

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

SPECIAL PERMIT NO: 002-17

APPLICANT/OWNER(S): BARNSTABLE COUNTY AGRICULTURAL SOCIETY, INC.
of East Falmouth, MA

SUBJECT PROPERTY: 1220 Nathan S. Ellis Highway, East Falmouth, MA (and others)
Assessor's Map: Map 18, Section 02, Parcel 005, Lot 001
Map 18, Section 02, Parcel 002, Lots 180 through 185
Map 18, Section 02, Parcel 002A, Lots 359 through 361
Map 18, Section 02, Parcel 003, Lot 000
Map 18, Section 02, Parcel 004, Lot 000
Map 18, Section 02, Parcel 006, Lot 002
Map 18, Section 03, Parcel 001, Lot 001
Map 18, Section 03, Parcel 007, Lot 000
Map 18, Section 03, Parcel 008, Lot 000

DEED/CERTIFICATE: Book 1891 / Page 0243
Certificate 58678 – Land Court Plan 27489-A, June 11, 1966

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of January 11, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-38, 240-109 A., 240-109 B., 240-160 and 240-18 of the Code of Falmouth to allow non-agricultural events with associated parking and parking for a fee on subject property known as 1220 Nathan S. Ellis Highway, 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 February 23, 2017.
4. The public hearing was terminated on February 23, 2017, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate Robert Dugan (sitting as voting member) 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 General Manager Wendy Brown who reviewed and discussed proposed events for 2017 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)

02/02/2017 Final Revised Schedule of Events for the 2017 Season at the Cape Cod Fairgrounds by Barnstable County Agricultural Society.

Letters/Referrals/E-mails from Town Departments

- 01/12/2017 Referral submitted to the from the Planning Department staff with no comment
- 01/13/2017 Referral submitted to the file from the Fire Department that states: *We have reviewed the list of events and have no concerns at this time. The Barnstable County Ag. Soc. has a copy of the FFRD Public Event Standard which they distribute to all event organizers.*
- 01/18/2017 Referral submitted to the file from Marine Environmental Services with no comment
- 01/18/2017 Referral submitted to the file from the Director of Assessing with no comment
- 02/09/2017 Referral submitted to the file from the Conservation Commission that states: *Wetlands do not appear to be impacted by encroachment – storage of materials near vernal pool wetland (north corner of property near Ashumet Road) has not expanded. No trash in area either as in past.*
- 02/13/2017 Referral submitted to the file from the Engineering Department has no comment

Plans submitted by Applicant/Applicant's Representative

- 02/04/2016 “Plot Plan of Land in Falmouth, MA” prepared for Barnstable County Agricultural Society as drawn by Stephen A. Haas Engineering, Inc. – Sheet 1 of 2 stamped, dated and signed by Stephen A. Haas, P.E. on 1/4/2017 and with a Board date ‘received’ stamp of January 11, 2017; and
- “Plot Plan of Land in Falmouth, MA” prepared for Barnstable County Agricultural Social – Sheet 2 of 2 as drawn by Stephen A. Haas Engineering, Inc., stamped, signed and dated by Stephen A. Haas, P.E. on January 4, 2017 and with a Board date ‘received’ stamp of January 11, 2017.

Hearing:

General Manger Wendy Brown briefly reviewed the updated event schedule with a couple events cancelled and a late addition of a new event being held this year. She explained that there were no problems or complaints for 2016 and all vendors are made aware of the permits that they will need from the Town for certain events.

All concerns and questions from Board members were addressed. Chairman Bielan asked for any public comment in support or opposition of the proposed project. There was not 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.

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 are located off Nathan S. Ellis Highway - the main property (events held), 1220 Nathan S. Ellis Highway, consists of 21 acres of Agricultural A zoned land located within the State Zone II District, Water Resource Protection District, Childs River Coastal Pond Overlay District and a portion of the properties are within the Natural Habitat for Endangered Species Project. Total acreage including main event property and all parking areas [separate lots owned by BCAS] totals approximately 98 acres. The applicant/Owner, Barnstable County Agricultural Society, (hereinafter referred to as BCAS) applied under Section(s) 240-38, 240-160, 240-109 A. and B. and 240-18 of the Code of Falmouth to allow non-agricultural events on said properties herein stated, which include, but are not limited to, parking for scheduled events and staging of equipment/trucks used by vendors or event holders. The applicant/Owner requires a yearly permit from the Board of Appeals pursuant to Section 240-160 A. of the Code of Falmouth to hold non-agricultural events during the summer and fall months.

Section 240-160 A. of the Code of Falmouth requires that temporary and conditional structures and uses that do not conform to the regulations prescribed in the Zoning Bylaws may be allowed by special permit, provided that no special permit shall be for more than a one-year period and further provided that no special permit shall be renewed until all abutters have been notified and public notice given in the manner provided in MGL Chapter 40A.

Section 240-109 A. of the Code of Falmouth allows the Board of Appeals to vary the parking for activities/events to be staged on same premise as activity/event.

