

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 028-18  
**APPLICANT/OWNER:** SAVON HATEM, LLC of East Falmouth, Massachusetts  
**SUBJECT PROPERTY:** 561 Thomas B. Landers Road, Hatchville, Massachusetts  
**Assessor's Map:** Map 15 Section 03 Parcel 021 Lot 003  
**DEED/CERTIFICATE:** Book 28522 / 0298  
**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of April 9, 2018, the applicant applied to the Zoning Board of Appeals for a Modification of Special Permit #25-15 pursuant to Section(s) 240-57 H. of the Code of Falmouth to allow an 8,000 gallon fuel tank on subject property known as 561 Thomas B. Landers Road, Hatchville, 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 17, 2018.
4. The public hearing was closed on May 17, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Halim Choubah, P.E. of Choubah Engineering Group, P.C., who 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)**

None

### Letters/Referrals/E-mails from Town Departments

- 04/10/2018 Referral submitted to the file from Planning Department staff with no comment
- 04/09/2018 Referral submitted to the file from Wastewater Superintendent that notes no sewer on subject property
- 04/10/2018 Referral submitted to the file from Water Department that states: *Not a problem as long as containment from leakage into soil.*
- 04/12/2018 Referral submitted to the file in form of a letter dated April 12, 2018 from the Falmouth Fire Rescue Department that states Lt. Trott has been working with the applicant's engineer and has reviewed the plans submitted and has no concerns at this time with the proposed.
- 04/12/2018 Referral submitted to the file from Director of Assessing with no comment
- 04/19/2018 Referral submitted to the file from Board of Health Agent that states: *Applicant must comply with 310 CMR 80 Underground Storage Tank (UST) Systems. That regulation is regulated by Mass DEP.*
- 05/07/2018 Referral submitted to the file from Town Engineering Department with standard comments

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

### Plans submitted by Applicant/Applicant's Representative

Plans drawn by Choubah Engineering Group, PC consisting of: Sheet 1 of 3 "Existing Conditions & Demolition Plan" dated 4/6/2018, Sheet 2 of 3 'Proposed Site Layout' dated 4/6/2018 and Sheet 3 of 3 'Proposed Above Ground Storage Tank Layout & Elevations' dated 4/6/2018 – all plans are stamped and signed by Halim A. Choubah, PE and have a Board date 'received' stamp of April 9, 2018.

#### Hearing:

Mr. Choubah reviewed the proposed location and installation of an 8,000 gallon above ground fuel tank station for the trucks used and stored on-site. He briefly reviewed the previous special permit that granted the construction of a 5,000 square foot building for parking of fuel trucks and offices on this Light Industrial A zoned lot. Mr. Choubah explained that having the fuel storage tank on site for fueling of the trucks will minimize impact to the Town roads as the tractor trailer type trucks that carry fuel will not be required to fuel up at local gas stations along the main roads in the Town. He stated that Mr. Hatem (applicant) will meet and comply with all State, Federal and location environmental and licensing requirements. He noted that the flow of traffic on site will not be impacted by the location and use of the proposed fuel tank.

The Board discussed plans with Mr. Choubah. All concerns and questions were addressed.

Chairman Foreman asked for any public comment in support or opposition of the proposed project. There was no public comment.

Member Van Keuren made a motion to close the hearing. Member Hurrie seconded the motion. Motion carried 5 – 0.

Chairman Foreman 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 561 Thomas B. Landers Road in Hatchville contains 80,200 square feet of Light Industrial Z zoned land that is located within a Wildlife Corridor Overlay. The applicant applied under Section(s) 240-57 H. of the Code of Falmouth to allow an 8,000 gallon fuel tank (above-ground) on subject property. The subject property has a previous Special Permit (#25-15) that allowed construction of a 5,000 square foot building to store tractor/trailer trucks used by applicant to deliver fuel to service stations. The special permit allows up to five (5) trucks to be stored on site. The proposed 8,000 gallon fuel tank will allow the applicant to fuel his trucks on site for normal deliveries to service stations. The previous special permit conditioned an 18' clear access fire lane around the building that will never be obstructed by parked vehicles. This 18' access around the building will not be impacted through the proposed 8,000 gallon fuel storage tank.

