

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 110-17

**APPLICANT/OWNER:** DANIEL S. O'CONNOR and JANE E. O'CONNOR of Worcester, MA

**SUBJECT PROPERTY:** 291 Scranton Avenue, Falmouth, Massachusetts  
**Assessor's Map:** Map 47C Section 05 Parcel 040 Lot 000

**DEED/CERTIFICATE:** Book 17114 / Page 312

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of December 5, 2017, 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 enclose existing deck and add dormers to the pre-existing nonconforming single-family dwelling on subject property known as 291 Scranton 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 25, 2018.
4. The public hearing was closed on January 25, 2018, wherein the Board consisting of Acting Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren, Member Paul Murphy and Alternate Robert Dugan (sitting as voting member) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) 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)**

01/17/2018 Attorney Klauer submitted a letter dated January 17, 2018 addressed to the Zoning Administrator that had 4 attachments, including revised floor plans and lot coverage calculations

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

- 12/07/2017 Referral submitted to the file from the Planning Department staff with no comment
- 12/11/2017 Referral submitted to the file from Direct of Assessing with no comment
- 12/12/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 12/21/2017 Referral submitted to the file from Town Engineering Department with standard comments

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

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

“Certified Plot Plan 291 Scranton Avenue in Falmouth” as drawn on a plan by Cape & Islands Engineering – Sheet 1 of 1 dated November 1, 2017 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of December 5, 2017;

Hand drawn “Full Foundation Unfinished Basement” – one page with a Board date ‘received’ stamp of January 16, 2018; and

O’Connor – 291 Scranton Ave” plans as drawn by Longfellow Design-Build consisting of Drawing A0.1 ‘Demo Plans’, Drawing A0.2 ‘Demo Plan’, Drawing A1.0 ‘First Floor Plan’, Drawing A1.1 ‘Second Floor Plan’, Drawing A1.2 ‘Third Plan’ and Drawing A2.0 ‘Exterior Elevations’ – all Drawings dated 1/16/18 and have a Board date ‘received’ stamp of January 17, 2018.

Hearing:

Attorney Klauer reviewed the existing site and the proposed plans to renovate the interior and the exterior of the dwelling which includes enclosing a portion of the existing deck space on the first floor to add space to the kitchen area and to add a dormer to the existing loft area on the third floor to be able to increase an existing bedroom space adding sitting room and powder room. He reviewed the existing nonconformities on subject property and noted that all nonconformities will remain as existing through this special permit application and approval. He further noted that there will be no increase to the existing three (3) bedroom total within the dwelling. He briefly reviewed the lot coverage calculations sheet that he had submitted to the file that shows 16 properties (including subject property) within the area.

The Board discussed plans with Attorney Klauer including the existing shed and actual setback to the southerly side yard property line due to a bay window off the second level of the dwelling. Attorney Klauer responded that the shed will remain as there is no garage for storage and that the bay window has

existed for many years (confirmed by marketing photos from 2002). All concerns and questions were addressed.

Chairman Hurrie 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 5 - 0.

Chairman Hurrie 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 291 Scranton Avenue in Falmouth contains 3,226 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 C. of the Code of Falmouth to enclose a portion of an existing deck and add dormers to the pre-existing nonconforming single-family dwelling on subject property. The existing dwelling on subject property has a nonconforming setback to the front property line off Scranton Avenue of 4' wherein a 25' setback is required pursuant to Section 240-68 A. of the Code of Falmouth; the dwelling structure has a 4' setback from the southerly side property line that requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth; the subject property has nonconforming lot coverage by structures of 39.6% wherein only 20% maximum is allowed by right under Section 240-69 A. of the Code of Falmouth and 25% is allowed through a special permit under Section 240-69 E. of the Code of Falmouth; and the total lot coverage by structures, parking and paving on subject property is nonconforming as well as it is well over the 40% maximum allowed in this residential district under Section 240-69 A. of the Code of Falmouth. The height of the dwelling is in compliance with Section 240-70 of the Code of Falmouth. The dwelling has three (3) bedrooms existing (although only two show on the plans submitted – the existing attic may count as the third bedroom) and will remain a three-bedroom dwelling through this application.

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 partial enclosure of the existing deck to increase the existing kitchen area and the dormers to increase and improve the third level of the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as the additions and alterations to the dwelling will not increase the footprint of the existing dwelling and therefore not increase the existing nonconforming setbacks and lot coverage; and the additions will not create any new nonconformities on subject property. The Board further finds that there will be improvement to the utilization of the dwelling for its occupants. Furthermore, the Board finds that the applicant's representative gave testimony that the existing dwelling has three (3) bedrooms – only two are shown on the plan with a loft area on the third level that is open to the floor below (See Drawing A0.2 submitted to the file and noted herein); and that the proposed plan shows creation of the loft area into a bedroom with

sitting room and powder room – counting as the third bedroom. It is noted that the hand drawn plan submitted to the file shows the basement area as unfinished.

