

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 118-16

APPLICANT/OWNER: CAPITAL REALTY AND DEVELOPMENT CORPORATION
of Falmouth, MA

SUBJECT PROPERTY: 0 Gifford Street Extension, Falmouth, MA
Assessor's Map: Map 26, Section 01, Parcel 017, Lot 000D

DEED/CERTIFICATE: Book 29435 / Page 257

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of November 9, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-38 F. and 240-72.3 C. (8) of the Code of Falmouth to construct a 9,750 square foot building for philanthropic use, volunteer training and retail sales on subject property known as 0 Gifford Street Extension, 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 January 12, 2017.
4. The public hearing was closed on January 12, 2017, wherein the Board consisting of Vice Chairman Kenneth Foreman sitting as Chair, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy made a decision to direct the Zoning Administrator to draft an affirmative decision for the Special Permit with findings and conditions to bring back to an open meeting in the future for review, discussion and vote of said decision. Note: Member Kenneth Foreman disclosed that he is a donor to Habitat for Humanity but feels he can be objective to the proposed application by Capital Realty and Development Corporation and asked the Board if they had any issues with him sitting as a member. The Board had no concerns; and the applicant (Capital Realty and Development Corporation) had no objections.
5. Minutes from the hearing are on file in the Board of Appeals.
6. The applicant was represented at the hearing by Attorney Jeffrey Oppenheim of Oppenheim & Nickerson, LLP and Michael Borselli, P.E. with Falmouth Engineering, Inc., who reviewed and discussed proposed plans with the Board.
7. On February 16, 2017 at a duly posted open meeting of the Board of Appeals, the Board was unable to review and discuss draft decision due to a lack of quorum of the four Board members. Open Meeting was rescheduled for March 9, 2017.
8. On March 9, 2017 at a duly posted open meeting of the Board of Appeals during review of the draft decision, Attorney Oppenheim requested the Board to 'Reconsider' conditions 2 and 9 of draft decision. Board granted 'Reconsideration' and directed Zoning Administrator to advertise a new public hearing for Reconsideration of draft Conditions 2 and 9 to be held on April 13, 2017 with notification to abutters.

9. On April 13, 2017 a public hearing for ‘Reconsideration’, as requested by Attorney Oppenheim commenced. Voting members of the Board are Kenneth Foreman as Acting Chair, Terrence Hurrie as Clerk, Members Ed Van Keuren and Paul Murphy. The Hearing was closed this night and Board voted 4 – 0 to approve application with re-draft of decision with conditions.
10. The applicant at this hearing was represented by Attorney Jeffrey Oppenheim of Oppenheim & Nickerson, LLP and John W. Diaz, P.E., P.T.O.E. of Greenman-Pedersen, Inc. who reviewed and discussed request for reconsideration of Conditions 2 and 9 of draft decision.
11. 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

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| 12/13/2016 | E-mail from abutter Miskovsky with questions regarding proposed projects |
| 01/04/2017 | Letter via e-mail from abutters Joanne Gartner and Ken Gartner stating opposition to proposed project and comments |
| 01/06/2017 | E-mail from abutter Miskovsky with additional questions and concerns about proposed project |
| 01/10/2017 | Letter from Debbie Netto of 450 Brick Kiln Road dated January 6, 2017 stating support of applicant and proposed project |
| 01/10/2017 | Letter from Pat Gonsalves of 339 Brick Kiln Road dated January 5, 2017 stating support of proposed project |
| 01/10/2017 | E-mail from Joanne Gartner to Attorney Oppenheim with Board of Appeals copied in response to comment from Attorney Oppenheim |
| 01/12/2017 | Letter submitted to the file at the hearing on January 12, 2017 from abutter Louise Theroux of 387 Brick Kiln Road with concerns of proposed project |

For Reconsideration:

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| 04/05/2017 | Letter submitted to the file from abutter Miskovsky raising concerns of driveway location proposed |
| 04/13/2017 | Letter submitted to the file from Stan Ingram, Chair of Falmouth Agriculture Commission regarding a condition of notification of use of land or building change |