Section 240-57 H. of the Code of Falmouth requires a special permit from the Board of Appeals for use of: *Lumber, fuel, feed and ice establishments, contractors' yards.*

The Board finds that the proposed 8,000 gallon fuel storage tank on subject property is appropriate as represented which is strictly for the use of fueling the five (5) trucks that are allowed on subject property through Special Permit #25-15. The Board further finds that the proposed 8,000 gallon fuel storage tank will not impact the flow of traffic and access for the trucks utilizing subject property. Furthermore, the Board finds that the use of the proposed 8,000 gallon fuel storage tank shall be strictly for fueling of the five (5) trucks stored on subject property by the applicant for the purpose of fuel delivery for Savon Hatem, LLC and shall not be used to fuel vehicles by other entities.

The Board finds through testimony by the applicant's representative that a chain link fence surrounding the tank and tank pad was added to the plan by recommendation from the Falmouth Fire Rescue Department. The Board further finds that there is proper and numerous levels of containment for the volume of gas in the proposed tank.

The Board finds through testimony by the applicant's representative that the applicant will be applying to the Board of Selectmen for an updated license relative to the proposed 8,000 gallon fuel storage tank as well as approval from the Department of Environmental Protection. The Board further finds through testimony by the applicant's representative that there will be no derogation from conditions set forth in Special Permit #25-15.

In addition to the above findings, the Board finds that the proposed installation and location of the proposed 8,000 gallon fuel storage tank 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 8,000 gallon fuel storage tank as it will not create any nonconforming setback and it will not impact the maximum percentage of lot coverage allowed on this Light Industrial A zoned land.

B. The site is suitable for the proposed 8,000 gallon fuel storage tank as an accessory use to the existing use as the property is zoned Light Industrial A and the Board previously issued a special permit (#25-15) allowing the storage of five (5) fuel delivery trucks within the 5,000 square foot building or on site as approved.

C. There will be no impact on traffic flow and safety to and from this site as there is no change in the location of the existing driveway and no increase in the number of trucks allowed to be stored on site as previously approved in Special Permit #25-15.

D. The visual character of the subject property will be slightly changed but there will be no impacts to the visual character of the property and there will be no impact on a view or vista for the roadway.

E. The sewage disposal system is unaffected through this modification of a previous special permit for the business activity on subject property. The Board of Health did submit a referral that the applicant understands and will follow through with.

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

G. The proposed fuel storage tank 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 8,000 gallon fuel storage tank, located above ground 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 this Modification of Special Permit #25-15** to Savon Hatem, LLC (herein referred to as Applicant) under Section(s) 240-57 H. of the Code of Falmouth to allow an 8,000 gallon fuel storage tank on subject property known as 561 Thomas B. Landers Road, Hatchville, Massachusetts. This special permit shall be subject to the following conditions:

1. The location of the 8,000 gallon fuel storage tank, fencing of tank and tank pad area, lot coverage, setbacks and use of the fuel storage tank shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - Plans drawn by Choubah Engineering Group, PC consisting of: Sheet 1 of 3 “Existing Conditions & Demolition Plan” dated 4/6/2018, Sheet 2 of 3 ‘Proposed Site Layout’ dated 4/6/2018 and Sheet 3 of 3 ‘Proposed Above Ground Storage Tank Layout & Elevations’ dated 4/6/2018 – all plans are stamped and signed by Halim A. Choubah, PE and have a Board date ‘received’ stamp of April 9, 2018.
2. The applicant shall apply to the Board of Selectmen and the Department of Environmental Protection for proper license of the premises to include this 8,000 gallon fuel storage tank as approved herein. Further, the Board shall contact Falmouth Fire Rescue Department and Board of Health for any other permits and or licenses required for the additional fuel storage on subject property approved herein.
3. There shall be derogation whatsoever from any condition set forth in Special Permit #25-15 except as stated herein.
4. 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.
5. 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.)
6. This permit shall lapse three (3) 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: **028-18**

Applicant: **SAVON HATEM, LLC of East Falmouth, Massachusetts**

Subject Property: **561 Thomas B. Landers Road, Hatchville, Massachusetts  
Map 15 Section 03 Parcel 021 Lot 003**

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 this Special Permit as a Modification of Special Permit #25-15 as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



**Terrence J. Hurrie, Vice Chairman, Board of Appeals**

**RECEIVED**

**MAY 25 2018**

FALMOUTH TOWN CLERK

*AA@930am*

**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.