

**Zoning Board of Appeals  
Minutes of April 27, 2023 at 6:30PM  
Zoning Administrator: Noreen Stockman  
Present: Morse, Potamis, Finneran, Murphy, Duffy**

REGISTERED  
VOTING MEMBERS  
TOWN OF FALMOUTH

**Public Comment** – none

Morse – There is still an opening on the Board for an Associates position; if you are interested, please apply at the Select Board’s office.

**(Continuation) #003-23 Old Dock Road Condominium Association, 606 West Falmouth Highway, West Falmouth** – appeal of the Building Commissioner’s determination

Voting Members: Morse, Peterson, Murphy, Finneran, Duffy

Peterson read the ‘Notice of Public Hearing’ into the record, and read the following referrals:

Building / Zoning - With the documentation provided; the use of the Right-of-Way does not appear to protect a cognizable legal right of the surrounding landowners, nor have a clear purpose which compliance serves – this is not enforceable for the Town.

**Correspondence** –

16 letters in support of appeal

3 letters in opposition of appeal

Morse – There were 2 issues that are before the Board; request for enforcement of Condition #6 of Special Permit 54-05 concerning the use of the right-of-way, along with the failure to maintain the screening along the right-of-way. There were numerous filings by abutters, but I would like the Board to keep in mind that we are not the Superior or Land Court.

Julie Kellner, Trustee, Old Dock Road, Unit 4B – The majority of letters that I have been given are mainly in support of Old Dock Road. We know that this won’t be an easement discussion, but we are asking for Special Permit no.54-05 be enforced. We received the letter from Attorney Wall today, explaining what the scope of what ZBA is. I would like to say that it is to the ZBA that we go to, if we are not content with the response from the Building Commissioner. In all of the special permits, the conditions state that there’s to be a physical barrier across the entirety of the right-of-way; it is our understanding that this is enforceable by the Town. Special Permit #39-79 is very specific on what conditions were changed dealing with the right-of-way, including the part that we own, and the part that the neighbors own. This is in our deeds, and has been recorded with the Barnstable County Registry of Deeds. It also says that the right-of-way “shall not be used by tenants and customers at any time, and was only granted use for the present owner. #39-79 also required that a fence be installed for all but 4 months, with “Do Not Enter” signs installed. It is the developer and the owner that are responsible to make sure these conditions are complied with. This decision has been in our deed since 1979. Special Permit #54-05 further extinguished the easement, and shall not be used by residents of 606 West Falmouth Highway. A lot of the documentation pertaining to this property was filed with Barnstable Registry of Deeds. Before #54-05 was approved, the ZBA heard that the access to the rear “shall not be used by the tenants or visitors at any time”; #54-05 required screening at the right-of- way, with a revised landscape plan submitted to the ZBA. They did file a revised landscape plan on September 2008. 606 West Falmouth

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Highway and Old Dock Road came into effect after the '79 Special Permit, and all of us are subject to those conditions. The Captain Hamblin House, 606 West Falmouth Highway (CHH) master deed, and unit deeds have lots of references that they are supposed to abide by. There was an Administrative Approval in 2009 that mentioned the right-of-way, and upholding the conditions of the 2005 Special Permit. It was reiterated that #54-05 was to be abided by and enforced. The condo association signed their own agreement to the fencing in 2018, in front of this Board. This area is a safety concern; the number of crashes in the area are just as high where the highway intersects Brick Kiln Road, and safety is mentioned in the zoning Bylaws.

Duffy –Regarding condition #6, is there a separate document that was signed by 606 West Falmouth Highway, and recorded at the Registry of Deeds?

Kellner – No, #54-05 is filed, and the '79 decision was already filed, and that is what you are working off of.

Paul Sellers, 16 Old Dock Road – The right-of-way began in 1956, and the changes started coming in with the '79 decision, in which Mr. Hendel, the former owner, gave up rights to the right-of-way. The new fence was to be installed with “do not enter” signs. In the 2005 Special Permit, the conditions included screening the right-of-way and dumpsters, and that the right-of-way shall not be used except for the residents of the right-of-way. There were many letters received in opposition at the 2005 hearing, many of those had to do with safety. We had meetings with the developers and abutters, and we worked through them and came to agreements, which included screening of the right of way and that the people from 606 West Falmouth Highway not use the way. The violations started in 2013. In 2018, the Building Department received a complaint about a shed, which they did get permission for. They were told to put the dumpster back where it was supposed to be. There were more violations in 2020 for the same issues. There is plenty of access for the residents to use the sidewalks that they are supposed to. If someone is parked askew, there is no passage on Old Dock Road. Snow access in the winter is difficult to manage, kayaks have been dragged down, and in 2020 a new access path was cut in. The newly created path creates a blind spot, and was never in the landscape design. The new access was prohibited in the '79 and '05 permits. We would ask that you uphold the 40+ years of conditions, and have 606 repair screenings, and the installation of the fencing with the “Do Not Enter” signs to be completed by June 1<sup>st</sup>. If that is too much to ask, we would ask that a stockade fence be installed, and if these can't be met, we would ask that you fine the association per day, at the highest rate.

Steven Ladd, Trustee (treasurer) – Read letter into the record. Half of the association owners about the right-of-way, and during the purchasing process by the developer, who detailed the location and the importance of the development and the right-of-way; this was a major condition. These conditions are part of a written record, and are recorded at the Barnstable Registry of Deeds. The master deed of 606 West Falmouth Highway is restricted by the rules and regulations including the municipality. Privacy is a cherished commodity. Safety is the overriding concern. The Zoning Board of Appeals had specific language for a fence and screening, and this has been a chronic issue; plants have died, and have trampled. For screening to be effective, it must start with a height of 4'. We ask that the Zoning Board of Appeals make 606 West Falmouth Highway respect and adhere to, what they've agreed to in the previous Special Permits.

