

Zoning Board of Appeals
Minutes of May 25, 2023 at 6:30PM
Zoning Administrator: Noreen Stockman
Present: Morse, Peterson, Potamis, Finneran, Murphy, Duffy
Absent:

05/25/23
JUN 21 2023 PM 6:10
TOWNS CLERK

Public Comment – none

#105-22 Bowen, Trustees, 102 Grand Avenue, Falmouth - requesting a modification of existing 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

Kevin Klauer, attorney for Applicants – I submitted an email today to request a continuation to June 8th. I wasn't able to get the revised plans submitted in a timely manner.

Morse – I think the June 8th meeting is going to be problematic. Is the June 29th meeting good for you?

Klauer – Yes.

Murphy made a motion to continue to June 29, 2023. Peterson 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	Klaum
Previous SP's	11/30/22	Klaum
(9) Copies site plan	11/30/22	Klaum
Enforcement letter	11/30/22	AK
Request Abutters	12/1/22	AK
Request referal	12/1/22	AK
Email - J. Dault	12/1/22	AK
Referal - planning	12/2/22	AK
Cert. Abutters list	12/7/22	AK
Referal - fire	12/12/22	AK
Revised application	12/14/22	AK
Referal - Health	12/20/22	AK
Referal Eng.	12/22/22	AK
Referral CC	12/28/22	WS
letter support	1/17/23	AK
letter - Support - Gentry	1/18/23	AK
filed extension waiver	1/20/23	AK
Revised plans	3/14/23	AK
Email - G. Street	3/15/23	AK
Email - Klaum ^{Continuation}	3/16/23	AK
Revised Eng. referal	3/14/23	AK
Email 8/26/22 S. Schluter	4/13/23	AK
Email w/ photos - B Dugan	4/24/23	AK
Email - Dault	5/11/23	AK
Revised site plans	6/13/23	AK

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#024-23 Bateman, Trustee, 14 Clam Lane, East Falmouth – requesting a Special Permit to construct a pool and a rinse station, exceeding 20% lot coverage by structures

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

Morse – A revised landscape plan has been submitted since the last meeting.

Shannon Sylvester, representative for Applicants – We did meet with the abutters at 9 Crowell Road this past Monday, and we were able to come up with a plan that seemed to work for everyone. We were originally going to put up a fence, and now we are offering to put in about 25 plants on their property, 8' apart. They have been reserved at Mahoney's; we will pay for them, and we will dig the holes. They [abutters] will plant and maintain them on their property. We are also adding 3\4" crushed stone along the fence line on their property, to add for additional drainage. We will be getting 3'-4' arborvitae, to be planted every 8'. The pool equipment shed will be installed, and will have sound insulation. I did talk to BSS yesterday, to have them add a 12' x 8' shed to the site plan. We are aware that this will need to meet setbacks, and the revised plan will be submitted.

Board Discussion -

Potamis – Who's installing the trees?

Sylvester – We are buying and digging the holes for them; they will install.

Duffy – Can you confirm that the lighting will face downward?

Sylvester – Yes, they will be; they are soffit lights so they face down.

Murphy – I appreciate you working with the neighbors, and you've worked out the issue with going over their property?

Sylvester – Yes.

Public Comment -

Henry Peters, Crowell Road – He has agreed to supply 25 trees. We can stay on his property, and dig a hole, and we'll install them, and be happy. I would like to recommend that we get these trees in within the next week.

Potamis – You understand they won't be able to do anything for several days; the decision hasn't been written, and then there's an appeal period after that.

Morse – We can't mandate timelines. If there is a private agreement, that is between you and the developer. That's not before the Zoning Board.

Duffy – My concerns have been addressed.

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

Peterson made a motion to approve application #024-23. Murphy seconded the motion. Motion carried 5-0.

