

## Zoning Board of Appeals Decisions Decisions for: 04-14-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 117-15

APPLICANT/OWNER(S): MPG CORPORATION of Plymouth, MA

SUBJECT PROPERTY: 435 Palmer Avenue, Falmouth, MA  
Assessor's Map: Map 38, Section 03, Parcel 030, Lot 000

DEED/CERTIFICATE: Book 27027 / Page 49

SUMMARY: Special Permit Granted With Conditions

### PROCEDURAL HISTORY

1. Under a date of November 23, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 and 240-51 B. (3) of the Code of Falmouth to raze and reconstruct the existing retail store, motor vehicle service and repair building and eliminate the use of sales and repairs of automobiles on subject property known as 435 Palmer Avenue, 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 January 21, 2016.
4. The public hearing was terminated on April 14, 2016. Board members voting were Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy. The Board made a 4 – 1 decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Attorney Laura M. Moynihan who reviewed existing and proposed site conditions and plans with the Board. Also present on behalf of the applicant was Patrick McLaughlin with MHF Design Consultants, Inc.
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

2/18/2016 Letter submitted to the file from Attorney Jeffrey W. Oppenheim dated February 18, 2016 to Board of Appeals Chairwoman on behalf of his client Cape Cod Bagel Co., Inc. stating concerns of the proposed project by applicant.

3/3/2016 Letter submitted to the file from Attorney Jeffrey W. Oppenheim dated March 3, 2016 on behalf of his client Cape Cod Bagel Co., Inc. to Board of Appeals Chairwoman with attached Appeals Court case Harrison vs. St. Pierre, relative to the raze and reconstruction of the commercial building proposed by applicant.

3/3/2016 Petition submitted by Jan Kelley in opposition to the proposed development by applicant. Petition has 271 signatures. The petition notes a Dunkin Donuts or Subway entity being at proposed development as well as traffic issues.

3/17/2016 Letter submitted to the file from Attorney Jeffrey W. Oppenheim dated March 17, 2016 on

behalf of his client Cape Cod Bagel Co., Inc. to Board of Appeals Chairwoman citing previously submitted case and stating that the proposed raze and reconstruct of the commercial building must conform to dimensional requirements; and cited other cases in the letter.

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

11/23/2015 Attorney Laura M. Moynihan submitted an application, plans, fee, letter of authorization, lease agreement for the proposed raze and reconstruction of commercial building on subject property. Also submitted was a letter of November 19, 2015 from MHF Design Consultants, Inc. to Scott Schluter, P.E. with Falmouth's DPW Engineering Division regarding drainage information for proposed project.

1/15/2016 Letter submitted to the file by MHF Design, Consultants, Inc. on behalf of MPG Corporation dated November 19, 2015 – Revised January 14, 2016 addressed to Scott Schluter, P.E. with Falmouth's DPW Engineering Division with revised drainage calculations.

1/15/2016 Letter submitted to the file by MHF Design, Consultants, Inc. on behalf of MPG Corporation dated January 14, 2016 addressed to Sari Budrow Zoning Administrator with four copies of revised plans and calculations for project on subject property.

1/21/2016 Attorney Moynihan on behalf of MPG Corporation submitted to the file "Truck Turn Plan" dated 1/21/16 drawn by MHF Design Consultants, Inc.; "Bike Rack Location Sketch" dated 1/20/16 drawn by MHF Design Consultants, Inc.; Existing site plan "White's Automotive Center Site Plan" dated 9/16/1996 drawn by William F. Roslansky, AIA; Traffic Information based on ITE Common Trip Generation Rates; and a copy of "Revocable License Agreement" between Cape Cod Bagel Co., and Stephen E. White, Trustee of White's Automotive Realty Trust.

2/18/2016 Letter submitted to the file by MHF Design Consultants, Inc. on behalf of MPG Corporation regarding attached (four copies) revised Site Plans dated 2/16/2016.

2/18/2016 Letter submitted to the file by Attorney Moynihan on behalf of MPG Corporation dated February 18, 2016 with attachments regarding information requested by the Board of Appeals on 1/21/2016.

