

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 122-16

APPLICANT: MELISSA PURDY of East Falmouth, Massachusetts

OWNER: Moonakis Madness LLC – Ronald K. Purdy, Resident Agent

SUBJECT PROPERTY: 416 Carriage Shop Road, East Falmouth, Massachusetts
Assessor's Map: Map 29, Section 01, Parcel 006, Lot 000

DEED/CERTIFICATE: Book 27126 / Page 088

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of November 10, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-38 G. (4) of the Code of Falmouth to park a school bus on subject property known as 416 Carriage Shop Road, East Falmouth, 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 January 12, 2017.
4. The public hearing was terminated on January 12, 2017, wherein the Board consisting of Vice Chairman Kenneth Foreman sitting as Chair, 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 present at the hearing and reviewed and discussed proposed plans with the Board.
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)

11/17/2016 E-mail correspondence between Zoning Administrator and applicant regarding proposed curb cut on Carriage Shop Road with colored photos of site attached

Letters/Referrals/E-mails from Town Departments

- 11/16/2016 Referral submitted to the file from Conservation Commission with no comment
- 11/16/2016 Referral submitted to the file from the Planning Department with no comment
- 11/22/2016 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment
- 11/29/2016 Referral submitted to the file from the Director of Assessing with no comment
- 12/12/2016 Referral submitted to the file from the Engineering Department (N. Croft) that states: *This permit required a Driveway Permit from the Engineering Department. The Driveway Permit has already been approved and completed to our specs. No drainage or other issues. Work was completed 12/07/2016.*

Plans submitted by Applicant/Applicant's Representative

Hearing:

Applicant, Melissa Purdy explained to the Board that she is seeking a special permit to be allowed to park the school bus she drives at her home (subject property). She explained that occasionally she comes home with the bus between morning and afternoon routes and at times will keep the bus overnight. The bus will be backed in approximately 200 from the front property line and 20 – 30 feet from the side property line.

The Board discussed plans with the applicant and reviewed existing buffering along the easterly side of the property abutting the Holy Ghost Association building. All concerns and questions were addressed.

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

Cynthia Wawicki of 0 Crosswinds Way stated she is building a home (2 properties over on the west of subject property) and is bringing 2 horses with her. She stated concern and effect on her livestock with the idling of a bus and asked what the purpose of parking the bus on her property is. She suggested the applicant plant mature 6' shrubs 24" apart around the bus parking area and to please limit idling time of the bus. She suggested there are other places to park a bus instead of her home.

Chairman Foreman informed Ms. Wawicki that it is allowed under the zoning by-laws with a special permit.

Ms. Purdy, applicant, responded that the State regulation is no more than five (5) minutes of idling time for a bus and that the bus automatically e-mails the driver after three (3) minutes of idling time and then notifies the driver's supervisor if idling occurs over five (5) minutes.

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

Chairman Foreman closed the hearing.

Board Discussion:

Member Murphy stated he feels the proposal is reasonable, the idling is strictly regulated; the lot and the parking area, which is 200 feet from the roadway is heavily wooded so it will not be necessary to add plantings. All members agreed.

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 416 Carriage Shop Road in East Falmouth contains 6.1 acres of Agricultural A zoned land that is located within the Eel Pond and Childs River Coastal Pond Overlay District, the Wild Life Corridor and the Natural Heritage and Endangered Species Program Overlay districts. The Board finds that the subject property had benefit of Special Permit #58-89 and a Variance #61-89 due to the width of the subject parcel in a Water Resource District. The applicant applied under Section(s) 240-38 G. (4) of the Code of Falmouth to park a school bus on subject property. The applicant would like to stage/park the school bus she drives daily on subject property for more than two hours per day and some overnight parking when necessary. The applicant stated that it saves her approximately one hour a day to have the bus parked on site and it saves considerable gas as well.

Section 240-38 G. (4) of the Code of Falmouth allows an applicant to apply to the Board of Appeals for a special permit to stage/park a school bus on subject property for more than two hours per day.

The Board finds according to testimony by the applicant that the bus being parked on subject property will be a benefit as it will save the applicant at least an hour daily in commuting time of her route; and will lessen pollution from the fuel due to the shortened amount of travel time.

The Board finds that the applicant has received approval from the Town Engineering Department for an additional curb cut on Carriage Shop Road to access subject property. The Board further finds that the applicant intends on parking the school bus approximately 200 feet from the front property line off Carriage Shop Road on subject property and at least 20 to 30 feet away from the easterly side yard property line.

The Board finds that there are sufficient existing plantings, shrubs and trees along the easterly side of subject property to buffer the school bus from adjacent property; and the proposed location of the bus to be parking on subject property being 200 feet from front property line, will not be visible from the roadway.

The Board finds from testimony by the applicant that according to State law a bus cannot idle for more than five (5) minutes; and the buses have an electronic system that e-mails the bus driver when the bus idles for three (3) minutes, alerting the bus driver and alerting the driver's supervisor after five (5) minutes of idling time. The Board further finds that the applicant intends to back the bus up into the proposed parking space on subject property (200 feet from front property line), so that the bus can be

driven straight out in the morning without the use of a back-up beeper that may be offensive in the early morning hours to abutters.

The Board finds according to testimony by the applicant that the bus is typically parked on subject property by 5:00 PM.

In addition to the above findings, the Board finds that the proposed 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 parking of the school bus as the site is over 6 acres and the bus will be parked 200 feet back from the front property line so as not to be seen from the roadway.
- B. The site is suitable for the proposed use as the property is used as residential and the proposed parking of the school bus shall not change the use of subject property.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property; there is a curb cut specifically for the bus access to property that was approved by the Town Engineering Department.
- 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 unaffected by this special permit approval.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed parking of a school bus on subject property as 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 school bus allowed to park on subject property at 416 Carriage Shop Road 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 **4 – 0 to Grant the Special Permit** to Melissa Purdy (herein referred to as Applicant) under Section(s) 240-38 G. (4) of the Code of Falmouth to park a school bus on subject property known as 416 Carriage Shop Road, East Falmouth, MA. This special permit is subject to the following conditions:

1. The school bus shall be parked in the location shown on the plan submitted to the file known as "Site Plan for Proposed Additions located at 416 Carriage Shop Road East Falmouth, MA" drawn by Meyer & Sons, Inc. stamped, signed and dated on 10/17/14 by Edward A Stone, PLS and with a Board date 'received' stamp of November 10, 2016.
2. The school bus shall always be parked approximately 200 feet from the front property line off Carriage Shop Road and no less than 20' to the easterly side yard property line abutting Holy Ghost Association lot; and the bus shall be oriented facing the Carriage Shop Road so that no backing up is required to exit the property.
3. This permit is approved only for Melissa Purdy and shall not withstand conveyance of the land.
4. The applicant shall file this Special Permit Decision with the Barnstable Registry of Deeds immediately following the twenty (20) day appeal period, and no more than thirty (30) days past such date. The applicant will submit a copy of the filed Decision to the Board of Appeals forthwith.
5. 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.
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 three 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: **122-16**

Applicant: **MELISSA PURDY of East Falmouth, MA**

Subject Property: **416 Carriage Shop Road, East Falmouth, MA
Map 29, Section 01, Parcel 006, 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.