The Board finds through the plans submitted that the sitting room shown of the third level of the dwelling as proposed will have a cased opening of no less than four feet (4') so that it will not meet the criteria of a bedroom, or be used as such; and the same for what appears to be a sitting room on the second level off the hallway adjacent to a bedroom.

The Board finds through testimony by the applicant's representative that the existing shed will remain so the applicant can have storage as there is no garage on subject property. The Board further finds that the existing subject property is quite small and limits the use, setbacks and lot coverage on said property.

The Board finds that the 'Lot Coverage Calculations' Sheet that Attorney Klauer submitted to the file did not show actual percentages for each property, but did show that 50% of the dwellings on the sheet are two or more stories in height. The Board further finds that the proposed addition of dormers to the subject dwelling will increase the habitable space on the third level so that the appearance of the dwelling will change in appearance of a two-story to a two and one-half story dwelling without increasing the footprint of the dwelling which is allowed by Code.

In addition to the above findings, the Board finds that the proposed addition and alteration of the existing single-family dwelling 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 enclosure of a portion of the existing deck to increase existing kitchen space and the addition of dormers on the upper level of the dwelling to improve and increase the habitable space on the third level as there will be no increase to the existing footprint therefore not increasing any existing nonconforming setback or lot coverage and thus not creating any new nonconformity.

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

C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms within the dwelling as stated at the hearing by the applicant's representative 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 the existing height will be unchanged and there will be no addition to the side of the dwelling that may be seen by the roadway; 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 approval for a three-bedroom dwelling on subject property will be reviewed by the Board of Health prior to the building permit being issued. The Board of Health has to find that the septic system existing is appropriate for what is approved herein.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant will have to contact the Town Water Department regarding updating of water service as the Board did not receive a referral from the Water Department as to the status of the existing water service.

G. The proposed dwelling alterations 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 addition and alterations to the existing single-family dwelling 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 Bielan 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 Daniel S. and Jane E. O'Connor (herein referred to as Applicant) under Section(s) 240-3 C. of the Code of Falmouth to enclose a portion of the existing deck and add dormers to the pre-existing nonconforming single-family dwelling on subject property. This special permit shall be subject to the following conditions:

1. The additions, alterations, lot coverage, height of dwelling (post dormer additions), setbacks and use of the single-family dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - “Certified Plot Plan 291 Scranton Avenue in Falmouth” as drawn on a plan by Cape & Islands Engineering – Sheet 1 of 1 dated November 1, 2017 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of December 5, 2017;
  - Hand drawn “Full Foundation Unfinished Basement” – one page with a Board date ‘received’ stamp of January 16, 2018; and
  - O’Connor – 291 Scranton Ave” plans as drawn by Longfellow Design-Build consisting of Drawing A0.1 ‘Demo Plans’, Drawing A0.2 ‘Demo Plan’, Drawing A1.0 ‘First Floor Plan’, Drawing A1.1 ‘Second Floor Plan’, Drawing A1.2 ‘Third Plan’ and Drawing A2.0 ‘Exterior Elevations’ – all Drawings dated 1/16/18 and have a Board date ‘received’ stamp of January 17, 2018.
2. The applicant shall maintain a cased opening of no less than four feet (4’) between the bedroom area and what is labeled as ‘Sitting Room’ on the third level (see Drawing A1.2 ‘Third Plan’ noted above); and an opening of no less than four feet (4’) on the undesignated space on the second level (see plan A1.1 ‘Second Floor Plan’) that appears to be an unlabeled ‘sitting room’ off the bedroom and hallway.
3. There shall be no more than three (3) bedrooms allowed 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. 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 three (3) 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:

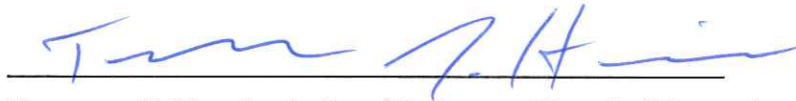
Special Permit Number: **110-17**

Applicant: **DANIEL S. O'CONNOR and JANE E. O'CONNOR of Worcester, MA**

Subject Property: **291 Scranton Avenue, Falmouth, Massachusetts  
Map 47C Section 05 Parcel 040 Lot 000**

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.



**Terrence J. Hurrie, Acting Chairman, Board of Appeals**

**RECEIVED**

**FEB -7 2018**

**FALMOUTH TOWN CLERK**



**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.