2/18/2016 "Traffic Impact Study Proposed Falmouth Hospital Expansion Falmouth, Massachusetts" submitted to the file by Attorney Moynihan on behalf of MPG Corporation.

2/18/2016 Attorney Moynihan submitted to the file a letter dated April 15, 2004 from Rizzo Associates to Mr. William Bent, P.E. regarding Functional Design Report Route 28 (Palmer Avenue) at Jones Road & Ter Heun Drive Falmouth, Massachusetts.

2/29/2016 Letter submitted to the file by Attorney Moynihan on behalf of MPG Corporation dated February 29, 2016 in response to Attorney Oppenheim's comments in a letter dated 2/18/2016 – attached to letter is a letter to the Board of Appeals from Attorney Robert H. Ament on behalf of Cape Cod Bagel Co., Inc. dated May 19, 2014 and a copy of a "Site Plan Review Decision" from the Planning Board dated June 16, 2004 regarding Cape Cod Bagel, Co., Inc.

3/1/2016 Letter from Attorney Moynihan submitted to the file dated March 1, 2016 on behalf of MPG Corporation with attached traffic report dated March 1, 2016 prepared by Greenman-Pedersen, Inc. Traffic Engineers.

3/3/2016 E-mail from Attorney Moynihan to the Zoning Administrator regarding cases cited by Attorney Oppenheim in a letter dated March 3, 2016.

3/17/2016 Letter submitted to the file by Attorney Moynihan dated March 17, 2016 on behalf of MPG Corporation in response to Attorney Oppenheim's letter of March 3, 2016 regarding case law cited. Attached to Attorney Moynihan's letter are twelve special permit decisions regarding raze and reconstruction of commercial properties approved by the Board of Appeals.

3/23/2016 E-mail from Attorney Moynihan to Zoning Administrator with attached copy of a letter from Greenman-Pedersen, Inc. dated March 22, 2016 in response to Attorney Oppenheim's comments stated in a letter of March 17, 2016.

3/24/2016 E-mail from Attorney Moynihan to Zoning Administrator with comments on opinion from Town Counsel as requested by the Board and submitted to the file.

#### Letters/Referrals/E-mails from Town Departments

11/24/2015 ZBA staff submitted four special permit decisions and one administrative approval for subject property

11/24/2015 Referral submitted to the file by the Planning Board with no comment.

12/7/2015 Referral submitted to the file by the Engineering Department attached a memo outlining review of the project and any concerns.

12/8/2015 Referral submitted to the file by the Falmouth Fire Rescue Department with no comment.

12/9/2015 Referral submitted to the file by the Conservation Commission that states: Contain stormwater on property.

12/14/2015 Referral submitted to the file by the Board of Health Agent with no comment.

12/14/2015 Referral submitted to the file by the Building Commissioner with no comment.

2/18/2016 Letter from Eladio Gore, Building Commissioner to Zoning Administrator Budrow, dated February 1, 2016 submitted to the file by Attorney Moynihan. This letter confirms that no Site Plan Review by the Planning Board was required for this project. Letter has a Board date 'received' stamp of February 18, 2016.

3/24/2016 Memorandum from Town Counsel Frank K. Duffy to Zoning Administrator dated 3/21/2016 regarding non-conforming structures [opinion requested by the Board].

#### Plans submitted by Applicant/Applicant's Representative

2/18/2016 "Proposed Site Improvement Plans for Parcel ID 38-03-30 435 Palmer Avenue (Route 28) Falmouth, Massachusetts" prepared for MPG Corporation 1 Roberts Road, Plymouth, Massachusetts 02360 drawn by MHF Design Consultants, Inc. consisting of Sheets 1 of 7 as follows:

- Sheet 1 of 7 - 'Title Sheet' with revised date of 2/16/16 - stamped, signed and dated by Frank C. Monteiro, P.E. on 2/17/16 with a Board date 'received' stamp of Feb. 18, 2016;
- Sheet 2 of 7 - 'Existing Conditions Plan in Falmouth, Massachusetts' dated April 21, 2015, stamped and signed by Gregory A. Bunavicz, PLS with a Board date received stamp of Feb. 18, 2016;
- Sheet 3 of 7 - 'Site Plan' with a final revision date of 2/16/16, stamped, dated and signed by Frank C. Monteiro, PE on 2/17/16 with a Board date 'received' stamp of Feb. 18, 2016;
- Sheet 4 of 7 - 'Grading, Drainage, & Utilities Plan' with a final revision date of 2/16/16, stamped, signed and dated by Frank C. Monteiro, PE on 2/17/16 with a Board date 'received' stamp of Feb. 18, 2016;
- Sheet 5 of 7 - 'Landscape Plan' with a final revision date of 2/16/16, stamped, signed and dated by Frank C. Monteiro, PE on 2/17/16 with a Board date 'received' stamp of Feb. 18, 2016;
- Sheet 6 of 7 - 'Details' with a final revision date of 2/16/16, stamped, signed and dated by Frank C. Monteiro, PE on 2/17/16 with a Board date 'received' stamp of Feb. 18, 2016; and
- Sheet 7 of 7 - 'Details' with a final revision date of 1/14/16, stamped, signed and dated by Frank C. Monteiro, PE on 1/14/16 with a Board date 'received' stamp of Feb. 18, 2016

"Convenience Store 453 Palmer Avenue (Route 28) Falmouth, Massachusetts" - no author, consisting of:

- Drawing A1.0 'Proposed Floor Plan' dated 11/10/15 with a Board date 'received' stamp of Feb. 18, 2016;
- Drawing A1.1 'Proposed Exterior Elevations' dated 11/10/15 with a Board date 'received' stamp of Feb. 18, 2016; and
- Drawing A1.2 'Proposed Exterior Elevations' dated 11/10/15 with a Board date 'received' stamp of Feb. 18, 2016

"Bike Rack Location Sketch MPG Corporation, 436 Palmer Avenue, Falmouth, MA" drawn by MHF Design Consultants, Inc. - not dated, with a Board date 'received' stamp of Jan. 21, 2016.

Hearing January 21, 2016:

Attorney Laura M. Moynihan, on behalf of MPG Corporation, reviewed the existing site that is zoned Business 2 and noted the existing conditions and the proposed razing of the commercial building on site and the reconstruction of a new building relocated on site. She stated that the current use of the building is for a convenience store, auto sales and repair. The auto sales and auto repair operation is within the rear portion of the building. She explained that the auto sales and auto repair operations will be eliminated. She reviewed the proposed location and traffic pattern on the site proposed. The existing use of the site, since 1958, is a gas station with a convenience store that sells food product as well as beer and wine and consists of 1,200 square feet, the rear portion of the building is 1,400 square feet in size and has an auto sales and auto repair operation. The new building will be 3,500 square feet in size; 3,300 will be for the convenience store that exists now which does include the sale of wine and beer; and 200 square feet of the interior of the building will be used as a coffee or snack service. The new building will conform to the rear setback. Attorney Moynihan stated that there will be no change to the existing gas pumps and canopy at the front of the property. The canopy is nonconforming at 9.1' front the front property line off Route 28.

Patrick McLaughlin with MHF Design Consultants, Inc. spoke on the proposed changes to the site. The building for the convenience store will be moved further back on the site to allow for better traffic flow and parking. The site will have a dedicated loading and truck delivery area. The HVAC and other mechanical utilities will be at the rear of the building. New water and gas service is planned for the site; three new leaching structures and two proprietary treatment units are on site and the Board of Health are reviewing the septic system proposed. He noted that the impervious surface on site will be reduced.

John Wyman, Contractor, stated the existing building will be wood on a concrete slab with gray shingles and white trim with a cupola. The handicap access area will be widened and it will fully comply with ADA accessibility. LED lighting is planned for both inside and outside of the building. There is no basement or second story planned.

The Board discussed plans with the representatives and discussed parking, landscape, improved and proposed setbacks.

