



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: #022-19

APPLICANT/OWNER: Green Ocean Car Wash LLC / 187 Teaticket LLC
24 Stowell Road, Winchester, Massachusetts

SUBJECT PROPERTY: 187 Teaticket Highway, Teaticket, Massachusetts

Assessor's Map: Map 39 Section 14 Parcel 024B Lot 000

DEED/CERTIFICATE: Book 30818 Page 228

SUMMARY: Special Permit granted, with conditions

PROCEDURAL HISTORY

1. On April 22, 2019, an application was filed with the Zoning Board of Appeals for a Special Permit, pursuant to Section(s) 240-51. B. (3). of the Code of Falmouth, to operate a motor vehicle service station as a car wash at 187 Teaticket Highway, Teaticket, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the tax list.
3. The previous Zoning Board of Appeals case for the Premises included:
 - Special Permit 77-94 in 1994 to allow renovation of a restaurant, to include a drive-thru window
 - Special Permit 146-94 in 1994 to allow change to a donut shop
 - Special Permit 11-11 in 2011 to allow a motor vehicle oil change service
 - Special Permit 38-13 in 2013 to allow retail candy sales with ice cream sales

- Special Permit 005-18 for a commercial car wash withdrawn without prejudice
4. The advertised public hearing was opened on June 13, 2019, at which hearing, relevant testimony was heard.
 5. Kevin P. Klauer II, Ament Klauer LLP, 39 Town Hall Square, Falmouth, MA appeared before the Board, representing Green Ocean Car Wash LLC / 187 Teaticket LLC , 24 Stowell Road, Winchester, Massachusetts (the "Applicant"), as to 187 Teaticket Highway, Teaticket, MA (the "Premises"). Mr. Klauer II discussed the request for special permit with the Board.
 6. The public hearing was continued to July 18, 2019, and August 1, 2019 to review a positive draft decision. Minutes of the hearing(s) are on file in the Board of Appeals.
 7. The following documents and information are on file in the office of the Zoning Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

- Letter from the 300 Committee Land Trust, dated June 12, 2019 signed by Jessica Whritenour, Executive Director
- Letter from Richard Stone, dated 9 Hickory Lane, Teaticket

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

- Attorney Klauer submitted application, filing fee and addendum to project
- Attorney Klauer submitted an authorization letter, dated April 20, 2019 signed by Wallace C. Kendall, Manager of 187 Teaticket LLC
- Letter from John Fetters, Engineering Manager, JE Adams Industries, dated June 9, 2019, regarding noise levels of proposed vacuums
- Email from Attorney Klauer to ZBA staff dated June 13, 2019
- Letter from Cape and Islands Engineering, dated May 22, 2019 from Raul Lizardi-Rivera, P.E. regarding Fire Departments referral
- Letter from Cape and Islands Engineering, dated May 22, 2019 from Raul Lizardi-Rivera, P.E.
- Email from Attorney Klauer dated April 24, 2019 to ZBA staff
- Letter from Attorney Klauer dated June 4, 2019 in response to the Wastewater's Superintendent questions

Letters/Referrals/E-mails from Town Departments

- Referral from the Planning Department from Planning Board staff, dated April 24, 2019 with comments – *A site plan review application has been filed with the Planning Department and will be on the May 28th PB Agenda*
- Referral from the Water Department from Greg Powers, dated April 26, 2019 with comments – *Water service needs to be upgrade [sic] either 1" or 2" service*
- Referral from Conservation, dated April 28, 2019 from Conservation Agent with no comments
- Referral from the Health Department, dated April 30, 2019 from Scott McGann, Health Agent with comments – *On October 19, 2018 the Board of Health gave a positive referral that a*

compliance Title 5 system could be located on the property. Wash water is processed and reused with a portion being discharged. That discharge will be entering the Town's sewer system. The applicant is not proposing ground discharge of wash water, which is considered industrial waste water by DEP.

