

**FALMOUTH ZONING BOARD OF APPEALS  
FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 124-16

**APPLICANT/OWNER:** THEODORE D. MARTLAND and CATHERINE F. MARTLAND  
of Nashua, New Hampshire

**SUBJECT PROPERTY:** 38 Fairview Avenue, Falmouth, Massachusetts  
**Assessor's Map:** Map 47B, Section 06, Parcel 009, Lot 004

**DEED/CERTIFICATE:** Book 21270 / Page 336

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of November 18, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. of the Code of Falmouth to raze existing garage, construct attached garage, with habitable space above, to pre-existing nonconforming single-family dwelling on subject property known as 38 Fairview 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 12, 2017.
4. The public hearing was terminated on January 12, 2017, wherein the Board consisting of Vice Chairman Kenneth Foreman sitting as Chair, 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 Attorney Kevin P. Klauer, II with Ament Klauer LLP, 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)**

None

11/14/2016	Mark Bogosian, Contractor, submitted on behalf of the applicant, an application, letter of authorization, four sets of plot plan and architectural plans and fee for public hearing
11/16/2016	Application was amended and re-filed with Town Clerk

01/12/2017 Letter of authorization dated January 11, 2017, signed by applicants (Theodore and Catherine Martland) authorizing Ament Klauer LLP to represent the applicants at the Board of Appeals Hearing on January 12, 2017

**Letters/Referrals/E-mails from Town Departments**

11/18/2016 Referral submitted to the file from Conservation Commission that states: *Contain all stormwater on the property.*

11/21/2016 Referral submitted to the file from Planning Department staff with no comment

11/22/2016 Referral submitted to the file from Falmouth Fire Rescue Department with no comment

11/29/2016 Referral submitted to the file from Director of Assessing with no comment

**Plans submitted by Applicant/Applicant's Representative**

“Site and Septic Design Plan” prepared for Theodore D. and Catherine F. Martland, 38 Fairview Avenue in Falmouth, MA – Sheet 1 of 1 dated October 13, 2016, stamped and dated by Matthew C. Costa as Professional Land Surveyor and again as Professional Engineer on 10/21/2016 and with a Board date ‘received’ stamp of November 16, 2016;

“Existing Basement Floor Plan” prepared for Ted Martland by Longfellow Design Build consisting of Drawing EX-0 dated November 16, 2016 and with a Board date ‘received’ stamp of November 17, 2016;

“Existing Exterior Elevation” prepared for Ted Martland by Longfellow Design Build – Drawing EX-3 dated October 26, 2016 with a Board date ‘received’ stamp of November 14, 2016;

“Existing Conditions at 38 Fairview Avenue Falmouth, MA” prepared for Ted Martland by Longfellow Design Build consisting of Drawings EX-1, EX-2 and EX-4 – all dated October 26, 2016 with a Board date ‘received’ stamp of November 16, 2016; and

“Proposed Renovations at 38 Fairview Avenue Falmouth, MA” prepared for Ted Martland by Longfellow Design Build consisting of Drawings A-0 through A-03 and A-05 through A-09 all dated October 26, 2016 and with a Board date ‘received’ stamp of November 16, 2016.

**Hearing:**

Attorney Klauer reviewed the subject property that consists of 7,175 square feet with a 1,622 square foot dwelling that has a nonconforming setback of 13.4’ from the structure to the front property line off Fairview Avenue; all other setbacks are conforming. The applicant would like to remove the existing detached garage and construct an attached garage with habitable space above. Attorney Klauer stated that the proposed garage will not increase the nonconforming front yard setback and lot coverage by structures will be increased from 16.2% to 20%. The space above the proposed garage will allow for a new master bedroom and bath.

The Board discussed plans with Attorney Klauer. Attorney Klauer was asked about the number of bedrooms and he responded that the dwelling will remain a three (3) bedroom dwelling. All concerns and questions were addressed.

Chairman Foreman asked for any public comment in support or opposition of the proposed project.

There was no public comment.

Member Van Keuren made a motion to close the hearing. Member Murphy 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 38 Fairview Avenue in Falmouth contains 7,175 square feet of General Residence zoned land. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to raze the existing detached garage and construct a garage addition to the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling has a nonconforming setback to the front property line of 13.4' that requires a 25' setback pursuant to Section 240-68 A. of the Code of Falmouth; and the detached garage structure proposed to be razed has a nonconforming setback of 6.1' to the rear property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The proposed garage addition will have space above that will allow for a new master bedroom and bath to be created. The proposed plans submitted, specifically Drawing A-2, shows an existing bedroom being converted to office space that meets the criteria for a fourth bedroom under 310 CMR.

