

Zoning Board of Appeals Decisions Decisions for: 11-06-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 86-14

APPLICANT: MORCIO HENRIQUE ALMEIDA of Falmouth, MA

OWNER: Village Common Properties, LLC

DEED/CERTIFICATE: Book 25209 / Page 306

SUBJECT PROPERTY: 20A Village Common Drive, Teaticket, MA
Map 34, Section 06, Parcel 024, Lot 002A

Under a date of October 8, 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 operate an auto repair business on subject property known as 20A Village Common Drive, Teaticket, Massachusetts.

A public hearing was opened on November 6, 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 and Member Matthew McNamara

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

Attorney Geoffrey Nickerson was present on behalf of applicant Morcio Almeida was also present. The applicant is a principal in Petro Brothers LLC who own and operate M&N Auto Repair. Attorney Nickerson reviewed the subject property that is zoned Light Industrial A and within an industrial park area off Route 28. He explained that there are three leasable spaces in the subject structure; one existing is an electrical store open to contractors and the other two spaces are currently vacant. The applicant proposes to operate an auto repair shop out of the space at the north end of the structure, approximately 4,500 square feet. There will be no auto body work or painting of vehicles done at this site – mechanical repair only. Attorney Nickerson referred to the sketch plan submitted and stated there will be a reception area, an office area, a parking area and four hydraulic lifts. The floor of the service area will have a pedestrian door and bay doors. The work area will be vented to the exterior and floor of the service area will have an epoxy coating to prevent fluids from penetrating the floor surface. The hours of operation will be 8 AM to 6 PM Monday through Friday, 8 AM until Noon on Saturday and closed on Sunday. Attorney Nickerson stated that on a given day the applicant expects to service 8 to 10 vehicles daily and there will be a key drop for after hour drop off with parking at the north wall of the unit. No subsurface storage of automobile fluids of any kind will occur on site; waste oil is removed from vehicles and stored on site in a dedicated waste oil container that will be stored on site in compliance with Massachusetts Department of Environmental Protection requirements and are removed every two months by a qualified waste removal contractor. Attorney Nickerson reviewed Section 240-216 and stated he is confident that the proposed use will not be overbalanced by any adverse effects that are set forth in this section.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted by the Board of Health Agent David Carignan commented on storage of waste automotive fluids and area where fluids are stored (see file).

A referral submitted by the Engineering Department had standard comments.

A referral submitted by Falmouth Fire Department states that they have reviewed the plans and have no concerns with the project.

Referrals submitted by the Building Department and the Planning Department had no comment.

There was correspondence from Thomas J. Scanlon, President of Benchmarks Inc., owner of subject property, who is in support of M&N Auto Repair at subject property.

There was correspondence submitted from Attorney Eric Turkington on behalf of the abutters at Lot 1 – Village Common Realty Trust (owner of the building in which Sherwin Williams paint store is presently located) in opposition of the proposed auto repair use.

Board Questions:

Member McNamara asked about parking for the use – Table of Minimum Requirements that says Industrial Use is 1.3 spaces per employee; this is LIA District but it is a 'service' use not industrial.

Attorney Nickerson said he believes the use to be more industrial – he feels nail salons and hairdressers are service uses.

Member McNamara referred to 'other uses' in the bylaw [Section 240-108 'Table of Minimum Requirements'] where the Building Commissioner determines the number of parking spaces; and 'retail sales, service' where 1 parking space per 200 square feet of leasable floor area – but not less than 3 spaces per entity is required, thereby requiring 23 parking spaces for this use.

Attorney Nickerson explained that at the south end of the lot there is capability for the additional parking spaces.

Member McNamara commented on the letter of opposition from Attorney Eric Turkington regarding Section 240-148 of the Code of Falmouth that requires a 50' setback from abutting residential use: 'Location of automotive services.' No portion of the front or side lines of a public garage, automobile repair shop, greasing station, storage battery service station or gasoline filling station, or any of their appurtenances, or accessory uses, shall hereafter be placed within 50 feet of any residence district.

Attorney Nickerson stated that the easterly rear property line of subject property abuts a residential zone. He showed a plan dated 1989 that indicates the building is 50' from that property line [easterly – rear property]; in the plan submitted by the applicant with the application, the building at its south east corner is shown as 46.2' to the rear property line.

Member Bielan asked if there would be overnight parking.

Attorney Nickerson stated that there may be instances where a car is dropped off at night and they will use the drop box for keys and the 2 parking spaces at the northeast corner of the building.

Member Bielan asked if there would be long term storage.

Attorney Nickerson stated no.

Member Bielan asked where customers would enter – would the customer have access at rear of building.

Attorney Nickerson pointed to the plan at the east side (rear) of the building where the bay door is located for vehicle access; he stated that the employees will be driving the customer's cars into the service area.

Member Foreman asked what other businesses exist on-site and what traffic flow is on site.

Attorney Nickerson stated that there is an electrical supply store in the south side of the structure and traffic is minimal as the supply store is primarily for contractors.

