

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 031-17

**APPLICANT/OWNER:** NEUBAUER REALTY LLC of Falmouth, MA

**SUBJECT PROPERTY:** 15 Depot Avenue, Falmouth, Massachusetts  
**Assessor's Map:** Map 38A, Section 01, Parcel 070, Lot 000

**DEED/CERTIFICATE:** Book 25886 / Page 0100

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of April 20, 2017, the applicant applied to the Zoning Board of Appeals for a Modification of Special Permit #91-13 pursuant to Section(s) 240-3 C. of the Code of Falmouth to remove a second story deck with stairs to grade off the front structure and construct an addition to the northwest corner of the rear structure creating additional office space on subject property known as 15 Depot Avenue, 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 June 15, 2017.
4. The public hearing was terminated on June 15, 2017, wherein the Board consisting of Acting Chairman Paul Murphy, Acting Vice Chairman Ed Van Keuren, Acting Clerk Robert Dugan and Gerald Potamis (Dugan and Potamis are Associate Members sitting as voting members), made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was present at the hearing to review and discussed proposed plans with the Board.
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**

04/20/2017 Letter submitted to the file from Jodee P. Bishop of Hilton & Bishop, Counsellors at Law, dated April 20, 2017, in support of the removal of the deck off front building and addition to rear building.

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

06/14/2017 Letter from Jill Neubauer Architects submitted to the file regarding possible leasing of off-street parking at 10 North Main Street – signed by Ms. Neubauer and Intergas, Inc.

### Letters/Referrals/E-mails from Town Departments

- 04/25/2017 Referral submitted to the file from the Planning Department with no comment
- 04/25/2017 Referral submitted to the file from the Director of Assessing with no comment
- 04/25/2017 Referral submitted to the file from the Historical Commission that notes that application will be before the Historical Commission on 5/2/2017
- 04/27/2017 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment
- 05/22/2017 Referral submitted to the file from Conservation Commission that notes to contain stormwater on property
- 05/23/2017 Referral submitted to the file from Engineering Department with comments and attached information on zoning – see file
- 06/15/2017 A copy of the Certificate of Appropriateness dated May 5, 2017 for subject property from the Historic Commission was submitted to the file

### Plans submitted by Applicant/Applicant's Representative

“Site Plan – Proposed Addition” prepared for Jill Neubauer 15 Depot Avenue Falmouth, Massachusetts as drawn by BSS Design, Inc. dated April 10, 2017 with a final revision date of 6/14/2017 – plan is stamped and signed by Thomas Jackson Bunker, P.L.S. and with a Board date ‘received’ stamp of June 15, 2017; and

“Barn Addition 15 Depot Avenue” drawn by Jill Neubauer Architects consisting of Drawing A001-1 ‘Proposed on Site Parking’ with final date of 06/15/2017; Drawing A002-1 ‘Parking Access Plan’ with final date of 06/15/2017; Drawing A011-1 ‘Existing Plans – 1’ with final date of 06/15/2017; Drawing A021 ‘Existing Exterior Elevations – 1’ with a final date of 06/15/2017; Drawing A101-1 ‘Proposed Plans – 1’ with a final date of 06/15/2017; and Drawing A201 ‘Proposed Exterior Elevations – 1’ with a final date of 06/15/2017 – all plans with a Board date ‘received’ June 15, 2017.

#### Hearing:

Jill Neubauer reviewed the existing site plans and the proposed changes to the structures on site that include removal of the deck on the second story of the front structure and a small addition to the northwest corner of the rear structure. The structures are circa 1880’s; the front structure was remodel in 1972 to add a deck and stairway to allow for egress to the apartment on the second floor of said structure. The elimination of this deck and stairway on the front structure will create one additional parking space. The 12’ x 20’ addition to the rear structure will increase work space for the existing architectural firm operation in said structure.

The Board discussed plans and parking on site with Ms. Neubauer. Ms. Neubauer stated that there are now eight (8) total spaces on site and that they have not used the leased spaces in the past as there is nearby public parking spaces, however she does have the option to lease space with another business if the Board requires leasing of off-site parking. All other concerns and questions were addressed.

Chairman Murphy asked for any public comment in support or opposition of the proposed project. There was no public comment.

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

Chairman Murphy 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 15 Depot Avenue in Falmouth contains 10,443 square feet of Business 3 zoned land that is located within the Siders Pond Coastal Pond Overlay District and the Historical District. The applicant applied to modify existing Special Permit #91-13 under Section(s) 240-3 C. of the Code of Falmouth to remove second story deck with stairs to grade on front structure and to construct a 12' x 20' addition to the northwest corner of the rear structure to create additional workspace for the existing architectural firm business. The Board received a copy of the Certificate of Appropriateness from the Historical Commission for proposed project. It is noted that the addition to the rear building has been decreased in size and applicant will need to seek modification approval from the Historic Commission for said change.

