



# TOWN OF FALMOUTH

## ZONING BOARD OF APPEALS

59 TOWN HALL SQUARE, FALMOUTH, MA 02540  
508-495-7460 – FAX 508-495-7463

Zoning Board of Appeals  
Attn: Board Members  
59 Town Hall Square  
Falmouth, MA 02540

April 6, 2020

**RE: Minutes for Public Hearings and Open Meeting held on March 5, 2020 at 6:30 PM in the Selectmen's Meeting Room – Town Hall Square**

Dear Board Members:

The attached minutes as referenced above are respectfully submitted for the Board's approval and to be filed with the Town Clerk:

#063-19 Kachadoorian / Balas, 18 Tashmoo Drive, East Falmouth  
#087-19 Kachadoorian / Balas, 18 Tashmoo Drive, East Falmouth  
#072-19 Mullen, 410 Surf Drive, Falmouth  
#078-19 Buzzards Bay Dev., LLC, 40 Shore Street, Falmouth  
#001-20 Chevalier, 426 Menauhant Road, East Falmouth  
#004-20 Garfield, 85 Fay Road, Woods Hole  
#003-20 Falmouth Housing Trust, lot 9 & 10 Pam's Way, East Falmouth

Terrence Hurrie, Chairman of Board of Appeals

Respectfully submitted  
Ashley DeMello, Office Assistant  
Noreen Stockman, Zoning Administrator

RECEIVED  
APR 6, 2020 PM 1:39  
TOWN CLERK

**Zoning Board of Appeals  
Selectmen's Meeting Room – Town Hall  
Minutes– March 5, 2020 at 6:30 PM  
Zoning Administrator: Noreen Stockman  
Present: Hurrie, Dugan, Van Keuren, Barry  
Absent: Morse, Foreman**

**MINUTES OF MARCH 5, 2020**

**Public Comment – none**

At the beginning of each application, Chairman Hurrie gave the applicant or their representative 3 options; proceed with a 4 member board, withdraw without prejudice and reapply or ask for a continuation to a future date.

**#063-19 & #087-19 Kachadoorian / Balas, 18 Tashmoo Drive, East Falmouth** – appeal of Building Commissioners inaction and denial letter of November 20, 2019

Voting Members: Hurrie, Dugan, Van Keuren, Barry

Dugan noted that a letter from Attorney Wall was submitted requesting a continuation to April 2, 2020.

Dugan made a motion to grant the continuation to April 2, 2020. Van Keuren seconded the motion. Motion carried 4-0.

All in favor.

“Agreement for Extension of Statutory Hearing, Decision and Filing Deadline” was signed by Mr. Wall and the ZBA on March 5, 2020

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**#072-19 Mullen, 410 Surf Drive, Falmouth** – modification of special permit #106-91 to allow an elevated bath house on existing pilings

Voting Members: Hurrie, Dugan, Van Keuren, Barry

Klauer – We would like to request a continuance, as the owner is looking at some different options. This permit involves several Boards.

Stockman – Mr. Foreman is expected to be absent on March 19, 2020. We are considering adding April 9, 2020 to the agenda.

Dugan made a motion to grant the continuation to April 9, 2020. Van Keuren seconded the motion. Motion carried 4.0.

All in favor.

“Agreement for Extension of Statutory Hearing, Decision and Filing Deadline” was signed by Mr. Klauer II on March 5, 2020, and the ZBA on March 6, 2020.

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**#078-19 Buzzards Bay Development, LLC, 40 Shore Street, Falmouth** – Comprehensive Permit to renovate existing single family dwelling and construct 7 single-family dwellings; 2 units to be affordable

Voting members: Hurrie, Dugan, Van Keuren, Barry

Klauer – We would like to request a continuance do to some things that have arisen. I would prefer to wait until Mr. Foreman is back, so we would have a full Board.

Stockman – Mr. Foreman is expected to be absent on the March 19, 2020. We are considering adding the April 9, 2020.

Dugan made a motion to grant the continuation to April 9, 2020. Van Keuren seconded the motion.  
Motion carried 4.0

All in favor.

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**#001-20 Chevalier, 426 Menauhant Road, East Falmouth** – special permit to construct in-ground pool; increasing lot coverages by structures

Voting members: Hurrie, Dugan, Van Keuren, Barry

Ken Breivogal, representative for applicant – We would like to request a continuation. We received a letter today from an abutter, and we would like some time to put another plan together, to show the plantings that we are proposing as a buffer. We would also like a full Board with 5 members.

Dugan made a motion to continue to April 9, 2020. Van Keuren seconded the motion. Motion carried 4-0.

All in favor.

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**#004-20 Garfield, Trustee, 85 Fay Road, Woods Hole** – special permit to allow 1<sup>st</sup> and 2<sup>nd</sup> floor additions to existing cottage

Voting members: Hurrie, Dugan, Van Keuren, Barry

Laura Moynihan, Attorney for the applicant – I would like to request a continuance, based on the fact that there is only a 4 member Board tonight.

Dugan – Because of our scheduling, every time we continue a hearing, another date gets bottlenecked. I don't think we have the luxury of doing a courtesy continuance. I understand from the applicant's point of view, but I don't think it can be done anymore; we are too busy.