Chairman Bielan asked for any public comment in support or opposition of the proposed project.

Marilyn Fox, owner of Cape Cod Bagel on adjacent lot asked the Board to keep this application and hearing open as she would like to review the plans and speak with her attorney. She stated there are agreements in place with the subject property owner.

The Board voted 5 – 0 to continue the hearing to February 25, 2016 and asked the applicant to submit information: (1) letter from Planning Board that this application did not require Site Plan Review; (2) Landscape plan; (3) improved parking plan with elimination of spaces 1, 2, 10, 11 and 12; (4) Cape Cod Commission traffic study; and (5) Driveway curb cut info.

Hearing February 25, 2016: Rescheduled due to lack of quorum

Hearing continuation March 3, 2016:

Attorney Moynihan reviewed revised plan, Cape Cod Commission Traffic Study and spoke briefly on letter submitted by Attorney Oppenheim who is representing Cape Cod Bagel, Inc. (abutting lot)

Patrick McLaughlin with MHF Design Consultants, Inc. briefly explained the parking reduction, increase to green space and eliminated parking.

Attorney Jeffrey Oppenheim spoke on behalf of Marilyn Fox owner of Cape Code Bagel, Inc. and stated that he submitted two letters to the file (February 18, 2016 and March 3, 2016) as well as two legal cases – Harrison v. St. Pierre – Appeals Court and Rockwood et al v. the Snow Inn Corporation. Attorney Oppenheim stated that he believes the proposed project does not conform to Falmouth's bylaws. He reviewed Section 240-3 "Preexisting structures and uses.", sub-section C (2) 'Exempted from the requirement for a special permit are the following:' [criteria (a) through (d) listed]. Attorney Oppenheim stated that 'commercial' isn't included in (a) Alteration, reconstruction, extension or structural change

(collectively "alteration") to a nonconforming single- or two-family residential structure shall not be considered an increase in the nonconforming nature of the structure and shall be permitted by right under the following circumstances.... and that (d) states: Reconstruction of any permitted commercial accommodation structure or unit(s), if for the purpose of rehabilitation, upgrade, and if the commercial accommodation was licensed and operational for the three years prior to the rehabilitation upgrade. The reconstruction will not allow rebuilding at a greater density, greater height or at a different location than previously existed. Attorney Oppenheim opined on the proposed razing and reconstruction of a commercial building that will not be conforming. He further discussed an agreement between the applicant and his client (abutting property). Attorney Oppenheim submitted a petition with 271 signatures in opposition to the proposed.

Attorney Moynihan stated that she would like to respond in writing and noted that Falmouth's bylaw is not the same as Chatham's bylaw, which was considered in one of the cases cited by Attorney Oppenheim. She reviewed cases in Falmouth, approved by the Board of Appeals, as examples of this application. She stated that the request is to modify a special permit; the existing nonconformities on site will be improved.

Chairman Bielan suggested requesting Town Counsel's opinion and the question raised by Attorney Oppenheim. Board agreed.

Board voted 5 – 0 to continue the hearing to March 24, 2016 at 6:00 PM.

Hearing Continuation March 24, 2016:

Town Counsel's opinion was submitted and reviewed by the Board.

It was noted that Attorney Moynihan and Attorney Oppenheim submitted letters to file regarding case law submitted to the file and to Town Counsel's opinion. Board discussed project, cases submitted and Counsel's opinion.

Member Bielan requested more time to review all written and submitted information.

Board voted 5 – 0 to continue the hearing to April 14, 2016 at 6:30 PM.

