



TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

CASE NO: 071-19

APPLICANT/OWNER: Christopher E. Pernock Jr., Trustee, Seahorse Realty Trust

P.O. Box 120, Easton, Massachusetts

SUBJECT PROPERTY: 40 Deacons Avenue, Falmouth, Massachusetts

Assessor's Map: Map 46B Section 02 Parcel 007 Lot 013

DEED/CERTIFICATE: Book 15019 Page 0282

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. On October 9, 2019, an application was filed with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-3 C. (1)(b) of the General Code of the Town of Falmouth, to renovate the first floor deck and add a second floor deck, with associated structure to grade at 40 Deacons Avenue, Falmouth, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the tax list.
3. The previous Zoning Board of Appeals case for the Premises include:
  - #161-94: granted a special permit for renovation and expansion, filed with the Town Clerk on January 18, 1995
  - #20-96: granted a special permit to allow a 12-foot by 12-foot shed in the front yard, filed with the Town Clerk on April 17, 1996

- #21-96: granted a variance to locate an accessory structure a minimum of 50 feet from the street property line at 40 Deacon's Avenue, filed with the Town Clerk on April 17, 1996

4. The advertised public hearing was opened on November 21, 2019. Board members present included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Gerald Potamis.

5. Gerrit Frase, architect, 74 Dove Hill Road, North Falmouth, Massachusetts, appeared before the Board, representing the Applicant.

6. The public hearing was closed on November 21, 2019, following a motion made by Mr. Dugan, which was seconded by Mr. Van Keuren, and unanimously voted. Minutes of the hearing(s) are on file with the Zoning Board of Appeals.

7. The following documents and information are on file in the office of the Zoning Board of Appeals at Town Hall, as set forth below:

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

- October 16, 2019 Gerrit Frase, representative, submitted application, filing fee, owner authorization and plans

Letters/Referrals/E-mails from Town Departments

- Referral from the Health Department: *Proposed project appears to have no impact on the septic system in terms of setbacks and bedroom count* signed by Health Agent, Scott McGann, October 19, 2019
- Referral from Falmouth Fire Department with no comment, signed October 21, 2019
- Referral from Planning Department with no comment, signed October 17, 2019
- Referral from Assessors: *includes lots 12, 13, 22 & 23* signed by Patricia Favulli, Director of Assessing October 21, 2019
- Referral from Engineering with standard comments and a recommendations; *while there is a rock with "40" engraved on it at the corner of Vernon and Deacon, we recommend that the number be posted on the house itself. The rock is tucked into landscaping and isn't prominent enough. We recommend the following condition for any approval (or similar): "Upon completion of construction, the applicant shall post the address for the residence per §99-1 Affixing of legible numbers required; time limit for compliance"* signed by Scott Schluter, P.E., November 6, 2019
- Referral from Conservation: Con Com approved an RDA for this work on 11/6/19
- ZBA staff submitted copies of previous special permits No's: 161-94, 20-96, 21-96

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

Letters/E-mails from Abutters/Interested Parties

- Letter dated October 17, 2019 from Al Larkin and Wendy Fox – 34 Deacons Avenue, Falmouth

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

- 'Proposed Deck Plan' 40 Deacons Avenue, Falmouth, Massachusetts, sheet 1 of 1, dated October 11, 2019 with a final revision date of October 16, 2019, as drawn by Cape & Islands Engineering, 800 Falmouth Road, Suite 301C, Mashpee, Ma; prepared for Christopher E. Pernock Jr., Trustee Sea Horse Realty Trust, PO Box 120, Easton, MA 02334-0120 – plan was stamped and signed by Matthew C. Costa, P.L.S; and
- Pernock Residence – Renovation ' Existing partial floor plan and section', sheet EX101, 'Existing Partial Elevations' sheet EX201, 'Proposed partial floor plans' sheet A101, 'Proposed Elevations' sheet A201 - all plans are dated July 17, 2019 with a final revision date of October 10, 2019, 40 Deacons Ave, Falmouth, MA as drawn by GF Architecture 74 Dove Hill Road, North Falmouth, MA

### Hearing:

The Notice of Hearing and referrals were read into the record.

Appearing before the Board was Gerrit Frase, architect and representative for the Applicant, who stated that the owners seek a renovation of the existing first floor deck. Mr. Frase stated that the existing deck is curved, and they would like to instead square the deck. He reported that it is difficult to put any furniture on the existing deck, due to the curved portion. They also seek to add a second floor deck directly above the existing deck.

