

**Falmouth Planning Board and Zoning Board of Appeals
Selectmen's Meeting Room – July 31, 2018
Joint Meeting - 6:30 pm
MINUTES**

Present FPB: Jim Fox, Chairman, Pat Kerfoot, Vice Chairman, Paul Dreyer, Clerk/Secretary, John Druley, Pamela Harting-Barrat, Tom Bott, Cori Pacheco

Absent: Robert Leary, Charlotte Harris

Present ZBZ: Terrence Hurrie, Edward Van Keuren, Gerald Potamis, Sari Budrow,

Chairman J.Fox and Chairman T.Hurrie called the meeting to order at 6:30 PM.

Joint meeting with the Zoning Board of Appeals to discuss the changes to the Accessory Apartment Bylaw for the November Town Meeting Warrant.

Accessory Apartments draft 7-11-2018

**§ 240-23 I. Accessory Apartments & § 240-38 I. Accessory Apartments
Accessory Apartments**

Purpose

The intent of the Accessory Apartment bylaw is to: Broaden the range of housing choice in Falmouth by increasing the number of small dwelling units available for rent; Encourage greater diversity of population with particular attention to young adult citizens and to allow for "Aging in Place" for our senior citizens; Promote more economic and energy efficient use of the town's housing supply. All this while maintaining the appearance and character of the town's single family neighborhoods.

Definitions

Accessory Apartment. Sections 240-3 A, 240-66. D and 240- 70.D not-with-standing, an additional dwelling unit, subordinate in size and accessory to the principal dwelling unit on the lot, located in either the principal dwelling or an accessory structure on the lot. An accessory apartment is constructed so as to maintain the appearance and essential character of a single family dwelling or accessory structure thereto located on the lot.

Requirements

Only one accessory apartment shall be allowed per lot. The lot size shall be no less than 7,500 square feet. Either the principal dwelling or accessory apartment must be owner-occupied for a period of seven months in every calendar year, or owned by a nonprofit organization or government authority whose purpose is to provide affordable housing.

Either the principal dwelling or accessory apartment may be rented, but not both. The owner-occupied dwelling cannot be rented while owner is absent. Rental periods shall be no less than six (6) months and weekly/monthly rentals (summer rentals so called) are expressly prohibited. Neither the principal dwelling nor accessory apartment shall be used as commercial accommodations at any time.

The accessory apartment shall have no more than two bedrooms and a maximum of eight hundred (800) square feet, or forty (40) percent of the principal dwelling, whichever is less, as measured using the exterior side of the outside wall. The foot print of a detached accessory structures cannot exceed that of the principal dwelling. An existing dwelling in excess of four (4) bedrooms may convert two of the existing bedrooms into one accessory unit.

The total number of bedrooms on the lot shall not exceed four when the lot contains less than twenty thousand (20,000) square feet. A property that has a pre-existing bedroom count that exceeds four (4)

bedrooms per twenty thousand (20,000) square feet of lot area can maintain that number of current bedrooms but cannot increase.

Whether allowed as a matter of right or by special permit, accessory apartments located on lots subject to the provisions of the Water Resource Protection or Coastal Pond Overlay Districts, the total number of bedrooms shall not exceed one (1) per ten thousand (10,000) square feet of lot area. Properties that preexist with a density greater than one (1) bedroom per ten thousand (10,000) square feet in a Coastal Pond Overlay District can maintain their existing bedroom count but cannot increase.

Properties in a Coastal Pond Overlay District that want to increase beyond the density outlined in (g) can only do so provided that: both the principal dwelling and accessory apartment are connected to the municipal sewer system; or an on-site septic system with enhanced nitrogen removal approved by the Board of Health is installed on the property.

Design Standards

Accessory apartments, whether a part of new construction, reconstruction, alteration or change to a single family residence or accessory structure attached thereto, shall maintain the following standards: The architectural effect, as the result of the accessory apartment being constructed within the principal dwelling, shall be that of a single family residence compatible with the surrounding neighborhood. The architectural effect, as the result of the accessory apartment being constructed as a detached accessory structure, shall be that of a structure incidental to a single family residence compatible with the surrounding neighborhood. Parking for the accessory apartment shall be provided in a manner that is compatible with the surrounding neighborhood.

Procedures

Accessory Apartment constructed within a single family dwelling or accessory structure attached thereto: Prior to the issuance of a building permit for an accessory apartment constructed within a single family dwelling or accessory structure attached thereto: a Site Plan Review (Design Review), pursuant to Article XXXIX (39) of the Zoning Bylaw, shall be conducted by the Planning Board, taking into account the design standards, requirements and purposes of this accessory apartment bylaw. The application for site plan review shall include the information contained in Section 240-195 C, unless waived by the Planning Board.

NOTE: *The consensus of the group is approval for accessory housing should be by one Board not two. The question which Board? If it's the ZBA then section (5)a would need to be amended.*

Accessory Apartment constructed within or as a detached accessory structure (not attached to a single family dwelling): In addition to the site plan review requirements above, an accessory apartment built within or as an accessory structure, not attached to a single family dwelling, a special permit from the Board of Appeals shall be required. In addition to the design standards, requirements and purposes of this accessory apartment bylaw, the Board of Appeals shall take into account the standards found in section 240-216 A- I of this bylaw.

