

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 90-14

APPLICANT: PAULINO J. RODRIQUES of East Falmouth, MA

OWNER: Paulino P. Rodriques

DEED/CERTIFICATE: Book 10471 / Page 112

SUBJECT PROPERTY: 614 East Falmouth Highway, East Falmouth, MA
Map 33, Section 21, Parcel 009B, Lot 000

Under a date of October 30, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-57 G. of the Code of Falmouth to modify previous Special Permit(s) #2783, 2960 and 63-12 to allow a Penske truck pick-up/drop-off operation on subject property known as 614 East Falmouth Highway, 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.

Chairman Haddad stated he did not feel that he wanted to go forward in discussing this application as he felt the plan was incomplete. He abstained from the hearing process and remained at the Board table.

Board Members sitting: 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.

Paulino [Rocky] Rodriques was present with Ed Monteiro to explain the Penske truck pick-up and drop-off operation for Penske trucks. He explained the application was for five trucks and he has reduced it to three trucks for this pick-up and drop-off operation on subject property. He pointed out on the plan where he plans to park the trucks, which will be the three spaces in the northeastern most parking lot area behind Rocky's Gym; he also pointed out the boat storage area on the back portion of the subject property separated by fencing. Mr. Rodriques explained that this will be only for pick-up or drop-off of trucks; the customer will come into the gym to pick up keys for a truck; and after hours there will be 'key drop box' for drop-off of a truck after business hours. He said that orders are taken on-line and Penske in New Bedford will drop off trucks at subject property to fill orders; and pick-up when trucks returned. Trucks can only be picked up during 'Rocky's Gym' working hours Sunday through Saturday [open 7 days a week]; and for trucks dropped off after hours there is a key drop box on site.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted from the Engineering Department had standard comments regarding impacts to public right of ways, any alteration or connection to public utilities would require permission from appropriate Town departments and there should be no stormwater runoff to public property, abutters or right of ways.

A referral submitted from the Falmouth Fire Rescue Department said they had no concerns with the proposed parking of Penske trucks on subject property.

Clerk Bielan noted an e-mail submitted to the file from the Conservation Commission Agent that stated concern of the parking of trucks for more than 2 hours at a time and 'what if' a truck is leaking fuel or oil(s) and asked how it would be handled and questioned if there is drainage in that specific area of the property and 'spill kits'.

Board Questions:

Vice Chair Foreman asked for clarification on the request of five (5) trucks in application being reduced to three (3) according to testimony by the applicant.

Mr. Rodriques stated that after speaking with Penske Truck in New Bedford and the Zoning Administrator [Ms. Budrow], he wanted to accommodate anyone who needed a truck and Penske has a quick response time to remove rental trucks so he reduced the number to three (3) trucks.

Member Cool asked Mr. Rodriques to point out on the plan where the proposed designated parking space for the three (3) Penske trucks will be.

Mr. Monteiro explained and pointed out the three most northeasterly parking spaces in the parking area behind Rocky's Gym where he proposed to park the trucks.

Member Cool asked if the three (3) spaces could accommodate the size of trucks Penske will be parking there.

Mr. Monteiro stated yes – the largest truck being a 24' truck.

Member Cool noted that the Conservation Commission questioned the duration of the parking of trucks and asked what turn-around time might be and what drainage on site is.

Mr. Rodriques said the intent is a quick turn-around by Penske; in the event a truck is not picked up by a customer – it may take three (3) days to have truck removed.

Mr. Monteiro explained that the parking lot has a berm to contain drainage as was required when gym was built; stormwater is contained in a tank and pumped out at certain intervals.

Member Cool asked if the applicant would be amenable to having hazard kits for each parking space used by Penske.

Mr. Rodriques stated yes – kits will be similar to what Steamship Authority uses.

Member Bielan asked if all trucks fit into spaces – no overhang beyond space.

Mr. Rodriques said the trucks will fit into the spaces.

Member Bielan asked for clarification regarding picking up of trucks during hours of operation of the gym.

Mr. Rodriques said pick-up of trucks can be done only when the gym is open as the employees of the gym disburse the keys. Drop-off of a truck after 9:00 PM [when gym is closed] is done using a 'key drop box' on site and then those vehicles are inspected the next morning before Penske picks up.

Member Bielan asked if the operation is on-going at this time.

Mr. Rodriques said yes, that he has been operating since September of this year.

