

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 076-17

**APPLICANT/OWNER:** RICHARD J. PROVENZANO & NANCY R. PROVENZANO  
of Woburn, MA

**SUBJECT PROPERTY:** 21 Hawthorne Court, Falmouth, Massachusetts  
**Assessor's Map:** Map 46B Section 22 Parcel 012 Lot 017

**DEED/CERTIFICATE:** Book 4823 / Page 334

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of August 25, 2017, 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 raze and reconstruct the pre-existing nonconforming single-family dwelling on subject property known as 21 Hawthorne Court, 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 October 19, 2017.
4. The public hearing was closed on October 19, 2017, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren and Member Paul Murphy 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 with Ament Klauer LLP, 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**

None

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

10/12/2017 Attorney Klauer submitted to the file a letter to the Board of Appeals dated October 12, 2017 regarding proposed project on behalf of applicant

10/12/2017 Attorney Klauer submitted to the file calculations of properties and building size and stories within the general vicinity of subject property

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

08/29/2017 Referral submitted to the file from the Planning Department staff with no comment

08/30/2017 Referral submitted to the file from the Director of Assessing that notes: *Includes Lots 17 and 19*

08/30/2017 Referral submitted to the file from the Water Department stating: *Water service is from a 2" 1930 water line. Water supply is limited available pressure and if work includes an irrigation system there is unlikely to be adequate supply*

08/31/2017 Referral submitted to the file from the Falmouth Fire Rescue Department with no comment

09/06/2017 Referral submitted to the file from Conservation Commission that states: *No filing received yet: needs RDA filing that shows 1) FF elevation is at least 1ft above base flood elevation; and 2) stormwater contained on property with roof gutters to drywells and trench drain in driveway*

09/29/2017 Referral submitted to the file from Town Engineering Department with standard conditions and notes to post house number visible from the street; and there is a road cut moratorium for Hawthorne Ct until April 2021.

10/17/2017 ZBA staff submitted to the file a copy of the 'Determination of Applicability' for proposed project – signed by Conservation on 10/11/2017

Note: Referrals from ZBA staff were sent to Assessors, Building Department, Conservation Commission, Engineering, Board of Health, Fire Department, Planning, Board of Selectmen and Water Department

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

"Plot Plan – Existing House" prepared for Richard & Nancy Provenzano 21 Hawthorne Court Falmouth, Massachusetts as drawn by BSS Design, Inc. dated April 21, 2017 – plan is stamped and signed by Thomas Jackson Bunker, P.L.S. with a Board date 'received' stamp of October 12, 2017;

"Plot Plan – Proposed House" prepared for Richard & Nancy Provenzano 21 Hawthorne Court Falmouth, Massachusetts as drawn by BSS Design, Inc. dated August 25, 2017 – plan is stamped and signed by Thomas J. Bunker, P.L.S. with a Board date 'received' stamp of October 12, 2017; and

"Provenzano Residence 21 Hawthorne Ct Falmouth, MA" as drawn by Architecture by SPB consisting of Drawings A1 showing Proposed Elevations, Drawing A2 showing

Existing Floor Plan and Proposed First and Second Floor Plans and Drawing S1 showing Existing Basement, Proposed Foundation Plan and Proposed Third Floor – all Drawings have a date of 8/8/2015 and have a Board date ‘received’ stamp of August 25, 2017.

Hearing:

Attorney Klauer reviewed the existing site conditions, the existing four-bedroom, one-story 1,777 square foot dwelling that has a nonconforming front setback to Hawthorne Ct. of 20’4”, a nonconforming side yard setback of 9’8”, a shed with a nonconforming setback to the side yard property line, nonconforming lot coverage by structures of 23.98% and has a height of 13.66’. He then reviewed the proposed four-bedroom two and one-half story dwelling that will eliminate all the nonconforming setbacks, removal of the shed, the exact same nonconforming lot coverage by structures and have a height of 34’6”. The proposed dwelling will meet the flood plain requirements and have the first floor elevation of 15’. The total lot coverage on the property will be improved from 36.13% to 33.49%. He noted that the den shown on the proposed first floor plans has a closet and storage area as the basement and shed are being eliminated, and has a cased opening of 5’ so as not to be considered a bedroom. Attorney Klauer reviewed the ‘Lot Size Calculations’ he submitted to the file noting 43 of the properties within the general vicinity of subject property and noted that seven (7) of these homes have a larger gross floor area – two (2) of these seven (7) properties have comparable size lots as subject property. He explained the ‘raised patio’ that is being created to allow egress from the dwelling on the rear facade of the structure.

The Board discussed plans with Attorney Klauer. All concerns and questions were addressed.

Chairman Foreman asked for any public comment in support or opposition of the proposed project.

Tom DiPaolo of 27 Hawthorne Court stated concern of proximity of dwelling and patio relative to his Fir trees that has partial root growth on subject property.

Member Murphy made a motion to close the hearing. Member Van Keuren 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 21 Hawthorne Court in Falmouth contains 7,410 square feet of Residential C zoned land that is partially located within the Little Pond Coastal Pond Overlay District and within Flood Plain AE13. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming four-bedroom, one-story single-family dwelling on subject property. The existing structure has a nonconforming setback to the front property line of 20’4” that requires a 25’ setback pursuant to Section 240-68 A. of the Code of Falmouth; the southerly side yard setback is 9’8” that requires a 10’ setback pursuant to Section 240-68 B. of the Code of Falmouth; the setback of the shed to the southerly side yard property line is nonconforming as it is less

to Know About Fences, Sheds and Greenhouses” (Building Department Requirements) – any accessory structure over 100 square feet in size requires a 10’ setback to side and rear property lines under Section 240-68 B. of the Code of Falmouth; and the lot coverage by structures is nonconforming at 23.98% where a 20% maximum lot coverage is required under Section 240-69 A. and may be increased through a special permit up to and not exceeding, 25% under Section 240-69 E. of the Code of Falmouth. The dwelling structure was constructed approximately in 1956 when the lot coverage requirement was 35% by structures in a residential zone, which was decreased to 20% through an Annual Town Meeting vote in 2002. The proposed reconstructed dwelling will remain a four-bedroom dwelling and will be a two and one-half story structure that will have conforming setbacks, thus eliminating all nonconforming setbacks. The height of the structure will be 34’6” which is just below the 35’ height allowed by right in Section 240-70 of the Code of Falmouth. The lot coverage by structures will remain nonconforming at 23.98%.

