

Zoning Board of Appeals Decisions Decisions for: 05-05-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 24-15

APPLICANT(S): CHRISTIAN GIARDINI of Teaticket, MA

OWNER: Kenneth Silverman, Jr.

DEED/CERTIFICATE: Book 4686 / Page 50

SUBJECT PROPERTY: 258 Teaticket Highway, Teaticket, MA
Assessor's Map: Map 34, Section 01, Parcel 020A, Lot 000

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of March 6, 2015 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-160 A. and 240-3 of the Code of Falmouth to state a 20' x 10' container and an 8' x 10' freezer at the north corner of the rear building, operating as a Bait & Tackle Shop, on subject property located at 258 Teaticket Highway, Teaticket, 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 23, 2015.
4. The public hearing was terminated on April 23, 2015 wherein the Board consisting of Vice Chair Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren, Associate Mark Cool and Associate John Sutherland made a decision to Grant the Special Permit with conditions.
5. The applicant was present at the hearing and 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

4/3/2015 E-mail letter from James Montemorano with attached photos and comments from Condo Association

4/6/2015 James Montemorano submitted, on behalf of the Trotting Park Condominium Trust a letter of concern with three attached exhibits (photos and plot plan)

4/22/2015 Duplication of e-mail received 4/3/2015 (above), submitted again 4/22/15 by James Montemorano with attached photos of subject building regarding setback concerns

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

3/6/2015 Photos from applicant showing subject building, freezer and area (submitted with application)

4/21/2015 E-mail from applicant in explanation of work taking place on subject property and discussion with Condo Association representative

Letters/Referrals/E-mails from Town Departments

3/11/2015 Referral submitted by Building Commissioner Gore stating: Please note Site Plan depicts adjacent business storage containers encroach on neighboring property. That encroachment is being addressed with the owner of that business by this department.

3/11/2015 Referral submitted by Planning Department with no comment

3/11/2015 Referral submitted by Conservation Commission with no comment

3/18/2015 Referral from the Fire Department stating: The Fire Department has no issues with this property.

4/2/2015 An E-mail to Board of Appeals Administrator by the Board of Health Agent, Scott McGann listed reasons why the Board of Health approves the proposed location of outside storage freezer and container

4/10/2015 A referral submitted by the Engineering Department had standard comments

Plans submitted by Applicant/Applicant's Representative

3/6/2015 "Site Plan" prepared for Christian Giardini of 258R Teaticket Highway, Falmouth, MA drawn by J.E. Landers-Cauley, P.E. dated 2/23/2015 and revised on 3/4/2015 and with a Board date 'received' stamp of 3/6/2015

Hearing:

Applicant, Christian Giardini, was present and reviewed the existing site conditions and the proposed outside storage of an 8' x 10' freezer and a 20' x 10' container [storage] next to the rear building on the northeasterly side. He explained that the freezer is for bait that he sells in his bait and tackle business operation. Mr. Giardini stated he has been working with the condo association [16 Trotting Park Road] and the zoning enforcement office to abate violations that he did not know existed since he has been there for over 8 years. The location of the freezer and container on the "Site Plan" will be revised showing a new location just to the side of the building so that setback to rear property line will not be impacted [not closer than 15.6'.

The Board discussed proposed location of freezer and container and cleanup with Mr. Giardini. All concerns and questions were addressed.

Vice Chair Bielan asked for any public comment in support of the proposed outside storage.

There was no comment.

Vice Chair Bielan asked for any public comment in opposition of the proposed outside storage.

James Montemorano with the Trotting Park Condo Association at 16 Trotting Park Road stated the condo development is in opposition to the location of storage units and has issues as outlined in the information he submitted to the file and asks that the Board condition three items: 1) stake property boundary and put up a temporary snow fence and restore property by removing debris and 6' x 8' panels, footings, etc.; 2) that the condo trustees and its landscape contractor be given access to the rear of subject property to undertake necessary work; and 3) the boundary is further augmented by installing 6, 6' u-pickets (steel stakes) on condo property – 1 southwest corner, 1 northeasterly at the 15.6' vector (closest point building comes to property line), 1 at surveyors 11.2' vector intersection, 1 at mid-point adjoining condo property and 264 Teaticket and 258 Teaticket properties, 2 stakes north of that point vortex 15' and 30' working northeast. These stakes will serve as a future reference for setbacks.

Roland Lamirande, owner of Roland's Catering operating from same building as applicant, explained to the Board that they [he and applicant] are working to get all issues resolved with the abutters. Mr. Lamirande stated he has been in same location for years, prior to the condos being constructed and that some debris comes from other parties and not the two business on site.

Mr. Giardini reviewed the letter he submitted on April 21, 2015 to the Board explaining that all issues are being addressed and he has planted trees to replace a pine tree removed and the three trees he planted were a type of tree the abutters requested and were planted where the condo association representative wanted them located.

Board discussed:

Member Cool stated he believes the applicant is working to abate the violations and is working with the abutters to restore the property. He said he is in favor.