Peterson moved to allow an additional 2 minutes for the abutter's presentation. Murphy seconded the motion. Motion carried 5-0.

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All in favor.

Brian Wall, attorney for the Captain Hamblin House – My client completely disagrees with the premises for enforcement to stop all use of the right-of-way. The first condition came into effect in 1978, where the property owner at that time was applying to the Board, to convert the barn at the rear of the property, into an antique business. There was a condition attached with that permit, that said the right-of-way at the rear of the property will not be used in conjunction with the business use of the barn. In 2005 the owner sought to convert the commercial use of the barn, into residential use, and the business use would go away. It's curious to me that the condition regarding the right-of-way didn't go away completely, but the language did change. It now says that the 20' right-of-way owned by the property owner shall not be used residents/visitors of 606 West Falmouth Highway. All of the properties on the right-of-way have an easement in which to use it; the ZBA can condition use of the property, but they can't alter or modify an easement. This is a request for enforcement, and these requests are very specific in how they are handled. Once the Building Commissioner makes a determination, the issues are limited to those that are raised. There are 2 requests here. Members of Captain Hamblin House continue to access the right-of-way. In condition #6, there is nothing that says they can't access the right-of-way. The Building Commissioner got that right, and I would suggest the Board to not disturb that. The other request is that the screening be maintained. The language of condition #2 says that revised plans shows the screening shall be submitted to the Board, but it does not say it stops all access. This is not unusual for the Board to condition this with commercial properties. This is an attempt from Old Dock Road to have my clients stop using the right-of-way. If they want to contest this, that request would go to the Superior Court or the Land Court.

Potamis – The screening was just visual, and not intend for trespassing?

Wall – That is correct. The screening was required with the dumpster.

Finneran– Is there anything in there that allows the residences of 606 to maintain the screening?

Wall – The conditions say “maintained.” The burden is on the Applicant to persuade you to overturn the Building Commissioner. I also didn't see any recorded documents relinquishing easement rights. Their argument is that these permits are recorded, but those don't cause easement rights to be relinquished.

Finneran – Our conditions are meant to be complied with.

Peterson – When you talk about screening, the material doesn't do anything optically, what is there currently, doesn't seem to make sense.

Wall – The burden of proof is on the Applicant, and they haven't provided any information on that.

Peterson – I struggle with the Condition says, “shall not use the right-of-way.” From my reading it doesn't look like 606 should be able to use the right-of-way.

Wall – All properties have an easement to utilize the right-of-way. Then you look at the condition in #54-05, it applies to the right-of-way on 606, not the right-of- way as a whole.

Steven Haddad, previous developer –This Board required me to have a fence. Mr. Hendel was insistent on not having any condo owners trespass on his property, because he was trying to sell. Natural screening was put up to stop access to the right of way. Bill Hendel specifically told me he didn't want his tenants to walk on his property and vice versa. A lot of people have their bedrooms on the right-of- way or their

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drive-way. Most people who live at 4 Old Dock Road don't even use this. I would ask that you support the rebuilding of the screening, and if need be, a fence be installed.

Julie Malloy, 606 West Falmouth Highway – There were many comments submitted in 1978 over concerns of vehicular traffic. The Decision talks about tenants and customers, and most of those customers aren't walking. I don't think that if this board could have prohibited the owners at 606. There were complaints about pedestrian and bicycle use, not vehicular traffic. It is safer for pedestrians to access the private right-of-way down to Old Dock Road. It's a bit ridiculous that a fence be installed, and prohibit us from using a right-of-way on our own property. The neighbors are asking for permission to trespass on the portion of the right-of-way owned by Old Dock Road. There is no allegation that cars are using it. There wouldn't be any public purpose to taking this land. I would argue that you should uphold the Building Commissioner's decision.

Linda Pogue, 606 West Falmouth Highway – There are 9 units, 5 year-round residents, and out of those, not everyone uses it. Whether I can go around is beside the point; we aren't driving or biking. I did bring my paddle board down there. I want to go outside by back door, and walk on the right-of-way that we are paying taxes for.

Deb Shearer, Old Dock Road – Its very clearly defined in #54-05 that there shall be screening between 606 and the right-of-way. The right to use the easement is not what we are here for; it says the screening shall be maintained, and that's all you need to address.

Maury Hawkes – I have lived in this area my whole life, and I was at the '79 discussion. It was very clear then that he wanted to have an increase of use at his barn, and we came up with an agreement. There was supposed to be 2 chains across the right-of-way, and only 2 people could access it. In 2005, he wanted to turn it into condos, and safety was still a concern. There were 3 conditions to get the 9 units; the dumpster, screening, and no use of the right-of-way. Mr. Hendel never appealed, and he gave up those rights, so we would all give him the support for this development. I think a substantial green screen should go up and posts with signs. I would hope that you support the 4 Old Dock Road request.

Julie Kellner, 4 Old Dock Road – Safety is a big issue; if you haven't been out to the area, take a walk down the road. It seems safe, but then you have to "J" walk to get to get across the street. I can't see the road from my car when I am parked in my garage; it's a very big safety issue. For me to be worrying about people on the road gets stressful. There are also a lot of blind spots. It's not a personal issue, it's a safety issue for the Town and other people around, and I'm worried about it. The other units don't have doors on the backside for that reason. Please consider the safety of everyone using Old Dock Road.

**Board Discussion**

Peterson – It's unfortunate that this couldn't have been resolved between the 2 abutters; they "shall not use the way," and I think the screening is inadequate. I'm not sure why the Commissioner couldn't have looked at the previous findings and conditions to stop this. Both sides bring arguments.

Murphy – I think that screening has been trampled. The conditions from #54-05 should stand.

