

Zoning Board of Appeals Decisions Decisions for: 05-19-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 039-16

APPLICANT/OWNER(S): LEIGHTON T. ALLENBY, II of Waquoit, MA

SUBJECT PROPERTY: 891 Waquoit Highway, Waquoit, MA
Assessor's Map: Map 30, Section 04, Parcel 022, Lot 001

DEED/CERTIFICATE: Book 18065 / Page 145

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of March 22, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-162 and 240-23 G. (2) and (4) of the Code of Falmouth to allow a home occupation for a tree and landscape business and staging of three trucks over 13,000 GVW on subject property known as 891 Waquoit Highway, 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 May 12, 2016.
4. At the duly posted hearing for May 12, 2016, the Board voted unanimously to allow the hearing to be continued to May 19, 2016 – no testimony was given.
5. The public hearing was terminated on May 19, 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.
6. The applicant was represented at the hearing by Attorney Kevin P. Klauer, II who reviewed and discussed proposed plans with the Board.
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

4/28/2016 E-mail to Zoning Administrator, dated April 27, 2016 from Julie Ball stating opposition to the application for Home Business at 891 Waquoit Highway.

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

5/12/2016 Applicant submitted copies of six (6) Certificates of Registration for vehicles trailers on subject property – three trucks are over 13,000 GVW

Letters/Referrals/E-mails from Town Departments

3/23/2016 Referral submitted to the file by the Planning Department staff with no comment.

3/31/2016 Referral submitted to the file by Lt. Trott of the Falmouth Fire Rescue Department with no

comment.

4/7/2016 Referral submitted to the file by Town Engineering Department (S. Schluter) that states: This application was reviewed only or impacts to public right of ways and public utilities. Martin Road is a Public right of way, and Waquoit Highway is a State right of way in this area. No alterations are proposed to either right of way; any changes within the right of way would require filing a permit with the Engineering Division or permit from MassDOT. 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.

4/22/2016 Referral submitted to the file by Conservation Agent Mark Kasprzyk with no comment.

Plans submitted by Applicant/Applicant's Representative

"Certified Plot Plan 891 Waquoit Highway in East Falmouth, Massachusetts" prepared for Leighton T. Allenby, II – drawn by Cape & Islands Engineering dated 3/16/16 with a Board date 'received' stamp of March 22, 2016.

Hearing:

The Board discussed plans with Attorney Klauer and asked questions regarding maintenance of vehicles, buffering, employees and hours of operation. 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 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 891 Waquoit Highway in Waquoit contains 40,087 square feet of Residential B zoned land that is located within the Quashnet River Coastal Pond Overlay District and a portion of the front part of the property is located within the Zone II Overlay District (no dwelling or structures located in Zone II). The applicant applied under Section(s) 240-162 and 240-23 G. (2) and (4) of the Code of Falmouth to operate a home based tree and landscape business and staging of three (3) vehicles over 13,000 GVW on subject property. The applicant owns and operates Allenby Tree and Landscape Inc. and subject property right on Waquoit Highway that is almost 1 acre and located in a Residential B zoned district. The applicant is requesting to stage three work vehicles over 13,000 GVW in a buffered portion of the lot, along with two trailers. He has a personal pick-up truck (black F350 Ford) that he does use for personal and business. He has two employees that will come to the site and pick up the trucks to use off-site. Hours of operation are from 7:00 am to 7:00 pm Monday through Saturday. The detached garage on site was recently destroyed by fire and the applicant hopes to re-build it in the near future. The garage was where maintenance was conducted on vehicles; temporarily the slab of the previous garage, that still exists, will be used for maintenance on vehicles used in tree and landscape operation requested herein. Lot coverage on subject property is well below the maximum allowed pursuant to Section 240-69 A. of the Code of Falmouth.

Section 240-162 of the Code of Falmouth – "Home occupations." allows the Board of Appeals to approve a special permit based on criteria and consideration of sub-sections A. through F. for a home occupation or a home-based service business.

The Board finds that the applicant is the owner of subject property and the business discussed herein as "Allenby Tree and Landscape Inc."

The Board finds that the proposed staging of vehicles on subject property for a tree and landscape

operation meets the criteria of Section 240-162 of the Code of Falmouth. The Board further finds that the subject property is accessed off Waquoit Highway and mostly buffered from any residential dwelling in the general area. Furthermore, the Board finds that the applicant has buffered the driveway and staging area of the vehicles noted herein so as not to be seen from the roadway.