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

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| 11/09/2016 | Attorney Jeffrey Oppenheim submitted, on behalf of applicant Capital Realty and Development Corporation, an application with letter of authorization, fee for hearing process, four sets of plot plan and architectural plans, a copy of ‘Runoff Calculations for subject property’s proposed project, a copy of “Articles of Amendment” for Habitat for Humanity (philanthropic organization), a copy of a “Commercial Lease” between applicant and Habitat for Humanity, a copy of an IRS statement dated 3/09/2015 verifying tax-exempt status for Habitat for Humanity and a copy of “Articles of Organization” for Habitat for Humanity of Cape Cod, Inc. |
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- 12/05/2016 Attorney Jeffrey Oppenheim forwarded an e-mail to Board of Appeals staff with two photos of the trucks involved with the philanthropic use proposed for subject property
- 12/29/2016 E-mail submitted by Michael Borselli, P.E. with revised site plan and floor plan for subject property
- 01/06/2017 Letter from Attorney Oppenheim dated January 4, 2017 requesting the Board to allow additional time for his presentation at the hearing on behalf of applicant
- 01/06/2017 E-mail from Michael Borselli, P.E. with aerial photo of site showing proximity of abutters to proposed operation
- 01/11/2017 E-mail from Attorney Oppenheim addressing questions from abutter Miskovsky that were submitted to file on 01/06/2017
- 01/11/2017 Attorney Oppenheim submitted copies of photos of the Habitat Yarmouth Re-store showroom
- 01/12/2017 E-mail from Attorney Oppenheim with an attached list of products and quantities that may be used in re-storing items sold on site
- 01/12/2017 Photos submitted by Attorney Oppenheim at hearing showing three facilities owned by Robert Burke of Capital Realty and Development Corporation

For Reconsideration:

- 03/09/2017 Letter from Attorney Oppenheim dated March 9, 2017 to Board requesting reconsideration of conditions 2 and 9 of draft decision. Letter states reasons for reconsideration with attachments
- 03/10/2017 Letter submitted by Attorney Oppenheim from Greenman-Pedersen, Inc. – John W. Diaz, P.E., P.T.O.E., Vice-President and Director of Traffic Engineering - dated March 9, 2017 to Robert Burke [applicant] regarding proposed driveway and traffic – information in letter confirms agreement with proposed driveway location – taking into consideration traffic and sight distances (exhibit attached of sight distances)
- 03/10/2017 “Exhibit Plan Showing Alternate Drive Location” drawn by Falmouth Engineering, Inc. dated March 7, 2017 – submitted to ZBA after ‘Reconsideration’ granted by Board

Letters/Referrals/E-mails from Town Departments

- 01/04/2017 E-mail from Engineering Department (Scott Schluter) regarding proposed driveway siting on subject property with three photos – in response to question from Board of Appeals staff
- 01/11/2017 Copy of Planning Board’s ‘Site Plan Review’ dated January 11, 2017 was submitted to the file by Board of Appeal’s staff

For Reconsideration:

- 03/10/2017 Attorney Oppenheim submitted to the file a copy of a letter from Lt. Mel Trott with Falmouth Fire Rescue to Robert Burke [applicant] dated February 7, 2017 regarding concerns with Board’s desired location of driveway for subject property

- 04/07/2017 Attorney Oppenheim submitted a letter from Falmouth Police Chief Edward A. Dunne to Robert Burke (applicant) dated March 17, 2017 regarding a follow-up meeting they had on site; Chief Dunne stated he agrees with Greenman-Pedersen, Inc. [traffic consultant for applicant] on proposed driveway entrance
- 04/12/2017 Letter submitted to the file by Michael Borselli, Project Engineer regarding site visit held on 4/11/2017
- 04/13/2017 E-mail to Zoning Administrator Budrow from Town Engineer Jim McLoughlin regarding site visit held on 4/11/2017 of subject property stating he concurs with findings submitted to the file by Town Engineers and project Engineers on location of proposed driveway

Plans submitted by Applicant/Applicant's Representative

“Interior Floor Plan Layout For: Habitat for Humanity 0 Gifford Street Extension Falmouth, MA 02540” as drawn by DHS Designs, Inc. – Drawing A1 dated 11/3/2016 and with a final revision date of 12/28/2016 – with a Board date ‘received’ stamp of January 5, 2017;

Two computer generated color photos of the front elevation of proposed 9,750 square foot building – with a Board date ‘received’ stamp of November 9, 2016;

