

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

Open Meeting – 6:00 PM:

A Motion was made to take the open meeting out of order by G. POTAMIS.
SECOND: P. MURPHY. Vote carries 4-0.

1. Minutes August 16, 2018

A Motion was made by P. MURPHY to approve the Minutes of August 16, 2018.
SECOND: G. POTAMIS. **Vote carries. 4-0**

A Motion was made by G. POTAMIS to go back into public meeting.
SECOND: P. MURPHY. **Vote carries 4-0.**

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

Continuation: #046-18 – McDermott, 42 Tower House Rd – R & R (TJ, KF, KB, EVK, PM)

T. Borselli, Falmouth Engineering, for the applicant, prefers to wait for a full quorum.

A Motion was made by R. DUGAN to continue the hearing until a full contingent (one member running late) later in the meeting. SECOND G. POTAMIS. **Vote carries. 4-0.**

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

New Hearings:

**#059-18 - Ito, 48 Shady Lane, E. Falmouth
Special Permit to allow a Home Occupation**

Members sitting: Chairman Hurrie, Member Murphy, Associate Dugan, Associate Potamis.

Chairman HURRIE designated P. MURPHY as Acting Clerk.

Acting Clerk MURPHY read the Notice of Public Hearing into the record.

- Engineering - standard comments, no stormwater runoff onto rights of way.
- ConCom – no comment
- Health Dept. – no comments
- Fire Dept. – no comments
- Water Dept. - no comments
- Assessor - property includes lots 14 and 19.

Applicant E. ITO of 48 Shady Lane:

Applicant said she wants to relocate her precious metals business to the property garage instead of continuing to rent off-site space. She makes casts of multi-metal small parts and operates the business by herself. The public does not come to her place of business. In response to questions by the Board, Ito said there will be radiant floor heat, no habitable space and some supply deliveries.

S. BUDROW : The use will not constitute more than 30% coverage of the substandard lot.

G. POTAMIS: Will there be disposal of solid or liquid waste? Is there metal in the rinse water?

E. ITO: The materials are kept because they are valuable. There will be no disposal of solid material and no metal in the rinse water.

Chair HURRIE: Will there be any noise, vibrations or electrical interference?

E. ITO: No.

There being no public comments, the Board discussion was that it a good and reasonable use with minimal impact on the area.

S. BUDROW: Is there any fire safety equipment on site?

E. ITO: There is a fire extinguisher and yearly inspection.

A Motion was made by G. POTAMIS to close the hearing.

SECOND: P. MURPHY. **Vote carries 4-0.**

A Motion was made by P. MURPHY to approve the application as submitted.

SECOND: G. POTAMIS. **Vote carries 4-0.**

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

FINDINGS:

- Meets the requirements of §240-162E and F1.
- There will be no employees.
- No members of public will access business.
- The space will be heated.

CONDITIONS:

- Per plan
- No habitable space
- Any changes to the project will require the applicant to come back before the Board.

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

**#060-18 - Novitsky, 24 Perch Pond Cir., Teaticket
Special Permit to construct 2nd floor to existing garage**

Members sitting: Chairman Hurrie, Acting Clerk Murphy, Associate Dugan, Associate Potamis.

Acting Clerk Murphy read the Notice of Public Hearing into the record.

- Engineering – Recommend adding drywells or stormwater measure for new roof line.
- ConCom – no comments
- Health Dept. – area above garage must not be used for sleeping. Any increase in bedrooms is not allowed unless applicant can show enough capacity in existing system.
- Planning Dept. – no comments
- Assessor – n/a
- Water Dept. – no impact
- Fire Dept. – no comments

Applicant Thomas Novitsky:

Applicant said he wants to add a second floor for storage and to be able to stand up in the space. It will allow access without a ladder to the home where a present storage space exists under the eave. The addition will be insulated, sheet-rocked and wired but it will not be heated. There will be windows for light and ventilation. The new roof will follow the existing roofline. It will remain a one-car garage and be used for storage only.

G. POTAMIS: Is a spiral staircase to be added as shown on the plan?

T. Novitsky: Yes.

Public Comments:

Robert Ottaviano of 33 Perch Pond: Asked the applicant what are you going to put up there with a spiral staircase for access?

P. Novitsky: The spiral is to save space in the garage. The footprint is too small for a regular staircase. There is a barn door with functional access.

A Motion was made by G. POTAMIS to close the hearing.

