

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 010-18  
**APPLICANT/OWNER:** FRANCIS FLAHERTY and MICHELLE A. FLAHERTY of Brighton, MA  
**SUBJECT PROPERTY:** 99 and 101 Grand Avenue, Falmouth, Massachusetts  
**Assessor's Map:** Map 46B Section 25 Parcel 013 Lot 002  
**DEED/CERTIFICATE:** Book 16258 / Page 126  
**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of February 7, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth to have Town acknowledge that two (2) separate dwelling units existed prior to May 19, 1959 and to construct a small addition to the entry of one of the pre-existing nonconforming dwellings on subject property known as 99 and 101 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 April 5, 2018.
4. The public hearing was closed on April 5, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Acting Clerk 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 John Doyle, PE, 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**

- 02/07/2018 Letter submitted to the file by applicant from John F. Cremen of 12 Montgomery Avenue dated May 15, 2017 stating his knowledge of two dwellings on subject property since 1950
- 02/07/2018 Letter submitted to the file by applicant from James J. Brennan of 22 Hawthorne Avenue stating his knowledge of two dwellings on subject property since 1950

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

04/05/2018 John Doyle (representative) submitted a photo of the front of the subject unit showing front entry way and marker to increase the landing

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

02/09/2018 Referral submitted to the file from Planning Department staff with no comment

02/09/2018 Referral submitted to the file from Director of Assessing with no comment

02/20/2018 Referral submitted to the file from the Water Department with no comment

04/05/2018 Photos from 1950 and 1960 that show the two units on subject property as unchanged and is consistent with today's GIS map on subject property

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**

“Plot Plan of Land” prepared for Francis and Michelle Flaherty showing the proposed addition (landing) as drawn by John Doyle, PLS – plan is dated January 7, 2018 and is stamped and signed by John P. Doyle, III, PLS with a Board date ‘received’ stamp of February 7, 2018;

“101 Grand Ave” hand drawn floor plans (1 story) with a Board date ‘received’ stamp of February 7, 2018; and

“99 Grand Ave” hand drawn floor plans (2<sup>nd</sup> story) with a Board date ‘received’ stamp of February 7, 2018.

Hearing:

John Doyle reviewed the existing subject property with the Board and noted it is nonconforming due to there being two (2) separate dwelling units on the property, nonconforming setbacks to front, rear and side yard property lines and lot coverage by structures well exceeds the 20% maximum allowed in a residential zoned district. Mr. Doyle explained that the applicant is in front of the Board to get acknowledgement under Section 240-3 A of the Code of Falmouth that both dwelling units on subject property existing prior to May 19, 1959. He noted the submission of two letters from long-time residents within the neighborhood that knows of the existence of the two dwellings on the property prior to 1959. Mr. Doyle also stated that he grew up in the area and delivered papers to the property when he was a boy. Mr. Doyle stated that the applicant is also in front of the Board to seek relief under Section 240-3 C. of the Code of Falmouth to alter one of the pre-existing nonconforming dwellings on site known as 101 Grand Avenue. He explained that the applicant would like to increase the size of the landing at the front egress of the one dwelling to improve the utilization of egress to the main entry. The

landing will be increased and not come any closer to the front property line than the existing 7.7' setback. There will be no other changes at this time to the dwelling structure.

The Board discussed plans with Mr. Doyle and asked about the shed on the property and the lot coverage proposed.

Francis Flaherty, applicant, informed the Board that he would like the shed to remain as it houses all lawn and patio equipment as there is only crawl space below the one dwelling unit – no basement. Mr. Doyle explained that the increase in the pre-existing lot coverage by structures would be slightly increased from 35.57% to 36.08%.

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

There was no public comment.

Member Murphy made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 - 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 99 and 101 Grand Avenue in Falmouth contains 3,757 square feet of Residential C zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth to have the Town acknowledge that two (2) separate dwelling units have existed on subject property prior to May 19, 1959 and to allow the front landing on 101 Grand Avenue unit to be repaired and increased. The applicant submitted two letters from residents who have resided in the neighborhood since 1950 and his Representative Mr. Doyle stated into the record that he grew up in the neighborhood and delivered newspapers as a boy in the neighborhood and can verify that the two (2) dwelling units did exist prior to May of 1959. The applicant is proposing to repair and slightly increase the existing landing at the entrance of 101 Grand Avenue to improve access to the dwelling and to allow a chair or pot on the front landing for esthetics.