“Site Plan For Lot D Gifford Street Ext.” prepared for Robert Burke in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 2 stamped and signed by Michael J. Borselli, PE and stamped, signed and dated 01/17/2017 by Gary S. Labrie, PLS, plan dated October 24, 2016 with a final revision date of 01/17/2017 and a Board date ‘received’ stamp of January 18, 2017;

“Standard Details for Lot D Gifford Street Ext.” prepared for Robert Burke in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 2, stamped and signed by Michael J. Borselli, PE, plan dated October 24, 2016 and with a Board date ‘received’ stamp of November 9, 2016; and

“Drainage Worksheet for Lot D Gifford Street Ext.” prepared for Robert Burke in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 1 stamped and signed by Michael J. Borselli, PE - plan dated October 24, 2016 and with a Board date ‘received’ stamp of November 9, 2016.

Hearing:

Attorney Jeffrey Oppenheim on behalf of the applicant Robert Burke of Capital Realty and Development Corporation explained that the applicant owns the current vacant subject property and is proposing to construct a 9,750 square foot metal building with tan sides and a maroon roof, two bathrooms, office and retail sales showroom that will be leased to Habitat for Humanity as a ReStore operation. He noted that there is a ten (10) year lease in place pending the outcome of this application. Attorney Oppenheim informed the Board that the building will be a metal building (similar to Jack in the Beanstalk store directly across the street also owned by Robert Burke); the only tenant will be Habitat for Humanity; and Habitat will operate it as a retail store of furniture and home goods that will be sold on the property. Attorney Oppenheim reviewed that Habitat for Humanity of Cape Cod is a non-profit 501 (C) 3 organization and Articles of the incorporation submitted to the file note that Habitat for Humanity of Cape Cod is a philanthropic institution. This application is filed under Section 240-38 F. of the Code of Falmouth seeking relief for the philanthropic use by Habitat to restore furniture and other items for re-sale and as a training site for volunteers for construction and retail sales; retail sales is otherwise not allowed in this Agricultural zoned district. The net income of the enterprise will go to fund Habitat for Humanity Cape Cod, Inc. Attorney Oppenheim reviewed the existing South Yarmouth ReStore organization which this site will be used for and nets approximately \$280,000 a year. Habitat is proposing hours of operation from 9:00 AM to 5:00 PM Tuesday

through Saturday. He explained the peak time and day will be Saturdays from approximately 10:00 AM to 2:00 PM where it is anticipated 200 to 250 vehicles possibly; 75 to 100 vehicles during regular days.

Michael Borselli, P.E. with Falmouth Engineering, Inc. and on behalf of the applicant reviewed the site design noting that the 4-acre site is near the intersection of Brick Kiln Road and Gifford Street Extension. The subject property has a powerline easement running north to south through the front portion of the land; the building will be east of the power lines; the closest house to the building will be over 400 feet away; and the parking lot is screened by a thickly wooded area. The driveway will be 22 feet wide with the parking surrounding the proposed building – there will be a designated loading and drop-off zone at the rear of the building. The traffic will circulate counter clockwise around the building to the front parking lot. He explained that runoff drains go to a grassy area (swale/raingarden) and there are leaching pits located at the rear of the property. The water will come in from Gifford Street and a water main will be installed to a hydrant for fire safety. A dumpster will be located at the southeasterly corner of the property. The building is a one-story building with a slab foundation on grade and will have an open display floor area along with an office, conference room and a stock room. The building will be 22' to ridge height; and the roof will overhang to the concrete sidewalk along the building. Mr. Borselli informed the Board that the Planning Board has given approval under Site Plan Review.

Attorney Oppenheim further noted that they are seeking relief as well under Section 240-72.3 C. (8) as the lot coverage exceeds the requirement in a Water Resource Protection Overlay District.

The Board discussed plans with Attorney Oppenheim and Mr. Borselli and asked about: 1) precautions taken regarding dumping on site (should entrance be gated); 2) concerns from the Fire Department in a letter dated November 21, 2016 about the turning radii; 3) safety precautions and storage of product used to refinish furniture (testimony was that there was no refinishing); 4) the location of the driveway (could it be moved to the north); 5) parking and loading spaces; 6) the timing of training sessions on site; and 7) options in the event of lease with the tenant (who is allowed under philanthropic use) is terminated. The Board also noted that 63 parking places are shown on the plan while only 55 are required under the bylaw, and asked whether the applicant would consider reducing the parking by 6 spaces in light of the fact that they are exceeding the 15% lot coverage by impermeable surface allowed in the Water Resource Protection Overlay District.

