

Zoning Board of Appeals Decisions Decisions for: 03-24-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 016-16

APPLICANT/OWNER(S): CADETE ENTERPRISES, INC. of Pembroke, MA

SUBJECT PROPERTY: 0 and 1184 Sandwich Road, Hatchville, Massachusetts
Assessor's Map: Map 10, Section 04, Parcel 007, Lot 193 (0 Sandwich Rd)
Map 10, Section 04, Parcel 007, Lot 194 (1184 Sandwich Rd)

DEED/CERTIFICATE: Certificate 159880 – Lots 193 & 194 – Plan 12349-12

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of January 27, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-51 C. (1) (a), 240-107 B. and 240-72.3 C. (8) of the Code of Falmouth to construct a Class IV restaurant (donut shop) with a drive thru window and additional retail/commercial space with parking reduction on subject property known as 0 Sandwich Road and 1184 Sandwich 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 24, 2016.
4. The public hearing was terminated on March 24, 2016. Board members sitting were Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy.
5. On April 14, 2016, the Board voted 5 – 0 to Grant the Special Permit with Conditions. Minutes from the hearing are on file in the Board of Appeals.
6. Attorney Robert H. Ament of Ament Law Firm represented the applicant Cadete Enterprises, Inc.
7. 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)

1/27/2016 Attorney Ament submitted on behalf of applicant an application, Addendum to application, fee and four sets of architectural and site plans; letter of December 8, 2015 from LEC to Thomas J. Bunker of BSS Design, Inc. re: 'Wetland Resource Area Analysis Report' for subject properties; and a "Traffic Impact Study" from Conley Associates dated January 2016.

2/12/2016 A letter from Ament Law Firm LLC to Brian Currie, Town Planner for Site Plan Review by Planning Department.

3/4/2016 A letter from Ament Law Firm LLC dated March 4, 2016 to Zoning Administrator with attached

copy of the Conservation Commission's Determination of Applicability; and a copy of a letter from Thomas W. French, Ph.D. with Division of Fisheries & Wildlife dated February 18, 2016 that noted the proposed will not result in a prohibited "take".

3/16/2016 A letter from Ament Law Firm LLC dated March 16, 2016 to Zoning Administrator with four (4) sets of updated Site Plans (six pages each).

3/24/2016 A letter from Ament Law Firm LLC dated March 24, 2016 to Zoning Administrator in response to Board of health e-mail regarding flows from uses on subject property.

Letters/Referrals/E-mails from Town Departments

3/23/2016 Board of Health Agent Carignan sent the Zoning Administrator an e-mail noting that the subject properties are in a Zone II area of groundwater protection with flow limitations based on uses (see file for e-mail dated 3/23/2016).

2/25/2016 Referral submitted to the file from Marine Environmental Services with no comment.

2/17/2016 Referral submitted to the file from Conservation Commission Agent Kasprzyk that states: Scheduled for RDA Hearing for 2/17/16. Located in sensitive area: adjacent to Little Jenkins Pond (vernal pool and under conservation restriction), with Zone II to public water supply. Concerns over (1) block wall to be built and (2) containing stormwater on property during construction. Mr. Bunker to submitted methodology.

2/17/2016 Referral submitted to the file from the Engineering Department (S. Schluter) with an attached referral to the Planning Board for proposed project – Referral in the form of a memo to the Planning Department has a date of 2/16/2016.

2/5/2016 Referral submitted to the file from the Falmouth Fire Rescue Department noting that the proposed building will have to have the required Life Safety Systems installed according to the Building Code; and it is recommended to have a Knox Box key entry system for after hour emergencies.

1/29/2016 Referral submitted to the file from the Planning Department Staff that states: A Site Plan Review is scheduled before the Planning Board on February 16, 2016.
Plans submitted by Applicant/Applicant's Representative

1/27/2016 "Multi-Unit Commercial Building 1184 Sandwich Road Falmouth, MA" preliminary architectural plans as drawn by Aharonian & Associates, Inc. dated January 21, 2016 consisting of Drawing A3.1 'Proposed Exterior Elevations' and Drawing A1.1 'Proposed Floor Plan' – both with a Board date 'received' stamp of January 27, 2016;

"Site Plan – Dunkin Donuts Restaurant and Subsurface Sewage Disposal System" prepared for Cadete Enterprises 1184 Sandwich Road Falmouth, Massachusetts as drawn by BSS Design, Inc. consisting of 'Existing Conditions' with a revised date of Feb. 11, 2016, 'Layout Plan' with a revised date of March 15, 2016, 'Grading & Drainage Plan' revised date of March 15, 2016, 'Septic System and Water Service' with a revised date of March 15, 2016 – all with a Board date 'received' stamp of March 16, 2016'

