

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

SPECIAL PERMIT NO: 016-18

APPLICANT/OWNER: CAPTAIN HAMBLIN HOUSE CONDO OWNERS
William Bedingfield, Trustee

SUBJECT PROPERTY: 606 West Falmouth Highway, West Falmouth, Massachusetts
Assessor's Map: Map 24A Section 05 Parcel 003B Lot 000B

DEED/CERTIFICATE: Book 6063 / Page 72

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of February 28, 2018, the applicant applied to the Zoning Board of Appeals for a Modification of Special Permit #54-05 pursuant to Section(s) 240-3 of the Code of Falmouth to allow a shed for use by condo association on subject property known as 606 West Falmouth Highway, West 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 April 19, 2018.
4. The public hearing was closed on May 3, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Member Paul Murphy and Alternate Robert Dugan (sitting as voting member) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Michael Borselli, PE with Falmouth Engineering, Inc., who reviewed and discussed, with the Board, proposed plans for modification of Special Permit to allow a shed on subject property.
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

04/06/2018 Letter submitted to the file from Donna Adami of 14 Old Dock Road in opposition to modification to allow a shed on subject property

04/06/2018 Letter submitted to the file from Peter and April Gedney of 18 Old Dock Road dated March 29, 2018 stating opposition to the modification to allow a shed on subject property

04/17/2018 Letter submitted to the file from Rudolf Oldenbourg and Nannette Drake Oldenbourg of 594 West Falmouth Highway (immediate abutter) stating they have no opposition to the shed proposed on subject property

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

02/28/2018 Letter submitted with application and plans by Michael Borselli, PE dated February 28, 2018 as explanation of shed and dumpster

Letters/Referrals/E-mails from Town Departments

03/01/2018 Referral submitted to the file from Planning Department with no comment

03/01/2018 Referral submitted to the file from Historical Commission that states: *Depending on the location of the shed, it might need a Certificate from the Historical Commission*

03/05/2018 Referral submitted to the file from Director of Assessing with no comment

03/07/2018 Referral submitted to the file from Board of Health Agent with no comment

03/21/2018 Referral submitted to the file from Conservation Commission with no comment

03/22/2018 ZBA staff submitted to the file a copy of Special Permit #54-05 and Administrative Approval (dated March 18, 2009) for subject property

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

Plans submitted by Applicant/Applicant's Representative

“Site Plan Showing New Shed for #606 West Falmouth Highway” prepared for Captain Hamblin House, LC in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 1 dated February 22, 2018, stamped, signed and dated by Gary S. Labrie, PLS on 2/27/2018 and with a Board date ‘received’ stamp of February 28, 2018; and

Photos of the existing shed discussed herein with a Board date stamp ‘received’ of February 28, 2018 (four Pictures).

Hearing:

Michael Borselli, PE of Falmouth Engineering, Inc. explained that the association failed to request a modification of Special Permit #54-05 before locating a shed on the west side of subject property approximately 26.6’ from rear property line that is measured through the deeded ‘Right of Way’ on said property which is 6.6’ from said ‘Right of Way’ on subject property. The east side of the ‘Right of Way’ is buffered with cedar trees so that the shed cannot be seen by the abutters to the rear (west side) of subject property. The shed is also located on the property so that it cannot be seen from the roadway (front of property) off West Falmouth Highway. Mr. Borselli stated that the association was also in violation by removing the dumpster that was conditioned in previous permit wherein the tenants then set out barrels for trash collection. He explained that the dumpster is back on site and now properly located as conditioned in original plans. Mr. Borselli introduced Stephanie Krebs of the Captain Hamblin House Condominium Association.

Ms. Krebs explained that the association did not realize a modification of the special permit was required to locate a shed on the property to be used by tenants for storage of bicycles and other personal items. She explained she had contacted the Town and was told that if the shed was less than 200 square feet and so many feet from the

property line that a permit was not required. She further explained that the association will be repairing the dumpster enclosure as soon as funds are available.

The Board discussed the location of the shed and dumpster on subject property. All concerns and questions were addressed.

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

Paul Sellers of 16 Old Dock Road (immediate westerly abutter) stated he was the complainant and feels the shed is not appropriate for the site and will block the sunshine and nourishment of the existing cedar trees that screens the subject property from his view. He discussed the hearings for Special Permit that allowed the additional condos on site.

Maureen Harlow-Hawkes of 9 Old Dock Road stated opposition to the shed and spoke on the previous hearing and vetting of this project and questioned what is to stop other structures from appearing on site.

Stephanie Krebs of 606 West Falmouth Highway and Captain Hamblin House Condominiums stated that the association has no intent to add additional sheds to the site.

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

Chairman Foreman closed the hearing.