- Referral from the Assessing Department, dated April 30 ,2019 from Patricia Favulli, Assessor with no comments
- Referral from the Falmouth Fire Rescue Department dated May 2,2019 from Mel Trott, Fire Prevention Officer with comments – *The Falmouth Fire Rescue Department will need the driveway on the west side and rear of the property to be at least 14 feet wide for adequate apparatus access*
- Referral from the Engineering Department to the Planning Board, dated May 10,2019 from Scott Schluter, P.E. with 3 pages of comments regarding sewage, water, parking and access, grading and drainage and general comments
- Referral from the Wastewater Division, dated May 23,2019 from Amy Lowell, Wastewater Superintendent stating that this would require a Variance from the Board of Selectmen under the Flow Neutral Bylaw and requested further information for review by the Wastewater Division
- Received Planning Board decision, dated June 21, 2019
- ZBA staff submitted previous special permits #38-13,#77-94,#146-94, #11-11, and #05-18

Plans submitted by Applicant/Applicant's Representative

- Six (6) aerial renderings submitted by Attorney Klauer, not dated or authored, Board received dated April 22, 2019 and July 13, 2019
- "Proposed Site Development Plans at 187 Teaticket Highway, Falmouth", by Cape and Islands Engineering, consisting of eight(8) sheets; 'Cover Sheet' sheet G-101, 'Existing Conditions Plan' sheet V-101, ' Demolition and Erosion Control Plan' sheet E-101, ' Site Layout Plan' sheet C-101, ' Landscape Plan' sheet L-101, 'Grading and Utilities Plan; sheet C-111, 'Construction Details Plan' sheet C-501 and ' Construction Details Plan' sheet C-502; all plans dated March 11, 2019
- "Proposed Site Development Plans at 187 Teaticket Highway, Falmouth", by Cape and Islands Engineering, consisting of eight(8) sheets; 'Cover Sheet' sheet G-101, dated March 11,2019 with a revision date of May 14,2019, 'Existing Conditions Plan' sheet V-101, ' Demolition and Erosion Control Plan' sheet E-101, ' Site Layout Plan' sheet C-101 dated March 11, 2019 with a revision date of May 14, 2019, ' Landscape Plan' sheet L-101, 'Grading and Utilities Plan sheet C-111 dated March 11, 2019 with a revision date of May 14, 2019, 'Construction Details Plan' sheet C-501 and ' Construction Details Plan' sheet C-502 dated March 11, 2019 with a revision date of May 14, 2019
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- Falmouth Car Wash 187 Teaticket Highway, Teaticket, MA 02540 ' First Floor Plan' sheet A-1.0, dated March 14, 2018 drawn by Bruce Ronayne Hamilton Architects, 833 Turnpike Road, New Ipswich, NH
- (1) sheet consisting of building elevations, not dated or authored; Board date received stamp of May 1, 2019
- Aerial rendering, not dated or authored, with a Board date received of July 11,2019

Hearing:

June 13, 2019

Attorney Kevin P. Klauer II appeared before the Board, with Wallace C. Kendall, Manager of 187 Teaticket LLC, and stated that 187 Teaticket Highway, Teaticket, Massachusetts (the "Premises") is located on Route 28, and contains 24,200 square feet of area in the Business 2 zoning district. The Premises is currently improved by a single story structure that is nonconforming, due to side and rear setbacks, and a shed encroaching into the rear lot line. The lot coverage by structure/parking/paving is also nonconforming. The Applicant is proposing to replace the existing structure with a conforming commercial car wash, comprising 2,675 square feet, resulting in lot coverage by structures of 11%.

Mr. Klauer stated that changes have been made to the application which was previously before the Board last year, including a single lane of cars entering and exiting the Premises, as well as providing two bail out lanes from the cars in the que. A vehicle can bail out at the vacuum area, or a gate can be manually lifted to allow a car to bail out in the area of the payment stations. The pay stations will be automated, with a 10-foot tall awning above. An employee will provide oversight at the pay station. The width of lanes has been increased to 14 feet in width, to meet Fire Department requirements. Mr. Klauer reported that the curb cut is now further south, for improved traffic flow. A proximate utility pole will be removed. Mr. Klauer reported that the ITE manual expects 12 cars per hour, and that summer and fall would be the slowest time for a car wash business. He stated he did not have any data for cars seeking vacuuming only.

Mr. Klauer stated that water reclamation tanks will be located underground, and fed by drains in the building, to catch runoff. Oil or solids will be disposed of properly. He noted that the Applicant will require a variance from the Board of Selectmen regarding a sewer connection. Mr. Klauer reported that they have worked with the 300 Committee, to address their concerns.