"Landscape Plan" by Yarmouth Port Design Group – L1 with a final revision date of March 8, 2016 and a Board date 'received' stamp of March 16, 2016;

"SSDS Profile & Details" plan drawn by BSS Design, Inc. dated February 11, 2016 and with a Board date 'received' stamp of March 16, 2016; and

"Paving & Drainage Details" plan by BSS Design, Inc., dated January 22, 2016 with a Board date 'received' stamp of January 27, 2016

Hearing:

Attorney Robert Ament reviewed the existing site conditions, previous special permits on subject properties that were not acted upon and reviewed proposed development of a Dunkin Donuts operation with a drive through. The site consists of two lots – lot 193 and 194 – that total 3.1 acres. The subject

property (lots 193 and 194) are within the Public Use District (first 100' off Sandwich Road), Business 2 District (where buildings will be located) and Agricultural A District. The proposed Dunkin Donuts would operate out of a 2,200 square foot portion of the building and there would be additional 3,200 square feet of retail/commercial space that would be leased out in the future either as three separate store fronts or possibly two store fronts. The applicant is requesting a reduction of parking spaces from 38-41 to 34 under Section 240-107 B. of the Code. The applicant feels that the parking spaces required for Dunkin Donuts (minimum of 10 spaces or 1 space per seat) according to our Code may not be necessary as the majority of customers to Dunkin Donuts utilize the drive-thru window and due to the parking spaces on site being shared with other tenants on subject property having different peak demand times for parking..

Thomas J. Bunker, PLS with BSS Design, Inc. reviewed the proposed site: The lot coverage by structures will be 6% of upland land area and the total lot coverage will be 32.60% of that land area. The existing two-way curb cut allowing access to and egress from the adjacent lot where a gas station and the present Dunkin Donuts exists will be used to enter the proposed development and a new curb cut further approximately 110 feet to the south and existing curb cut will be created for exiting the site [one way in and one way out]. The proposed plan shows lighting, fencing at rear of driveway behind building, dumpster location, outside seating and crosswalk to proposed parking at south side of proposed building and driveway.

Jennifer Conley, P.E. of Conley Associates reviewed the 'Traffic Impact Study' submitted by Conley Associates.

Jason Cadete of Cadete Enterprises, Inc. (applicant) was present and discussed hours of operation from 5:00 AM to 11:00 PM daily; and possible tenants in additional retail/commercial spaces.

The Board discussed testimony given and plans submitted with the applicant and his representatives. All concerns and questions were addressed.

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

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

Chairman Bielan closed the hearing.

The Board briefly discussed and Member Foreman made a motion to have the Zoning Administrator draft a positive decision for Board's review on April 14, 2016. Member Murphy seconded the motion. Motion carried 5 - 0.

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 (2) located at 0 and 1184 Sandwich Road in Hatchville together contains 135,780 square feet of Public Use, Business 2 and Agricultural A zoned land. The Public Use district is the first 100 feet into the land off from Sandwich Road; Business 2 district is the area where the building, drive and parking area will be located; and the Agricultural A district is at the southwest of Lot 193. The rear of the properties is primarily wetland area and buffer restricted for conservation. The subject properties are located within the Green Pond Coastal Pond Overlay District, the Wildlife Corridor, Water Resource Protection Overlay District, the Natural Heritage and Endangered Species Program (NHESP) - Priority Overlay District and the State Zone II Overlay District. The two properties are known as Lot 193 [0 Sandwich Road] that consists of 56,609 square feet of land and Lot 194 [1184 Sandwich Road] that consists of 79,171 square feet of land.

The applicant applied under Section(s) 240-51 C. (1) (a), 240-107 B. and 240-72.3 C. (8) of the Code of Falmouth to construct a Class IV restaurant (donut shop with drive-thru window) with additional retail/commercial space and reduced parking on the subject properties. The donut shop will occupy approximately 2,200 square feet of building space; and the remaining 3,200 square feet of building will be leased out to tenant(s). Parking required based on the area of the building and the proposed donut

shop with 25 seats is 38 to 41 spaces. The applicant is requesting to have 34 spaces.

Section 240-51 of the Code of Falmouth – “Special Permit uses.” – subsection C. ‘In B-2 Districts only: (1) Fast-food restaurants. All fast food restaurants, regardless of gross floor area, shall be subject to § 240-220, Multiple Review.