FINDINGS

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

The subject property located at 606 West Falmouth Highway in West Falmouth contains 43,342 square feet of Business 3 and Residential B zoned land that is within the West Falmouth Harbor Coastal Pond Overlay District. The applicant applied to modify previous Special Permit #54-05 to allow a shed to be used for the tenants on subject property. The Captain Hamblin House Association had placed the shed on the property without a modification of Special Permit #54-05 which created a violation. The Board of Appeals staff contacted the Association regarding the violation of the shed being placed without permission and the removal of a dumpster on site being replaced with trash barrels for the nine condo units on subject property. The shed was located on subject property approximately 26.6' from the westerly (rear) property line. There is a 20' right of way at the westerly side of property that is deeded as rights of travel by abutters. The shed is 6.6' from the easterly side of the 20' right of way and is screened by existing cedar trees so as not to be seen by abutters on the other side of the right of way. The shed is also placed so as not to be seen from the roadway (West Falmouth Highway). The President of the Association stated that the dumpster is back on site and will be placed in the correct area on site and that the fence enclosure for the dumpster will be repaired.

The Board finds that there was no malicious intent from the association to derogate from the conditions of Special Permit #54-05. The Board further finds that the shed is screened from the complainant to the west of subject property (off 'Right of Way'); and that the shed is located so that it is not visible from the front roadway (West Falmouth Highway). Furthermore, the Board finds that the association's intent for the shed was to remove bicycles and other items from decks and entrances of condominium units to improve the appearance and safety of the units within the development.

The Board finds that the abutter was concerned that the shed is inappropriate for the site as it may impact the sunlight and nourishment of the existing cedar trees that the shed sits in front of. The Board further finds that the association will be responsible to maintain the health of the existing cedar trees to insure continuous screening of the shed from properties on the westerly side of the shed as discussed herein. Furthermore, the Board finds through testimony by tenants on subject property, the shed is used to store bicycles, lawn chairs and other personal items so that they are not stored on decks/balconies where the items may be a safety issue.

The Board finds through testimony by the President of the Captain Hamblin House Condo Association (Stephanie Krebs) that the dumpster approved in Special Permit #54-05, previously removed from site, was brought back to the site and will be located according to the approval in said special permit; and she further noted that the fence enclosure for the dumpster will be repaired and the trash barrels removed. The Board further finds that the dumpster enclosure shall be repaired and intact to protect the dumpster no later than August 1, 2018.

In addition to the above findings, the Board finds that the proposed modification of previous special permit to allow a shed on site and to maintain the trash dumpster for units on site is 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 shed to be used by tenants as the shed is within required setbacks pursuant to Section 240-68 B. of the Code of Falmouth, there are no new nonconformities created and lot coverage by structures will remain below the allowed percentage pursuant to Section 240-69 A. of the Code of Falmouth.
- B. The site is suitable for the existing use on the property as it exists through the benefit of an approved Special Permit and the shed herein discussed is a modification of said special permit.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be unchanged through the approval of this shed as it cannot be seen by abutters to the westerly side of subject property and cannot be seen from the roadway (West Falmouth Highway).
- E. The sewage disposal system is unaffected by the location of the shed on subject property.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The location of the shed as discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was no Site Plan Review required by the Planning Board and the referral submitted to the file from the Planning Department had no comment.
- I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformities stated herein.
- J. The approval of this special permit does not include any affordable housing.

The Board of Appeals has weighed the effects of the shed location 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 Murphy made a motion to Grant the Special Permit with conditions. Member Van Keuren seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted **5 – 0 to Grant the Modification of Special Permit #54-05** to Captain Hamblin House Condo Owners (herein referred to as Applicant) to allow the shed, for storage

use by tenants, in its location and to maintain the dumpster on subject property known as 606 West Falmouth Highway, West Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The location of the shed, maintenance of the dumpster and dumpster enclosure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Site Plan Showing New Shed for #606 West Falmouth Highway" prepared for Captain Hamblin House, LC in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 1 dated February 22, 2018, stamped, signed and dated by Gary S. Labrie, PLS on 2/27/2018 and with a Board date 'received' stamp of February 28, 2018; and
 - Photos of the existing shed discussed herein with a date stamp Board 'received' of February 28, 2018 (four Pictures).
2. The association will have the dumpster enclosure repaired and in place no later than August 1, 2018, and said dumpster location and enclosure shall be located and dressed as approved in Special Permit #54-05.
3. The Association shall maintain, and keep in good health, all the cedars along the right of way that screen the shed on the westerly side of subject property (east side of right of way).
4. There shall be no derogation whatsoever from any condition set forth in Special Permit Decision #54-05 except as stated herein.
5. There shall be no additional outbuildings, accessory structures or additions to the subject property without a modification of Special Permit #54-05 and #016-18.
6. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.
7. This permit shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days has elapsed after the decision had been filed in the office of the Town Clerk with no appeal being filed, or an appeal has been filed within such time, is recorded in Barnstable Registry of Deeds. (Any person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.)

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: **016-18**

Applicant: **CAPTAIN HAMBLIN HOUSE CONDO OWNERS**
 William Bedingfield, Trustee

Subject Property: **606 West Falmouth Highway, West Falmouth, Massachusetts**
 Map 24A Section 05 Parcel 003B 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: 5 – 0 to Grant Special Permit #016-18 as Modification of Special Permit #54-05 as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



Terrence J. Hurrie, Vice Chairman, Board of Appeals

RECEIVED

MAY 15 2018

FALMOUTH TOWN CLERK

doc 805am

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.