

## Zoning Board of Appeals Decisions Decisions for: 10-07-2016

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 090-16

APPLICANT/OWNER: CAPE COD AGGREGATES CORP. of Barnstable, MA

DEED/CERTIFICATE: Certificate 117342 – Lots 33 through 61, inclusive and  
The ways shown as Dixon Drive, Wesky Way, Vernier Drive  
Katian Way and Dantes Lane, on subdivision Plan 31976J

PROPERTY ADDRESS: Dimmock Ave & Draper Rd, East Falmouth, MA  
Map 22, Section 01, Parcel 008A, Lot 014  
Map 23, Section 03, Parcel 014A, Lot 013  
Map 23, Section 03, Parcel 014B, Lot 015  
Map 23, Section 03, Parcel 014C, Lot 017

Under a date of August 16, 2016 the Applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-150, 240-152 and 240-153 of the Code of Falmouth to continue the earthmoving operation and reclamation of land on four subject properties located on Dimmock Ave. and Draper Road in East Falmouth Massachusetts (see Map and Parcel ID's).

A public hearing was opened on September 29, 2016. 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 was heard.

Board Members sitting: Acting Chairman Terrence J. Hurrie, Acting Clerk Paul Murphy, Member Edward Van Keuren and Associate Member Gerald Potamis sitting as voting member.

Acting Clerk Murphy read the Notice of Public Hearing into the record.

John Doyle, PLS, was present on behalf of the Applicant and reviewed the site conditions for the earthmoving operation on subject property. He stated that the original permit was issued in 1989 for this 60 acre parcel and that the permit is required, according to MGL and Town Code, to be renewed every three (3) years. He then reviewed the plan showing where the earthmoving is currently being conducted and which cells have been reclaimed and what type of vegetation used for said reclamation. Mr. Doyle informed the Board that every year he is required to submit to the Board how many cubic yards of material have been removed during each year. Mr. Doyle showed on the plan what portion was re-vegetated over the past three years. He further stated that to the best of his knowledge there have been no complaints in the past three years regarding the operation.

Clerk Murphy read the Town Department referrals into the record:

08-17-2016 Referral from Planning Department Staff was submitted with no comment.

08-19-2016 Referral from Town Assessor submitted to the file with no comment.

08-30-2016 Referral from Falmouth Fire Rescue Department was submitted to the file with no comment.

09-09-2016 Referral from Engineering Department was submitted to the file with no comment.

09-20-2016 Referral from Conservation Commission was submitted to the file and stated: Note: West end of Lot 13 has wetland. Still quite a distance away but would like to discuss future plans.

Board discussed area of work and asked about reclamation and revegetation. Mr. Doyle explained to the Board the requirements set forth in the bylaw regarding reclamation of disturbed areas and types of materials and plantings used.

Acting Chairman Hurrie asked if anyone present would like to speak in favor or opposition.

Andrew Wahlen of 476 Blacksmith Shop Road (abutter) questioned the 50' buffering around perimeter of

subject property. He stated any animals on his property may be affected by the noise of the equipment used to move earth on subject property.

Note: Special Permit #64-89 – Condition 3, required: For earth removal operations, border buffer strips in which the natural vegetation and soil are undisturbed shall be left for a width of at least 100 feet from the side line of any road open to public use and for a width of at least 50 feet from all abutting property lines. Applicant shall maintain a 200' buffer zone abutting the O'Brien property and the buffer zone shown on the plan to remain forested on the westerly portion of the site shown on submitted plan.

Member Van Keuren made a motion to close the hearing. Member Murphy seconded the motion. Motion carried 4 to 0.

Acting Chairman Hurrie 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 properties in total, owned by Applicant, contain 60.11 acres of Agricultural AA zoned land that is located in the Wildlife Corridor and the West Falmouth Harbor Coastal Pond Overlay District. The Applicant applied under Sections 240-150, 240-152 and 240-153 of the Code of Falmouth to allow earthmoving on subject properties located off Dimmock Avenue and Draper Road, just off Blacksmith Shop Road in East Falmouth. The operation at this site for earth- moving by Cape Cod Aggregates has been in existence since 1989 (Previous location was off Thomas Landers Road – Map 16, Section 03, Parcels 1, 2 and 3, Lots 000.) They are required to file for a special permit every three years pursuant to Sections 240-150 of the Code of Falmouth. Section 240-152 of the Code of Falmouth – "Procedures; plan information" sets out the procedures the Applicant needs to be in compliance with over the three year period granted through each special permit. Section 240-153 of the Code of Falmouth – "Permit Limitations" requires that a special permit for earth moving shall be issued for no more than three years, although a special permit may be renewed for additional periods in the same manner based upon reclamation completion. Section 240-154 of the Code of Falmouth – "Regulations" sets forth what each special permit for earthmoving shall be subject to.

The Board finds that Cape Cod Aggregates received Special Permit #64-89 to allow earth moving on land that consists of approximately 60 acres. The 1989 special permit conditions state:

3. ...border buffer strips in which the natural vegetation and soil are undisturbed shall be left for a width of at least 100 feet from the side line of any road open to public use and for a width of at least 50 feet from all abutting property lines. Applicant shall maintain a 200' buffer zone abutting the O'Brien property and the buffer zone shown on the plan to remain forested on the westerly portion of the site shown on submitted plan. The O'Brien property abuts the property at the southeasterly corner – 462 Blacksmith Shop Road. Further conditions:

4. The depth of any earth removal shall be limited to a plan that is at least 10 feet above the seasonal high ground water level for that location..;

5. The slope of the banks of the excavation or fill shall at times not exceed one foot in depth for every three feet of horizontal distance;

6....the reclamation of the altered land shall be performed in the following manner: - a) At least two inches of loam shall be placed over the subsoil; b) The area graded and seeded or planted to prevent erosion and to conceal the scars of stone removal.

