

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 097-16

**APPLICANT:** DIANE MEAL and JOHN GRACI of Teaticket, MA

**OWNER:** Edward J. Sheehan, III and Nancy M. Sheehan, Trustees  
of No. Falmouth, MA

**SUBJECT PROPERTY:** 0 Tanglewood Drive, Hatchville, MA  
**Assessor's Map:** Map 28, Section 03, Parcel 009A, Lot 003B and  
Map 28, Section 03, Parcel 009B, Lot 000B

**DEED/CERTIFICATE:** Book 8422 / Page 283 (Lot 003B)  
Book 9595 / Page 313 (Lot 000B)

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of September 13, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-162 F. (1), 240-162 F. (3), 240-38 I., 240-38 G. (4)(b) and 240-38 G. (1)(b) of the Code of Falmouth to allow a home-based service business for a septic inspection company with vehicles over 13,000 GVW on site, garage space of more than 900 square feet and an accessory apartment located within the single-family dwelling on subject property known as 0 Tanglewood Drive, Hatchville, Falmouth, MA.
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 November 3, 2016.
4. The public hearing was terminated on December 8, 2016, wherein the Board sitting on December 8, 2016 consisting of Vice Chairman Kenneth Foreman sitting as Chairman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy voted to direct the Zoning Administrator to draft a positive decision to be reviewed, and possibly vote on, during a duly posted open meeting on December 15, 2016.
5. On December 15, 2016 the above members reviewed and discussed the draft decision with findings and conditions to approve the application. The Special Permit was Granted with Conditions. Minutes from the hearings and the open meeting are on file in the Board of Appeals.
6. On December 21, 2016, prior to a signed Decision being filed with the Town Clerk, Attorney Robert H. Ament submitted a letter dated December 21, 2016 requesting 'Reconsideration' of Condition 13 of the approved Decision for Special Permit #097-16. The Board Granted the Reconsideration.
7. On March 9, 2017 at the hearing for Reconsideration of Condition 13, the Board voted to Grant the Decision as amended.

8. The applicant was represented at the hearing by Attorney Robert H. Ament of Ament Law Firm, who reviewed and discussed proposed plans with the Board. Attorney Ament signed waiver(s) to extend the date of filing of decision (see file).
9. 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**

- |            |   |
|------------|---|
| 10/26/2016 | E-mail from abutter Thomas Saudade asked questions regarding Board's vote   |
| 10/26/2016 | E-mail with attached letter dated October 26, 2016 from Michael McIntyre of 99 Tanglewood Drive with 15 listed comments/concerns and six photos of the roadways around Coonamessett Circle  |
| 10/27/2016 | E-mail dated 10/26/2016 from Thomas Saudade with questions to ZBA   |
| 10/27/2016 | Two e-mails dated 10/27/2016 from Thomas Saudade with questions to ZBA  |
| 11/01/2016 | Letter dated October 31, 2016 from Michael McIntyre as supplement to 10/26/16 e-mail and info, with attached photo of applicant's dump truck  |
| 11/02/2016 | E-mail from Michael McIntyre regarding applicant's business off Facebook (no photo was attached to e-mail)  |
| 11/03/2016 | E-mail from Thomas Saudade with comments and attached court cases   |
| 11/03/2016 | E-mail from Thomas Saudade with comments to Zoning Administrators response to his questions/comments on Board's review of information submitted   |
| 11/03/2016 | E-mail from Thomas Saudade regarding possible restriction on subject property(s) with attached 'Quit Claim' Deed from 1994 on subject property  |
| 11/03/2016 | Letter dated October 28, 2016 from Karen Blake of 90 Meredith Dr., E. Falmouth stating no objection to proposed plans for HBSB as long as any truck/materials used in the business are parked or stored within the garage and/or screened from view and no objection to accessory apartment |
|            | Same letters as immediately above (no date) signed submitted individually by: Dylan Benoit of 67 Meredith Dr.; Taryn Dean of 53 Meredith Drive; Ron Catone of 50 Meredith Drive; and Deb Kendall of 19 Tanglewood Drive   |
| 11/03/2016 | Petition signed in support of accessory apartment and HBSB stating they have reviewed the proposed plans signed by twenty (20) individuals from the Falmouth area (see file)  |
| 11/07/2016 | Photo submitted by Mike McIntyre of a listing showing commercial property for sale by applicant   |
| 11/08/2016 | E-mail from Thomas Saudade with comments regarding deed restriction and possible appeal by an individual and consequences   |