The existing house is pre-existing non-conforming due to the existing encroachment into the front yard setback and exceeding the maximum allowance for lot coverage by structures and structures/parking/paving. Mr. Frase stated that the change in the first floor deck involved reducing the length to insure that the area remained the same. The second floor deck will have eaves that match the existing structure and will be placed within the roof. The existing roof will remain unchanged.

There was one letter submitted in support of the project. There was no public comment.

Mr. Dugan made a motion to close the hearing, which was seconded by Mr. Van Keuren, and unanimously voted.

### Findings:

The subject property, 40 Deacons Avenue, Falmouth, Massachusetts (the "Premises") is located in the Single Residence C zoning district, the Falmouth Inner Harbor Coastal Pond Overlay District, and the FWR buffer zones A and B, within 100 feet of the coastal bank. The lot comprises 11,969 square feet of area. The dwelling is nonconforming as it is sited 15.6 feet from the street, with a set of stairs 9.9 feet from the street, in a district requiring a minimum street setback of 25 feet. The existing lot coverage by structure exceeds the 25% maximum allowed under the By-Law, at 25.9%. The existing lot coverage by structures/parking/paving exceeds the 40% maximum allowed under the By-Law, at 47.5%. The proposal involves reconstructing the first floor deck at the northerly corner of the dwelling, resulting in no change to the pre-existing nonconforming lot coverage by structures of 25.9%. The first floor deck will be further from the beach and bank than the existing stairs, which are 58 feet from the top of the coastal bank.

A Request for Determination of Applicability for the project was approved by the Conservation Commission on November 6, 2019; the deck is no closer to resource areas.

Engineering requires that the Applicant shall post the address for this residence, per §99-1, in legible numbers.

In addition to the above findings, the Board finds that the proposed dwelling will be in harmony with the general purpose and intent of the By-Law, and does include consideration, as set forth in Section 240-216 of the Code of Falmouth.

The Zoning Board of Appeals weighed the effects of the decks at the Premises, as discussed herein, and found that the beneficial effects of granting this special permit outweigh any negative effects there may be. The Board further found that the granting of this special permit will be in harmony with the purpose and intent of the Zoning By-Law, and that the change, extension or alteration shall not be substantially more detrimental to the neighborhood, and will not nullify or substantially derogate from the intent or purpose of the By-Law.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under Section(s) 240-3 C (1) (b) of the General Code of Falmouth, following a motion made by Mr. Foreman, and seconded by Mr. Van Keuren, voted 5 to 0, to grant a special permit, for renovation of the first floor deck and added second floor deck, with associated structure to grade at 40 Deacons Avenue, Falmouth, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

Conditions:

1. The construction shall be as shown on the plans:
  - 'Proposed Deck Plan' 40 Deacons Avenue, Falmouth, Massachusetts, sheet 1 of 1, dated October 11, 2019 with a final revision date of October 16, 2019, as drawn by Cape & Islands Engineering, 800 Falmouth Road, Suite 301C, Mashpee, Ma; prepared for Christopher E. Pernock Jr., Trustee Sea Horse Realty Trust, PO Box 120, Easton, MA 02334-0120 – plan was stamped and signed by Matthew C. Costa, P.L.S; and
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2. The first floor deck will be no closer to the northerly lot line (street) than 15.8 feet. The lot coverage by structures will remain at 25.9%. The lot coverage by structures/parking/paving will remain at 47.5%.
3. The Applicant shall post the address for this residence, per §99-1, in legible numbers, prior to the final building permit sign off.
4. The Applicant shall comply with Conservation Commission requirements.
5. No stormwater runoff may be directed off the Premises to right-of-ways or abutters.

6. Any deviation, no matter how minor, from plans submitted and approved by this Board, shall be submitted to the Board for approval, prior to implementation of said change. The Zoning Administrator may make a determination as to whether the changes are minor in nature, and can be approved administratively, or whether they will require a hearing for an amendment. Changes made prior to an approval may be subject to a full hearing, and are at risk that the ZBA may deny the request.

7. 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.)

8. This special 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 Zoning Board of Appeals.

9. The Zoning Board of Appeals reserves the right to recall the Applicant, with such notice as the Board deems proper, to discuss any unresolved matters of concern.

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

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

The Zoning Board of Appeals, by the signature below, certifies the vote of the Board:



Robert B. Dugan, Falmouth Zoning Board of Appeals

RECEIVED  
DEC 30, 2019 PM 3:10

TOWN CLERK

Date Filed With Town Clerk