The Board finds that under Section 240-51 C. (1) a special permit is required as the donut shop (Dunkin Donuts) is considered ‘fast food’.

Section 240-107 of the Code of Falmouth – “Parking reductions.” – sub-section B. ‘Reduction by special permit’ allows the Board of Appeals to make a determination that special circumstances such as shared use of parking on the property with uses having different peak demand times may be allowed a parking reduction – or require more parking spaces if the Board believes it necessary.

The Board finds based on the Traffic Impact Study prepared by Conley Associates dated January 2016, that considered the adequacy of parking and concluded that the proposed parking shown on the plan submitted and noted herein is sufficient to accommodate parking demand for the restaurant and future retail/commercial spaces, even through peak demand hours of all uses on site. The Board further finds through testimony by applicant (Jason Cadete), which through an affiliate owns the East Falmouth Dunkin Donuts with a drive-thru off East Falmouth Highway that the majority of customers use the drive-thru and do not park and enter the store. Furthermore, the Board finds that Mr. Cadete stated there will not be another tenant on site that is a quick-service restaurant.

The Board finds through testimony by the applicant and his representative that no decision has been made as to the future tenants for the remaining 3,200 square feet of building space. The Board further finds that there are allowed uses in the Business 2 zoning district that may demand more parking spaces than the traditional business or professional offices, such gyms, medical labs or Class II restaurants. Furthermore, the Board finds that the applicant is amenable to a condition that the Board administratively review proposed tenants relative to traffic and parking.

The Board finds that the use of the existing curb cut off Sandwich Road used to access and exit the abutting gas station is an appropriate access for the proposed uses on subject properties; and that the curb cut approximately 100 feet south of existing curb cut is a proposed curb cut to be used as an exit only by all vehicles from subject property. The Board further finds that the proposed ‘exit’ curb cut from the subject properties will serve as an entrance only for emergency vehicles that need to access the site.

Section 240-72.3 of the Code of Falmouth – “Use Regulation.” – sub-section C. ‘Uses and activities requiring a special permit’, (8) requires any use on a lot creating impervious area of more than 15% or 2,500 square feet of any lot to submit a system for groundwater recharge that shows no impact to groundwater quality.

The Board finds that in accordance with Section 240-72.3 C. (8), the plan submitted and reviewed by the Board shows a system for groundwater recharge that includes three drainage basins (vegetated bio-swales) with leaching catch basins; the system does not utilize drywells. The Board further finds that the Planning Board reviewed the proposed “Site Plan – Dunkin Donuts Restaurant” and the Landscape Plan for the subject properties under Site Plan Review and issued a Decision approving the plans as submitted, including the bio-swales as part of the drainage system.

The Board finds after discussion and review of the “Layout Plan” that the dumpster location, four additional parking spaces in the rear to be used by employees on site (according to testimony by applicant’s representative) the ‘loading lane’ for deliveries, ‘bypass lane’, retaining wall with chain link fence along the rear of the property as a safety measure, crosswalk and stop sign when exiting drive-thru window and directional signage when leaving site are appropriate design features for the proposed use. The Board further finds after review that the Landscape Plan shows appropriate plantings for this environmentally sensitive property. Furthermore, the Board finds that at the south end of the property where vehicles will be exiting the site along the front of the building to exit the site, the applicant has proposed a 32’ long x 6’ high stockade fence in order to buffer any vehicle lights exiting the site that may impact the abutting residential property to the south of subject property.

The Board finds through testimony by the applicant that the proposed hours of operation for the Dunkin Donuts will be from 5:00 AM to 11:00 PM. The applicant further noted that the peak hours for the

operation are generally 7:00 am to 9:00 AM Monday through Friday and from 8:00 AM to 10:00 AM on Saturday and 9:00 AM to 11:00 AM on Sunday.

The Board finds through testimony by the applicant that snow removal will most likely be done by the applicant who has a bobcat and dump truck. Small snow amounts may be kept on site in grassy areas; or in the event of large snow amounts the applicant will haul snow away.

The Board finds that the applicant will need to file an ANR plan showing the two lots to be merged prior to issuance of a building permit.

In addition to the above findings, the Board finds that the proposed building and uses 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 Class IV restaurant (Dunkin Donuts) with drive-thru window and commercial/retail space and associated parking as all dimensional requirements are in compliance with the Town bylaws.

B. The site and location of proposed is suitable for the commercial operation(s) discussed herein.

C. There will be a slight impact on traffic flow according to the Traffic Impact Study submitted and reviewed by the Board. There will be a separate curb cut for exiting the subject property discussed herein.

