

Zoning Board of Appeals Decisions Decisions for: 01-07-2016

[Close Window](#)

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 110-15

APPLICANT/OWNER(S): JOHN R. BOWEN of Mashpee, MA

SUBJECT PROPERTY: 102 Grand Avenue, Falmouth, MA
Assessor's Map: Map 46B, Section 21, Parcel 036, Lot 001

DEED/CERTIFICATE: Book 12850 / Page 066

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of November 12, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 A. of the Code of Falmouth to have the town acknowledge that two (2) separate dwelling units existed prior to May 19, 1959 on subject property known as 102 Grand Avenue, 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 January 7, 2016.
4. The public hearing was terminated on January 7, 2016, wherein the Board consisting of Vice Chairman Kenneth Foreman acting as Chairman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was present at the hearing and reviewed and discussed the application and 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)

11/12/2015 Applicant submitted to the file, copies of old Assessors' field cards of subject property [1956].

11/12/2015 Applicant submitted to the file a letter from Marguerite Cenzalli dated 6/30/2015 stating she grew up in the Heights and remember the cottage being moved from Otis Base to subject property around 1956.

11/12/2016 Applicant submitted to the file photos of the cottage on subject property.

Letters/Referrals/E-mails from Town Departments

11/16/2015 Referral submitted to the file by the Planning Department with no comment.

11/17/2015 Referral submitted to the file by the Fire Rescue Department with no comment.

11/18/2015 Referral submitted to the file by the Building Commissioner Gore with no comment.

12/9/2015 Referral submitted to the file by the Conservation Commission Agent Kasprzyk states: If/when any work is proposed, within Flood Zone A, must file with ConComm.

12/10/2015 Referral submitted to the file by the Engineering Department [S. Schluter] that states: This application was reviewed only for impacts to public right of ways and public utilities. Grand Avenue is a Public right of way in this area. There is no construction proposed. There are two separate building structures visible on the 1950 Town aerial photographs on file in our office.

12/14/2015 Referral submitted to the file by Board of Health Agent Carignan with no comment.

Plans submitted by Applicant/Applicant's Representative

11/12/2015 "Mortgage Inspection Plan" as drawn by Yankee Survey Consultants dated 11/20/89 with a Board date 'received' stamp of November 12, 2015.

Hearing:

The Board discussed the applicant John Bowen, the history of the structure and information submitted. The Board noted the one letter submitted to the file from Ms. Cenzalli who at one time resided at 4 Hawthorne Court [since 1950 as a child and through early adulthood] and remembered the cottage being moved from Otis to subject property in the mid 50's. The cottage is a one bedroom dwelling. Mr. Bowen noted that the old assessors' field cards submitted to the file show two dwellings on subject property in 1956. Mr. Bowen explained how he purchased the property and in the future intends to return and reside in main dwelling. Currently both structures are rented to year-round tenants. He noted that the property will be hooked to the Town sewer in the near future.

Member Murphy noted that the Town has aerial photos from the 1950's showing two structures on the property.

Member Van Keuren made a motion to close the hearing. Member Hurrie seconded the motion. Motion carried 4 - 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 102 Grand Avenue in Falmouth contains 3,750 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 A. of the Code of Falmouth to maintain the two dwelling units existing subject property. The existing main has nonconforming setbacks to the front yard property line off Montgomery Court and Grand Avenue of less than 25' which is the required setback under Section 240-68 A. of the Code of Falmouth. It appears that the lot coverage by structures, and structures parking and paving is nonconforming, exceeding the 20% by structures and 40% by total lot coverage, under Section 240-69 A. of the Code of Falmouth.

Section 240-3 A. of the Code of Falmouth states that the residential use of two or more dwellings on a single lot shall be deemed a preexisting nonconforming use if commenced prior to May 19, 1959 and may only be altered, extended or modified by special permit pursuant to said section provided the Board of Appeals finds through a preponderance of credible evidence that said use commenced prior to May 19, 1959 and has not been abandoned for two or more years. In approving the existence of said units on a lot the Board shall require that the number of dwellings be limited to the same as existed on May 19, 1959.

The Board finds that the evidence submitted by the applicant is credible to the existence of the two dwelling structures existing on subject property as of May 19, 1959. The Board further finds through testimony by the applicant that there is no intent to add other dwelling units to subject property.

Furthermore, the Board finds that testimony by the applicant was that both units are rented year-round.

The Board finds that the referral from the Engineering Department verifies that two structures existed on subject property in the early 1950's and is on file in the Engineering office.

In addition to the above findings, the Board finds that the conversion of existing structure into two dwelling units 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 two units as there will be no change in the structure itself and no increase in the number of units or bedrooms currently existing.
- B. The site is suitable for the proposed use as the property is zoned residential and has been found herein to have had two dwelling structures on said property since the middle 1950's.
- 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 unchanged; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system has been reviewed and referral from the Board of Health submitted to the file.
- F. There are adequate utilities to subject property by virtue of existing dwellings on site.
- G. The two dwelling structures 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 Van Keuren made a motion to Grant the Special Permit with conditions. Member Hurrie 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 John Bowen (herein referred to as Applicant) under Section(s) 240-3 A. of the Code of Falmouth to have the Town acknowledge that two separate dwelling structures existed prior to May 19, 1959 on subject property located at 102 Grand Avenue, Massachusetts. This Special Permit is subject to the following conditions:

1. There shall be no more than two dwelling structures/units on subject property.
2. Parking for dwelling structures shall be maintained on site.
3. There shall be no home occupations or taking of boarders by the tenants residing in the two dwelling units on subject property.
4. 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.
5. 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.)
6. 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: 110-15

Applicant: JOHN BOWEN of Mashpee, MA

Subject Property: 102 Grand Avenue, Falmouth, MA
Map 46B, Section 21, Parcel 036, Lot 001

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 stated herein and with the above stated Conditions.

Terrence J. Hurrie, Clerk, 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 110-15 Bowen - Filed w/Town Clerk 1/21/16