

Zoning Board of Appeals Decisions Decisions for: 05-26-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 047-16

APPLICANT(S)/OWNER: LOUIS P. ROMIZA, JR. of East Falmouth, MA

DEED/CERTIFICATE: Book 3964 / Page 187

SUBJECT PROPERTY: 84 Trotting Park Road, East Falmouth, MA
Assessor's Map: Map 34, Section 01, Parcel 028B, Lot 000

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 15, 2016 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3, 240-38 G. (4), 240-162 and 240-216 of the Code of Falmouth for a home occupation for limited auto salvage use with two flatbed trucks/tow trucks to be parked on parcel known as 84 Trotting Park Road, East Falmouth, 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 May 26, 2016.
4. The public hearing was terminated on May 26, 2016 wherein the Board consisting of Acting Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate Mark Cool (sitting as voting member) made a decision to Grant the Special Permit with conditions.
5. The applicant was represented at the hearing by Kristine Romiza.
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

5/26/2016 Letter dated May 26, 2016 from Rebecca Racicot and Paul Gross of 90 Trotting Park Road was submitted to the file – letter stated support of the special permit.

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

5/25/2016 Letter to the Board of Appeals from Kristine Romiza reviewing status of conditions of the Special Permit (17-15) issued for the home occupation with 3 photos attached.

Letters/Referrals/E-mails from Town Departments

4/21/2016 Referral submitted to the file by the Planning Department staff with no comment.

4/22/2016 Referral submitted to the file by Conservation Agent that stated: Provided no stormwater runs towards Trotting Park Road.

4/26/2016 Referral submitted to the file by the Fire and Rescue Department with no comment.

4/29/2016 Referral submitted to the file by the Building Commissioner with no comment.

5/3/2016 Referral submitted to the file by the Engineering Department with standard conditions that are not relevant to this application.

Plans submitted by Applicant/Applicant's Representative

"Certified Plot Plan" prepared from Louis P. & Carol A. Romiza of 84 Trotting Park Road East Falmouth, MA – drawn by Cape & Islands Engineering, stamped and signed by Christopher Costa, PLS on 9/16/15 and with a Board of Appeals date 'received' stamp of April 15, 2016.

Hearing: May 26, 2016

Kristine Romiza explained that the Board of Appeals granted a one year special permit for the home occupation requested herein. She reviewed the fencing and buffering of property lines conditioned in special permit #17-15 and explained that as of this date the fencing is complete and is all along the side property line abutting Mr. Medeiros of 80 Trotting Park Road. She explained that all vehicles are the same and the home occupation is the same with no changes requested. She said there have been no complaints and she believes there have been no violations.

Zoning Administrator Budrow confirmed that she has had no complaints and she was not notified of any violations.

Chairman Foreman asked for public comment in support or opposition of the proposed additions.

Earl Berry of 83 Trotting Park Road stated his support of the home occupation and said he has lived on Trotting Park for 40 years with no complaint of 84 Trotting Park Road.

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

Chairman Foreman closed the hearing.

Board discussed and had no issues with the home occupation that has operated for one year according to the special permit issued (#17-15) and consensus was to allow the home occupation to continue its operation through a special permit.

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 84 Trotting Park Road in East Falmouth contains 34,000 square feet of Agricultural B zoned land that is located within the Great Pond Coastal Pond Overlay District and a Wildlife Corridor. The applicant applied under Section(s) 240-3, 240-38 G. (4), 240-162 and 240-216 of the Code of Falmouth to allow the continued use of a limited home occupation for auto salvage use with two trucks and two trailers to be parked on subject property. The applicant has been using subject property to operate a limited salvage operation that consists of towing vehicles to the site, removing the catalytic converters and batteries for resale and then removing the vehicles.

Section 240-3 of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the applicant in 2016 filed under Section 240-3 due to the nonconforming setback of the accessory structure of 9.3' where a 10' setback is required. The Board further finds that through Special Permit #17-15 the Board conditioned that the accessory structure be brought into setback compliance – the applicant complied and submitted a "Certified Plot Plan" to the file showing compliance. The Board further finds that the dwelling structure on subject property has a pre-existing nonconforming setback of 17' to the front property line off Trotting Park Road that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. Furthermore, the Board finds that the lot coverage on subject

property is in compliance with Section 240-69 A. of the Code of Falmouth.

Section 240-162 of the Code of Falmouth sets forth criteria to allow the Board of Appeals to grant a special permit for a home occupation only after Board's consideration of said criteria.

