

## Zoning Board of Appeals Decisions Decisions for: 10-08-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 82-15

APPLICANT(S)/OWNER: MICHAEL W. DOMINGUES and NANCY A. DOMINGUES  
of Waquoit, MA

DEED/CERTIFICATE: Book 11329 / Page 178

SUBJECT PROPERTY: 134 Carriage Shop Road, Waquoit, Massachusetts  
Assessor's Map: Map 29, Section 08, Parcel 008, Lot 003

SUMMARY: Granted Special Permit with Conditions

PROCEDURAL HISTORY

1. Under a date of September 2, 2015, 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 create an accessory apartment within the single-family dwelling on subject property known as 134 Carriage Shop, Waquoit, Massachusetts.
2. 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.
3. A duly advertised public hearing was opened on October 8, 2015.
4. The public hearing was terminated on October 8, 2015, wherein the Board consisting of Chairman Kimberly Bielan, Vice Chairman Kenneth Foreman, Clerk Terrence Hurrie, Member Ed Van Keuren and Member Paul Murphy made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Michael Borselli, P.E. with Falmouth Engineering, Inc. who reviewed and discussed proposed plans with the Board.
6. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

10/8/2015 Applicant's representative, Michael Borselli, submitted to the record at the hearing a letter of support for the proposed accessory apartment with eight (8) signatures from six (6) different abutters.

Letters/E-mails/Information from Applicant/Representative(s)

None

Letters/Referrals/E-mails from Town Departments

9/8/2015 Referral submitted by Falmouth Fire Rescue with no comment.

9/10/2015 Referral submitted by the Planning Department with no comment.

9/16/2015 Referral submitted by the Water Superintendent with no comment.

10/8/2015 Referral submitted by the Board of Health Agent David Carignan that states: The property is

currently listed as a four bedroom dwelling in the Assessors' record. There is an active permit on file in the Health Department to replace and upgrade the existing septic system to accommodate a fifth bedroom. The system has not been installed as of this date. No objections to project, provided the septic system is upgraded as planned and the accessory apartment does not provide more than an additional, fifth bedroom.

#### Plans submitted by Applicant/Applicant's Representative

9/29/2015 "Plot Plan for #134 Carriage Shop Road Prepared for Michael Domingues in Falmouth" drawn by Falmouth Engineering, Inc. – Sheet 1 of 2 with final revision date of 9/14/2015 and with a Board date 'received' stamp of September 29, 2015;

"Septic System Details for #134 Carriage Shop Road Prepared for Michael Domingues in Falmouth, MA" drawn by Falmouth Engineering, Inc. – Sheet 2 of 2 with a final revision date of 9/14/2015 and with a Board date 'received' stamp of September 29, 2015; and

"Custom Home Design Domingues Residence 13 Carriage Shop Road East Falmouth, MA" drawn by Architecture by SPB consisting of Drawings A1 showing elevations dated 8/28/2015, Drawing A2 showing proposed floor plans dated 8/28/2015, Drawing S1 showing basement and foundation plan dated 8/28/2015, Drawing S2 showing framing plan dated 8/28/2015 and Drawing D1 showing construction calculations/details dated 8/28/2015 – all with a Board date 'received' stamp of September 2, 2015.

#### Hearing:

Michael Borselli, P.E. of Falmouth Engineering reviewed the existing site conditions and the proposed creation of an accessory apartment within the newly constructed dwelling on subject property. Mr. Borselli explained that the previous pre-existing non-conforming dwelling was burned down and the proposed new dwelling will be in compliance with all setbacks and lot coverage. He reviewed the proposed 728 square foot accessory apartment will be located at the north side of the new dwelling at ground level and will consist of a bedroom, full bathroom, laundry area, living area with eat-in kitchen space. The accessory apartment will be used in conjunction with care of a family member. Mr. Borselli reviewed the criteria of Section 240-38 I. for the accessory apartment and Section 240-216 for standards of Board of approval.

The Board discussed plans with Mr. Borselli. All concerns and questions were addressed.

Chairman Bielan asked for any public comment in support or opposition of the proposed additions. There was no public comment.

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

Chairman Bielan 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 134 Carriage Shop Road in Waquoit contains 57,753 square feet (1.33 acres) of Agricultural A zoned land that is within the Child's River Coastal Pond Overlay District. The applicant applied under Section(s) 240-38 I. of the Code of Falmouth to create an accessory apartment within the new proposed dwelling being constructed on subject property. The existing non-conforming single-family dwelling recently burned down and the applicant is constructing a new dwelling that will be conforming to all setbacks under Sections 240-68 A. and B. of the Code of Falmouth, as well as compliance with lot coverage under Section 240-69 A. of the Code of Falmouth. The applicant and the accessory apartment proposed for care of a family member meets the criteria of Section 240-38 I.

Section 240-38 I. of the Code of Falmouth allows an individual to apply to the Board of Appeals to allow one accessory apartment per lot added to or created within a single-family dwelling based on criteria set forth as (1) through (8).

