

## Zoning Board of Appeals Decisions Decisions for: 03-20-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 12-14

APPLICANT/OWNER: BARNSTABLE COUNTY AGRICULTURAL SOCIETY

Deed: Book 01891 / Page 0243

Certificate: 58678 – Land Court Plan 27489-A, June 11, 1966

SUBJECT PROPERTY: 1220 Nathan S Ellis Highway, East Falmouth, MA

Map 18, Section 02, Parcel 002, Lots 180 thru 185

Map 18, Section 02, Parcel 005A, Lot 003

Map 18, Section 02 Parcel 002A, Lots 359, 360 and 361

Map 18, Section 02, Parcel 003, Lot 000

Map 18, Section 02, Parcel 004, Lot 000

Map 18, Section 02, Parcel 005, Lot 001

Map 18, Section 03, Parcel 008, Lot 000

Map 18, Section 02, Parcel 006, Lot 002

Map 18, Section 03, Parcel 001, Lot 001

Map 18, Section 03, Parcel 007, Lot 000

Under a date of February 3, 2014, the Applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-38, 240-109 A & B, 240-160 and 240-18 of the Code of Falmouth to allow the Barnstable County Agricultural Society to hold special events that are non-agricultural with parking on subject properties near Fairgrounds located at 1120 Nathan S. Ellis Highway, East Falmouth, Massachusetts.

A public hearing was held on March 20, 2014. Notice was duly given as required by Section 11, 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 all parties desiring to be heard were heard.

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Clerk Scott Zylinski, Member Patricia Johnson and Associate Mark Cool

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

Wendy Brown, General Manager of Barnstable County Agricultural Society, was present to discuss the yearly request for special events to be held on subject property(s) pursuant to Section(s) 240-38 and 240-160, 240-109 A. & B. and 240-18 of the Code of Falmouth. Ms. Brown referenced the schedule of events submitted to the file that indicate events to be held at the fairgrounds this 2014 season. The event schedule includes parking areas associated with each event and if parking fees are assessed per event.

Clerk Zylinski read the Town Department referrals into the record.

A referral submitted by Conservation Commission Agent Mark Kasprzyk states: Note: Care should be taken not to disturb naturally vegetated buffer to the vernal pool (junction of Ashumet Road/Hooppole Rd – south of Flashy Pond). Could not get inside but appeared some debris in buffer. Possible to meet with representative the week of 3/17 or 3/24.

A referral submitted by Falmouth Fire Rescue Department of 2/14/14 stated that Wendy Brown, General Manager of Agricultural Society has been issued the 'Public Event Standards' packet and is required to give each organizer a copy of the standards. The Fire Department said they had concerns with 8 events and that those organizers would be required to contact the Fire Department thirty (30) days prior to event (see file for letter of referral).

A referral submitted by Building Commissioner Eladio Gore states: Just a reminder that permits are required for tents and the tent must be inspected before the event.

A referral submitted by Health Agent David Carignan states: Any event coordinator should be informed that food vendors must be permitted by the Health Department. The permit fees are increased for after hours and weekend inspections so every effort should be made to conduct business with the Health Department during regular business hours.

Referrals submitted by the Engineering Department, Planning Department and Water Department had no comment.

Clerk Zylinski noted that there was no communication from any abutter or interested party submitted to the file.

#### Board Questions:

Member Johnson asked how complaints are handled.

Ms. Brown stated she would talk one-on-one with any complainant. She said there are rarely any noise complaints and they try to be good neighbors. Most complaints are usually trash issues – the fairgrounds consist of 98 acres and there is a lot of illegal dumping. Ms. Brown stated she is working with Conservation Commission to help limit dumping issues.

Member Johnson asked where the vernal pool is Conservation had concern about.

Ms. Brown pointed to it on plan stating it is near Gate 6.

Member Johnson asked if there are any new signs proposed on 151.

Ms. Brown stated no.

Member Foreman commented on referral from Fire Department and asked who procures fire safety and alcohol licenses.

Ms. Brown said she helps vendors in getting before the Board of Selectmen for alcohol licenses and checks on website to insure they have approval prior to event. She said she meets with Fire and Police regarding certain events – police in both Falmouth and Mashpee. She stated she does have the forms from the Fire Department and is working with Mel Trott of the Fire Department regarding their new forms and getting vendors to contact Fire Department.

Member Foreman asked if there are any new events this year.

Ms. Brown stated new events are 'Cancer Survivor Day', Reel Cape Cod Music Fest (same as Naukabout), Mud Run, Cape Cod Scallop Festival, Cape Cod Beer Fest is adding one more day and a run. Member Zylinski asked what mitigation is done to the ring after car derby.

Ms. Brown said they clean the ring, make sure free of glass and debris. She said she has never seen issues with gas tanks or fluids. She commented that Conservation Commission does not have any issues.

