

Zoning Board of Appeals Decisions Decisions for: 05-27-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 25-15

APPLICANT(S)/OWNER: SAVON HATEM, LLC of East Falmouth, MA

DEED/CERTIFICATE: Book 28522 / Page 298

SUBJECT PROPERTY: Lot 3 off Thomas B. Landers Road, East Falmouth, MA
Assessor's Map: Map 15, Section 03, Parcel 021, Lot 003

OVERLAY DISTRICT(S): NHESP (Natural Heritage and Endangered Species Program) and Wildlife Corridor

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) 240-57 H. of the Code of Falmouth to construct a 5,000 square foot building for offices and parking of fuel trucks on property zoned Light Industrial A known as Lot 3 off Thomas B. Landers Road, East Falmouth, 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 May 14, 2015 wherein the Board consisting of Vice Chair Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren and Associates Mark Cool and John Sutherland (sitting as voting members) made a decision to Grant the Special Permit with conditions.
5. The applicant was represented at the hearing by Halim Choubah, P.E. of Choubah Engineering Group, P.C., 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

None

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

3/20/2015 E-mail from staff to applicant's representative (H. Choubah) regarding referral from Fire Rescue Department – and response

3/23/2015 E-mail from applicant's representative to Fire Rescue Dept. regarding referral

3/24/2015 E-mail between Fire Rescue Department and applicant's representative with plan of building attached

4/10/2015 Copy of letter to applicant from Division of Fisheries & Wildlife regarding applicant's NHESP application with decision of "will not result in a prohibited taking" – submitted by applicant's

representative

4/27/2015 E-mail from applicant's representative to Falmouth Fire Rescue Department asking for further details on referral submitted to ZBA – with response from Fire and Rescue on April 29, 2015

5/8/2015 E-mail to ZBA Administrator from applicant's representative regarding 5/7/15 letter from Fire Rescue Dept. stating no objections to requirements

Letters/Referrals/E-mails from Town Departments

3/10/2015 Referral submitted by the Building Commissioner with no comment

3/11/2015 Referral submitted by the Planning Department's Assistant Town Planner that states: The Planning Board will be conducting a 'Site Plan Review' beginning March 17, 2015.

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

3/18/2015 "Site Plan Review" Decision from Planning Department

3/19/2015 Referral submitted from the Falmouth Fire Rescue Department with comments (see letter in file)

3/24/2015 Referral submitted by the Marine & Environmental Services with no comment

4/13/2015 Referral with memo attached submitted by Scott Schuler of the Engineering Department (see file)

4/13/2015 Referral from the Board of Health Agent David Carignan with comments and concerns regarding project

4/21/2015 Letter to ZBA Administrator from Falmouth Fire Rescue Department regarding application and applicant's response

5/7/2015 Letter from the Falmouth Fire Rescue Department updating earlier referral with requirements for proposed building and use per Building Code.

Plans submitted by Applicant/Applicant's Representative

3/6/2015 "Proposed Fuel Tanker Terminal Facility Thomas B. Landers Road West Falmouth, Massachusetts 02536" – consisting of Sheets 1 of 15 through 15 of 15 all dated 2/18/2015 showing site layout, grading/drainage, septic details, landscaping and building floor plans/elevations as drawn by Choubah Engineering Group, Inc. and stamped by Halim Choubah, P.E. - all with a Board date 'received' stamp of March 6, 2015

5/11/2015 "Proposed Site Layout" – revised Sheet 4 of 15 dated 2/18/15 with no revision date, not stamped, showing the parking of 3 trucks outside of building and 2 trucks within building, as well as traffic pattern on site – with a Board date 'received' stamp of May 11, 2015

Hearing: April 23, 2015

Halim Choubah, P.E. was present on behalf of the applicant, Savon Hatem, LLC and reviewed the existing site conditions and the proposed building and office space on the 1.8 acre lot. John Hatem of Savon Hatem, LLC was also present. Mr. Choubah explained that on the first floor there are two bays proposed for fuel truck storage and 1,250 square feet of office space; on the second floor there is 1,250 additional square feet of office space proposed. He reviewed the plan noting 12 parking spaces for employees and landscaping. A water line will be brought to the property, a septic system installed, drainage will be contained on-site and a lighting plan will be submitted.