SECOND: P. MURPHY. **Vote carries 4-0.**

A Motion was made by G. POTAMIS to approve the application as submitted.

SECOND: P. MURPHY. **Vote carries 4-0.**

FINDINGS:

- Engineering concerns about drywells and gutters will be addressed and drywells will be updated.
- The project is not closer to the property line.
- To be used for storage only.

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

- No habitable space.

CONDITIONS:

- Per plan
- No habitable space
- To be used for storage
- Upgrade drywells
- All stormwater will be maintained on site.

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

Continuation of # 046-18 – McDermott, 42 Tower House Rd – R & R (TJ, KF, KB, EVK, PM)

**Members sitting: Chairman Hurrie, Clerk Bielan, Member Murphy, Associate Dugan,
Associate Potamis**

Thomas Borselli of Falmouth Engineering for the applicant:

Borselli: Borselli said the hearing was continued because comments were made about the space on the third floor that was not labeled on the plan. The space was contemplated to be a bathroom, but a decision was made to eliminate the space. The applicant and architect watched the video and listened to the Board's comments about the architectural design. We believe it is not substantial or more detrimental. Five bedrooms will become four bedrooms.

William McDermott, McDermott Builders, for the applicant, presented the Board with photos of the existing structure and revised proposed renderings.

McDermott: McDermott said the house is on cinder blocks and is in total disrepair with uneven floors. The architect came up with a new plan which is better than the last. The aesthetics are a great fit for the neighborhood and the neighbors are in support.

Clerk K. BIELAN: Is the height of the revised proposed structure to be 34.4 inches?

T. Borselli: Yes.

G. POTAMIS: Is there a covered porch?

Borselli: Yes

No public comments.

Board Discussion:

P. MURPHY: It looks like a completely different house and 3,900 sf goes to the limit.

Clerk BIELAN: The concern is the height and bulkiness. Although what is proposed is better, it is 3,900 sf and 34' height. It is a tight lot, close the property lines and substantially taller than what is around it being right up against the 35 feet height maximum.

T. Borselli: If you look at the house from the street, the home to the left was raised and reconstructed within the last ten years which required a similar review. There are aesthetic and environmental improvements and we don't think it rises to a substantial detriment to the neighborhood.

P. MURPHY: It has been changed but not enough to make a huge difference. The side and rear elevations are similar to what was previously proposed.

G. POTAMIS: It is not extremely detrimental compared to others and bulk is not as much a concern. It has nice architectural detail.

R. DUGAN: I am concerned with bulk because of the style. The revised proposed breaks up the mass. You mentioned in the file that you didn't have to go in front of the Historic Commission, but you said you incorporated some of its suggestions.

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

W. McDermott: The Historic Commission was more concerned with architectural details. That is why we came up with this design. Originally, it was to be a Gambrel Nantucket style and the Commission wanted more of an A-frame. In Falmouth Heights, every neighbor is up to three stories. This plan is not detrimental with the houses around it. The applicant will retire here and is trying to maximize bedrooms.

S. BUDROW: Did you receive a Certificate of Appropriateness from the Historic Commission? There is not one in the file.

T. Borselli: The applicant was before the HC for demolition delay only.

Clerk BIELAN: I understand the desire to have a fourth bedroom on the third floor, but there is also a large deck that is adding to the roofline. The setbacks are very tight. It would be nice to have something from the Historic Commission.

P. MURPHY: There was not enough attempt to make it less bulky. I would not vote in favor.

R. DUGAN: I would like to see something proposed to reduce the bulk.

Chair HURRIE: I would like to see more effort regarding the bulk.

T. Borselli: You don't have guidelines for architecture. We did submit bulk calculations and it is right in the median for bulk. We have two options, to force a denial or a continuance. I'm going to ask for continuance.

Clerk BIELAN: Bulk and size are in our purview.

G. POTAMIS: In the past, photographs of the neighborhood have been helpful to provide perspective.

S. BUDROW: The rooflines help break up the bulk.

A Motion was made by Clerk BIELAN to continue the hearing to October 4, 2018 at 6:30 P.M.

SECOND: R. DUGAN. **Vote carries 5-0.**

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

**#063-18 - Starke, 19 Commodore Ln., E. Falmouth
Special Permit to construct 3rd bay addition to garage**

**Members sitting: Chairman Hurrie, Clerk Bielan, Member Murphy, Associate Dugan,
Associate Potamis**

Clerk K. Bielan read the Notice of Public Hearing into the record.

