



TOWN OF FRAMINGHAM

ZONING BOARD OF APPEALS

150 Concord Street B2  
Framingham, MA 01702

2016 FEB -2 A 9:03

TOWN CLERK  
FRAMINGHAM

BOARD OF APPEALS CASE NO. 16-01

PETITION OF MARGARET & CLAIRE HENRY

DATE OF DECISION: JANUARY 19, 2016

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of MARGARET & CLAIRE HENRY (hereinafter the Applicant), for property located at 62 STONYBROOK RD. This Decision is in response to a Petition for a Variance from front setback requirements of the Zoning By-Law (hereinafter the Application) to enlarge and enclose a porch.

2. Property Owner and Applicant

Margaret & Claire Henry  
62 Stonybrook Road  
Framingham, MA 01702

3. Location

Property is located at 62 Stonybrook Road and identified by Assessors' Parcel ID 101-72-7709-000 (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 January 19, 2016 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
STEPHEN MELTZER	YES
EDWARD COSGROVE	YES

5. Proceedings

The Application was received by the Board on December 17, 2015 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on January 19, 2016 at 7:00 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Stephen Meltzer, Edward Cosgrove, and Alternate Kevin Gatlin were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

## 6. Exhibits

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

- 6.1. Application filed with the Building Official for a permit for a 12' x 14' front porch addition within the setback.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on December 22, 2015.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Plan entitled "A# Existing Conditions", dated 11/12/15.
- 6.5. Plan entitled "Proposed", prepared by Chappell Engineering Associates LLC, 201 Boston Post Road, Marlborough, MA, stamped "Received" by the Zoning Board Office on 12/17/15.
- 6.6. Plan entitled "F-1 Proposed Foundation", dated 11/12/15.
- 6.7. Exterior rendering of residence with proposed porch, stamped "Received" by the Zoning Board Office on 12/17/15.
- 6.8. Plan entitled "P1 Proposed Addition Layout", dated 11/12/15.

Exhibits 6.5 to 6.8 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 the Single Residence (R-1) zoning district.
- 7.2. On November 23, 2015, the Building Official denied the Application for a permit to build a 12' x 14' addition within the front setback under Section IV.E.2 of the Zoning By-Law.
- 7.3. On December 22, 2015, 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 January 4 and 11, 2016 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11. No Town Meeting Members or residents appeared at the hearing.
- 7.5. The Applicants were present and stated that the purpose of the application was to build an enclosed porch extending into the front setback. The required front setback in the R-1 zoning district is thirty (30) feet, and the porch will be located 19.5 feet from Stonybrook Road. It will replace an existing covered patio that is 24.5 feet from the road. The structure is pre-existing nonconforming.
- 7.6. 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.

7.7. 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, and that there is already a pre-existing non-conforming covered patio extending into the front setback, which the proposed porch would replace.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.

7.8. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *The Applicant has limited mobility, and there is already a covered patio with a door. Relocating the outdoor seating area would be costly.*

7.9. 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. *As there is an existing covered patio, the proposed enclosed porch will not be substantially more detrimental to the public good than the existing non-conforming structure, and will not derogate from the intent and purpose of the By-law or of the R-1 Residential zoning district.*

7.10. The Board grants this Variance with the following condition:

7.10.1. The proposed porch shall be constructed as shown on the Plans.

7.11. 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.

7.12. 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.

7.13. 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

7.14. 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