

TOWN OF FALMOUTH  
ZONING BOARD OF APPEALS  
DECISION

SPECIAL PERMIT NO.: 016 -19

APPLICANT/OWNER: Phillippe D. and Eleanor M. Bouvier, Trustees  
The Walcott Circle 2011 Realty Trust  
47 Walcott Circle, Marlborough, Massachusetts

SUBJECT PROPERTY: 359 Edgewater Drive East, East Falmouth, Massachusetts  
Assessor's Map: Map 41, Section 06, Parcel 000, Lot 207

DEED/CERTIFICATE: Book 26820 Page 57

SUMMARY: Special Permit granted with conditions

PROCEDURAL HISTORY

1. On March 27, 2019, the Applicant filed an application with the Zoning Board of Appeals for a Special Permit, pursuant to Section(s) 240-3C, and 240-69E. of the Code of Falmouth, to construct an attached garage addition, exceeding 20% lot coverage, on subject property at 359 Edgewater Drive East, East 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. There is a previous ZBA case from 2003 for the subject property, where a special permit was granted for an addition to the rear of the dwelling, resulting in a lot coverage of 13.69%. The existing dwelling encroaches into both the Edgewater Drive and Fisher Road 25-foot setback from a street. An

unpermitted deck, sited approximately 10 feet from Fisher Road, was required to be removed. The front deck and rear addition were granted.

4. The advertised public hearing was opened on May 23, 2019, at which hearing, relevant testimony was heard.

5. Beth Frawley, 398 Edgewater Drive West, East Falmouth, MA appeared, representing Phillippe D. and Eleanor M. Bouvier, Trustees, owners of 359 Edgewater Drive East, East Falmouth, Massachusetts (the "Applicant"). Ms. Frawley discussed the request for special permit with the Board.

6. The public hearing was closed on May 23, 2019, wherein the Zoning Board of Appeals, consisting of Terrence J. Hurrie, Chairman, Edward Van Keuren, Member, Robert B. Dugan, Acting Clerk, and Gerald Potamis, Member, made a decision to grant the Special Permit with conditions. Kenneth H. Foreman, Vice Chairman, and James T. Morse, Associate Member, were absent. Minutes of the hearing(s) are on file in the 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)

- "Zoning Board of Appeals- Comparitive (sic) Land Coverage of neighboring Properties" for 359 Edgewater Dr. East

Letters/E-mails from Abutters/Interested Parties: None

Letters/Referrals/E-mails from Town Departments

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

- Engineering comments, dated 4/11/19 (driveway connection requires a permit from Engineering; project must not direct stormwater runoff off property; condition recommended stormwater mitigation, such as a drywell; post any required bond for driveway, and must complete work as approved by the Engineering division)
- Conservation Commission, no comment, dated 4/10/19
- Board of Health, comments, dated 4/2/19, revised per 5-9-2019 email (septic ok)
- Water, no comments, dated 4/2/2019
- Assessors, no comments, dated 4/3/19
- Fire Department, no comments, dated 4/4/19
- Planning, no comments, dated 4/2/19

Plans submitted by Applicant/Applicant's Representative

- "Proposed Addition (sic), 359 Edgewater Drive East, East Falmouth, MA", prepared by Collins Civil Engineering Group, Inc., 225 South Main Street, West Bridgewater, MA, dated 4-4-19

- “Existing Floor Plans, A101”, “2<sup>nd</sup> Floor Plan, A103”, “Proposed 1<sup>st</sup> Floor Plan, A102”, dated 3-24-19 and date stamped received Apr 08, 2019, “Existing Elevations, A301”, “Elevations, A302”, and “Elevations, A303”, all prepared by C. Beth Frawley, 398 Edgewater Dr W, East Falmouth, MA, and dated 3-24-19

Hearing:

May 23, 2019

Beth Frawley appeared representing Phillippe D. and Eleanor M. Bouvier, Trustees (the “Applicant”). Ms. Frawley responded to the Engineering referrals, and stated that the Applicant was willing to remove the existing asphalt driveway, and replace it with a pervious surface, if conditioned, to meet engineering concerns.

Ms. Frawley reported that the plan was reviewed by the Conservation Commission, due to the flood zone, but had no comments for the Zoning Board. She stated that the garage addition would be on a slab, and that the Applicant sought to keep the existing shed. There will be a pull-down stair to access storage above the garage, but there will be no habitable space above. Ms. Frawley stated that the Applicant is amenable to all Engineering comments, and will remove asphalt if asked to do so. She reported that the final lot coverage by structures would be 22.9%.

Chairman Hurrie asked for any public comment in support of, or opposition to, the proposed project. Lawrence Barrett, 367 Edgewater Drive, stated he is in support of the proposal.

Mr. Potamis made a motion to close the hearing. Mr. Van Keuren seconded the motion. The motion carried 5-0. Chairman Hurrie closed the hearing.

