



# TOWN OF PLYMOUTH

11 Lincoln Street  
Plymouth, Massachusetts 02360

FAX (508) 830-4062  
(508) 747-1620

## Board of Appeals

### Decision

Case No. 3905

18 MAY 15 08:10

RECEIVED  
TOWN CLERK'S OFFICE  
PLYMOUTH, MA

**LANDOWNER:** Franklin Marsh LLC

**PETITIONER:** Franklin Marsh LLC

**SUBJECT PROPERTY:** Off Carver Road, Carver, Massachusetts

**PARCEL ID NO:** 107-000-006-000

**TITLE REFERENCE:** Plymouth County Registry of Deeds Book 29800, Page 14-22

**DATE OF PUBLIC HEARING:** May 2, 2018

\*\*\*\*\*

In exercise of its discretionary powers, the Plymouth Zoning Board of Appeals (Members: Peter Conner, William Keohan, Michael Main, Edward Conroy and David Peck) voted unanimously (5-0) to **GRANT** the petition of Franklin Marsh LLC, requesting a Special Permit required per section 205-18 (F) (C & G) for Cranberry Cultivation Earth Removal on the property of **Franklin Marsh LLC** located at **Off Carver Road** and shown as Lot 6 on Plat 107 of the Assessors Maps dated January 1, 2017 in a RR Zone.

### SUBMITTED DOCUMENTATION:

- a. ZBA Petition Application
- b. Deed recorded page 29800, pages 14-22
- c. Property Record Card
- d. Inspectional Services Denial 1-19-18
- e. Beals & Thomas Project Narrative 3-1-18
- f. Fire Department Comments 3-8-18
- g. Conservation Department Comments 3-27-18
- h. Engineering Department Comments 3-29-18
- i. Town of Carver Earth Removal Committee Approval 3-28-18
- j. Planning Board Decision 4-24-18

### THE PLYMOUTH ZONING BOARD OF APPEALS FINDS THE FOLLOWING FACTS:

1. This is the first case that is subject to Plymouth's new earth removal bylaw. A special permit is required since the amount of material to be removed for cranberry cultivation exceeds 50,000 cy. The area of excavation is located within the Rural Residential Zoning District and is not located within the Aquifer Protection District, mapped habitat for rare and endangered species or within flood hazard areas.
2. In its approval of the Town's Earth Removal Bylaw the Attorney General's Office included the following caution to the Town: "Section 205-18 establishes that cranberry cultivation earth removal that does not exceed 50,000 cubic yards is exempt from the by-law's zoning permit and special permit requirements. However, cranberry cultivation earth removal that





exceeds 50,000 cubic yards requires a zoning permit and a special permit. In addition, such use is subject to certain minimum conditions and safeguards. For example, excavation sites in or directly abutting certain residential zoning districts shall have a 200 feet buffer. **These requirements cannot be applied in a manner that prohibits or unreasonable regulates cranberry bogs that enjoy agricultural protections under state law. Moreover, a 200-foot buffer may be an unreasonable regulation as applied to a particular cranberry bog (emphasis added).**"

3. The Petitioner, Franklin Marsh LLC, operates a cranberry operation located on the Plymouth/Carver town line. At the request of the Town, the Petitioner, has agreed to constructed of these new cranberry bogs and abandoned seven (7) acres of existing bogs, known as Darby Bog, located near the Darby Pond Public Water Supply (PWS). The existing Darby Bogs within the Zone II pf the Darby Pond PWS will be removed from production and left to revegetate naturally as wetland resource areas. This relocation of this portion of the cranberry operation will reduce water usage related to cranberry cultivation within the Darby Pond Well recharge area.
4. The project includes the construction of approximately seven (7) new acres of cranberry bogs. Approximately three and one half (3.5) of the seven (7) acres will be located in Plymouth and the remaining 3.5 acres will be located in Carver. The Applicant is currently coordinating the mechanics of transferring Ocean Spray Cranberry Corporation fruit production rights to the new bogs and the water rights with MA DEP.
5. The amount of water pumped from the Town's Darby Pond Well is limited by DEP. Irrigation for the exiting 7 acres of Franklin Marsh bogs is also provided via Darby Pond. The Town is regularly required by DEP to limit pumping from this public water source. The limitation is based on the surface water elevation of Darby Pond (which is a reflection of groundwater levels). When the restriction is in place, the Town must impose mandatory water bans, increase pumping from other wells or continue to pump from this well and be subject to DEP fines. The impacts of the DEP limitations on the Town's well be minimized by abandoning these bogs and relocating the water source (to an existing pond located outside the Darby Pond Well's Zone II and in the Town of Carver).
6. The new bog acreages will be designed and constructed in a manner, "squared off", that allows for a more efficient farming operation. New higher yielding vines will be planted and the existing irrigation supply reservoir located in Carver (and outside of the Darby Pond Well Zone II) will be expanded by approximately two and one half (2.5) acres (1.7 acres of which, is located in Plymouth).
7. To construct all 7 acres (3.5 acres in Plymouth) of cranberry bogs and expand the water reservoir approximately 27 acres of land (13.8 in Plymouth) will be cleared an 1,045,000 cy (635,000 cy in Plymouth) of earth removed. The Carver potion of this project has been approved with conditions by the Town of Carver Earth Removal Committee. Once the new bogs are complete, the existing 7 acres of bogs (located entirely in Plymouth) will be abandoned. These bogs will eventually revert to natural wetlands. Once abandoned, the