- Engineering - standard comments about drywells and stormwater
- Concom – no comments
- Water Dept. - n/a
- Planning Dept. - no comments
- Fire Dept. - no comments
- Correspondence from the Applicant

Present for the Applicant: Jeffrey Ryther, PE and Russ Crockford, G&P Architects

J. Ryther: The Applicant proposes a third garage bay for an antique car on the lot that is less than 30,000 sf. All setbacks existing and proposed are met. Lot coverage is met with less than 20%. The setback is four feet and the addition will not cast shadows. (Ryther presented GIS pictures to the Clerk.) There is no dwelling across the street and the abutters will not see it through the vegetation. The septic is for four bedrooms and there will be no new bedrooms. There is a leach style small tank system. The architecture is consistent with existing houses in the neighborhood.

R. Crockford: The project adds 12 feet of extension to the left of the existing garage. Roofline will be maintained, and materials will be matched. The house was previously renovated and updated. There will be better access into the house.

R. DUGAN: Is the space over garage for storage?

R. Crockford: It is unfinished space for storage and will not be heated. There is a fire code wall.

Clerk BIELAN: Is it your intention to add drywells?

S. BUDROW: There are none shown on the plan. Engineering recommends drywells for roof runoff.

J. Ryther: Agreed.

No public comments.

A Motion was made by P. MURPHY to close the hearing.

SECOND: K. BIELAN. **Vote carries 5-0.**

A Motion was made by Clerk BIELAN to approve the plan as submitted.

SECOND: P. MURPHY. **Vote carries 5-0.**

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

FINDINGS:

- designed third bay is stepped back
- Maintain roofline
- For storage only
- Will remain unfinished
- Will not be heated
- Will increase utilization for the applicant
- Drywells will be added as recommended
- Use is to store antique cars

CONDITIONS:

- Per plan
- No habitable space above garage
- Additional drywells to be located per discretion of the engineer

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

**#064-18 - Case, 46 Iroquois Street, Teaticket
Special Permit to convert existing 1 car garage to a 2-car garage (addition)**

**Members sitting: Chairman Hurrie, Clerk Bielan, Member Murphy, Associate Dugan,
Associate Potamis**

Clerk BIELAN read the Notice of Public Hearing into the record.

- Engineering Dept. – The proposed driveway will require a permit. The Dept. recommends a change in design and will not approve as shown based on a discussion with the Tree Warden that the driveway, as proposed, will negatively impact the oak tree on the property. Stormwater runoff to be directed on site and not onto the public way. Add drywells for stormwater runoff.
- ConCom – no comments
- Assessor – includes lots 61,62 and 63
- Fire Dept. – no comments
- Planning Dept. -no comments

S. BUDROW: The applicant has addressed the driveway change to avoid the oak tree. A drywell was put in on the SW corner of the new addition.

Dick Betzik for the Applicant: Betzik said we are replacing an existing single-car garage with a two-car garage. Lot coverage is 23.5% and will be 23.89%. There will be no curb cuts, no increase in habitable space. The existing entry does not access the garage from the house and will not change. The use is for storage and additional space for antique cars. There will be no staircases. The exit is in the rear. Stormwater will be controlled per revised plan.

R. DUGAN: The scuttle pull-down does not appear on the plan. It should be added in.

Clerk BIELAN: If it is just for storage, why is there a bump-out on the second level?

D. Bessey: For curb appeal and light. The first floor will be insulated. The upstairs is not heated, insulated or finished.

Clerk BIELAN: Was the 12' x 16' wood patio in the backyard calculated as part of the structure?

D. Bessey: The wood patio is seven inches off the ground and is not considered in lot coverage because it is on grade and not attached.

Chair HURRIE: Does the bump-out offer more room to move around.

D. Bessey: Yes, and it reduces the bulk with an overall height of 21+ feet.

No public comments

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

Board Discussion: Is the patio a deck or a patio and should it be considered part of the lot coverage. The Board will follow-up.

Clerk BIELAN: I suggest we should amend to add §240-69E because they are increasing lot coverage. The concern is that the wood patio makes the lot more non-conforming. The wood patio on grade presents a bigger issue. It sounds like a deck. The applicant can amend the application.

