

Zoning Board of Appeals Decisions Decisions for: 06-11-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 17-15

APPLICANT(S)/OWNER: LOUIS P. ROMIZA, JR. of East Falmouth, MA

DEED/CERTIFICATE: Book 3964 / Page 187

SUBJECT PROPERTY: 84 Trotting Park Road, East Falmouth, MA
Assessor's Map: Map 34, Section 01, Parcel 028B, Lot 000

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of February 12, 2015 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3, 240-38 G. (4), 240-162 and 240-216 of the Code of Falmouth for a home occupation for limited auto salvage use with two flatbed trucks/tow trucks to be parked on parcel known as 84 Trotting Park Road, East Massachusetts.
2. 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.
3. A duly advertised public hearing was opened on April 2, 2015.
4. The public hearing was terminated on June 11, 2015 wherein the Board consisting of Chairman Kenneth Foreman, Vice Chair Kimberly Bielán, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate John Sutherland made a decision to Grant the Special Permit with conditions.
5. The applicant was represented at the hearing by Attorney Christopher Lebherz and Zoning Consultant Stephen O. McKenzie, who reviewed and discussed proposed plans with the Board.
6. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

3/23/2015 Letter dated March 13, 2015 was submitted to the file on 3/23/15 by John L. Medeiros of 80 Trotting Park Road citing disturbances by proposed home business.

Letters/E-mails/Information from Applicant/Representative(s)

4/1/2015 Information regarding application, subject property and applicant was submitted to the file by Attorney Lebherz

5/7/2015 Applicant's representative submitted 7 Titles and registrations for vehicles located on subject property as well as two trailers (two trucks and two trailers for business operation – the others are personal vehicles)

5/14/2015 Letter from applicant's representative [Attorney Lebherz] stating conditions applicant will agree to

5/14/2015 At public hearing on 5/14/15 the applicant's representative submitted copies of title and registrations (duplicate of submission on 5/7/2015)

5/26/2015 Letter from applicant's representative [Attorney Lebherz] regarding accessory structure and its existence on site

6/9/2015 Letter from applicant's representative [Attorney Lebherz] regarding Board of Health updated referral and building permit for accessory structure

Letters/Referrals/E-mails from Town Departments

2/17/2015 Referral submitted to the file by the Conservation Commission with no comment

2/18/2015 Referral submitted to the file by the Planning Department with no comment

2/19/2015 Referral submitted to the file by the Building Commissioner with no comment

3/3/2015 Referral submitted to the file by the Fire and Rescue Department stated: No issues.

3/20/2015 Referral submitted to the file by the Board of Health Agent states: Auto salvage, auto dismantling, and auto repair activities should be conducted under a roof on an impervious surface. Hazardous fluids should be properly stored and hazardous wastes must be stored in appropriate containers and disposed of in an environmentally safe manner. The business may need to register as a generator of hazardous waste. Records should be maintained documenting the use of hazardous materials (for example, gallons of unused motor oil) purchased for stock and the gallons of waste oil transported off-site and to which facility. Adequate supplies should be maintained to respond to a hazardous material accident. By this I mean absorbent pillows and pads, speedy dry granules or equivalent and personal protective gear such as chemical resistant gloves.

5/19/2015 Board of Health Agent updated the referral of 5/20/15 and stated: Revised Remarks of 3/20/15 following site visit of 5/19/2015 – The broad term "auto salvage" used above to describe the proposed business not as described by the applicant during the site visit of 5/19/15 belies the simple surgical procedure of removing the catalytic convertor and battery; the removal of these items is not truly auto salvage. I would limit my concerns to performing the work on concrete only.

