

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 013-18

**APPLICANT/OWNER:** ALFRED S. LARKIN, JR. and WENDY E. FOX of Milton, MA

**SUBJECT PROPERTY:** 34 Deacons Avenue, Unit 2, Falmouth, Massachusetts  
**Assessor's Map:** Map 46B Section 02 Parcel 006 Lot 002U

**DEED/CERTIFICATE:** Book 10828 / Page 279

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of February 14, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to remove existing deck and construct an addition increasing habitable space within the pre-existing nonconforming dwelling on subject property known as 34 Deacons Avenue, Unit 2, Falmouth, Massachusetts.
2. Notice was duly given as required by Section 11 of Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.
3. A duly advertised public hearing was opened on April 5, 2018.
4. The public hearing was closed on April 5, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk Ed Van Keuren, Member Paul Murphy and Alternate Robert Dugan (sitting as voting member) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Attorney Kevin P. Klauer, II who reviewed 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**

04/05/2018 Email letter submitted to the file from Beverley Earle and John Sloan of 34 Deacons Avenue, Unit 1 that states support of the proposed addition

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

02/14/2018 Attorney Klauer submitted along with the application copies of previous special permits on subject property (see file)

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

- 02/20/2018 Referral submitted to the file from Director of Assessing with no comment
- 02/21/2018 Referral submitted to the file from Planning Department staff with no comment
- 02/23/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 03/19/2018 Referral submitted to the file from the Town Engineering Department with standard comments and a note that they recommend adding drywells, rain garden, or other stormwater measure for the roof in close proximity to Falmouth Harbor
- 04/02/2018 ZBA staff submitted to the file a copy of the Administrative Review approved by Conservation Commission – dated 2/9/2018

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

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

“Certified Plot Plan” for Proposed Addition 34 Deacons Avenue in Falmouth, Massachusetts” prepared for Alfred S. Larkin, Jr. and Wendy E. Fox as drawn by Cape & Islands Engineering – Sheet 1 of 1 dated December 29, 2017 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of February 23, 2018; and

“Al Larkin & Wendy Fox 34 Deacons Ave, Falmouth, MA” architectural plans drawn by Longfellow Design-Build consisting of: Drawings A0.0 ‘Cover’ dated 2/07/18, A0.1 ‘Demolition Plans’ dated 2/07/18, A1.1 ‘Proposed First Floor Plan’ dated 2/07/18, A1.2 ‘Proposed Second Floor Plan’ dated 2/07/18, A2.1 ‘Elevations’ dated 2/07/18 and A2.2 ‘Elevations’ dated 2/07/18 – all Drawings have a Board date ‘received’ stamp of February 14, 2018.

#### Hearing:

Attorney Klauer reviewed the existing 11,969 square foot lot that has two condo units that were approved through a special permit in 1997 under Section 240-23 B. of the Code of Falmouth. The existing structure has a nonconforming setback to the northeasterly side yard property line of 4.5’ that requires a 10’ setback under the Code of Falmouth and there is an existing shed in the front with a 9.6’ setback to the front property line, which was through benefit of a special permit and variance in 1994. Attorney Klauer noted that the shed will be removed and not replaced or relocated on subject property. He reviewed the removal of a deck on the southwesterly side of the existing structure and the construction of a 13.2’ x 17’ addition in its place that will increase the living space on the first and second floor of Unit 2. Unit 2 is currently three (3) bedrooms and will remain three (3) bedrooms through this special permit application. The addition to the first floor will allow for a family room that will be completely open to the existing kitchen and other living space; the addition to the second floor

will allow for a bedroom to be increased to a master bedroom/bath. He explained that the lot coverage by structures which is nonconforming at 28% was conforming until 2002 when the Town voted to decrease the lot coverage by structures on a lot from 35% to 20% (up to 25% through a special permit) under Section 240-69 of the Code of Falmouth. The plan for this addition and through removal of the existing shed will decrease the nonconforming lot coverage by structures from 28% to 27.6%. There will be no increase to the existing nonconforming setback on the northeast side of the dwelling and no new nonconformities will be created through this special permit request. Attorney Klauer reviewed Section 240-216 noting that the proposed met all criteria in said section.

The Board discussed plans with Attorney Klauer and asked if the owners of Condo 1 were in agreement with the removal of the shed and plans for the addition to Unit 2. Attorney Klauer noted that the owners of Unit 1 are aware and have no objections (see email letter submitted to the file from owners of Unit 1 on subject property).

Chairman Foreman 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 Hurrie seconded the motion. Motion carried 5 - 0.

Chairman Foreman closed the hearing.

### **FINDINGS**

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

The subject property located at 34 Deacons Avenue contains 11,969 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to remove existing deck, remove existing shed and construct an addition to increase habitable space within the pre-existing nonconforming structure on subject property. There are two units on subject property (condo units) that were approved through Special Permit #48-97 under Section 240-23 B. to convert a dwelling into up to four (4) units. The existing shed that is to be removed from the property, and not be replaced or relocated, was granted a variance and special permit to be located 9.6' from the front property line. Unit 1 on subject property is a two-bedroom unit and Unit 2, subject of this application, is a three-bedroom unit. The height of the structure that is well below the 35' maximum height allowed under Section 240-70 of the Code of Falmouth, will not be increased through this special permit and the nonconforming setback of 4.5' to the northeasterly side yard property line will remain as it exists. The lot coverage by structures of 28% will be slightly reduced to 27.6%. The proposed addition will create a new family room on the first floor of Unit 2 and take an existing bedroom on the second floor and convert it to a master bedroom/bath. The number of bedrooms existing at three (3) will remain with no increase of bedrooms.