Mr. Klauer anticipated two employees; one parking space will be provided for employees, and a bike rack will be installed. The hours of operation are anticipated to be 8:00 a.m. to 7:00 p.m. Solar panels are contemplated for the roof of the building.

The Board expressed concern about the adequacy of the width of the turning area exiting the car wash, and that cars exiting may swing into the incoming cars. Mr. Costa stated that the 14-foot width turning radius of the exit is adequate, and that they are providing a one-foot wide painted strip to separate exiting cars from entering cars.

The Board expressed concern about potential traffic backup, where vehicles exiting the car wash may be tied up by vehicles waiting for the vacuum, where this exit lane is shared. Mr. Klauer stated that there would be no queuing for the vacuums. Mr. Costa reported that there was a parking space where a vehicle could stage, while waiting for a vacuum.

The Board expressed concern about the amount of pavement, related to the lack of landscaping. Mr. Costa represented that the arborvitaes can be maintained in a narrow area through pruning. Mr. Costa also reported that the proposed lanes would manage traffic within the site, and preferred to not reduce pavement.

The Board recommended that a vacuum be provided at the handicapped spot. They further inquired about the decibel output of the vacuums, and whether that output could be mitigated. Mr. Klauer stated he would get that information.

The Board noted a proximate traffic light (at the housing complex), and suggested that traffic could be better managed exiting with a right turn only. Mr. Klauer opined that that option would be problematic, as cars would then be looking to take the first left possible, to turn around. He indicated this would lead to a traffic problem elsewhere. Mr. Costa stated that general times of lower traffic volume, such as the winter, result in more trips through the car wash. He reported that times of highest traffic volume in the summer, are typically a slower time for the car wash.

The Board noted that it is confusing to see where the curb cut is, and whether the area could be different. Mr. Klauer stated that the curb cut is the same size as currently exists; it is just being shifted slightly. Mr. Costa reported that Mass DOT has jurisdiction for the curb cuts, and that they will file with them for the curb cut review.

The Board inquired about raised curbing on the Premises, and whether that would be assistive in keeping vehicles in proper lanes. Mr. Costa stated that there will be only Cape Cod berms installed, to keep water on the site for recycling. The rest of the area is asphalt and crushed stone.

Mr. Dugan made a motion to continue the hearing to July 11, 2019 at 6:30 p.m. Mr. Van Keuren seconded the motion; all voted unanimously for the continuation. Notice thereof was posted at the Town Clerk's office, and on the Town's website.

July 11, 2019

Attorney Kevin P. Klauer II appeared before the Board, with Wallace C. Kendall, Manager of 187 Teaticket LLC, and Matthew Costa, Cape & Islands Engineering. Mr. Klauer II submitted updated information to the Board. He pointed out that the Premises is in the Business 2 zoning district, and will constitute a lot coverage by structures of 11%, and lot coverage by structures/parking/paving of 70%.

Mr. Klauer reported that this represents a reduction in lot coverage from current conditions. He also stated that the proposal has been reviewed and approved by the Planning Board.

Mr. Klauer II reviewed the changes with the Board, which included an additional parking spot in the vacuum area, the addition of a bike rack, and provided sound information related to the vacuums. He noted that the Applicant will be replacing a dilapidated site, and exceeding minimum district setback requirements. Mr. Klauer II also stated that they worked with the 300 Committee.

In response to a Board question about gravel areas, it was reported that there will be Cape Cod berms throughout the site, and stone level with the pavement. Mr. Costa reported that crushed stone is planned in case cars drive over it, exiting the wash. Mr. Klauer II noted that the Fire Department requested that the Premises not be curbed, for access.

The Board inquired about the sufficiency of the loading zone/delivery area at 9 feet wide, noting the tight area, and the number of parking spaces. Mr. Klauer stated that only 3 parking spaces are required, but that they are providing 6 spaces (the vacuum spaces are short-term). Mr. Klauer suggested that deliveries would be made by a cargo van. The Board also inquired about placing bollards at the exit of the car wash, to prevent contact with incoming cars, and to separate lanes. Mr. Costa offered flexible bollards at the exit area of the car wash. He suggested that option would better provide for different driving abilities, in navigating the exit of the car wash. The Board also discussed more site arrows and signage, noting that an updated plan was received on July 11, 2019 (meeting date).