- 11/08/2016 Letter dated November 4, 2016 signed by Richard V. Yanni and Paula J. Yanni of 53 Tanglewood Drive with comments and request for Board to reject subject application for home business
- 11/09/2016 Letter dated November 8, 2016 from Nancy Duffany of 67 Tanglewood Drive stating opposition with comments to the application for a home business
- 11/09/2016 E-mail with comments to the Board of Appeals from Mike McIntyre regarding November 3<sup>rd</sup> hearing
- 11/09/2016 E-mail from Mike McIntyre with attached photos (3) of applicant's septic business
- 11/11/2016 Letter to the Board of Appeals dated November 10, 2016 from Patricia A. Evans of 74 Falmouth Landing Road stating opposition to the proposed home based service business with a recommendation and 'Attachment A'
- 11/14/2016 E-mail of 11/13/2016 with letter attached from Lisa and Frank Samko with comments and a request that the Board vote 'no' on the application for home business
- 11/14/2016 E-mail from Keith Robbins of 76 Tanglewood Drive with comments and concerns and request to deny the application for home business
- 11/15/2016 E-mail dated 11/14/2016 from Mike Mitchell of Meredith Drive stating opposition to the proposed application for home business
- 11/15/2016 Petition submitted to the file by residents – with 64 signatures stating opposition to subject home business
- 11/15/2016 Letter dated November 13, 2016 submitted to the file (via e-mail) from Michael R. Samko stating opposition to the subject home business – stated safety concerns
- 11/16/2016 E-mail dated November 15, 2016 from Mike McIntyre with comments and attached picture of applicant's truck with trailer and excavator loaded on trailer
- 11/28/2016 Letter dated November 23, 2016 submitted and signed by Denise Kelleher and Colette Farrell of 56 Tanglewood Drive stating concerns and opposition to the home business

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

- 9/13/2016 Attorney Robert H. Ament with Ament Law Firm submitted, on behalf of the applicant John Graci Sr. and Diane Meal, an application for a special permit, fee, a copy of a Purchase and Sale Agreement for subject property, site and architectural plans, worksheet for the requested accessory apartment, photo of trailer and three trucks over 13,000 GVW, copies of registration of trucks a copy of a "Plan of Land for subject properties dated April 1995 and a narrative of proposed requests included in the special permit
- 9/14/2016 Attorney Ament submitted a letter dated September 14, 2016 to the file to the Zoning Administrator regarding address of subject property and plan merging lots in 1995

- 9/30/2016 Attorney Ament submitted a letter with copies of a two 'Quitclaim Deeds' from the Sheehans (property owners) dated September 27, 2016 with a book and page number of Bk 29970 / Pg 113 and Bk 29970 / Pg 115 regarding transfer of property into Tomatoe Realty Trust
- 11/01/2016 Letter from Attorney Ament to ZBA dated 10/31/2016 in response to Mr. Saudade's comments (above)
- 11/01/2016 Letter from Attorney Ament to ZBA dated 10/31/2016 in response to Mr. McIntyre's comments (above)
- 11/02/2016 Cover letter from Attorney Ament dated 11/02/2016 with attached letter from Attorney Ament to Rod Palmer, Building Commissioner, dated October 27, 2016 regarding lot frontage and buildability of subject properties. Second page of letter has a signature of Mr. Palmer's under a comment regarding buildability of Lot B3
- 11/03/2016 E-mail from Attorney Ament in response to Mr. Saudade's 11/03/2016 e-mail
- 11/03/2016 E-mail from Attorney Ament in response to Mr. McIntyre's e-mail regarding commercial property operated by applicant
- 11/09/2016 E-mail from Attorney Ament in response to comments from Mr. Saudade on a deed restriction
- 11/15/2016 Letter from Attorney Ament to the Board of Appeals dated November 14, 2016 regarding weight of the three trucks proposed within the HBSB with comments on what is 'empty' weight of the vehicles vs. 'with load' weight of trucks – attached tickets showing weight with no load but with fuel
- 11/16/2016 Letter from Attorney Ament dated November 16, 2016 to the Board of Appeals with comments regarding concerns stated by the Board and abutters at previous hearings with an attachment listing applicant's inventory and storage of said equipment
- 12/01/2016 Letter from Attorney Ament dated December 1, 2016 to the Board of Appeals stating proposed reduction of equipment on subject property for the home business (removed two trucks, one trailer, excavator and other equipment; reduced size of garage and gravel area on site)

**Letters/Referrals/E-mails from Town Departments**

- 9/15/2016 Referral submitted to the file from the Director of Assessing with the comment: *Lot 000B is an unbuildable lot, Assessors' recommend merging with Lot 003B, by ownership*
- 9/15/2016 Referral submitted to the file from the Planning Department staff with no comment
- 9/20/2016 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 9/30/2016 Referral submitted to the file from Conservation Commission with no comment
- 10/05/2016 Referral submitted to the file from the Engineering Department with comments regarding construction of the new home proposed

