

Zoning Board of Appeals Decisions Decisions for: 01-09-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 107-13

APPLICANT/OWNER: CATHERINE NAOUM, TRUSTEE, VC AV Trust
of East Falmouth, MA

DEED/CERTIFICATE: Book 21210 / Page 274

SUBJECT PROPERTY: 41 Sadys Lane, East Falmouth, Massachusetts
Map 32, Section 08, Parcel 003, Lot 045

Under a date of November 13, 2013, the Applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-23 I. of the Code of Falmouth to create an accessory apartment within and/or attached to the existing single-family dwelling on subject property located at 41 Sadys Lane, East Falmouth, Massachusetts.

A public hearing was held on January 9, 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 Matthew J. McNamara, Vice Chairman Kenneth Foreman, Clerk Scott Zylinski, Member Patricia Johnson and Member David Haddad

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

Jerome Morse of J. Morse & Sons was present on behalf of the Applicant and explained that the Applicant is desirous of creating an accessory apartment for her son's use. He reviewed the plans that show a portion of the existing attached garage would be converted into a living room/kitchen area and construct a 16' x 16' addition to the southeasterly corner of dwelling [behind garage] to create the bedroom and bathroom for said apartment. Mr. Morse reviewed existing floor plan stating that the smallest of the existing three bedrooms would be converted to a den with a 4' cased opening, thus allowing a new third bedroom within the accessory apartment.

Mr. Morse explained he contacted the association for the development of Sadys Lane, Chris Rassias, and reviewed plans of proposed accessory apartment.

Clerk Zylinski read the Town Department referrals into the record.

A referral from the Engineering Department had standard reply regarding any changes to right of way and/or public utilities would require permission from appropriate Town department.

A referral from the Board of Health Agent David Carignan states: The proposal calls for modifying one bedroom on the main level to a room with insufficient privacy unsuitable for use as a sleeping room by removing the door and constructing a four foot cased opening. This conversion creates a one bedroom credit that can be applied to the proposed in-law apartment.

Referrals submitted from the Conservation Commission, Planning Department and Water Department had no comment.

Clerk Zylinski noted that there was no correspondence from any abutter or interested party submitted to the file.

Board Questions:

Member Haddad asked if the property will be owner occupied 7 months out of each year and if the apartment is under 30% of gross floor area of main dwelling.

Mr. Morse stated that Ms. Naoum resides here year round and that the accessory apartment is 27% of the gross floor area of dwelling.

Member Haddad asked if the Applicant understands that the accessory apartment cannot be rented as a seasonal or commercial unit.

Mr. Morse stated they understand.

Member Haddad asked about parking for the accessory apartment.

Mr. Morse stated that there are four parking spaces in front of the garage.

Chairman McNamara asked if this will be rented out as affordable unit or will it always be used by family.

Mr. Morse said family will use it.

Chairman McNamara asked if anyone present would like to speak in favor or opposition. There was no public comment. [Note: representative from association was in the audience.]

Member Zylinski made a motion to close the hearing. Member Foreman seconded the motion. Motion carried 5 – 0.

Chairman McNamara 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 41 Sady's Lane in East Falmouth contains 16,020 square feet of Residential C zoned land that is located within the Eel Pond Coastal Pond Overlay District. The Applicant applied under Section(s) 240-23 I. of the Code of Falmouth to allow an accessory apartment to be created within existing garage and addition proposed to existing dwelling. The Applicant's representative came before the Board and gave testimony that the apartment will be for the Applicant's son and will not be rented out; and that they understand that the apartment cannot be rented out seasonally or as a commercial accommodation. The Applicant's representative further stated that the Applicant is aware of the requirements under Section 240-23 I. and that said apartment will be maintained in compliance with this Section, including the drafting and filing of a Restrictive Covenant for subject property. The proposed addition to create a bedroom at the rear of the garage which garage space will be converted to living room and kitchen area will be located so as not to be seen from the roadway, thus maintaining the character of a single-family dwelling.

Section 240-23 I. of the Code of Falmouth allows the Board of Appeals to approve a special permit to create an accessory apartment that will be created within or added to a single-family dwelling that will be in compliance with sub-sections 1) through 8) of said code.