Member Zylinski made a motion to close the hearing. Member Cool seconded the motion. Motion carried 5 to 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 properties are located off Nathan S. Ellis Highway - the main property (events held), 1220 Nathan S. Ellis Highway, consists of 21 acres of Agricultural A zoned land located within the State Zone II District, Water Resource Protection District, Childs River Coastal Pond Overlay District and a portion of the properties are within the Natural Habitat for Endangered Species Project. Total acreage including main event property and all parking areas [separate lots owned by BCAS] totals approximately 98 acres. The

applicant/Owner, Barnstable County Agricultural Society, (hereinafter referred to as BCAS) applied under Section(s) 240-38, 240-160, 240-109 A. and B. and 240-18 of the Code of Falmouth to allow non-agricultural events on said properties herein stated, which include, but are not limited to, parking for scheduled events and staging of equipment/trucks used by vendors or event holders. The applicant/Owner requires a yearly permit from the Board of Appeals pursuant to Section 240-160 A. of the Code of Falmouth to hold non-agricultural events during the summer and fall months.

Section 240-160 A. of the Code of Falmouth requires that temporary and conditional structures and uses that do not conform to the regulations prescribed in the Zoning Bylaws may be allowed by special permit, provided that no special permit shall be for more than a one-year period and further provided that no special permit shall be renewed until all abutters have been notified and public notice given in the manner provided in MGL Chapter 40A.

Section 240-109 A. of the Code of Falmouth allows the Board of Appeals to vary the parking for activities/events to be staged on same premise as activity/event.

Section 240-109 B. of the Code of Falmouth requires a special permit from the Board of Appeals to be exempt from paving parking surfaces for cases such as seasonal periodic use where an alternative surface will prevent dust, erosion, water accumulation or unsightly conditions.

Section 240-18 of the Code of Falmouth states that uses not classifiable under any category listed for the applicable district are prohibited, except that a use listed nowhere in Articles V through XIII may be allowed on special permit if the Board of Appeals determines that it closely resembles in its neighborhood impacts a use allowed or allowed on special permit in that district.

Section 240-38 of the Code of Falmouth states that the Board of Appeals will be the granting authority for any uses requested on subject properties that require a special permit.

The Board finds that BCAS is a non-profit entity and owner of subject properties listed and discussed herein.

The Board finds that BCAS has had previous special permits approved by this Board for non-agricultural events held yearly on subject properties without violation of any town or zoning bylaws.

The Board finds that the subject properties noted herein owned by the applicant are suitable and adequate for the scheduled events and uses as submitted and represented to this Board.

The Board finds that the events as represented by the applicant and listed below are the events being held at the Barnstable County Fairgrounds for the year 2013, commencing on April 17, 2013 and ending on December 14, 2013. The Board further finds that any event not listed, that has either paid parking or is a non-agricultural event, will require BCAS to request an Administrative Approval or modification of the approved Special Permit and BCAS must receive approval prior to said event(s) taking place.

The Board finds through testimony of the applicant's representative [Wendy Brown] that all efforts will be made to work with the Police and Fire Departments for any event that may require traffic and public safety detail. The Board further finds that the Fire Department has created "Public Event Standards" and has given them to the applicant [General Manager Wendy Brown on behalf of BCAS] and is requiring that she give all vendors copies of said standards for their review and signature and that BCAS maintain a copy of the signed copies. Furthermore, the Board finds that the applicant's representative gave testimony that she will assist vendors in getting proper permits and licensing from appropriate Town departments.

The Board finds that the proposed, as it is relevant, meets the criteria set forth in Section 240-216 of the Code of Falmouth.

There is no decision of the Planning Board to consider, as this proposal is not subject to review by the Planning Board under Site Plan Review.

The Board has weighed the beneficial and adverse effects of the proposed events and the associated parking 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 Bylaw.

Member Zylinski 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 (hereinafter referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth, hereby voted 5 – 0 to Grant the Special Permit to Barnstable County Agricultural Society (hereinafter referred to as Applicant) under Section(s) 240-18, 240-38, 240-109 A. and B., and 240-160 A. of the Code of Falmouth to allow non-agricultural events and/or paid parking on subject properties listed herein, which includes the main property known as 1220 Nathan Ellis Highway, East Falmouth, Massachusetts. This Special Permit is subject to the following conditions:

