

## Zoning Board of Appeals Decisions Decisions for: 10-02-2014

[Close Window](#)

DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 72-14

APPLICANT/OWNER: LAWRENCE J. HAVERTY, III & JEAN M. HAVERTY  
of Natick, MA

DEED/CERTIFICATE: Book 27687 / Page 66

SUBJECT PROPERTY: 30 Otis Street, North Falmouth, Massachusetts  
Map 02A, Section 09, Parcel 009, Lot 026

Under a date of August 19, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of 240-3 of the Code of Falmouth to increase the below grade one-car garage to a two-car garage, construct new steps, remove a portion of the existing dwelling and construct an addition smaller than portion removed on the pre-existing nonconforming single-family dwelling on subject property located at 30 Otis Street, Falmouth, Massachusetts.

A public hearing was opened on October 2, 2014. 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.

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Member Matthew McNamara and Associate Mark Cool

Acting Clerk Mark Cool read the Notice of Public Hearing into the record.

Thomas J. Bunker, P.L.S. with BSS Design, Inc. was present on behalf of the applicant and reviewed the existing site conditions and proposed changes on subject property. He explained the existing lot coverage by structures is nonconforming at 34.06% [property consists of 5,502 square feet of land] and there are three setbacks that are nonconforming: front yard setback off Otis Street is 14.7'; setback off Marion Street is 13.6'; and on the east façade the structure is 5.7' from the property line. The existing dwelling is also nonconforming with a height of 35.2'. The applicant is proposing on the east side of the structure to remove an existing portion of the house and constructing an addition to create a powder room and pantry; on the north façade the steps will be removed and diagonal steps created which will improve the setback to Otis Street by 2.7'. Also proposed on the southeast facade of the dwelling will be to enclose a porch area [first and second level] to increase kitchen space on first floor and the second floor will create a bathroom with a bay window bump out. The portion of the porch at the south west corner of the dwelling will be expanded – not enclosed and new steps will be added. There is an existing below grade one-car garage off Marion Street and the applicant proposed to lift the dwelling to create a two-car garage with poured concrete floor.

Mr. Bunker noted that the lot coverage by structures will be slightly decreased to 33.82%; the easterly setback of 5.7' will be improved to 6.9' and the setback off Otis Street will be improved from 14.7' to 17.4'. He said the proposed changes are in keeping with the neighborhood and there are no new bedrooms being created so there will be no increase of traffic. The increase of the below grade garage area will improve parking conditions on site.

Clerk Cool read the Town Department referrals into the record.

A referral submitted by the Engineering Department states: This application was reviewed only for impacts to public right of ways and public utilities. Otis Road is a Public right of way in this area. The proposed plan includes changes to the Right of Way, which would require filing a permit with the Engineering Division. Any connections or alterations to public utilities would require permission from the appropriate town Department. The project must not direct any stormwater runoff to public property, abutters or right of ways.

A referral submitted by the Board of Health Agent David Carignan and updated on 10/2/2014 states: Referral Update – Correspondence from Thomas Bunker dated 9/25/14 and a revised plan dated 9/23/14 address the concern that the porch addition will prevent access to the existing leaching pit or consume scarce lot area. The six feet of separation between the porch and the final grade elevation is sufficient.

Referrals submitted by the Building Department and the Planning Department had no comment.

Clerk Cool noted correspondence submitted by William and Megan Bearce of 26 Otis Street stating support for the proposed project.

#### Board Questions:

Member Foreman asked what pervious material would be used on driveway and if the parking spot shown on existing conditions off Marion Street would be removed.

Mr. Bunker stated that the pervious material will be crushed stone; and the parking spot shown on existing conditions could be eliminated and decrease total lot coverage slightly.

Member Cool asked if the cesspool shown on the southerly lot line is abandoned and asked about the third floor office area.

Mr. Bunker stated that the cesspool should have been abandoned – it is a beehive design and appears to be empty and should be filled in. He said they are not sure as to the ownership of the cesspool – it may belong to Lot 25.

Member McNamara reviewed the proposed improvements in lot coverage and setbacks with Mr. Bunker.