7. Provisions made to during operations for the control of noise, wind, dust and water erosion that may affect adjacent properties and traffic along a roadway.

8. Within six months of the completion of the operation or following the expiration or withdrawal of a permit, the land and slopes shall be graded and contoured to prove natural surface drainage and to fit compatibly with the existing contours of the surrounding land...

9. Permit granted for 60 acres...

10. To ensure compliance with the conditions of this special permit, the applicant is required to post a cash deposit or surety bond in form acceptable to the Town Treasurer, in the amount of \$75,000 with evidence of said bond submitted to Board of Appeals yearly.

11. The area to be mined is a total of 60 acres in 26 separate parcels (cells)...

12. The hours of operation are to be from 7:30 AM to 4:30 PM Monday through Friday.

The Board finds that the file reflects the engineers' report of cubic yards moved in each year from September to September – as conditioned by the Board in each special permit.

The Board finds that the Applicant has remained in compliance with Section 240-150 of the Code of Falmouth which requires a special permit from the Board of Appeals where the amount of earth moved is 1,000 cubic yards or more within any three-year period. The Board further finds that the Applicant, has maintained all conditions set forth in original permit #64-89 and subsequent issued permits.

The Board finds that the Applicant has met the procedures as set forth in Section 240-152 of the Code of Falmouth – "Procedures; plan information" as the plan entitled "Site Plan of Land" prepared for Cape Code Aggregates drawn by John P. Doyle, P.L.S. and submitted to the file shows the quadrants of the 60 acre parcel that are active, as well as the areas reclaimed/re-vegetated by the Applicant. The Board further finds through site visits conducted by the Board that the Applicant is in compliance with the requirements of reclamation of the land. Furthermore, the Board finds that there are no man-made structures in the vicinity where earth moving is being done.

The Board finds pursuant to Section 240-154 of the Code of Falmouth – "Regulations" that the Applicant has been in compliance with all that this Board has conditioned since the 1989 original permit and all said regulation.

The Board finds pursuant to Section 240-155 of the Code of Falmouth – "Renewal" that the Applicant has been in compliance with the requirements set forth noting that the Applicant has renewed the special permit several times over the past years and that the Applicant, to date, has not failed any of the requirements or conditions set forth in the Decisions by the Board of Appeals.

The Board finds that the site is adequate and suitable for the earth moving operation and found there to be no dramatic change from prior review.

The Board finds that the Board and the project engineer have monitored the site and operation to ensure that the work and reclamation is being done in accordance with the bylaw.

The Board finds that the traffic off Blacksmith Shop Road has not been adversely impacted by the ongoing operation by Cape Cod Aggregates on subject properties as the trucks used in and for the earth moving operation travel a road within the property boundaries to get material to the plant on adjacent property.

The Board finds that the Applicant has in the past years, and shall continue to submit yearly a copy of the updated Surety Bond for the operation on subject properties by Cape Cod Aggregates.

The Board finds that a portion of Mr. Wahlen's property at 476 Blacksmith Shop Road benefits by the 200' conditioned buffering of O'Brien's property (westerly immediate abutter) as according to the plan submitted a portion of the 200' buffering includes the northwest corner (almost to center line) of Mr. Wahlen's property.

The Board further finds that according to the site plan submitted and a site visit conducted by some Board members, cells being worked since last review, are substantially in the same location and therefore no reclamation conducted since previously 2013 permit.

The Board finds that the proposed, as it is relevant, meets the criteria set forth in Section 240-216 of the Code of Falmouth.

The Board finds 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 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 Bylaw.

Member Murphy 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 (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted 4 - 0 to Grant the Special Permit to Cape Cod Aggregates (herein referred to as Applicant) under Section(s) 240-150, 240-152 and 240-153 of the Code of Falmouth to allow an earth moving operation on subject properties totaling 60.11 access off Dimmock Avenue and Draper Road that have access off Blacksmith Shop Road in East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The amount of earth to be moved and/or mined shall be no more than Seven Hundred Fifty Thousand Exact cubic yards (750,000 cubic yards) within a three (3) year period.
2. Cape Cod Aggregates' operation shall be in compliance at all times with Section 240-150 through 156 of the Code of Falmouth.
3. The Applicant shall submit documentation to the Board of Appeals as required in Section 240-154 of the Code of Falmouth - "Regulations", A. through O. [as they are relevant] and Section 240-155 of the Code of Falmouth - "Security".
4. This Special Permit shall expire in three (3) years from the date this Decision is filed with the Town Clerk. If the Applicant desires to continue this operation then an application shall be filed ninety (90) days prior to the date of this Special Permit.
5. There shall be no derogation from any conditions set forth in previous Decisions of Special Permit #'s 64-89, 116-92, 103-95, 117-98, 145-01, 134-04, 59-07, 71-10 and 92-13 except as stated herein.
6. Any deviation, no matter how minor, from plans submitted and approved by this Board shall be submitted to the Board for approval prior to implementation of said change. The Zoning Administrator may administratively approve minor changes.
7. 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.)
8. 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: 090-16

Applicant: CAPE COD AGGREGATES, CORP of Barnstable, MA

Address: Off Dimmock Ave. and Draper Rd., East Falmouth, MA  
Map 22, Section 01, Parcel 008A, Lot 014  
Map 23, Section 03, Parcel 014A, Lot 013  
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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 - 0 to Grant the Special Permit as represented to the Board, based on the Findings and Conditions stated herein and written above.

\_\_\_\_\_  
Terrence J. Hurrie, Acting Chairman, 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 90-16 Cape Cod Aggregates, filed with Town Clerk 10/7/16