1. The events and parking shall be held on properties as represented to this Board and as shown on a "Plot Plan of Land" in Falmouth, MA prepared for Barnstable County Agricultural Society by Stephen A. Haas, Engineering, Inc., Sheets 1 and 2 of 2 stamped and signed by Stephen A. Haas, P.E. on 1/16/2013 with a Board date 'received' stamp of February 20, 2014.
2. The events and parking schedule calendared for 2014 as represented to, and approved by this Board are as follows:
  - a. May 17, 2014 – Master Gardeners Plant Sale [10 am – 1 pm] – parking is non-paid – Area A and Lot E;
  - b. June 7, 2014 – Cancer Survivor Day – C.C. Healthcare [ 8 am – 9 pm] – non-paid parking – Area C & D and Lot 4;
  - c. June 13 – 15, 2014 – Cape Cod Kennel Club Dog Agility Show – [7:00 AM to 5:00 PM], parking is non-paid – Area A, C, D and Lot 4;
  - d. June 14, 2014 – 4-H Dog Show – [7 am to 5 pm] – non-paid parking, Area A & B;
  - e. June 20 – 21, 2014 – Relay for Life – American Cancer Society – [ 24 Hours ] – parking is non-paid – Area: A;
  - f. June 20 - 22, 2014 – Falmouth Amateur Radio Association – [8:00 AM to 8:00 PM] – parking is non-paid – Area: Lot 3;
  - g. June 22, 2014 – Fieldcrest Farm Horse Show (Carolyn Weeks) – [8 am – 4 pm] non-paid parking – Area: B – Horse Arena Only;
  - h. June 22, 2014 – Mashpee Triathlon – Parking Only [ 6 am – 3 pm], non-paid parking, Lot 1;
  - i. June 28, 2014 – Falmouth Food and Wine Festival – Gary Matter Marketing [8 am to 9 pm] – non-paid parking, Area: C & D and Lot 4;
  - j. July 4 – 6, 2014 – Mashpee Wampanoag POW WOW – No Alcohol - [9 am – 10:00 pm] Parking: non-paid – Area: A, B, C & D – Lot E, 1 and 4 and Lot 2 and 3 if needed;
  - k. July 21 – 27, 2014 – Barnstable County Fair – [4 pm to 10 pm Mon thru Thurs, Noon – 10 pm Fri thru Sun - Gates: close at 10:00 PM Daily with Midway open to 11:30 PM Daily] – Parking: Non paid – Lots 2, 3 and E; Paid – Lots 1 and 4; Area: A, B, C, D;
  - l. August 4 – December 2, 2014 – Upper Cape Spartans – Practice Football and Cheer Leading [Mondays thru Thursdays 8/1 through 9/1 and Tues thru Thurs 9/1 through 12/1 - 5:00 pm – 7:30 pm], non-paid parking, Area: Lot 1, 3 and 4;
  - m. August 2, 2014 – The Real Cape.Com Music Festival - [10:00 AM to 10:00 PM] – Parking: non-paid; Area A, B, Reserve E and Lot 1;
  - n. August 9, 2014 – Mud Run Obstacle Course [8 am – 10 pm] – non-paid parking – Area: A, B, C, D Lot 4;
  - o. August 17, 2014 – Falmouth Road Race BBQ [1:00 pm to 6 pm] Parking is non-paid; Area: C & D, Lot 4;
  - p. August 24, 2014 – Fieldcrest Farm Horse Show – Carolyn Weeks [ 8am to 4 pm] non-paid parking, Area B – Horse Arena only;
  - q. September 6, 2014 – Food Truck Festival [10 am to 6 pm] – Parking is non-paid; Area A, B, C, D and Lot E, 1 and 4;
  - r. September 11 – 14, 2014 – Cranberry Cluster Kennel Dog Shows [7:00 AM to 5:00 PM] – non-paid parking – Area B, C, D, Lots 3 and 4;
  - s. September 19 - 21, 2014 – Cape Cod Scallop Festival [7am to 11 pm] – Paid and non-paid parking – Area: A, B, C, D and Lots 1, 2, 3, 4 and E
  - t. September 27 – 28, 2014 – Cape Cod Beer Festival & 5k Run [10 am to 10 pm] – Parking is non-paid; Area A, B, C, D and Lot E;
  - u. October 12, 2014 – Fieldcrest Farm Horse Show – Carolyn Weeks [8 am to 4 pm] – non-paid parking,

Area B Horse Arena Only;

v. October 18, 2014 – MA State Track Association [7:00 AM – 10:00 PM] –Parking is non-paid; Area A, B, C, D, Lot E & 4 – Lot 2 or 3 if needed.

w. October 25, 2014 – Cape Cod Doxie Days – [7 am to 6 pm Parking is non-paid; Area: C and D;

Plus:

x. Farmer's Market: June 10 through December 14, 2014 – [Noon to 4:00 pm] Tuesdays during June, July, August and September; and on Sundays during November and December – Area: A and B and Reserve Lot.

3. 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 addition of event or change. The Zoning Administrator may administratively approve minor changes/additions.

4. Any event not herein noted that is non-agricultural or has paid parking shall be brought to the Board of Appeals, in a timely manner (no less than 30 days prior to event), for modification of special permit or administrative approval.

5. The applicant shall work with the Falmouth Police Department for any traffic detail that may be required due to events scheduled.

6. The applicant [Wendy Brown, General Manager] shall be responsible to make sure that all vendors are properly permitted through various Town departments, i.e. Building Department, Fire Department, Board of Health and events with alcohol shall have alcohol permit through the Board of Selectmen.

7. There shall be no parking or staging of vehicles of any type on Lots 359, 360 and 361 at any time.

8. There shall be no parking of commercial and/or personal trucks/vehicles on subject properties not related to the scheduled events approved herein.

9. 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 has been filed in the office of the Town Clerk with no appeal being filed, is recorded in Barnstable Registry of Deeds. A copy of said filing with the Registr