Member McNamara asked if it would be possible since the house is being raised for pouring of garage floor, if the height of the house could be made conforming.

Mr. Bunker conferred with the architect, Denise D'Ambrosi Bonoli. Mr. Bunker stated it could be decreased in height by 2/10's [making it 35' in height].

Member McNamara asked if this is a single-family use and if there was designation by the Building Commissioner as to a front yard.

Mr. Bunker stated it is a single-family use residence and that Mr. Gore will not designate what is a front yard in cases such as this because both setbacks off streets are nonconforming.

Member McNamara asked about the drainage at the new garage doors; what the basement use will be.

Mr. Bunker said the storage space will remain unfinished; the family room and mudroom are finished. He explained that a trench drain will be in the driveway and will put dry wells under driveway as well.

Chairman Haddad asked if the downspouts have dry wells and what will the driveway apron be.

Mr. Bunker said the apron of the driveway will be concrete and that he hadn't planned on putting drywells in as there is no increase to runoff through proposed changes.

Chairman Haddad asked if there will be any other accessory structures added to the site and when will work take place.

Mr. Bunker stated there are no accessory structures to be added and the work may start during winter months.

Chairman Haddad asked Mr. Bunker if the cesspool issue will be addressed – find out who owner is and discuss filling it in.

Mr. Bunker stated they will work on it, will check with neighbor.

Chairman Haddad asked if anyone present would like to speak in favor or opposition.

Laurie Leitner of 30 Marion Road said she is interested in the extension of the porch and asked for a review.

Mr. Bunker showed her on the plan the 7.5' extension.

Board Discussion:

Member Foreman commented that the setbacks are slightly improved and they are decreasing the height of the house to make it conforming in height at 35'; he would like to see the parking space off Marion eliminated and be grass area.

Member Cool agrees with Member Foreman and would like Mr. Bunker to follow up on the cesspool issue.

Member McNamara said the structure is large and was large to begin with. He has a concern with this structure being more than one dwelling. He said the drainage is important especially in this area. He commented how problematic a project can become when not properly staked for review purposes.

Member Foreman made a motion to close the hearing. Member McNamara seconded the motion. Motion carried 4 – 0.

Chairman Haddad 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 30 Otis Street in North Falmouth contains 5,502 square feet of Residential B zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 of the Code of Falmouth to increase the below grade one-car garage to a two-car garage, construct new steps, remove a portion of the existing dwelling and construct an addition smaller than the portion removed on the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling structure has a nonconforming setback to the front property line off Marion Road of 13.6' and a nonconforming setback to the front property line off Otis Street of 14.7' – both require a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth. The southerly side of the dwelling has a nonconforming setback of 5.7' that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. Under Section 240-69 A. of the Code of Falmouth lot coverage by structures is nonconforming at 34.06% - 20% requirement; and total lot coverage by structures, parking and paving is nonconforming at 40.5% - 40% requirement. The height of the dwelling is 35.2' where a maximum of 35' is required under Section 240-70 of the Code of Falmouth. Through the changes requested herein the setback to Otis Street will be improved to 17.4', the setback at the southerly façade of the dwelling will be improved from 5.7' to 6.9'. Lot coverage by structures will be slightly decreased to 33.82%; and the lot coverage overall that shows on the plan to be more nonconforming from 40.5% to 41.4% may be reduced through the elimination of the parking space at the front of the dwelling right along Marion Road. The applicant, through raising the structure to create a below grade two-car garage stated at the hearing that they will be able to lower the structure 2/10's of a foot making it conforming to a height of 35'. This is a single-family four-bedroom dwelling use with no increase in the number of bedrooms through this approval.

Section 240-3 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 changes to the pre-existing nonconforming dwelling reviewed and discussed herein does not appear to be substantially more detrimental than what currently exists. The Board further finds that there are slight improvements to the existing nonconforming setbacks, lot coverage and height of structure as noted herein. Furthermore, the Board finds that the structure is presented as a four-bedroom single-family dwelling with no increase of bedrooms and use will remain the same.