Section 240-3 C. of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the proposed removal of the second story deck with stairs to grade on the front pre-existing nonconforming structure and the 12' x 20' addition to the rear pre-existing nonconforming structure on subject property will not be substantially more detrimental than what currently exists. The Board further finds that the removal of the deck and stairs on front structure will allow one additional parking space to the site; and that the addition to the rear structure will be in compliance with setback requirements of Section 240-68 B. of the Code of Falmouth. Furthermore, the Board finds that the proposed removal of deck from front structure and addition to rear structure on subject property creates a slight reduction from 35.72% to 35.54% in lot coverage by structures.

The Board finds that Section 240-69 A. of the Code of Falmouth states maximum requirement for Business 3 zoned districts to be 35% by structures and 65% by total lot coverage (structures/paving/parking). The 35% by structures under footnote 2 states: *For lots where 30% or more of lot area is covered by buildings lawfully in existence on April 2, 1979, additions may cover up to 40% of remain un-built lot area.* The structures on subject property were created prior to zoning as noted above.

The Board finds through testimony by the applicant that signage for 'Parking' will be placed at the two parking spaces on the westerly side of the rear building to indicate that there are two parking spaces there upon approval of this Special Permit by the Board.

In addition to the above findings, the Board finds that the proposed removal of deck and stairs off the front structure and the addition to the rear structure as discussed herein will be 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 proposed changes noted herein as there will be no increase to any existing nonconforming setback, no creation of additional nonconforming setbacks and no increase to existing lot coverage on subject property.

B. The site is suitable for the proposed uses as the subject property is zoned Business 3 and two businesses exist in the two structures on subject property.

C. There will be no impact on traffic flow and safety as there is no substantial increase to the existing workspace in the rear structure 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 as the alterations to front and rear structures will not be seen from the roadway; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is in place and is unaffected by the changes approved herein. It is noted that there is no referral from the Board of Health in the file, however, the Board of Health does sign off on projects prior to the issuance of a building permit.

F. There are adequate utilities to subject property by virtue of an existing businesses on site.

G. The proposed changes noted herein to the existing structures on subject property discussed and represented 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 proposed removal of the second story deck and stairs to grade off the front structure and the 12' x 20' addition to the rear structure 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 Dugan made a motion to Grant the Modification of previous 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 **4 – 0 to Grant the Modification of Special Permit #91-13** to Neubauer Realty LLC (herein referred to as Applicant) under Section(s) 240-3 C of the Code of Falmouth to remove a deck with stairs to grade off the second floor of the front structure and construct an addition to the northwest corner of the rear structure creating additional office space on subject property known as 15 Depot Avenue, Falmouth, MA. This special permit is subject to the following conditions:

1. The removal of the second story deck and stairs to grade from the front structure, construction of a 12' x 20' addition to the rear structure, all setbacks, parking, lot coverage and use of structures shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - "Site Plan – Proposed Addition" prepared for Jill Neubauer 15 Depot Avenue Falmouth, Massachusetts as drawn by BSS Design, Inc. dated April 10, 2017 with a final revision date of 6/14/2017 – plan is stamped and signed by Thomas Jackson Bunker, P.L.S. and with a Board date 'received' stamp of June 15, 2017; and
  - "Barn Addition 15 Depot Avenue" drawn by Jill Neubauer Architects consisting of Drawing A001-1 'Proposed on Site Parking' with final date of 06/15/2017; Drawing A002-1 'Parking Access Plan' with final date of 06/15/2017; Drawing A011-1 'Existing Plans – 1' with final date of 06/15/2017; Drawing A021 'Existing Exterior Elevations – 1' with a final date of 06/15/2017; Drawing A101-1 'Proposed Plans – 1' with a final date of 06/15/2017; and Drawing A201

'Proposed Exterior Elevations – 1' with a final date of 06/15/2017 – all plans with a Board date 'received' June 15, 2017.

2. The applicant shall install a 'Parking' sign at each of the two parking spaces on the westerly side of the rear structure upon approval of this Special Permit Modification.
3. 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.
4. 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.)
5. This permit shall lapse three years from the date on which this decision is filed in the Town Clerk's office if a substantial use of the Special Permit has not sooner commenced except for good cause as determined by the Board of Appeals.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number:       **031-17**

Applicant:                       **NEUBAUER REALTY LLC of Falmouth, MA**

Subject Property:               **15 Depot Avenue, Falmouth, Massachusetts  
Map 38A, Section 01, Parcel 070, Lot 000**

Action:                    The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote:                      4 – 0 to Grant Modification of Special Permit #91-13 as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



**Edward Van Keuren, Acting Vice Chair, Board of Appeals**

**RECEIVED**

**JUN 26 2017**

FALMOUTH TOWN CLERK

AP @ 3:25 pm  
**Date Filed With Town Clerk**

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.