Darby Pond water withdrawal will also be abandoned thereby increasing the amount of water the Town will be allowed to pump from its well. Cuts in the vicinity of 33 feet to 26 feet are proposed for the bog construction and a 45 foot cut with a finish slope cut of 19 feet is proposed to expand the reservoir.

8. Proposed Work Summary

	Total (±)	Plymouth (±)	Carver (±)
Clearing	27 ac	13.8 ac	13.2 ac
Earth Removal	1,045,000 cy	635,000 cy	410,000 cy
Bog Construction	7 ac	3.5 ac	3.5 ac
Pond Expansion "squaring off" existing pond	2.5 ac	1.7 ac	0.8 ac

9. Two truck routes are proposed. The majority of truck traffic will travel westerly via Plymouth Street into Carver. No more than 40 truck trips will travel easterly via Carver Road in Plymouth. The trucks will enter Carver Road via an existing bog access way in the vicinity of 345 Carver Road.

10. Five waivers from the Earth Removal Bylaw are requested and are more fully described below.

11. Three other earth removal operations for the creation of cranberry bogs have been completed (Cases 2622 and 3391) or not exercised (Case 2838) in this area.

Case	Petitioner	CY	Purpose	Location	Map	Lots
2622	John Degrenier	260,000	New Bog	Darby Station Rd	107	72
2838	Annawon Council BSA	400,000	New Bogs	Darby Station Rd	107	20F-2, 23, 64, 66&67
3391	Franklin Marsh LLC	246,750	New Bogs	Plymouth St	107	1,2,3,4,5, 6,8&9

12. The Petitioner has requested an amendment to their existing Cranberry Farm Plan that was prepared by the USDA-Natural Resources Conservation Service (NRCS). This amendment request includes the abandonment of Darby Bog and new bog relocation. Since this modification was unplanned until the Petitioner was approached by the Town of Plymouth, amendments are in still process.

**THE GRANTING OF THIS SPECIAL PERMIT IS BASED ON THE FOLLOWING REASONS:**

It is recommended that the Special Permit and associated waivers per Section 205-18 F (C) & (G), for earth removal be **GRANTED** based on the following reasons, and subject to the following CONDITIONS:

---

ZBA Case No. 3905

- a) In light of the agricultural exemption included in MGL c. 40A (the Zoning Act), the proposed activity is appropriate to the Rural Residential zone and this specific site as earth removal is allowed by Special Permit and is necessary for and incidental to the development of cranberry bogs and associated uses. Chapter 40A provides broad protections and exemptions to agricultural uses. Per the "Handbook of Massachusetts Land Use and Planning Law" Section 4.03 Agricultural Uses, case law states that the exemption standard also applies to uses accessory or incidental to the principal agricultural use.
- b) In addition, once complete, Franklin Marsh LLC will abandon its Darby Pond water rights thereby improving the Town's ability to provide safe drinking water to the residents of Plymouth.
- c) Adequate and appropriate facilities are available and will be in place to provide for the proper operation of the use. The majority of vehicle trips will travel on Carver roads.
- d) There will be no hazard to pedestrians or vehicles because grading and excavation work will be temporary and limited to the site. Trucking routes are restricted by this Special Permit.
- e) There will be no nuisance or adverse effect upon the neighborhood and the site is isolated geographically from abutting land uses.