Findings:

- 1) Property located within a Residential C zoning district, Bourne's Pond Coastal Pond Overlay
- 2) Meets criteria of 240-11.3A(4) and 240-12.1E
- 3) Lot is 16,563 s/f
- 4) Existing lot coverage 19.92% – 19.92%; proposed lot coverage 22.65% / 34.80%
- 5) Project includes plunge pool and rinse station

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6) Continuance to address concerns of abutters regarding vehicles, drainage, and screening
Conditions

- 1) Per revised plans - landscape and site plan
- 2) Work Hours: Monday – Friday 7A-7P, no Saturday's or Holidays absent an emergency
- 3) Downward facing lighting to be installed
- 4) Pool equipment to be enclosed with sound baffling added
- 5) Drainage to be maintained by Applicant on their property
- 6) No additional structures without prior approval from the Zoning Board

All in favor.

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Absent:

#034-23 The 300 Committee Land Trust, Inc., 13 Thomas B. Landers Road, East Falmouth
– requesting a Special Permit for permission to use the property as a philanthropic institution

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

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

Planning – the applicant filed a SPR application with the Planning Board. A date has not yet been set for a public hearing

Engineering Department - standard comments; comply with Town’s “Soil Erosion and Sediment Controls Standards”; attached Planning Board review(s)

Fire – no issues with the project as drawn

ConCom – no comment

Received Site Plan review and Special Permit decisions from the Planning Board

Email dated May 16, 2023 from Scott McGann, Health Agent

Correspondence – none

Morse – I filed a disclosure for the file that the 300 Committee shares the same office space as I do. If you would like, I would be happy to recuse.

Klauer – We have no issues with that.

Jessica Whritenour, Executive Director, 300 Committee Land Trust – This project has been in the works for several years, and our mission is to preserve and provide open space since 1985. Our current location is rented space at 157 Locust Street, where we have been for a few decades. Our goal is to preserve and protect open space in Falmouth through land acquisition and stewardship. In our 38 year history, we have collaborated with the Town to preserve more than 2,500 acres of open space. We do provide land stewardship services for more than 200 acres of Town owned land. The 300 Committee owns 300 acres of land and 2,000 acres of conservation land; every project that we take on is in perpetuity, and all of the properties have conservation status. The concept of a permanent home became a very important goal, and we conducted this search. We are excited about this location, and the proximity to the Coonamessett greenway; the centralized location of this property is extremely helpful. The purpose of the headquarter project is to provide for a handicap accessible space, for the administration and management of the organization. This will allow space for a handicap accessible work and meeting space for the staff, Board of Directors, Committees and our conservation partners. It will also serve as a “stewardship hub,” and include adequate space for equipment storage.

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Kevin Klauer, attorney for Applicants – We are seeking approval to use the premises as offices for a philanthropic institution. It's a conversion of a single-family dwelling and outbuildings. This project required multiple levels of review, including a Site Plan Review approval and a Special Permit decision. The main structure is in very good shape, and will be ideal for the proposed use; the outbuildings are functional, but need some attention. The existing lot coverage by structure is 3.55% and the total lot coverage is 5.80%. We are requesting a Special Permit under 240-6.1 for a philanthropic institution, and 240-11.4A(1)(i) to allow the existing shed to remain in the front yard. It has been in existence, but we thought we would make it formal with the special permit request. There will be very little change to the exterior; no change to the proposed landscaping, and the current field and open space will be maintained. The intent is for management of the committee, office space for the small staff, and a stewardship hub. There will be small meetings, but this is not intended to be a money maker i.e. weddings \ venues. Attorney Klauer opined that the project meets the criteria of 240-6.1, 240-11.4A(1)(i) and 240-12.1E.

Board Discussion –

Peterson – I think it's a great addition, no issues.

Public Comment – none

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

Peterson made a motion to grant application 034-23. Murphy seconded the motion. Motion carried 5-0.