S. BUDROW: It is under 240-3C and is already over the 20%. They are already pre-existing non-conforming from 2002. It is not exceeding the 25%. The Building Commissioner can determine whether the wood deck would be considered lot coverage by structures. They did remove the shed and took it off the house to minimize increase in lot coverage by structures. If it is determined to be a structure, then it would put it over the 25%. It would have to be the applicant that would amend the application to §240-69E. That allows the board to vote. It can be amended here.

G. POTAMIS: Is a wooden platform detached from the house a structure?

D. Betzik: I received the determination from the Building Commissioner in an informal discussion about the detached patio, but it is not in writing. Right now, the patio is three feet above grade. It is being knocked down to grade to seven inches off the ground.

Clerk BIELAN: It is minimally separated from the structure. A wood patio sounds like a deck. We were not provided with elevations of the rear of the property.

Chair HURRIE: It is an important distinction to be made. It doesn't hurt the applicant to amend the application to §240-69E.

P. MURPHY: At grade I would call it a patio.

S. BUDROW: Because it is being increased, the Board believes you should amend to §240-69E here.

A Motion was made by K. BIELAN to continue the hearing until October 4, 2018 at 6:30 P.M. until further information is available from the Building Commissioner whether the deck is a structure with lot coverage or a patio. A determination can be made at that time to amend to §240-69E.

SECOND: R. DUGAN. **Vote carries 5-0.**

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

#061-18 - Campion, 20 Sheridan Avenue, Falmouth - Appeal of Building Commissioner's determination that bulkhead, deck and walkway are in violation and requires building permit

Members sitting: Chairman Hurrie, Clerk Bielan, Member Murphy, Associate Dugan, Associate Potamis

Others present: Attorney Charles Sabatt; Building Commissioner Rod Palmer; Attorney Jackson Parmenter; Michael Borselli, Falmouth Engineering; Michael McGrath, Holmes and McGrath.

Clerk BIELAN read the Notice of Public hearing into the record.

- No referrals

Attorney Charles Sabatt for the applicant: Submitted for the record: January 13, 2011 plan

Atty Sabatt: Sabatt said we are appealing an order of the Building Commissioner issued earlier this year ordering the applicant to apply to the Board of Selectmen for a special permit under the zoning bylaw for maintenance of existing bulkhead which fronts on Falmouth Harbor.

The stone and mortar seawall on the front of the property fronts on the Harbor. Plans from the early 20th century show the continuous seawall ran along neighboring properties. In 1990 a license was applied for that required the owner to maintain the existing seawall in good condition. In 2009, the seawall was beginning to deteriorate and in danger of collapsing. Falmouth Engineering was retained to propose the repair of the seawall with vinyl sheeting and cap to encase and stabilize the seawall. This proposal was presented to the ConCom. In 2010, an Order of Conditions (OOC) was issued allowing the repair as applied. In June 2010, Devaney Construction began to prep the area and discovered the seawall was not straight up and down, but on an angle and supported by tow stones. Since you could not drive vinyl sheeting into tow stones, the solution was to move the repair ten inches more seaward. The ConCom agent was notified of the change by necessity. The ConCom representative performed a sight visit and approved the proceeding with field minor modifications and in the summer of 2010 the repair was made.

In the fall of 2010, The Department of Environmental Protection (DEP) was notified by the northerly neighbor that he was objecting to the repair and sheeting. DEP said a Chapter 91 license was needed. The Application for the license was prepared in January 2011 and the plan dated January 13, 2011 showing the existing bulkhead and cap was appended to the application submitted to DEP. When the Building Commissioner's order and letter were received, the focus was on notice and the ability to appeal. There was no letter enclosed from Attorney Ament, but we did receive a copy of it this week from S. BUDROW. The Ament E-mail suggests it is unknown whether the then Building Commissioner got an accurate depiction of the onsite work. (Atty. Sabatt entered the plan into the record and stated it is

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

similar to the license plan.) There are notations on the plan in bold type. "...shows permitted location of sheet pile bulkhead and four-foot wide timber deck. As-built location of sheet pile and four-foot deck." Page 3 shows the same language. The as-built shows it was permitted, and it is on the final license plan. The Planning Board made a determination that plans have been filed referring to this plan of January 13.