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 raze and reconstruction of the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as the proposed plans show that the nonconforming setback to the front property line off Hawthorne Circle and the setback to the southerly side yard property line will be eliminated and the shed removed so that all setbacks are in compliance Section 240-68 A. and B. of the Code of Falmouth. The Board further finds that the proposed dwelling will be constructed according to Flood Plain Regulations and have a first floor elevation of 15’ with a height of 34’6”. Furthermore, the Board finds that the nonconforming lot coverage by structures of 23.98% will remain the same and not be increased through the reconstruction of the single-family dwelling.

The Board finds that the subject property will be served by the Town sewer and that a maximum of four (4) bedrooms is allowed as proposed herein. The Board further finds that the proposed ‘Den’ shown on Drawing A2 has a 5’ cased opening so as not to be considered or used as a bedroom. Furthermore, the ‘Den’ as proposed includes a walk-in-closet that, according to testimony by the applicant’s representative, will be used for storage as the basement and shed on the existing plans have been eliminated.

The Board finds through testimony by the applicant’s representative that the applicant is amenable to installing drywells on subject property to maintain stormwater runoff on site; and that there will be no irrigation installed on said property.

The Board finds according to testimony by the applicant’s representative that the third floor ‘unfinished attic area’ and ‘unfinished attic/mechanical area’ shown on Drawing S1 will be used for storage and remain unfinished.

The Board finds that the bulk of the proposed dwelling is in keeping with the general vicinity of the subject property according to the ‘Lot Size Calculations’ submitted by the applicant’s representative as out of the 43 properties within said area, there are seven (7) properties that have dwellings that exceed the gross floor area of what is proposed, and that two (2) of said seven (7) properties are of comparable size (see file for calculation sheet).

The Board finds through testimony by the applicant's project engineer, Thomas J. Bunker, P.L.S., the proposed 'raised patio' / 'retaining wall' being created to allow for egress at the rear of the dwelling will have no concrete footing.

In addition to the above findings, the Board finds that the proposed raze and reconstruction of the pre-existing nonconforming single-family dwelling on subject property 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 raze and reconstruction of the single-family dwelling as the nonconforming setbacks of the existing dwelling will be eliminated through the reconstruction; the nonconforming shed will be removed; and lot coverage by structures, although nonconforming, will not be increased.

B. The site is suitable for the proposed use as the property is zoned residential and the new dwelling will be maintained as a single-family dwelling through this approval.

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 subject property will be served by Town sewer and no more than four (4) bedrooms allowed on subject property.

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

G. The proposed dwelling reconstruction 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 raze and reconstruction of the nonconforming single-family dwelling 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 Murphy 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 Richard J. Provenzano and Nancy R. Provenzano (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze and reconstruct the pre-existing nonconforming one-story, four-bedroom single-family dwelling and replace with a 2.5 story, four-bedroom single-

family dwelling on subject property known as 21 Hawthorne Court, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The raze and reconstruction, height of dwelling proposed, all setbacks, lot coverage and use of the single-family dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - “Plot Plan – Proposed House” prepared for Richard & Nancy Provenzano 21 Hawthorne Court Falmouth, Massachusetts as drawn by BSS Design, Inc. dated August 25, 2017 – plan is stamped and signed by Thomas J. Bunker, P.L.S. with a Board date ‘received’ stamp of October 12, 2017; and
  - “Provenzano Residence 21 Hawthorne Ct Falmouth, MA” as drawn by Architecture by SPB consisting of Drawings A1 showing Proposed Elevations, Drawing A2 showing Existing Floor Plan and Proposed First and Second Floor Plans and Drawing S1 showing Existing Basement, Proposed Foundation Plan and Proposed Third Floor – all Drawings have a date of 8/8/2015 and have a Board date ‘received’ stamp of August 25, 2017.
2. There shall be no more than four (4) bedrooms allowed on subject property.
3. There shall be no concrete footings in the construction of the retaining wall/patio at the rear of the dwelling.
4. The existing shed shall be removed and not replaced or relocated on subject property.
5. Drywells shall be located on subject property as recommended by the project engineer to insure stormwater runoff is maintained on site.
6. 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.
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 permit shall lapse two 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:

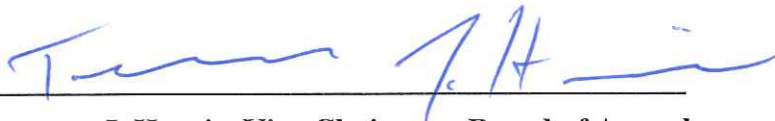
Special Permit Number: **076-17**

Applicant: **RICHARD J. PROVENZANO & NANCY R. PROVNZANO  
of Woburn, MA**

Subject Property: **21 Hawthorne Court, Falmouth, Massachusetts  
Map 46B Section 22 Parcel 012 Lot 017**

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

OCT 27 2017

FALMOUTH TOWN CLERK

*dd@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.