



TOWN OF FRAMINGHAM  
ZONING BOARD OF APPEALS

150 Concord Street B2  
Framingham, MA 01702

CITY OF FRAMINGHAM  
CITY CLERK'S OFFICE

2017 DEC 26 P 2: 19

**BOARD OF APPEALS CASE NO. 17-52**

**PETITION OF DAVID FARMER**

**DATE OF DECISION: DECEMBER 12, 2017**

**1. Application**

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of DAVID FARMER (hereinafter the Applicant), for property located at 94 PINCUSHION ROAD. This Decision is in response to a Petition for a Variance for a deck within the required front setback as specified in the Zoning By-Law (hereinafter the Application).

**2. Property Owner and Applicant**

David Farmer  
94 Pincushion Road  
Framingham, MA 01702

**3. Location**

Property is located at 94 Pincushion Road and identified by Assessors' Parcel ID 133-25-1558-000 (hereinafter the Site).

**4. Board Action**

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on December 12, 2017 the Board voted to GRANT the requested VARIANCE by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
SUSAN CRAIGHEAD	YES
STEPHEN MELTZER	YES

**5. Proceedings**

The Application was received by the Board on November 14, 2017 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Board considered the Application at a duly noticed public hearing on December 12, 2017 at 7:30 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan Craighead, Stephen Meltzer, and Alternates Robert Snider, Edward "Ted" Cosgrove, Joseph Norton, and Rick McKenna were present throughout the proceedings. Due to potential imminent changes to the makeup of the Board, Mr. Ottaviani appointed multiple alternates. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision

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constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

The Applicant, Mr. David Farmer, was present and explained the existing raised concrete slab. He explained the request was to build a deck over the existing concrete and extend roughly five feet. He stated the work was started but was stopped after being approached by Code Enforcement. Mr. Ottaviani stated he was familiar with the site and its uniqueness. Being on a corner requires 30-feet of setback on multiple sides, the lot line is at an angle and a deck could not be placed elsewhere on the site. Board members voiced no concern.

## **6. Exhibits**

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Application filed with the Building Official to convert existing concrete patio into deck with five foot extension, denied on November 3, 2017.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on November 17, 2017.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Conservation Commission comments dated December 8, 11, and 12, 2017.
- 6.5. Photographs (7) depicting existing patio conditions submitted with application, November 14, 2017.
- 6.6. Hand-drawn structural diagram indicating dimensions, submitted with application, November 14, 2017.
- 6.7. Site plan entitled "Certified Plot Plan", dated October 31, 2017, prepared by New England Land Survey, 710 Main Street, N. Oxford, MA 01537.

Exhibits 6.6 and 6.7 shall be hereinafter referred to as the "Plans".

## **7. Findings and Conclusions**

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1. The property is located within Single Family Residence (R-1) zoning district.
- 7.2. On November 3, 2017, the Building Official denied the Application for a permit for a deck composite addition, pursuant to Section IV.E.2 of the Zoning Bylaw.
- 7.3. On November 17, 2017, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Variance from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on November 26 and December 3, 2017 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11. No Town Meeting Members appeared at the hearing.
- 7.5. The required front setback in the R-1 zoning district is 30 feet. The proposed deck would be 18.8 feet from the front property line.

- 7.6. The Board is satisfied that no direct abutters came forward to object to the proposed deck expansion. The Applicant made a case that there is no other place on the property where a deck could be constructed, due to the unique shape of the lot and existing concrete slab patio; and that the proposed location would be most accessible and non-detrimental to the neighborhood. The preexisting concrete slab is 30 inches off the ground, 9 feet 3 inches wide, and 14 feet 3 inches in length. The proposed deck would extend an additional 5 feet, totaling 12 feet from the dwelling.
- 7.7. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.
- 7.8. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The Board finds that this parcel is unique, in that the lot is a constrained corner lot subject to multiple front setback requirements and cannot accommodate a deck anywhere else.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.
- 7.9. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *A literal enforcement of the provisions of the Bylaw would prevent a deck from being constructed on the property, which would cause hardship to the Applicant.*
- 7.10. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *No neighbors have objected to the proposed project. The proposed deck will not be visually obtrusive to the neighborhood.*
- 7.11. The Board grants this Variance with the following conditions:
- 7.11.1. The proposed deck shall be located and constructed as shown on the Plans.
- 7.12. This Decision applies only to the requested Variance. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.13. If the rights authorized by this Variance are not exercised within one year of the date of grant of such Variance, such rights shall lapse. The Applicant may request an extension to the one-year period by submitting a written Application for extension prior to expiration of the one-year period. However, it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board

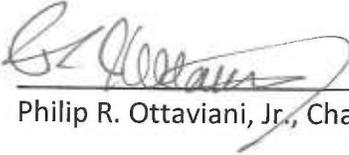
fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by this Variance shall lapse at the expiration of the one-year period. If the Variance lapses, such rights pertaining to the Variance may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.

- 7.14. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official
- 7.15. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the Town of Framingham.

**8. Appeals**

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By:   
Philip R. Ottaviani, Jr., Chairman