Finneran- It was described as a taking, but no one had the right to build 9 units. We gave a conditional approval, and they aren't abiding by it. There is too much of this going on. These were kept on as conditions for obvious reasons.

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Duffy – We received a lot of material from both parties. This is an appeal of the Building Commissioner, and he received a request for enforcement. He said he declined to take enforcement action. I see this as 2 issues; the screening, and the right-of-way. The Building Commissioner has the authority to enforce the zoning Bylaws, and what's in the Bylaw. I think the Board of Appeals puts these conditions in permits, and I think that Building Commissioner can take action regarding planting and maintaining the screening. The right-of-way issue is probably beyond this Board. I also am wondering if condition #6 really is effective. When you have a right-of-way, the only way to get rid of it is to have another person sign and record the right-of-way. I would overrule the Building Commissioner's determination in part, with respect to screening, and maintaining the screening and uphold the enforcement of the right-of-way, and let a higher court decide.

Morse – The 2 issues are screening, and use of the right-of-way. I would agree with Mr. Duffy. As for condition #6, I think that it involves a determination from Land Court or Superior Court. I would overrule the Building Commissioner's determination in part as to screening, and but for condition #6. The parties can either litigate or resolve amicably. I think that people deserve to get the benefit of the bargain. A separate document should also be recorded to extinguish the right-of-way.

Stockman – If you decide to pursue your vote, it may be difficult for the Building Commissioner to enforce the landscape where it's on private property. It may be easier for the Board to direct the screening be reinstalled.

Morse - In #54-05 it was clear that it did not say in perpetuity. It should be enforced with the landscape plan that was approved by the Board in 2005, and that's what should be maintained.

Finneran – Is the fence from '79 still there?

Paul Sellers– The remnants of the fence from '79 is still there. The landscape plan was from 2008.

Peterson made a motion to close the hearing. Murphy seconded the motion. Motion carried 5-0.

Morse made a motion to affirm the decision of the Building Commissioner with respect to the right-of-way, and overrule the Building Commissioner's determination regarding screening, and enforce that the landscaping be maintained in accordance with the approved plan (2008). Peterson seconded the motion. Motion carried 5-0.

All in favor.

Application #	Applicant Name:	Address:
003-23	Old Dock Road Conslc	Goulds Fall Hwy
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / fee	1/11/23	ODRCA
Enforcement letter	1/11/23	" "
Email - D. Shearer <sup>w/ attachments</sup>	1/12/23	(A)
Request Abutter	1/12/23	(A)
Request re fence	1/12/23	(A)
Email from D Shearer	1/12/23	(A)
11 Pre fence - Building Dept.	1/17/23	(A)
letter Suppat Hawks	2/1/23	(A)
letter - opposition Tutchell	2/9/23	(A)
letter - Mallory	2/13/23	(A)
letter B. Wall	2/13/23	(A)
letter - McHenry	2/13/23	(A)
letter - Clayton	2/14/23	(A)
letters - Harlow - Hawks	2/15/23	(A)
Continuation letter	2/15/23	(A)
letter - Kellner	2/10/23	(A)
Continuana waiver	2/17/23	(A)
letter <sup>from old dock rd</sup> <sub>condo Ass'n</sub>	4-18-23	us.
Powerpoint pres.	4-26-23	(A)
letter - B. Wall	4-26-23	(A)
Email & Powerpoint <sup>(Kellner)</sup>	9/27/23	(A)

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**(Continuation) #065-22 Nika Development, LLC 259/263 Old Main Road, North Falmouth –**  
requesting a Special Permit to raze the existing structures, and construct two(2) duplex buildings and one(1) single-family dwelling on a combined parcel

Voting Members: Morse, Peterson, Murphy, Finneran, Potamis

Kevin Klauer, attorney for Applicants – This project has been before the Board several times, and we have made some revisions to the plan, to address some of the comments and concerns. The property is located in the North Falmouth village, with 2 lots that will be merged. The combined lot is 44,438 s/f, and is split zoned: B3 – Business 3 and RB - Residential B. Currently, there is a dilapidated single-family dwelling at the front of the lot, that is non-conforming to the front yard setback, and a barn located in the rear lot, which is also non-conforming. What is now being requested are two duplexes, located in the Business zone. The single-family structure that was located at the rear, has been eliminated. This project has been approved by the Historical Commission and the Planning Department. Planning did approve the site plan, but we would have to go back to modify the Site Plan Review, if you were to approve this plan. The proposed lot coverage is 11.6% by structures, and 21.3% by structures, parking and paving. The buildings would eliminate all of the non-conformities, and will comply with all setback and lot coverage requirements. Attorney Klauer stated the project meets the criteria of 240-3 C., 240-51 A(5) and 240-216. We have spoken to the abutters, and agreed to a few terms. The Applicant has agreed to abandon the right-of-way, and to provide a 5' natural buffer for the back lot. I spoke with Mr. Petrucci [abutter], and I think that he is amenable to these changes.

**Board Discussion –**

Finneran – We were onto this before when we were discussing the building in the back, and you have cited Tofias v. Butler. You have since removed the building in the back, and Tofias states that you can use the property in the back to satisfy dimensional requirements, but it must remain open, which you've done. Business 3 requires 40,000 s/f, you have 17,143 s/f, you've used the back lot to satisfy the dimensional requirements, but only Town Meeting can re-zone. By merging the lots you have a combined lot of now 44,438 s/f. You cannot reuse the lot area twice; you did in the back, but you can't use it in the front portion. By combining 2 lots in different districts, that can only be allowed by a Town Meeting vote. You have multi-family housing which is only allowed in Residential B; you can't exceed 6 units per acre. You could do 2.63 units. The best use of this property would be for you to build 1 single-family dwelling in the front and one in the back. You can't change the zoning.