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 although the existing nonconforming lot coverage by structures is slightly being increased from 35.75% to 36.08%, the repair and increase of the landing to the entrance of the dwelling on subject property known as 101 Grand Avenue will be an improvement for access to the dwelling and improve the curb appeal of the property. The Board further finds that the addition to the existing landing will not increase the existing nonconforming setback to the front property line. Furthermore, the Board finds that the nonconforming lot coverage by structures is existing and the proposed is a minimal increase and will not adversely impact the property or the neighborhood.

Section 240-3 of the Code of Falmouth – “Pre-existing structures and uses”, sub-section A. requires that to alter, extend or modify a dwelling on a lot with more than one (1) dwelling, requires Board of Appeals approval based on submission of a preponderance of credible evidence that the dwelling structures (all on the subject property) existed prior to May 19, 1959 and that use of the dwelling has been consistent and not abandoned for a period of two years or more. If the Board approves an alteration, extension or modification of a dwelling on a lot with more than one (1) dwelling, then the Board shall condition that the number of dwellings on said property be limited to those existing prior to May 19, 1959.

The Board finds through submission of letters from nearby abutters (who have lived in the neighborhood since 1950), by testimony from the representative of the applicant who also lived and delivered newspapers in the neighborhood during the 1950’s and by aerial photos from 1950 and 1960 submitted by the Town Engineering Department that the two (2) existing and separate dwellings on subject property did exist prior to May 19, 1959 and are therefore pre-existing nonconforming under Section 240-3 A. of the Code of Falmouth. The Board further finds that there will be no more than two (2) dwellings on subject property.

The Board finds through testimony by the applicant that there is no basement area within either of the two (2) dwellings on subject property – only crawlspace. The Board further finds that the existing shed at the rear of subject property will remain as existing for storage due to lack of basement space on subject property.

In addition to the above findings, the Board finds that the application is 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 existing two (2) separate dwellings on subject property as there will be no additional dwellings created and the nonconforming setbacks remain as existing; the lot coverage by structures was increased slightly to allow the front stoop of dwelling known as 101 Grand Avenue to be enlarged for safety and aesthetics.
- B. The site is suitable for the proposed use as the property is zoned residential and will be maintained as it is existing with no more than the existing two (2) separate dwellings on the lot.
- 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 slightly 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 subject property is on Town sewer and there will be no new bedroom added through this approval.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed alteration to the front stoop of one (1) of the dwellings 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 requested acknowledgement of two (2) separate dwellings on subject property and the increase in the existing landing at one (1) of the dwelling's entrance 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 Hurrie 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 Francis and Michelle A. Flaherty (herein referred to as Applicants) under Section(s) 240-3 A. and 240-3 C. of the Code of Falmouth to have Town acknowledge that two (2) separate dwelling units existing prior to May 19, 1959 and to increase the existing landing at the front entry of one (1) of the two (2) dwelling units on subject property known as 99 and 101 Grand Avenue, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The proposed small addition to the existing front landing to entrance of 101 Grand Avenue shall be constructed according to current Massachusetts State Building Code and as shown on the plan submitted entitled:
  - "Plot Plan of Land" prepared for Francis and Michelle Flaherty showing the proposed addition (landing) as drawn by John Doyle, PLS – plan is dated January 7, 2018 and is stamped and signed by John P. Doyle, III, PLS with a Board date 'received' stamp of February 7, 2018;
2. There shall be no increase in the number of dwelling units on subject property outside of the two (2) existing and herein acknowledged as being on said property prior to May 19, 1959 and used consistently without a two (2) year abandonment.
3. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, shall be submitted and 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 (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:       **010-18**

Applicant:                       **FRANCIS and MICHELLE A. FLAHERTY of Brighton, MA**

Subject Property:               **99 and 101 Grand Avenue, Falmouth, Massachusetts  
Map 46B Section 25 Parcel 013 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.



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

RECEIVED

APR 13 2018

FALMOUTH TOWN CLERK

*AD @ 3:30 pm*

**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.