Hearing continued April 14, 2016:

Board members discussed the project. Chairman Bielan reviewed testimony and written information submitted by Attorney Oppenheim regarding Section 240-3 C. (2) of the Code of Falmouth. She noted that the section is 'Exemptions' from a special permit and therefore differs and is separate from Section 240-3 C. including C. (1): Recognizing the need to provide some guidelines for determining relative detrimentality, and recognizing there are basic and consistent principles of zoning which are broadly accepted, the following standards shall apply to the granting of a special permit:.... (b) The change or alteration of the structure or use may be allowed as maintaining or lessening any nonconformity without having to meet existing dimensional requirements. However, the extension of a structure may be considered a detriment after the Board of Appeals considers whether the extension extends or creates a new dimensional nonconformity, impairs views or vistas or does not reasonably conform to the average dimensions found in the neighborhood. (c)..... She further stated that the bylaw language uses 'structure or use' and does not state 'residential' or 'commercial'. She opined that Section 240-3 C. states: Preexisting, nonconforming structures or uses may be extended, altered or changed only by special permit from the Board of Appeals. Any such change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure. She noted that the Town of Falmouth's bylaws are unique and distinct, different from the bylaws of other towns. She also noted that the 'exemptions' from a special permit refer to a "structural change", but would not exempt "non-structural" changes from requiring a special permit. As such reading renders a nonsensical result, it is inappropriate to refer to Section 240-3 C. (2) to assist in an interpretation of the language contained in Section 240-3 C. As reference to 240-3 C. (2) is inappropriate, "change" should be read broadly and may include "reconstruction" of pre-existing, nonconforming commercial structures.

Member Murphy stated that the Board should consider previous special permits granted on a single property/use; not to consider previous permitting for an application could be arbitrary. The Board discussed past practice in matters of pre-existing nonconforming commercial uses and structures,



although noted that no case sets precedence with the Board, fact finding of said decisions may be relevant to this application.

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

Chairman 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 435 Palmer Avenue contains 19,733 square feet of Business 2 zoned land that is located within the Natural Heritage for Endangered Species Program (NHESP – priority). The applicant applied under Section(s) 240-3 and Section 240-51 B. (3) of the Code of Falmouth to raze the existing one-story building use as a gas service station and convenience store with an auto repair and auto sales operation at the rear end of the building and construct a one-story building consisting of 3,500 square feet for the existing gas service station convenience store/retail sales with the elimination of the existing permitted automobile repairs and auto sales on subject property. The existing canopy over the gas pump area will remain as existing with no change to the nonconforming setback of 9.1' to the front property line off Route 28. The existing building has nonconforming setback of 2.9' to the northerly side yard property line that requires a 20' setback under Section 240-68 B. of the Code of Falmouth. The lot coverage by structures is conforming as it is less than the 40% allowed by right under Section 240-69 A. of the Code of Falmouth; however, the total lot coverage is nonconforming at 88.1% which exceeds the 70% allowed by right under Section 240-69 A. of the Code of Falmouth. The proposed building will improve the nonconforming setback to the northerly property line to 10'; all other setbacks for the proposed building will comply with current regulations. The proposed project will reduce overall lot coverage for structures, pavement and parking from 88.1% to 79.7%, and lot coverage for structures proposed will be 24.9%, which is in compliance with Section 240-69 A. of the Code of Falmouth for a Business 2 zoned lot. The subject property has been used as a service station for many years and approved for retail sales, automobile sales, automobile repairs and State motor vehicle inspections pursuant to various special permits and modifications of special permits issued by the Board of Appeals. The subject property is located on a heavily travelled roadway of Palmer Avenue and traffic impacts will only be negligible as a result of the applicant's project as discussed herein. The existing required parking is for 20 spaces and the required parking for the applicant's redevelopment is 12 spaces. The subject project proposes 15 parking spaces. The subject property is serviced by a private septic system which will be replaced and upgraded as part of the project; the proposed on-site drainage has been reviewed and accepted by the Town Engineering Department (see referrals submitted to file).

Section 240-3 of the Code of Falmouth – "Pre-existing structures and uses." allows the Board of Appeals to approve a modification of special permits and/or issue a special permit to extend, alter or change a pre-existing nonconforming structure or use if the Board deems said extension, alteration or change to be no substantially more detrimental than what exists; and Section 240-3 provides guidelines for the Board to make such a determination.