The Board finds that the applicant's representative stated that they will remove the existing gravel parking space along Marion Road – returning the area to grass, and that the total lot coverage shall be improved by that elimination. The Board further finds that the applicant's architect and representative agreed that the dwelling structure can be decreased in height by 2/10's of a foot through the construction of the below grade two-car garage.

The Board finds that the proposed trench and drywell drainage within the new driveway area is appropriate. The Board further finds that there will be drywells installed at downspouts on dwelling.

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 changes to the existing dwelling on subject property as there will be modest improvements to the nonconforming setbacks, lot coverage and height of dwelling.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as a four-bedroom single-family dwelling for many years.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property. There is a change to the driveway off Marion Street and filing a permit with the Town Engineering Department is required.
- 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 sewage disposal system is in place and noted by the Board of Health herein through a referral.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed changes 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.

Member Foreman made a motion to Grant the Special Permit with conditions. Member Cool 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 4 – 0 to Grant the Special Permit to Laurence J. Haverty, III and Jean M. Haverty (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to increase the below grade one-car garage to a two-car garage, construct new steps, remove a portion of the existing dwelling and construct an addition smaller than portion removed on the pre-existing nonconforming single-family dwelling on subject property located at 30 Otis Street, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The changes to the single-family dwelling noted herein, all setbacks, lot coverage, dwelling height, parking and use of dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Existing House at 30 Otis Street North Falmouth, Massachusetts" prepared for Jay & Jamie Haverty drawn by BSS Design, Inc. dated July 22, 2014 and with a Board date 'received' stamp of August 19, 2014;
- "Plot Plan – Proposed Additions at 30 Otis Street North Falmouth, Massachusetts" prepared for Jay & Jamie Haverty drawn by BSS Design, Inc. dated August 14, 2014 with a final revised date of September 23, 2014 and with a Board date 'received' stamp of September 25, 2014. NOTE: This Plan shall be revised per a condition below to reflect elimination of parking space and update of lot coverage.
- "Haverty House 30 Otis Street Megansett North Falmouth, MA" – Existing Floor Plans and Elevations drawn by Denise D'Ambrosi Bonoli, AIA consisting of eight pages not dated with a Board date 'received' stamp of August 19, 2014; and
- "Haverty House 30 Otis Street Megansett North Falmouth, MA" – Proposed architectural Floor Plans and

Elevations drawn by Denise D'Ambrosi Bonoli, AIA consisting of eight pages not dated with a Board date 'received' stamp of August 19, 2014

2. As noted in condition one above the plot plan shall be revised showing the elimination of the parking space along Marion Road to be returned to grassy area and update the lot coverage showing elimination of said space. The revised plan shall be submitted to the Board of Appeals prior to the issuance of a building permit.
3. The applicant shall install a trench drain and drywells in the proposed driveway and install drywells at downspouts to insure runoff is maintained on site.
4. The applicant shall verify through a letter from a Land Surveyor that the height of the house was reduced to 35'. The letter shall have the surveyor stamp and be submitted to the Board of Appeals prior to the final sign off of the building permit by the building department and/or the Board of Appeals.
5. The applicant shall submit an 'as-built' plan post construction showing that all setbacks and lot coverage as represented herein. The 'as-built' plan shall be submitted to the Board of Appeals prior to a final sign off of the building permit by the building department and/or the Board of Appeals.
6. There shall be only four bedrooms allowed on subject property.
7. The storage area in the basement as shown on the proposed architectural plans noted in condition one above shall remain unfinished.
8. There shall be no accessory structures added to the subject property discussed and represented herein.
9. 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.
10. 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.)
11. 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: 72-14

Applicant: LAWRENCE J. HAVERTY, III & JEAN M. HAVERTY  
of Natick, MA

Subject Property: 30 Otis Street, North Falmouth, MA  
Map 02A, Section 09, Parcel 009, Lot 026

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

Vote: 4 – 0 to Grant the Special Permit as represented to the Board, based on the Findings and Conditions noted above.

\_\_\_\_\_  
Kenneth Foreman, Vice-Chair, Board of Appeals

\_\_\_\_\_ 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.

**Notes:**

SP #72-14 Haverty - 30 Otis St., N. Falmouth / posted 10/14/14 mm