

Zoning Board of Appeals Decisions Decisions for: 04-28-2016

[Close Window](#)

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 031-16

APPLICANT/OWNER(S): CHAPOQUOIT ASSOCIATES of West Falmouth, MA

SUBJECT PROPERTY: 0 Associates Road, West Falmouth, MA
Assessor's Map: Map 24, Section 05, Parcel 010, Lot 022E

DEED/CERTIFICATE: Book 236 / Page 270

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of March 7, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-160 A. of the Code of Falmouth to allow a temporary tent to be used by Association for the summer months June through August on subject property known as 0 Associates Road, West Falmouth, Massachusetts.
2. Notice was duly given as required by Section 11 of Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.
3. A duly advertised public hearing was opened on April 28, 2016.
4. The public hearing was terminated on April 28, 2016, wherein the Board consisting of Vice Chairman Kenneth Foreman (Acting Chair), Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Gerald Potamis (sitting as voting member) made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Jeffrey E. Ryther, PE of BSS Design, Inc. and reviewed and discussed proposed plans with the Board.
6. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

None

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

3/7/2016 Applicant's representative submitted to the Board of Appeals an application accompanied by four copies of Existing and Proposed Conditions plan on Lot 22E Associates Road, fee for application, owner authorization, photos (2 pages) of proposed site and owner authorization.

Letters/Referrals/E-mails from Town Departments

3/10/2016 Planning Department submitted a referral to the file with no comment.

3/10/2016 Marine & Environmental Services submitted a referral to the file with no comment.

3/11/2016 Building Commissioner Gore submitted a referral to the file that states: Permit required from Inspectional Services Department and must also be signed off by Falmouth Fire Rescue Department.

3/15/2016 Lt. Mel Trott, Fire Prevention Officer, submitted a letter as referral to the file that states no cooking or open flame is allowed inside the tent area.

4/7/2016 Scott Schluter of the Engineering Department submitted a referral to the file that states: This application was reviewed only for impacts to public right of ways and public utilities. Associates Road is a Private right of way in this area. Any connections or alterations to public utilities would require permission from the appropriate Town Department. The project must not direct any stormwater runoff to public property, abutters, or right of ways.

4/13/2016 Board of Appeals staff submitted a copy of the Order of Conditions issued by Conservation Commission for subject property.

Plans submitted by Applicant/Applicant's Representative

3/7/2016 "Plot Plan – Little Beach Improvements" prepared for Chapoquoit Associates Lot 22E Associates Road Chapoquoit Island, West Falmouth, Massachusetts as drawn by BSS Design, Inc. dated January 12, 2016 with final revision date of March 4, 2016, stamped and signed by Jeffrey Edwin Ryther, P.E. and with a Board date 'received' stamp of March 7, 2016.

Hearing:

Jeff Ryther with BSS Design, Inc. reviewed the existing site conditions and discussed the proposed location for a seasonal 16' x 32' tent. He explained that the tent is being proposed to be erected in June and disassembled at the end of August. The tent will be primarily used by Association members and by events such as sailing camp, Annual Clam Bakes and everyday beach goers within the association. He explained that the sailing camp does include individuals from West Falmouth that will be picked up and dropped off at site. Mr. Ryther reviewed the proposed tent that has guyed wires and will approximately 12' in height.

The Board discussed the proposed seasonal tent and parking with Mr. Ryther. All concerns and questions were addressed.

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

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

Acting Chairman Foreman closed the hearing.

FINDINGS

The Board of Appeals, after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

The subject property located at 0 Associates Road (Lot 022E) in West Falmouth contains 34,848 square feet of Residential B zoned land that is located within the West Falmouth Harbor Coastal Pond Overlay District. The applicant applied under Section(s) 240-160 A. of the Code of Falmouth to allow a temporary 16' x 32' tent to be erected for use during June, July and August. The subject property has a dock and other minor amenities used by the members of Chapoquoit Associates.

Section 240-160 of the Code of Falmouth – "Temporary and conditional structures and uses." – Sub-section A. states: Temporary and conditional structures and uses that do not conform to the regulations herein prescribed may be allowed by special permit, provided that no special permit shall be for more than a one-year period and further provided that no permit shall be renewed until all abutters have been notified and public notice given in the manner provided in MGL C. 40A.

