

## Zoning Board of Appeals Decisions Decisions for: 05-12-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 033-16

APPLICANT: M & N AUTO REPAIR of East Falmouth, Massachusetts

PROPERTY OWNER: Village Common Properties LLC

SUBJECT PROPERTY: 20 Village Common Drive, Teaticket, Massachusetts  
Assessor's Map: Map 34, Section 06, Parcel 024, Lot 002A

DEED/CERTIFICATE: Book 25209 / Page 0306

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of March 9, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-57 G. of the Code of Falmouth to allow for motor vehicles sales on subject property known as 20 Village Common Drive, Teaticket, 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 May 12, 2016.
4. The public hearing was terminated on May 12, 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 Brian Bourque who reviewed and discussed proposed plans with the Board. Business owner Morcio Almeida was also present.
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

3/15/2016 Referral submitted to the file by the Planning Board staff with no comment.

3/21/2016 Referral submitted to the file by Building Commissioner Gore with no comment.

3/22/2016 Referral submitted to the file by Falmouth Fire Rescue Department with no comment.

Plans submitted by Applicant/Applicant's Representative

"Existing Conditions Plan 20 Village Common Drive" drawn by G.A.F. Engineering, Inc. Drawing 1 of 1 dated 7/25/11, stamped, signed and dated by Glenn D. Amaral, PLS on 8/1/11 with a Board date 'received' stamp of Mar. 9, 2016;

"Proposed Grading and Drainage Plan" prepared for Gile Moniz dated Jan. 10, 1989, stamped and signed by David Charles Sanicki with a Board date 'received' stamp of Mar. 9, 2016;

"Unit C Existing Conditions Floor Plan" prepared for M & N Auto Sales Prospective Tenant as drawn by BKB - Drawing 1 of 3 dated 2/12/16 with a Board date 'received' stamp of Mar. 9, 2016;

"Unit C Proposed Floor Plan" prepared for M&N Auto Sales Prospective Tenant as drawn by BKB - Drawing 2 of 3 dated 2/12/2016 with a Board date 'received' stamp of Mar. 9, 2016; and

"Unit C Proposed Floor Plan with Cars" prepared for M&N Auto Sales Prospective Tenant as drawn by BKB - Drawing 3 of 3 dated 2/12/2016 and with a Board date 'received' stamp of Mar. 9, 2016.

#### Hearing:

Brian Bourque, on behalf of the applicant, reviewed the existing site conditions, proposed use and previous special permit. The existing building is 18,000 square feet in size with three units. The most southerly unit is an electrical wholesaler, the most northerly unit is an auto repair operation owned and operated by the applicant and the middle unit is an open space of approximately 8,000 square feet that is subject of the request to allow motor vehicle sales. He explained the proposal to stage 17 cars within the building, 5 of which the applicant would like to park on the outside of the building during the day. Mr. Bourque discussed the parking on site [38 spaces] and the use of parking by existing tenants [electrical supply operation and auto repair operation].

The Board discussed proposed floor plan, parking for uses on site and staging of 5 vehicles for sale on the outside of the building. It was noted in the discussions that the vehicles for sale will be used cars, not new vehicles. Also discussed were hours of operation for the vehicle sales which is being requested as 8am to 6pm Monday through Friday, 8am to 2pm on Saturdays and closed on Sundays. The existing special permit for the auto repair [owned by applicant] has Saturday hours from 8am to 12 noon, which the applicant's representative stated would not change.

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

Robert Salzer who is representative for owners of Lot 1 stated they are not opposed to this application. However, they do not want cars sold or parked on Lot 1 (immediate abutting lot to the north). He further explained that the parties of Lot 1 and Lot 2 (subject lot) are in negotiations for an easement for use of Lot 1, but that it is not fully agreed to and signed.

It was noted that there is no designation of parking for the existing uses on Lot 2.

Member Foreman 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 20 Village Common Drive in Teaticket contains 1.94 acres (84,370 square feet) of Light Industrial A zoned land that is located within the Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-57 G. of the Code of Falmouth to allow for motor vehicle sales on subject property. The applicant is requesting to have seventeen (17) vehicles staged within the 8,000 square foot space currently vacant in existing building on site. The property has a previous special permit with conditions that allows the use of the auto repair business operating in the northerly most portion of the existing building. The owner of the auto repair business (M&N Autorepair) is the applicant and the

vehicle sales operation requested herein will be an addition to said business.

Section 240-57 of the Code of Falmouth – “Special permit uses.” – Uses allowed on special permit from the Board of Appeals. Sub-section G. states: Motor vehicle service stations, motor vehicle sales, stables and parking facilities where a fee is to be charged, automobile repair shops, whether ancillary to sales or not.

