

Zoning Board of Appeals Decisions Decisions for: 09-11-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 64-14

APPLICANT/OWNER: DAVID M. COSTA and CARMEL L. COSTA of Waquoit, MA

DEED/CERTIFICATE: Book 4513 / Page 325

SUBJECT PROPERTY: 49 O'Donnell Avenue, Waquoit, Massachusetts
Map 20, Section 06, Parcel 060A, Lot 012C

Under a date of July 29, 2014 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-38 I. of the Code of Falmouth to allow the continued use of an accessory apartment created in 1999 within existing single-family dwelling located at 49 O'Donnell Avenue, Waquoit, Massachusetts.

A public hearing was opened on September 11, 2014. 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 Matthew McNamara and Member Patricia Johnson

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

David Costa, applicant/owner, was present and reviewed the subject property and explained to the Board that in 1993 he received a building permit to add on to the existing two bedroom dwelling to create additional space for his mother-in-law. The addition consisted of a bedroom, living room, bathroom and wet bar area [sink, counter and refrigerator]. He said in 1999 his mother-in-law needed extra care and a stove was put in the addition to accommodate live-in care. The stove was permitted through a building permit with a sign-off.

Mr. Costa stated that his mother-in-law is no longer with them and they would now like to rent out the apartment and are before the Board to receive approval for the accessory apartment. He said he has read the criteria for the apartment and what is required when rented.

Clerk Bielan read the Town Department referrals into the record.

The Board of Health forwarded an e-mail to the Zoning Administrator stating that the Health Department reviewed files of the history of the property and has learned that a building permit for a 4th bedroom was reviewed and approved by the Health Department in 1993 based on the existing septic system at that time. The property is within the Zone II district and approval for the fourth bedroom was granted prior to the 1995 establishment of the Zone II area and that in their opinion the existing property is grandfathered as a four bedroom dwelling and there is no objection to the continued use of the property.

A referral from the Engineering Department stated its standard answer regarding any changes to existing utilities and driveway would require application to the appropriate department.

A referral from the Planning Department had no comment.

There was no correspondence submitted to the file from any abutter or interested party.

Member McNamara asked how many bedrooms are existing on the property currently.

Mr. Costa stated there are two bedrooms in the main dwelling and one bedroom in the accessory apartment.

Chairman Haddad asked if anyone present would like to speak in favor or opposition. There was no public comment.

Member McNamara made a motion to close the hearing. Member Bielan 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 49 O'Donnell Avenue in Waquoit contains 15,002 square feet of Agricultural A zoned land that is located within the Zone II District, the Water Resource Protection Overlay District, the Wildlife Corridor and Child's River Coastal Pond Overlay District. The applicant applied under Section(s) 240-38 I. of the Code of Falmouth to allow the continued use of an accessory apartment created in 1999 via permits through the building department. The existing dwelling structure and shed located on subject property are in compliance with setbacks pursuant to Section 240-68 A. and B. of the Code of Falmouth. Lot coverage by structures and structures, parking and paving are in compliance with Section 240-69 A. of the Code of Falmouth. The applicant stated he is aware of the requirements for an accessory apartment under Section 240-38 I.

The Board finds subject property and the existing dwelling structure meet the criteria of Section 38 I. of the Code of Falmouth as follows:

- (1) The principal or accessory unit on subject property, according to the applicant's testimony, will be occupied for at least seven months out of each calendar year.
- (2) The accessory unit, according to information and drawings submitted by the applicant, does not occupy more than 30% of the floor area of the principal structure, has only one bedroom, and floor space of less than 750 square feet.
- (3) The subject property has 15,002 square feet of land; 15,000 square feet being the minimum allowed for an accessory apartment.
- (4) The subject property is within the Water Resource Protection Overlay District, is within the Child's River Coastal Pond Overlay and is within a Zone II District; however, an addition, that includes a bedroom, to the subject dwelling was allowed by building permit in 1993 where the applicant's mother-in-law resided; and in 1999, when live-in care was necessary for the mother-in-law, a stove was added and permitted by the building department – thus creating an accessory apartment. Therefore, the apartment predated Zone II establishment, is an existing addition for more than 10 years and has Board of Health recognition as being 'grandfathered'.
- (5) The access to the accessory apartment is not visible from the roadway and is off the driveway with a parking area shown at the north end of the driveway on subject property.
- (6) The applicant understands that this accessory apartment may not be used for commercial or seasonal accommodations.
- (7) The applicant understands that he will be responsible for drafting a deed restriction that is acceptable to and enforceable by the Town; that the applicant will file with the Barnstable County Registry of Deeds prior to the rental of said unit. The document shall restrict the leasing of the accessory apartment or the principal structure to households with an income 80% or less of the Barnstable County median income; the gross annual rent shall not exceed 30 percent of the median income. The applicant shall submit to the Board of Appeals every year on the anniversary of the filing of this approval, information on the income level and amount of rent paid of the tenant and whether the tenant has a lease through the applicant or a nonprofit organization; or if the principal unit and accessory apartment are occupied by the property owner or by persons related to the property owner by marriage, blood or adoption or by a domestic partner of the property owner, including minor children in the care of any of them.
- (8) The applicant understands that the accessory apartment shall be maintained so as to keep the appearance of a single-family dwelling.

The Board finds that there have been no complaints regarding the use of subject property since the inception of an accessory apartment.

The Board finds that there are currently three (3) bedrooms on subject property – 2 in main dwelling and one in the accessory apartment. The Board further finds that while the Board of Health states that the subject property is 'grandfathered' as a four bedroom property, the Board will require any further bedroom additions require Board of Appeals approval.

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 continued use of the accessory apartment as all dimensional requirements as in compliance with the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned Agricultural A and an accessory apartment may be allowed with Board of Appeals approval pursuant to Section 240-38 I. of the Code of Falmouth.
- 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 maintain as a single-family dwelling; 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 proposed dwelling with an accessory apartment discussed and represented herein will add an additional unit to 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.
- J. The approval of this special permit does include one affordable unit as stated herein.

Member Foreman made a motion to Grant the Special Permit with conditions. Member Johnson 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 David and Carmel Costa (herein referred to as Applicant) under Section(s) 240-38 I. of the Code of Falmouth to allow the continued use of an accessory apartment with conditions on subject property located at 49 O'Donnell Avenue, Waquoit, Massachusetts. This special permit is subject to the following conditions:

1. The accessory apartment and subject property discussed and represented to the Board shall be maintained and used as stated and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Certified Plot Plan for ZBA" for 49 O'Donnell Avenue, East Falmouth, MA 02536 as drawn by Cape & Islands Engineering dated 7/18/2014 – with a Board date 'received' stamp of July 29, 2014; and
 - Hand drawn floor plans of main dwelling and accessory apartment with a Board date 'received' stamp of July 29, 2014.
2. The applicant shall maintain compliance, at all times, with Section 240-38 I. in its entirety.
3. The applicant shall draft a deed restriction as required in Section 240-38 I., sub-section (7) and forward it to the Board of Appeals for approval. The Zoning Administrator will forward the document to Town Counsel for approval and return to applicant who will then file the signed document with the Barnstable Registry of Deeds and send to the Board of Appeals a filed copy of said document forthwith.
4. The applicant shall include language in the deed restriction conditioned in 3 above that there will be no seasonal rentals of either the principal or accessory dwelling unit, that subject property will be maintained as a single-family dwelling; and that the owner of the property shall be reside on subject property for no less than seven (7) months out of each year.
5. The applicant shall not rent out the accessory apartment or principal dwelling until a fully executed and filed copy of the deed restriction has been submitted to the Board of Appeals.

6. There shall be no more than three (3) bedrooms allowed on subject property. Addition of a bedroom on subject property will require Board of Appeals approval.

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 any deviation or change. Minor changes may be administratively approved by the Zoning Administrator.

8. 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.)

9. 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: 64-14

Applicant: David M. Costa & Carmel L. Costa of Waquoit, MA

Subject Property: 49 O'Donnell Avenue, Waquoit, MA
Map 20, Section 06, Parcel 060A, Lot 012C

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 #64-14 Costa - 49 O'Donnell Ave., Waquoit / Acc Apt posted 9/19/14 mm

