

## Zoning Board of Appeals Decisions Decisions for: 05-28-2015

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 37-15

APPLICANT/OWNER: KENNETH R. DULGARIAN, of Providence, RI

DEED/CERTIFICATE: Book 22964 / Page 134

PROPERTY ADDRESS: 335 Quaker Road, North Falmouth, Massachusetts  
Map 13, Section 16, Parcel 000, Lot 249

Under a date of April 21, 2015 the Applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-160 A. of the Code of Falmouth to allow seasonal parking for a fee on residential property located at 335 Quaker Road, North Falmouth, Massachusetts.

A public hearing was opened on May 28, 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, at the Board's discretion, relevant and appropriate testimony will be heard.

Board Members sitting: Chairman Kenneth Foreman, Clerk Terrence J. Hurrie, Member Ed Van Keuren, Associate Mark Cool and Associate John Sutherland (Associates sitting as voting members)

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

Attorney Christopher Lebherz was present on behalf of the Applicants Kenneth Dulgarian and his son Harry Dulgarian, who were also present. Attorney Lebherz reviewed the request for a special permit to conduct seasonal parking on residential property owned by the Applicant. Attorney Lebherz explained to the Board that the request is the same as was submitted the past 6 years for the seasonal permit to restrict the parking of seven (7) cars on subject property for a fee.

Attorney Lebherz stated everything is the same as previous years, including hours of operation from 9:00 AM to 7:30 PM daily; location and number of parked vehicles; and that there is no signage

Chairman Foreman asked if anyone present would like to speak in favor or opposition. There was no public comment from any interested party or abutter.

Member Sutherland 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 property located at 335 Quaker Road in West Falmouth contains 11,168 square feet of Residential C zoned land that is not located in any overlay district. There was a previous special permit on subject property, #2968, allowing the dwelling to be used as a guesthouse (boarding house); and a special permit, #33-99, allowing the demolition of the boarding house and construction of a five bedroom single-family dwelling. The Applicant applied under Section(s) 240-160 A. of the Code of Falmouth to allow the seasonal use of parking for a fee on subject property. The Applicant and son have been issued a special permit since 2009 during summer months to park seven (7) vehicles at the southerly side property line of subject property within the property boundaries and to charge a fee. The use is proposed during the summer season for approximately eleven weeks, and will operate from 9:00 AM to 7:30 pm

daily. There is an Order of Conditions on subject property issued by the Conservation Commission (see referral). Across the street from the subject property is a Town Beach and parking lot (for a fee), as well as a hotel with conference center; the proposed parking on subject property is proposed to be used by beach-goers. The plan of the property and proposed use location submitted to the file shows a one-way in and one-way out driveway for said use (see plan entitled "Plan of Proposed Parking on Existing Pervious Surface", drawn by BSS Design, dated October 30, 2009 and revised January 31, 2012).

Section 240-160 A. of the Code of Falmouth "Temporary and conditional structures and uses" state: Temporary and conditional structures and uses that do not conform to the regulations herein prescribed 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 permit shall be renewed until all abutters have been notified and public notice given in the manner provided in MGL C. 40A.

The Board finds that the proposed parking for a fee is a temporary (seasonal) use that does not conform to the regulations prescribed in the residential district. The Board further finds that yearly approval for a special permit for this temporary (seasonal) use is required pursuant to Section 240-160 A. of the Code of Falmouth.

The Board finds that the proposed parking for a fee during the summer months is not substantially more detrimental to the single-family use than what currently exists on site off Quaker Road. The Board further finds that the subject property has one immediate abutter who is located on the opposite side of the property from where the parking is proposed.

The Board finds that the Applicant is proposing the parking for a fee on a daily basis from 9:00 AM to 7:30 PM from June 26, 2015 through September 8, 2015 (day after Labor Day).

The Board finds that the Applicant, at this time, does not see a need for signage on site and proposes none. The Board further finds that the Applicant does understand that if in the future they desire a sign, an application to the Design Review Committee would be required.

The Board finds that the Applicant's personal vehicles are usually parked within the existing garage or at the southwest corner of the property in the driveway area.

The Board finds that the site is adequate and suitable for the proposed temporary (seasonal) use for parking of vehicles based on the certified plot plan submitted (noted herein) and reviewed by the Board. The Board further finds that the proposed parking plan (noted herein) needs to be revised showing seven vehicles at the location on subject property discussed herein.

The Board finds that Quaker Road is busy during the summer season by residents and visitors alike as the Town Beach is located across the street from the subject property. The Board does have a concern about the traffic but feels that the proposed does not increase any traffic or negatively affect the amount of traffic existing during the summer months. The Board further finds that the area is monitored by the police department. Furthermore, the Board finds that there has been no issues or complaints reported regarding parking for a fee on subject property.

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 parking for a fee on subject property and finds the granting of this permit will be in harmony with the purpose and intent of the Bylaw.

Member Sutherland 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 voted 5 - 0 to Grant the Special Permit to Kenneth R. Dulgarian (herein referred to as Applicant) under Section(s) 240-160 A. of the Code of Falmouth to allow seasonal parking of seven vehicles for a fee on subject property known as 335 Quaker Road, West Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The location of seven vehicles parking for a fee shall be the first seven vehicles parked closest to Quaker Road at the southwesterly corner of the property as shown on a plan submitted to the file entitled "Plan of Proposed Parking on Existing Pervious Surfaces" prepared for Kenneth R. Dulgarian, Lots 249, 250 and 251, #335 Quaker Road, drawn by BSS Design, dated October 30, 2009 with a final revision date of January 31, 2012 and a Board date 'received' stamp of April 21, 2015.
2. There shall be no more than seven (7) vehicles parked for a fee allowed on subject property at one time. There shall be no parking of vehicles in the vegetated wetlands which is shown on the plan delineated by a dotted line towards the rear of the property and noted as '50' offset BVW'.
3. There shall be no employees hired relative to the parking of vehicles for a fee as approved herein. The parking of vehicles operation shall be monitored by Applicant/Owner, Mr. Kenneth Dulgarian.
4. The parking for a fee of vehicles operation shall be from 9:00 AM to 7:30 PM daily and only from June 26, 2015 to September 8, 2015.
5. This Special Permit is valid only for the dates in Condition 4 above. If the Applicant is desirous of continuing the use for the 2016 year, an application will be required to be submitted to the Board prior to March of 2016.
6. This Special Permit is not transferrable. This Special Permit is to the Applicant only and shall not transfer through any type of lease or sale of 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 September 8, 2015.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 37-15

Applicant: KENNETH R. DULGARIAN of Providence, RI

Address: 335 Quaker Road, North Falmouth, Massachusetts  
Map 13, Section 16, Parcel 000, Lot 249

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:**

#37-15 Sp / Dulgarian / Filed w/ T.C. on 6/9/15