



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

CASE NO: 021-20

APPLICANT/OWNER: Michael A. and Samantha J. Mueller, 91 Central Avenue, East Falmouth, Massachusetts

SUBJECT PROPERTY: 91 Central Avenue, East Falmouth, Massachusetts

Assessor's Map: Map 32 Section 03 Parcel 012 Lot 000

DEED/CERTIFICATE: Book 30536, Page 0227

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. On March 26, 2020, an application was filed with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-13 and 240-162 of the General Code of the Town of Falmouth, to operate a home-based landscape business at 91 Central Avenue, East Falmouth, 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. There was no previous Zoning Board of Appeals case for the Premises.
4. The advertised public hearing was opened on May 14, 2020. Board members present included Terrence J. Hurrie, Kenneth H. Foreman, Edward Van Keuren, Edwin Zylinski, and James Morse.
5. Michael A. Mueller, homeowner, appeared before the Board on the application.

6. The public hearing was closed on May 14, 2020, following motion made by Mr. Zylinski, seconded by Mr. Morse, and unanimously voted. Minutes of the hearing(s) are on file with the Zoning 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/Information from Applicant/Representative(s)

- Four photographs submitted to the file, date stamped received March 26, 2020
- Six photographs submitted to the file, date stamped received April 14, 2020
- Copy of Registration for 2017 GMC Sierra
- Copy of Registration for 2019 GMC Sierra
- Copy of Registration for 2000 utility trailer
- Copy of Registration for 2014 utility trailer
- Copy of Registration for 2015 utility trailer
- 2019 Employer Federal Return
- 2019 Quarterly Wage List Report

Letters/Referrals/E-mails from Town Departments

- Referral dated March 26, 2020 from the Health Department, no issues unless there is plumbing proposed, in which case a permit would be required
- Referral dated March 26, 2020 from the Fire Department – no comment
- Referral dated March 26, 2020 from the Conservation Department – no comment
- Referral dated April 2, 2020 from the Planning Department – no comment
- Referral dated September 9, 2019 from the Water Department – no comment
- Referral dated March 27, 2020 from Assessing – no comment
- Referral dated April 8, 2020 from the Engineering Department signed by Scott Schluter, PE, No comment; driveway permit on file in Engineering from October 2019

Letters/E-mails from Abutters/Interested Parties

- Letter of support from Tony Sciarillo, 24 Mary Manuel Way, dated May 10, 2020
- Letter of support from Carol A. McAlvin, 37 Paola Drive, dated May 4, 2020
- Letter of support from Eileen Perry, 87 Central Avenue, dated 4/29/2020
- Letter of support from George R. and Ruth B. Spivey, 98 Central Avenue, dated 4/29/2020
- Form letter of support from JoAnne Wilson, 2 Paola Drive 5/9/20
- Form letter of support from Gregory W. McCabe, Jr., 20 Paola Drive 5/9/20
- Form letter of support from Andrea Maguire, 12 Paola Drive 5/10/20
- Form letter of support from Carolyn Osgood, 66 Old Menahant Road, dated 5/10/20
- Form letter of support from Mindy Reasmorer, 83 Central Avenue, dated 5/11/20
- Form letter of support from Mary Nelson, 88 Central Avenue, dated 5/12/20
- Form letter of support from Patricia Dundulis, 18 Tashmoo Drive, dated 5/12/20
- Form letter of support from Elaine Colagiovanni, 21 Tashmoo Drive, dated 5/12/20
- Form letter of support from Meg and Joe McArdle, 72 Hanson Circle, dated 5/12/20

Plans submitted by Applicant/Applicant's Representative

- "Plot Plan" for 91 Central Avenue, East Falmouth, Massachusetts, prepared by Cape & Islands Engineering, 800 Falmouth Road, Suite 301C, Mashpee, MA, dated March 5, 2020

Hearing:

The Notice of Hearing and referrals were read into the record.

Appearing before the Board was Michael Mueller, 91 Central Avenue, East Falmouth, Massachusetts (the "Applicant"), who stated he has lived at this property with his wife and 2 daughters for 3 years. He reported that the Premises comprises 86,433 square feet of area, and is located in the Agricultural B zoning district. Mr. Mueller reported that he has made improvements to the Premises, including screening along the property lines, and that he requests to be able to run his landscape business from his house. He reported that he had 1-2 employees at any one time, and that the work does not occur on the property, meeting the definition of a Home-Based Business Service. Mr. Mueller reported that the area on the lot where the commercial trucks and trailers are kept is well screened. He reported that one of the trucks is also his personal truck, and that none of the trailers exceed 18 feet. Mr. Mueller stated that his hours are generally 7 a.m. to 5 p.m., but that he would request the hours of 7 a.m. to 7 p.m. in the event that a job ran late. He reported that the only access to the Premises is from Central Avenue, and that no new traffic would be generated, where trips to the property are infrequent. Mr. Mueller stated that his proposal meets the criteria of By-Law §240-216, and that he has neighborhood support, as presented.