The Board discussed plans, hours of operation, site issues and Fire Department referral with Mr. Choubah.

Mr. Choubah addressed the Board's questions including office use for dispatch and office staff for fuel

business, hours of operation from 8 am to 5 pm for office staff and varied hours for trucks (4am to 11 pm or later). He informed the Board that Savon Hatem, LLC will be the only business on site and space in building will not be leased/rented and that the trucks on site will be owned by Mr. Hatem – not storage of other trucks on site.

The Board requested further information on the number of trucks and size of trucks with location of parking said trucks on site and further information on Fire Rescue Department referral.

Chairman Foreman asked for any public comment in support or opposition of the proposed additions. There was no public comment.

Member Cool made a motion to continue the hearing to May 14, 2015 at 6:30 PM. Member Van Keuren second the motion. Motion carried 5 – 0.

May 14, 2015 Hearing:

Halim Choubah, P.E. was present on behalf of applicant Savon Hatem, LLC. John Hatem of Savon Hatem, LLC was also present. Mr. Choubah reviewed the site plan showing the parking of three trucks on-site, with two being stored in the building. The size of the trucks are approximately 55' x 8'. Mr. Choubah stated that he has discussed with Lieutenant Mel Trott the most recent correspondence submitted to the file from the Falmouth Fire Rescue Department [dated May 7, 2015] and the applicant agrees with all the requirements stated in the letter and will comply with all local and state fire codes and asked the Board to include the fire department correspondence as part of the conditions in the approved special permit.

Board Discussion:

Member Cool reviewed the site for parking of five trucks (including 2 within the building) as plan shows. He said the Fire Rescue Department did not limit amount of trucks that can be parked just that no parking of trucks within 18' of the building for fire access. Mr. Cool stated that he does not want the site inundated with large trucks.

Member Bielan stated she is comfortable with conditioning five tanker trucks to be stored on site and if the applicant wishes to increase the number then a modification can be made to the Board; the applicant has more property on site that could be cleared and used for parking of tanker trucks.

Mr. Choubah stated that it is not a parking issue, it is a capacity of tanks issue on site which is why the applicant is now required to go before the Board of Selectmen for a license that limits the amount of fuel and storage on site (527 CMR 1 table 1.12.8.50). This requirement was based on recommendations from the Fire Rescue Department (see letter of May 7, 2015 from Lt. Mel Trott, Fire Prevention Officer).

Member Cool made a motion to close the hearing. Member Hurrie 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 known as Lot 3 off Thomas B. Landers Road in East Falmouth contains 1.8 acres of Light Industrial A zoned land that is located within the Wildlife Corridor and the Natural Heritage for Endangered Species (priority) Program. The applicant applied under Section(s) 240-57 H. of the Code of Falmouth to construct a building with a 5,000 square footprint (first and second floor 6,250 square feet) for offices and parking of fuel trucks. The subject property is vacant land with a portion of it proposed to be cleared for location of building and uses. The referral from the Marine and Environmental Services had no comment and this property being in the Wildlife Corridor therefore did not have a designation of a wildlife corridor according to the plan submitted. However, the side and rear setback requirements in this Light Industrial A zoned land is 35 feet and lends to migration for wildlife. The applicant submitted a letter from the Division of Fisheries and Wildlife dated April 10, 2015 regarding applicant's application to that department relevant to the Natural Heritage of Endangered Species Program. The Division

determined that the project as proposed will not result in a prohibited "take". The proposed office building has a footprint of 5,000 square feet. The first floor shows two bays that will accommodate two fuel tanker trucks and an office space of approximately 1,250 square feet of space; and office space on the second floor of approximately 1,200 square feet.

Section 240-57 of the Code of Falmouth – "Special permit uses." [under Light Industrial A] sets forth uses allowed on special permit from the Board of Appeals. Sub-section H. lists 'fuel'.

The Board finds that the subject property is located within a Light Industrial A zone and the application is therefore appropriately before the Board of Appeals. The Board further finds that the proposed building along with the staging of fuel tanker trucks on site has been reviewed by all Town Departments according to referrals submitted to the file. Furthermore, the Board finds that the Planning Board has held hearings under "Site Plan Review" and rendered a decision which was submitted to the file and taken under consideration by this Board.