Klauer – We are not trying to change the zoning.

Finneran – Yes you are; in Tofias v Butler you can't use lot area twice.

Klauer – You're misinterpreting Tofias. You can take all square footage of the lots and combine them, which is over 44,000 s/f, which exceeds the minimum zoning requirement. We are not requesting 6 units; we are requesting 4.

Finneran – You are allowed 6 units per acre, you have about 0.39 acres. You can get just over 2 units.

Klauer – The lot as combined will be 44,000 s/f and you are allowed to take all of the square foot of the lot, not just the zoning district, into consideration; that's what Tofias represents.

Finneran – Yes, the dimensional requirements.

Klauer – The dimensional requirement of the lot will exceed what the minimum requirement in that district is. We are not limited to just the square footage in that particular district; Tofias says you can use the square footage from other districts to satisfy that requirement.

Finneran – The way I read it, that is incorrect; you're allowed 6 units per acre. You can't rezone.

Klauer – No one is trying to rezone anything.

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Murphy – I think this is a good plan; I'm glad you took the single-family dwelling out.

Peterson – I think Mr. Finneran brings up good points. You did what we always ask, you went back and talked to abutters and reduced. This is a positive move. You do have more than an acre. I'm ok with it.

**Public Comment**

Tony Petrucci, 243 Old Main Road – We are very pleased that there will only be 2 duplexes. I didn't do any of the calculations. We have agreed that the right-of-way will be extinguished upon issuance of a building permit, and there will be a 5' buffer maintained in perpetuity. If this is what the Board decides, we would be in favor.

Potamis – To extinguish the right-of-way would have to go through the courts.

Klauer – We would have to file this with Superior Court extinguishing our rights. I would like to have this conditioned before we get the building permit, in the off chance this was appealed.

Morse – Thank you for working with your abutters; that makes our job easier.

Finneran – This is a greater density, and if we vote in favor of this, we are voting in error.

Murphy made a motion to close the hearing. Peterson seconded the motion. Motion carried 5-0.

Murphy made a motion to grant application #065-22. Potamis seconded the motion. Motion carried 4-1 (Finneran dissenting).

**Findings**

- 1) Meets minimum requirement for setback and lot coverage
- 2) Lot size is 44,438 s/f
- 3) 11.6 \ 21.3% lot coverage
- 4) Comply with Water Department referral
- 5) Comply with Engineering Department referral
- 6) Drywells are proposed
- 7) Project received Planning Board approval
- 8) Abutters are in support
- 9) Project merges 2 lots, 2 different zoning districts

**Conditions**

- 1) Merge lots
- 2) Comply with Engineering referral
- 3) Per plans
- 4) Comply with Planning Board approval
- 5) Comply with Board of Health comments
- 6) Limited to 12-bedrooms
- 7) Install and maintain landscape plan in perpetuity, with natural 5' screening to abutters to the right
- 8) Construction Hours: Monday – Friday 7A – 7P, Saturday's 8A-4P; no Sunday's or Holidays absent an emergency
- 9) Prior to obtaining Building Permit, record proof of extinguishing the right-of- way
- 10) Permission from the Tree Warden to remove the trees in the right-of-way
- 11) Comply with Water Department referral

4-1 with Member Finneran in opposition

Took a 5-minute recess at 8:40 PM.





Application # 065-22 Applicant Name: Nika Dev. LLC Address: 259603 Old Main

Document (s) Submitted:	Date Submitted:	Submitted By:
Application / Fee	8/3/22	Klauer
Owner authorization	}	}
Existing photos / fire plan		
(9) copies site plan		
(9) sets arch plans		
Request re: funds	8/4/22	SM
Request Abutters	8/4/22	SM
Preperm - planning	8/5/22	SM
Preperm - H2O	8/8/22	SM
Preperm - Health	8/15/22	SM
Preperm - fire	8/18/22	SM
Preperm - Eng.	8/30/22	SM
Preperm - Concur	9/1/22	SM
letter - Malra (cop)	9/1/22	SM
Old Assessors Cycles	9/25/22	SM
letter - L. Leitner	9/26/22	SM
letter - P. Ghentg	9/27/22	SM
Email re: continuation	9/28/22	SM
Revised site plans	10/20/22	SM
Revised arch. plans	10/20/22	SM
letter - Yunis	10/24/22	SM
letter - Petrucci	10/25/22	SM

letter - Petrucci, Ghentg + MacDonnell 10/24/22 SM

continuation letter 10/24/22 SM

1/19/23 SPA decision SM

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**(Continuation) #105-22 Bowen, Trustees, 102 Grand Avenue, Falmouth** – requesting a modification of Special Permits #110-15 and 37-21 to remove condition no. 2 of the Special Permit (#110-15) and increase the total lot coverage; property is under an enforcement order by letter dated September 14, 2022

Voting Members: Morse, Peterson, Murphy, Duffy, Potamis

Mr. Finneran rescued himself

Potamis – I am an abutter to this property, and I have filed a disclosure with the Select Board; Town Counsel has reviewed this and also affirmed.

