

Zoning Board of Appeals Decisions Decisions for: 12-04-2014

[Close Window](#)

DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 77-14

APPLICANT/OWNER: JEANINE CONSTANTINE, TRUSTEE of Wayland, MA

DEED/CERTIFICATE: Book 19684 / Page 73

SUBJECT PROPERTY: 659 Carriage Shop Road, East Falmouth, MA
Map 21, Section 09, Parcel 004C, Lot 000C

Under a date of September 5, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 E. of the Code of Falmouth for amnesty to allow the continued use of a multifamily (4 units) structure on subject property located at 659 Carriage Shop Road, East Falmouth, Massachusetts.

A public hearing was opened on October 16, 2014 and continued to December 4, 2014 as requested by the applicant with no testimony given. 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.

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Terrence Hurrie and Associate Member Mark Cool

Clerk Bielan read the Notice of Public Hearing into the record.

Jeanine Constantine, applicant and owner of subject property was present and explained to the Board time frame of the multi-family structure and the efforts to bring the structure into compliance with the guidelines set forth in Section 240-3 E. of the Code of Falmouth and pursuant to the Building Commissioner's letter of July 14, 2014 that lists issues found through the inspection process. History of structure: Previous owners (Marchisin) built the structure in 1959 with two units; in 1961 they added a third unit; and in 1972 they added a fourth unit. The Ullian's [applicant's married name] purchased the property from the Marchisin's in 1979 as a four dwelling structure. In 2006 the applicant had 5 gas meters installed – one for each of the four units and one that is a house meter. Ms. Constantine reviewed the rents she charges for the units: 2 upstairs units (both one-bedroom) are \$625.00/month – electric and water included; one downstairs unit is \$700.00/month – electric and water included; and a studio apartment downstairs is \$500.00/month – electric and water included. Each unit tenant pays their own gas bill. She stated that the rents have and will remain low (below DHCD guidelines for affordable apartments); and the tenants have lived there quite a few years – one tenant has resided there for twenty-two years and another for 18 years.

Ms. Constantine reviewed the requirements under Section 240-3 E. and noted that a deed restriction is required and language included that tenancy for two units [two units were allowed by right in 1959 – so only two units are required to be affordable] shall be to individuals meeting the 80% of median income requirement. She said she will follow through with filing a deed restriction. She stated the only lapse in occupancy for a unit since she purchased the property has been due to renovations/painting between tenants; no longer than a month at a time. Ms. Constantine said she is aware of what the building department is requiring for compliance (letter from Building Commissioner Gore dated July 14, 2014) and the work will commence upon issuance of the special permit. She said that the structure has been used as a four unit structure consistently since 1979.

Clerk Bielan read the Town Department referrals into the record.

A referral submitted from the Engineering Department had standard comments regarding any connections or alterations to utilities will require application to the appropriate department.

A letter in the form of a referral from the Falmouth Fire Rescue Department's Fire Prevention Officer, Lt.

Mel Trott, was submitted and outlined requirements for smoke detectors and carbon monoxide detectors (see letter of September 26, 2014 submitted to the file).

Referrals submitted from the Building Department, Planning Department and Marine Environmental Services had no comment.

Clerk Bielan noted that the applicant had submitted a letter to the file from Hildegard Marchisin dated August of 1994 giving history of structure since 1959 and sold by Hildegard and Michael Marchisin and sold to Allan and Jeanine Ullian (Jeanine Constantine) in 1979; a response from the Ullians dated 8/31/1994; and a letter by the applicant dated August 27, 2013 giving the history of the structure and installation of separate gas meters in November 2006 and rental fees of the units.

Applicant submitted to the file a copy of the ad for the 'apartment complex' for sale that was published in the "Falmouth Enterprise" on September 28, 1979, page 15A.

At the hearing the applicant submitted a letter dated December 4, 2014 from her accountant Edward Heylin, CPA that states he has done her taxes since 1979 and it is his understanding that the subject property has been a four unit rental to the present time.

At the hearing the applicant also submitted letters from two tenants: Tom Gibbons (tenant of nine years) stating that he lives on premise comfortably and appreciates it; and Anthony Perry who states he lived on premise from 1986 to 2012.

Applicant submitted a letter from Building Commissioner Eladio Gore dated July 14, 2014 that gives a summary of when subject structure was inspected by the Inspectional Services Department.

Board Questions:

Member Bielan asked if there had been any lapses in the use of the four units.

Ms. Constantine stated never more than a month at a time.