Attorney Oppenheim stated he believes that all concerns from the Falmouth Fire Rescue Department have been addressed. The precautions that will be taken to avoid dumping on site will be through lighting and security cameras. He stated signage on site will be according to the bylaws.

Michael Borselli stated that they had considered moving the driveway but deliveries to Jack in the Beanstalk across the street are prior to hours of operation on subject property and the entrance/exit for the store is a bit down from that – the driveway directly across is for deliveries to Jack in the Beanstalk. He reiterated that the Town's Engineering Department had no issues with placement; and if moved they would have to work around high-voltage poles and they also wanted to limit the easement use on said property.

Attorney Oppenheim stated that 55 parking spaces are required on site and if the Board wants to decrease the proposed parking from (what is shown on the "Site Plan" revised 12/28/16) 61 to 55, the applicant is amenable and thus decreasing the total lot coverage.

Attorney Oppenheim responded to the lease concern stating that the applicant would return to the Board of Appeals for a revision to the special permit or do something that is allowed by-right; or apply for a different special permit.

Testimony from the applicant was that no refinishing or repair of the "gently used" furniture takes place on the site. There may be cleaning of the furniture. All appropriate safety precautions will be followed.

Vickie Goldsmith, Director of Habitat for Humanity for Cape Cod explained the use of the facility and that Habitat offers courses for families purchasing their homes and for outreach to prospective Buyers that would take place on

site. They might have a series of courses over four weeks or single-topic meetings. The meetings occur when the restore is closed. Donna Baldwin, Manager of Yarmouth facility stated they will hold one to two-hour volunteer meetings that will include 30 to 40 people during the early evening hours. She further commented on the lease that Mr. Burke has given them a 'discounted' lease (one-third the cost of other facilities Habitat has looked at).

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

Paul Miskovsky, immediate abutter (south) requested that the Board condition screening for privacy, lighting and noise – the dumpster for the proposed operation is close to his residence. He asked how the applicant intends to prohibit dumping of trash and other unwanted items on the property. He also suggested that the driveway be relocated about two-thirds of the distance along the frontage to the north of the proposed location, which is currently shown adjacent to the southerly property line directly across from another business competing for access to roadway. He noted that vehicles along the roadway do not adhere to speed limit and the more northerly location would allow for greater site distance and less traffic conflict.

Joanne Gartner of Locustfield (abutter at rear of subject property) stated that although she supports Habitat for Humanity, she is opposed to this project going in on agricultural land and without an agricultural use.

Kevin Murphy of North Falmouth stated support of the project and said that Habitat for Humanity has the commitment and trust of this community; the service to the community includes keeping items out of our waste streams.

Barry Clickstein of Fox Run Road in East Falmouth stated he was involved in setting up the Yarmouth ReStore and it is number one in our state.

John Netto of Brick Kiln Road, East Falmouth stated support for the project and explained that he empties homes and has no place to take good usable furniture and items; this project will be a benefit to the Town.

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

Chairman Foreman closed the hearing.

Reconsideration: On March 9, 2017, the Board approved 'reconsideration' of Conditions #2 and #9 as drafted. A new public hearing was advertised for April 13, 2017 with notification to abutters that reconsideration will be for Conditions #2 and #9 only.

Additional information:

4/11/2017 Site Visit Notice posted and Members Foreman, Van Keuren and Hurrie met at the site with Zoning Administrator, applicant, applicant's representative, Town Engineer McLoughlin, project Engineer Borselli and Barry Clickstein with Habitat For Humanity. Review of proposed driveway and relocation of driveway was reviewed as well as site distances and opposing driveways [across the roadway].

April 13, 2017 Hearing:

Attorney Oppenheim reviewed issues with the Board's desired location of a driveway for subject property and introduced John W. Diaz, P.E., P.T.O.E. with GPI [Engineering and Construction Services].

Mr. Diaz reviewed a power point presentation explaining to the Board that the proposed driveway by the applicant on subject property is appropriate. He reviewed the sight distances, noted State standards, minimum distance required for a vehicle traveling at a certain speed to safely stop if necessary, stopping sight distance and intersection

site distance reviewed - visibility issue with oncoming traffic from the north and traffic calming effect heading south to traffic light. He further discussed the 'opposing' driveways [across the street at Jack in the Beanstalk].