Member Sutherland said he agreed.

Member Bielan said that she is in favor of the application as well and stated that the requests made by Condo Association is not under the purview of this Board and cannot condition installation of items on properties outside of the application by a tenant on subject property.

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

Vice Chair Bielan 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 258 Teaticket Highway in Teaticket 11,200 square feet of Business 2 zoned property that is located within the Little Pond Coastal Pond Overlay District. There are two buildings on subject property with three business operations; two of which are located in the rear building that is subject of this application. The applicant is a tenant. The owner of subject property is also the owner of abutting property at 264 Teaticket Highway that is a residence. There is parking available at 264 Teaticket Highway that is used by the businesses operating at 258 Teaticket Highway as allowed by the property owner and noted on the plan submitted. The applicant applied under Section(s) 240-160 A. of the Code of Falmouth to allow the outside storage of a freezer and a container. This special permit is for one year only and continued staging of the freezer and container require a yearly filing of an application prior to the expiration date of each special permit under this section.

Section 240-160 of the Code of Falmouth – "Temporary and conditional structures and uses.", Sub-section A. allows temporary and conditional structures and uses that do not conform to the regulations be allowed by special permit for one year, provided that no permit shall be renewed until all abutters have been notified and public notice given according to MGL Chapter 40A, Section 11.

The Board finds that the applicant submitted a "Site Plan" drawn by J. E. Landers-Cauley, P.E. dated 2/23/15 that shows the proposed location of the 8' x 10' freezer and the 20' x 10' storage container on subject property. The Board further finds that according to the Zoning Administrator there was confusion as to the setback of the structures as the freezer exceeds the existing 15.6' setback which is nonconforming as the property is zoned Business 2 and requires a 20' setback under Section 240-68 B. of the Code of Falmouth; the proposed freezer would have a setback of 11.2' which is more nonconforming. Furthermore, the Board finds through testimony by the applicant that he is amenable to moving the freezer and storage container to the northeasterly side of the building so that they are no closer than the existing 15.6' setback and having the "Site Plan" revised showing new location as discussed herein.

The Board finds that the new proposed location as pointed out on the plan by the applicant will be an improvement. The Board further finds that the applicant will have the "Site Plan" revised and approved by Building Commissioner Eladio Gore and administratively approved by the Zoning Administrator. Furthermore, the "Site Plan" will show that there will be 23 parking spaces maintained on subject property.

The Board finds through testimony of the applicant and the Zoning Administrator that the applicant is working with the Zoning Enforcement Department to abate all violations of encroachment and to clear out debris from behind the building. The Board further finds through testimony by the Condo Association

representative that the applicant has had discussions with the association and has planted trees to help to screen the site. Furthermore, the Board finds that the requests of the Condo Association to have the applicant install u-pickets (steel stakes) on the association's property and to allow access to subject property is beyond the purview of this Board.

The Board finds that the applicant is a tenant of subject property and that any requests for trespass onto subject property or location of items stored on site shall be approved by the property owner.

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 outside storage of the 8' x 10' freezer and a 10' x 20' storage container as the location will not be an encroachment into a nonconforming setback and the parking spaces on site will be maintained at the existing number of 23.
- B. The site is suitable for the proposed use as the property is zoned Business and the storage is allowed through a yearly special permit under Section 240-160 A. of the Code of Falmouth.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of businesses on the property and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be improved with the removal of debris; 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 governed by the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing businesses on site.
- G. The proposed outside storage of the two units 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 Cool made a motion to Grant the Special Permit with conditions. Member Hurrie 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 that Special Permit to Christian Giardine (herein referred to as Applicant) under Section(s) 240-160 A. of the Code of Falmouth to allow the outside storage of an 8' x 10' freezer and a 10' x 20' container at the rear building on subject property known as 258 Teaticket Highway, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The location of the outside storage of the 8' x 10' freezer and the 10' x 20' container shall be as represented to the Board – at the northeasterly side of the existing building on subject property. The "Site Plan" submitted with the application shall be revised showing the accurate location of both units. The revised "Site Plan" shall be submitted to the Board of Appeals for approval by the Building Commissioner and the Zoning Administrator.
2. The revised "Site Plan" shall show that there are 23 parking spaces in total between 264 and 258 Teaticket Highway. Parking is shared by the tenants at both properties as stated in a letter submitted to the file by Kenneth Silverman dated 12/16/2014 and received by the Board on 12/17/2014.
3. This special permit is good for one year from the date this Decision is filed with the Town Clerk. If the applicant wishes to continue the outside storage of the two units described herein, the applicant shall apply to the Board of Appeals at least forty-five (45) days prior to the expiration date of this special permit.
4. 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.
5. 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.)

6. 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: 24-15

Applicant: CHRISTIAN GIARDINI of Teaticket, MA

Subject Property: 258 Teaticket Highway, Teaticket, MA
Map 34, Section 01, Parcel 020A, Lot 000

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 Conditions.

Terrence J. Hurrie, 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:

#24-15 Giardini SP