

Zoning Board of Appeals Decisions Decisions for: 12-15-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 123-16

APPLICANT/OWNER: ALCIDE J. CORMIER, III of East Falmouth, MA

SUBJECT PROPERTY: 91 Carl Landi Circle, Waquoit, Massachusetts
Assessor's Map: Map 30, Section 05, Parcel 003, Lot 016

DEED/CERTIFICATE: Book 29240 / Page 45

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of November 14, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-162 F. (1) of the Code of Falmouth to allow a home occupation for internet car sales on subject property known as 91 Carl Landi Circle, Waquoit, 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 December 15, 2016.
4. The public hearing was terminated on December 15, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Gerald Potamis, sitting as voting member, made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
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

None

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

None

Letters/Referrals/E-mails from Town Departments

11/16/2016 A referral was submitted to the file by the Planning Department staff with no comment

11/29/2016 A referral was submitted to the file by the Director of Assessing with no comment

Plans submitted by Applicant/Applicant's Representative

Hand drawn floor plans – Basement and first floor – showing office area in basement, plans have a Board date 'received' stamp of November 14, 2016; and

GIS aerial map that shows subject property with a Board date 'received' stamp of November 14, 2016.

Hearing:

Alcide Cormier explained to the Board that he is requesting a Special Permit to have a home occupation to conduct internet sales of vehicles. He stated there will be no cars stored or staged on the subject property and no clients will visit the subject property and there will be no other employees in this business. His office is in a designated area in the basement of the dwelling.

The Board discussed plans with Mr. Cormier. He was asked about the recent clearing on his land and he stated he is putting in a lawn so that his three children have a play area – it is not to store cars.

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

Art Jones of 104 Carl Landi Circle stated he is not opposed but has concerns with extra cars possibly being on site and the added traffic as there is no sidewalk for the children in the area.

Josh Durepo of 108 Carl Landi asked about the process of internet sales.

Mr. Cormier stated that the process is that he will go on-line to car auctions to find cars that clients have an interest in and bids on them. If he is successful the car will be transported to the buyer's home or to his repair shop (Cormier's Auto Service) in Mashpee if repairs are necessary.

Member Van Keuren made a motion to close the hearing. Member Hurrie 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 91 Carl Landi Circle in Waquoit contains 21,032 square feet of Residential B zoned land that is located within the Quashnet River Coastal Pond Overlay District and the Zone II Overlay District. The applicant applied under Section(s) 240-162 F. (1) of the Code of Falmouth to allow a home occupation on a sub-standard size lot. The lot is zoned Residential B that requires, according to current bylaws, a 40,000 square foot lot; the subject property has 21,032 square feet of land. The applicant is requesting a home occupation to allow him to conduct internet car sales. He applied to the Board of Selectmen for a license to buy and sell vehicles in the Town of Falmouth. The proposed office space within the dwelling will be located in the basement and consists of space less than 30% of the gross floor area of the dwelling.

Section 240-162 F. of the Code of Falmouth requires a special permit for certain home occupations – subsection (1) states: Any home occupation which otherwise meets the applicable provisions of §240-162, except that it utilizes a lot which does not conform to the minimum lot dimensional requirements, shall require a special permit from the Board of Appeals.

The Board finds that the proposed home occupation to conduct purchase and sell vehicles on-line within his dwelling on subject property is approvable under Section 240-162 F. (1) of the Code of Falmouth.

The Board finds through testimony by the applicant that there will be no employees, except himself, on subject property conducting said internet sales/purchase of vehicles. The Board further finds through testimony by the applicant that there will be no vehicles stored or staged on subject property except for personal vehicles owned and used daily by the applicant or his family. Furthermore, the applicant stated that there will be no visitors to subject property relative to the internet vehicles sales operation discussed herein.

In addition to the above findings, the Board finds that the proposed request to operate a home occupation to conduct an internet vehicle sales/purchase business on subject property is 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 home occupation as there will be no outside storage of any vehicles related to the internet sales operation and there will be no increase in the footprint of the existing dwelling through this request.
- B. The site is suitable for the proposed use as the property is zoned residential and meets the criteria of a home occupation as defined in Section 240-13 and as set forth in Section 240-162 F. (1) of the Code of Falmouth.
- C. There will be no impact on traffic flow and safety as there is no additional traffic to and from the subject property through this special permit approval; and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be unchanged through this special permit approval so therefore no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system will be unaffected through this special permit approval.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed home occupation 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.

The Board of Appeals has weighed the effects of the proposed home occupation 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Potamis 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 Alcide J. Cormier, III (herein referred to as Applicant) under Section(s) 240-162 F. (1) of the Code of Falmouth to allow a home occupation to conduct internet car sales (and purchase) on subject property known as 91 Carl Landi Circle, Waquoit, Massachusetts. This special permit is subject to the following conditions:

1. The home office for the home occupation for internet sales/purchase of vehicles shall be as represented to the Board and as shown on plans submitted and reviewed by the Board as follows:
 - Hand drawn floor plans – Basement and first floor – showing office area in basement, plans have a Board date 'received' stamp of November 14, 2016.
2. There shall be absolutely no storage or staging of any vehicle bought or sold through the proposed internet car sales/purchase operation discussed herein.
3. There shall be no employees except the applicant engaged in the home occupation on subject property as discussed and approved herein.
4. There shall be no signage allowed on subject property advertising or noting the home occupation for vehicle sales/purchasing approved herein.
5. 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.
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 three 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: 123-16

Applicant: ALCIDE J. CORMIER, III of East Falmouth, MA

Subject Property: 91 Carl Landi Circle, Waquoit, MA
Map 30, Section 05, Parcel 003, Lot 016

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.

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:

SP # 123-16 Cormier, III, filed w/Town Clerk 12/23/16