Attorney Oppenheim reiterated that the applicant was in attendance at the site visit held on April 11, 2017 and informed the Zoning Administrator that he would be willing to move the existing driveway at Jack in the Beanstalk [across the street – opposing driveway] approximately 20' to better align it with the proposed driveway on subject property. It was noted that the applicant for this special permit is also the owner of the property across the roadway where 'Jack and the Beanstalk' is operated. Attorney Oppenheim also stated that he has no objection to the proposed revision of Condition 9 as written.

Robert Burke of Capital Realty Development Corp. [applicant and owner] reiterated what the project engineer, Town engineers, traffic engineer, Police Chief and Lt. Mel Trott for Falmouth Fire Rescue comments on the proposed driveway vs the driveway location the Board would like to see.

Marie Hickey of Hickey Landscaping spoke in support of proposed driveway.

John Netto spoke in support of proposed driveway.

Kevin Murphy of North Falmouth stated concerns with the Board and their process for this application. He spoke in support of the project and the proposed driveway.

Patrick Gonsalves [previous owner of subject property] spoke in support of proposed driveway.

Attorney Oppenheim stated that the applicant, who also owns the subject property [Jack and the Beanstalk] across the roadway is amenable to altering the driveway approximately 20' so that it will align with the proposed driveway on subject property.

Board discussed. Consensus of the Board was that although the majority of the Board feels that there are some safety concerns with sight distance when exiting the property, they were impressed with Mr. Diaz's presentation at this hearing and the explanation given for the standards used in determination of sight distance [desired and maximum distances], the 'calming effect' of speed as a vehicle nears an intersection and the reasoning for opposing driveways vs. offset driveways. Based on the information and presentation submitted for Reconsideration, the Board is in favor of amending Condition 2 of the draft decision.

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

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 Gifford Street Extension (Lot 000D) contains 4 acres of Agricultural A zoned land located in the Water Resource Protection Overlay District and partially located within the Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-38 F. of the Code of Falmouth to allow retail sales by a non-profit, philanthropic organization as the tenant on subject property; retail sales is not otherwise allowed. The applicant also applied for relief under Section 240-72.3 C. (8) of the Code of Falmouth to allow total lot coverage of more than 15% on this subject property which is located within the Water Resource Protection Overlay District; the applicant is proposing 27.2% total impervious lot coverage. The proposed structure will be a one-story, 9,750 square foot building that will have two bathrooms, office space, conference room, breakroom, receiving and storage area/stock room and showroom area for the restored furniture and items to be sold. The applicant has a ten (10) year lease with Habitat for Humanity of Cape Cod Inc. (copy submitted to file) to operate a ReStore on subject

property. Habitat for Humanity will also use the building as a training center for prospective volunteers and employees of the retail sales operation.

The applicant proposed impervious lot coverage in this Water Resource Protection Overlay District of 27.2% which includes sixty-one (61) proposed parking spaces. Testimony by the applicant's representative is that fifty-five spaces are required. Section 240-108 "Table of Requirements" require one space per 200 square feet of leasable floor area (49 spaces); included in the count are three (3) handicap spaces. There are two loading zone areas at the rear of the building with access through two bay doors into the 'stock room'. The Board had a concern with the impervious surface on the property and the number of parking spaces proposed; and questions whether that many spaces were necessary for this operation. The Board asked if the applicant would be amenable to reduce the parking down to fifty-five (55) spaces and thereby slightly reducing the impervious surface on this property located within the Water Resource Protection Overlay District. Note: During the hearing Attorney Oppenheim stated there were 66 parking spaces on site. On the "Drainage Worksheet for Lot D Gifford Street Extension" submitted to the file on November 9, 2016 it shows 63 parking spaces; on the "Site Plan For Lot D Gifford Street Ext." it shows 61 parking spaces. The Board suggested decreasing the parking to 55 spaces as stated herein.

The recommendations from the Falmouth Fire Department were discussed. The building will have an automatic fire sprinkler system installed; the fire alarm system will be monitored; the "Site Plan" shows the installation of a fire hydrant near the mid-way southerly side property line; and the applicant will have a Knox box key entry system for emergency after hour access to the building. In #3 of the November 21, 2016 letter from the Falmouth Fire Rescue Department, it sites per the Building Code that the building will need to be tested to see if there is adequate radio signal strength inside the building for emergency responders and shall be done by a qualified communications company. Testimony by the applicant was that ventilation and storage of all materials used to restore furniture will be according to requirements set forth by manufacturer and Falmouth Fire Department.

