

## Zoning Board of Appeals Decisions Decisions for: 06-30-2016

[Close Window](#)

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 061-16

APPLICANT: JULIA DAY of Teaticket, Massachusetts

OWNER: Michael and Phaedra Vining of Woburn, MA

SUBJECT PROPERTY: 143 Maravista Avenue, Teaticket, Massachusetts  
Assessor's Map: Map 39A, Section 32, Parcel 000, Lot 220

DEED/CERTIFICATE: Certificate 162957 – Plan 4286A (Plate 6)

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of May 26, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-162 F. of the Code of Falmouth to allow a home occupation for an art studio on subject property known as 143 Maravista Avenue, Teaticket, MA.
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 June 30, 2016.
4. The public hearing was terminated on June 30, 2016, 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, Julia Day (O'Malley-Keyes) was present at the hearing and reviewed and discussed the proposed home occupation 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

6/30/2016 E-mail from Barbara and Paul Brown of English Street stating support of the proposed home occupation for O'Malley-Keyes art studio – "property greatly improved".

6/27/2016 E-mail from Celeste and Ernie Dascoli of 43 Oak Street stating support of the proposed home occupation for the O'Malley-Keyes art studio – "she has brought class and culture to the neighborhood".

6/27/2016 Letter from Donald and Rosemary Colleran of 53 Oak Street stating support of the proposed home occupation for the O'Malley-Keyes art studio – "we see no issues with traffic or customer cars".

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

6/30/2016 Applicant submitted updated information on number of visitors to the O'Malley-Keyes art studio on subject property (shows number of visitors and cars to site).

6/24/2016 Applicant submitted a letter she wrote to all neighbors regarding the upcoming hearing to

discuss the proposed art studio home occupation.

6/24/2016 Applicant submitted information on number of visitors and cars to the O'Malley-Keyes art studio on subject property.

6/23/2016 E-mail from applicant in response to questions to her regarding accessory structure and main dwelling on subject property.

#### Letters/Referrals/E-mails from Town Departments

6/28/2016 A Referral was submitted to the file from the Engineering Department (S. Schluter) that states: This application was review only for impacts to public right of ways and public utilities. Maravista Avenue and Oak Street are Public right of ways in this area. No alterations are proposed to the right of ways; any changes within the right of ways would require filing a permit with the Engineering Division.

6/23/2016 ZBA staff submitted photos [from on-line] of the O'Malley-Keyes art studio that is within the accessory structure on subject property.

6/7/2014 A Referral submitted to the file from Conservation Commission had no comment.

6/7/2014 A Referral submitted to the file from the Falmouth Fire Rescue Department had no comment.

5/27/2016 A Referral submitted to the file by the Planning Department staff had no comment.

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

Photos of the subject property showing the accessory structure where the art studio is located and parking area in driveway on subject property were submitted to the file and have a Board date 'received' stamp of June 24, 2016; and

A copy of the "Upgrade Sewage Disposal System Plan" prepared for Phaedra & Michael Vining (property owners) dated December 13, 2016 was submitted to show subject property and existing structures - plan has a Board date 'received' stamp of May 26, 2016.

#### Hearing:

Ms. Julia Day (O'Malley-Keyes) explained to the Board that she is an artist and using the detached accessory structure on subject property as her studio to paint in and to show her art work. The structure is less than 30% of the floor area of the main dwelling as required in Section 240-162 of the Code of Falmouth. Ms. Day stated that she rents the property and her lease allows her to have her art studio on subject property. She stated there is never more than 1 or 2 cars on subject property at a time from visitors to the art studio; and she stated that she believes five or six cars are able to park within the driveway area - customers never park in the street. Ms. Day explained her hours of operation which are Tuesday through Saturday 11:00 AM to 5:00 PM or by appointment. She has no employees and all art within the studio is by her and created on-site.

The Board discussed the home occupation, parking, signage and 'open' flag with Ms. Day. All concerns and questions were addressed.

Chairman Bielan asked for any public comment in opposition of the proposed home occupation.

Mr. and Mrs. Leonard Cusick of 44 Oak Street spoke in opposition stating that they are concerned with added parking on a narrow street [Oak St.] and that it is a business in a residential area and that they believe that Ms. Day holds art classes in the studio.

Alan Jaffe of 64 Randolph Street stated opposition as he believes it to be an inappropriate use within a residential district and concerned with additional traffic.

Anna Jones of 153 Maravista Avenue spoke in opposition as a home occupation may set a precedent for a business operation in a residential neighborhood.

Chairman Bielan asked for any public comment in support of the proposed home occupation.

Theresa Reardon of 53 Priscilla Street stated she is an immediate abutter and stated there has not been any noise or added traffic to the neighborhood. Said Ms. Day has cleaned up the property substantially and is a good neighbor.

James Pontuso of 149 Maravista Avenue spoke in support stating that there is never more than 1 or 2 cars on subject property at a time and he doesn't believe there to be any impact from traffic.

Kathy Harland of 29 Oak Street stated support and said there are no issues with traffic, that Ms. Day is a great neighbor and an asset to the neighborhood.

Sharon Nunes of 23 Oak Street stated support and that Ms. Day has improved the property greatly – beautiful property, and there is no traffic impact – no more than 1 or 2 cars on the property at a time.

Cindy Henderson of 39 Oak Street stated support of the art studio and said that she herself has more people and family visiting her on Oak Street that park in the street, that there is no traffic due to the art studio on site and that Ms. Day has improved the house and property.

Ms. Day stated in response to Mr. Cusick that she has never held any classes on site, not had a grand opening. She has been existing for a while and has never had anyone at the art studio park on the street.

