

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 91-14

APPLICANT: RICHARD ENOS of East Falmouth, MA

OWNER: Debra Anderson

DEED/CERTIFICATE: Book 27992 / Page 181

SUBJECT PROPERTY: 92 Old Barnstable Road, East Falmouth, MA
Map 28, Section 02, Parcel 012, Lot 001

Under a date of November 5, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-23 G. (4) of the Code of Falmouth to allow parking of a commercial tow truck in a driveway on subject property located at 92 Old Barnstable Road, East Falmouth, 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

Noted: Chairman Haddad stated that the Notice to Abutters was incorrect: Section 240-3 G(4) should have been corrected to read 240-23 G(4).

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

Attorney Bruce Gilmore of Yarmouth Port, Massachusetts was present on behalf of the applicant and the request to park a tow truck on subject property under Section 240-23 G. (4) of the Falmouth Code. Attorney Gilmore handed to the Board, two letters of support from abutters. He explained that Ms. Anderson has owned the subject property for thirteen (13) years and the applicant resides with the owner. He said that Mr. Enos [applicant] works for Capeway Towing and has for three (3) years. Capeway Towing does emergency tows for the Town of Falmouth, Mashpee and Sandwich; and that Capeway has two facilities where towed vehicles are stored securely. Attorney Gilmore said that the tow truck that is the responsibility of the applicant and owned by Capeway Towing, is approximately 28' long and has a cab that is 8' in height. The applicant is required to be on-call fourteen (14) days of each month, thus the need for the truck to be parked where he resides. He then reviewed the plan submitted showing that the subject tow truck would enter the property off of Andrews Street and exit the property onto Old Barnstable Road; the driveway will be buffered with arborvitae on the south side to screen the tow truck from the roadway heading north onto Andrews or Old Barnstable. The site distance entering and exiting the site will be maintained to insure clear view of oncoming property.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted by the Engineering Department noted that there are no changes proposed to the right of ways, any changes to utilities requires permission from appropriate Town Boards and that stormwater should be maintained on site.

Referrals submitted by the Building Department and the Planning Board have no comment.

Attorney Gilmore submitted a letter in support of the proposed tow truck parking on site from: Diane and Paul Lanahan of 32 Andrews Street; and Edward F. Graham, Jr. of 8 Andrews Road.

Board Questions:

Member Hurrie asked if on-call is 24/7 and if any of the towed vehicles would be brought to subject property.

Attorney Gilmore stated that the applicant works approximately from 7:30 am to 5:00 pm so during the week the truck may be on site from 5:00 pm to 7:30 am – and weekend days when he is on-call. He stated that no towed vehicles would be brought to subject property as Capeway Towing has two facilities which towed vehicles are stored at.

Member Cool asked for clarification on the size of the tow truck.

Mr. Enos stated that the bed is 19 to 20 feet in length and the cab is approximately 8' [approximately 28' in length].

Member Cool asked about the plan for the arborvitaes, width of the driveway and asked about silencing the backup beeper on the truck.

Attorney Gilmore answered that the plan is to place four (4) arborvitaes, possibly 4' in height, on the south side of the driveway, parallel, noting that arborvitaes grow fast and will screen truck from oncoming traffic. He said that the backup beeper will be silenced while on site.

Member Cool asked if the tow truck and the school bus driven by the property owner will ever be at the site at the same time.

Attorney Gilmore stated no as the tow truck is not present during work hours and the bus is only at site for brief time during work hours.

Member Bielan asked if there will be any other trucks on site.

Attorney Gilmore stated no.

Chairman Haddad asked about other vehicles on site and if any other drivers on site.

Attorney Gilmore said that each have a personal vehicle on site and that there will not be any other drivers at the site.

Chairman Haddad asked about maintenance of the tow truck being done on site, asked for confirmation that no towed vehicles will be on site and reviewed week day hours truck will be on site when applicant is on-call.

Attorney Gilmore answered that all maintenance is done at the principal office of Capeway Towing; he confirmed that no towed vehicles will be taken to subject property as Capeway has secured fenced lots that vehicles are towed to; and that when the applicant is on-call the tow truck will depart the property at approximately 7:30 am and return approximately 5:00 pm and will be parked all day on weekend days when on call.

Chairman Haddad discussed the arborvitaes and how he would like to see them be 6' in height and plant five trees instead of four.

Chairman Haddad asked if anyone present would like to speak in favor or opposition. There was no public comment.

Member Bielan made a motion to close the hearing. Member Foreman 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 92 Old Barnstable Road in East Falmouth contains 14,000 square feet of Residential C zoned land that is located within the Green Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-23 G. (4) of the Code of Falmouth to be allowed to park a tow truck on site when the applicant is on-call with Capeway Towing. The subject property [owned by Debra Anderson] is uniquely located where Old Barnstable Road splits into Andrews Street to the west of subject property and Old Barnstable continues along the southeasterly side of subject property. The property has a driveway that extends from Andrews Street to Old Barnstable Road that allows for the subject truck to enter property from Andrews Street and exit onto Old Barnstable. The house will screen the truck on the northeasterly side and the proposed arborvitaes will screen the truck from the southwesterly side. Testimony was given that the property owner drives a school bus and periodically stops at her residence [subject property] for coffee or lunch; however, there will be no conflict on the property of the two commercial vehicles as the tow truck will not be on subject property during the daytime hours.