Michael Borselli of Falmouth Engineering is here tonight. He represented the prior owner and was explicit and clear about onsite changes in a letter dated January 18, 2011 to the DEP and copied to the ConCom. The letter said there was a ten-inch change in the field and the contractor adjusted for the ten inches. (Atty Sabatt submitted the letter to the Clerk). 310 CMR 9.34 provides a precondition to issuance of a Chapter 91 license that states the applicant must obtain a certification that the proposed project is in compliance with zoning. There is nothing in the regs that addresses or authorizes revocation of a certificate. The certification was signed by the appropriate municipal clerk. The certificate by the Building Commissioner on January 13th certifies that there is no violation of zoning ordinances or bylaws. The project is in compliance. There is an additional certificate by the Planning Department signed by Joyce White that states the project as described and detailed on the license has been submitted to the Planning Board. The application is a matter of record and the Building Commissioner certified there were no violations. DEP certified and issued the Chapter 91 license.

The Order by the Building Commissioner would create a conflict that DEP regulations are intended to avoid. The Opposition questions whether the Building Commissioner had a full picture at the time he certified. He did. He was fully aware. There is no authority to backtrack on this. Once they filed for the application, the abutter to the north initiated a lengthy appeal. There was a two-year battle with prefiled testimony. It was an expensive proceeding for the prior owner, the Millette family. The Applicant, the Campions, purchased the property after the certification was issued and relied upon it. The Building Commissioner cannot, seven years after the fact, rescind what was allowed then by the Building Commissioner. The zoning statute is that once an order is made by the Building Commission, you have a small window of 30 days. If you have a constructive notice of a violation, then you have sufficient time to make an appeal of the Building Commissioner's decision.

The direct abutter, Mr. Geoffroy, was notified about the original ConCom filing, the Notice of Intent, and the DEP filing and never filed an appeal. In a two-year period, he never interjected or intervened. He attempted to get a dock at his bulkhead and that application was denied. He had to revise his plan to tear down the existing seawall. He put out an unlawful float and put his boat in a location that prevented the applicant from tying up his boat. In the Spring of 2016 the ConCom wrote an enforcement letter to Geoffroy to remove the illegal float. Geoffroy put in a cleat and ties so that the Applicant cannot use the southerly side of the dock. Only then did he begin to complain about the bulkhead after he lost the illegal float.

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

In 2017 we filed suit and obtained an injunction which enjoined Geoffroy from tying up to the Applicant's dock. He is simply too late by eight years. The answer to him should have been the Town certified in 2011 and the application should have been denied.

The work done by Geoffroy was far different from Millette's work. In 1999, the Geoffroy's work included tearing down.

Chair HURRIE: Does this apply to the appeal?

Atty Sabatt: It is relevant to the materials submitted to you. The Chapter 91 license for Geoffroy in 1999 was to construct and Millette's license was to repair the existing bulkhead. The Millette displacement was seven cubic yards. The Geoffroy displacement was 19 cubic yards. The DEP is the sole and exclusive agent for examining and issuing a permit in Commonwealth tidelands. The opposition alleges that the Millette bulkhead, now the Campion bulkhead, is located on Geoffroy's property. It is an issue in the Barnstable Superior Court. Mr. Geoffroy has filed action in Land Court and it will be resolved in Land Court. This Board is not the Land Court. It is not in your purview. The permit says the bulkhead is located in Commonwealth tidelands. You cannot have common ownership in Commonwealth tidelands.

In summary, the evidence is clear about what was filed and submitted and very explicitly about what transpired out on the site. Mr. Geoffroy had every opportunity in last the eight years to make his concerns known and to file his appeals and he did not do it. We ask you to overturn the Decision of the Building Commissioner.

Building Commissioner Rod Palmer: Palmer said the original permit Chapter 91 license filed and signed by Mr. Gore (then Building Commissioner) was for a repair. After a site review it was found to be more than a repair. It was a construction. The owner should have had a special permit by the Board of Selectmen. The overall width of the elevated walkway was larger than originally permitted. The dock was not what was originally described.

P. MURPHY: You felt it was a new seawall?

R. Palmer: Yes. Some are greater than a simple dock and start with stairs, a landing and eventually a dock. In some cases, a building permit is applicable. If the structure in the aggregate is greater than 200 sf it requires special permit.

G. POTAMIS: If this was simply new construction how did all subsequent approvals come through?

R. Palmer: I can't speak to that.

G. POTAMIS: If it was completed in error does it need a special permit?

R. Palmer: If the intent was to repair and they reconstructed, yes, they would need a special permit.

S. BUDROW: Did they go beyond the Chapter 91 waterways license permitted? Was there an as-built that Mr. Gore signed off? Don't you usually require as-builts?