Chairman Haddad asked if there will be any work conducted outside of the building, how is hazardous waste contained and picked up and plan in case of spillage.

Attorney Nickerson stated there will be no work outside of building, there are special containers stored inside per regulations that applicant has to be certified yearly and in the event of spillage the applicant

will follow state regulations.

Member McNamara asked for comparison of parking spaces and service at current site and if the proposed plan for parking at subject property will require Site Plan Review.

Attorney Nickerson said the applicant at present site has three (3) hydraulic lifts and ten (10) parking spaces. He said he does not believe the proposed use on subject property requires Site Plan Review as there is no new development (see first paragraph of Section 240-192).

Member McNamara asked what the plans show for floor drains.

Attorney Nickerson said there is a partial basement and that the lifts are not located over basement area and keep in mind there is an impermeable epoxy floor. He said the partial basement is for mechanical utilities.

Member McNamara stated that no plans for a basement were submitted and asked about its use.

Attorney Nickerson stated that it is a partial basement and used for mechanical utilities.

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

Attorney Eric Turkington said he is present on behalf of the owner of Lot 1 which abuts the subject property, and said based on testimony regarding parking he would like to have ten (10) minutes recess to speak with his client.

Board approved 10 minute recess.

Reconvened hearing.

Attorney Turkington said he conversed with the owner and attorney for applicant and said that there had been dispute over the parking on Lot 1 in the past. He said the applicant assured his clients that they will not use Lot 1 and suggested that the Board condition the no parking on Lot 1 if they approve this application and if so his clients will waive their other objections.

Thomas Scanlon owner of subject property clarified that the electrical supply business on subject property is for contractors.

Mary Salzar, Trustee of Lot 1 stated her only concern was with parking on Lot 1 by uses on Lot 2.

Board Discussion:

Member McNamara stated in terms of 240-216 he has no problem with the approval of this application; he believes it is suitable and not detrimental to the area. He said he is troubled by this being a 'service' not an industrial use so recommends requirement is for 23 spaces and it should be stated as such in the lease. Also questions the 50' setback to the residential zone.

Administrator Budrow questioned according to Section 240-148 – is this not the rear of the building – the bylaw stated front and side [No portion of front or side lines of the ...uses, shall hereafter be placed within 50 feet of any residence district.].

Member Foreman made a motion to close the hearing. Member McNamara seconded the motion. Motion carried 4 – 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 20A Village Common Road in Teaticket contains 1.93 acres of Light

Industrial A zoned land that is located within the Great Pond Coastal Pond Overlay District. The subject property was granted a Variance in 1986 and 1988 – the 1988 Variance changed the approval of the 1986 Variance in that the building was relocated and pushed back on the lot and moved parking from behind the building (see 1986 plan in the file) - a plan from 1989 shows a 50' setback to the rear property line (east side). The applicant applied under Section(s) 240-57 G. of the Code of Falmouth to allow an auto repair shop business on subject property within the 4,500 square feet northerly portion of the existing structure on subject property. There will be no auto body work or painting done in this operation.

Section 240-57 of the Code of Falmouth "Special Permit Uses." Sub-section G. Motor vehicle service stations, motor vehicle sales, stables and parking facilities where a fee is to be charged (see § 240-148), automobile repair shops, whether ancillary to sales or not."

The Board finds that the proposed use on subject property is an automobile repair shop and therefore requires a special permit through the Zoning Board of Appeals. The Board further finds that the use does not appear to be detrimental to this industrial zoned area. Furthermore, the Board finds that the rear property line of subject property abuts a residential zoned district.

The Board finds through testimony of the applicant's representative that there will be no outside storage of hazardous waste, that all waste will be contained in compliance with state regulations on the inside of the structure and that there will be no work conducted outside of subject shop area.

The Board finds that the portion of the existing structure that the applicant will be leasing is 4,500 square feet in size and that the use proposed is a service and therefore is required 23 parking spaces for said use [see Table of Minimum Requirements Section 240-108 of the Code of Falmouth]. The Board further finds through testimony of the applicant's representative that 23 parking spaces can be made available at the south end of the structure [Owner of subject property was present and verified spaces].

The Board finds that the plan submitted does not show a setback from the rear of the existing building to the easterly property line (rear). The Board further finds that the applicant will have plan revised showing accurate setback of the structure to the rear property line abutting the residential district. Furthermore, the Board finds that according to Section 240-148 No portion of the front or side lines of a public garage, automobile repair shop, greasing station, storage battery service station or gasoline filling station, or any of their appurtenances, or accessory uses, shall hereafter be placed within 50 feet of any residence district. No driveway to such premises shall be in any part within 50 feet of any residence district.... The bylaw for Location of Automobile Services in 1987 has the same requirements as noted herein for setback to residential zoned district; however in 1988 when the structure was constructed the setbacks for buildings and parking facilities were less restrictive in an industrial zone [Section 5256 - 1987 Code of Falmouth] than the current requirements [Section 240-68 C of the Code of Falmouth].