Member Bielan asked if there will be any signage for designated parking spaces for the trucks.

Mr. Rodriques stated yes – he will work with Ollie [Zoning Enforcement Agent] to insure correct size.

Member Bielan asked if the Building Commissioner has any issues with the current parking on site.

Mr. Rodriques stated not that he is aware of.

Mr. Monteiro stated that the Rodriques' own the 2.8 acres which includes where boat storage is located, so if the need arises they could increase parking by utilizing some the land behind.

Member Bielan asked what the possible longest staging of a truck on site might be.

Mr. Rodriques said it is usually a very quick turn-around time for the trucks – but in the event of an issue, a truck may be onsite for three (3) days.

Member Hurrie noted that when he conducted a site visit, one of the trucks appeared to be outside of a parking space.

Mr. Rodriques said that whoever parked the truck, did not park it properly – each space is 30' in length [to the fence] – maximum truck is 24'.

Member Hurrie asked if spaces will be signed for 'Penske trucks' only.

Mr. Rodriques stated yes.

Vice Chairman Foreman asked what all the uses on subject property are.

Mr. Monteiro explained there is Rocky's Gym, boat storage that is separated from other uses by a fence and the auto repair/sales [leased business] at the east side of property with a path that goes through the property for access to the boat storage; there is one driveway off East Falmouth Highway servicing all uses on the property.

Vice Chairman Foreman asked for clarification on parking for subject property.

Mr. Rodriques and Clerk Bielan reviewed the plan – Rocky's Gym is required 25 parking spaces, there are 35 spaces existing for the gym; and the Auto Repair has 10 parking spaces [8 designated for use and 2 for employees at rear].

Administrator Budrow noted that the Auto Repair/Sales business on subject property (easterly side) is by benefit of a special permit and they are allowed staging of a certain amount of vehicles for sale in front of structure.

Vice Chairman Foreman asked what the possible inventory of Penske trucks would be onsite.

Mr. Rodriques said that the maximum truck would be 24', approximately 35,000 GVW; also 16' truck, approximately 17,000 GVW; and a 12' truck, approximately 11,000 GVW.

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

There was no public comment.

Member Bielan said she doesn't believe that Section 240-57 G. encapsulates the application and asked if the application should be amended to include Section 240-18.1 of the Code of Falmouth. Members agreed.

Member Cool made a motion to close the hearing. Member Bielan seconded the motion. Motion carried 4 – 0.

Vice Chairman Foreman 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 614 East Falmouth Highway contains 2.8 acres (125,904 square feet) of Light Industrial A zoned land located within the Bournes Pond Coastal Pond Overlay District. The subject property currently has three uses: 1) Rocky's Gym westerly side of lot; 2) boat storage on northerly portion of lot ; and 3) existing garage structure on the easterly portion of the lot used for auto repair and used auto sales. The auto repair and used auto sales operation on subject property is through benefit of a special permit with conditions to allow an auto salvage and tire center in the 1970's that has been modified in 1978 and 2012 to allow current use noted herein; and that said operation is leased to an individual by the applicant. The applicant applied under Section(s) 240-57 G. of the Code of Falmouth to

allow the parking of three (3) Penske trucks on subject property. The Board voted 4 – 0 to amend the application to include filing under Section 240-18.1 of the Code of Falmouth.

Section 240-57 G. of the Code of Falmouth allows the Board of Appeals to approve a special permit for Motor vehicle service stations, motor vehicle sales, stables and parking facilities where a fee is to be charged, automobile repair shops, whether ancillary to sales or not.

The Board finds through testimony of the applicant that Section 240-57 G. was requested on the application as there is an existing special permit on subject property for auto repair and used auto sales. The Board further finds that the filing under this section may not encapsulate the requested use on said property.

Section 240-18.1 of the Code of Falmouth – “Multiple Uses.” states: For property in any Business 1, 2, 3 or Industrial A District, on which exists a specially permitted use, any additional use proposed for that property, including a use allowed in the zoning district as a matter of right, will require the issuance of a special permit by the Board of Appeals. The Board of Appeals shall take into consideration the combined effects of each use on the property and determine whether such combination is in harmony with the general intent of this bylaw utilizing the criteria of Articles XXII, XXIII, XXIV and XLII. This section shall not be construed to prohibit any property owner from conducting a use allowed by right in the zoning district provided that any existing use approved by special permit on the same lot is abandoned. Any additional use for which a special permit is required shall be subject to the standards in this section with respect to review of the combined effects of each use on the property.