Peterson read the ‘Notice of Public Hearing’ into the record, and read the following referrals:

Planning – no comment

Fire – no issues with the project as drawn

Health – no comment

Engineering – 10 pages of comments

**Correspondence –**

2 letters of support

Kevin Klauer, attorney for Applicant – We are seeking permission to modify the existing Special Permit and Administrative Approval. This property is located in Falmouth Heights on the corner of Montgomery Court and Grand Avenue, in a dense neighborhood. The lot is 3,730 s/f and within the Residential C zoning district. Presently, there are 2 dwellings on the lot, which were acknowledged by Special Permit no.110-15. The primary dwelling is a 3-bedroom Cape, and the secondary is a 1-bedroom cottage. The current footprint by structures is 41%, and lot coverage by structures, parking and paving is 59%. We are seeking to modify the existing permits, to delete condition no.2 of Special Permit no. 110-15 that states that the “parking for the dwelling must remain on site”; this is simply not feasible, given that they need parking for more than 1 car, without encroaching onto the street layout (typically 18’ is the depth of a parking stall). If parking was required to be on the site, the total lot coverage would have to be increased, and it is already nonconforming. The Applicant has already obtained a license from the Select Board allowing parking in the Grand Avenue layout, but because of Condition no.2, we are in violation of the Special Permit, which resulted in the enforcement order. If the board is not willing to remove that condition, I suppose we would need to seek a variance to increase the lot coverage. The second issue is the correction of the incorrect lot coverage percentages in the administrative approval. The Special Permit in 2021 was granted using a mortgage survey; there are no lot coverage calculations on the plot plan and no mention of lot coverage calculations in that decision. The 2021 plot plan had incorrect calculations, because it didn’t account for hardscapes. It doesn’t show walkways to the main dwelling or cottage and patios. Mr. Santos [Engineer] did an exhibit reflecting what was there; lot coverage by structures, parking and paving was 59%, which matches what exists today. We also met with Mr. Street [Building Commissioner] and he agreed with our analysis, but felt that coming to the Board would be the appropriate way to handle it. It seems clear that the 2021 plot plan didn’t take into consideration all aspects of the lot coverage. The Applicant is proposing to lower the total lot coverage down to 57%, by removing some hardscape, and increasing the lawn area.

**Board Discussion –**

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Peterson – There are multiple pages of non-compliance in the file, can you walk me through where we stand on these issues today?

Klauer – There's a cobble stone apron on the corner, and our intent is to seek a license for that, but wanted to come through this process first. The parking on Grand Avenue is in conflict with the Special Permit because it says that you have to have all parking on the property. There was additional parking on Montgomery Court, which is a private right-of-way, and wouldn't require a license from the Town. I believe that our engineer has been working with the Town's Engineering Department and I believe they are satisfied with what is proposed. We corrected the lot coverage to where it should have been in 2021; we needed to establish a baseline. The lot coverages on the 2021 plan was incorrect.

Peterson – It was confusing to keep up with your numbers. The parking area along Montgomery, that is impervious, is that going to be modified, or are you going to seek approval for what's there?

Klauer – That area is included in the lot coverage calculation, and will still be reduced to 57%.

Murphy – What is the 62.7% for?

Klauer – That percentage was what existed prior to the 2021 modification, and that was reduced to 59% which is where we are today.

Murphy – Why can't the front parking be gravel on Grand Avenue?

Klauer – It would still count towards lot coverage because it's required parking.

Duffy – You're saying the parking on Grand Avenue is not sufficient because they stick out into the road. Do you have license from the Select Board to encroach into the right of way?

Klauer – Correct. Yes, we received approval, and we would need to apply for the other parking space on Montgomery.

Duffy – How did that parking area get there?

Klauer – It's a private way. This was added, but we are reducing it at another area.

Duffy – The car will still encroach into Montgomery Court. You seem to be asking us to approve the parking of a vehicle along Montgomery Court that will be 1/2 on the lot, and 1/2 out.

Klauer – We are asking for permission to have the hardscape for that parking area. With a private way you own to the center line.

Duffy – By asking us to eliminate the parking to be on the site you want us to authorize cars that will stick out into the right-of-way. If we granted your request to park in the lower right-hand corner and the Select Board granted your license, you would be happy?

Klauer – Yes.

Duffy – What would be the impervious lot coverage if we granted this?

Klauer – 59% being reduce to 57%.

Potamis – I think the property looks good and is in harmony.

Morse – The plan submitted by John Doyle was incorrect?

Klauer – Yes, because it didn't take any of the hardscapes into consideration.

Morse – The total lot coverage is being reduced to 57%?

Klauer – Yes.

Morse – My concern is runoff into the public right-of-way, because there is a lot of impervious surface.

Murphy – You said that there is another area that will be removed, where is that?

Tim Santos, Project Engineer – When this plan was submitted it didn't take into consideration any hardscapes. We prepared these exhibits and used aerial photos, met with the Building Commissioner, and discussed what we needed to include in the coverages. Then we prepared the new plan to show the existing plan at 59%. There is 369 s\f of where the shell area was, that will be reduced to 254 s\f, to stay under the 59%. 62.7% shouldn't have been shown; 59% is what existed, and 57% is what is proposed.

Stockman – No changes took place on the property between Doyle survey and your survey? Were there hardscapes added between Doyle's plan and your plan.

Santos – The Doyle survey was done prior to construction in 2021. Our survey was done this year.

**Zoning Board of Appeals**  
**Minutes of April 27, 2023 at 6:30PM**  
**Zoning Administrator: Noreen Stockman**  
**Present: Morse, Potamis, Finneran, Murphy, Duffy**

Stockman – Are you suggesting that there was no change made in the lot coverage between the Doyle survey and that survey?

Santos – The total lot coverage for that survey is incorrect.

Stockman – Was there a change in hardscape on the property between the Doyle survey and yours?

Santos – From 2021-2023 yes, but the 2021 exhibit that we prepared is that plan that should be compared to Doyle's 2021 survey.

Peterson – So there has been an increase in impervious surface?

Klauer – The area on Montgomery Avenue was added but there has been a reduction.

Peterson – How many parking spaces does this lot need?

Klauer – 3.5 spaces.

Duffy – The principal parking area in front of the cottage is 429 s/f, and that is inadequate to park two cars without a license from the Select Board. You can't comply with the condition unless you get a license. I don't think that we can help you on Grand Avenue; you have to go beyond the lot line.