(6) Enforcement

Upon a written determination by the Building commissioner that the property owner has failed to comply with these provisions the property owner shall bring the accessory apartment into compliance within ninety (90) days of such notice. Failing compliance, the property shall be restored to single family dwelling status within ninety (90) days of said failure determination, in a manner that complies with all requirements of the State Building Code and any other local regulations or bylaws.

Monitoring

An affidavit shall be submitted annually to the building commissioner, signed by the property owner, attesting that the principal dwelling or accessory apartment has been owner-occupied for a period of

seven months and not otherwise rented as set forth in section 3 (b) above. The Building Commissioner may allow a property owner to be absent during this seven-month period for cause, such as military assignment, work or health related issues, academic sabbatical or similar circumstance.”

P.Kerfoot - We decided the lot size shall be no less than 7,500 square feet and is intended as a starting point. Building Commissioner Rod Palmer said that people should start with him; he would cover so many of the problems that could come up. 3(d) is the same but is stated more clearly. We changed the first sentence to two sentences. That last phrase is new, “as measured using the exterior side of the outside wall.” There were multiple ways to measure the square footage. Anything, also anything created within.

J.Fox - One has to be 40 per cent of the other. It allows someone to age in place.

P.Kerfoot - We go on to 3(f). What is new there is “the footprint of a new detached accessory. Instead of structure, cross it out and say dwelling unit. Then we go to g through j. This was restated by Scott McGann. He thought it should be clarified more by splitting it apart.

G.Potamis - I don't see the need for enhanced nitrogen. I agree the Board of Health has to approve it. We are requiring a standard that's not defined yet. Let the Board of Health make that decision.

V.Valiela - I think that document should be brought back before the committee for a discussion.

Diana Molloy - There has been some discussion but it is challenging because there are no standards set yet. It may be something we want to tackle separately. We don't have great data on these alternative systems and what will work in the long run.

S.Budrow - I sent you all the old bylaw and number four specifically addressed this and worked for years. I got an opinion from Frank Duffy that it was the Board of Health's determination as to the adequacy of septic system under Section 240-216E of the Code of Falmouth and that would be the Board of Health. Maybe you might want to read that old bylaw; 24-23 (i), 240-38 (i) that was in existence prior to this change on how it requires IA systems in a Coastal Pond Overlay or Water Resource Protection Overlay.

J.Fox - I agree with Gerry that it needs to be approved by the Board of Health. It sounds like there's a lot of interest in discussing this further.

P.Kerfoot - Sari suggests we read the old number four and Virginia says we should bring this whole issue back to the working group. What I really am hearing is that it should read “an on-site septic system approved by the Board of Health”; and remove “with enhanced nitrogen removal”. Design Standards under b, we added “constructed as a detached accessory structure”. It now reads “the architectural effect as the result of the accessory apartment being constructed as a detached accessory structure shall be that of a; we changed the word garage or barn to the word structure.

T.Hurrie - I think we need to come up with some sort of guidelines that would help the public with the design standards.

P.Kerfoot - 4(c) we threw a few words in here; “parking for the accessory apartment shall be provided on site. We cross out the rest and end it with on site. We go to Procedures B we added detached accessory apartment constructed within or as a detached accessory structure. We further clarified “not attached to a single family dwelling”.

P.Kerfoot - We need to make a list of the pluses and minuses.

S.Budrow - If property/structure is pre-existing non-conforming then according to the bylaw, a special permit is required for approval, so in the by-right addition or creation within a single-family dwelling – the application still may have to go to two regulatory Boards. Unless you change several bylaws or create this bylaw to cover 240-3(c), 240-69(e), 240-70. There are quite a few that you need to look at. Under 240-23(i) and 240-38(i) the ZBA in all applications previously has taken into consideration on how the proposed accessory apartment on a property can allow the single-family dwelling to maintain its appearance of a single-family dwelling. You've got to either include other bylaws in this bylaw, such as 240-3(c), pre-existing nonconforming, 240-69(e) lot coverage, bulk calculations, 24-70 height or allow the ZBA to continue the special permitting process of pre-existing/nonconforming and detached accessory apartment. Either way you decide I think it's got to be specified within the amended bylaw.

J.Druley – Recommended that the bylaw be kept just as is for responsibilities regarding ZBA and FPB for a period of five (5) years and then look at it again to see if anything in regard to responsibilities should be changed. Both committees agreed.

P.Kerfoot - Confirmed with Julian Suso that the proposed language of the bylaw will be reviewed once more by the working group, hopefully next week, and final revised bylaw sent out to all.

NEXT MEETINGS: August 14, 2018 and August 28, 2018

Meeting adjourned at 7:43 pm

Respectfully Submitted,
Paul Dreyer, Clerk/Secretary
Sheri Theroux, Recording Secretary