D. The visual character of the subject property will be improved and there does not appear to be any adverse impact on the neighborhood's visual character; and there is no adverse impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system proposed will be reviewed by the Board of Health for approval prior to the issuance of a building permit.

F. The Applicant will have to contact the Town Water Department regarding water system for site, and contact the Engineering Department for approval of drainage, any work in the public layout and for a curb cut permit.

G. The proposed development of subject properties discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. There was Site Plan Review by the Planning Board and the Board of Appeals will take into consideration the Decision for said review.

I. The application is within compliance of all applicable sections of the zoning bylaws as represented.

J. The approval of this special permit does not include any affordable housing.

April 14, 2016 – Open Meeting: Board discussed draft decision for proposed development.

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 5 - 0 to Grant the Special Permit to Cadete Enterprises, Inc. (herein referred to as Applicant) under Section(s) 240-51 C. (1) (a), 240-107 B. and 240-72.3 C. (8) of the Code of Falmouth to construct a Class IV Restaurant (Dunkin Donuts) with a drive-thru window and additional retail/commercial space with reduced parking on subject properties known as 0 and 1184 Sandwich Road, Hatchville, Massachusetts. This special permit is subject to the following conditions:

1. The construction of the proposed building, driveway layout, entrance and exit of site, parking, landscape, drainage, fencing, lighting, all setbacks, lot coverage, curb cut(s) 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:

- "Multi-Unit Commercial Building 1184 Sandwich Road Falmouth, MA" preliminary architectural plans as drawn by Aharonian & Associates, Inc. dated January 21, 2016 consisting of Drawing A3.1 'Proposed Exterior Elevations' and Drawing A1.1 'Proposed Floor Plan' – both with a Board date 'received' stamp of January 27, 2016;

- "Site Plan – Dunkin Donuts Restaurant and Subsurface Sewage Disposal System" prepared for Cadete Enterprises 1184 Sandwich Road Falmouth, Massachusetts as drawn by BSS Design, Inc. consisting of 'Existing Conditions' with a revised date of Feb. 11, 2016, 'Layout Plan' with a revised date of March 15, 2016, 'Grading & Drainage Plan' revised date of March 15, 2016, 'Septic System and Water Service' with a revised date of March 15, 2016 – all with a Board date 'received' stamp of March 16, 2016'

- "Landscape Plan" by Yarmouth Port Design Group – L1 with a final revision date of March 8, 2016 and a Board date 'received' stamp of March 16, 2016;

- "SSDS Profile & Details" plan drawn by BSS Design, Inc. dated February 11, 2016 and with a Board date 'received' stamp of March 16, 2016; and

- "Paving & Drainage Details" plan by BSS Design, Inc., dated January 22, 2016 with a Board date 'received' stamp of January 27, 2016

2. The proposed building discussed herein shall have the required Life Safety Systems installed according to the current Massachusetts Building Code, a monitored fire alarm system with a Knox box key entry system as recommended by the Falmouth Fire Prevention Bureau.

3. The applicant shall submit to the Board of Appeals a signed ANR plan that has been filed with Land Court showing the merging of the two subject properties. The plan shall be submitted to the Board of Appeals prior to the issuance of a building permit.

4. The hours of operation for the proposed Dunkin Donuts shall be 5:00 AM to 11:00 PM Sunday through Saturday.

5. The Board shall determine the sufficiency of parking, either by administrative action or by modification of this decision, as the Board shall deem appropriate, before any of the commercial space is occupied (1) by any of the following uses permitted by bylaw Section 240-48: a medical clinic (as differentiated from offices of physicians, dentists, counselors or other health professionals), a sports/health club, a convenience store, or any other restaurant; or (2) by any other use or combination of uses that would cause the site to require, under the Table of Minimum Requirements, more than 41 parking spaces.

6. The applicant shall insure that all signage and directional signage for 'in' and 'out' traffic pattern to and from site, 'bypass' lane, loading area and crosswalk to always be maintained on site.

7. 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.

8. The Applicant shall meet the requirements of the Falmouth DPW Water and Engineering Divisions.

9. 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.)

10. 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: 016-16

Applicant: CADETE ENTERPRISES, INC. of Pembroke, MA

Subject Property: 0 Sandwich Road, Hatchville – Map 10, Section 04, Parcel 007, Lot 193; and 1184 Sandwich Road, Hatchville, - Map 10, Section 04, Parcel 007, Lot 194

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.

Kimberly Bielan, 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 # 016-16 Cadete Enterprises, Inc / filed w/Town Clerk 4/15/16