Montgomery Court is a different issue, it's a private way and you own it in common with everyone else.

Klauer – The Building Commissioner took the position that the license is in violation with the Special Permit because all parking must be on site.

Morse – What were the previous representations made for the last application?

Stockman – We had a stamped plot plan, and that's where we get the lot coverage numbers from.

Duffy – It's the Montgomery side that bothers me.

Peterson – Are you saying you would remove the pull off area, and replace with grass?

Klauer – I would have to discuss that with my clients.

Peterson – We are trying to help, but it seems like these folks got ahead of themselves. If the Select Board wants to give you parking, that would make logical sense.

Potamis – Given what we have now, what is the increase in runoff?

Santos – The increase would be 104 s/f.

Potamis – People can still park on grass, if that cobblestone area is removed.

**Public Comment –**

Jonathan O'Reilly, Montgomery Avenue – I wrote a letter in support of this current plan. People park in the street all summer, it's a very tight area, and he has very limited space.

Unidentified Individual – The first plan was a mistake, I think Mr. Santos did a beautiful job. It is a tight road.

Duffy – I would like to see Mr. Klauer talk to his client regarding the grass area on Montgomery Court.

Klauer – I would like to ask for a continuance.

Peterson made a motion to continue to May 25, 2022. Murphy seconded the motion. Motion carried 5-0.

All in favor.

Application #	Applicant Name:	Address:
105-22	Bowen	102 Grand Ave.
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / fee	11/30/22	Klauser
Previous sp's	11/30/22	Klauser
(9) copies sit plan	11/30/22	Klauser
Enforcement letter	11/30/22	<del>AK</del>
Request Apartments	12/1/22	<del>AK</del>
Request referrel	12/1/22	<del>AK</del>
Email - S. Dault	12/1/22	<del>AK</del>
Referrel - planning	12/2/22	<del>AK</del>
Cert. Apartments list	12/7/22	<del>AK</del>
Referrel - fire	12/12/22	<del>AK</del>
Revised application	12/14/22	<del>AK</del>
Referrel - Health	12/20/22	<del>AK</del>
Referrel Eng.	12/22/22	<del>AK</del>
Referral CC	12/28/22	WS
letter support	1/17/23	<del>AK</del>
letter - Support - Gemity	1/18/23	<del>AK</del>
filed extension waiver	1/20/23	<del>AK</del>
Revised plans	3/14/23	<del>AK</del>
Email - G. Street	3/15/23	<del>AK</del>
Email - Klauser <sup>Continuation</sup>	3/16/23	<del>AK</del>
Revised Eng. referrel	3/14/23	<del>AK</del>
Email 8/26/22 S. Schluter	4/13/23	<del>AK</del>
Email w/ photos - B Dugan	4/24/23	<del>AK</del>
Email - Dault	5/11/23	<del>AK</del>

**Zoning Board of Appeals  
Minutes of April 27, 2023 at 6:30PM  
Zoning Administrator: Noreen Stockman  
Present: Morse, Potamis, Finneran, Murphy, Duffy**

**#025-23 Hunnewell, 3 Quissett Avenue, Falmouth** – requesting a Special Permit to raze and rebuild the existing garage adding a screened porch above

Voting Members: Morse, Peterson, Murphy, Finneran, Duffy

Murphy read the ‘Notice of Public Hearing’ into the record, and read the following referrals:

Wastewater - Property is connected to sewer but no Wastewater Division comments because adding a garage, deck and screen, porch / sunroom will not affect wastewater connection or flow.

Assessors – no comments as presented

Planning – no comment

Health – no issues with Health, property appears to be on town sewer

Conservation - A Request for Determination of Applicability has been filed for the above referenced property and is scheduled on the March 29, 2023 Conservation Commission Hearing.

**Correspondence** – 1 letter in support

Laura Moynihan, attorney for Applicants – This project proposes to remove the existing 18’ x 20’ garage, and construct a new 18’x 23.7’ garage, with a screened porch above. The height will be increased from 8’4 ½” – 15’3 ½” due to the proposed screened porch. The site drops off in the back, and if you visited the site, you would see that there is not a driveway into the garage. The Applicant uses it for boat storage, but not for vehicles. The garage will be replaced, and it will connect to the existing deck with the screened porch. The lot size is 16,345 s/f, located within the Residential C zoning district. Lot coverage by structures and the total lot coverage exist at 12.92%, well below the allowable 20%, and the proposed lot coverage is 13.28%, for both lot coverage by structures and lot coverage by structures, parking and paving. There is a non-conforming setback to the easterly side of 2’, that will be improved to 4.2’. Attorney Moynihan stated the project meets the criteria of 240-10.1C(3) and 240-12.1E. There is no increase in bedrooms, and the project has been approved by the Conservation Commission. There is 1 email that I wasn’t able to get from the Applicants in time, but it’s a letter of support from the abutters that would be closest to the garage.

Morse – If you have that email that would be great if you could file it.

**Public Comment** – no comments

Moynihan - There is also a referral from the water department that I think you should be aware of. The Water Department recommended an upgrade to the water service to a 1” line, but there is no water service proposed to the garage or the sunroom, so I asked the Water Superintendent if this was a requirement, or a regulation. That response is in your file that it is just a recommendation. We would ask that the Board not impose that as a condition, as there is no additional water service going into the garage.

Finneran – Is there water running to the building now?

Moynihan – No and there’s none proposed.

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**Minutes of April 27, 2023 at 6:30PM**  
**Zoning Administrator: Noreen Stockman**  
**Present: Morse, Potamis, Finneran, Murphy, Duffy**

Potamis – I think that the Water Department is trying to improve water pressure and upgrades for fire pressure.

Morse – I agree with your point. I suggest that there be a condition that if there's a trigger for additional water use, that there be an upgrade. I do want to make it clear that we are not going to be giving blanket exceptions for water line upgrades.