Section 240-109 B. of the Code of Falmouth requires a special permit from the Board of Appeals to be exempt from paving parking surfaces for cases such as seasonal periodic use where an alternative surface will prevent dust, erosion, water accumulation or unsightly conditions.

Section 240-18 of the Code of Falmouth states that uses not classifiable under any category listed for the applicable district are prohibited, except that a use listed nowhere in Articles V through XIII may be allowed on special permit if the Board of Appeals determines that it closely resembles in its neighborhood impacts a use allowed or allowed on special permit in that district.

Section 240-38 of the Code of Falmouth states that the Board of Appeals will be the special permit granting authority for any uses requested on agricultural zoned properties wherein a special permit is required.

The Board finds that BCAS is a non-profit entity and owner of subject properties listed and discussed herein.

The Board finds that BCAS has had several previous special permits approved by this Board for non-agricultural events held yearly on subject properties without violation of any town or zoning bylaws.

The Board finds that the subject properties noted herein, owned by the applicant, are suitable and adequate for the scheduled events and uses as submitted and represented to this Board.

The Board finds that the events as represented by the applicant and listed below are the events being held at the Barnstable County Fairgrounds for the year 2017, commencing on May 20, 2017 and ending approximately on December 1, 2017. The Board further finds that any event not listed, that has either paid parking or is a non-agricultural event, will require BCAS to request an Administrative Approval or modification of the approved Special Permit and BCAS must receive approval prior to said event(s) taking place.

The Board finds through testimony of the applicant's representative [Wendy Brown] that all efforts will be made to work with the Police and Fire Departments for any event that may require traffic and public safety detail. The Board further finds that the Fire Department has created "Public Event Standards" and has given them to the applicant [General Manager Wendy Brown on behalf of BCAS] and is requiring that she give all vendors copies of said standards for their review and signature and that BCAS maintain a copy of the signed copies. Furthermore, the Board finds that the applicant's representative gave testimony that she will assist vendors in getting proper permits and licensing from appropriate Town departments.

The Board finds that the proposed, as it is relevant, meets the criteria set forth in Section 240-216 of the Code of Falmouth.

There is no decision of the Planning Board to consider, as this proposal is not subject to review by the Planning Board under Site Plan Review.

The Board has weighed the beneficial and adverse effects of the proposed events and the associated parking 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 Bylaw.

Member Van Keuren made a motion to Grant the Special Permit with conditions. Member Foreman seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (hereinafter referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth, hereby voted **5 – 0 to Grant the Special Permit** to Barnstable County Agricultural Society, Inc. (hereinafter referred to as Applicant) under Section(s) 240-18, 240-38, 240-109 A. and B., and 240-160 A. of the Code of Falmouth to allow non-agricultural events and/or paid parking on subject properties listed herein, which includes the main property known as 1220 Nathan S. Ellis Highway, East Falmouth, Massachusetts. This Special Permit is subject to the following conditions:

1. The events and parking shall be held on properties as represented to this Board and as shown on a "Plot Plan of Land" in Falmouth, MA prepared for Barnstable County Agricultural Society by Stephen A. Haas, Engineering, Inc., Sheets 1 and 2 of 2 stamped and signed by Stephen A. Haas, P.E. on 1/04/2017 with a Board date 'received' stamp of January 11, 2017.
2. The events and parking schedule calendared for 2017 as represented to, and approved by this Board are as follows:
 - a. May 13, 2017 – Brazilian Community Event Concert – [12:00am – 8:00pm] – Alcohol – non-paid parking – Areas A, B, C and D – Lots 1, 2 and 4;
 - b. May 20, 2017 – Master Gardeners [8 am – 2 pm] – non-paid parking – Area A & C - Lot 1 and E.