The Board finds that the proposed accessory apartment being created on subject property meets the criteria of Section 240-23 I. – 1) through 8) as follows:

1. The principal or accessory unit will be owner-occupied for at least seven (7) months during each year as testified to at the hearing on 1/9/2014;
2. The accessory apartment will occupy 27% [less than 30% allowed] of the floor area of the principal structure; the apartment will have only one (1) bedroom; and the apartment will be approximately 631 square feet in size;
3. The subject lot size is 16,020 square feet, which is more than the 15,000 square feet minimum and the number of bedrooms existing, three (3), will not be increased through this special permit;
4. The subject lot is within a Coastal Pond Overlay District as noted above and the number of bedrooms proposed and approved through this Special Permit will not exceed the existing three (3) bedroom count;
5. Parking for the accessory apartment will be in the existing driveway that can accommodate four vehicles and will leave the appearance of the single-family dwelling unchanged;

6. The Applicant understands that this application and approval prohibits any commercial accommodation or summer rental of the premises;
7. The Applicant understands according to the testimony of the Applicant's representative that the apartment will be used by a family member and in the event it is not, then the apartment shall be rented as an affordable unit and meet the criteria of (7) (a) of this bylaw. The Applicant understands that a Restrictive Covenant shall be drafted by the Applicant, reviewed and approved by the Town and filed with the Barnstable County Registry of Deeds with a copy of said filing submitted to the Board of Appeals; and
8. The proposed accessory apartment will be created within the existing garage with an addition constructed attached to the rear of said garage which shall not change the appearance of that as a single-family dwelling.

The Board finds that the criteria set forth in Section 240-23 I. is clear that if not used by family it will be used as an affordable unit and this shall be reflected in the Covenant that the Applicant will draft, get approval by the Town and file with the Registry of Deeds in Barnstable.

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 of the criteria 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 accessory apartment as review of the plans submitted and discussed herein meet the criteria set forth in Section 240-23 I. of the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned residential and has been used as a single-family dwelling since its construction circa 1990.
- 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 remain that of a single-family dwelling as the addition for a portion of the accessory apartment will be constructed at the rear of the existing attached garage so 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 three 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 accessory apartment will not have an immediate effect on the supply of affordable housing in Falmouth as it will be used by a family member. It is however, noted herein that in the event it is no longer used by a family member, it will then be rented out as an affordable unit through a nonprofit organization or government authority.
- 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 an affordable housing that will be placed on the housing inventory.

Member Foreman made a motion to Grant the Special Permit with conditions. Member Zylinski 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 Catherine Naoum, Trustee (herein referred to as Applicant) under Section(s) 240-23 I., (1) through (8) of the Code of Falmouth to allow an accessory apartment to be created as required on subject property located at 41 Sadys Lane, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The accessory apartment shall be created as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Certified Plot Plan" prepared for Catherine Naoum 41 Sadys Lane, East Falmouth, Massachusetts on Sheet 1 of 1 drawn by Costa Associates, Inc. dated 11/1/13 and revised on 11/12/13 with a Board date 'received' stamp of November 13, 2013; and
- Hand drawn floor plans – 2 pages – consisting of existing floor plan and proposed floor plan with a Board date 'received' stamp of November 13, 2013.

2. The plans noted in Condition 1 above are preliminary plans; the Applicant shall meet with the Board of Appeals to review final plans prior to the issuance of a building permit. Plans must be substantially the same.
3. There shall be no more than three (3) bedrooms allowed on subject property.
4. The Applicant shall convert the small existing bedroom into a Den by removing the door and create a 4' cased opening [see hand drawn floor plan – 'proposed' noted in Condition 1 above].
5. The Applicant shall maintain the accessory apartment, subject property and use of accessory apartment to be in compliance at all times with Section 240-23 I. (1) through (8).
6. The Applicant will submit a draft of a Restrictive Covenant restricting the use of the accessory apartment and subject property according to Section 240-23 I. of the Code of Falmouth and submit draft to the Board of Appeals for review and approval of said covenant. Upon signature on document by both parties [Applicant and Town] the Applicant shall file the document with the Barnstable Registry of Deeds and submit a copy of said filing to the Board of Appeals forthwith. The Board of Appeals staff will not sign off on the final for the accessory apartment until a copy of the filed document has been received and submitted to the special permit file for #107-13.
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. 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: 107-13

Applicant: CATHERINE NAOUM, TRUSTEE of VC AV Trust

Subject Property: 41 Sady's Lane, East Falmouth, Massachusetts
Map 32, Section 08, Parcel 003, Lot 045

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.

E. Scott Zylinski, Clerk, Board of Appeals

_____ 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 107-13 Naoum / 41 Sadys Ln / Acc Apt posted to web 1/21/14 mm