The Board finds that the proposed philanthropic use of the subject property will be a benefit to the Town of Falmouth and Habitat for Humanity. The applicant has addressed the question of possible 'dumping of furniture and items' on site by installing security cameras and motion sensor lighting.

The proposed building will be used by Habitat for Humanity to restore and sell furniture and other items on site; to train volunteers who may help in the restoring furniture or construction of habitat homes; and to train employees for on-site sales. Testimony by the applicant was that there will be approximately 20 – 24 meetings a year that will be held in the evening hours after the close of business.

The applicant was amenable to consider buffering of the southeast corner of subject property where the closest abutter [Miskovsky] resides. The dumpster for the proposed use on subject property is shown to be located approximately 40 feet from the shared property line. Testimony was also that the applicant is amenable to submit new landscape and lighting plan for Board's review.

In addition to the above findings, the Board finds that the proposed philanthropic use of this Agricultural A zoned land will be in harmony with the general purpose and intent of this chapter, specifically Section 240-38 F. of the Code of Falmouth 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 9,750 square foot building to be used by Habitat for Humanity for its philanthropic use as a furniture ReStore for retail sales and training facility on subject property.

B. The site is suitable for the proposed as testimony given at the hearing and as shown on the plans submitted show appropriate flow, parking, draining and buffering of the site. The use approved herein is allowed only to a philanthropic organization under Section 240-38 F.; and herein approved only for Habitat Humanity of Cape Cod Inc.

C. The Board discussed the proposed driveway and impact on traffic flow and safety to and from the site at length and through 'Reconsideration' and the Board finds through testimony by the applicant's representative that the applicant, who is also the owner of the property across the roadway where "Jack and the Beanstalk" is operated, is amenable to adjusting/altering the driveway on that property so it is directly across from the proposed driveway

on subject property and is not offset. The change in location of the driveway across from subject property will be approximately 20' so as to be more in line with the proposed driveway and not in conflict.

D. The subject property is a vacant 4 acre parcel that will have a building with parking, a driveway installed, a fire hydrant and landscaping; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system will be installed according to Title V regulations with sign off by the Board of Health.

F. The applicant has proposed utilities to the site and will file all appropriate permits with the respective Town Departments and install according to regulations – includes, water, electrical, fire, etc.

G. The proposed building and land improvements discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. The Planning Board issued a Site Plan Review Decision on January 11, 2017 to Rod Palmer, Building Commissioner and a copy submitted to this file. The Board has taken into consideration the Site Plan Review Decision.

I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the relief requested herein.

J. The approval of this special permit does not include any affordable housing, however, the funds raised may support construction of some affordable housing in the Town of Falmouth and other Cape Cod towns.

The Board of Appeals has weighed the effects of the proposed philanthropic use of 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 as amended through Reconsideration with conditions. Member Hurrie 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 **4 - 0 to Grant the Special Permit** to Capital Realty and Development Corporation (herein referred to as Applicant) under Section(s) 240-38 F. and 240-72.3 C. (8) of the Code of Falmouth to construct a 9,750 square foot building for philanthropic use, volunteer training and retail sales on subject property known as 0 Gifford Street Extension, Falmouth, Massachusetts. This special permit will be subject to the following conditions:

1. The construction of the building, drainage, septic system, location of dumpster and use of building shall be as shown on the plans submitted as follows – with exceptions listed in conditions below:

“Interior Floor Plan Layout For: Habitat for Humanity 0 Gifford Street Extension Falmouth, MA 02540” as drawn by DHS Designs, Inc. – Drawing A1 dated 11/3/2016 and with a final revision date of 12/28/2016 – with a Board date ‘received’ stamp of January 5, 2017;

Two computer generated color photos of the front elevation of proposed 9,750 square foot building – with a Board date ‘received’ stamp of November 9, 2016;

“Site Plan For Lot D Gifford Street Ext.” prepared for Robert Burke in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 2 stamped and signed by Michael J. Borselli, PE and stamped, signed and dated 01/17/2017 by Gary S. Labrie, PLS, plan dated October 24, 2016 with a final revision date of 01/17/2017 and a Board date ‘received’ stamp of January 18, 2017;

“Standard Details for Lot D Gifford Street Ext.” prepared for Robert Burke in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 2 of 2, stamped and signed by Michael J. Borselli, PE, plan dated October 24, 2016 and with a Board date ‘received’ stamp of November 9, 2016; and

“Drainage Worksheet for Lot D Gifford Street Ext.” prepared for Robert Burke in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 1 stamped and signed by Michael J. Borselli, PE - plan dated October 24, 2016 and with a Board date ‘received’ stamp of November 9, 2016 – Note: that the location of some drainage structures or pits may be required to be revised based on the relocation of the Driveway.

