

Zoning Board of Appeals Decisions Decisions for: 05-05-2015

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

APPLICATION NO: 20-15

APPLICANT(S)/OWNER: PETER S. DAWSON of Canton, MA

DEED/CERTIFICATE: Book 27935 / Page 10

SUBJECT PROPERTY: 681 Sandwich Road, East Falmouth, MA
Assessor's Map: Map 21, Section 08, Parcel 004, Lot 001

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of February 19, 2015 the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-38 I, 240-38 G. (1) and 240-70 D. of the Code of Falmouth to allow an accessory apartment within the new dwelling structure, create garage space of more than 900 square feet for more than three cars and construct a detached garage with a height of 24'4" on subject property known as 681 Sandwich Road, East Falmouth, 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 April 23, 2015.
4. The public hearing was terminated on April 23, 2015 wherein the Board consisting of Vice Chair Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate John Sutherland made a decision to Grant the Special Permit with conditions. Associate Mark Cool recused from the hearing process.
5. The applicant was represented at the hearing by Attorney Robert H. Ament with Ament Law Firm and Michael McGrath, PE, PLS with Holmes and McGrath, Inc.
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

4/23/2015 Letter dated April 23, 2015 from Gregory S. Pinto in support of the application and plans
Letters/E-mails/Information from Applicant/Representative(s)

2/19/2015 Letter from Attorney Ament reviewing existing site, previous variance, uses of property and proposed use and application requests

4/23/2015 E-mail to Zoning Administrator with attached letter to Eladio Gore, Building Commissioner, from Attorney Ament dated April 21, 2015 asking Mr. Gore his opinion of 240-70 D. criteria (see letter) with Mr. Gore's agreement on page 2

4/23/2015 Attorney Ament submitted copies of Variance #2435 from 1972 and Modification of Variance #121-94 for subject property's accessory apartment existing and colored in copy of "Plan" noting structures and contour of easterly property

Letters/Referrals/E-mails from Town Departments

2/26/2015 Referral submitted by the Building Commissioner with no comment

2/26/2015 Referral submitted by Conservation Commission Agent that states: Contain stormwater on property.

2/26/2015 Referral submitted by Water Department Superintendent with no comment

3/2/2015 Referral submitted by the Planning Department with no comment

3/3/2015 Referral submitted by the Fire Rescue Department with no comment

3/10/2015 Referral submitted by the Engineering Department with standard comments and noted that the proposed changes to the driveway and right of way will require filing a driveway permit with the Engineering Division; and any connections or alterations to public utilities would require permission from appropriate Town Department.

Plans submitted by Applicant/Applicant's Representative

2/19/2015 "Plan of Proposed House Reconstruction" prepared for Peter Dawson for Lot 1, #681 Sandwich Road in Falmouth, MA – Sheet 1 of 1 drawn by Holmes and McGrath, Inc. dated February 18, 2015 with a Board date 'received' stamp of February 19, 2015

2/19/2015 "Proposed New Residence For peter and Janet Dawson" drawn by Saltonstall Architects consisting of 'Second Floor Plan – Main House & Apartment' dated 2/12/2015, 'First Floor Plan – Main House & Garage' dated 2/12/2015, 'Detached Garage' dated 2/12/2015 – all with a Board date 'received' stamp of February 19, 2015

Note: The accessory apartment is shown as 746 square feet in size.

Hearing:

Attorney Ament reviewed the existing site conditions and the proposed accessory apartment and detached garage for more than three vehicles that will have a height of 24'4". He stated the subject property has 9.6 acres and since 1984 has been operated as 'Cape Cod Winery'; the property is zoned Agricultural A. He reviewed the surrounding properties with one being residential use and the other abutting properties belonging to the Town and the 300 Committee. Attorney Ament reviewed history of previous special permit and variance on property that allowed an accessory apartment that was to be used solely by the parents of the current owner in 1972. In 1994 the variance was modified by Board's approval to remove the condition that the apartment was to be used solely by previous owner's parents and therein allowed to continue to be used as living quarters. Attorney Ament stated there is an existing barn on subject property and the applicant is proposing to construct a detached three car garage that is proposed at 24'4" in height which may be allowed by special permit if subject property is more than two acres, which subject property is. The accessory apartment will be created in the main dwelling and the detached garage structure will not have any living space or cooking facilities within it. He explained that the Building Commissioner agrees that the intent of Section 240-70 D. restriction of a building height and its use was intended for detached accessory structures, not main dwelling and that on a lot with more than two acres, both may exist (see letter to Eladio Gore dated April 21, 2015 in file). Attorney Ament stated that the applicant will be amenable to a restrictive covenant with specific language that the accessory apartment be used by an individual who is substantially employed on subject property.

Michael McGrath, PE, PLS with Holmes and McGrath, Inc. reviewed the site conditions and drainage; noting specifically the elevation and grades of subject property that will contain stormwater runoff on site.

