

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

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

APPEAL NO: 97-13

APPELLANT: JEANINE CONSTANTINE, TRUSTEE of Wayland, MA

DEED/CERTIFICATE: Book 19684 / Page 73

SUBJECT PROPERTY: 659 Carriage Shop Road, Hatchville, Massachusetts
Map 21, Section 09, Parcel 004C, Lot 000C

Under a date of October 3, 2013 Jeanine Constantine, Trustee of 659 Carriage Shop Road, Hatchville, Massachusetts, filed with the Falmouth Town Clerk an Appeal of the Assistant Zoning Enforcement regarding her determination that subject property [659 Carriage Shop Road] is restricted to a two-family dwelling.

A public hearing was opened on December 5, 2013. 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.

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

December 5, 2013 Hearing:

Members sitting: Chairman Matthew McNamara, Vice Chair Kenneth Foreman, Clerk Scott Zylinski, Member David Haddad

The hearing was opened and correspondence from applicant's representative [Attorney Kevin Klauer] was read into the record. The correspondence requested a continuation to April 17, 2014. It was noted by the Board that Attorney Klauer agreed to a waiver to extend the 100 day hearing process.

Member Haddad made a motion to continue the hearing to April 17, 2014. Member Zylinski seconded the motion. Motion carried 4 - 0.

April 17, 2014 Hearing:

Members sitting: Chairman David Haddad, Clerk Scott Zylinski, Member McNamara, Member Johnson and Associate Bielan

Hearing was continued from December 5, 2013. Appellant submitted a letter on April 10, 2014 requesting a continuation of this Appeal until May 15, 2014.

Member McNamara made a motion to continue the hearing to May 15, 2014 at 6:30 PM. Member Zylinski seconded the motion. Motion carried 5 - 0.

May 15, 2014 Hearing:

Members sitting: Chairman David Haddad, Acting Clerk Kimberly Bielan, Member McNamara and Associate Mark Cool.

Clerk read a request from Ms. Constantine (Appellant) to continue the Appeal hearing to September 11, 2014.

Member Bielan made a motion to continue the Appeal hearing to September 11, 2014 at 6:30 PM. Member Cool seconded the motion. Motion carried 4 - 0.

September 11, 2014 Hearing:

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Clerk Kimberly Bielan, Member Matthew McNamara and Member Patricia Johnson

Appellant Jeanine Constantine was present and requested that the Appeal hearing be continued to December 4, 2013.

Member McNamara asked the appellant the reason for the request to continue the hearing once again. He commented that this Appeal was first opened on December 5, 2013 and has been continued several times.

Ms. Constantine explained that she first requested continuation of the hearing as there was a petition article for April Town Meeting that, if passed, would allow her to file for a special permit. She said due to circumstances she has not been able to file for a special permit until recently [on hearing schedule for 10/16/14].

Member McNamara asked how continuing the Appeal will assist in the special permit process as since filing for a special permit any existing violation is in a 'stay mode' until determination is made; and the Appeal is regarding the building commissioner's determination – whereas the special permit is a new bylaw that allows amnesty for this existing violation if the appellant meets the criteria.

Board discussed at length.

Member McNamara made a motion to deny the continuation of the Appeal. Member Bielan seconded the motion. Motion carried 4 – 0 - 1 with Member Foreman abstaining.

Hearing of Appeal:

Jeanine Constantine reviewed the history of the subject property that is subject of the Assistant Zoning Enforcement Agent's determination that the use of the existing structure can be for only a two-family dwelling – not a four unit property. Ms. Constantine cited information she submitted to the file that states the structure was built in 1959 as two units; in 1961 it became three units; in 1972 it became four units; and in 1979 it was sold as a four unit structure. She stated that there have been no structural changes – only regular maintenance and interior upgrades. She said that she and her husband purchased the property in 1979 from Foley Real Estate as a 'retirement investment'. She said in 2006 she upgraded the units over from oil to natural gas and that the change-over was completed and signed off by the inspector – sign-off [11/16/2006] submitted to file. In 2013, National Grid requested that the meters be changed and all 5 meters [4 unit meters and 1 'house meter'] were replaced. Ms. Constantine said the rents are extremely low \$525.00 to \$700.00.