**Plans submitted by Applicant/Applicant's Representative**

“Site Plan for Lot B3 Tanglewood Drive” prepared for Diane Meal & John Graci in Falmouth, MA as drawn by Falmouth Engineering – Sheet 1 of 2 dated August 16, 2016 with a final revision date of 11/10/2016, stamped and signed by Michael J. Borselli, P.E. – with a Board date ‘received’ stamp of November 15, 2016;

“Septic System & Standard Details for Lot B3 Tanglewood Drive” prepared for Diane Meal & John Graci in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 2 dated August 16, 2016 – stamped and signed by Michael J. Borselli, P.E. with a Board date ‘received’ stamp of September 13, 2016; and

“New Residence for: Diane & John Graci 147 Tanglewood Drive Falmouth, MA” drawn by Giampietro Architects consisting of Drawing A1 through A5 dated 9-9-2016 and all with a Board date ‘received’ stamp of September 13, 2016.

Hearing 11/3/2016:

Attorney Robert H. Ament reviewed the proposed application with the Board. He noted that the applicants have a purchase and sale agreement on subject property. The applicant is requesting (see file) to create an accessory apartment for the applicant's disabled brother; build a garage with more than 900 square feet to accommodate machinery/trucks for a proposed home-based service business on said property. Attorney Ament reviewed the site that is a 4.5 acres parcel located at the end of a cul-de-sac off Tanglewood Drive and abuts conservation land. The proposed garage is approximately 3,000 square feet in size to accommodate three vehicles involved in the home business. The applicant is the only individual in the business, there are no outside employees. There will be two trailers that are 18' in length, an excavator, bobcat and a Kubota along with three trucks all over 13,000 gross vehicle weight.

The Board discussed plans and home-based service business with Attorney Ament, including hours of operation which were said to be 7:00am to 7:00pm Monday through Saturday and emergency calls for septic pump outs and snow plowing for Town of Falmouth; that there is no intent to service any vehicles on site. The three trucks are: A 1985 Mack Dump Truck with a load weight of 76,000 GVW; a 1988 Ford Medium Heavy Dump Truck with a load weight of 33,000 GVW and a 2014 Ford Dump Truck with a load weight of 20,000 GVW. The two trailers are: A 2000 Utility Trailer (yellow) with a load weight of 20,000 lbs.; and a 2015 Utility Trailer (gray) with a load weight of 17,000 lbs.

Public comment is support or opposition:

Joao Junqueira of Capewide Enterprises – 11 Cornell Way spoke in support and stated the applicant works on his own and is a hard worker.

Richard Yanni of 53 Tanglewood Drive stated opposition and feels the business is too large for the neighborhood; the business may expand and the applicant has large equipment for this residential neighborhood.

Marjorie Parmenter of 36 Meredith Drive stated opposition due to noise and safety concerns with a child-friendly neighborhood – feels the proposed is not appropriate for a neighborhood such as this.

Patricia Evans of 74 Falmouth Landing Road stated opposition to the commercial aspect proposed.

Mike McIntyre of 99 Tanglewood Drive stated opposition siting it is a large business looking for a home and concerned the business will grow.

Thomas Saudade of 149 Tanglewood Drive stated opposition and concern with weight of three large trucks and two trailers – spoke on drainage.

Adam MacDonald of 110 Tanglewood Drive stated concern of the width of the neighborhood road (Tanglewood) and the capability of the large trucks going down this road with cars parked on the road and children in the road playing.

Linda Vokey of 68 Falmouth Landing Road stated concern with noise, snow plowing and type of screening. She stated a business like this does not belong in a neighborhood.

Greg Souza of 146 Tanglewood Drive stated he does business with applicant and he is a good businessman but has concern with the amount of special permit requests and asked if the applicant sells his commercial property in Bourne, will all the equipment come to this property.

Alicia Reihl of 75 Tanglewood stated concern of trucks on roadway as she is a bus driver and said it is hard to drive a bus in the neighborhood as people park on the road and are a lot of children in the area.

Board discussion: Board noted the 4.5 acre parcel is appropriate for a home-based service business but stated concern with the large trucks traveling through the neighborhood. The Board had no issues with the proposed accessory apartment. Board suggested that photos of the trucks and proposed buffering plan of the site would be helpful.

Member Murphy made a motion to continue the hearing to November 17, 2016 at 6:30 PM. Member Foreman seconded the motion. Motion carried 5 – 0.