The Board discussed plans with Attorney Ament and Michael McGrath. All concerns and questions were addressed, including use of second floor of proposed detached garage and proposed covenant language.

Vice Chair Bielan asked for any public comment in support or opposition of the proposed additions.

Gregory Pinto, abutter at 699 Sandwich Road submitted a letter of support he read to the Board.

Member Sutherland made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 4 – 0.

Vice Chair 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 681 Sandwich Road in East Falmouth contains 9.63 acres of Agricultural A zoned land that is located within the Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-38 I. [accessory apartment], 240-38 G. (1) [garage space for more than two cars with more than 900 square feet of space] and 240-70 D. [height of accessory structure] of the Code of Falmouth to allow an accessory apartment to be created within the single-family dwelling, to construct a detached garage for more than two cars exceeding 900 square feet and to allow the detached garage structure to be 24'4" in height. The subject property had been granted a variance in 1972 for a variance to turn garage space into living space for the then owner's parents to reside in. The variance was modified in 1994 to remove the condition that the residence be for previous owner's parents only so as to utilize the living space. The subject property has been used as a winery for the past several years. The applicant's intended use is as a single-family dwelling and for agricultural purposes. The dwelling with attached garage, two barns and two sheds will be demolished; two new barns are currently under construction. The applicant is proposing an accessory apartment within the proposed main dwelling and not in the detached garage structure as was allowed previously on subject property. The detached garage structure proposed herein with a height of 24'4" will not have living space created within its space and there will be no cooking facilities installed in the detached garage structure as well as stated by Attorney Ament. The applicant would like the accessory apartment to be used by an individual that will be substantially employed by the applicant on site [such as caretaking or laborer] with the income reporting under Section 240-38 I (7) of the Code of Falmouth waived until such time that accessory apartment is no longer used by applicant's family or employee.

Section 240-38 I. of the Code of Falmouth allows the Board of Appeals to approve a special permit for an applicant to create an accessory apartment within or attached to a single-family dwelling with criteria as set forth in sub-sections (1) through (8).

The Board finds that the apartment meets the criteria under Section 240-38 I. and that the applicant will submit a restrictive covenant governing the use of the accessory apartment to family or an individual substantially employed on subject property. The Board further finds that in the event that the apartment is not in use by family or an employee employed on subject property, then it shall be rented to an individual/family with an income of 80% or less of the Barnstable County median income as determined by the most recent federal census or other method acceptable to the Board of Appeals; and rent to said individual shall not exceed 30 percent of the median income herein described. Furthermore, the Board finds that the property owner will then provide to the Board of Appeals, yearly, documentation that certifies the income level and rent paid by a tenant.

The Board finds through that the applicant's representative if the accessory apartment is rented to an individual substantially employed on subject property, then the Board will waive the annual reporting of income level and rent paid to the Board on a yearly basis. The restrictive covenant required in Section 240-38 I. (7) shall incorporate this waiver as well as the understanding that if the apartment is not used solely by family members or an individual substantially employed on subject property and rented out to a non-affiliated individual, all reporting requirements of Section 240-38 I. (7) will be met. Upon rental to a non-affiliated individual that meets the requirement of 80% of median income, the owner shall reside on subject property seven (7) months out of each year as required in Section 240-38 I. (1).

Section 240-38 of the Code of Falmouth – "Special permit uses" allows accessory uses with approval of a Special Permit from the Board of Appeals. Sub-section G. lists accessory uses that may be applied for as is the case in this application under (1) Garage space for more than two cars if: (b) The footprint of the garage is more than 900 square feet or 50% of the footprint of the principal structure whichever is less.

The Board finds that the total square footage of proposed garage space on subject property equals approximately 2400 square feet [816 sf in garage attached to dwelling and proposed detached garage has 1596 sf]. The Board finds that the proposed detached garage has three bays and a half second floor that will not contain any living space or cooking facilities according to testimony by the applicant's representative.

Section 240-70 of the Code of Falmouth – "Maximum building height", sub-section D. allows through a special permit by the Board of Appeals, an accessory structure on a lot of more than two acres to have a maximum height of 25' with the requirement that the subject property cannot be subdivided below two acres, that there be no accessory apartment and that the height does not impact the neighborhood visual character or obstruct a view.

The Board finds that the subject property is suitable for the detached garage structure to be a maximum of 25' in height as the size of the lot is 9.6 acres with most of the abutting properties being devoted to open space; the dwelling is located 194' from Sandwich Road with the proposed detached garage behind the dwelling and over 300' from the closest abutter. The Board further finds that Building and Zoning Commissioner, Eladio Gore acknowledged by his signature at the bottom of a letter dated April 21, 2015 from Attorney Ament that the zoning bylaw, Section 240-70 D. of the Code of Falmouth may be interpreted by the Board of Appeals, in its discretion, to grant an accessory apartment in a dwelling on a property under Section 240-38 I. of the Code of Falmouth while allowing, on same property, under a special permit pursuant to Section 240-70 D., a separate accessory structure up to 25' in height on a parcel over two acres. Furthermore, testimony by the applicant's representative was there will not be any living space or cooking facilities created within this detached accessory garage structure.

