

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 053-18

**APPLICANT/OWNER:** ROBERT O'DONNELL and ANNAMARIE O'DONNELL  
of Marlborough, MA

**SUBJECT PROPERTY:** 95 Grand Avenue, Falmouth, Massachusetts  
**Assessor's Map:** Map 46B Section 24 Parcel 001 Lot 001

**DEED/CERTIFICATE:** Book 23463 / Page 167

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of June 29, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct a porch addition and an addition to the second floor of the pre-existing nonconforming single-family dwelling on subject property known as 95 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 August 16, 2018.
4. The public hearing was closed on August 16, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Ed Van Keuren and Member Paul Murphy 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)**

06/29/2018 Attorney Kevin Klauer submitted an amended application, an addendum and revised floor plan

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

- 07/2/2018 Referral submitted to the file from Board of Health Agent noting property on Town sewer
- 07/2/2018 Referral submitted to the file from Planning Department staff with no comment
- 07/03/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 07/03/2018 Referral submitted to the file from Director of Assessing that states: *Includes Lots 1 and 38*
- 07/26/2018 Referral submitted to the file from Town Engineering with standard comments and a recommendation to add drywells, rain garden or other stormwater measure for the roof

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

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

“Lot Coverage Calculations 95 Grand Avenue” – has a Board date ‘received’ stamp of June 27, 2018;

“Proposed Addition” prepared for Robert & Annamarie O’Donnell 8 Meadow Brook Road Marlborough, MA for 95 Grand Avenue as drawn on a plan by Cape & Islands Engineering dated June 13, 2018 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of June 27, 2018; and

“O’Donnell Residence 95 Grand Ave, Falmouth” architectural plan (conceptual design) as drawn by Longfellow Design-Build consisting of:

Drawing A0.0 ‘Cover’ dated 6/11/2018 with a Board date ‘received’ stamp of June 27, 2018;

Drawing A0.1 ‘Demo Plans’ dated 6/11/2018 with a Board date ‘received’ stamp of June 27, 2018;

Drawing A1.1 ‘First Floor Plan’ dated 6/11/2018 with a Board date ‘received’ stamp of June 27, 2018;

Drawing A1.2 ‘Second Floor Plan’ dated 6/11/2018 with a Board date ‘received’ stamp of June 29, 2018; and

Drawing A1.3 ‘Elevations’ dated 6/11/2018 with a Board date ‘received’ stamp of June 27, 2018.

Hearing:

Attorney Kevin Klauer reviewed the existing site and proposed addition with the Board. The subject property is 7,527 square feet in size, applicants have owned the property for approximately 20 years. The property has nonconforming setbacks. The dwelling is a three (3) bedroom being increased to a four (4) bedroom through the special permit application. Lot coverage is currently in compliance at 18.6% and will be increased to 21.9% - he reviewed the Lot Coverage Calculations submitted to the file showing subject property and neighborhood. The applicant is proposing to add to the existing second floor, with balcony, to increase the 1.5 story dwelling to a 2.0 story dwelling. The second floor addition will create a master bedroom/bathroom. Also proposed is a front porch addition that will not increase the existing nonconforming setback of 10.2' to the front property line off Montgomery Avenue.

The Board discussed plans with Attorney Klauer. 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 Foreman made a motion to close the hearing. Member Van Keuren 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 95 Grand Avenue in Falmouth contains 7,527 square feet of Residential C zoned land that is not located within any overlay district. The property has benefit of Town sewer. The applicant applied under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct a porch addition and addition to the existing second floor of the pre-existing nonconforming single-family dwelling on subject property. The dwelling structure has a nonconforming setback of 10.2' to the front property line of Montgomery Avenue and an 8.5' setback to the front property line off Grand Avenue – both setbacks require a 25' setback under Section 240-68 A. of the Code of Falmouth. It is noted that there was no submission to the file from the Building Commissioner designated either a front or side yard property line under Section 240-13 'Yard, front.'. There is a detached garage that also has a nonconforming setback to front property line off Grand Avenue of 9.8' and a nonconforming side yard setback to the westerly side property line of 5.5' which requires a 10' setback pursuant to Section 240-68 B. of the Code of Falmouth. The lot coverage by structures existing is shown as 18.6% on the plan submitted and noted herein. The property is on Town sewer and therefore the proposed fourth bedroom is allowed.

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 addition to the second floor, renovation of egress and steps at the west side of the dwelling and addition of a front porch off east façade of the pre-existing nonconforming dwelling will not be substantially more detrimental than what currently exists as there is no increase to the nonconforming setbacks noted and the addition to the existing second floor proposed herein will improve the utilization of the dwelling for its occupants. The Board further finds that the proposed changes are in keeping with the character of the property and the neighborhood.