The Board finds that the activities proposed on subject property are in keeping with the general area and in keeping with the intent of the Code of Falmouth. The Board further finds through testimony by the applicant, that applicant will be using all office and storage space on site (interior and exterior) and not renting/leasing to any other entity.

The Board finds through testimony from the applicant's representative that only light maintenance of the fuel tanker trucks will be done within the building; there will be no maintenance of trucks conducted on the outside of the building. The Board further finds that snow will remain on site when plowed and will not impact the path of travel by trucks around the building, including the 18' clearance to the building required by the Fire Rescue Department. Furthermore, the Board finds through testimony by the applicant's representative that all stormwater will be contained on site and there will be no runoff onto abutting property or roadway.

The Board finds through testimony by applicant's representative and letter submitted to the file from the Falmouth Fire Rescue Department that the applicant has discussed proposed plans with the Fire Rescue Department and applicant is amenable to all recommendations and requirements stated in the letter dated May 7, 2015.

In addition to the above findings, the Board finds that the proposed building and uses on site stated herein 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 building that is in compliance with all setbacks pursuant to Section 240-68 A., B. and C. of the Code of Falmouth; in compliance with lot coverage requirements under Section 240-69 A. of the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned Light Industrial A and Section 57 H. of the Town Code requires a special permit through the Board of Appeals.
- C. There will be no impact on traffic flow and safety as this site is off a well-traveled road with mostly commercial operations; the number of employees proposed is minimal and the number of fuel tanker trucks on site is limited.
- D. The visual character of the subject property will be improved and there does not appear to be any impact on the visual character of the area; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system has been reviewed by the Board of Health and will be signed off by them prior to issuance of a building permit.
- F. There will be adequate utilities to subject property by virtue of application to appropriate Town Departments.
- G. The proposed building construction and use discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was Site Plan Review by the Planning Board which this Board took into consideration prior to Decision.
- 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 the Special Permit to Savon Hatem, LLC (herein referred to as Applicant) under Section(s) 240-57 H. of the Code of Falmouth to construct a building for offices and parking of fuel trucks on a 1.8 acre lot zoned Light Industrial A, known as Lot 3 off Thomas B. Landers Road in East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The building location, all setbacks, height of building, lot coverage and use of building and lot shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Proposed Fuel Tanker Terminal Facility Thomas B. Landers Road West Falmouth, Massachusetts 02536"
– consisting of Sheets 1 of 15 through 15 of 15 all dated 2/18/2015 showing site layout, grading/drainage, septic details, landscaping and building floor plans/elevations as drawn by Choubah Engineering Group, Inc. and stamped by Halim Choubah, P.E. - all with a Board date 'received' stamp of March 6, 2015

- "Proposed Site Layout" – revised Sheet 4 of 15 dated 2/18/15 with no revision date, not stamped, showing the parking of 3 trucks outside of building and 2 trucks within building, as well as traffic pattern on site – with a Board date 'received' stamp of May 11, 2015

2. There shall be no leasing of office space within the building.

3. There shall be no cooking facilities installed in the office space on the second level.

4. There shall be no habitable space created within the office spaces within the building.

5. Light maintenance of trucks to be done within the garage space of building.

6. There shall be no more than five (5) fuel tanker trucks stored on site, which shall include the two stored within the building.

7. All stormwater runoff shall be contained on site.

8. The applicant shall install a sprinkler system and a fire alarm system with monitoring of said system(s) stated in the May 7, 2015 letter from the Falmouth Fire Rescue Department.

9. The applicant shall obtain a license through the Board of Selectmen regarding the capacity of fuel tanker trucks on subject property; and obtain a permit for same from the Fire Rescue Department.

10. The applicant shall maintain an 18 foot clear access fire lane around the building that will never be obstructed by parked vehicles.

11. The applicant shall install a fire hydrant on Thomas B. Landers Road at the corner of the entrance to subject property with approval from the Water Department and the Falmouth Fire Rescue Department.

12. 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.

13. The Applicant shall meet the requirements of the DPW Water Division.

14. 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.)

15. 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: 25-15

Applicant: SAVON HATEM, LLC of East Falmouth, MA

Subject Property: Lot 3 off Thomas B. Landers Road, East Falmouth, MA
Map 15, Section 03, Parcel 021, Lot 003

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.

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:

25-15 - Savon Hatem, LLC - SP