

Zoning Board of Appeals Decisions Decisions for: 03-10-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 012-16

APPLICANT/OWNER(S): PETERSON COMPANY, LLC of East Falmouth, MA

SUBJECT PROPERTY: 497 Thomas B. Landers Road, Hatchville, MA
Assessor's Map: Map 16, Section 02, Parcel 001, Lot 002

DEED/CERTIFICATE: Book 16918 / Page 130

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of January 22, 2016, the applicant applied to the Zoning Board of Appeals for a Modification of Special Permit #125-02 pursuant to Section(s) 240-57 E. and 240-109 B. of the Code of Falmouth to construct a second pre-manufactured metal building for office space use and business bays to subject property known a 497 Thomas B. Landers Road, Hatchville, 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 March 10, 2016.
4. The public hearing was terminated on March 10, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy 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 represented at the hearing by Raul Lizardi-Rivera of Holmes and McGrath, 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

None

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

1/22/2016 Mr. Rivera submitted the application, plans, fee and photos of existing signage and landscaping on subject property; and a rendering (two pages) of what the proposed warehouse structure will look like when completed – all have a Board date 'received' stamp of January 22, 2016.

3/10/2016 At the hearing representative Raul Lizardi-Rivera handed the Board a colored copy of the "Grading, Drainage & Utilities Plan – Site Plan" with a Board date 'received' stamp of March 10, 2016. Note: There are no changes from the original plan – Sheet 2 of 3 – submitted on January 22, 2016 and noted below.

Letters/Referrals/E-mails from Town Departments

2/9/2016 A referral submitted to the file by the Engineering Department (S. Schluter) with the following comment: This application was reviewed only for impacts to public right of ways and public utilities.

Thomas B. Landers Rd is a Public right of way in this area. No alterations are proposed to the right of way; any changes within the right of way would require filing a permit with the Engineering Division. Any connections or alterations to public utilities would require permission from the appropriate Town Department. The project must not direct any stormwater runoff to public property, abutters, or right of ways.

2/2/2016 A referral submitted to the file by the Building Commissioner has no comment.

1/28/2016 A referral submitted to the file by the Falmouth Fire Rescue Department has no comment.

1/25/2016 A referral submitted to the file by the Planning Department staff stated: See attached Site Plan Review by the Planning Board. Attachment of a January 20, 2016 Decision for Site Plan Review addressed to Eladio Gore, Building Commissioner was attached to this referral. The Site Plan Review Decision had one condition.

1/22/2016 Copy of previous Special Permit #143-98 for subject property was submitted to the file.

Plans submitted by Applicant/Applicant's Representative

1/22/2016 "Layout Plan – Site Plan" prepared for Peterson Company, LLC in Hatchville, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 3 dated December 8, 2015, stamped and signed by Raul Lizardi-Rivera, P.E. with a Board date 'received' stamp of January 22, 2016;

"Grading, Drainage & Utilities Plan – Site Plan" prepared for Peterson Company, LLC in Hatchville, MA as drawn by Holmes and McGrath, Inc. – Sheet 2 of 3 dated December 8, 2015, stamped and signed by Raul Lizardi-Rivera, P.E. and with a Board date 'received' stamp of January 22, 2016;

"Construction Details – Site Plan" prepared for Peterson Company, LLC in Hatchville, MA as drawn by Holmes and McGrath, Inc. – Sheet 3 of 3 dated December 8, 2015, stamped and signed by Raul Lizardi-Rivera, P.E. and with a Board date 'received' stamp of January 22, 2016;

"SK-CO1: Retained Slope Section Detail" prepared for Peterson Company, LLC 497 Thomas B. Landers Rd, Falmouth, MA as drawn by Holmes and McGrath, Inc. dated January 15, 2016 with a Board date 'received' stamp of January 22, 2016; and

Preliminary drawings of proposed warehouse structure by Corle dated 8/19/15 consisting of three (3) pages with a Board date 'received' stamp of January 22, 2016.

Hearing:

Mr. Rivera reviewed the existing site conditions showing the existing building allowed by Special Permit in 2002. The proposed is to modify said permit to allow for a 3,200 square foot building with twelve (12) additional parking spaces that are being requested herein to be gravel. Mr. Rivera explained some of the uses allowed by right in this area such as converting, fabricating, manufacturing and retail sales. He stated there is a HVAC organization [tenant] in the existing building on-site that would move to this building.

The Board questioned Mr. Rivera on the proposed improvement to the retaining slope and driveway area. Mr. Rivera noted the "Retained Slope Section Detail" submitted to the file showing the slope to be improved and further stated that the landscaping will be brought into compliance as conditioned in previous special permit. He discussed the proposed gravel parking area noting that there will be 'wheel stops' installed; the applicant does not anticipate having to use these spaces.

Chairman Bielan asked for any public comment in support or opposition of the proposed project. There was no public comment.