The Board finds that the proposed hours of operation for the auto repair shop discussed herein shall be 8 AM to 6 PM Monday through Friday, 8 AM to Noon on Saturday and closed on Sunday.

The Board finds through testimony of the applicant's representative that there will be no auto body repair or painting conducted on site. The Board further finds that the hazardous waste products will be contained and disposed of according to State Regulations [DEP requirements]. Furthermore, the Board finds that there will be no long term storage of hazardous waste material on site or within the building.

The Board finds through testimony of the applicant's representative that the only signage for the proposed use will be a backlit sign on the building. The Board further finds that any signage will be permitted, as required, according to the Town's sign bylaw.

The Board finds that opposition by abutters on Lot 1 was withdrawn by their counsel, Eric Turkington. The Board further finds that the withdrawal was made with a request that the Board condition that the proposed use will not be allowed to park on Lot 1 at any time.

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 auto repair shop as the structure is existing and the use is allowed by special permit.
- B. The site is suitable for the proposed use as the property is zoned Light Industrial A and the applicant

- has stated that parking for said use as discussed herein can be accommodated on subject property.
- C. There will be no impact on traffic flow and safety as testimony by the applicant's representative was that the proposed auto repair service normally services eight to ten vehicles in a day.
- D. The visual character of the subject property will be unchanged except for the installation of a sign for the business on the façade of the building; and there will be no change to any existing view or vista from the roadway or abutting properties.
- E. The sewage disposal system is in place and services the site. The Board of Health will review the septic capabilities on site and sign off on building permit if approved.
- F. There are adequate utilities to subject property by virtue of existing businesses on site.
- G. The proposed use on 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 Foreman made a motion to Grant the Special Permit with conditions. Member McNamara 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 Morcio Henrique Almeida (herein referred to as Applicant) under Section(s) 240-57 G. of the Code of Falmouth to operate an auto repair business on subject property located at 20A Village Common Drive, Teaticket, MA. This special permit is subject to the following conditions:

1. The proposed auto repair business operation on subject property shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Floor Plan" of existing building showing the 4,500 square foot leasable space by applicant – plan drawn for Hartel Commercial Strategic Real Estate Services with a Board date 'received' stamp of October 8, 2014;
 - Hand drawn proposed Floor Plan by applicant showing reception area, office, car parking area and service area with a Board date 'received' stamp of October 8, 2014; and
 - "Existing Conditions Plan" of 20 Village Common Drive by G.A.F. Engineering, Inc. dated 7/25/11 signed by Glenn Amaral on 8/1/11. Plan shows the site and parking on the lot. Plan has a Board date 'received' stamp of October 8, 2014.
2. The auto repair business operation on Lot 2 discussed and approved herein shall not allow parking of vehicles on Lot 1 at any time (abutters to the north).
3. The applicant's lease with the owner of subject property [Village Common Properties LLC] shall state that there are 23 parking spaces available on subject property for the auto repair business represented and approved herein. A copy of said lease shall be submitted to the Board of Appeals prior to final sign off of the building permit by the Zoning Administrator.
4. The approval of this special permit is contingent on Site Plan Review if required by the Building/Zoning Commissioner. Should Site Plan Review be required, all conditions of the Planning Board shall be incorporated as conditions of this decision.
5. A revised plan showing the setbacks at the rear of the existing structure on subject property shall be submitted to the Board of Appeals prior to issuance of a building permit. This permit is subject to demonstration through submission of the revised plan of full compliance with Section 240-148 of the Code of Falmouth requires that: No portion of the front or side lines of a public garage, automobile repair shop, greasing station, storage battery service station or gasoline filling station, or any of their appurtenances, or accessory uses, shall hereafter be placed within 50 feet of any residence district.
6. Any change in size of the auto repair business shall require administrative approval of the Zoning Administrator to insure compliance with Section 240-148 of the Code of Falmouth.

7. The hours of operation for the auto repair business approved herein shall be 8 AM to 6 PM Monday through Friday, 8 AM to Noon on Saturday and closed on Sunday.
8. There shall be no auto body repair or painting conducted on site.
9. The applicant shall meet all Department of Environmental Protection [DEP] requirements for hazardous waste products [containment and disposal of]. The hazardous waste products shall be stored inside the building area leased to applicant and contained according to DEP regulations.
10. There shall be no long term storage of hazardous waste products on site or within the building. Testimony was given at the hearing that the waste products are removed at least every two months.
11. The applicant shall maintain proper certification for all hazardous waste materials on a yearly basis and submit a copy of said certification to the Board of Appeals.
12. There shall not be any auto repairs conducted or storage of materials/items on the outside of the subject building, except for a dumpster.
13. 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.
14. 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.)
15. 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: 86-14

Applicant: MORCIO HENRIQUE ALMEIDA of Falmouth, MA

Subject Property: 20A Village Common Drive, Teaticket, Massachusetts
Map 34, Section 06, Parcel 024, Lot 002A

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.

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 #86-14 Almeida - 20A Village Common Dr / auto repair business posted 11/18/14 mm