Continuation – November 17, 2016:

Attorney Ament reviewed the two letters he submitted since previous hearing and noted that the dimensions of the garage have changed and the location of the doors and some of the gravel area for storage of equipment has been eliminated. He reviewed the proposed plantings of evergreen trees as a buffer for the neighbor and proposed control of drainage on site. Attorney Ament stated that the applicant would be amenable to a condition that the trucks cannot be loaded driving down Tanglewood Drive. He reviewed the neighborhood noting that out 64 of the 134 homes in the area are heated by oil – so a heavy oil truck goes down that road quite frequently, which is a larger truck than proposed. He further notated that trash trucks that pick up trash in the neighborhood are much larger as well.

Board discussed with Attorney Ament and asked about consideration of limiting the number of vehicles on the property, how does the material storage proposed fit into the bylaw and, how will the small equipment or materials be loaded onto trailers?

Attorney Ament replied that the small dump truck (Ford 550) is also the applicant's personal vehicle and that the two larger trucks would be used infrequently. He noted that the materials stored on site are not for resale and all materials will be hand loaded as the bylaw does not allow 'mechanical' loading of materials.

Public comment in support or opposition:

Merle Young of 125 Tanglewood Drive stated concern with losing the 'family feel' of the area.

Dave Etter of 29 Meredith Drive stated he does not agree with a business like this being in the neighborhood and is not convinced it will be limited to trucks in the future. He noted that there are lots of children in the neighborhood.

Frank Samko of 106 Tanglewood Drive stated opposition and concern of the large trucks maneuvering on the neighborhood road. He fears that home prices will go down if this business is allowed.

Thomas Saudade of 149 Tanglewood Drive cited issues with the five letters of support submitted as four do not live in the area and potential negative impacts on the possibility of sales of homes.

Chris Cowan of 141 Tanglewood Drive stated concern with children going to and from the bus stops; the large trucks are an issue. He said he has trouble maneuvering a fire truck down this road and noted a lack of signage for the safety of the road.

Nancy Duffany of 57 Tanglewood Drive stated she works for a septic company and they use large trucks all of the time so she feels they are underestimating the usage of the trucks which will affect the traveling of the neighborhood road.

Steve Paltz of 103 Tanglewood Drive stated concern for children's safety as there are no sidewalks within the neighborhood.

Board discussed:

Member Foreman stated the intent of the bylaw is to accommodate small businesses, not one with three vehicles over 13,000 pounds; and under Section 240-216 it talks about safety and neighbors are clearly concerned about that – he feels that the proposed is not the right fit for this site.

Member Hurrie stated that the site is adequate for the proposed use and the applicant has revised the plans. He doesn't think trucks this size are good in that neighborhood.

Member Van Keuren said the proposed meets the bylaw and that there could be worse uses on the property.

Member Murphy said it is a great site for the business but that it is too bad that it goes through a neighborhood, but he is inclined to approve it.

Member Potamis said if traffic is an issue then there are controls that can be put in place that the applicant can work within. He feels the Board should draft a decision to make this work.

Member Bielan noted that given all of the conditions the Board would need, the Enforcement officer couldn't enforce them diligently. She noted that during her site visit she did encounter at least 20 children getting off a school bus and walking down the road. Although the property is an appropriate size – the trucks go through a tight and busy neighborhood with lots of kids and she believes the trucks are inappropriate for this site.

Member Foreman said he believes that the application as proposed could meet definition of a contractor's yard (section 240-13) and that the subject property is not an appropriate location for this business and may violate the intent of the bylaw.

Attorney Ament stated that given the comments by the Board, he would like to request a continuation to review issues stated tonight with the applicant.

Member Foreman made a motion to continue the hearing to December 8, 2016 at 6:00PM. Member Hurrie seconded the motion. Motion carried 5 – 0.

Continuation – December 8, 2016:

Clerk Hurrie read a letter submitted to the file by Attorney Ament that laid out a revision of the original request where the only business vehicle on the property would be the Ford 550 Dump Truck that the applicant uses as personal and business vehicle, the other two larger dump trucks, the 18' Hudson trailer and the John Deere excavator would be garaged at a different location and not on subject property. The letter further stated that with the reduction of equipment proposed on site, the footprint of the garage would be substantially reduced to not more than 1,800 square feet in size. The only equipment to remain on subject property as part of the proposed home-based service business is the personal/business vehicle used by the applicant, the Ford 550 which has an empty weight of 11,700 pounds, a 17' bed length trailer, the Kubota L35 tractor and Takeuchi skid steer (bob cat). The letter noted that revised plans showing this reduction in equipment and garage for home-based service business has not be completed and suggests that said plans will be submitted for review and approval by the Board when a decision is made.

The Board discussed the scaled down proposal for the home-based service business. Attorney Ament answered questions from the Board regarding trips per day of the Ford 550 – with and without trailer, one-year review if approved and hours of operation.