Section 240-23 G. of the Code of Falmouth allows the Board of Appeals to approve a special permit for accessory uses – subsection (4) states: The outside parking of more than one commercial light panel, delivery or pickup truck; or any school bus; or any tow truck.

The Board finds that the applicant filed appropriately under Section 240-23 G. (4) of the Code of Falmouth to allow the parking of a tow truck on subject property. The Board further finds that the applicant and his representative prepared a plan that shows the truck being able to enter and exit the property safely with no impact to oncoming traffic; and a plan to screen the truck so as not to negatively impact the character of the neighborhood. Furthermore, the Board finds that the tow truck will not be parked on subject property day in and day out as the applicant will only have the tow truck on-site when he is on-call which is approximately fourteen (14) days each month; and the applicant will not generally be on subject property with the tow truck during work week from approximately 7:30 am to 5:00 pm.

The Board finds that the applicant will silence the backup beeper on the tow truck when entering, exiting or parked on subject property so as not to disrupt the neighborhood. The Board further finds that the applicant is amenable to installing at least five (5) 5 foot to 6 foot arborvitaes – four feet on center - along the southerly side of the driveway to screen the tow truck. Furthermore, the Board finds that the arborvitaes shall be planted so as not to impact or obscure the site line for traffic using Andrews Street and Old Barnstable Road [as they intersect just south of subject property].

The Board finds through testimony of the applicant's representative that there will be no other drivers parking on subject property. The Board further finds that the applicant shall not bring any towed vehicle to subject property and no towed vehicle shall be stored on subject property. Furthermore, the Board finds that the applicant is the only employee on subject property associated with the tow truck.

The Board finds that the tow truck to be parked on subject property used by the applicant is approximately 28' in total length with a cab that is 8' in height.

The Board finds that there was no opposition submitted to the file or stated at the hearing by any interested party for this application. The Board further finds that there were two letters submitted to the file in support of the application.

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 parking of a 28' tow truck on subject property 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 parking of the tow truck as it will be screened from the roadways, will be entering off Andrews Street and onto Old Barnstable Road so there will be no backing up into a public roadway and the driveway space is adequate for both the tow truck and a personal vehicle.
- B. The site is suitable for the proposed use as the property is zoned residential and under Section 240-23 G. of the Code of Falmouth the use approved herein is an accessory use to the primary single-family dwelling use on subject property.
- C. There will be no impact on traffic flow and safety as the tow truck will be conditioned herein to enter

subject property from Andrews Street and exit subject property onto Old Barnstable Road to eliminate backing up into public roadways and there is no change in the location of the existing driveway on site. D. The visual character of the subject property will not be negatively impacted as there is a plan to screen the parked tow truck so there is not any impact on the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties due to the unique location of subject property with two public roads – one on each side of subject property and convergence of both at the southern-most tip of said property..

E. The sewage disposal system will not be affected through this special permit.

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

G. The proposed accessory use of parking a tow truck on subject property as 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 Foreman made a motion to Grant the Special Permit with conditions. Member Hurrie 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 Richard Enos (herein referred to as Applicant) under Section(s) 240-23 G. (4) of the Code of Falmouth to allow the applicant to park a commercial tow truck when on-call on subject property located at 92 Old Barnstable Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The parking of the tow truck shall be where indicated on the "Plot Plan of Land" – Landscape and Parking Plan" dated November 19, 2002 with a Board date 'received' stamp of November 5, 2014.
2. The applicant's tow truck to be parked on subject property shall not exceed 28' in total length.
3. The applicant shall plant five (5), five to six foot arborvitaes, four feet off center along the southwesterly side of the driveway as a screen for the tow truck being parked within the driveway. When planting the arborvitaes, the applicant will insure that the site distance for traffic using Andrews Street and Old Barnstable Road in both directions is not impacted. The site distance shall be maintained at all times.
4. The applicant shall plant the five (5) arborvitaes within a six month period from the date of this Decision being filed with the Town Clerk [see date stamp below]. Not planting the arborvitaes conditioned herein will be a violation of this special permit.
5. The Zoning Administrator shall conduct a one-year review of subject property relevant to this special permit and conditions set forth. The review shall be submitted to the Board for review.
6. The applicant shall maintain arborvitaes at all times. The arborvitaes shall be found in good health so as to properly maintain the screening of the tow truck approved herein.
7. 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.
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: 91-14

Applicant: RICHARD ENOS of East Falmouth, MA

Subject Property: 92 Old Barnstable Road, East Falmouth, Massachusetts

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 #91-14 Enos - 92 Old Barnstable Rd / Tow Truck Parking posted 12/30/14