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 497 Thomas B. Landers Road in Hatchville contains 1.84 acres of Light Industrial A zoned land that is located within the Wildlife Corridor Overlay District. The applicant applied under Section(s) 240-57 E. and 109 B. of the Code of Falmouth to construct a second industrial building on site with gravel parking area. The subject property was issued a special permit in 2002 (#125-02) that granted construction of an industrial building with office space and business bays, as well as alternative parking surface. The special permit also allowed use as a contractor's yard. This application is for a second industrial building to be located on site with twelve (12) additional parking spaces that will have a gravel surface with wheel stops installed.

Section 240-57 E. of the Code of Falmouth requires a special permit from the Board of Appeals to allow: Blacksmith, builder, carpenter, mason, plumber, roofer, tinsmith, undertakes and similar uses which the Board of Appeals may in specific instances find to be compatible with the uses mentioned above.

Section 240-109 B. of the Code of Falmouth – "Surface" – requires all parking spaces – except for residential family unit parking –to paved unless exempted by special permit from the Board of Appeals in certain circumstances where seasonal or periodic use where an alternative surface will prevent dust, erosion, water accumulation or unsightly conditions.

The Board finds that Section 240-57 E. of the Code of Falmouth allows tradesmen uses by special permit only; original special permit, #125-02 was granted under 240-57 H. that allowed a contractors' yard. The Board further finds through testimony by the applicant's representative that an existing tenant will relocate to proposed building.

The Board finds that the applicant's representative stated that the proposed twelve (12) gravel parking spaces will have wheel stops installed to delineate the parking spaces. The Board further finds that the proposed twelve (12) additional parking spaces will be located at the rear of the property adjacent to proposed building.

The Board finds that the proposed industrial building will be compatible with the existing use on subject property. The Board finds through testimony by the applicant's representative that the landscaping will be brought into and maintained in compliance with the conditions set forth [specifically Condition 2] in the Decision of Special Permit #125-02 for subject property. Furthermore, the Board finds the proposed and the Board's conditions herein will not derogate from any condition set forth in previous Special Permit #125-02.

The Board finds that the proposed industrial building and parking are in compliance with Sections 240-68 A. and B. (setbacks), Section 240-69 A. (lot coverage) and Section 240-70 (height) of the Code of Falmouth.

In addition to the above findings, the Board finds that the proposed construction of a second industrial building with parking 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 second industrial building on site as all dimensional requirements are in compliance with the Town bylaws.

B. The site is suitable for the proposed use as the property is zoned Light Industrial A. and said uses discussed herein are allowed by right or by special permit by this Board.

C. There will be no impact on traffic flow and safety as Thomas B. Landers Road is a main route that is traveled daily for many industrial and commercial uses along said road.

D. The visual character of the subject property will basically be unchanged as the proposed industrial building will be located at the rear of the property; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is in place for the uses allowed on subject property and there was no comment regarding the proposed building on the referral submitted by the Board of Health Agent.

F. There are adequate utilities to subject property by virtue of an existing building and uses on site. However, the Applicant will have to contact the Town Water Department regarding updating of water system.

- G. The proposed industrial building discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was a Site Plan Review Decision submitted to the file and taken under consideration by this Board.
- 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 Van Keuren 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 Peterson Company, LLC (herein referred to as Applicant) under Section(s) 240-57 E. and 240-109 B. of the Code of Falmouth to construct a second industrial building with parking on subject property known as 497 Thomas B. Landers Road, Hatchville, Massachusetts. This special permit is subject to the following conditions:

1. The proposed building, all setbacks, lot coverage, parking and use of building shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Layout Plan – Site Plan" prepared for Peterson Company, LLC in Hatchville, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 3 dated December 8, 2015, stamped and signed by Raul Lizardi-Rivera, P.E. with a Board date 'received' stamp of January 22, 2016;
- "Grading, Drainage & Utilities Plan – Site Plan" prepared for Peterson Company, LLC in Hatchville, MA as drawn by Holmes and McGrath, Inc. – Sheet 2 of 3 dated December 8, 2015, stamped and signed by Raul Lizardi-Rivera, P.E. and with a Board date 'received' stamp of January 22, 2016;
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- Preliminary drawings of proposed warehouse structure by Corle dated 8/19/15 consisting of three (3) pages with a Board date 'received' stamp of January 22, 2016.

2. There shall be no derogation whatsoever from any conditions set forth in the Decision of Special Permit #125-02 (filed with the Registry of Deeds 2/12/2003) accept as stated herein.

3. This Decision hereby incorporates the Planning Board's "Site Plan Review" and its Decision dated January 20, 2016 as a condition.

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: 012-16

Applicant: PETERSON COMPANY, LLC of East Falmouth, MA

Subject Property: 497 Thomas B. Landers Road, Hatchville, MA
Map 16, Section 02, Parcel 001, Lot 002

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 Modification of Special Permit 125-02 herein as Special Permit 012-16 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 012-16 /Peterson Co,LLC / Filed w/Town Clerk 3/23/16