Findings

- 1) Property is located within an Agricultural A zoning district, Great Pond Coastal Pond Overlay
- 2) Previous 1986 decision
- 3) 2.96 acres
- 4) Existing lot coverage 3.55% / 3.85%; proposed lot coverage 3.55% / 5.82%
- 5) Meets criteria of 240-6.1, 240-11.4A(1)(i) and 240-12.1E.
- 6) Existing non-conforming shed in the front yard
- 7) Issuing Special Permit to cure the shed located in the front yard
- 8) Received approval(s) from Planning Board

Conditions

- 1) Per plans

All in favor.

Application #	Applicant Name:	Address:
034.23	300 Comm.	13 Thomas B. Landers
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / see owner authorization	3/28/23	KLAW
Existing photos	}	}
(9) copies site plan		
(9) sets hand drawn plans		
Nearest referrals	3/29/23	KLAW
Request Abutters	3/29/23	KLAW
Referral - Planning	3/27/23	KLAW
Previous ZBA decision	3/31/23	KLAW
Rec'd cert. Abutters list	4/5/23	KLAW
Referral - Fire Dept.	4/20/23	KLAW
Referral - ConCom	4/26/23	KLAW
PB SPR & SP	5/10/23	KLAW
Email - S. McGinn	5/16/23	KLAW
Site 5 septic report	5/17/23	KLAW
Discloser - JMCW	5/17/23	KLAW
Referral - H2O	5/19/23	KLAW

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#036-23 Doyle, 33 Sandpiper Circle, East Falmouth – requesting a Special Permit to convert the exiting garage into habitable space, and construct a new garage; 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

Assessors – no comment as presented

Fire – no issues with the plans as presented

Engineering – comments: recommendation to add drywells; comply with Town's "Soil Erosion and Sediment Control Standards"

Health - the project doesn't result in an increase in bedroom count. However, the ZBA and applicant needs to know that this cesspool is very old (no newer than 1978) and will not last indefinitely. The addition may make it more difficult to place a septic system in the future as it is consuming real estate on the lot that maybe needed for the new system. Suggest the applicant provide a reserve area for the septic system.

ConCom – no comment

Correspondence – 2 letters of support

Jonathan Polloni, attorney for Applicants – We are here to requesting to exceed lot coverage over 20%. The project is to relocate the garage, and use that space to expand the living room and kitchen area. A new garage will be constructed. The bedroom count will remain, the lot coverage by structures will be increased from 17.87% – 21.56%. At the rear, there is a proposed rinse station which will not be visible from the street. Since it abuts the street on both sides, the Building Commissioner determined a portion Sandpiper Circle to be the front yard, so that it will meet all setbacks. The ridge height will not be increased; it is currently 15.3," and the new garage will match the ridge height of the dwelling. The Engineer has added a limit of work, and a reserve area has also been added to the plans. Attorney Polloni opined that the project meets the criteria of 240-11.3A(4) and 240-12.1E.

Board Discussion

Morse – Per the Board of Health's referral, is there sufficient area on the lot to put a septic system in the future?

Polloni – It is shown on the revised site plan.

Morse – Are you going to install a Title 5 septic system?

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Polloni – At this time, that is not the plan.

Tom Bunker, Project Engineer – Yes, there is, we did revise the plan to show it.

Public comment - none

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

Peterson – I think they're doing a nice job, good project.

Murphy made a motion to grant application #036-23. Finneran seconded the motion. Motion carried 5-0.

Findings:

- 1) Property is located within a Residential B zoning district, Great Pond Coastal Pond Overlay
- 2) Lot size -10,066 s/f
- 3) Private road
- 4) Meets the criteria of 240-11.3A(4) and 240-12.1E
- 5) Existing lot coverage 17.87% / 21.54%; proposed 21.54% / 32.60%
- 6) Remaining 3-bedrooms
- 7) Proposed ridge height 16', 3"
- 8) 2 letters in support
- 9) No opposition at hearing
- 10) Board of Health comment regarding cesspool and request that a reserve septic area be delineated on plan; engineer testified that a reserve area will fit and revised plans will be submitted
- 11) No increase to ridge height
- 12) Lot is a corner lot, a portion of Sandpiper Circle determined as Front Yard by Building Commissioner

Conditions

- 1) No other structures without prior approval from Zoning Board
- 2) Remaining 3-bedrooms
- 3) No bedrooms in the basement
- 4) Comply with the Engineering Departments comments

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Absent:**

5) Per revised plans

All in favor.