2. The “Site Plan For Lot D Gifford Street Ext.” prepared for Robert Burke in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 2 stamped and signed by Michael J. Borselli, PE and stamped, signed and dated 01/17/2017 by Gary S. Labrie, PLS, plan dated October 24, 2016 with a final revision date of 01/17/2017 and a Board date ‘received’ stamp of January 18, 2017 shall be contingent on the adjustment/alteration of the driveway across the roadway from subject property on a parcel of land also owned by the applicant and known as 800 Gifford Street Extension, East Falmouth, MA [“Jack and the Beanstalk”]. A plan showing the alteration of the driveway at 800 Gifford Street Extension in East Falmouth shall be submitted to the Board of Appeals for approval showing the alignment of the driveway with that of the proposed driveway on subject property. The plans for alteration of the driveway at 800 Gifford Street Extension in East Falmouth shall be submitted to the Board of Appeals and approved by the Board of Appeals prior to the issuance of a building permit.
3. All restoration of furniture will take place in the designated work area on the plan and the work area shall be equipped with appropriate ventilation and fire safeguards.
4. The lighting through the parking area and attached to the proposed building shall be low lighting that will not be reflected on to abutting properties. The final lighting plan shall be submitted to the Board of Appeals for approval prior to issuance of a building permit.
5. The applicant shall construct a six (6) foot stockade fence along the southerly property line starting at the west end of the proposed retaining wall to just past the proposed dumpster location.
6. Approval of signage for the proposed philanthropic use on subject property shall be submitted to the Board of Appeals file prior to final sign off of construction by the Building Department.
7. Hours of operation for the ReStore operation by Habitat for Humanity on subject property shall be 9:00 AM to 5:00 PM Tuesday through Saturday. There shall be no hours of operation on Sundays or Mondays. It was noted at the hearing through testimony by the applicant that approximately 20 – 24 times a year (once or twice each month) there may be a meeting/training of volunteers at the subject building after the close of business. All meetings and training sessions should be completed prior to 10:00 PM.
8. There shall be security cameras and sensor lighting on subject building to deter dumping of goods on subject property.
9. This special permit is granted to Capital Realty and Development Corporation with the understanding of intent and agreement, as submitted to the file, to lease subject property to Habitat for Humanity of Cape Cod Inc. as represented herein. The use as approved in this special permit shall not be transferrable to any other non-profit or philanthropic organization without further review by the Board of Appeals and said review may be done administratively by the Board at the Board’s discretion. In the event that the applicant, Capital Realty and Development Corporation, conveys subject property to any

other entity, Capital Realty and Development Corporation shall notify the Board of Appeals in writing as to said transfer of subject property within thirty (30) days of said transfer.

10. The applicant shall meet the requirements of the Massachusetts Building Code and have the building tested by a qualified communications company to insure there is adequate radio signal strength inside the building for emergency responders.
11. The applicant shall maintain all drainage proposed and conditioned on subject property. The applicant shall have a maintenance plan for yearly inspections of all catch basins/dry wells on site. The maintenance plan shall be submitted to the Board of Appeals prior to final sign-off of the construction by the Building Department or the Board of Appeals.
12. 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.
13. The applicant shall meet the requirements of the DPW Water Division and Engineering Department.
14. 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.)
15. 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: **118-16**

Applicant: **CAPITAL REALTY and DEVELOPMENT CORPORATION
of Falmouth, MA**

Subject Property: **0 Gifford Street Extension, Falmouth, Massachusetts
Map 26, Section 01, Parcel 017, Lot 000D**

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 with Reconsideration noted above and based on the Findings stated herein, with the above stated Conditions.



Terrence J. Hurrie, Clerk, Board of Appeals

RECEIVED

APR 20 2017

FALMOUTH TOWN CLERK

1:14 pm

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.