

## Zoning Board of Appeals Decisions Decisions for: 11-12-2015

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 87-15

APPLICANT: ANDREAS & JOAN SPALARIS

DEED/CERTIFICATE: Book 2907 / Page 341

LOCATION OF PROPERTY: 78 Squibnocket Dr., East Falmouth, Massachusetts  
Map 32, Section 04, Parcel 008, Lot 047

Under a date of September 15, 2015, the Applicant applied to the Zoning Board of Appeals for a Special Permit under Section 240-68 D. of the Code of Falmouth to locate a dwelling less than 50' from the waters of Vineyard Sound on subject property known as 78 Squibnockett Drive in East Falmouth, Massachusetts.

A public hearing was held on November 12, 2015. Notice was duly given as required by Section 11, 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 all parties desiring to be heard were heard.

Board Members sitting: Chairman Kimberly Bielan, Clerk Terrence J. Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Mark Cool sitting as voting member

Clerk Hurrie read the Notice of Public Hearing into the record and reviewed the referrals from the Town Departments that were submitted to the file.

Michael J. Borselli, P.E., with Falmouth Engineering, Inc. is present on behalf of the applicants to discuss the proposed location of a new single-family dwelling on subject property. Mr. Borselli reviewed the proposed plot plan showing the location of a future dwelling that will be 38 feet from the 3' contour line off Eel Pond [waters of Vineyard Sound]. Mr. Borselli explained that the applicant applied under Section 240-68 D. of the Code of Falmouth which states no principal structure shall be constructed within 50' of the waters of Vineyard Sound or a coastal pond, which in this case is Eel Pond, unless criteria under subsection (2) of this section can be met. Mr. Borselli reviewed the plan showing that the proposed dwelling and subject property meets the criteria as the depth of the lot is only 90' and therefore a special permit to construct a single-family dwelling no less than 38 feet from the measured water's edge as shown on the plan may be allowed by the Board.

Mr. Borselli explained that the Conservation Commission denied the project in 2008 and the applicant appeal the Commission's Decision to Superior Court. The court remanded the project back to Conservation Commission and there is an 'Amended Order of Conditions', and a copy of said amendment was submitted to this file. He said the timeframe for the Special Permit granted by the Board of Appeals expired during the appeal process of the appeal of the Conservation Commission's decision, so the applicant is back in front of the Board of Appeals once again requesting a special permit to construct a dwelling that will have a 38' setback to the 3' contour line off Eel Pond [waters of Vineyard Sound]. Mr. Borselli stated that the Board of Health has approved the installation of a denitrification system on subject property.

Chairman Bielan asked if there is any public comment in support or opposition to the proposed project. There was no public comment.

Member Cool made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 to 0 to close hearing.

Chairman Bielan 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 78 Squibnocket Drive in East Falmouth contains 11,782 square feet of Agricultural B zoned land that is located in the Eel Pond Coastal Pond Overlay District. The applicant applied under Section 240-68 D. of the Code of Falmouth to allow a principal dwelling to be located no less than 50' from the 3' contour line of Eel Pond [waters of Vineyard Sound] unless criteria under subsection (2) of this section can be met which would allow structure to be no less than 30' from the 3' contour line at the waters of Eel Pond.

Section 240-68 D. (2) of the Code of Falmouth states 'any lot shown on a plan or described in a deed duly recorded at the Registry of Deeds that has less than 125 feet depth from the measured water mark to the front, side or rear lot line, whichever is greater, shall be eligible to apply to the Board of Appeals for a special permit to construct a single-family residence if, when all setbacks are taken into consideration, including the fifty-foot setback required herein, the minimum average width of the remaining building envelope is less than 60 feet. In no case shall the Board of Appeals grant a special permit to construct a single-family residence less than 30 feet from the measured water's edge, as described above.'

The Board finds that the subject property, based on testimony by the representative, Michael Borselli, P.E., with Falmouth Engineering, Inc., and a Plot Plan, prepared for 78 Squibnocket Drive, drawn by Falmouth Engineering, Inc., shows that the criteria of Section 240-68 D. sub-section (2) has been met. The Board further finds that the subject property is the only lot left in the subdivision that has not been developed.

The Board finds that the proposed location of a single-family dwelling on the subject property, including its 38' setback from the 3' contour line of Eel Pond is consistent with the setbacks of properties in the neighborhood. The Board further finds that there are no objections to the proposed setbacks submitted to the file from any abutter or interested party.

The Board finds that the Applicant is proposing to install a Singulair Denitrification Septic System on subject property and that approval was received from the Board of Health. The Board further finds that the Conservation Commission has issued an 'Amended Order of Conditions'.

The Board finds that the site is adequate and suitable for the proposed use of a single-family dwelling on the subject property that is Agricultural B zoned district.

The Board finds that the proposed, as it is relevant, meets the criteria set forth in Section 240-216 of the Code of Falmouth.

There is no decision of the Planning Board to consider, as this proposal is not subject to review by the Planning Board under Site Plan Review and the referral submitted by the Planning Board stated no comment.

The Board has weighed the beneficial and adverse effects of the proposed single-family dwelling location and its setbacks on subject property 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 Bylaw.

Member Cool made a motion to Grant the Special Permit with conditions. Member Murphy seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (hereinafter referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth, hereby vote 5 – 0 to Grant the Special Permit to Andreas & Joan Spalaris (hereinafter referred to as Applicant) pursuant to Section 240-68 D. (2) of the Code of Falmouth to locate a single-family dwelling 38' from the 3' contour line of Eel Pond off Vineyard Sound on subject property at 78 Squibnocket Drive, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The single-family dwelling will be constructed within the setbacks and lot coverage as represented to this Board and as shown on the "Plot Plan for 78 Squibnocket Drive" prepared for Andreas and Joan

Spalaris, drawn by Falmouth Engineering, Inc., dated January 24, 2008 with a final revision date of 4/30/202, consisting of Sheets 1 of 3 through 3 of 3, and with a Board stamped 'received' date of September 15, 2015.

2. 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.

3. The applicant shall meet the requirements of the DPW Water Division.

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 has been filed in the office of the Town Clerk and no appeal has been filed, is recorded in Barnstable Registry of Deeds.

5. This permit shall lapse two years from the date on which this decision is filed in the Town Clerk's office if a substantial use thereof 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: 87-15

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Applicant: ANDREAS & JOAN SPALARIS

Address: 78 Squibnocket Drive, East Falmouth, Massachusetts  
Map 32, Section 04, Parcel 008, Lot 047

Action: The Board of Appeals, by their signatures below, being present, voted as follows for the above referenced:

Vote: 5 – 0 to Grant the Special Permit requested as presented with the above stated Conditions.

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Kimberly Bielan, Chairman

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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 Town Clerk.

**Notes:**

SP 87-15 Spalaris / Filed w/ Town Clerk 11/20/15