The Board finds that the application is appropriately before this Board and is proposed as a ‘used vehicle sales operation’. The Board further finds that the proposed vehicle sales operation will be complimentary to the existing auto repair operation on site owned by the applicant. Furthermore, the Board finds that the 8,000 square foot interior building area is an appropriate space for the proposed inside staging of vehicles for sale.

The Board finds through testimony and the “Existing Conditions Plan” submitted to the file that there are thirty-eight (38) parking spaces on subject property, 23 of which are condition through Special Permit #86-14 shall be available to the auto repair [M&N Autorepair] operation approved in said Special Permit. The Board further finds through testimony by the applicant’s representative that approximately 5 spaces of the 38 spaces on site are used by the electrical supply operation located in the most southerly portion of existing building. Furthermore, the Board finds that the applicant is requesting to stage no more than 5 of the 17 vehicles for sale on the exterior of the building during business hours only.

The Board finds based on the above that there is adequate parking on site for the existing operations and the proposed vehicle sales operation. The Board further finds that the existing building has a sprinkler system as required by code. Furthermore, the Board finds through testimony by the applicant’s representative that there will be a garage bay door installed, via a building permit, at the rear of the building to allow for the 17 vehicles to have access for staging.

The Board finds that the requested hours of operation for the vehicle sales will be 8am to 6pm Monday through Friday, 8am to 2pm Saturday and closed on Sunday. The Board further finds through testimony by the applicant’s representative that the proposed vehicles sales operation will have two employees.

In addition to the above findings, the Board finds that the proposed vehicle for sale operation discussed herein 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 vehicles sales operation as the vehicles will be staged inside and the operation will primarily take place on the interior of the building. There are no additions proposed to the building so the footprint and parking on site remain as existing.
- B. The site is suitable for the proposed vehicle sales as the property is zoned Light Industrial A and applicant has applied for a special permit, as required, for said use to be allowed in this district.
- C. There will be no impact on traffic flow and safety as there is minimal increase of activity to and from the site through the proposed vehicle sales 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 and there does not appear to be any impact on the neighborhood’s visual character; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is not impacted through the approval of this special permit.
- F. There are adequate utilities to subject property by virtue of an existing businesses on site.
- G. The proposed use of vehicle sales 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 vehicle sales operation on subject property 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 Foreman made a motion to Grant the Special Permit with conditions. Member Murphy 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 a Special Permit to M&N Auto Repair (herein referred to as Applicant) under Section(s) 240-57 G. of the Code of Falmouth to allow for motor vehicle sales on subject property known as 20 Village Common Drive in Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The proposed vehicle sales operation, number of vehicles for sale on site, parking and hours of operation shall be as represented to the Board.
2. The applicant shall revise the "Existing Conditions Plan" submitted and noted above showing the proposed five (5) dedicated parking spaces for staging of 5 vehicles during daily business hours. The revised plan shall be submitted prior to commencement of vehicle sales operation and administratively approved by the Board of Appeals Zoning Administrator. Failure to submit the revised plan for approval will result in violation of this special permit approval.
3. There shall never be more than seventeen (17) used vehicles for sale on subject property.
4. There shall never be more than five (5) of the 17 used vehicles for sale staged in an exterior parking space on subject property during business hours of the vehicle sales operation approved herein. The 5 vehicles staged on the exterior of the building in a dedicated parking space as approved by the Board shall be moved to the interior of the building before sales operation is closed for the day.
5. The staging of vehicles on the interior of the building shall be substantially the same as what is shown on the plan submitted to the file and entitled: "Unit C Proposed Floor Plan with Cars" prepared for M&N Auto Sales Prospective Tenant as drawn by BKB – Drawing 3 of 3 dated 2/12/2016 and with a Board date 'received' stamp of Mar. 9, 2016.
6. Hours of operation for the used vehicles for sale operation shall be 8am to 6pm Monday through Friday, 8am to 2pm Saturday and closed on Sunday.
7. There shall be no parking or staging of any vehicles for sale on Lot 1. All parking and staging shall be on Lot 2 (subject property) and as conditioned herein.
8. There shall be no derogation from any conditions set forth in Special Permit #86-14 as it relates to this subject property, existing auto repair business owned by applicant and restricted parking.
9. 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.
10. 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.)
11. 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: 033-16

Applicant: M&N AUTO REPAIR of East Falmouth, MA

Subject Property: 20 Village Common Drive, Teaticket, MA  
Map 34, Section 06, Parcel 024, Lot 002A

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, 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 033-16 M & N Auto Repair / filed w/Town Clerk 5/20/16