Peterson made a motion to close the hearing. Murphy seconded the motion. Motion carried 5-0.

Peterson made a motion to grant application #023-23. Murphy seconded the motion. Motion carried 5-0.

**Findings**

- 1) Located in the Residential C zoning district, within a AE13 flood zone, lot size is 16,345 s/f
- 2) Meets criteria of 240-10.2A and 240-11.12.1E
- 3) Existing lot coverage 12.92%/12.92%; proposed lot coverage is 13.28% / 13.28%
- 4) Non-conforming to the side yard setback at 2'; proposed to be 4.2'
- 5) Raze and rebuild garage for boat storage
- 6) Proposed screened porch on second floor
- 7) 5\8" water main, no update as there is no increase in use
- 8) 1 letter of support
- 9) Lot is sufficient for proposal
- 10) Testimony - closest abutter indicated they were in support; an email will be provided to the file

**Conditions**

- 1) Per plans
- 2) Construction Hours: Monday – Friday 7A-7P, Saturday's 8A-4P; no Sunday's or Holidays absent an emergency
- 3) No additional water use without upgrade to waterline

All in favor.



Application # 025-23	Applicant Name: Hunnell	Address: 3 Quisset Ave.
Document (s) Submitted:	Date Submitted:	Submitted By:
Application/ Fee	2/22/23	Ⓟ
Owner authorization	}	}
(9) copies site plan		
(9) sets arch. plan		
Request referrals	2/23/23	Ⓟ
Request Abutter	2/23/23	Ⓟ
Referral - Planning	2/24/23	Ⓟ
Referral - Assessors	}	}
Referral - Engineering		
Revised wastewater referrals	2/27/23	Ⓟ
Referral - Health	3/14/23	Ⓟ
Referral - ConCom	3/16/23	Ⓟ
ConCom RDA	4/10/23	Ⓟ
Letter of Spmt Approval	4/25/23	Ⓟ

**Zoning Board of Appeals**  
**Minutes of April 27, 2023 at 6:30PM**  
**Zoning Administrator: Noreen Stockman**  
**Present: Morse, Potamis, Finneran, Murphy, Duffy**

**#026-23 Droukas / Hogan, 16 Falmouth Heights Road, Falmouth** – requesting a Special Permit to raze and rebuild the existing dwelling; exceeding 20% lot coverage by structures

Voting Members: Morse, Peterson, Murphy, Finneran, Duffy

Murphy read the ‘Notice of Public Hearing’ into the record and read the following referrals:

Planning – no comment

Health- Property on town sewer – no issues with Health

Engineering - standard comments; recommendation to add drywells, rain garden or other stormwater infiltration measure; comply with Town’s “Soil Erosion and Sediment Control Standards”; comply with section 99-1 “Affixing of Legible Number numbers required; time limit for compliance”

Wastewater – 4 bedrooms, connect to sewer

Water – meets Town of Falmouth standards

Received approval from Conservation

**Correspondence –**

1 letter with comments

Kevin Klauer, attorney for Applicants – The Applicants are seeking permission to raze and rebuild the non-conforming dwelling. This proposal is located at the Northern end of Falmouth Heights road in a dense residential neighborhood on a lot of 7,957 s/f and located within a Residential C zoning district. A portion of the lot is within a flood zone but the dwelling itself is not. Presently, there is a 4-bedroom, single-family dwelling with a total footprint of 1,327 s/f and conforms to all setback requirements. The Applicants purchased the property in 2021, and they have been assessing the property to determine their needs. The proposed dwelling is an attractive design, fits in with the neighborhood, and will reduce clutter on the lot, as the shed will be eliminated. The number of bedrooms will be maintained, and the project is on the Little Pond Sewer District, which allows 4-bedrooms by right. The proposed ridge height is 23’11.5,” and the proposed lot coverage by structures is 24.3%. Attorney Klauer stated the project meets the criteria of 240-11.3A(4) and 240-12.1E. We submitted a Lot Coverage Worksheet, and the proposed does fall within the range of the neighborhood. A front yard designation was submitted, and the Building Commissioner determined that Falmouth Heights was the primary front yard. We also submitted revised plot plans, to address the comments of the Engineering Department.

**Board Discussion**

Finneran – It’s pushing the limits but it’s an improvement.

Peterson – Nice upgrade; a well needed project.

**Public Comment** – none

Morse made a motion to close the hearing. Murphy seconded the motion. Motion carried 5-0.

Peterson made a motion to grant application #026-23. Murphy seconded the motion. Motion carried 5-0.

**Zoning Board of Appeals**  
**Minutes of April 27, 2023 at 6:30PM**  
**Zoning Administrator: Noreen Stockman**  
**Present: Morse, Potamis, Finneran, Murphy, Duffy**

**Findings**

- 1) Property located within the Residential C zoning district, Little Pond Coastal Pond Overlay district, within an AE13 flood zone, lot size is 7,957 s/f
- 2) Proposed ridge height is 23'11.5"
- 3) Lot coverage by structures increasing from 16.6%-24.3%; total lot coverage increasing from 27.9% – 36.1%
- 4) Approval from Conservation Commission
- 5) No previous Special Permits
- 6) Lot coverage comparison worksheet submitted
- 7) Setback will conform
- 8) Shed will be removed
- 9) Proposed stormwater management plan
- 10) Remaining 4 bedrooms
- 11) Meets criteria of 240-10.2A and 240-12.1E
- 12) Property is on sewer

**Conditions**

- 1) Per plans
- 2) No additional structures without prior ZBA approval
- 3) Construction Hours: Monday – Friday 7A-7P, Saturday's 8A-4P; no Sunday's or Holidays absent an emergency
- 4) Material and vehicles to be kept on site; stay off Falmouth Heights Road. If unable, contact Falmouth Police for detail
- 5) Comply with Engineering Department's comment
- 6) Comply with Wastewater Department's comments
- 7) Maintain trees on lot line to the west
- 8) As-built to be submitted to ZBA
- 9) No additional sheds or structures without prior approval

All in favor.

