

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

SPECIAL PERMIT NO: 048-18

APPLICANT/OWNER: STEPHEN PROIA and KELLEY SHAW PROIA of Allen, TX

SUBJECT PROPERTY: 317 Edgewater Drive West, East Falmouth, Massachusetts
Assessor's Map: Map 41 Section 06 Parcel 065A Lot 000

DEED/CERTIFICATE: Book 30498 / Page 119

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 26, 2018, the applicant applied to the Zoning Board of Appeals for a Modification of a previous Special Permit and Variance pursuant to Section(s) 240-3 C. of the Code of Falmouth to enclose a portion of the existing deck and construct additions (dormer and front porch) to the pre-existing nonconforming single-family dwelling on subject property known as 317 Edgewater Drive West, East 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 August 2, 2018.
4. The public hearing was closed on August 2, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, Acting Clerk Ed Van Keuren, Member Paul Murphy and Associate 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 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

08/02/2018 Email received from Chris Stamos of 316 Edgewater Dr. West (Town shows as 318) dated August 2, 2018 stated objection to the proposed additions as requested by applicant

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

None

Letters/Referrals/E-mails from Town Departments

06/26/2018 Referral submitted to the file from the Planning Department staff with no comment

06/27/2018 Referral submitted to the file from Director of Assessing noting: *Includes lots 656 and 66*

06/28/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment

07/09/2018 Referral submitted to the file from Town Water Department with no comment

07/24/2018 Referral submitted to the file from Town Engineering Department with standard comments and noting that drywells are proposed for roof runoff (see plan)

07/24/2018 ZBA staff submitted a copy of the Conservation Commission's Order of Conditions and letter to applicant (from Conservation Commission) dated July 18, 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

Four photos submitted showing all four facades of existing dwelling with a Board date 'received' stamp of June 21, 2018;

"Plot Plan – Proposed Addition" prepared for Stephen & Kelley Shaw Proia 317 Edgewater Drive West, Falmouth, Massachusetts as drawn by BSS Design, Inc. – plan is dated May 29, 2018 stamped and signed by Thomas Jackson Bunker, PLS and with a Board date 'received' stamp of June 21, 2018; and

"Proposed Addition/Renovation Design Proia Residence 317 Edgewater Drive West East Falmouth, MA" as drawn by Designs by SPB consisting of:

- Drawing A1 dated 9/22/2017 with a revised date of 5/1/18 showing Elevations and Height with a Board date 'received' stamp of June 21, 2018
- Drawing A2 dated 9/22/2017 with a revised date of 5/1/18 showing Proposed First and Second Floor Plans with a Board date 'received' stamp of June 21, 2018
- Drawing A3 dated 9/22/2017 with a revised date of 5/1/18 showing Proposed Attic Plan with a Board date 'received' stamp of June 26, 2018
- Drawing A3 dated 9/22/2017 with a revised date of 5/1/18 showing Existing Basement Plan with a Board date 'received' June 21, 2018

Hearing:

Attorney Klauer reviewed the existing subject property and proposed additions to the existing dwelling on said property. He noted that there is an existing special permit/variance for the accessory shed located within the front yard of subject property. The existing dwelling is a one-story with a height of 17'. The applicant is proposing a new front porch, enclosing a portion of the existing deck and slightly increase the roof line by adding a dormer to accommodate an attic. The proposed dwelling height will be approximately 26'. The existing bedroom count of three (3) bedrooms will remain the same with no increase. The space to be enclosed, previously a deck, will create new living room space and the kitchen and dining area will be renovated and increased. The front façade of the dwelling will be improved through the design of a new front porch. Attorney Klauer reviewed 240-216 standards and stated that the proposed is in keeping with said standards.

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

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

There was no public comment.

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

Chairman Hurrie 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 317 Edgewater Drive West in East Falmouth contains 25,900 square feet of Residential C zoned land that is located within the Eel Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to enclose a portion of the existing deck as habitable space, construct a dormer and front porch to the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling structure has a nonconforming setback of 18.3' to the front property line off Edgewater Drive West that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; a nonconforming setback of 14' to the 2.1' North American Vertical Datum (NAVD) contour line off the waters of Eel Pond - previously known as the 3' National Geodetic Vertical Datum – NGVD – Section 240-68 D. of the Code of Falmouth; and the shed located within the front yard of subject property is through benefit of a Variance and Special Permit approval - #19-98 – see Section 240-68 A. (8) of the Code of Falmouth, although said Special Permit and Variance application was filed under Section 240-3. The existing dwelling is a three-bedroom one-story dwelling that will remain a three-bedroom one-story dwelling. However, the height of the existing dwelling will be increased from 17' to 26' to accommodate a roof line change to incorporate an attic space for storage and mechanical utilities. The lot coverage by structures is increasing from 8.25% to 8.40%, which is still below the maximum allowed for structures and total lot coverage under Section 240-69 A. of the Code of Falmouth.

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 additions to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as there will be no increase in the nonconforming setbacks on subject property and no new nonconformities will be created. The Board further finds that the proposed additions and enclosing a portion of the existing deck to expand living space within the dwelling will enhance the utilization of the dwelling for its occupants.

The Board finds that the change in the height of the dwelling is a moderate change in bulk and the occupants will benefit from the additional storage and mechanical utilities storage in said attic space. The Board further finds that there will be no increase in the number of bedrooms on subject property through the proposed additions – that the count will remain three (3) bedrooms.

The Board finds that this application request and approval does not affect the shed being located in the front yard as approved through a Variance and Special Permit, #19-98, request under Section 240-3 (pre-existing nonconforming).

In addition to the above findings, the Board finds that the proposed 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 additions as the proposed plans do not increase the existing nonconforming setbacks and that the lot coverage will be maintained well below the maximum percentages allowed in Section 240-69 A. for a residential district.
- B. The site is suitable for the proposed use as the property is zoned residential and 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 other homes 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 will be unaffected by the approval of this special permit as there is no increase in the number of bedrooms on subject property – remaining at three (3) bedrooms.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed additions to the dwelling 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 additions as represented 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 Modification of Special Permit and Variance #19-98 as modified herein under #048-18** to Stephen Proia and Kelley Shaw Proia (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to enclose a portion of the existing deck and construct additions (dormer and front porch) to the pre-existing nonconforming single-family dwelling on subject property known as 317 Edgewater Drive West, East Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

- 1. The enclosure of a portion of the existing deck, the front entry porch, construction of a dormer, all setbacks, lot coverage and use of the 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 Addition” prepared for Stephen & Kelley Shaw Proia 317 Edgewater Drive West, Falmouth, Massachusetts as drawn by BSS Design, Inc. – plan is dated May 29, 2018 stamped and signed by Thomas Jackson Bunker, PLS and with a Board date ‘received’ stamp of June 21, 2018; and

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2. There shall be no more than three (3) bedrooms on subject property.
 3. 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.
 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 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.)
 5. 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: **048-18**

Applicant: **STEPHEN PROIA and KELLEY SHAW PROIA of Allen, TX**

Subject Property: **317 Edgewater Drive West, East Falmouth, Massachusetts
Map 41 Section 06 Parcel 065A Lot 000**

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 Hurrie, Chairman, Board of Appeals

RECEIVED

AUG - 9 2018

FALMOUTH TOWN CLERK

000810am

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.