The Board finds that the applicant meets the criteria of Section 240-38 I. as follows:

- (1) The single-family dwelling on subject property is primary residence of applicant and applicant resides full-time on said property;
- (2) As shown on the plans submitted and noted herein the accessory apartment does not occupy more than 30% of the floor area of the principal structure and is 728 square feet in size (< 750 s.f.);
- (3) The subject property has 1.3 acres of land (> more than 15,000 s.f. as required);
- (4) The subject property is located within a Coastal Pond Overlay District, but is not located within a Water Resource Protection District; and the existing dwelling is a four (4) bedroom dwelling, although the Board of Health has signed off on the capacity of the septic system as a five (5) bedroom system, the plans show that four (4) bedrooms will be existing with an office that has a cased opening;
- (5) Parking for the accessory apartment will not be visible from the roadway;
- (6) The accessory apartment will not be rented seasonally as it is for family use;
- (7) The applicant will file an approved deed restriction/covenant acceptable to and enforceable by the Town with the Registry of Deeds as conditioned herein and said document will state that when not used for family purposes, the accessory apartment, if rented, will be rented to a household with an income 80% or less of the Barnstable County median income and will notify the Board of Appeals yearly of said tenant as required; and
- (8) The accessory apartment will be constructed so that the appearance of the structure remains that of a single-family dwelling.

The Board finds that the proposed reconstruction of the existing nonconforming single-family dwelling that was destroyed by fire will be an improvement to the subject property as it will meet all setback and lot coverage requirements. The Board further finds that the reconstructed dwelling with an accessory apartment will allow the family to better care for the family needs at this time. Furthermore, the Board finds that immediate abutters support the proposed accessory apartment.

The Board finds that the septic system on subject property will be upgraded and installed with a five (5) bedroom capacity.

The Board finds that the applicant has a Special Permit, #80-05, that allows two vehicles over 13,000 GVW to be stored in garage on subject property with appropriate buffering along the property line to screen said vehicles. The Board finds that the record shows that there have been no complaints or violations regarding the Special Permit on subject property for two vehicles over 13,000 GVW.

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 accessory apartment addition as all setbacks and lot coverage will be in compliance with zoning.
- B. The site is suitable for the proposed use as the property has been used as residential property for many years and that the Special Permit to allow the storage of two trucks over 13,000 GVW does not impact the residential use on this 1.3 acre parcel.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms in the single-family dwelling proposed and there is no change in the location of the existing driveway on site.
- D. The visual character of the subject property will be improved and there does not appear to be any impact on the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system proposed has been reviewed by the Board of Health with no objects (see referral from Board of Health submitted to file).
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant will have to contact the Town Water Department regarding updating of water service lines.
- G. The proposed accessory apartment discussed and represented herein will have no effect on the supply of affordable housing in Falmouth at this time.
- 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.

Member Foreman made a motion to Grant the Special Permit with conditions. Member Murphy 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 Michael and Nancy Domingues (herein referred to as Applicant) under Section(s) 240-38 I. of the Code of Falmouth to create an accessory apartment within the single-family dwelling on subject property known as 134 Carriage Shop Road, Waquoit, Massachusetts. This special permit is subject to the following conditions:

1. The creation of the accessory apartment, all setbacks, lot coverage and use of accessory apartment shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan for #134 Carriage Shop Road Prepared for Michael Domingues in Falmouth" drawn by Falmouth Engineering, Inc. – Sheet 1 of 2 with final revision date of 9/14/2015 and with a Board date 'received' stamp of September 29, 2015;

- "Septic System Details for #134 Carriage Shop Road Prepared for Michael Domingues in Falmouth, MA" drawn by Falmouth Engineering, Inc. – Sheet 2 of 2 with a final revision date of 9/14/2015 and with a Board date 'received' stamp of September 29, 2015; and

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2. The applicant shall draft a restrictive covenant/deed for approval by the Board and signature by the Town Manager; the document will then be filed with the Registry of Deeds by the applicant and a copy of said filing submitted to the Board of Appeals forthwith. The document shall be approved by the Board and Town Counsel, signed by Town Manager, filed with the Registry of Deeds and a copy submitted to the Board of Appeals prior to issuance of an occupancy permit.

3. The applicant shall always maintain compliance with Section 240-38 I. of the Code of Falmouth in its entirety.

4. The applicant shall not derogate from any Conditions set forth in Special Permit #80-05 and shall maintain compliance of said permit.

5. 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.

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

7. 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.)

8. 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: 82-15

Applicant: MICHAEL W. and NANCY A. DOMINGUES of Waquoit, MA

Subject Property: 134 Carriage Shop Road, Waquoit, Massachusetts  
Map 29, Section 08, Parcel 008, Lot 003

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.

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Kimberly Bielan, Board Chairman

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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 82-15 Domingues /Filed w/Town Clerk 10/19/15