited to, topsoil, sand or other fill, crushed stone, gravel, seashells, seaweed, mulch or wood chips for re-sale.
16. If this property is found to be in violation of this permit, immediate enforcement action will be implemented by the Zoning Enforcement Agent.
17. There shall be no taking of boarders on subject property and no other home occupation or home-based service business shall be conducted on said property.
18. There shall be no unregistered vehicles allowed on subject property.
19. Any hazardous materials used or stored on site shall be handled, stored and disposed of in accordance with all local, state and federal regulations.

20. This property shall be in compliance with the conditions set forth herein.
21. The Applicant shall meet the requirements of the DPW Water Division.
22. 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.)
23. This permit shall lapse three (3) 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: **025-18**

Applicant: **CARL E. JOHNSON, JR. of Waquoit, Massachusetts**

Subject Property: **136 Carriage Shop Road, Waquoit, Massachusetts  
Map 29 Section 08 Parcel 008 Lot 002**

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

Vote: 4 – 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, Vice Chairman, Board of Appeals**

**RECEIVED**

**MAY 29 2018**

**FALMOUTH TOWN CLERK**

dp@8:15am  
**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.