Public comment:

Mike McIntyre of Tanglewood Drive spoke in opposition stating concerns of heavy trucks down the neighborhood road, safety of the neighborhood children, a business too large for neighborhood that may grow. He stated the difficulty with monitoring the business and vehicles; and is not conducive for the neighborhood.

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

Chairman Foreman closed the hearing.

The consensus of the Board was that the reduction in the size of the garage from 3,000 square feet to 1,800 square feet and the removal of the two larger trucks, together with the removal of the excavator and 18' trailer results in a substantial improvement to the special permit. The consensus was that the revised proposal as scaled down in size and scope meets the criteria for a home-based service business under Section 240-162 F. (1) and F. (3) and will not have adverse impacts on the neighborhood.

Member Murphy made a motion to direct the Zoning Administrator to draft an affirmative decision for review by the Board and possible vote. Member Van Keuren seconded the motion. Motion carried 5-0.

Duly posted open meeting of the Board of Appeals – December 15, 2016:

The Board reviewed and discussed the draft decision prepared by the Zoning Administrator as requested. The Board amended the draft decision and voted to approve (see below).

### **FINDINGS**

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



The subject properties located off the cul-de-sac at the end of Tanglewood Drive contains in total 4.5 acres of Agricultural B zoned land that is located within the Great Pond Coastal Pond Overlay District and the Search and Rescue Overlay District. The applicant applied under Section(s) 240-162 F. (1) and F. (3) of the Code of Falmouth to allow a home-based service business on subject property; Section 240-38 I. of the Code of Falmouth to allow an accessory apartment within the dwelling on subject property; Section 240-38 G. (4)(b) of the Code of Falmouth to allow vehicles over 13,000 GVW on subject property and Section 240-38 G. (1)(b) of the Code of Falmouth to construct a garage more than 900 square feet in size. The proposed single-family dwelling is not before the Board as that will only require a building permit approved by the Building Commissioner. All dimensional requirements for the proposed structures on subject property under Sections 240-68 A. and B, 240-69 A. and 240-70 of the Code of Falmouth are in compliance.

The buildability of subject property is not before the Board through this application for special permit herein discussed.

Section 240-38 of the Code of Falmouth – “Special Permit Uses”, requires special permit approval from the Board of Appeals for Sub-sections A through I. Sub-section I allows the Board of Appeals to approve a special permit for an accessory apartment based on criteria set forth in (1) through (8).

The Board finds through testimony by the applicant’s representative that the principal dwelling will be owner-occupied for at least seven (7) months every calendar year (sub-section 1 of 240-38 I.).

The Board finds through plans submitted and reviewed that the proposed accessory apartment is approximately 620 square feet in size and occupies no more than 12% of the gross floor area of the main dwelling on subject property (sub-section 2 of 240-38 I.). The Board further finds that the worksheet submitted to the file for calculation of the accessory apartment is incorrect as it included the garage spaces, which should not be included within the calculations (‘floor area of the principal structure’).

The Board finds through plans submitted that the subject property in total is approximately 4.5 acres (more than the 15,000 square feet required according to sub-section 3 of 240-38 I.).

The Board finds through submission of plans that the subject property is within a Coastal Pond Overlay and meets the requirements of land ratio vs. number of bedrooms and an alternative subsurface sewage disposal system is not required (sub-section 4 of 240-38I.).

The Board finds through plans submitted that the parking for the accessory apartment is placed appropriately on subject property and will not deter from the single-family appearance use on subject property (sub-section 5 of 240-38 I.).

The Board finds through testimony by the applicant’s representative that the apartment or single-family dwelling will not be rented out for commercial accommodations or a summer rental and that such language shall be included within the Deed Restriction required for approval of the accessory apartment (sub-section 6 of 240-38 I.).

The Board finds through testimony that the proposed accessory apartment will be used by the disabled brother of the applicant. The Board further finds that the applicant will submit to the Board of Appeals a draft Deed Restriction that states the apartment will be used by family members and with the acknowledgement that if not used by a family member, said apartment shall be rented to a household with an income 80% or less of the Barnstable County median income and that subject property and/or the accessory apartment shall not be rented as commercial accommodations or summer rental (sub-section 7 of 240-38 I.). After approval by the Board and Town Counsel and signature from Town Manager, the Deed Restriction shall be filed with the Barnstable County

Registry of Deeds with a copy of said filing forwarded to the Board prior to the final sign off of the building permit.

The Board finds through plans submitted that the proposed accessory apartment will be constructed so as not to vary from the appearance of a single-family dwelling (sub-section 8 of 240-38 I.).