- c. June 3, 2017 – Cape Cod Antique Dealers – [10:00 am – 4:00 pm] – Market Place, non-paid parking – Lot 4;
- d. June 10, 2017 – Cape Cod Comedy Fest – [2:00pm – 10:00pm] – Alcohol - non-paid parking, Area C, D, Lot 4;
- e. June 11, 2017 – Horse Show – Field Crest Farm [7:00 am – 6:00 pm] Parking: non-paid – Area A and B, Reserve E;
- f. June 16 - 18, 2017 – Agility Dog Show – Kennel Club - [7:00 am to 6:00 pm] – non-paid parking, Area A, B, C, D - Lot 4;
- g. June 18, 2017 – Mashpee Triathlon – Town of Mashpee [6:00 am – 3:00 pm] Parking: non-paid – Area - Lot 1;
- h. July 1 - 3, 2017 – Mashpee PowWow – [10:00 am to 10:00 pm] – No Alcohol – Area B, C and D – Lot 4;
- i. July 17- 23, 2017 – Barnstable County Fair – [4:00pm to 11:00pm Mon thru Thurs, Noon – 11:00pm Fri thru Sun - Gates: close at 10:00 PM Daily with Midway open to 11:30 PM Daily] – Parking: Non paid – Lots 2, 3 and E; Paid – Lots 1 and 4; Area: A, B, C, D;
- j. August 5, 2017 – 5K Inflatable – Fundraiser – [7:00am – 2:00pm] – Alcohol – Areas A, B, C and D – Lot 1 and 4 and Reserve E;
- k. August 5, 2017 – ALS Concert - Fundraiser [5:00pm – 8:00pm] Alcohol - non-paid parking, Area: A and B, Lot 1 and Reserve E;
- l. August 12, 2017 – Food Truck Festival [10:00 am to 6:00 pm] Alcohol – Parking is non-paid; Areas A, and C – Lot 1, 2, 4 and E;
- m. August 16, 2017 – FRR Vol Dinner – Marketplace [6:00pm – 8:00pm] Alcohol - Parking is non-paid – Lot 4;
- n. August 19 - 20, 2017 – Race Team Road Race [10:00 am to 6:00 pm] Alcohol - Parking is non-paid; Area: B, C & D, Lot 4;
- o. August 27, 2017 – Fieldcrest Farm – Horse Show [7:00 am to 6:00 pm] – Parking is non-paid; Area A, and B and Lot 1 and E;
- p. September 14 - 17, 2017 – Cranberry Dog Show [7:00 am to 6:00 pm] – non-paid parking – Area A, B, C, D, Lot 4;
- q. September 22 - 24, 2017 – Cape Cod Scallop Festival – Canal Chamber [10:00 am to 10:00 pm] Alcohol – Paid and non-paid parking – Area: A, B, C, D and Lots 1, 2, 4 and E;
- r. October 14, 2017 – Cape Cod Brew Fest – Gray Matter Marketing [12:00 pm to 9:00 pm] Alcohol - Parking is non-paid; Area C, D and Lot 4;
- s. October 19, 2017 – Construction Day – Home Builders/WIB [8:00am – 3:00pm] – Parking is non-paid, Areas C, D and Lot 4;
- t. October 21, 2017 – MA State Track Association [12:00 pm to 10:00 pm] – Parking is non-paid; Area A, B, C, D, Lot 1, 4 and E;
- u. October 28, 2017 – Doxie Days – Dachshund Rescue [11:00am – 4:00pm] – Parking is non-paid; Area C and D – Reserve Lot;
- v. October 29, 2017 – Touch a Truck [7:00am – 7:00pm] – Parking is non-paid, Areas B, C, D and Lot 4; and
- w. November 4 – 5, 2017 – Cyclo Race – [7:00 am to 5:00 pm] – Alcohol - non-paid parking, Area A, B, C and D – Reserve and Lot 4.

3. Any deviation, no matter how minor, from plans and events submitted and approved, orally or in writing, by this Board, shall be submitted to the Board for approval prior to implementation of addition of event or change. The Zoning Administrator may administratively approve minor changes/additions.

4. Any event not herein noted that is non-agricultural or has paid parking shall be brought to the Board of Appeals or the Zoning Administrator, in a timely manner (no less than 30 days prior to event), for modification of special permit or administrative approval.
5. The applicant shall work with the Falmouth Police Department for any traffic detail that may be required due to events scheduled; and shall forward vendors requiring Special Event Permits and Alcohol License to the Board of Selectmen for approval of event.
6. The applicant [Wendy Brown, General Manager] shall be responsible to make sure that all vendors are properly permitted through various Town departments, i.e. Building Department, Fire Department, Board of Health and Selectmen.
7. There shall be no parking or staging of vehicles of any type on Lots 359, 360 and 361 at any time without prior approval by the Board of Appeals. Board may administratively approve parking on said lots.
8. There shall be no parking of commercial and/or personal trucks/vehicles on subject properties not related to the scheduled events approved herein.
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 has been filed in the office of the Town Clerk with no appeal being filed, is recorded in Barnstable Registry of Deeds. A copy of said filing with the Registry of Deeds shall be submitted to the Board of Appeals forthwith.
10. This permit shall expire on December 31, 2017. Applicant shall return to the Board of Appeals no later than February 15, 2018 to apply for a special permit for the subject properties if applicant is desirous of continued use on said properties for the next year.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: **002-17**

Applicant: **BARNSTABLE COUNTY AGRICULTURAL SOCIETY
of East Falmouth, MA**

Subject Property: **1220 Nathan S. Ellis Highway, East Falmouth, MA (and associated parcels)
Map 18, Section 02, Parcel 005, Lot 001
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Map 18, Section 02, Parcel 006, Lot 002
Map 18, Section 03, Parcel 001, Lot 001
Map 18, Section 03, Parcel 007, Lot 000
Map 18, Section 03, Parcel 008, 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: 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

RECEIVED

MAR - 6 2017

FALMOUTH TOWN CLERK

Date Filed With Town Clerk

APR 12 12:15pm

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.