

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

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 39-15

APPLICANT(S)/OWNER(S): VISHAL SHUKLA & PARESH PATEL of Forestdale, MA

DEED/CERTIFICATE: Book 28518 / Page 165

SUBJECT PROPERTY: 714 West Falmouth Highway, West Falmouth, MA
Assessor's Map: Map 24, Section 18, Parcel 001A, Lot 000

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 24, 2015 the applicants applied to the Zoning Board of Appeals for a Special Permit pursuant to modify Condition 7 of special permit 57-05 to allow sales of lottery tickets as well as items previously approved in special permits 2270, 18-97, 57-05 and 168-05 on subject property known as 714 West Falmouth Highway, West Falmouth, MA.
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 May 28, 2015.
4. The public hearing was terminated on May 28, 2015 wherein the Board consisting of Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Van Keuren and Associate Members Mark Cool and John Sutherland, sitting as voting members, made a decision to Grant the Special Permit with conditions.
5. The applicants were present at the hearing and reviewed and discussed the request to have lottery ticket sales on subject property as well as other items previously granted through special permits.
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(s)/Representative(s)

4/24/2015 Application, "Site Plan", and list of requested sundries to be sold at service station's convenience store and a check for the hearing process submitted by applicant.

5/27/2015 Applicant submitted a copy of the application to the Massachusetts State Lottery Commission for the right to sell lottery tickets at the service station's convenience store. Application notes applicant's corporate name as New Falmouth Corp, d/b/a Express Mart.

Letters/Referrals/E-mails from Town Departments

4/27/2015 A referral submitted to the file by the Assistant Town Planner, Marlene McCollem, with no comment.

5/7/2015 A referral submitted to the file by the Building Commissioner, Eladio Gore, with no comment.

5/15/2015 A letter dated May 15, 2015 from the Falmouth Fire Rescue department in response to a referral request submitted to the file stating that the Falmouth Fire Rescue Department has no concerns with the proposed.

5/20/2015 A referral submitted to the file by the Board of Health Agent, David Carignan, with no comment.

Plans submitted by Applicant/Applicants' Representative

4/24/2015 "Site Plan" of 714 West Falmouth Highway drawn by Tyree of Webster, MA with no certification - dated 12/17/2012;

Hand drawn floor plan of the convenience store on subject property with a Board date 'received' stamp of April 24, 2015; and

"Proposed Site Plan" of 714 West Falmouth Highway, W. Falmouth, Massachusetts drawn by Tyree Engineering, P.C. dated 11/4/98 with final revision date of 10/8/1997 - signed and certified by Douglas W. Heald, P.E. on 3/10/2005 with a Board date 'received' stamp of April 24, 2015.

Hearing:

Vishal Shukla and Paresh Patel, applicants, were present and reviewed the request to be allowed to sell lottery tickets in the convenience store operation in conjunction with existing service station on subject property.

The Board discussed and asked questions of the applicants. All concerns and questions were addressed.

Chairman Foreman asked for any public comment in support or opposition to the application. There was no public comment.

Member Cool made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 - 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 714 West Falmouth Highway in West Falmouth, contains 18,127 square feet of Business 3 zoned land that is located within the West Falmouth Harbor Coastal Pond Overlay District and Historic District. The use of the existing service station on subject property was allowed through the granting of Special Permit 2270 in 1970, which pre-dates the prohibition of service stations in a Business 3 zoned district. Modification of Special Permit 2270 in 1997 [#18-97] allowed the use of a convenience store as accessory to the service station. Since the approval for the convenience store, modification to existing special permits were made: #47-02 allowed the sale of sandwiches, bread and lottery tickets that were prohibited in previous permits; #57-05 allowed the sale of lottery tickets [#47-02 permit did not act on sale of lottery tickets and expired]; and #168-05 requested the sale of beer and wine, ice, propane tanks, health and beauty aids, dairy products, UPS Service Box, ATM machine and vacuum - not lottery tickets. The applicants applied to modify the above previous special permits to include the sale of lottery tickets and to continue the sale of items listed herein.

Note: The Board finds that previous decisions state that the subject property consists of 17,500 square feet of Business 3 zoned land. The "Proposed Site Plan" (plan of current record) drawn by Tyree Engineering, P.C. dated 11/4/1996, stamped and signed by Douglas W. Heald on 3/10/2005 certifies the subject property to be 18,127 square feet of Business 3 zoned land.