The Board finds that the 'exemptions' from a special permit refer to a "structural change", but would not exempt "non-structural" changes from requiring a special permit. As such reading renders a nonsensical result, it is inappropriate to refer to Section 240-3 C. (2) to assist in an interpretation of the language contained in Section 240-3 C. As reference to 240-3 C. (2) is inappropriate, "change" should be read broadly and may include "reconstruction" of pre-existing, nonconforming commercial structures.

The Board finds that the subject property is pre-existing nonconforming as to lot coverage and structural setbacks as herein noted and that the prior special permits for the subject property have approved changes to the existing building and site and the standards of Section 240-3 of the Code of Falmouth have been previously favorably applied by the Board of Appeals in such Decisions. The Board further finds that the proposed razing and reconstruction of the existing building is an extension, alteration or change to the nonconforming building and site as allowed by Section 240-3 of the Code of Falmouth, with the new

building being constructed with a setback to the northerly property line that is less nonconforming than existing and the total lot coverage as well will be improved. Furthermore, the Board finds that the applicant's project as proposed will not be substantially more detrimental than what exists at the subject property and that the proposed project will be an improvement over existing conditions.

The Board finds that the applicant's project as proposed will provide an attractive new building and site design with improved and additional landscape and that fuel delivery and site circulation will be significantly improved, and in particular there will be an elimination of the adverse situation of fuel trucks backing on to Palmer Avenue; there will be significant drainage improvements to the site, there will be increased and better environmental protection measures implemented, there will be a landscape buffer added at the rear of the property where none currently exists. The Board further finds there will be improved parking areas, and in particular the relocation of parking from the rear of the existing building to the front of the building, there will be improved septic treatment for the subject property, and a reduction in overall lot coverage.

The Board finds through testimony by Attorney Moynihan, on behalf of the applicant, that a small portion of the retail space will be leased to either a Dunkin Donuts or a Subway operation; and may have the same hours of operation as the service station.

The Board finds through testimony by Attorney Moynihan, on behalf of the applicant, that the service station/convenience store will have two employees on site on a daily basis. The Board further finds that there will be a 'Red Box' video rental at the front of the convenience store, as well as sales of propane tanks located on site according to recommendations by the Fire Department. Furthermore, the Board further finds that the service station may operate 24/7 hours each day.

The Board finds that the applicant has signed agreements with the abutter, Cape Cod Bagel, that are separate from this Special Permit application.

The Board finds through testimony by Attorney Moynihan, and submission of a letter from Commissioner Gore to the file, verifying that Site Plan Review for this project was not required as the proposed building size and reduction of existing parking on site was such that it did not require said review. The Board further finds through testimony by Attorney Moynihan that the Design Review Committee approved the design as shown on the plans submitted, reviewed and discussed by this Board.

In addition to the above findings, the Board finds that the proposed redevelopment of the subject property meets the requirements/criteria of Section 240-216 of the Code of Falmouth – "Decisions" as follows:

- A. The Board finds that the site is adequate in terms of size for the proposed reconstruction and relocation of the building on subject property as the nonconforming 2.9' side yard setback will be improved to 10' and the nonconforming total lot coverage will be improved;
- B. The Board finds that the site is suitable for the proposed use as the property is zoned Business 2 and is located in a commercial area of the Town of Falmouth;
- C. The Board finds that there will be no adverse impact on traffic flow and safety with the proposed redevelopment of the subject property; that any increase in traffic impacts will be negligible with appropriate traffic mitigation implemented; and addition of a bicycle rack to the site as shown on the plans submitted;
- D. The Board finds that there will be no impact on the visual character of the neighborhood, including any view or vista as the proposed building design is a significant improvement over the existing building and is attractive in design and within the height and story requirements of the Zoning Bylaw, as well as the improved landscaping proposed and landscape buffers that will improve buffers and aesthetics at the site;
- E. The Board finds that the method of sewage disposal will be a new private septic system approved by the Board of Health, the source of water will be Town water and the plan for drainage, approved by the Town Engineering Department – are all improvements over existing site conditions;
- F. The Board finds that there are adequate utilities to subject property by virtue of an existing commercial use on site. However, the Applicant will have to contact the Town Water Department regarding updating of water system;
- G. The Board finds that the proposed raze and reconstruction of the building on site discussed and represented herein will have no effect on the supply of affordable housing in Falmouth;
- H. The Board finds that the Planning Department did not review the proposed project under Site Plan Review of the Zoning Bylaw as it was determined by the Building Commissioner, as Zoning Enforcement Officer for the Town of Falmouth, that Site Plan Review was not required for the proposed project;
- I. The Board finds that the proposed project as discussed and reviewed herein meets compliance with all

