

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 007-17  
**APPLICANT:** THE CAPE CLUB, INC. of East Falmouth, MA  
**OWNER:** FWG, LLC of Norwood, MA  
**SUBJECT PROPERTY:** 125 Falmouth Woods Road, East Falmouth, MA  
**Assessor's Map:** Map 11, Section 01, Parcel 029, Lot 001B  
**DEED/CERTIFICATE:** Book 28691 / Page 250  
**SUMMARY:** Special Permit for One Year Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of January 26, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-160 of the Code of Falmouth to allow a temporary tent from May 1<sup>st</sup> through October 31<sup>st</sup> on subject property known as 125 Falmouth Woods Road, East 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 March 16, 2017.
4. The public hearing was terminated on March 16, 2017, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy 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 Ms. Kelly Durfee Cardoza with Avalon Consulting Group, LLC and reviewed and discussed with the Board the proposed plans to erect a 90' (w) x 60' (d) tent for the summer season on subject property as shown on the plan submitted.
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**

03/15/2017 Letter submitted to the file from Board of Trustees of Fairway Pointe Condominium Trust – President Porretti, stating support of the proposed tent.

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

1/26/2017 Kelly Cardoza, representative, submitted in addition to application, plans and fee, a copy of an "All Alcoholic Common Victualler" license for the Cape Club.

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

- 1/31/2017 Referral submitted to the file from the Director of Assessing with no comment
- 02/02/2017 Referral submitted to the file from Lt. Mel Trott, Fire Prevention Officer, with no comment
- 02/06/2017 Referral submitted to the file from the Planning Department staff with no comment
- 02/07/2017 Referral submitted to the file from Conservation Commission noting that the subject property is out of their jurisdiction
- 02/27/2017 Referral submitted to the file from the Engineering Department (S. Schluter) states: *This application was reviewed only for impacts to public right of ways and public utilities. Falmouth Woods 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 storm water runoff to public property, abutters, or right of ways.*

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

“Site Plan of Proposed Concrete Tent Pad” prepared for The Cape Club, Inc. for Lot 1B, #125 Falmouth Woods Road in Hatchville, MA – Sheet 1 of 1 as drawn by Holmes and McGrath, Inc. dated Feb. 26, 2016 with a final revision date of 4/20/2016 and with a Board date ‘received’ stamp of January 26, 2017; and

One page plan of similar tent with same height as proposed tent and design loads, stamped by Lawrence Fischer, P.E. and submitted to the file with a Board date ‘received’ stamp of January 26, 2017.

#### Hearing:

Ms. Cardoza reviewed the site owned by FWG, LLC and the proposed erection of a 60' x 90' tent that will be maintained and used by The Cape Club Country Club [formerly known as Ballymeade Country Club]. The applicant [The Cape Club] will own and maintain the proposed tent that will be located on an 80' x 90' concrete pad near the existing in-ground pool that is situated just west of the clubhouse. Ms. Cardoza explained that the tent will have life-saving equipment within the tent in the event of an emergency. There will be lights on the interior of the tent only. The tent will cease activities at 10:00 PM. The Cape Club is requesting to install the proposed tent for a six-month period yearly and asks the Board to grant this request; and a request to condition that the Board may administratively approve subsequent yearly applications.

The Board discussed plans with Ms. Cardoza and all questions and concerns were addressed.

Chairman Bielan asked for any public comment in support or opposition of the proposed project.

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

Chairman Bielan 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 125 Falmouth Woods Road consists of 129.86 acres of Agricultural AA zoned land that is located within the Wild Harbor River Coastal Pond Overlay District, the Wild Life Corridor Overlay District, the Natural Habitat for Endangered Species Program (Priority) and the Search and Rescue Overlay District. The applicant applied under Section(s) 240-160 of the Code of Falmouth to allow a temporary 60' x 90' tent from May 1<sup>st</sup> to October 31<sup>st</sup> of this year on subject property. The tent will be used by The Cape Club for outdoor functions and events to be held at least 2 to 3 times a week; and will accommodate 300 people. The bylaw requires a special permit to be issued yearly for temporary structures such as the proposed tent.

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 60' x 90' tent, with a ridge height of no more than 25', to be installed on subject property as shown on the plans noted herein, is a temporary use by the applicant for the timeframe of May 1<sup>st</sup> to October 31<sup>st</sup> of this year. 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.