Section 240-3 C. 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 garage addition with habitable space above added to the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists. The Board further finds that the proposed site changes include an improvement to the nonconforming front yard setback from 13.4' to 14.6' and the elimination of the nonconforming setback from the detached garage, proposed herein to be razed, of 6.1'. Furthermore, the Board further finds that according to the "Site and Septic Design Plan" submitted and noted herein, the lot coverage by structures will not exceed the 20% maximum allowed by-right. (Note: This plan shows all exterior steps as "landscape steps" and may therefore not be included in the lot coverage by structure calculations.)

The Board finds that the proposed plans discussed, noted and approved herein will be an improvement to the utilization of the dwelling by its residents.

The Board finds through testimony by the applicant's representative that there will be no more than three (3) bedrooms within the dwelling structure. The Board further finds through testimony by the applicant's representative that there will be no shed located on subject property without further review by the Board of Appeals through modification of this special permit.

In addition to the above findings, the Board finds that the proposed razing of existing detached garage structure and the construction of an attached garage structure with habitable space on second level 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 garage addition as the nonconforming front yard setback will be slightly improved; the nonconforming setback from the detached garage, proposed herein to be

razed, will be eliminated; and the lot coverage by structures will not exceed the allowed maximum by right in this residential zoned district.

B. The site is suitable for the proposed use as the property is zoned residential and the structure on said property will continue to be used as a single-family dwelling through the approval of this special permit.

C. There will be no impact on traffic flow and safety as there is no increase in the number of the three bedrooms existing 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; and there is no impact on any view or vista from the roadway or abutting properties.

E. The Board of Health did not submit a referral regarding the existing septic system on subject property, however, testimony given and plans submitted show that there is an existing three-bedroom dwelling that will remain a three-bedroom dwelling. A Note is above regarding the proposed change from a bedroom to "office space" shown on Drawing A2.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed garage addition to 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.

The Board of Appeals has weighed the effects of the proposed garage addition to the pre-existing nonconforming single-family dwelling on subject property as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

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 **4 – 0 to Grant the Special Permit** to Theodore D. Martland and Catherine F. Martland (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to raze the existing detached garage structure and construct a garage with space on second level to be attached to the pre-existing nonconforming single-family dwelling on subject property known as 38 Fairview Avenue, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The razing of the existing detached garage structure, construction of attached garage structure, all setbacks, lot coverage, height of addition, number of bedrooms and use of floor plan submitted shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - "Site and Septic Design Plan" prepared for Theodore D. and Catherine F. Martland, 38 Fairview Avenue in Falmouth, MA – Sheet 1 of 1 dated October 13, 2016, stamped and dated by Matthew C. Costa as Professional Land Surveyor and again as Professional Engineer on 10/21/2016 and with a Board date 'received' stamp of November 16, 2016;

- “Existing Basement Floor Plan” prepared for Ted Martland by Longfellow Design Build consisting of Drawing EX-0 dated November 16, 2016 and with a Board date ‘received’ stamp of November 17, 2016;
  - “Existing Exterior Elevation” prepared for Ted Martland by Longfellow Design Build – Drawing EX-3 dated October 26, 2016 with a Board date ‘received’ stamp of November 14, 2016;
  - “Existing Conditions at 38 Fairview Avenue Falmouth, MA” prepared for Ted Martland by Longfellow Design Build consisting of Drawings EX-1, EX-2 and EX-4 – all dated October 26, 2016 with a Board date ‘received’ stamp of November 16, 2016; and
  - “Proposed Renovations at 38 Fairview Avenue Falmouth, MA” prepared for Ted Martland by Longfellow Design Build consisting of Drawings A-0 through A-03 and A-05 through A-09 all dated October 26, 2016 and with a Board date ‘received’ stamp of November 16, 2016.
2. No more than three (3) bedrooms allowed on subject property.
  3. 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.
  4. 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.)
  5. This permit shall lapse three 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: **124-16**

Applicant: **THEODORE D. MARTLAND and CATHERINE F. MARTLAND  
of Nashua, New Hampshire**

Subject Property: **38 Fairview Avenue, Falmouth, Massachusetts  
Map 47B, Section 06, Parcel 009, Lot 004**

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.

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**Terrence J. Hurrie, Clerk, Board of Appeals**

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**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.