Application #	Applicant Name:	Address:
036123	Doyle	33 Sandpiper
Document (s) Submitted:	Date Submitted:	Submitted By:
Application / See owner determination L/C worksheet FY designation (9) copies site plan (9) sets Arch plan	4/4/23	J. Polloni
Request Abutty	4/5/23	JP
Request Referrals	4/5/23	JP
Email to Agent	4/5/23	JP
Referral - planning	4/5/23	JP
Referral - Assessors	4/7/23	JP
Rec'd Cert. Approved	4/10/23	JP
Referral - Fire Dept.	4/20/23	JP
Referral - Eng.	4/20/23	JP
Referral - Health	4/28/23	JP
Referral - ConCom	5/5/23	JP
Email - Support	5/10/23	JP
Email - support	5/15/23	JP
Revised elevations	5/18/23	JP
Referral H2O	5/19/23	JP

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#037-23 Pease, 14 Alderberry Circle, East Falmouth – requesting a Special Permit to remove the existing landing / steps, and construct a covered porch

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

Fire – the Fire Department has no issues with the project as drawn

Engineering – comments: recommendation to add drywells or other stormwater infiltration measure; comply with Town’s “Soil Erosion and Sediment Control Standard Conditions”

Health – no issues with project

Conservation Commission – no comment

Correspondence – 8 letters of support

Brian Bourque, contractor- We’ve applied for a Special Permit under 240-10.2A to remove the existing front landing and steps, and construct a covered porch. The lot is 37,488 s/f with a single-family ranch, and a side back deck, and 2 small sheds. The existing lot coverage by structures is 6.5%, and will be increased to 6.8%. The existing total lot coverage is 8.3%, increasing to 8.6%. The current front setback is 18’.9” to the road layout, and the new porch will maintain that setback. The new porch will provide a new, safe entryway, and will beautify the property. As you see, there was an overwhelming support for the project from the neighborhood.

Board Discussion

Peterson – The fence and timber wall will have to get addressed by the Select Board. Do you know why the radius is so wide on this cul-de-sac?

Bourque – It’s pre-existing, non-conforming. I said the same thing, I have no history as to why they did this, because it’s not typical.

Finneran – Technically we are extending a non-conformity by lengthening it in the front.

Stockman – The Bylaw seems to exclude steps. When a foundation is poured there are no landings or steps; but you need those to access your house. The Bylaws also excluded a 4’ landing, because you need that by code. What is there technically conforms to the 25’ setback.

Bourque – Nothing is getting any closer. The setback of 18’.9” will be maintained.

Stockman – The roof right now is at 25’, so by bringing the roof out, you will be at 18’9”, which is closer to the street.

Finneran – Your extending a non-conformity.

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Duffy – I visited the property; I think that the change makes sense. I'm not concerned about the encroachment in the back yard, because it doesn't affect any zoning issues, but it is our policy that you go to the Select Board for a license, if you plan on keep the fence.

Bourque – The fence was put in prior to her owning the property, and they plan on relocating it or remove it.

Public Comments – none

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

Morse – This is a very unique application because of the radius, I think it will improve the area.

Duffy – It is a unique shape.

Morse – If it was going to the paved area, it would be in compliance.

Murphy made a motion to grant application #037-23. Finneran seconded the motion. Motion carried 5-0.