Section 240-38 of the Code of Falmouth – “Special Permit uses.” require special permit approval from the Board of Appeals for sub-sections A through I. Sub-section G. (1) *Garage space for more than two cars if: (b) the footprint of the garage is more than 900 square feet or 50% of the footprint of the principal structure whichever is less.*

The Board finds that the plans submitted and reviewed, dated 9/9/16 drawn by Giampietro Architects, show a proposed garage of at least 3,000 square feet in size to hold the trucks/equipment related to the requested home-based service business (part of this request). However, on December 1, 2016 Attorney Ament submitted a letter with revisions for the proposed home-based business and garage stating that if the special permit is approved as revised in the letter, the footprint of the garage will be reduced to 1,800 square feet and that the applicant will submit revised plans upon approval. The Board further finds according to the plans submitted, the garage is attached to the single-family dwelling and does not show a second floor; plans show a bathroom and office on the first floor of the garage. Furthermore, the Board finds that the proposed 1,800 square foot garage, revised via letter dated December 1, 2016 from Attorney Ament, is appropriately before the Board.

Section 240-38 of the Code of Falmouth – “Special Permit Uses.” Require special permit approval from the Board of Appeals for sub-sections A. through I. Sub-section G. (4)(b) *Any commercially registered vehicle with a gross vehicle weight of more than 13,000 pounds.*

Section 240-162 of the Code of Falmouth – “Home Occupations.” – Sub-sections F. (1) through (3) requires a special permit from the Board of Appeals to allow a home-based service business based on the criteria set forth in said sub-sections.

The Board finds that the applicant is proposing to operate a home-based septic service business from subject property. The Board further finds through copies of vehicle registrations and photos submitted to the file, as well as testimony from applicant’s representative, that the applicant is requesting to store three dump trucks on subject property to be used in the home-based service business (one with 20,000 GVW, one with 33,000 GVW and one with 76,000 GVW) – Sub-section F. (3) of 240-162 allows four vehicles with requirements of [1] through [3] – which includes other equipment and appropriate storing/staging.

The Board further finds through review of the plans, discussion with the applicant’s representative and several parties within the neighborhood that the operation proposed in the application may not be appropriate for the neighborhood.

The Board finds that after review, discussion and testimony by interested parties and the Board, the applicant’s representative submitted to the Board a letter dated December 1, 2016 revising the plans for the home-based septic business proposing: (1) the removal of the two larger trucks (33,000 GVW dump truck and 76,000 GVW dump truck) from the application, leaving only the Ford 550 with 20,000 GVW as the only vehicle over 13,000 GVW allowed on subject property; (2) remove from the application and subject property the 18’ Hudson trailer and the Excavator; and (3) decrease the footprint of the proposed garage from 3,000 square feet to 1,800 square feet and decrease the gravel area on the exterior of the garage. Furthermore, the Board finds through said letter, the only equipment to be stored on site in the home-based septic business will be the Ford 550 Dump truck, the 17’ trailer, Kubota tractor and Takeuchi skid steer (bob cat).

Furthermore, the Board feels that the revisions set forth in the letter from Attorney Ament dated December 1, 2016 is a substantial improvement to the plan and more appropriate for the site and neighborhood.

The Board finds through testimony by the applicant's representative that there will be no unrelated employees in this home-based service business. The Board further finds through testimony by the applicant's representative that the 17' trailer, the Kubota tractor and the Takeuchi skid steer (bob cat) will be stored in the proposed garage noted herein.

The Board finds that according to Sub-section F. (3)(b), the maximum amount of exterior storage shall not exceed more than 10% of the lot area and that [5] states that materials that require use of a motorized device to off-load or load shall not be stored on the premises of a home-based service business. The Board further finds through testimony by the applicant's representative that there may, at times, be small amounts of material stored in the gravel area outside the garage for storage related to the home-based service business proposed, however, there will be no storage of motorized equipment or vehicles outside of the garage with the exception of the Ford 550 that is used as a personal vehicle by the applicant.

The Board finds that the applicant submitted a "Site Plan" showing proposed landscaping plans to create a screen/buffer along the northerly side of the proposed driveway up to the proposed dwelling, along the southerly side of the garage and work area and along both sides of the northerly end of the driveway off Tanglewood. The plan also shows proposed drainage on the driveway just after entrance onto subject property.

The Board finds that the applicant will be required to submit revised plans for the calculation of the accessory apartment based on floor area of the main dwelling; a revised plan of the proposed reduction of the garage; a revised site plan showing all proposed buffering, drainage and gravel area where materials will be stored; and a complete list of all equipment to be used in the proposed home-based business as set forth in the letter from Attorney Ament dated December 1, 2016.