The Board finds that the uses on subject property – a gym, boat storage, auto repair and used auto sales – will not be adversely affected by the proposed parking of three (3) Penske rental trucks on subject property. The Board further finds that although there will not be a Penske Rental Truck operation on site, the applicant will be responsible for three (3) Penske Trucks being picked up and dropped off at subject property. Furthermore, the Board finds that employees of the applicant’s gym on subject property [Rocky’s Gym] shall be responsible to disburse keys to appropriate parties picking up the Penske rental trucks; collect keys from patrons dropping off a truck, except for trucks dropped off after 9:00 PM that will use an on-site key drop box.

The Board finds that there is adequate parking on the subject property to accommodate the use of three of the existing parking spaces located in the northeasterly parking lot behind Rocky’s Gym as designated parking spaces for three Penske rental trucks and each space shall have signage designating said space as parking for a Penske rental truck. The Board further finds that there shall be no more than three (3) Penske rental trucks on site at any one time. Furthermore, the Board finds through testimony of the applicant that the size trucks that may be parked on subject property shall be either a 12’, 16’ or 24’ Penske rental truck and that the maximum size Penske rental truck shall not exceed 24’ in length and shall be no more than 35,000 GVW.

The Board finds through testimony of the applicant that there is a stormwater containment system on subject property that is pumped periodically. The Board further finds that the applicant, as stated in the hearing, is amenable to have a ‘spill kit’ for each of the three designated parking spaces for the Penske rental trucks. Furthermore, the Board finds that any Penske rental truck shall not be staged on site for more than three (3) days at one time.

The Board finds that the proposed operation to allow three (3) Penske rental trucks to be parked on subject property is not substantially more detrimental than the uses currently existing on said property.

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 parking of three (3) Penske Rental trucks in spaces identified herein as there is adequate parking on subject property.
- B. The site is suitable for the proposed use as the property is zoned Light Industrial A and the uses on subject property appear to exist in harmony with one another.
- C. There will be no impact on traffic flow and safety as there is no increase in the existing traffic onto subject property at a given time; and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be slightly changed with the parking of no more than three (3) Penske rental trucks, but there does not appear to be any impact on the neighborhood’s visual

character as the use in the general area is that of commercial business; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system on subject property will not be impacted through this special permit approval.

F. There are adequate utilities to subject property by virtue of existing business operations on site.

G. The proposed additional use to subject property 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 Cool made a motion to amend the application to include Section 240-18.1 of the Code of Falmouth. Member Bielan seconded the motion. Motion carried 4 – 0.

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 4 – 0 to Grant the Special Permit to Paulino J. Rodriques (herein referred to as Applicant) under Section(s) 240- 57 G. and 240-18.1 of the Code of Falmouth to modify previous Special Permit(s) #2783, 2960 and 63-12 to allow a Penske truck pick-up/drop-off operation on subject property known as 614 East Falmouth Highway, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The three (3) Penske rental trucks allowed on subject property at one time shall always be parked in the three (3) most northeasterly parking spaces in the parking area behind Rocky's Gym on subject property.

2. There shall never be more than three (3) Penske rental trucks on subject property at one time.

3. Any Penske rental truck shall not be parked on subject property for a period of more than three (3) days at one time.

4. The applicant shall install signage at the three Penske rental truck parking spaces that designates each of the three spaces for said rental trucks only.

5. The maximum size Penske rental truck on subject property shall be a 24' truck that shall have no more than 35,000 GVW (gross vehicle weight).

6. Each of the three (3) Penske rental trucks on subject property shall be parked properly and within the designated parking spaces with no overhang into other spaces or travel lanes.

7. The applicant shall have a 'spill kit' for each designated Penske rental truck parking space in the event of leakage or spill of fluids from said trucks.

8. The on-site drainage shall be maintained in proper working order and pumped periodically so as to be maintained and in good working condition.

9. 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.

10. 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.)

11. 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: 90-14

Applicant: PAULINO J. RODRIQUES of East Falmouth, MA

Subject Property: 614 East Falmouth Highway, East Falmouth, MA
Map 33, Section 21, Parcel 009B, Lot 000

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 modifying previous special permits as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

Kimberly Bielan, 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 #90-14 Roderiques - 614 East Falmouth Hwy / Penske Truck operation posted 1/2/15 mm