Ms. Constantine noted the ad that was published in the Enterprise in 1979 for 4 year round apartments next to Falmouth Country Club – recently remodeled – for \$61,000.00 – subject property. Also noted is a letter from August 1, 1994 from Hildegard Marchisin that gives a brief history of the property and timeframe of two to four dwelling units on the property.

Member McNamara asked if she realized when she purchased the property that its use as a four unit structure is not legal.

Ms. Constantine stated no.

Member McNamara asked if she had found any type of building permit or special permit for the structure allowing it to increase from a two unit to a four unit.

Ms. Constantine said no – the zoning enforcement officer and the zoning administrator researched as well and found nothing.

Member Foreman asked Ms. Constantine if she ever resided at the property.

Ms. Constantine stated no. She said the prior owner's son resided there for many years and just recently purchased a home and moved out.

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 Foreman seconded the motion. Motion carried 5 - 0.

Chairman Haddad closed the Hearing.

Board discussed:

Member McNamara said there is the fact only two units existed prior to May 19, 1959 – not four; there was no evidence submitted that the Building Commissioner is incorrect; a plumbing or gas permit does not allow a change in use; and there was no building permit or special permit allowing the additional two units. He suggested the only cure now is Section 240-3 E. of the Code of Falmouth that was recently voted at Town Meeting.

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 51,098 square feet (1.17 acres) of Agricultural A zoned land that is located within the Green Pond Coastal Pond Overlay District, the Wildlife Corridor and within the Natural Heritage of Endangered Species Program. The applicant appealed the determination of the Building Commissioner that there can only be a two dwelling unit on subject property where there is four existing.

The Board finds that when the structure was constructed Agricultural A zoned land could have apartments by right [Section 7 "Agricultural Districts" – see "Residential District" in Sec. 4 ss 3a. - pursuant to Section 15A. "Regulations for Apartment Houses" - 1957 bylaw]. In 1966 that right was removed from bylaws for Residential, General Residence and Public Use Districts and therefore not allowed in Agricultural Districts [Sec 7 – ss 1. Any use permitted in a Single, General Residence or Public Use District, except that no dwelling shall be occupied by more than one family.] The Board further finds that testimony was submitted to the file by appellant that notes a third unit was created in the structure in 1961 and a fourth unit in 1972. Furthermore, the Board finds that there was no evidence submitted to the file that the third apartment unit was created without the approval of a building permit; and that the fourth unit was created without benefit of both a building permit or a special permit [due to change in bylaw in 1966 a special permit would have been required to add fourth unit].

The Board finds that through testimony, information submitted and research of the bylaws, the use of the multifamily [three or more units] dwelling is in violation of the Town of Falmouth's Zoning Bylaws.

Member McNamara made a motion to Deny the Appeal. Member Bielan seconded the motion. Motion carried 5 – 0.

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 Deny the Appeal filed by Jeanine Constantine (herein referred to as Appellant), upholding the Assistant Zoning Enforcement Agent's determination that the structure on subject property at 659 Carriage Shop Road in Hatchville is restricted to two units.

Decision of the Falmouth Zoning Board of Appeals Continued:

Appeal Number: 93-13

Appellant: JEANINE CONSTANTINE, TRUSTEE of Wayland, MA

Subject Property: 659 Carriage Shop Road, Hatchville, Massachusetts
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 Deny the Appeal and uphold the Assistant Zoning Enforcement’s determination.

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:

#97-13 Constantine - 659 Carriage Shop Rd / Appeal of BC - Denied / posted to web 9/23/14 mm