

Zoning Board of Appeals Decisions Decisions for: 04-09-2015

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 19-15

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 23, 2015, 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 April 2, 2015. 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 Kenneth Foreman, Vice Chairman Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate John Sutherland

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

Clerk Hurrie read the referrals from Town Departments into the record:

A referral submitted by the Fire department states: No general concerns with attached list. The individual groups will need to contact the Fire Prevention Office before the event. Contact must be made at least 30 day prior to scheduled event. Events contacting less than 30 days risk not having the event.

A referral submitted by the Water Department states: Sari, Water Department wants to see a clear plan for protecting against back flow where water is provided to multiple vendors and operations on the site.

A referral submitted by the Engineering Department had standard comments regarding alteration to existing utilities or change in services.

Referrals submitted by the Building Department, Conservation Commission, Board of Health, Planning Department and Marine Environmental Services had no comment.

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 2015 season. The event schedule includes parking areas associated with each event and if parking fees are assessed per event.

The Board reviewed and asked Ms. Brown about new events. Ms. Brown reviewed new events and new

policies that will be in place for the Scallop Festival scheduled in September. She informed the Board that she had met with Town Departments on concerns (Fire Department, Water Department, Police, etc.).

Chairman Foreman asked if anyone present would like to speak in favor or opposition to the proposed 2015 scheduled events at the Fairgrounds.

There was no public comment.

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

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 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 2015, commencing on April 25, 2015 and ending approximately on December 1, 2015. 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 Bielan made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 3/10/2015 with a Board date 'received' stamp of March 17, 2015.
2. The events and parking schedule calendared for 2014 as represented to, and approved by this Board are as follows:
 - a. April 25 – 25, 2015 – Nose Work Dog Trials [8:30 am – 5:30pm] – Reserve Lot E
 - b. May 8 1 10, 2015 – Boy Scouts [All day] – parking is non-paid – Area A – D, Lots 1-4 and E;
 - c. May 16, 2015 – Master Gardeners [8 am – 2 pm] – non-paid parking – Area A & C and Lot E;
 - d. May 15 – 17, 2015 – Amateur Radio – [9:00 AM to 5:00 PM], parking is non-paid – Main Office – Lot E;
 - e. May 23, 2015 – Memorial Concert – [12 pm to 4 pm] – non-paid parking, Area A & B, Lot 1 and E;
 - f. May 31, 2015 – JDRF Walk – [9:00am t 5:00 pm] – parking is non-paid – Area: A, B, C, D – Lot 4;
 - g. June 7, 2015 – Horse Show – [7:00 AM to 6:00 PM] – parking is non-paid – Area A, B – Lot E;
 - h. June 12 – 14, 2015 – Agility Dog Show – [7:00 am – 6:00 pm] non-paid parking – Area A, B, C, D – Lot 4;
 - i. June 19 – 20, 2015 – Relay For Life Walk - [Overnight], non-paid parking, Area B, C, D – Lot 4;
 - j. June 20, 2015 – 4-H Dog Show - [8:00 am to 5:00 pm] – non-paid parking, Area A - Lot E;
 - k. June 21, 2015 – Mashpee Triathlon - [6:00 am – 3:00 pm] Parking: non-paid – Area - Lot 1;
 - l. June 28, 2015 – Horse Show [7:00 am – 6:00 pm] Parking: non-paid – Area A and B, Lot 1 and E;
 - m. July 3, 2015 – Mashpee PowWow – [10:00 am to 10:00 pm] – No Alcohol – Area B, C and D – Lot 1 and E;

- n. July 20- 26, 2015 – Barnstable County Fair – [4 pm to 10 pm Mon thru Thurs, Noon – 11 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;
- o. August 4 – December 2, 2015 – 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;
- p. August 1, 2015 – The Real Cape.Com Music Festival - [12:00 pm to 10:00 pm] – Parking: non-paid; Area A, B, Reserve E and Lot 1;
- q. August 8, 2015 – MV Summer Madness - [Noon – 8:00 pm] – non-paid parking – Area: B, C, D Lot 1, 3 & 4;
- r. August 15 - 16, 2015 – Race Team Road Race [10:00 am to 6:00 pm] Parking is non-paid; Area: B, C & D, Lot 4;
- s. August 22, 2015 – Inflatable 5K – [8:00 am to 3:00 pm] – Parking is non-paid; Areas A, B, C, D – Lot 1,2,3,4 and EE
- t. August 28, 2015 – MA St. Police Boxing – [6:00 pm to 10:00 pm] – Parking is non-paid; Areas A, C, D – Lot 4
- u. August 29, 2015 – Food Truck Festival [10:00 am to 6:00 pm] – Parking is non-paid; Area A, and C and Lot E, 1, 2 and 4;
- v. August 30, 2015 – Fieldcrest Farm Horse Show - [7:00 am to 6:00 pm] non-paid parking, Area A and B – Lot 1 and E;
- w. September 10 and 13, 2015 – Cranberry Dog Show [7:00 am to 6:00 pm] – non-paid parking – Area B, C, D, Lot 4;
- x. September 18 - 20, 2015 – Cape Cod Scallop Festival [10:00 am to 10:00 pm] – Paid and non-paid parking – Area: A, B, C, D and Lots 1, 2, 4 and E
- y. September 26 – 28, 2015 – Cape Cod Brew Fest [12:00 pm to 9:00 pm] – Parking is non-paid; Area C, D and Lot 4;
- z. September 27, 2015 – 5K Brew Run – [11:00 am to 5:00 pm] – Parking is non-paid; Areas A, B, C and D – Lot 4;
- aa. October 3 – 4, 2015 – Whiffle Ball Tournament – [9:00 am to 8:00 pm] – Parking is non-paid; Areas B, C, D and Lot 4
- bb. October 11, 2015 – Fieldcrest Farm Horse Show – [7:00 am to 6:00 pm] – non-paid parking, Area A and B – Lot 1 and E; and
- cc. October 24, 2015 – MA State Track Association [12:00 pm to 10:00 pm] –Parking is non-paid; Area A, B, C, D, Lot 1, 4 and E.

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 Registry of Deeds shall be submitted to the Board of Appeals forthwith.

10. This permit shall expire on December 31, 2015. Applicant shall return to the Board of Appeals no later than February 15, 2016 to apply for a special permit for the subject properties if applicant is desirous of continued use on said properties for the next year.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 19-15

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Applicant: Barnstable County Agricultural Society

Address: 1220 Nathan S Ellis Highway, East Falmouth, MA
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Map 18, Section 03, Parcel 007, Lot 000

Action: The Board of Appeals, by the signature below, being present, represents the vote of the Board as follows for the above referenced:

Vote: 5 – 0 to Grant the Special Permit as represented herein based on the above findings and with above conditions.

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 Town Clerk.

Notes:
BCAS Decision 2015 Schedule filed 4/9/15