Member Bielan questioned that for twenty years – since January 1, 1994 - the four units have been continuously occupied.

Ms. Constantine stated yes – absolutely.

Member Hurrie stated so there has been no summer rentals – just year round rentals.

Ms. Constantine stated that is correct.

Chairman Haddad asked Ms. Constantine what upgrades the Building Commissioner is requiring.

Ms. Constantine stated that the Building Commissioner is requiring smokes and carbon monoxide detectors to be hardwire, as is the Fire Department; paddle fans have to be raised – not less than 7' at height; electrical panel needs to be marked properly; egresses have to be shored up and repaired; fix the sliding door used as second means of egress for first floor unity and repair egress from the two second floor units; and replace globes on outside lighting.

Chairman Haddad asked how many total bedrooms are there, if there is separate utilities and condition of septic system.

Ms. Constantine answered that there are four bedrooms (3 units are one bedroom and 1 unit is a studio apartment). She said that the tenants pay their heating bill and she pays electric and water. The septic system she said is pumped every year and there has been no problems.

Chairman Haddad asked if anyone present would like to speak in favor or opposition.

Skip Gronros spoke in support stating he has lived in one of the units for twenty-two years and is happy there. He said that all of the units have been continuously occupied since 1994.

Administrator Budrow asked him what he pays in rent.

Mr. Gronros said he pays \$625.00/month in rent.

Jim Lamb said he is speaking for Tom Gibbons who is present but not feeling well. He read from a letter Mr. Gibbons wrote stating he has rented an upstairs unit for nine years, he is 78 years old and in fear of his future with this process as he lives comfortably there.

Arnold Andrade spoke in support and said he has been a resident for thirteen years and is 69 years old.

Board Discussion:

Member Cool reviewed the hearing and stated that the applicant meets the requirement of the bylaw and has received a letter from the Building Commissioner of what needs to be fixed.

Member Foreman stated concern regarding the lack of information from the Accountant regarding verification of rental income to the applicant.

Chairman Haddad agreed that the information submitted by the applicant's CPA is not sufficient as it doesn't show rental income.

Member Bielan said that if the Board approves the special permit, they can condition it contingent on receiving information from the accountant as to the rental paid over the 20 years.

Member Foreman made a motion to close the hearing. Member Cool seconded the motion. Motion carried 5 - 0.

Chairman Haddad 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 659 Carriage Shop Road contains 50,928 square feet of Agricultural A zoned land that is located partially within the Green Pond and Bourne Pond Coastal Pond Overlay District and the Wild Life Corridor. The applicant applied under Section(s) 240-3 E. of the Code of Falmouth, which is an amnesty bylaw that allows a property owner to apply for a special permit to the Board of Appeals in order to establish that more than one existing structure or a structure with more than one dwelling unit as lawfully nonconforming. Subsection (1) of this bylaw requires the applicant procure a determination from the office of the Building Commissioner of what repairs or upgrades, if any, will be required for an occupancy permit, which will be a condition in the Board's decision. Subsection (2) of this bylaw sets forth requirements for approval that will be conditioned in the Board's decision.

The Board finds based on the information submitted, specifically a letter from the owner of the property from 1959 to 1976 who in 1959 constructed the dwelling with two units, added a third unit in 1961 and a fourth unit in 1972 - that the subject property has had a structure with four (4) dwelling units within since 1972. The Board further finds through testimony of the applicant/owner, current tenants - one of 22 years, one of 9 years and one of 13 years - and letters submitted that the four units have been consistently occupied for the past twenty (20) years. Furthermore, the Board finds that the applicant submitted an advertisement of the property for sale in the "Falmouth Enterprise" publication of September 28, 1979 that reads: 'Apartment Complex - 4 year round apartments next to Falmouth Country Club. \$775.00 monthly income, recently remodeled, Owner financing at 19 per cent available - \$61,000.00 - Foley From Falmouth Realtors'.

The Board finds through testimony of applicant and a tenant of twenty-two (22) years that there has not been an abandonment of a unit on subject property for a period of two (2) years or more. The Board finds through testimony and information submitted that the four (4) subject units have been rented consistently for the past twenty (20) years.

The Board finds through a letter submitted by the applicant from the Building Commissioner [dated July 14, 2014] that the premises has been inspected and a list given to the applicant of what is required to be replaced or repaired prior to occupancy being issued. The Board further finds that the applicant is in possession of said letter and understands that the approval for amnesty and this special permit is dependent upon the requirements set forth in said letter from the Building Commissioner [dated July 14, 2014].