The Board finds that the applicant's representative from Holmes and McGrath, Inc. gave testimony, that due to the grades of the property all stormwater will naturally be maintained on site.

In addition to the above findings, the Board finds that the proposed accessory apartment created within the main dwelling and the detached three-car garage with a height of 24'4" 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 and 24'4" detached three-car garage as the subject property consists of 9.6 acres of agricultural land which will be used as a single-family residence with agricultural use (keeping of livestock).
- B. The site is suitable for the proposed accessory apartment and detached garage use as the property is zoned residential and the uses and structures approved herein are accessory to the primary residential dwelling and meet the requirements set forth in the Code of Falmouth as noted herein.
- C. There will be no impact on traffic flow and safety as the change in use from a winery to a single-family dwelling and keeping of livestock will have less of an impact on traffic and there will be 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 by the proposed 24'4" detached garage structure as it will be situated behind the 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 approved 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 discussed and represented herein will have no effect on the supply of affordable housing in Falmouth unless and until the accessory apartment is no longer used by a family member or an individual who is substantially employed on subject property (see restrictive covenant).
- 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 not include any affordable housing at this time, but may create one unit in the future that will meet all requirements set forth in the Code of Falmouth under Section 240-38 I.

Member Sutherland made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 4 – 0 to Grant the Special Permit to Peter S. Dawson (herein referred to as Applicant) under Section(s) 240-38 I., 240-38 G (1) and 240-70 D. of the Code of Falmouth to create an accessory apartment within the single-family dwelling and construct a three-car detached garage with a height of 24'4" on subject property known as 681 Sandwich Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The accessory apartment shall be created on the second floor of the main dwelling above the attached garage space as represented to the Board and as shown on plans submitted and reviewed by the Board as "Proposed New Residence for Peter and Janet Dawson 681 Sandwich Road, Falmouth, MA" drawn by Saltonstall Architects as 'Second Floor Plan – Main House and Apartment' dated 2/12/2015 and with a Board date 'received' stamp of February 19, 2015.
2. The detached three-car accessory garage structure shall be constructed as represented to this Board and as shown plans entitled:
 - "Plan of Proposed House Reconstruction" prepared for Peter Dawson for Lot 1, #681 Sandwich Road in Falmouth, MA – Sheet 1 of 1 drawn by Holmes and McGrath, Inc. dated February 18, 2015 and with a Board date 'received' stamp of February 19, 2015; and
 - "Proposed New Residence for Peter and Janet Dawson" drawn by Saltonstall Architects consisting of 'Second Floor Plan – Main House & Apartment' dated 2/12/2015, 'First Floor Plan – Main House & Garage' dated 2/12/2015, 'Detached Garage' dated 2/12/2015 – all with a Board date 'received' stamp of February 19, 2015
3. There shall be no habitable space created within the detached three-car garage structure.
4. There shall be no cooking facilities installed within the detached three-car garage structure including, but not limited to, a stove, oven, microwave oven, toaster-oven, hot-plate or nu-wave cook plate.
5. The applicant shall submit a draft of a Restrictive Covenant for the use of the accessory apartment. The covenant shall be submitted to the Board of Appeals for approval and review by Town Counsel. Once approved and signed by the Town the applicant shall file said covenant with the Barnstable Registry of Deeds and submit a filed copy to the Board of Appeals. The filed covenant shall be submitted to the Board of Appeals prior to final sign off of the building permit for the dwelling structure. The covenant shall include language discussed herein regarding tenancy by an individual substantially employed on subject property. The covenant shall provide that all criteria under Section 240-38 I. shall be met when the accessory apartment is rented to an individual other than a person substantially employed on the premises.
6. The accessory apartment on subject property shall not be rented seasonally.
7. The accessory apartment and the main dwelling on subject property shall contain the only living space on subject property.
8. The applicant shall maintain stormwater runoff on site at all times.
9. The only structures on subject property that may have living space and cooking facilities is that of the main dwelling structure.
10. The subject property may be divided into two or more lots, but a lot containing the detached garage and dwelling with accessory apartment herein approved shall contain at least two acres pursuant to Section 240-70 D. Other lots that contain neither the detached garage nor the house with accessory apartment herein approved shall not be subject to this decision or to the covenant referred to herein.
11. 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.
12. 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.)
13. 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: 20-15

Applicant: PETER S. DAWSON of Canton, MA

Subject Property: 681 Sandwich Road, East Falmouth, MA

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 0 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

Terrence J. Hurrie, 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:
20-15 Dawson SP