No one further appeared on the application. Mr. Zylinski made a motion to close the hearing, which was seconded by Mr. Morse, and unanimously voted.

Findings:

The subject property, 91 Central Avenue, East Falmouth, Massachusetts (the "Premises") is located in the Agricultural B zoning district. The proposal is to operate a Home-Based Business Service for landscaping from the Premises.

1. All work takes place off the Premises, and therefore does not generate either noise or nuisance to the neighborhood.
2. The area on the lot where the commercial trucks and trailers are kept is well screened, and access is from Central Avenue only.
3. The hours of operation shall be 7 a.m. to 7 p.m., Monday through Saturday.
4. The business typically includes 1 full time and 2 part time employees.
5. The equipment includes two trucks (one of which is also a personal use vehicle), and three trailers, none of which exceed 18 feet in length.
6. There were thirteen letters of support for the home based business, and no statements of opposition.
7. Mr. Mueller stated that his proposal meets the criteria of By-Law §240-216, and that he has neighborhood support, as presented.

In addition to the above findings, the Board finds that the proposed additions will be in harmony with the general purpose and intent of the By-Law, and does include consideration, as 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 use, comprising 86,433 square feet of area, in a district requiring a minimum 40,000 square foot lot.
- B. The site is suitable for the proposed use, as the property is zoned Agricultural B, and larger than many neighboring parcels.
- C. There will be no impact on traffic flow and safety, given that work takes place off Premises.
- D. There will not be any impact on the visual character of the neighborhood, or view or vista from the roadway or abutting properties, given that the Premises is well screened, and storage is set well back from lot lines, complying with setback requirements. No abutters appeared in opposition to the proposal, and several expressed strong support.
- E. The Board of Health had no concerns as there is no plumbing proposed.
- F. No impact on utilities.
- G. The proposal discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. No Site Plan Review was required, and the Planning Board issued no comment.
- I. The application is in compliance with all applicable sections of the Zoning By-Laws as represented.
- J. The approval of this special permit does not include any affordable housing.

The Zoning Board of Appeals weighed the effects of the home-based business at the Premises, as discussed herein, and found that the beneficial effects of granting this special permit outweigh any negative effects there may be. The Board further found that the granting of this special permit will be in harmony with the purpose and intent of the Zoning By-Law, and that the change, extension or alteration shall not be substantially more detrimental to the neighborhood, and will not nullify or substantially derogate from the intent of purpose of the By-Law.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under Section(s) 240-13 and 240-162 of the General Code of Falmouth, following a motion made by Mr. Zylinski, and seconded by Mr. Van Keuren, voted 5 to 0, to grant a special permit, for the home-based business at 91 Central Avenue, East Falmouth, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

Conditions:

1. The home based business shall remain consistent with "Plot Plan" for 91 Central Avenue, East Falmouth, Massachusetts, prepared by Cape & Islands Engineering, 800 Falmouth Road, Suite 301C, Mashpee, MA, dated March 5, 2020.
2. The hours of operation shall be between 7:00 a.m. and 7:00 p.m., Monday through Saturday.
3. The home based occupation shall remain in compliance with By-Law 240-162 conditions for home occupations.

4. Perimeter screening of the Premises shall be maintained.
5. Statutory appeal periods, and thus the issuance of Certificates of No Appeal, have been temporarily affected by Court Standing Orders, available at www.mass.gov/guides/court-system-response-to-covid-19. Applicants, abutters and interested parties should consult the Standing Orders to determine their next actions. Any decision by a permit holder to proceed is at their own risk, and the permit holder is urged to consult their own legal counsel.
6. Under Section 17 of Chapter 53 of the Acts of 2020, the requirement to record permit decisions with the Registry is suspended for so long as the Registry is "closed or subject to rules and procedures restricting public in-person access." However, such recording will still be required upon the full reopening of the Registry. The Barnstable County Registry of Deeds continues to accept filings by postal mail during this period, and permit holders are requested to file for recording through this method to the extent possible.
7. 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 Zoning Board of Appeals may deny the request.
8. This special 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 Zoning Board of Appeals.

True Copy Attest:



Noreen H. Stockman, Zoning Administrator

RECEIVED
JUN 8, 2020 AM 10:25
TOWN CLERK

Date Filed With Town Clerk