5/20/2015 A memo from the Zoning Administrator to Zoning Enforcement Agent and Assistant Zoning Enforcement Agent regarding site visit conducted with Board of Health Agent

5/20/15 Photos submitted by Board staff to file of site, accessory structure and trucks and trailers on subject property

6/5/2015 Two aerial photos of subject property submitted by Assistant Zoning Officer – 1 from 2005 and one from 2014 (shows condition of site)

6/5/2015 Memo from Eladio R. Gore, Building Commissioner and Zoning Enforcement Agent regarding the accessory structure, its existence of site and permits required

Plans submitted by Applicant/Applicant's Representative

Hearing: April 2, 2015

Attorney Christopher Lebherz and Zoning Consultant Stephen O. McKenzie were present on behalf of the applicant and reviewed the existing site conditions and the proposed Home Occupation for limited auto salvage with two flatbed trucks/tow trucks on site. It was noted that the family has a hobby of racing cars which is stored and worked on in the garage attached to the dwelling and is not part of this special permit.

The Board discussed plans and asked questions of Attorney Lebherz and Mr. McKenzie. Focus was on the 'home occupation' of towing vehicles to the site to remove catalytic converters and batteries with said removal of parts being done in the yard, on the tow trailer or garage. Concern with possible leakage of fuels or liquids from the vehicles was discussed. The Board reviewed the Titles and Registrations of the vehicles on site and applicant noted the two (2) trucks and two (2) trailers used in the operation; other vehicles are personal vehicles of family members. Both trucks used in the operation are no more than 13,000 GVW.

The Board questioned the applicant on issues set forth in the Board of Health referral. Attorney Lebherz reviewed the accessory structure.

Chairman Foreman asked for public comment in support or opposition of the proposed additions.

Todd Allen of 76 Trotting Park Road stated concern with all the trailers on site.

John Medeiros of 80 Trotting Park Road stated opposition to any permit due to health hazards and noise (see letter submitted to file).

Hearing: May 14, 2015

Attorney Chris Lebherz, on behalf of the applicant, reiterated to the Board that the applicant will use two (2) trucks – an F250 and an F350 – in the home business operation as well as two (2) trailers. He explained that when the race car owned by the family is worked on in the garage attached to the dwelling, it does get noisy and they will curtail the noise to a reasonable hour. Attorney Lebherz suggested the hours of operation for the home occupation that will take place in the accessory structure be Monday through Saturday 7 am to 7 pm; that the applicant will erect a fence on the southerly property line and arborvitaes along the southwest property line; and will remove parts from towed vehicles in the accessory structure. The noise from the operation generated is primarily from a sawzall that is used to extract the catalytic converter from a vehicle.

The Board discussed traffic concerns and asked about verification on the accessory structure relative to the Board of Health referral.

Public Comment:

John Medeiros of 80 Trotting Park Road stated opposition and suggested that the work cannot be done out of a 'hut' and noted that the applicants have three (3) trucks – one has a plow on it.

Brian Medeiros stated opposition and stated operations hours of 7 am to 7 pm is too early and sited lack of permits.

Bill Peck of Falmouth stated that the race car is very loud with a spray exhaust and believes the fence won't prevent noise.

Member Bielan stated she would like to continue the hearing as the issues stated in the Board of Health referral have not been clarified. Zoning Administrator Budrow stated she will request a site visit with the Board of Health.

Member Bielan made a motion to continue the hearing to June 11, 2015 at 6:30 PM. Member Van Keuren seconded the motion. Motion carried 5 – 0.

Hearing: June 11, 2015

Attorney Chris Lebherz, on behalf of the applicant, stated that the Board of Health Agent and Zoning Administrator conducted a site visit and reviewed the accessory structure for appropriateness relative to the home occupation. He suggested that the Health Agent has submitted further information to the file after the site visit [see updated referral by Board of Health].

The Board discussed proposed business operation and asked Attorney Lebherz to address the memo from Building Commissioner Gore regarding the accessory structure.

Attorney Lebherz reviewed that the accessory structure has been on site for over ten years and it exists with a nonconforming setback of 9.3' from the property line. He suggested that the Board can determine it to be de minimus or the applicant can make it conforming. He further stated that the applicant will be amenable to resolve issue with Building Department.