The Board finds that the proposed 16' x 32' tent, with an approximate height of 12', will be installed on subject property as shown on the plans noted herein and is a temporary use by the applicant from Memorial Day through Labor Day of 2016. The Board further finds that the proposed tent will be installed by tent professionals and with permits issued by the Inspectional Services Department. Furthermore, the Board finds through testimony by the applicant's representative that the tent will have applicable life safety devices according to the Fire and Building Codes and noted in the referral submitted to the file by the Falmouth Fire Rescue Department dated March 15, 2016.

The Board finds through testimony by the applicant's representative that there will be no cooking or open flame allowed inside the tent. The Board further finds through testimony by the applicant's representative that there will be no music within the tent after 10:00 PM and that any lighting at the tent used for a function being held will be extinguished within one hour after close of function.

The Board finds through testimony by the applicant's representative that the intent of the proposed tent will be to give shade to residents attending the beach, Annual Clam Bake held by the Association, Sailing Camp and other functions held by said Association.

The Board finds that the overall site of subject property will be improved, including parking area (12 spaces), additional plantings as well as dock being improved. The Board further finds that the Conservation Commission issued an Order of Conditions for work being conducted on site and for the tent.

The Board finds that the applicant requested administrative approval for yearly permits instead of the public hearing process. The Board further finds that Section 240-160 A. requires that no permit be renewed until all abutters have been notified and public notice given according to MGL C 40A.

In addition to the above findings, the Board finds that the proposed seasonal 16' x 32' tent 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 seasonal tent as the property is 38,484 square feet in size, is considered vacant and used only by the association members.
- B. The site is suitable for the proposed use as the property use is recreational and used by the members of the Chapoquoit Association.
- C. There will be no impact on traffic flow and safety on the property and there is no change in the property except for the seasonal tent approved herein and a boat dock used by members of the association.
- D. The visual character of the subject property will be minimally impacted; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The property is vacant land used by association members – no septic system or sewage disposal system is on site.
- F. Any utilities to the site will be permitted by the Inspectional Services Department and any other appropriate Town Department.
- G. The proposed seasonal tent installation discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was no Site Plan Review required by the Planning Board and the referral submitted to the file from the Planning Department had no comment.
- I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformities stated herein.
- J. The approval of this special permit does not include any affordable housing.

The Board of Appeals has weighed the effects of the proposed seasonal 16' x 32' tent on subject property as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Potamis made a motion to Grant the Special Permit with conditions. Member Van Keuren seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid

and acting under the provisions of the Code of Falmouth voted 5 – 0 to Grant a Special Permit for the year 2016 to Chapoquoit Associates (herein referred to as Applicant) under Section(s) 240-160 A. of the Code of Falmouth to allow for a temporary tent from Memorial Day through Labor Day in the year 2016, on subject property known as 0 Associates Road, West Falmouth, MA. This special permit is subject to the following conditions:

1. The location, installation, height and use of proposed temporary tent shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Little Beach Improvements" prepared for Chapoquoit Associates Lot 22E Associates Road Chapoquoit Island, West Falmouth, Massachusetts as drawn by BSS Design, Inc. dated January 12, 2016 with final revision date of March 4, 2016, stamped and signed by Jeffrey Edwin Ryther, P.E. and with a Board date 'received' stamp of March 7, 2016.

2. The 16' x 32' temporary tent may be installed on subject property from Memorial Day through Labor Day 2016. The tent shall be disassembled no later than the Tuesday following Labor.

3. If the applicant is desirous of installing the tent on subject property in the year 2017, application must be made to the Board of Appeals no later than March 15, 2017.

4. The tent may be installed on subject property only after the proper permits are issued from the Inspectional Services Department [Building and Fire Department].

5. The Board of Appeals herein adopt the conditions set forth in the Order of Conditions approved by the Conservation Commission signed and dated April 13, 2016.

6. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.

7. 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.)

8. This permit shall lapse two years from the date on which this decision is filed in the Town Clerk's office if a substantial use of the Special Permit has not sooner commenced except for good cause as determined by the Board of Appeals.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 031-16

Applicant: CHAPOQUOIT ASSOCIATES of West Falmouth, MA

Subject Property: 0 Associates Road, West Falmouth, MA
Map 24, Section 05, Parcel 010, Lot 022E

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

Vote: 5 – 0 to Grant a Special Permit for the year 2016 as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

Terrence J. Hurrie, Clerk, Board of Appeals

_____ Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.

Notes:

SP 031-16 Chapoquoit Assoc. / filed with the TC 5/5/16