The Board finds through testimony by the applicant that there will be two employees that come to the site, park in a buffered area designated as parking for them near the southerly property line, and go off site to work with the tree and landscape vehicles. The Board further finds through testimony by the applicant that the only other equipment on site would be a bobcat that is stored at off site at a different location, but is used on applicant's property when he is moving trees or landscaping subject property. Furthermore, the Board finds through testimony by the applicant that he is in the process of cleaning up subject property and working on landscape design for said property and improving the buffer areas to insure privacy and screening of all vehicles.

The Board finds through testimony by the applicant stated that there will be no employees on site on weekends. The Board further finds that the operation of hours for the tree and landscape operation discussed herein will be from 7:00am to 7:00pm Monday through Saturday only.

Section 240-23 of the Code of Falmouth – "Special permit uses." – Subsection G. (4) (b): Any commercially registered vehicle with a gross vehicle weight of more than 13,000 pounds. Requires an applicant to come before the Board of Appeals to allow said vehicles noted in this section to be allowed on a residential zoned property.

The Board finds that the applicant is requesting to have three vehicles (2 trucks/1 trailer) each weighing over 13,000 gross vehicle weight. The applicant submitted to the file registration for three vehicles that weigh more than 13,000 pounds: 1) a 1983 International flatbed truck; 2) a 1987 International Gray trailer; and 3) a 2,000 Ford dump truck. In addition the applicant has an additional trailer and a pickup truck that is used as personal vehicle and business vehicle. The Board further finds that all vehicles, with the exception of the 350 Ford Truck, will be staged and screened on subject property as shown on the plan submitted and noted herein as "Certified Plot Plan 891 Waquoit Highway, Waquoit, MA".

The Board finds through testimony from the applicant that he is amenable to having no less than two hazmat kits on site at all times in the event of spillage or leaking of fluids from vehicles.

In addition to the above findings, the Board finds that the proposed tree and landscape operation known as "Allenby Tree and Landscape Inc." 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 tree and landscape operation as all dimensional requirements of the Town bylaws in Sections 240-68 A. and B. and 240-69 A., are in compliance; and that the vehicles proposed on subject property do not adversely impact the lot.

B. The site is suitable for the proposed use of a home-based tree and landscape business as there is no storage of materials on site and the vehicles will be screened from public view and said business will not adversely affect the residential use of subject property.

C. There will be no impact on traffic flow and safety as there is no change in the location of the existing driveway on site.

D. The visual character of the subject property will be improved as the applicant is landscaping and planting trees and shrubs to screen the vehicles from abutters view and view from the roadway so there will be no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is unaffected by this application.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed tree and landscape operation 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 based tree and landscape business 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 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 Leighton T. Allenby, II (herein referred to as Applicant) under Section(s) 240-162 and 240-23 G. (2) and (4) of the Code of Falmouth to allow a limited home-based tree and landscape operation on subject property located at 891 Waquoit Highway, Waquoit, Massachusetts. This special permit is subject to the following conditions:

1. The location of the trucks and trailers, number of trucks and trailers, screening of trucks and trailers, employee parking and screening of employee parking shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Certified Plot Plan 891 Waquoit Highway in East Falmouth, Massachusetts" prepared for Leighton T. Allenby, II – drawn by Cape & Islands Engineering dated 3/16/16 with a Board date 'received' stamp of March 22, 2016.
2. Hours of operation for the home-based tree and landscape business shall be limited to 7:00 am to 7:00 pm Monday through Saturday only.
3. There shall be no more than two (2) employees on site other than family of the applicant.
4. The applicant shall at all times have no less than two (2) hazmat kits on site in the event of any spillage or leakage of fluids from the vehicles staged on subject property. All care will be taken by applicant to insure there will be no impact to groundwater from fluid spillage or leakage from vehicles.
5. Maintenance of any vehicle on site shall be conducted on the concrete slab where a garage was previously located on site. In the event the garage is reconstructed, said maintenance shall be conducted within the garage.
6. In the event the vehicles listed herein are sold or traded in for new vehicles, the applicant shall inform the Board of Appeals. The applicant shall submit Certificate of Registration for any trade of vehicle noted herein (copy of Certificate of Registration for each vehicle approved herein is in the file for this special permit).
7. Any additional equipment added to the site will be considered a violation of this special permit unless authorized by the Board of Appeals.
8. The home-based tree and landscape business approved herein shall be solely for the applicant and not transferrable to any other individual and will not withstand conveyance of subject property.
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.)

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 039-16

Applicant: LEIGHTON T. ALLENBY, II of Waquoit, Massachusetts

Subject Property: 891 Waquoit Highway, Waquoit, Massachusetts
Map 30, Section 04, Parcel 022, Lot 001

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 039-16/Allenby II / Filed w/ Town Clerk 5/31/16