## WAIVERS

As part of this approval the following waivers are granted:

Section 205-18F(B)(4) - A minimum of six inches of topsoil shall be placed on areas designated to be restored to a natural state.

*A reduction in the amount of loam from 6" to 4" is acceptable as this site is not in an environmentally sensitive area and it eliminates the need for additional truck traffic to haul topsoil onto the site.*

Section 205-18F(B)(6) - For excavation sites in or directly abutting the RR [zoning district], excavation shall not occur within 200 feet of the project's property lines which shall include a 100 foot vegetated natural buffer. The Board of Appeals may reduce these requirements.

*The majority of the site is well buffered from abutting land uses. Due to the location of the existing bogs and site topography, the applicant proposes a natural vegetated buffer with a minimum ±51-foot width (increasing to ±111-foot) to the excavation at three points of the Plymouth portion of the property (adjacent to Alpine Run Road in Kinston).*

Section 205-18F(C)(2) - Requirements for test pits.

*Test pits are not needed as the soils are typical of Carver/Plymouth sand and gravel and are relatively uniform throughout the site.*

Section 205-18F(C)(a)(b) - Side slopes exceeding 3 to 1 grades may be allowed by the Board of Appeals provided that the slopes do not exceed the soil's natural angle of repose and the Board of Appeals finds that the soils are suitable for steeper slopes and adequate revegetation plans are submitted.

*The proposed 2 to 1 slopes will match the slopes of the existing Carver bogs, and the irrigation supply pond. The existing 2 to 1 side slopes have been stable.*

Section 205-18F(a)(c) - No area greater than 5 acres may be disturbed at one time for earth removal, stockpiling, and/or processing.

*The proposed project has been designed to excavate, prepare, and stabilize the entirety of the limit of work at the same time. The work was designed in such a way so that the adverse impacts of earth removal would be limited to the shorter construction period rather than phasing the construction over an extended time period of time. The sooner the project can be completed and the cranberry acreage moved, the sooner the water withdrawal burden will be removed from the Darby Pond Well.*

Town Officials noted the importance completing the project in a timely manner to reduce the private water withdrawal demands on Darby Pond and thereby increase the Town ability to provide safe drinking water to the residents of the Town. Based on this greater public need, the Board finds the request to waive the 5 acre limitation reasonable.

*Removing the existing bog out of Zone 2 would be a public benefit.*

**CONDITIONS:**

1. The Petitioner will return for an informal hearing with the Zoning Board or appeals regarding what equipment will be used on the property & documentation of relief from DPW regarding comments regarding the proposed driveway width and turning radii.
2. "No Jake Brake" signs shall be installed at the exit of the haul road and on Carver Road at the approaches to the entrance of the haul road.
3. Within five (5) years of the commencement of work on the new bog parcel, Darby Bog and the Darby Pond water usage rights associated with it, will:
  - a. No longer be used; or
  - b. Be abandoned; or
  - c. Be transferred to another site outside of the Darby Pond Well's Zone II;and
  - a. The land offered to the Town of Plymouth;

In accordance with the terms of the Purchase and Sales Agreement <sup>1</sup>between the Town of Plymouth and Franklin Marsh, LLC. As part of the agreement, the existing Darby Bog will continue to be cultivated, and harvested (with no restrictions) by Franklin Marsh LLC through the completion of the construction of the new bogs and associated earth removal.

4. Snow fence or flagging shall be installed at the limit of disturbance for the project.
5. Slopes are planned to be stabilized with four inches (4") of loam, then hydroseeded with a Conservation seed mix, or similar seed to control run-off and provide permanent vegetation of the slopes.
6. All areas of excavation and access ways to earth removal operations shall be clearly marked with legally posted no trespassing signs. Areas of steep slope or grade, as judged by the the Building Commissioner, shall additionally be fenced and clearly marked "DANGER- KEEP OUT" every 150 feet.
7. Sixty (60) days prior to the completion of the first 3-year limitation period, the Petitioner may file a written request to the Board of Appeals for an extension of the excavation period, which shall be granted if determined to be consistent with the intent and purpose of the Earth Removal Bylaw. A maximum of one (1) excavation period extension may be granted for a term not to exceed two (2) years. Additional extensions shall require a modification/reapplication of the Zoning Permit or Special Permit.
8. Evidence of recording of this Special Permit at the Plymouth County Registry of Deeds shall be presented to the Building Inspector, and the plans shall be recorded with the Special Permit.
9. The Petitioner shall submit an erosion control plan (and dust suppression measures if needed) including a planting plan for stabilization of the disturbed slopes to the Building Commissioner. Any exposed banks created by the excavation should be hydro-seeded or otherwise stabilized in a manner acceptable to the Building Commissioner and maintained for three (3) years.
10. Excavation, trucking and equipment start-up and operation and any related use shall be limited to Monday through Friday and hours of operation shall be limited to 7:00 AM to 4:00 PM, with no excavation activities permitted on State or Federal holidays.
11. The Petitioner shall be responsible for the clearing of any sand that accumulates on the truck route as a result of the excavation of material on a daily basis. The Petitioner shall coordinate with the Plymouth DPW to perform any roadway cleaning along Carver Road that may be required during construction.
12. The Petitioner shall provide an "as-built" survey which verifies that no more than 635,000 cubic yards of material were removed (as measured at bank face).