The Board finds that the proposed sale of lottery tickets within the existing convenience store on subject

property, accessory to the primary service station, is not substantially more detrimental than what currently exists. The Board further finds that the applicants will not sell lottery tickets until approval from the Massachusetts State Lottery Commission for said sales. Furthermore, the Board finds that the applicants' request to continue to sell previously approved items within the convenience store will be beneficial to the operation of said store on subject property.

The Board finds by testimony of the applicants that the number of employees on subject property will be no more than two employees at one time.

The Board finds that the applicants do not intend on selling beer and wine within the convenience store. The Board further finds that the U-Haul truck operation previously approved on subject property will be eliminated.

The Board finds by testimony of the applicants that they will meet with the Falmouth Fire Department to determine the best location for the propane tanks to be sold, as well as secure proper licensing for sale of said tanks.

In addition to the above findings, the Board finds that the proposed selling of lottery tickets and other items within the convenience store on subject property 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 selling of lottery tickets and other items listed herein as there will be no change to the existing structures on subject property.
- B. The site is suitable for the proposed use as the property is zoned Business 3 and had been issued a special permit in 1970 to allow the use of the service station and since modified previous special permit to allow the use of a convenience store.
- C. There will be no impact on traffic flow and safety as there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be improved and there is no impact on the neighborhood's visual character; there will be no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is in place with approval from the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing service station and convenience store on site.
- G. The proposed selling of lottery tickets and other items within the convenience store on site as 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 the Special Permit as modification to previous Special Permits to Vishal Shukla and Paresh Patel (herein referred to as Applicants) under Section(s) 240-3 of the Code of Falmouth to modify Condition 7 in Special Permit 57-05 to allow the sales of lotter tickets and other previously approved items within the existing convenience store on subject property known as 714 West Falmouth Highway, West Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The items and services requested and approved to be sold as represented to the Board are as follows:

Motor Oil, Motor Fuel, Limited Automotive Accessories Road Maps
Tobacco Products (Cigarettes, Cigars, All tobacco products) Impulse Novelties
Newspapers Snacks
Health and Beauty Aids Ice Chest

Pre-packaged Pastry Items Propane Tanks
Non-Alcoholic Beverages Candy/Gum/Mints
Dairy Products, Package Meats Pre-made Sandwich
Non-perishable Groceries Fax/Copy Machine
ATM Machine & UPS Box Vacuum
Lottery Tickets

2. There shall be no sales for alcoholic beverages without prior approval of the Board of Appeals.
3. The granting of this Special Permit to allow sale of lottery tickets shall be only for the individuals named as applicants herein and at subject property. This approval for sales of lottery tickets shall not be transferrable to future owners of subject property. A copy of any permits or licenses shall be submitted to the Board upon any renewal date from licensing/permitting authority.
4. Hours of operation shall be within the hours of 6:00 AM to 10:00 PM daily.
5. The applicants shall submit a copy of the contract approved with the State Lottery Commission allowing the sales of lottery tickets to the Board of Appeals prior to implementation of said sales at subject property.
6. The applicants shall submit to the Board of Appeals a copy of the Fire Departments approval for the location of propane tank storage and a copy of the license to sell propane on subject property. Propane tank sales shall not be implemented until the Board has received the location approval by the Fire Department and a copy of the license to sell propane.
7. There shall be no other business operations allowed on subject property except for the service station, propane tank sales as required herein and convenience store with sales of items listed in condition 1 above.
8. There shall be no derogation from previously granted Special Permits 2270, 18-97, 47-02, 57-05 and 168-05 except as herein stated.
9. All signage shall be according to the Town bylaws and with approval from the Historic District Committee.
10. 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.
11. 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.)
12. 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: 39-15

Applicants: VISHAL SHUKLA & PARESH PATEL of Forestdale, MA

Subject Property: 714 West Falmouth Highway, West Falmouth, MA
Map 24, Section 18, Parcel 001A, 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, modifying previous special permits noted above, 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:

#39-15 SP / Shukla, Patel / Filed w/ T.C. 06/09/2015