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

R. Palmer: Not typically. We usually ask for as-builts for things that are very permanent such as foundations. I'm not aware that an as-built was provided

G. POTAMIS: In your opinion, is there a procedure for going back to Waterways to ask them to weigh in?

R. Palmer: I don't know.

Clerk BIELAN: Atty Sabatt, you submitted both a January 18 and 19th letter.

Atty Sabatt: Yes. Both were copied to the Concom.

Clerk BIELAN: Is it your contention that the certificate stops the Commission from enforcing the zoning bylaw?

Atty Sabatt: The Building Department certified to DEP that there were no violations. Nothing I can find authorizes the Town to backtrack on that certification. It doesn't really matter, at this point, if you accept that the certificate binds the Town of Falmouth. The Building Commissioner made a determination at the time that this was a lawful repair. It was certified to a state agency that has jurisdiction over tidelands. I don't see how the Town can rescind that.

Clerk BIELAN: I'm under the impression that the Town is not stopped from enforcing its bylaw. Can you cite any situation?

Atty Sabatt: It is a unique circumstance. The case here is that the DEP has relied upon it and required as a condition of proceeding.

Clerk BIELAN: Is it your position that no zoning violation exists, or they can't go back on the certificate?

Atty Sabatt: I relied on the Building Commissioner that there are no zoning violations here. The DEP certificate does, now, bind the Town. I believe the correct decision here is the Town has to certify that there is no violation. There are no grounds to rescind or vacate that certification. If you thought Mr. Gore was duped, I wouldn't be standing here. There is no evidence to that, so you are bound by it.

Clerk BIELAN: I would like to see any kind of caselaw that a certificate constitutes an order of decision. I would also like to see a case from an opinion letter. Is the Injunction preliminary or permanent?

Atty Sabatt: Preliminary

P. MURPHY: If a prior building commissioner made a determination that the present Building Commissioner now says he doesn't agree with, he is not bound to agree with that prior opinion.

Atty Sabatt: Even if the current Building Commissioner says he was wrong and he thinks he has the right to then say he made a mistake and wants to change his position, there is a structure in place that makes this different. It is not just a mind change.

P. MURPHY: What about in a purchase of a lot?

Atty Sabatt: It is a much different circumstance. If you had evidence here that the original certification was given improperly because of misinformation and that the certification basis is totally wrong, that would be different. We have evidence to the contrary. It is clear Mr. Gore knew what the story was. It is in the plans. This is exactly the situation the regulatory scheme is trying to avoid.

G. POTAMIS: Are you relying upon the issuance of a permit by DEP as a shield against further prosecution by anybody lacking misinformation or dishonesty?

Atty Sabatt: No. If an honest mistake had been made, the bulkhead had been mis measured and you can show me that it was a mistake, then you might have a basis for saying the whole thing is invalid. But you don't have that, and I don't think you can unwind it. There are mechanisms with DEP.

Falmouth Zoning Board of Appeals
DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

S. BUDROW: Mr. Borselli, you did the plans in 2011 and you do a lot of Chapter 91 applications. Is there an as-built prior to an end result of the Building Commissioner signing off to the DEP on the form sent to him?

M. Borselli: The form that he usually reviews is prepared prior to the structure being built. In this situation, the structure had been installed. The Chapter 91 plan was, in fact, the as-built.

S. BUDROW: Is the Board going to entertain anything with the Land Court case or the Superior Court case? I think the Board needs to make that determination before moving forward this evening. This appeal is strictly for a determination made by Building Commissioner and should not include the civil matter.

Chair HURRIE: I understand the Superior and Land Court matters are essentially private party matters.

Atty Jackson Parmenter representing Mr. Geoffroy, submitted documents to the Clerk for the record.

Atty Parmenter: There was much talk about whether the Building Commissioner was mis-led or duped. Mr. McGrath is here to demonstrate that is what happened. The Campions submitted an application to repair the seawall. There was a change on site. The as-builts are not an accurate depiction of what happened on site.

Michael McGrath registered professional land surveyor and engineer, Holmes and McGrath.