The Board finds that the application discussed herein meets the criteria and may be approved by the Board of Appeals under Section 240-162 of the Code of Falmouth. The Board further finds that Special Permit #17-15 was issued to applicant for one year with conditions that applicant needed to comply with; and for the Board to receive any information in that year of any complaint or violation of the home occupation. Furthermore, the Board finds that as of the date of this hearing, the applicant is in compliance with conditions set forth in Special Permit #17-15 and, based on information from the Zoning Administrator, that there were no complaints regarding the operation of the home occupation and that there were no known violations of the home occupation during the year for the special permit that expires June 24, 2016.

The Board finds that the applicant is satisfied with the conditions set forth by the Board in Special Permit #17-15 for the home occupation. The Board further finds that the application will continue to use the two (2) trucks and two (2) trailers that will be staged on subject property and involved in the proposed home occupation herein discussed; all personal vehicles on site shall not be a part of the home occupation operation. The titles and registration of the vehicles used in the home occupation operation are noted in the file. Furthermore, the Board finds that the two (2) pickup trucks used in the operation do not exceed 13,000 GVW.

The Board finds that the application under Section 240-38 G. (4) of the Code of Falmouth is not applicable as the vehicles on site used in the proposed home occupation are not over 13,000 gross vehicle weight.

In addition to the above findings, the Board finds that the proposed home occupation 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 home occupation as set forth herein.
- B. The site is suitable for the proposed use as the property is a residential use and the home occupation as represented herein is accessory to the primary and will not change the residential aspect of subject property.
- C. There will be no impact on traffic flow and safety entering and exiting subject property as the home occupation is operated by family members from the site and no additional trucks are affiliated with the home occupation; no other trucks or trailers not involved with the home occupation will be used or staged on site; 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 in place and not affected by the granting of this special permit.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed home occupation 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.

Member Hurrie made a motion to Grant the Special Permit with conditions. Member Van Keuren seconded the motion. Vote was 4 – 0.

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 Louis P. Romiza, Jr. (herein referred to as Applicant) under Section(s) 240-162 of the Code of Falmouth to allow a home occupation as discussed to be conducted on subject property known as 84 Trotting Park Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The home occupation discussed and represented herein shall be conducted within the accessory structure located mid-point near the southerly side property line as shown on the plan submitted and entitled "Certified Plot Plan" prepared for Louis P. & Carol A. Romiza drawn by Cape & Islands Engineering dated 9/16/2015, stamped and signed by Christopher Costa, PLS on 9/16/2015 and with a Board date 'received' stamp of April 15, 2016.
2. There shall be no more than the two (2) pickup trucks and two (2) trailers represented to the Board with copies of registration in the home occupation operation. Any substitution of the vehicles and trailers used in the operation, a copy of the new vehicle or trailer's registration shall be submitted to the Board of Appeals for approval.
3. There shall be no trucks on subject property that exceed 13,000 GVW.
4. The only work performed within this home occupation approved herein shall be the removal of a catalytic converter and/or a battery from any vehicle towed to the site.
5. There shall be no more than two towed vehicles on the site at one time.
6. There shall be no unregistered vehicles stored on subject property.
7. All work related to the home occupation approved herein shall be conducted within the accessory structure noted as a 1,032 square foot accessory structure on the plan noted in Condition 1 above. There shall be no removal of items from a towed vehicle while staged in the yard or on a trailer – all removal of items will be conducted in the structure noted. There shall be no work relative to the home occupation conducted in either garage [attached or detached] on subject property.
8. The hours of operation for the home occupation described herein shall be 8:00 am to 6:00 pm Monday through Saturday with no home occupation work being conducted on Sunday.
9. No towed vehicles or items removed from said towed vehicles shall be stored on subject property or within the accessory structure for more than twenty-four (24) hours.
10. The applicant shall have no less than two (2) spill kits (or equivalent thereof) on site at one time.
11. The applicant shall maintain the stockade fence along the southerly side yard property line and the plantings used to screen the subject property along the northerly and westerly property lines.
12. 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.
13. 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: 047-16

Applicant: LOUIS P. ROMIZA, JR. of East Falmouth, MA

Subject Property: 84 Trotting Park Road, East Falmouth, MA
Map 34, Section 01, Parcel 028B, Lot 000

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 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 047-16 Romiza, Jr / Filed w/Town Clerk 6/1/16