The Board finds through testimony of the applicants and tenants that the rents collected for the existing four units on subject property are modest and appear to be below the affordable guidelines of 80% of median income requirements. The Board further finds that the rental of the units on subject property appear to have very little turn over in tenants.

The Board finds that there is no more than four bedrooms on subject property as each of the four units has only one bedroom. The Board further finds that the applicant stated that the septic system is pumped yearly and there have not been any problems to date.

In addition to the above findings, the Board finds that the proposed 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 amnesty of the existing four apartment units as the footprint of the structure will remain unchanged.
- B. The site is suitable for the proposed use as it has existed as such for over 35 years.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property; there is no change in the location of the existing driveway on site; and adequate parking is provided.
- D. The visual character of the subject property will be unchanged; 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 signed off as a four bedroom system by the Board of Health.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The multi-family dwelling discussed and represented herein will have an effect on the supply of affordable housing in Falmouth but will not be counted on the housing inventory.
- 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 under a LIP program.

Member Foreman made a motion to Grant the Special Permit with conditions. Member Bielan 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 Jeanine Constantine (herein referred to as Applicant) under Section(s) 240-3 E. [Amnesty of more than one dwelling unit on a lot] of the Code of Falmouth to allow the continued use of four apartments within a structure located at 659 Carriage Shop Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The structure and floor plan for the four apartment units within the structure on subject property shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan of Land" prepared for Jeanine Constantine Showing the Existing Dwelling at 659 Carriage Shop Road, Falmouth, MA as drawn by J. Doyle Associates dated June 25, 2014 and with a Board date 'received' stamp of September 5, 2014; and
- Hand drawn floor plans consisting of two pages [first floor and second floor plans] with a Board date 'received' stamp of September 5, 2014.

2. There shall be no more than four (4) dwelling units on subject property. There shall be no more than one (1) bedroom in each of the four (4) dwelling units existing. Total of bedrooms on subject property

shall not exceed four (4).

3. There shall be no seasonal or commercial renting/leasing of any of the four (4) units on subject property.

4. The applicant shall submit a letter from her Accountant [Edward Heylin] verifying that rent for four (4) apartments has been paid for the past twenty (20) years. Verification shall be submitted prior to final sign off by the Board of Appeals Zoning Administrator.

5. The applicant shall draft a deed restriction instrument that limits the use of two of the four (4) dwelling units on subject property to households with an income 80% or less than the Barnstable County median income and that the gross annual rent of these two (2) dwelling units shall not exceed 30% of the median income; and that the applicant shall provide to the Board of Appeals documentation that certifies the income level and rent paid by those tenants on a yearly basis. The deed restriction shall be drafted by the applicant, forwarded to the Board of Appeals for approval by Town Counsel, signed by the Town Manager and the applicant shall then file the signed deed restriction with the Barnstable Registry of Deeds and submit a copy of said filing to the Board of Appeals. The copy of the filed deed restriction shall be submitted to the Board of Appeals prior to the lawful occupancy of the units on subject property.

6. The applicant shall complete all repairs and/or replacements listed in the July 14, 2014 letter from the Building Commissioner as follows:

- Exterior panel needs a cover;
- Paddle fans are too low (i.e.; less than 7' in height) and must be raised;
- Outside lights have globes missing;
- Wires near the furnace area are hanging;
- The electrical panel is not sufficiently marked;
- Apartments 3 and 4 do not have required clearance from combustibles above the gas ranges;
- Two means of egress from the two second floor apartments are in disrepair and unsafe – both need to be rebuilt;
- Second means of egress for the first floor unit is broken – sliding door – repair or replace;
- Smoke and carbon monoxide detectors shall be hardwired and interconnected; smoke detectors in the common space shall sound in all four units.

Verification of all repairs/replacements shall be submitted to the Board of Appeals prior to final sign off of occupancy. It is noted that the Fire Department also required the smoke and carbon monoxide detectors in their referral dated September 26, 2014.

7. 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.

8. The Applicant shall meet the requirements of the DPW Water Division.

9. 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.)

10. This permit shall lapse two 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: 77-14

Applicant: JEANINE CONSTANTINE of Wayland, MA

Subject Property: 659 Carriage Shop Road, East Falmouth, MA
Map 21, Section 09, Parcel 004C, Lot 000C

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.

David Haddad, Board Chairman

_____ 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.

Notes:

SP #77-14 Constantine - 659 Carriage Shop Rd / Amnesty posted to web 12/16/14 mm