Submitted as exhibits to the Clerk:

- Overlay
- Plans that show land of abutters, Geoffroy and McLaughlin
- Exhibit plan
- Recorded license for the parcel

M. McGrath: Said my company did an instrument survey of the parcel that is the subject of the appeal. It is appropriate because it shows that the seawall is vertical and there were existing stones on the bottom. You cannot drive plastic sheathing through stones. I took a plan in the recorded portion of the license plan that would have been shown to the Building Commissioner [at the time] and performed an instrument survey. The overlay shows that the projection is much greater into Falmouth Harbor than the suggested eleven inches. It is four feet. In the plans I drew, the seawall was vertical. The plan that was represented shows the historic wall to be approximately two feet into the harbor. It was not. We have a circumstance where the plan does not represent what happened. I believe the building inspector could have been very easily misled. Any filling of the salt water is almost unheard of. Here it was four feet. The original plan filed with the ConCom shows the seawall to be vertical.

Chairman HURRIE: You said the seawall was vertical. Testimony from the appellate said that it actually goes into Falmouth Harbor.

M. McGrath: There is a photo attached to one of the complaints that shows the seawall was vertical. The representation in the Chapter 91 license is not accurate.

Falmouth Zoning Board of Appeals
DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

- G. POTAMIS: In your opinion is there a remedy.
M. McGrath: I have never gone back on a Chapter 91 license.
R. DUGAN: Do the stones appear to be independent or are they part of the wall?
M. McGrath: We show them to be independent.
P. MURPHY: The property line was the old stone wall?
M. McGrath: Yes
P. MURPHY: And the as-built provided to us in 2018 shows an encroachment into Falmouth Harbor due to this repair of this wall?
M. McGrath: No question that the wall is further into the Harbor.
- Clerk BIELAN: You say a four- foot projection?
M. McGrath: On the license plan, it shows the distance of eleven inches. It is much greater.
Clerk BIELAN: Is a portion of that still over the land?
M. McGrath: There is a walkway over land. There are photographs attached to Attorney submissions.

Atty Parmenter stated there are two key issues. Were the Campions required to obtain a special permit from the Town? They obtained a Chapter 91 license. Refer to the License at Page 3, section 7 “...waterway license is granted subject to...” We know based on the License itself that local zoning still exists and cannot be avoided and is not trumped. The case law is clear that a Chapter 91 license is not a building permit. The Campions are arguing this. Willis v. ZBA states a Chapter 91 license does not equate to a building permit. A Barnstable case shows pier regulations require a special permit in addition to a state permit. State and local agencies work hand in hand where there is a cross-section of overlapping regulations. The Applicant says the work performed was merely a repair, so it doesn’t require a building permit or a special permit. The filling, excavating, drilling, wrip-wrapping within a tidal area to alter the shoreline was what was done here. They went over and above what was required by DEP.

The next argument claimed by the Campions is that certificate obtained by the Building Commissioner is somehow a decision similar to a permit from which my client should have filed an appeal within thirty days. He eluded to a constructive notice requirement of thirty days. This isn’t a Decision. Richardson v. ZBA says what is a decision. There is not a lot of caselaw on the topic. What happened was an endorsement on a plan by a building official and they attempted to repeal that. We do not have a permit or a decision where a notice to aggrieved parties is required. An application is not a basis for starting the thirty-day tolling. MGL 40A §7 states when structures are constructed without a building permit, there is a ten-year statute of limitations to bring an enforcement order. We are well within that period. The Appeal should be denied.

- Clerk BIELAN: You argue MGL 40A §7. We know your client was using this pier and has known about it for years. Will Latches come into play?
Atty Parmenter: We brought to your attention a violation exists. Latches should not apply to the Building Commissioner’s enforcement order because he is within the ten-year statute to do so.
Clerk BIELAN: There is no notice when there is an application.

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

Atty Parmenter: You don't get a notice of a building permit. This application could be signed and held for thirty days before it is submitted to DEP. There is a certification on the application that you are certifying to the entire correctness of the application.

S. BUDROW: Regarding Latches, the structure is visual, and they have seen it for years. Why didn't he ask for a determination shortly after it was completed? Why did none of the abutters approach before now?

Atty Parmenter: He didn't realize until litigation transpired. He didn't have an obligation to do so until ten years was up. He had no reason to believe that this structure was not properly permitted.

Clerk BIELAN: I think it would be helpful to have anything available about a certification binding the Town. Analogous circumstances must be there where the state relies upon certification.

Atty Sabatt: I'll see if I can find that.