---

<sup>1</sup> To be executed prior to the Zoning Board of Appeals public hearing.

13. Heavy vehicle round trips in Plymouth shall be limited to forty (40) round trips per day to and from the site.
14. Quarterly inspections and quarterly written certifications shall be submitted to the Building Commissioner demonstrating substantial compliance with the Zoning Bylaw, the earth removal Special Permit, and accepted engineering practices.
15. Permanent stabilization of any portion of the development site not under active construction for a period of six (6) months is required.
16. Within three (3) months of the reasonably anticipated completion of operations, the applicant shall provide written notice to the Building Commissioner of intent to complete operations and the estimated date thereof, and shall make the premises available for inspection by the Building Commissioner for conformity with the Special Permit, Zoning Permit and all approved Development Plans in advance of the intended date of completion.
17. The Building Commissioner shall calculate, after consultation with a qualified professional, a performance guarantee in an amount reasonably estimated to restore, regrade and revegetate the area under active excavation and other disturbed areas, if any, and shall include an adjustment for projected inflation or other predictable factors affecting cost of restoration over the term of the Earth Removal special permit plus one (1) year. A cash performance guarantee or bond acceptable to the Building Commissioner shall be in place prior to the commencement of work.
18. The Building Commissioner or its duly authorized agent shall have access to the excavation site at all times in order to inspect the site to insure compliance with the approved site plan.
19. If all of the above noted conditions are not adhered to the Building Commissioner may cause all excavation work to cease until the problems identified are corrected.
20. Overburden shall be stripped with topsoil and subsoil stored separately on site, and seeded to prevent erosion for use in the restoration of the site.
21. The site shall not be used for any other principal use until five years from the expiration of the excavation period or any extension thereof.

If substantial use or construction permitted by this Special Permit has not commenced within two years from the date on which a copy of this decision is filed with the Town Clerk, excluding the amount of time required for an appeal period to expire and the amount of time required to pursue and await the determination of any such appeal, then this Special Permit shall expire.

Any relief not expressly granted hereunder is hereby denied.



We hereby certify that copies of this decision were filed with the Town Clerk, Building Inspector, and the Planning Board on: May 15, 2018

ZONING BOARD OF APPEALS

Peter Conner  
Peter Conner, Chairman

Michael Main  
Michael Main, Member

David Peck  
David Peck, Vice-Chairman

Edward Conroy  
Edward Conroy, Member

William Keohan  
William Keohan, Clerk

NOT SEATED ON THIS CASE  
Michael Leary, Alternate

NOT SEATED ON THIS CASE  
Barnaby Bosanquet, Alternate

This decision shall not take effect until (a) a copy of this decision certified by the Town Clerk to the effect that twenty (20) days have elapsed since the decision was filed in the Office of the Town Clerk without any appeal having been filed or that any appeal filed has been dismissed or denied has been recorded in the Plymouth County Registry of Deeds or with the Assistant Register of the Land Court for Plymouth County, and (b) a certified copy indicating such Registry recording has been filed with the Board.

Any person aggrieved by a decision of the Board of Appeals has the right to appeal such decision to the Superior Court, the Land Court, or the District Court of the Commonwealth of Massachusetts pursuant to Massachusetts General Laws, Chapter 40A, Section 17, by filing such appeal within twenty (20) days after the date on which the decision was filed with the Town Clerk.

Copy to Applicant via Certified Mail on: May 15, 2018

Notice of Decision to interested parties on: May 15, 2018