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 as all proposed structures meet the dimensional requirements set forth in Sections 240-68 A. and B., Section 240-70 and Section 240-69 A. of the Code of Falmouth. Furthermore, the accessory apartment appears to meet the criteria of Section 240-38 I. of the Code of Falmouth.

B. The site is suitable for the proposed use as a single-family dwelling with an accessory apartment, a garage of more than 900 square feet in size and a home-based service business revised herein as the property is zoned Agricultural B and consists of 4.5 acres. The single-family dwelling will be the primary use with the accessory apartment and home-based service business as an incidental use to the primary use.

C. There will be minimal impact on traffic flow and safety as this is a new dwelling proposed on a vacant lot at the end of the cul-de-sac off the neighborhood road. Testimony was that three adults would reside on site, one of which does not drive. There is a single driveway off the cul-de-sac as is the case with the abutting lot that has a dwelling and residents.

D. There does not appear to be any impact on the neighborhood's visual character as the property is 4.5 acres and there is a proposal to screen from immediate abutters view; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system proposed will require approval by the Board of Health prior to the issuance of a building permit.

F. There are no utilities currently on subject property so the applicant will be required to apply to appropriate Town Departments for all utilities.

G. The proposed dwelling discussed and represented herein will have no effect on the supply of affordable housing in Falmouth currently as the accessory apartment is proposed for a disabled family member.

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 at this time.

The Board of Appeals has weighed the effects of the proposed accessory apartment, garage space over 900 square feet in size, staging of a vehicle of more than 13,000 GVW and a home-based service business 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 Van Keuren made a motion to Grant the Special Permit (draft as amended herein) for the proposed accessory apartment, the construction of a garage of more than 900 square feet in size, the staging of a vehicle over 13,000 GVW and a home-based service business with conditions. Member Potamis seconded the motion. Motion carried 5 - 0.

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December 21, 2016: Reconsideration request letter from Attorney Ament on behalf of applicant was filed with the Town Clerk on 12/21/16 and submitted to the Board of Appeals.

January 12, 2017: At a duly posted open meeting of the Board of Appeals this date the Board discussed the request for reconsideration of Condition 13 as approved by the Board December 15, 2016. The Board unanimously granted the Reconsideration that will be scheduled for February 9, 2017.

February 9, 2017 hearing was re-scheduled to February 16, 2017 due to inclement weather.

February 16, 2017 hearing was re-scheduled to March 9, 2017 due to lack of Board quorum.

March 9, 2017 the Board reviewed and discussed proposed language for Condition 13 submitted by Attorney Ament to allow two round trips per day by the applicant with the company vehicle transporting a trailer and equipment.

Public comment: Thomas Saudade of 149 Tanglewood discussed reviewing the video from December of the hearing and noted comments made by Member Foreman.

Member Van Keuren made a motion to close the hearing. Member Murphy seconded the motion. Motion carried 4 - 0.

Member Van Keuren made a motion to approve the Decision as amended herein. Member Murphy seconded the motion. Motion carried 4 - 0.

### **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 4 - 0 to Grant to Diane Meal and John Graci (herein referred to as Applicant) under Section(s) 240-38 I., Section 240-38 G. (1)(b), 240-38 G. (4)(b) and 240-162 F. of the Code of Falmouth to allow an accessory apartment, a garage of 900 square feet in size, storage of a vehicle

over 13,000 GVW and a home-based septic service business on subject property known as 0 Tanglewood Drive, Hatchville, Massachusetts. This special permit is subject to the following conditions:

1. The accessory apartment, herein approved and as shown on Sheet No. A3 of the architectural plans drawn by Giampietro Architects dated 9/9/16 and with a Board date 'received' stamp of September 13, 2016, shall be as represented to the Board.
2. The applicant's representative shall draft a 'Deed Restriction' and submit to the Board of Appeals for approval regarding the accessory apartment on subject property. The document shall include language that restricts the accessory apartment as family use and that in the event it is no longer occupied by a family member, any rental of said apartment shall be to households with an income of 80% or less of the Barnstable County median income and notice to the Board of Appeals will be as required in Section 240-38 I. (7). The restriction shall also include that the property shall not be rented as commercial accommodations or as a seasonal rental. After the Board's approval process and Town's signature, the applicant shall file the Deed Restriction with the Barnstable Registry of Deeds and then submit a copy of the filed Deed Restriction with the Board of Appeals. There shall be no final sign-off of the building permit by the Building Department and the Zoning Board of Appeals until the approved and signed Deed Restriction is filed with the Registry of Deeds and a copy submitted to the Board of Appeals.
3. The accessory apartment approved herein shall be maintained at all times in accordance with Section 240-38 I. in its entirety.
4. There shall be no occupancy of the accessory apartment until the Deed Restriction is filed and received by the Board of Appeals and an Occupancy Permit from the Building Department has been issued.
5. The applicant shall submit, to the Board of Appeals for approval, revised plans for the garage structure that will be reduced to 1,800 square feet as stated in the letter from Attorney Ament dated December 1, 2016 and discussed at the hearing on December 8, 2016. The plans shall be submitted to the Board of Appeals and approved prior to the issuance of a building permit.
6. The applicant will be allowed to store one 2015 Ford 550 Dump Truck, one 17' bed trailer, one Kubota L35 tractor and one Takeuchi skid steer bobcat for use within the home-based service business as well as other non-motorized equipment. The trailer, tractor, bobcat and non-motorized equipment shall be stored in the proposed 1,800 square foot garage structure at all times. It is noted herein that the Ford 550 Dump Truck is also used as a personal vehicle by the applicant and may at times be parked in the driveway.
7. There shall be no other company vehicles or motorized equipment staged or stored on site except as specified herein. If the applicant replaces any of the vehicles/equipment of equivalent size noted in condition 6 above, the applicant shall immediately submit registration of said vehicle/equipment and a photo of the item to the Board of Appeals for approval.
8. The applicant may be allowed to store landscape media on subject property that will be used to improve, enhance or landscape said property. There shall be no outside/exterior storage of any compost materials, including stone, relative to the home-based septic business on subject property.
9. There shall be no employees except for the applicants (John Graci and Diane Meal) allowed within the home-based septic business operation on subject property.

10. Hours of operation for the home-based septic business approved herein shall be 7:00 am to 7:00 pm Monday through Friday, 7:00 am to 5:00 pm Saturday and no business operation on Sunday, except for emergencies. Exception to the hours conditioned will be when applicant plows snow for the Town.
11. The home-based septic business discussed and approved herein shall not commence on subject property until after a Certificate of Occupancy is issued by the Building Department. The applicant shall request a Certificate of Occupancy from the Building Department and submit it to the Board of Appeals.
12. There shall be no staging of the vehicles and equipment noted in condition 6 above on subject property for the home-based septic business until the Certificate of Occupancy is submitted to the Board of Appeals. The foregoing shall not prevent the applicant from using such vehicles/equipment from installing a septic system or conducting landscaping or other construction projects on subject property.
13. The applicant shall not regularly exit and enter the subject property through Tanglewood Drive more than twice daily (i.e., two round trips) with the company vehicle pulling the trailer loaded with either piece of motorized equipment allowed in Condition 6 above (tractor or bobcat). When the Home-Based Service Business commences operations, the Board shall schedule a review for six months from the commencement date. The applicant shall maintain and provide a log of any additional trips pulling the loaded trailer. The Board shall review this log at the six month review and determine if the additional trips are having an adverse impact on the Tanglewood neighborhood, at which time the Board may further regulate trips to and from the subject property by the company vehicle when pulling a loaded trailer. The Board may also schedule further review if it deems appropriate. Commencement of the log for trips to and from the subject property as stated herein shall be the day the Certificate of Occupancy is issued for the dwelling/garage by the Building Department. The intent of this approval is for two round trips to and from the site for the company vehicle with a loaded trailer and the applicant is herein encouraged to not exceed the two round trips per day.
14. The applicant shall submit to the Board of Appeals for approval, prior to the issuance of a building permit, a revised "Site Plan for Lot B3 Tanglewood Drive" showing all changes set forth in the December 1, 2016 letter from Attorney Ament regarding reduction of original requests/plans. The plan shall include all landscaping, buffering, drainage and structures on subject property.
15. The special permit approved herein for a home-based septic business on subject property shall be for the applicant noted herein and shall not be transferrable, and shall not withstand rental or conveyance of subject property except to an entity controlled by said applicant.
16. This special permit for the home-based septic business discussed herein is contingent on the applicant meeting all the above conditions.
17. 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.
18. Failure to comply with any condition set forth herein may cause revocation of this Special Permit.
19. The Applicant shall meet the requirements of the DPW Water Division.
20. 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.)

21. This 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 Board of Appeals.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: **097-16**

Applicant: **DIANE MEAL and JOHN GRACI of Teaticket, MA**

Subject Property: **0 Tanglewood Drive, Hatchville, MA  
Map 28, Section 03, Parcel 009A, Lot 003B and  
Map 28, Section 03, Parcel 009B, Lot 000B**

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

Vote: 4 – 0 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



**Terrence J. Hurrie, Clerk, Board of Appeals**

**RECEIVED**  
**MAR 17 2017**

FALMOUTH TOWN CLERK



**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.