Findings

- 1) Property is located in the Great Pond Coastal Pond Overlay and zoned Agricultural A
- 2) Meets criteria of 240-10.2A and 240-12.1E
- 3) Ridge height of dwelling is 16'.2"; proposed porch 15'.8"
- 4) Lot size is 37,488 s/f
- 5) Private Road
- 6) Lot coverage by structures increasing from 6.5%-8.39%; total lot coverage increasing from 6.8% – 8.6%
- 7) 8 letters of support, no opposition at hearing
- 8) Proposed porch is 22' long
- 9) Encroachment onto Town property per engineering comments
- 10) The pavement vs. the cul-de-sac gives the appearance that house is setback farther
- 11) Board took into consideration unique shape of lot

Conditions

- 1) Bedroom count to remain
- 2) Work Hours: Monday – Friday 7A-7P, no Sunday's or Holidays absent an emergency

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- 3) Vehicles and materials to be maintained on site
 - 4) Applicant will either remove fencing, or get license from the Select Board; must file prior to sign off
 - 5) Comply with the Engineering Department comments
- All in favor.

Application #	Applicant Name:	Address:
037-23	Dease	14 Alderberry Ln
Document (s) Submitted:	Date Submitted:	Submitted By:
Application/fee	4/4/23	Donna Burke
Owner Authorization	}	}
(9) Copies site plan		
(9) sets circ. plans		
Request Abutt's	4/5/23	Ⓟ
Request referrals	4/5/23	Ⓟ
Email to agent	4/6/23	Ⓟ
Rec'd cert. Abutt's	4/11/23	Ⓟ
Referral - Fire Dept.	4/20/23	Ⓟ
Referral - Eng.	4/21/23	Ⓟ
Referral - Mail	4/28/23	Ⓟ
Referral - Eng.	5/5/23	Ⓟ
Letter Support - Maitor	4/21/23	Ⓟ
Letter Support - William	4/21/23	Ⓟ
Letter Support - Vezonia	5/8/23	Ⓟ
Letter Support - Daniel	5/10/23	Ⓟ
Letter Support - Cadmar	5/15/23	Ⓟ
Letter Support - Whik	5/15/23	Ⓟ
Letter Support - Atamian	5/17/23	Ⓟ
Letter Support - Zimmerman	5/17/23	Ⓟ

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Open Meeting:

- 1) Vote Minutes: April 27, 2023, May 4, 2023 and May 11, 2023
April 27, 2023 – Peterson made a motion to approve the minutes of April 27, 2023.
Finneran seconded the motion. Motion carried 6-0.
All in favor.
May 4, 2023 and May 11, 2023 - tabled
 - 2) Board Discussion –
Peterson – At some point can we have a discussion on whether we seek to have legal counsel for upcoming 40B applications? I believe that having that type of additional guidance is worthwhile.
Finneran – I would like to see what the Cape Cod Commission offers and what services are available to us.
Stockman – Under 40B with the current regulation, you can require the developer to pay for the peer review, but you cannot make them pay for your legal representation.
Morse – Did we get a standard legal budget?
Stockman – Our budget remains unchanged.
Morse – Any legal questions should go to Town Counsel, and if need be, a special counsel would be retained.
Duffy – It is always beneficial to collect money from the Applicant for a special “advisor”; these projects overwhelm the engineering department.
Stockman – For any 40B projects, we require them to fund a 53G account for the peer engineer reviews.
Duffy – The Applicant can say that you’re rendering the project uneconomical if you try to make them pay for legal counsel.
Finneran – There might be a place where we could use the Cape Cod Commission.
Peterson – What is the math formula for us to reach safe harbor?
Stockman – Affordable Housing now has a website, which includes the SHI list, so as the units are added, our percentage change, and it will be reflected.
Morse – I think we need to advise our new Town Administrator and Select Board that these need to be certified. If we hit certain benchmarks, it gives us more discretion. Our next scheduled meeting is June 8th, and I will not be at that meeting. There will be construction here at Town Hall that evening, and asbestos is involved.
Stockman – While we have a meeting scheduled, we will have to meet briefly to continue to a date and time certain, and we will meet in the basement.
 - 3) Board Updates - none
 - 4) Future Agenda Items – none
- Meeting adjourned 7:45 PM

Respectfully submitted,

Ashley E. DeMello, Office Assistant

Board of Appeals