Clerk BIELAN: It would be helpful if there was some caselaw that says what it does for the state in relying upon it.

Atty Sabatt: If you think it through, the obvious rationale is that the DEP does not want to issue permits and then go through what is happening now. To suggest that I made a statement that is patently false is a stretch and uncalled for. One of the items you have addresses Latches by private parties (ZBA v. Chilmark.)

A Motion was made by Clerk BIELAN to continue the hearing until Nov 1, 2018.

SECOND: G. POTAMIS. **Vote carries 5-0.**

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

Open Meeting Continued:

2. Board administrative Review for Determination of 'Insubstantial' Change – 587 Gifford Street - #89-04 Comprehensive Permit – Falmouth Housing Corporation

S. BUDROW: I sent the Board a letter by Attorney Laura Moynihan about why the changes proposed are important. Attorney Moynihan and Linda Clark of Falmouth Housing Court are here if you have any questions. Is this a substantial or insubstantial change? If your determination is that it is insubstantial, then the Applicant goes forward automatically and the Board signs off on the subdivision plan. Falmouth Service Center sent a letter in support of the subdivision and construction of additional units.

Clerk BIELAN: Is this Lot 5 part of the lot that the comprehensive permit relates to?

S. BUDROW: Yes. There are financial reasons why it has to be subdivided.

Clerk BIELAN: I think it is substantial but approvable.

P. MURPHY: I've never seen an instance where in the aggregate you have a 40B development and someone wants to pull an acre out of it and its not substantial. I would say it is substantial carving out over an acre off an existing previously approved comprehensive permit.

S. BUDROW: This is all part of Falmouth Housing Corp. who owns the property and who will be before you to add additional 40B units on the 1 acre parcel that is being subdivided.

Atty Moynihan: The reason why this is important is there is a grant program in place trying to fast-track the housing in order to be eligible for state funding between now and October 11, 2018. A determination would allow us to go to the lenders who have financing on the existing site to modify or subordinate their mortgages. In a test for substantial change, the regs allow for the increase in more than 10% in height, increase in more than 10% of the number of housing units and reduction of the size of the site of more than 10% in excess of any decrease in the number of housing number, changes of ownership, change from rental to ownership. Insubstantial changes are a reduction in the number of house units, decrease of less than 10% flooring, change in the number of bedrooms, change in color or style, change in financing...etc. I understand your concern about taking out an acre. This is a 12-acre site with a very low density and very low lot coverage. Look at it in terms of the impact on the residents. Because of the size of the property, taking out one acre puts us still well under the state recommendation. That is why we're saying insubstantial. The garden area was anticipated that it would be used for the tenants. There is a letter from Linda Clark that says the tenants had no objection to giving it up and they never intended to use it.

P. MURPHY: I've changed my mind. It's insubstantial

Chair HURRIE: I believe it is substantial. It is not an endorsement or objection for future proposals for that site. It merely means a comprehensive permit modification.

Clerk BIELAN: I think it is substantial.

G. POTAMIS: How soon could we hear this?

S. BUDROW: It will be October 11, 2018.

G. POTAMIS: I think it is Insubstantial.

R. DUGAN: Substantial

Falmouth Zoning Board of Appeals

DRAFT - Minutes of Meeting held September 6, 2018

PRESENT: Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy,
Associate Gerald Potamis, Associate Robert Dugan –
And Sari Budrow, Zoning Administrator

Absent: Vice Chairman Kenneth Foreman, Member Ed Van Keuren

A Motion was made by K. Bielan that the Board make a determination that the Comprehensive Permit is a substantial change.

SECOND: R. DUGAN.

In favor: K. BIELAN, T.J. HURRIE, R. DUGAN.

Opposed: G. POTAMIS, P. MURPHY. Vote carries by a majority 3-2.

3. Board Updates

Review Joint Board meeting notes of August 28, 2018.

S. BUDROW: Please review notes send by Planner, Tom Bott about recodification of the bylaws. It will be discussed at a future joint board meeting.

4. Procedural rules and policies. Tabled

5. Future Agenda Items.

Discuss articles talked about at Joint Board meeting held on August 28, 2018 at the Board's next meeting on September 20, 2018.

Meeting adjourned at 9:30.

Next Scheduled Public Hearings will be held on September 20, 2018 at 6:30 PM – Selectmen's Meeting Room – Town Hall.

Respectfully submitted,

Joanne Robbins, Recording Secretary