The Board finds through testimony by the applicant's representative that there will be no cooking or open flame allowed inside the tent and that any cooking will be at a minimum of five (5') feet from the tent. The Board further finds through testimony by the applicant's representative that the capacity of the proposed 60' x 90' tent is 300 people.

The Board finds through testimony by the applicant's representative that the intent of the proposed tent will be to hold functions/events held by the applicant, The Cape Club, and that the alcohol license for The Cape Club includes the area where the tent is to be located. The Board further finds through testimony by the applicant's representative that any entertainment held in the proposed tent will terminate no later than 10:00 PM and any lights within the tent will be out approximately one hour after any event.

The Board finds that the applicant requested administrative approval for yearly permits by the Board of Appeals instead of the public hearing process. The Board further finds that the applicant may seek administrative approval from the Board for the yearly permits unless there is a complaint made; and in the event of a complaint during a season, the following year application will be required to have a public hearing with abutters notified according to M.G.L. Chapter 40A, Section 9 and 11.

The Board finds that Fairway Condominium Trust Association submitted to the file, their support of the proposed seasonal tent and its use. The Board finds through testimony by the applicant's representative, proper drainage of the tent pad has been addressed and reflected on the “Site Plan” submitted and noted herein.

In addition to the above findings, the Board finds that the proposed seasonal 60' x 90' 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 129+ acres and all setbacks and lot coverage requirements are met.

B. The site is suitable for the proposed use as the property use is a golf course with clubhouse and other amenities.

C. There will be no impact on traffic flow and safety on the property and there is no change in the operation of the golf club through this special permit.

D. The visual character of the subject property will be minimally changed and there are no impacts on the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is addressed by the Board of Health.

F. There are adequate utilities to subject property by virtue of an existing clubhouse on site. All electrical and building permits shall be applied for prior to installation and use of proposed tent approved herein.

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.

Member Foreman made a motion to Grant the Special Permit with conditions. Member Murphy 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 the Special Permit** to The Cape Club, Inc. (herein referred to as Applicant) under Section(s) 240-160 of the Code of Falmouth to allow the installation of a 60' x 90' tent from May 1, 2017 to October 31, 2017 as shown on plans submitted for subject property 125 Falmouth Woods Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The tent installation, setbacks, height of tent and use of tent shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - "Site Plan of Proposed Concrete Tent Pad" prepared for The Cape Club, Inc. for Lot 1B, #125 Falmouth Woods Road in Hatchville, MA – Sheet 1 of 1 as drawn by Holmes and McGrath, Inc. dated Feb. 26, 2016 with a revision date of 4/20/2016 and with a Board date 'received' stamp of January 26, 2017; and
  - One page of a similar tent with same height as proposed tent and design loads, stamped, signed and dated by Lawrence Fischer, P.E. on June 1, 2014 and with a Board date 'received' stamp of January 26, 2017.
2. The proposed tent approved herein shall have a ridge height of no more than 25'.
3. There shall be no cooking or open flames within the tent or within five (5') feet of the tent.
4. The tent shall be equipped with life safety devices according to Fire and Building Codes.
5. A copy of the applicant's alcohol license shall be submitted to the Board of Appeals prior to issuance of a building permit for the proposed tent on subject property.

6. There shall be no music or entertainment after 10:00 PM nightly.
7. The lights inside and around the tented area shall be out approximately one hour (1) after a function or event is over – no later than 11:00 PM.
8. The 60' x 90' approved herein tent shall be installed for the time frame of May 1, 2017 through October 31, 2017.
9. This permit will expire on October 31, 2017. If the applicant is desirous of a special permit for a tent in the year 2018, application for Board's administrative approval will have to be made to the Board of Appeals no later than May 1, 2018. In the event that the applicant requests to increase the request herein approved; if there is a complaint made regarding the tent and its use; or if there is any violation of the above conditions, the applicant shall be required to apply for the application the following year no later than March 1<sup>st</sup> for a public hearing with abutters notified.
10. 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.
11. 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.)

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: **007-17**

Applicant: **THE CAPE CLUB, INC. of East Falmouth, MA**

Subject Property: **125 Falmouth Woods Road, East Falmouth, MA  
Map 11, Section 01, Parcel 029, Lot 001B**

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 the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

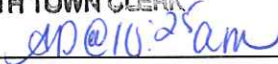


**Terrence J. Hurrie, Clerk, Board of Appeals**

**RECEIVED**

**MAR 22 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.