Section 240-69 E. of the Code of Falmouth (“Maximum lot coverage.”) requires a special permit to exceed the maximum lot coverage by structures of 20% up to, and not to exceed, 25% after the Board takes into consideration the size and height of the proposed, any impact of shadow effect on adjacent property, any impact on a view or vista from the public way or if there is any impact of nitrogen on a coastal embayment.

The Board finds that the proposed additions as noted herein to the pre-existing nonconforming single-family dwelling is in keeping with the integrity and character of the neighborhood, that there is no shadow effect on any abutting property, that there is no impact on a view or vista from a public roadway and there is no effect of nitrogen on a coastal embayment. The Board further finds that the increase to the bulk of the existing dwelling structure is at the rear of the dwelling, which a portion of said addition can be seen from Montgomery Avenue and that the proposed front porch off Montgomery Avenue side of dwelling will improve any impact the added bulk of the addition may create. Furthermore, the Board finds that there was no correspondence submitted to the file from any abutters and there was no public testimony from abutters or interested parties at the hearing.

The Board finds through testimony by the applicant’s representative that the applicant is amenable to adding drywells to the property and the project engineer will locate them as necessary. The Board further finds that the increase from three (3) bedrooms to four (4) bedrooms on subject property is allowed as the subject property is on Town sewer.

The Board finds that according to testimony from the applicant’s representative, there is no intent to locate or place a shed or other accessory structure on subject property. The Board further finds that the existing basement is unfinished and will remain unfinished through this special permit.

In addition to the above findings, the Board finds that the proposed additions discussed and represented herein 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 as there will be no increase to the existing nonconformities, there will be no new nonconforming setbacks and the front porch proposed will not be closer to the front property line than what exists and the lot coverage by structures is approvable herein under Section 240-69 E. of the Code of Falmouth.

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

C. There will be very minimal, if any, impact on traffic flow and safety through the addition of one (1) bedroom 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 property is on Town sewer according to the referral submitted by the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed dwelling additions 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 additions 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 Robert and Annamarie O'Donnell (herein referred to as Applicant) under Section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct a front porch addition and addition to the existing second floor of the pre-existing nonconforming single-family dwelling on subject property known as 95 Grand Avenue, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The removal of two landings with steps to grade at the front and rear of the dwelling, the addition of a front porch, addition of new rear landing and steps, the addition to the second floor, all setbacks, lot coverage and use of the dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

“Proposed Addition” prepared for Robert & Annamarie O'Donnell 8 Meadow Brook Road Marlborough, MA for 95 Grand Avenue as drawn on a plan by Cape & Islands Engineering dated June 13, 2018 – plan is stamped and signed by Matthew C. Costa, PLS and has a Board date ‘received’ stamp of June 27, 2018; and

“O'Donnell Residence 95 Grand Ave, Falmouth” architectural plan (conceptual design) as drawn by Longfellow Design-Build consisting of:

- Drawing A0.0 ‘Cover’ dated 6/11/2018 with a Board date ‘received’ stamp of June 27, 2018;
- Drawing A0.1 ‘Demo Plans’ dated 6/11/2018 with a Board date ‘received’ stamp of June 27, 2018;

- Drawing A1.1 'First Floor Plan' dated 6/11/2018 with a Board date 'received' stamp of June 27, 2018;
  - Drawing A1.2 'Second Floor Plan' dated 6/11/2018 with a Board date 'received' stamp of June 29, 2018; and
  - Drawing A1.3 'Elevations' dated 6/11/2018 with a Board date 'received' stamp of June 27, 2018.
2. There shall be no more than four (4) bedrooms allowed on subject property.
  3. There shall be no bedrooms or sleeping accommodation created within the basement area.
  4. The applicant shall add drywells to subject property and the location of said drywells will be determined by the project engineer.
  5. There shall be no shed or any other accessory structure allowed on subject property without prior approval by the Board of Appeals.
  6. 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.
  7. 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.)
  8. 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: **053-18**

Applicant/Owner: **ROBERT O'DONNELL and ANNAMARIE O'DONNELL  
of Marlborough, MA**

Subject Property: **95 Grand Avenue, Falmouth, Massachusetts  
Map 46B Section 24 Parcel 001 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: 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 Hurrie, Chairman, Board of Appeals**

RECEIVED

AUG 27 2018

FALMOUTH TOWN CLERK

*02:40 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.