Member Bielan made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 – 0.

Chairman Foreman closed the hearing.

Board discussed and noted concerns based on the type of business, complaints by neighbor and other issues. Board members expressed concerns about noise and impacts off site not conforming to the home occupation bylaw under Section 240-162 of the Code of Falmouth. The Chair suggested in light of th concerns by the Board that the special permit be limited to one year, after which the applicant may reapply.

Member Van Keuren made a motion to grant the special permit with conditions. Member Hurrie seconded the motion.

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 84 Trotting Park Road in East Falmouth contains 34,000 square feet of Agricultural B zoned land that is located within the Great Pond Coastal Pond Overlay District and a Wildlife Corridor. The applicant applied under Section(s) 240-3, 240-38 G. (4), 240-162 and 240-216 of the Code of Falmouth to allow the continued use of a limited home occupation for auto salvage use with two trucks and two trailers to be parked on subject property. The applicant has been using subject property to operate a limited salvage operation that consists of towing vehicles to the site, removing the catalytic converters and batteries for resale and then removing the vehicles. The application was recommended by the Building Department – Zoning Enforcement. It was found through the submission of information on the vehicles that neither truck used in the operation is over 13,000 GVW and therefore Section 240-38 G. (4) does not apply.

Section 240-3 of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the applicant filed under Section 240-3 due to the nonconforming setback of the accessory structure of 9.3' where a 10' setback is required. The Board further finds through the applicant's attorney's testimony that the applicant will resolve the issues of the accessory structure's existence and setbacks with the Building Department.

Section 240-162 of the Code of Falmouth sets forth criteria to allow the Board of Appeals to grant a special permit for a home occupation only after Board's consideration of said criteria.

The Board finds that the Town Departments were sent a referral for comment on the proposed or continued use of the home occupation herein described. The Board further finds that signed referrals were submitted to the file by the Building Commissioner on February 19, 2015, the Assistant Town Planner on February 17, 2015, and the Conservation Commission on February 19, 2015 and the Fire Rescue Department on February 25, 2015- all had no comment. Furthermore, the Board finds that the Board of Health submitted a referral to the file on March 20, 2015 with concerns regarding the type of home occupation and the possible presence of hazardous material on site.

The Board finds that the Building Department submitted a memo to the file on June 8, 2015 regarding the accessory structure discussed herein relative to the proposed home occupation operation and the structure's validity. The Board further finds that the Board of Health, after conducting a site visit with Appeals staff, revised the previous remarks of the March 20th referral.

The Board finds that the applicant, through testimony of the applicant's attorney, is amenable to installing a 6' fence along the southerly side yard property line as a buffer. The Board further finds through testimony of the applicant's attorney that the applicant is amenable to buffer the westerly property line with arborvitae that are approximately 5' to 6' in height. Furthermore, the Board finds that the northerly property line has sufficient buffering from the roadway [Palomino Dr.].

The Board finds that the applicant is amenable to limiting the hours of operation of the proposed home occupation and also amenable to not working on Sundays. The Board further finds that there will be only

two (2) trucks and two (2) trailers involved in the proposed home occupation herein discussed; all personal vehicles on site shall not be a part of the home occupation operation. The titles and registration of the vehicles used in the home occupation operation are noted in the file. Furthermore, the Board finds that the two (2) pickup trucks used in the operation do not exceed 13,000 GVW.

The Board finds through testimony by the applicant and the applicant's representative that the two items removed from the towed vehicles – catalytic converters and batteries – will not be stored on subject property for more than twenty-four (24) hours. The Board further finds that the vehicles towed to the site for removal of the two items noted herein shall not be stored on site more than twenty-four (24) hours. Furthermore, the Board finds that there shall be no more than two (2) towed vehicles on the site at one time.

The Board finds that the special permit shall be for only one (1) year and the applicant shall reapply to further extend the special permit.

The Board finds that the application under Section 240-38 G. (4) of the Code of Falmouth is not applicable as the vehicles on site used in the proposed home occupation are not over 13,000 gross vehicle weight.

