

Zoning Board of Appeals Decisions Decisions for: 01-09-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 108-13

APPLICANT: APPLIN L. HEADLEY of Falmouth, MA

OWNER: Dave Headley and Applin L. Headley

DEED/CERTIFICATE: Book 24438 / Page 323

SUBJECT PROPERTY: 33 Jamie Lane, East Falmouth, MA
Map 27, Section 06, Parcel 019, Lot 015

Under a date of November 15, 2013, the Applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-162 A. through F (1) of the Code of Falmouth to operate a landscaping home occupation on subject property known as 33 Jamie Lane, East Falmouth, Massachusetts.

A public hearing was held on January 9, 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 Matthew J. McNamara, Vice Chairman Kenneth Foreman, Clerk Scott Zylinski, Member Patricia Johnson and Member David Haddad

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

Applin Headley was present and explained to the Board that she and her husband have a small landscape company and they want to be able to park their truck and trailer on their property. She stated they have no employees, that they will not be storing any materials, chemicals or fertilizers on the property and that their hours of operation are 7:30 AM to 5:00 PM off-season and 7:30 AM to 6:00 PM during peak season – Monday through Saturday only – no Sunday work. Mrs. Headley further explained that she has a small office in the dwelling that is approximately 3% of the gross floor area of the dwelling. Section 240-162 F. (1) requires that individuals who would like to operate a home occupation on a lot that does not conform to the minimum lot dimensional requirements shall require a special permit from the Board of Appeals to allow said home occupation.

Clerk Zylinski read the Town Department referrals into the record.

Referrals submitted to the Board from the Engineering Department, Board of Health and Planning Department had no comment.

Clerk Zylinski noted that a copy of "Certificate of Registration" for the utility trailer and the 1998 Chevrolet Dump Truck was submitted to the file by the Applicant.

Board Questions:

Member Haddad asked the Applicant if they own the property.

Mrs. Headley stated yes.

Member Haddad asked if the business consisted just of the Applicant and her husband, if they will stockpile any type of material on-site, and if maintenance of the utility trailer and dump truck noted in the file will be done on-site.

Mrs. Headley stated it will be her and her husband only in the landscape operation, that they will not stockpile any material and that there will be no maintenance of vehicles used in the landscape operation

conducted on-site.

Member Haddad reviewed with the Applicant that the only vehicles to be used in the operation will be the trailer and dump truck noted in the file and the hours of operation she stated.

Member Foreman asked how many clients the Applicant currently has.

Mrs. Headley stated approximately 15 currently.

Member Zylinski asked how many personal vehicles are on-site.

Mrs. Headley stated five total: three personal vehicles [her daughter's car, Applicant's car and husband's car] plus the trailer and dump truck.

Member Zylinski asked if there was currently an accessory apartment within the dwelling and if anyone else resided on the property.

Mrs. Headley said there is no apartment and the only other person living with her and her husband is her daughter.

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

Member Haddad made a motion to close the hearing. Member Foreman seconded the motion. Motion carried 5 – 0.

Chairman McNamara 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 33 Jamie Lane in East Falmouth contains 11,229 square feet of Agricultural B zoned land that is located within the Great Pond Coastal Pond Overlay District. The Applicant applied under Section(s) 240-162 A. – F. (1) of the Code of Falmouth to allow a home occupation on an undersized lot with no more than 30% of the gross floor area within the dwelling to be used as an office area, with no employees outside of the family and with no change in the outside appearance of the property. The Applicant will be staging a utility trailer and a Chevrolet dump truck on the property on the south side of the dwelling as shown on the "Certified Plot Plan" submitted to the file drawn by Christopher Costa & Associates, Inc. dated 11/21/2006 and with a Board date 'received' stamp of November 15, 2013.

Section 240-162 of the Code of Falmouth – subsections A through E. – set forth criteria of what a home occupation may consist of to be operated on a homeowner's property. Subsection F. (1) requires an Applicant to apply to the Board of Appeals for a special permit if their property does not conform to the minimum lot dimensional requirements.