applicable sections of the Falmouth Zoning Bylaws; and

J. The Board finds that the proposed project discussed herein does not provide affordable housing.

The Board of Appeals has weighed the effects of the proposed redevelopment of the pre-existing nonconforming building and site at 435 Palmer Avenue as discussed herein 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 Zoning Bylaw.

Member Murphy made a motion to Grant the Special Permit with conditions. Member Van Keuren seconded the motion. Motion carried 4 – 1 with member Foreman in opposition.

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 4 -1 to Grant the Special Permit and/or Modification of Special Permit to MPG Corporation (herein referred to as Applicant) under Section(s) 240-3 and 240-51. B (3) of the Code of Falmouth to raze the pre-existing nonconforming building and construct a one-story 3,500 square foot building with associated parking, septic, drainage and landscaping for service station and retail use on the subject property known as 435 Palmer Avenue, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The razing of existing building at 435 Palmer Avenue, construction of a one-story 3,500 square foot building, all setbacks, lot coverage, height of building, parking, septic system, drainage, landscaping, lighting and use of proposed building shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Proposed Site Improvement Plans for Parcel ID 38-03-30 435 Palmer Avenue (Route 28) Falmouth, Massachusetts" prepared for MPG Corporation 1 Roberts Road, Plymouth, Massachusetts 02360 drawn by MHF Design Consultants, Inc. consisting of Sheets 1 of 7 as follows:

- Sheet 1 of 7 – 'Title Sheet' with revised date of 2/16/16 – stamped, signed and dated by Frank C. Monteiro, P.E. on 2/17/16 with a Board date 'received' stamp of Feb. 18, 2016;
- Sheet 2 of 7 – 'Existing Conditions Plan in Falmouth, Massachusetts' dated April 21, 2015, stamped and signed by Gregory A. Bunavicz, PLS with a Board date received stamp of Feb. 18, 2016;
- Sheet 3 of 7 – 'Site Plan' with a final revision date of 2/16/16, stamped, dated and signed by Frank C. Monteiro, PE on 2/17/16 with a Board date 'received' stamp of Feb. 18, 2016;
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- "Convenience Store 453 Palmer Avenue (Route 28) Falmouth, Massachusetts" – no author, consisting of:

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- Drawing A1.1 'Proposed Exterior Elevations' dated 11/10/15 with a Board date 'received' stamp of Feb. 18, 2016; and
- Drawing A1.2 'Proposed Exterior Elevations' dated 11/10/15 with a Board date 'received' stamp of Feb. 18, 2016

- "Bike Rack Location Sketch MPG Corporation, 436 Palmer Avenue, Falmouth, MA" drawn by MHF Design Consultants, Inc. – not dated, with a Board date 'received' stamp of Jan. 21, 2016.

2. The applicant shall provide any employee or individual employed on site with information regarding public transportation services, maps, schedule and fare information in order to travel to work via public transportation.



3. The applicant shall install a bike rack on subject property as shown on the plans noted in Condition 1 above.
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. The Applicant shall meet the requirements of the DPW Water Division.
6. 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.)
7. 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: 117-15

Applicant: MPG CORPORATION of Plymouth, MA

Subject Property: 435 Palmer Avenue, Falmouth, Massachusetts  
Map 38, Section 03, Parcel 030, 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: 4 – 1 Grant the Special Permit and/or Modification of Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

\_\_\_\_\_  
Kimberly Bielan, 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:**

SP 117-15 MPG Corp, filed w/Town Clerk 4/22/16