Ms. Day stated, in response to a question by the Board, that she is seeking a permit for her sign on the property and that she is amenable to having only one 'open' flag on site.

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 143 Maravista Avenue in Teaticket contains 7,200 square feet of Residential C zoned land that is located within the Little Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-162 F. of the Code of Falmouth to allow a home occupation on an undersized lot in the Town of Falmouth. There is an art studio, O'Malley-Keyes gallery, being operated on subject property. Testimony by the applicant was that she leases the property and did not know a permit was required as the owner of the property gave the permission.

Section 240-162 of the Code of Falmouth – "Home Occupations." – sub-section F. (1) states: Any home occupation which otherwise meets the applicable provisions of §240-162, except that it utilizes a lot which does not conform to the minimum lot dimensional requirements, shall require a special permit from the Board of Appeals.

The Board finds that as defined in Section 240-13 "Definitions" - 'Home Occupations' is a use of a dwelling or accessory building that is incidental to the use of residential purposes by family members/residents involving the manufacturing provision or sale of goods or services and said use is by the resident of the dwelling. The Board further finds that the applicant does reside on subject property via a lease from the property owner that does allow the home occupation of an art studio. Furthermore, the Board finds that the applicant [resident of property] does create paintings that are on display and for sale within the studio on subject property and therefore meets the criteria of Section 240-162 A. through F. of the Code of Falmouth for a 'Home Occupation'.

The Board finds through testimony by the applicant that there has not been any art or painting class held on subject property and that she has no intention to hold any art or painting classes in the future. The Board further finds that based on information submitted showing visits to the art studio from May 24, 2016 to June 30, 2016 (which also shows number of vehicles to site) that traffic to and from subject property is minimal and does not adversely impact the neighborhood. Furthermore, the Board finds that

there was testimony relating to concerns of traffic, but that upon review of the numbers submitted by the applicant from May 24, 2016 to June 30, 2016, and the countervailing testimony by abutters, that there will not be a significant impact upon traffic in the neighborhood.

The Board finds that the applicant is amenable to limiting the number of vehicles on site during proposed business hours to no more than two cars on-site (which does not include the two personal vehicles of the applicant and co-tenant).

The Board finds based on testimony and letters submitted to the file by abutters in support of the art studio and comments made at the hearing that the applicant and her art studio is an asset to the neighborhood and comments by same abutters that there are no traffic impacts, shows the Board that the home occupation will not adversely affect the neighborhood. The Board further finds that testimony from abutters at the hearing was that the applicant has greatly improved the property and keeps the property well maintained.

The Board finds through testimony by the applicant that she is amenable to having only one 'open' flag for the home occupation on subject property. The Board further finds through testimony by the applicant that she is processing an application for signage (outside of the open flag) of the art studio on subject property.

The Board finds that the proposed change to the pre-existing nonconforming dwelling is not substantially more detrimental than what currently exists.

The Board finds that Ms. Day submitted a letter of authorization to the file from the owner of subject property as required and that said letter does state that Ms. Day is allowed to run her art business from said property (see letter of authorization dated May 25, 2016 with a Board stamp of May 26, 2016).

In addition to the above findings, the Board finds that the proposed art studio home occupation 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 art studio as there is an existing accessory structure that is less than 30% of the floor area of the main dwelling that will be used for said studio.
- B. The site is suitable for the proposed use as the property is zoned residential and a home occupation is allowed pursuant to Section 240-162 F. on subject property.
- C. There will be no impact on traffic flow and safety as there will be minimal traffic to and from the site for the art studio discussed herein; and there will be no change in the location of the existing driveway on site.
- D. The visual character of the subject property has 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 in place will not be affected by the home occupation discussed herein.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed home occupation discussed and represented herein will have no effect on 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, except for the nonconformities stated herein.
- J. The approval of this special permit does not include any affordable housing.

The Board of Appeals has weighed the effects of the proposed home occupation as discussed herein and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Zoning Bylaw.

Member Foreman 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 5 – 0 to Grant the Special Permit to Julia Day (herein referred to as Applicant) under Section(s) 240-162 F. of the Code of Falmouth to allow a home occupation for an art studio on subject property known as 143 Maravista Avenue, Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The home occupation for an art studio shall be as represented to the Board and as shown in the photographs and floor plans submitted to the file and noted herein.
2. This Special Permit approval for a home occupation is strictly for the applicant Julia Day while residing at 143 Maravista Avenue in Teaticket. This Special Permit is not transferrable to any other individual or future resident of subject property. The owner of subject property is not considered the applicant and may not assume the Special Permit.
3. There shall be no more than two (2) cars at one time visiting the art studio during hours of operation or through an appointment with the applicant. The applicant and co-tenant on subject property each have a vehicle, so during business hours there shall be no more than four (4) total vehicles on site. This condition is limited to the home occupation and does not preclude the applicant or co-tenant from having personal visitation from family and friends.
4. Hours of operation for the art studio shall be Tuesday through Saturday 11 AM to 6 PM and by appointment otherwise.
5. The applicant shall not hold any art classes on-site.
6. The art studio shall be for works done only by the applicant and shall not conduct any retail sales for other artists or vendors.
7. The applicant shall apply for a sign permit and post one sign approved by the Sign Committee or Building Department.
8. The applicant will be allowed one 'Open' flag as well as the approved sign on subject property.
9. 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.
10. 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.)
11. 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: 061-16

Applicant: JULIA DAY of Teaticket, MA

Subject Property: 143 Maravista Avenue, Teaticket, Massachusetts  
Map 39A, Section 32, Parcel 000, Lot 220

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.

---

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:**

SP 061-16 Day, filed with Town Clerk 7/12/16