The Board finds that the subject property known as 33 Jamie Lane in East Falmouth, owned by the Applicant and her husband, is undersized and therefore requires a special permit to allow a home occupation on said property. The Board further finds that the Applicant meets the definition of what a 'home occupation' is pursuant to Section 240-13 of the Code of Falmouth - "Definitions": Use of a dwelling unit, or an accessory building, that is clearly incidental and subordinate to its use for residential purposes, by its family residents for employment involving the manufacture, provision or sale of goods and/or services. For the purposes of this definition, the home occupation must be owned and operated by the resident of the premises.

The Board finds that an area within the existing dwelling to be used as an office for the proposed home occupation is approximately 3% of the gross floor area of the dwelling as required in Section 240-160 A. of the Code of Falmouth. The Board further finds that there will be no storage or stockpiling of any materials, fertilizer or chemicals on subject property; there will be no equipment or process used within

the home occupation that creates noise, vibration, flare, fumes, odors or electrical interference; and no traffic will be generated by this home occupation that would jeopardize the traffic safety of the neighborhood pursuant to Section 240-160 B., C. and D. of the Code of Falmouth. Furthermore, the Board finds through testimony of the Applicant that there will be no employees outside of her immediate family associated with the landscape business operation proposed herein pursuant to Section 240-162 E. of the Code of Falmouth.

The Board finds that the Applicant understands that any additional equipment or vehicles to be staged on subject property will require the Applicant to return to the Board of Appeals for approval. The Board further finds that the Applicant intends to operate the home occupation Monday through Saturday from 7:30 AM to 6:00 PM, with no work conducted on Sundays. Furthermore, the Board finds that the proposed staging of the utility trailer and dump truck at the south side of the existing dwelling does not appear to derogate from the appearance of a single-family dwelling.

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 of the criteria 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 home occupation as noted herein and on plans submitted.
- B. The site is suitable for the proposed use as the property owned by the Applicant will maintain its appearance of a single-family dwelling.
- C. There will be no impact on traffic flow and safety as the Applicant will be operating the landscape business during 'normal' daily business hours and will not have any additional employees coming to or from the subject property.
- D. The visual character of the subject property will be unchanged of that as a single-family dwelling; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system will be unchanged as the special permit is for a home occupation which will not impact the septic system.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed home occupation 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.
- J. The approval of this special permit does not include any affordable housing.

Member Haddad made a motion to Grant the Special Permit with conditions. Member Foreman 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 Applin Headley (herein referred to as Applicant) under Section(s) 240-162 A. through F. (1) of the Code of Falmouth to allow a landscape home occupation on subject property known as 33 Jamie Lane, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The staging of the utility trailer and Chevrolet dump truck on subject property shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Certified Plot Plan" for 33 Jamie Lane, East Falmouth, MA drawn by Christopher Costa & Associates, Inc. dated 11/21/06 [Note: different owner name on plan but correct property] with a Board date 'received' stamp of November 15, 2013; and
- Hand drawn floor plan of existing dwelling showing the 11' x 11' room used as office area for proposed landscape home occupation with a Board date 'received' stamp of 11/15/2013.

2. The landscape home occupation represented herein shall be operated by the Applicant and her husband with no employees.

3. The hours of operation for the landscape home occupation shall be Monday through Saturday 7:30 AM to 6:00 PM. There shall be no landscape operations conducted on Sundays.

- 4. There shall be no maintenance of vehicles on subject property. Any maintenance of the utility trailer and Chevrolet dump truck shall be conducted off-site.
- 5. Any substitution or any additional equipment or vehicle used in the landscape home occupation will require the Applicant to contact the Board of Appeals office for either an administrative approval or notification that a modification of the special permit may be required.
- 6. The Applicant shall maintain the subject property so that it will continue to have the appearance of a single-family dwelling. The home occupation shall remain incidental to the use of the subject property.
- 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: 108-13

Applicant: APPLIN L. HEADLEY of East Falmouth, MA

Subject Property: 33 Jamie Lane, East Falmouth, MA
Map 27, Section 06, Parcel 019, Lot 015

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.

E. Scott Zylinski, 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 #108-13 Headley / 33 Jamie Ln / Home Occupation posted to web 1/21/14 mm