Moynihan - I would ask that this be granted tonight, I was under the impression that I could request a continuance, so I told the applicant and architect not to come. I do understand your frustration, and will be aware going forward. I was told April 2, 2020.

Dugan made a motion to grant the continuance to April 2, 2020. Van Keuren seconded the motion. Motion carried 4-0.

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**#003-20 Falmouth Housing Trust, Inc., - Lots 9 and 10, Pam's Way, East Falmouth** – special permit to modify the January 23, 2019 and December 8, 2004 Planning Board decision regarding the affordable housing requirements.

Voting Members: Hurrie, Dugan, Van Keuren, Barry

Robert Ament, Attorney for applicant – We would like to request a continuance to your next available date. The reason for the request is that this is a unique application, and we would like a review from the full Board. I understand that concerns that have been raised from the Board tonight. We notified the members of the Housing Trust/staff as to the continuance, so they are not present. As a courtesy I contacted 2 neighbors who had written letters in opposition, so they could avoid coming down tonight.

Dugan – The only reason I would be in favor of a continuance is that one of the neighbors who was in opposition to the project and requested to have their letter read out loud was told not to come. I would also ask the Zoning Administrator to get in touch with that same party to confirm the future date.

Dugan made a motion to grant the continuance for application #003-20 to April 9, 2020. Van Keuren seconded the motion. Motion carried 4-0.

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**Open Meeting:**

- 1) Vote Minutes of 2/6/20 and 2/13/20 –

Dugan made a motion to approve minutes of 2/6/20. Van Keuren seconded the motion. Motion carried 4-0.

Dugan made a motion to approve minutes of 2/13/20. Van Keuren seconded the motion. Motion carried 4-0.

- 2) Chair to appoint interim full voting member –

Hurrie – I can appoint a temporary member until the Selectmen can fill the seat. I would like to appoint Mary Barry for this temporary full voting member position.

- 3) #117-15 MPG Corporation, 435 Palmer Avenue, Falmouth – request for Board Administrative Approval to allow minor changes to previously approved plans – vote anticipated  
Bob Ament ; representative for applicant MPG Corporation, which is the tenant at 435 Palmer Ave. In 2015 they obtained a special permit to raze the building. The Board approved a new building, and the decision referred to the existing canopy to remain, as well as the gas pumps. The decision was appealed to Superior Court and the judgment was issued in favor of the Board. This request is to make some changes to the design of the building; the changes don't effect the footprint or height, it's just more of an attractive design. The height of the new building will be 24'3", and is about 3' lower that what was originally approved. The height of the wall will increase to about 13'; slightly more wall and much less roof. The ceiling height inside will be a bit higher, and make more of a pleasant space.

Dugan – Is there a canopy with this?

Ament – There is an existing canopy over the gas pumps; the decision said it would remain. The canopy remains. I did submit a letter to the Board asking for the Board to administratively approve the reconstruction of the canopy, at the same location, design and appearance. The intentions were to repair the canopy, but the contractor has advised the owner that the cost would be about \$30,000 dollars. For a new canopy, the cost would be about \$33,000. It would be a minor change to the special permit approval. If you feel that we need to wait to post that at another meeting we can. However you think.

Hurrie – The change to the height, is that because of the court case?

Ament – The court found that there was no standing. It would be a more appealing design. We would submit a plan for the new construction of the canopy, and would confirm that the new structure can match the old.

Dugan made a motion to allow the Zoning Administrator to approve changes as discussed. Van Keuren seconded the motion. Motion carried 4-0.

- 4) Board Discussion –

Dugan – We really need to make clear that going forward with 4 members is not a legal issue. We are changing everything around on our end to accommodate them. I don't think we can do any more courtesy continuations. They need to understand that they can ask, but the Board



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may not grant it. I'm very taken back that an applicant told an abutter to not come to this hearing tonight. In review of the file, the person that was told not to come, specifically wanted a letter read into the record, and was in opposition of the project.

Hurrie – We can proceed with 4 members.

Barry - There were people that came from the Public who wanted to be heard and had to leave. Thomas Bott, Town Planner – Has the ZBA had a discussion about the Mullin rule? That allows a member to miss 1 meeting on an application but can still vote.

Dugan – We do use the Mullin Rule already.

- 5) Board Updates – Mary has volunteered to be with Bob at our recodification group.

Dugan – What is the status of the Selectmen regarding the process of appointing a new member? It seemed like that should have already happened. Is it on an agenda?

Stockman - The information was forwarded to the Board of Selectmen, and I understand that it was to be on their upcoming agenda. Is that something that you want to put in the rules and procedures?

Dugan – All our procedures are based off a quorum. We might put that we won't be accepting continuations based on members present. Five members is great, but the fifth member is not a requirement.

Hurrie - The Board has done this in the past, but we haven't had the schedule that we have now.

Dugan – They can ask, but they run the risk of the continuation being denied. I would like something exclusively to the public.

Barry - Regarding the vacancy, is there a 30 day requirement that the Selectmen fill the Board vacancy?

Hurrie – It looks like the Towns policies may or may not be in conflict with the state laws.

- 6) Future Agenda Items – Next Meeting March 10, 2020, Executive Session and the next Public Meeting is March 19, 2020 at 6:30 PM

Meeting Adjourned 7:40 PM.

Respectfully Submitted,

Ashley DeMello, Office Assistant

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