Application # 026123	Applicant Name: Dukas / Higau	Address: 16 Falmouth Street
Document (s) Submitted:	Date Submitted:	Submitted By:
Application/see	3.2.23	Klauer
Anna Hutchinson	}	}
LIC calculations		
(9) sets arch. plans		
(9) copies site plan		
Request Abutters		ⓧ
Request referrals		ⓧ
Cert. Abutters list	3/13/23	ⓧ
Referral-planning	3/13/23	ⓧ
Referral-Health	3/14/23	ⓧ
Email - A. Bergenn	4/4/23	ⓧ
Email - A. Bergenn	4/7/23	ⓧ
Pensea plans	4/14/23	ⓧ
Referral - A. Bawell	4/24/23	ⓧ
Email - H2O	4/24/23	ⓧ

**Zoning Board of Appeals**  
**Minutes of April 27, 2023 at 6:30PM**  
**Zoning Administrator: Noreen Stockman**  
**Present: Morse, Potamis, Finneran, Murphy, Duffy**

**#027-23 Licence, 282 Edgewater Drive, East, East Falmouth** – requesting a Special Permit to replace the 2<sup>nd</sup> story deck

Voting members: Morse, Peterson, Murphy, Finneran, Duffy

Peterson read the ‘Notice of Public Hearing’ into the record and read the following referrals:

Planning – no comment

Health – no issues with Health

Engineering - No alterations are proposed to the right of way; any changes within the right of way would require filing a permit with the Engineering Division; public way

ConCom– approved the project through a negative determination

Assessors – no comment

**Correspondence – 1 affidavit**

Carl Licence, Applicant / owner – We bought the house in 2020 from my wife’s parents. When we moved in, the roof over the sunroom was leaking, and the only way to fix that was to remove the deck above the sunroom. After that we started the process to rebuild the deck. It was noticed by the building department, while we were applying for a building permit, that over 20 years ago, my in-laws had the ground-level deck installed, but none of that was on record. During the process it was noticed that the deck was not counted in the lot coverage. After talking with Gary Street [Building Commissioner], he said that the only way we could go forward would be to get approval from this board first. The deck we want to replace is smaller than what was previously there.

**Board Discussion –**

Peterson – I’m a little confused about the deck changes at ground level.

Finneran – Are you actually reducing coverage?

Licence – Yes, because we aren’t replacing the steps.

Finneran – I don’t have a problem with this.

Duffy – You’re asking for a Special Permit from us for lot coverage?

Licence – Correct.

**Public Comment – none**

Morse made a motion to extend the meeting time by 15 minutes. Peterson seconded the motion. Motion carried 5-0. All in favor.

Morse – I think it’s a necessary project.

Murphy made a motion to close the hearing. Peterson seconded the motion. Motion carried 5-0.

Murphy made a motion to grant application #027-23. Peterson seconded the motion. Motion carried 5-0.

**Zoning Board of Appeals  
Minutes of April 27, 2023 at 6:30PM  
Zoning Administrator: Noreen Stockman  
Present: Morse, Potamis, Finneran, Murphy, Duffy**

**Findings**

- 1) Property located within the Residential C zoning district, within the Waquoit Bay Coastal Pond Overlay, public road, lot size is 6,500 s/f
- 2) Small reduction in lot coverage by structures; Testimony - 35.1% - 33.5% (existing 33.5% / 39.3%)
- 3) No letters in file; no opposition at hearing
- 4) Received Conservation approval
- 5) No previous Special Permits
- 6) Nonconforming to the front yard setback at 22.1'; side yard setback to the north at 7.1'; NGVD 3' contour line at 19'
- 7) Both sheds are non-conforming
- 8) Meets criteria of 240-10.2A and 240-12.1E
- 9) Photos and affidavit submitted to show deck structure has been in existence for more than 10 years

**Conditions**

- 1) Per plans
- 2) No additional structures without prior ZBA approval
- 3) Comply with ConCom approval
- 4) Construction Hours: Monday – Friday 7A-7P, Saturday's 8A-4P; no Sunday's or Holidays absent an emergency
- 5) Keep materials and vehicles off road; if unable to, contact Falmouth Police for a detail

All in favor.



**Zoning Board of Appeals**  
**Minutes of April 27, 2023 at 6:30PM**  
**Zoning Administrator: Noreen Stockman**  
**Present: Morse, Potamis, Finneran, Murphy, Duffy**

**Open Meeting:**

- 1) Vote Minutes: April 13, 2023 –  
Finneran – The Minutes say that the motion was made by Potamis for the draft of Blue Moon, but it was made by Duffy. The ITE was referred to as the TTE, that should be corrected.  
Stockman – For the Board’s knowledge, sometimes, we have some difficulty determining who seconded a motion because there can be two people speaking at once.  
Morse – I’ll start identifying who made the motions.
- 2) Board Discussion  
Duffy – We denied a Special Permit for Surrey Lane, and I drove by there last weekend and there was a lot of smoke coming from a fire on the property.  
Morse – Maybe we can send an email to the Building Commissioner and the Fire Department to make them aware.
- 3) Board Updates  
Stockman – Ms. Murphy has volunteered to take Mr. Peterson’s position on the recodification committee.
- 4) Future Agenda Items - next meeting May 4, 2023 at 6PM

Meeting adjourned 9:45 PM.

Respectfully submitted,

Ashley E. DeMello, Office Assistant

Zoning Board of Appeals