FINDINGS

The Zoning Board of Appeals carefully considered the facts and evidence submitted for the hearing, and made the following findings:

There is a previous ZBA case from 2003 for the subject property, where a special permit was granted for an addition to the rear of the dwelling, resulting in a lot coverage of 13.69%. The existing dwelling encroaches into both the Edgewater Drive and Fisher Road 25-foot setback from a street. An unpermitted deck, sited approximately 10 feet from Fisher Road, was required to be removed. The front deck and rear addition were granted.

The Premises is sited in the Single Residence District C, and comprises 9,298 square feet of area. Existing lot coverage by structures is 14.2%; the proposed lot coverage is 22.9%. Lot coverage greater than 20% and up to 25% is permissible by special permit. The lot coverage by structures/parking/paving is 19.1%; the proposed is 35.9%. Total lot coverage by structures, paving and parking up to 40% is allowed. The lot comparison data submitted into the record indicates 3 neighboring dwellings that exceed the lot coverage by structures of 20%.

In addition to the above findings, the Board finds that the proposed construction 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, as follows:

- A. The site is adequate, in terms of size, for the proposed use. The lot coverage by structures is being increased from 14.2 % to 22.9%; lot coverage by structures/parking/paving is being increased from 19.1 % to 35.9%.
- B. The site is suitable for the proposed use, as the property is zoned Single Residence C, with neighboring single-family residences. One abutter spoke in favor of the proposal.
- C. There will be no impact on traffic flow and safety.
- D. There will not be any impact on the visual character of the neighborhood, or view or vista from the roadway or abutting properties, given that the attached garage is sited to the northerly side of the dwelling, and the ridge of the garage will be 17 feet; lower than the existing dwelling, at 20-feet, 6-inches.
- E. There will be no impact on sewage disposal, source of water, and drainage; the addition will not alter the three-bedroom count. The Applicant will comply with permitting requirements of Town Engineering.
- G. The construction discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was no requirement for site plan review by the Planning Board, and they issued no comment on April 2, 2019.
- I. The application is in compliance with all applicable sections of the Zoning By-Laws as represented, except for the nonconformities stated herein.
- J. The approval of this special permit does not include any affordable housing.

The Zoning Board of Appeals weighed the effects of the proposed additions at the Premises, as discussed herein, and found that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further found that the granting of this 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.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under the provisions of the Code of Falmouth, voted 4 to 0, following a motion made by Mr. Potamis, and seconded by Mr. Dugan, to grant a special permit, with conditions, under Section(s) 240-3C, and 240-69E. of the Code of Falmouth, for 359 Edgewater Drive East, East Falmouth, Massachusetts (the "Premises"), to allow construction of a 25-foot, 6-inch, by 27-foot, 4-inch single-story garage addition to the northerly side of the dwelling. This special permit shall be subject to the following conditions:

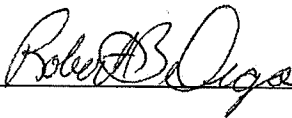
1. The construction shall be substantially as shown on the plans submitted and reviewed by the Board, as follows:
  - "Proposed Addition (sic), 359 Edgewater Drive East, East Falmouth, MA", prepared by Collins Civil Engineering Group, Inc., 225 South Main Street, West Bridgewater, MA, dated 4-4-19
  - "Existing Floor Plans, A101", "2nd Floor Plan, A103", "Proposed 1st Floor Plan, A102", dated 3-24-19 and date stamped received Apr 08, 2019, "Existing Elevations, A301", "Elevations,

A302", and "Elevations, A303", all prepared by C. Beth Frawley, 398 Edgewater Dr W, East Falmouth, MA, and dated 3-24-19

2. The addition will be sited 10.4 feet from the north, and 25.8 feet from the east (Edgewater Drive East), and approximately 38 feet from the west.
3. There shall be a 4-foot cased opening for the master bath; bedroom count is limited to three.
4. The shed at the northwest side of the lot may be retained.
5. There shall be no habitable space above the garage.
6. The Applicant shall comply with the Engineering referral requirements, including installation of a permeable driveway, prior to a final inspection by the Building department.
7. Any deviation, no matter how minor, from plans submitted and approved, shall be submitted to the Board for approval, prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.
8. 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, is recorded in Barnstable Registry of Deeds, or that an appeal has been filed within such time. (Any person exercising rights under a duly appealed special permit does so at risk that a court may reverse the permit, and that any construction performed under the permit may be ordered undone.)
9. 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 Zoning Board of Appeals.

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

Vote: 4 to 0 to grant the Special Permit, as represented to the Board, based on the Findings stated herein, and with the above stated Conditions.



Robert B. Dugan, Acting Clerk, Zoning Board of Appeals

RECEIVED

JUN 6 2019 PM 4:20  
TOWN CLERK



Date Filed With Town Clerk