A motion to close the hearing was made by Mr. Foreman, and seconded by Mr. Dugan. The Zoning Administrator was directed to draft a position for the continued hearing on July 18, 2019. Notice thereof was posted at the Town Clerk's office, and on the Town's website.

July 18, 2019

The Board continued the discussion on the Decision to August 1, 2019, where the draft decision was not completed. Notice thereof was posted at the Town Clerk's office, and on the Town's website.

Findings:

The subject site, 187 Teaticket Highway, Teaticket, Massachusetts (the "Premises") is sited in the Business 2 Zoning District, the Little Pond Coastal Pond Overlay District, and the Little Pond Sewer Service Area. The Premises is nonconforming where it comprises 24,218 square feet of area, in a district requiring a minimum 40,000 square foot lot. The Premises has 108.24 feet of frontage, where the minimum required is 200 feet. The Premises has 122 feet of lot width, where the minimum in the district is 200 feet. The proposal involves construction of a single-story car wash, under By-Law Section 240-51 B. (3), which constitutes an allowed use, by special permit by the Zoning Board of Appeals, within the category of motor vehicle service stations.

The Premises has been the subject of prior Zoning Board of Appeals Decisions, as enumerated above. The Planning Board issued Site Plan Approval, by letter dated June 21, 2019. The Fire Department has required that the driveway on the west and rear be a minimum of 14 feet wide, to accommodate fire apparatus. The Wastewater Superintendent has issued a letter with conditions. The Engineering department has issued a letter with conditions, including the requirement to file with the Board of

Selectmen for a Variance from the flow neutral By-Law. The 300 Committee, representing the immediate abutter to the north of the Premises, has issued a letter commenting on the plans.

The proposal is to raze the existing nonconforming structure, which is 9.8 feet from the northerly lot line, and comprises lot coverage by structures/parking/paving of 81%, where the maximum allowed is 70%. The replacement structure will comply with all district setback requirements, being sited 29 feet from the north, 51 feet from the east, 53 feet from the south side and rear lot lines, where the minimum required setback is 20 feet. The structure will be sited 56 feet from the west (street), where 35 feet is the minimum setback from the street. The lot coverage by structures will be 11%, well below the maximum of 40% allowed. The lot coverage by structures/parking/paving will be 69%, which is below the maximum allowed of 70%, as well as a reduction from the existing 81%.

The Applicant has incorporated requests by the 300 Committee, to minimize the impact on the abutting park. The Applicant has received Site Plan Approval by the Planning Board, and has met the Fire Department request for a 14-foot wide access lane.

Wastewater will require the grant of a Variance from the flow neutral By-Law by the Board of Selectmen. Changes to the curb cut will require consent from the Massachusetts Department of Transportation.

The Applicant has provided six parking spaces in total on the Premises. There will be one space dedicated for employees, and one flex spot. The Applicant has stated that there would be only two employees, as rationale for the parking provided.

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 car wash.
- B. The site is suitable for the proposed use as the property is zoned Business 2 and falls under Section 240-51. B. (3). of the Code of Falmouth, for a motor vehicle service station.
- C. The Applicant has provided lanes within the Premises for cars to que for the car wash, as opposed to lining up in the street. The Applicant intends to gain permission from Mass DOT for a change to the curb cut.
- D. The visual character of the subject property and neighborhood will be improved by the elimination of a nonconforming, dilapidated structure, and the construction of a new conforming single story building.
- E. A variance will be required by the Board of Selectmen to connect to the Little Pond Sewer Service Area.
- F. There are adequate utilities to the Premises, however, the Applicant will have to contact the Town Water Department regarding updating of water system.
- G. The proposed building reconstruction discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. The Planning Board issued Site Plan Review.

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.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals being of the opinion aforesaid, and acting under the provisions of the Code of Falmouth, voted 4 to 1 to grant this special permit, under Section(s) 240-51 B. (3.) of the Code of Falmouth, to allow construction of a single-story car wash. This special permit shall be subject to the following conditions:

1. The construction shall be as represented to the Board, and as shown on plans submitted and reviewed by the Board, entitled as follows:
 - 'Proposed Site Development Plans at 187 Teaticket Highway, Falmouth' Cape and Islands Engineering consisting of eight(8) sheets; 'Cover Sheet' sheet G-101, final revision date of June 19, 2019; 'Existing Conditions Plan' sheet V-101, dated March 11, 2019; 'Demolition and Erosion Control Plan' sheet E-101, dated March 11, 2019; 'Site Layout Plan' sheet C-101, final revision date of June 19, 2019; 'Landscape Plan' sheet L-101, final revision date of June 19, 2019; 'Grading and Utilities Plan sheet C-111, final revision date of June 19, 2019; 'Construction Details Plan', sheet C-501, dated March 11, 2019 and 'Construction Details Plan' sheet C-502, with a final revision date of May 14, 2019
 - Falmouth Car Wash 187 Teaticket Highway, Teaticket, MA 02540 'First Floor Plan' sheet A-1.0, dated March 14, 2018 drawn by Bruce Ronayne Hamilton Architects, 833 Turnpike Road, New Ipswich, NH
2. The Applicant shall comply with terms and conditions of the Planning Board's June 21, 2019 decision.
3. The Wastewater Superintendent issued a letter dated May 23, 2018, noting that the Premises is not currently connected to the sewer, and that a variance will be required from the Board of Selectmen, under the Town's Flow Neutral By-Law, Section 180-55. This approval shall be required prior to filing an application for a building permit. Upon approval by the Board of Selectmen, the Applicant shall meet all terms and conditions of the Wastewater Superintendent.
4. The Applicant shall comply with Town of Falmouth Engineering requirements within the May 10, 2019 Planning Board Review letter.
5. Hours of construction are limited to 7 a.m. to 7 p.m. weekdays, and 8 a.m. to 4 p.m. Saturdays. No Sunday or holiday hours, absent an emergency. All construction vehicles shall remain strictly on the subject property, and not park on abutting streets. Construction vehicles are prohibited from idling on or near the Premises, outside of construction hours. During construction, efforts shall be undertaken to minimize impacts on abutters, including securing dumpsters, stabilizing soil to guard against erosion from a rain event, and ensuring that public roadways are kept clean.
6. Hours of operation shall be 8:00 a.m. to 7:00 p.m., seven days per week.
7. In snow events of 6 inches or greater, the snow shall be removed from the Premises.
8. There shall be one designated employee parking space, and one flex parking space, for a maximum of two employees.
9. The Applicant shall contact the Town's Police Department to discuss coordination of traffic during construction. The Applicant shall provide to the Police, Building Department, and ZBA, the name and phone number of a project contact individual throughout the duration of the

construction process, to insure that any questions or concerns, including those of abutters, are timely managed.

10. The Premises shall have dark sky compliant lighting, and shall not shed lighting off the Premises, in order to not adversely impact abutters.
11. A final As-Built plan shall be provided to the ZBA. The Applicant is required to identify if there are any changes made to the approved plan, and seek proper approval, or to certify that there were no changes.
12. The Applicant shall meet the terms, conditions and requirements of the DPW Engineering and Water Division; including, but not limited to items specifically listed in a preliminary Engineering review letter dated May 10, 2019, regarding sewage, water, parking and access, grading and drainage, and general comments.
13. The Applicant shall gain approval from Mass DOT for any change to curb cuts.
14. Landscaping shall be installed as presented, and shown on plan L101, rev. dated 6-19-19. All plant materials shall be maintained in good health. Any material substantially diseased or dead shall be removed and replaced.
15. No delivery vehicles exceeding 9.5 feet in height and/or 18 feet in length, shall be permitted.
16. Any deviation, no matter how minor, from plans submitted and approved by this Board, shall be submitted to the Board for approval, prior to implementation of said change. The Zoning Administrator may make a determination as to whether the changes are minor in nature, and can be approved administratively, or whether they will require a hearing for an amendment. Changes made prior to an approval may be subject to a full hearing, and are at risk that the ZBA may deny the request, subjecting any unapproved construction be ordered undone.
17. 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.)
18. 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.
19. The Zoning Board of Appeals reserves the right to recall the Applicant, with such notice as the Board deems proper, to discuss unresolved matters of concern.

Action: The Board of Appeals, by the signature below, certifies the vote of the Board, as follows, for the above referenced hearing:

Vote: 4 to 1 to grant the Special Permit, as represented to the Board, based on the Findings stated herein, and with the above stated Conditions.



Robert B. Dugan, Zoning Board of Appeals

RECEIVED
AUG 2, 2019 PM 3:29
TOWN CLERK

Date Filed With Town Clerk