

## Zoning Board of Appeals Decisions Decisions for: 01-28-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 126-15

APPLICANT/OWNER(S): ANTHONY J. DEVANEY and AMY J. DEVANEY  
Jamaica Plain, MA

SUBJECT PROPERTY: 64 Grand Avenue, Falmouth, Massachusetts  
Assessor's Map: Map 46B, Section 17, Parcel 014, Lot 002

DEED/CERTIFICATE: Deed 10792 / Page 0147

SUMMARY: Granted with Conditions

### PROCEDURAL HISTORY

1. Under a date of December 11, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to construct an addition to the second floor to create additional habitable space to the pre-existing nonconforming single-family dwelling on subject property known as 64 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 28, 2016.
4. The public hearing was terminated on January 28, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, 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 represented at the hearing by Mark Bogosian of Longfellow Design Build, 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

None

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

12/11/2016 E-mail from staff to applicant's representative requesting further information on plans submitted for proposed addition.

Letters/Referrals/E-mails from Town Departments

12/14/2015 Referral submitted to the file by Planning Department staff with no comment.

12/15/2015 Referral submitted to the file by Falmouth Fire and Rescue with no comment.

12/15/2015 Referral submitted to the file by Water Superintendent Rafferty with no comment.

12/15/2015 Referral submitted to the file by Building Commissioner Gore with no comment.

12/18/2015 Referral submitted to the file by Conservation Agent Kasprzyk that states: Located in flood zone A, file Admin Review with ConCom, address stormwater on property where possible.

1/8/2016 Referral submitted to the file by Engineering Department (S. Schluter) with standard comments regarding any change in utilities requires a permit and that the project must not direct any stormwater runoff to public property, abutters or right of ways.

1/15/2016 Referral submitted to the file by Health Agent Carignan with no comment.

Plans submitted by Applicant/Applicant's Representative

12/22/2015 "Certified Plot Plan 64 Grand Avenue in Falmouth, Massachusetts" as drawn by Cape & Islands Engineering dated 11/16/15 with a final revision date of 12/17/2015, stamped and signed by Christopher Costa, PLS on 12/22/2015 and with a Board date 'received' stamp of December 22, 2015;

"Proposed Renovations at 64 Grand Avenue Falmouth, MA" prepared for Longfellow Design Build by Mark S. McCarthy dated 24 September 2015 consisting of EX.1 'Existing Elevations', EX.1 'Existing Floor Plans', A.1 'Proposed Floor Plans' and A.2 'Proposed Elevations' - all with a Board date 'received' stamp of December 11, 2015.

Hearing:

Mr. Bogosian with Longfellow Design Build was present on behalf of the applicant and reviewed the existing conditions and proposed addition to the subject dwelling. The addition consists of an addition over the existing first floor roof deck area to renovate an existing bedroom on same level into a new master bedroom and bath. He explained that the property is zoned Business 3 and the lot coverage by structures is 35% and that the property has 22.8% lot coverage which is well below the maximum allowed in this zoning district. The existing dwelling has four (4) bedrooms and it will remain a four (4) bedroom dwelling through the proposed addition.

The Board discussed the proposed plans with Mr. Bogosian. It was noted that the height of the existing roof and proposed roof line were not shown on the 'Proposed Elevations'. Mr. Bogosian stated he believes it is approximately 24' to the ridge line. The Board discussed briefly their concern and stated that they would like verification of height if the project is approved. All other concerns and questions were addressed.

Chairman Bielan 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 Bielan 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 64 Grand Avenue in Falmouth contains 9,114 square feet of Business 3 zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 of the Code of Falmouth to allow an addition to the existing second floor to renovate one bedroom into a master bedroom and bath. There is also a new proposed covered entrance at the northeast corner of the dwelling into the kitchen area that was previously increased over the existing deck through an administrative approval by the Zoning Administrator. There is no change to the footprint of the dwelling as proposed. The existing dwelling has a nonconforming setback from the front of the structure to the

front property line off Grand Avenue of 8.1' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; and a nonconforming setback of 6.8' from the westerly side yard property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage is in compliance for the Business 3 zoned land under Section 240-69 A. of the Code of Falmouth [35% structures – 65% structures parking and paving].

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 addition to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists. The Board further finds that the existing footprint will not be increased through the proposed addition and therefore no increase in the existing nonconforming setbacks and no creation of any new nonconforming setback; and the lot coverage on subject property will remain in compliance with Section 240-69 A. of the Code of Falmouth for this Business 3 zoned land. Furthermore, the Board finds that the proposed will be an enhancement to the utilization of the dwelling for the residents.

The Board finds that according to the plans submitted, the height of the existing dwelling will not be increased. However, the plans lack the height of the dwelling existing and proposed, so the Board will herein require that verification of the height of the structure [existing and proposed] will be submitted to this Board prior to the issuance of a Building Permit.

The Board finds that there are four (4) existing bedrooms within the dwelling and that that number of bedrooms will not be increased through this special permit.

In addition to the above findings, the Board finds that the proposed second floor addition 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 addition as the footprint will remain the same, thus no increase in the existing nonconforming setbacks and no new nonconformities will be created.
- B. The site is suitable for the proposed use as a single-family dwelling use allowed in a Business 3 zoned property.
- 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 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 signed off as a four bedroom system by the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed addition to the second floor of the existing 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 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 Special Permit to Anthony J. and Amy J. Devaney (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to construct an addition to the second floor and add a new covered porch entry at the northeast corner of the pre-existing nonconforming single-family dwelling on subject property known as 64 Grand Avenue, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The second floor addition, covered entry on northeast corner of dwelling, all setbacks, lot coverage and use of additions shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Certified Plot Plan 64 Grand Avenue in Falmouth, Massachusetts" as drawn by Cape & Islands Engineering dated 11/16/15 with a final revision date of 12/17/2015, stamped and signed by Christopher Costa, PLS on 12/22/2015 and with a Board date 'received' stamp of December 22, 2015;

- "Proposed Renovations at 64 Grand Avenue Falmouth, MA" prepared for Longfellow Design Build by Mark S. McCarthy dated 24 September 2015 consisting of EX.1 'Existing Elevations', EX.1 'Existing Floor Plans', A.1 'Proposed Floor Plans' and A.2 'Proposed Elevations' - all with a Board date 'received' stamp of December 11, 2015.

NOTE: See Condition three below regarding Drawing A.2 noted above.

2. There shall be no more than four (4) bedrooms allowed on subject property.

3. The applicant's representative shall submit to the Board of Appeals, prior to issuance of a Building Permit, verification by the architect, the existing and proposed height of the subject single-family dwelling

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. The Applicant shall meet the requirements of the DPW Water Division.

6. 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.)

7. 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: 126-15

Applicant: ANTHONY J. DEVANEY and AMY J. DEVANEY of Jamaica Plain, MA

Subject Property: 64 Grand Avenue, Falmouth, Massachusetts  
Map 46B, Section 17, Parcel 014, Lot 002

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.

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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 Devaney filed w/ Town Clerk 2/9/16