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 existing deck, removal of a shed and the two-story addition to Unit 2 of the pre-existing nonconforming structure on subject property is not substantially more detrimental than what currently exists as the addition will not increase the nonconforming side yard setback of 4.5' to the northeasterly property line, it removes a shed in the front yard with a 9.6' setback to front property that was approved through a special permit and variance and the project slightly decreases the nonconforming lot coverage by structures from 28% to 27.6%. The Board further finds that the proposed removal of the shed and the proposed addition will enhance the property and the utilization of Unit 2 for its occupants. Furthermore, the Board finds that there is no increase in the number of bedrooms in Unit 2 (3 bedrooms) and Unit 1 (2 bedrooms) on subject property that is not attached to Town sewer.

The Board finds that the applicants received approval for the proposed project from Conservation Commission under an Administrative Review that was approved on 2/9/2018 (see document submitted to file).

The Board finds that the height of the existing structure on subject property will remain as existing with the addition meeting the existing ridge height of the structure. The Board further finds that the subject property has had benefit of several special permits and one variance over the years that brought the lot coverage by structures up to 28%. However, the Board finds that the lot coverage by structures was 35% until a Town Meeting in 2002 decreased the by-right maximum lot coverage by structures from the 35% to 20% in a residential district, thereby making the lot coverage by structures on subject property nonconforming.

The Board finds that the owner of Unit 1 on subject property has no objections to the property (removal of shed) and proposed addition to Unit 2 (see email letter submitted to the file).

In addition to the above findings, the Board finds that the proposed removal of shed and proposed addition 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 addition to the condo structure on subject property as the nonconforming lot coverage by structures will be slightly improved, there will be no new nonconformities created and there will be no increase to the existing nonconforming side yard setback on subject property.

B. The site is suitable for the proposed use as the property is zoned residential and was granted a special permit to be allowed to be converted to a two dwelling structure (Special Permit #48-97 submitted to file) under Section 240-23 B. of the Code of Falmouth.

C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property and there is no change in the location of the existing driveway on site.

D. The visual character of the subject property will be improved and there does not appear to be any impact on the neighborhood's visual character as there are several houses in the surrounding area that have been improved such as this; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is unaffected by this application as there is no increase in the number of bedrooms on subject property. The Board of Health does review and sign off on building permit application prior to issuance of a building permit.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant will have to contact the Town Water Department regarding updating of water service line as the Board did not receive a referral from the Water Department.

G. The proposed dwelling addition discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. There was no Site Plan Review required by the Planning Board and the referral submitted to the file from the Planning Department had no comment.

I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformities stated herein.

J. The approval of this special permit does not include any affordable housing.

The Board of Appeals has weighed the effects of the proposed addition 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 Hurrie made a motion to Grant the Special Permit with conditions. Member Van Keuren seconded the motion.

#### **NOW THEREFORE**

**BE IT RESOLVED**, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted **5 – 0 to Grant the Special Permit** to Alfred S. Larkin and Wendy E. Fox (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to remove existing deck on the southwesterly side of structure, remove and not relocate or replace shed and construct a two-story addition to the pre-existing nonconforming condominium structure (two units) on subject property known as 34 Deacons Avenue, Unit 2, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The removal of the shed, removal of the deck on southwesterly side of structure, construct a two-story addition at southwesterly side of structure, height of structure, lot coverage, setbacks and use of the addition shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - “Certified Plot Plan” for Proposed Addition 34 Deacons Avenue in Falmouth, Massachusetts” prepared for Alfred S. Larkin, Jr. and Wendy E. Fox as drawn by Cape & Islands Engineering – Sheet 1 of 1 dated December 29, 2017 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of February 23, 2018; and
  - “Al Larkin & Wendy Fox 34 Deacons Ave, Falmouth, MA” architectural plans drawn by Longfellow Design-Build consisting of: Drawings A0.0 ‘Cover’ dated 2/07/18, A0.1 ‘Demolition Plans’ dated 2/07/18, A1.1 ‘Proposed First Floor Plan’ dated 2/07/18, A1.2 ‘Proposed Second Floor Plan’ dated 2/07/18, A2.1 ‘Elevations’ dated 2/07/18 and A2.2 ‘Elevations’ dated 2/07/18 – all Drawings have a Board date ‘received’ stamp of February 14, 2018.

2. There shall be no more than five (5) bedrooms allowed on subject property: two (2) bedrooms in Unit 1 and three (3) bedrooms in Unit 2.
3. There shall be no derogation from conditions set forth in previous special permits and variance on subject property except as stated herein (see file for special permits and variance). It is noted that the variance will be extinguished through the removal of the shed as requested herein on application.
4. 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.
5. The Applicant shall meet the requirements of the DPW Water Division.
6. 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.)
7. This permit shall lapse three (3) 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: **013-18**

Applicant: **ALFRED S. LARKIN, JR. and WENDY E. FOX of Milton, MA**

Subject Property: **34 Deacons Avenue, Unit 2, Falmouth, Massachusetts  
Map 46B Section02 Parcel 006 Lot 002U**

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

Vote: 5 – 0 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



**Terrence J. Hurrie, Vice Chairman, Board of Appeals**

**RECEIVED**

**APR 18 2018**

**FALMOUTH TOWN CLERK**

*sp@1135am*

**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.