In addition to the above findings, the Board finds that the proposed home occupation 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 home occupation as set forth herein.
- B. The site is suitable for the proposed use as the property is a residential use and the home occupation as represented herein is accessory to the primary and will not change the residential aspect of subject property.
- C. There will be no impact on traffic flow and safety entering and exiting subject property as the home occupation is operated under family members from the site and no additional trucks not affiliated with the home occupation will be used or staged on site; and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be unchanged and there does not appear to be any impact on the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is in place and not affected by the granting of this special permit.
- 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, except for the nonconformities stated herein.
- J. The approval of this special permit does not include any affordable housing.

Member Van Keuren made a motion to Grant the Special Permit with conditions. Member Hurrie seconded the motion. Vote was 4 – 1 with Member Bielan in opposition.

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 – 1 to Grant the Special Permit for one year with conditions to Louis P. Romiza, Jr. (herein referred to as Applicant) under Section(s) 240-162 of the Code of Falmouth to allow a home occupation as discussed to be conducted on subject property known as 84 Trotting Park Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The home occupation discussed and represented herein shall be conducted within the accessory structure located mid-point near the southerly side property line as shown on the plan submitted and entitled "Certified Plot Plan" prepared for Louis P. & Carol A. Romiza drawn by Cape & Islands Engineering dated 2/9/2015 with a Board date 'received' stamp of February 12, 2015.
2. The applicant will resolve the issues outlined by the Building Department in a memo dated June 5, 2015 and addressed to Sari Budrow, Zoning Administrator. The applicant shall submit any copy of a

building permit or occupancy permit issued for the accessory structure to the Board of Appeals. This special permit approval is contingent on the applicant receiving approval that the accessory structure is in compliance with Building and zoning codes.

3. There shall be no more than the two (2) pickup trucks and two (2) trailers represented to the Board with copies of registration in the home occupation operation. Any substitution of the vehicles and trailers used in the operation, a copy of the new vehicle or trailer's registration shall be submitted to the Board of Appeals for approval.

4. There shall be no trucks on subject property that exceed 13,000 GVW.

5. The only work performed within this home occupation approved herein shall be the removal of a catalytic converter and/or a battery from any vehicle towed to the site.

6. There shall be no more than two towed vehicles on the site at one time.

7. There shall be no unregistered vehicles stored on subject property.

8. All work related to the home occupation approved herein shall be conducted within the accessory structure noted as a 1,032 square foot accessory structure on the plan noted in Condition 1 above. There shall be no removal of items from a towed vehicle while staged in the yard or on a trailer – all removal of items will be conducted in the structure noted. There shall be no work relative to the home occupation conducted in either garage [attached or detached] on subject property.

9. The hours of operation for the home occupation described herein shall be 8:00 am to 6:00 pm.

10. No towed vehicles or items removed from said towed vehicles shall be stored on subject property or within the accessory structure for more than twenty-four (24) hours.

11. The applicant shall have no less than two (2) spill kits (or equivalent thereof) on site at one time.

12. The applicant shall submit a final landscape plan showing fencing and buffering as discussed with the Board. The final landscape plan shall be submitted within thirty (30) days from the filing of this Decision with the Town Clerk.

13. This special permit shall be for one (1) year. If the applicant is desirous to continue the home occupation, he/she shall submit an application with appropriate plans at least sixty (60) days prior to the expiration of this special permit (date filed with Town Clerk). The Board will review the application as well as any violation or complaint for a new special permit.

14. 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.

15. 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.)

16. This permit shall lapse one year 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: 17-15

Applicant: LOUIS P. ROMIZA, JR. of East Falmouth, MA

Subject Property: 84 Trotting Park Road, East Falmouth, MA

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 - 1 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions for one year from the date of filing with the Town Clerk (below).

Kenneth Foreman, 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 17-15 Romiza/ Filed with Town Clerk 6/24/15