

## Zoning Board of Appeals Decisions Decisions for: 02-04-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 130-15

APPLICANT/OWNER(S): MICHAEL J. LYNCH and SUSAN M. LYNCH  
of East Falmouth, MA

SUBJECT PROPERTY: 264 Central Avenue, East Falmouth, MA  
Assessor's Map: Map 41, Section 01, Parcel 000A, Lot 029

DEED/CERTIFICATE: Certificate 206568 – Plan 29490A, Lot 29

SUMMARY: Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of December 23, 2015, 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 the single-family dwelling on subject property known as 264 Central Avenue in East Falmouth, 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 February 4, 2016.
4. The public hearing was terminated on February 4, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Mark Cool 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 present at the hearing and 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

None

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

None

Letters/Referrals/E-mails from Town Departments

12/24/2015 Referral submitted by the Planning Department with no comment.

12/24/2015 Referral submitted by the Conservation Commission with no comment.

12/28/2015 Referral submitted by Water Superintendent Rafferty that states: Undeveloped lot; received and approved request for 1" water service 8/15. Service not yet installed. Water available.

12/28/2015 Referral submitted by the Falmouth Fire Rescue Department with no comment.

1/6/2016 Referral submitted by Building Commissioner Gore that states: Permit for new house issued, house is not in flood zone.

1/8/2016 Referral submitted by Marine Environmental Services with no comment.

1/8/2016 Referral submitted by the Engineering Department (S. Schluter) that states: This application was reviewed only for impacts to public right of ways and public utilities. Central Ave is a Public right of way in this area. The applicant has an active Driveway Permit on file with the same plan submitted to the ZBA in this application. Any connections or alterations to public utilities would require permission from the appropriate Town Department. The project must not direct any stormwater runoff to public property, abutters, or right of ways.

1/26/2016 Referral submitted by Health Agent Carignan with no comment.

Plans submitted by Applicant/Applicant's Representative

12/23/2015 "Site Plan" prepared for Michael & Susan Lynch of 264 Central Avenue Falmouth, MA as drawn by J.E. Landers-Cauley, P.E. – Sheet 1 of 2 dated 7/31/15 with a final revision date of 10/20/15; and Sheet 2 of 2 "Design Data" (septic system) dated 7/31/15 with a final revision date of 10/05/2015 – both Sheets have Board date 'received' stamp of December 23, 2015; and

"Custom Home Design Lynch Residence 264 Central Ave. East Falmouth, MA" as drawn by Architecture by SPB consisting of Drawings A1 through A4 and S1 through S3 – all dated 11/2/2015 and with a Board date 'received' stamp of December 23, 2015.

Hearing:

Mr. Michael Lynch [applicant] was present and reviewed proposed plans to create an accessory apartment within the dwelling that will be his primary residence and that he is currently constructing. The dwelling will have four (4) bedrooms total, including the accessory apartment. The main dwelling will be 2,790 square feet in size and the apartment will be 668 square feet in size, which is less than the 30% maximum allowed. Mr. Lynch reviewed the basement plans that will have a family room and a workshop – there will be no bedrooms. He explained that the accessory apartment will be used for family and/or guests and will not be rented out.

The Board discussed plans with Mr. Lynch and asked him if he understood, according to the bylaw, that there shall be no seasonal rental or commercial accommodations of the apartment. Mr. Lynch stated it would be for family and friends only, no intention to rent. All concerns and questions were addressed.

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

Member Murphy 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 264 Central Avenue in East Falmouth contains 22,293 square feet of Residential B zoned land that is located within the Bournes Pond Coastal Pond Overlay District and the Eel Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-23 I. of the Code of Falmouth for a special permit to create an accessory apartment within the dwelling being constructed on subject property. The plans submitted and discussed show that there will be four (4) bedrooms in the dwelling, including the bedroom in the accessory apartment. The applicant testified that he is aware of the regulations under 240-23 I. The dwelling and the accessory apartment meet are requirements under Sections 240-68 A. and B. and 240-69 A. of the Code of Falmouth.

Section 240-23 of the Code of Falmouth – “Special Permit uses.” sub-section I. allows the Board of Appeals to approve a special permit for the creation or addition of an accessory apartment to a dwelling that meets the criteria under said sub-section.

The Board finds that the proposed accessory apartment meets the criteria under Section 240-23 I. of the Code of Falmouth as follows:

- (1) The applicant gave testimony at the hearing that the principal or accessory unit will be owner-occupied for a period of seven months in every calendar year;
- (2) The plans submitted to the file and reviewed by the Board, shows that the accessory apartment will not occupy more than 30% of the floor area of the principal dwelling, has only one (1) bedroom and has a total of 668 square feet of space (750 sf with storage area);
- (3) The lot size of subject property is more than 15,000 square feet in size and the total number of bedrooms on subject property does not exceed four (4);
- (4) The subject property is within a Coastal Pond Overlay and has approval by the Board of Health for a four-bedroom Title V septic system as shown on Sheet 2 of 2 of the “Site Plan” submitted and reviewed by the Board;
- (5) The plan submitted and reviewed by the Board shows the driveway and garage space appropriate for parking of residents and guests for a dwelling with an accessory apartment to be used by family and friends only;
- (6) The applicant gave testimony that he understands there shall be no commercial accommodations or seasonal renting;
- (7) The applicant’s intent of use for the apartment is that of family and friends and not to be rented; and
- (8) The accessory apartment is being constructed so as the appearance of the structure remains that of a single-family dwelling.

The Board finds through testimony by the applicant that the dwelling discussed herein is their primary residence and they will reside on subject property year-round. The Board further finds through testimony by the applicant that the basement will have a family room and a workshop; there shall be no bedrooms within the basement space.

The Board finds that the applicant is amenable to a restrictive covenant limiting the use of the dwelling and accessory apartment to family and friends. The Board further finds that the restrictive covenant will include that there shall be no seasonal or commercial rental of subject property. Furthermore, the Board finds that the restrictive covenant will be reviewed by the Board of Appeals, signed by the Town, the applicant will then file the document with the Registry of Deeds and the applicant shall submit a copy of the filed covenant [with the Registry stamp] to the Board of Appeals.

In addition to the above findings, the Board finds that the proposed accessory apartment and its use 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 as all setbacks and lot coverage on subject property are in compliance as stated herein.
- B. The site is suitable for the proposed use as the property is zoned residential and will be maintained and used as a single-family dwelling through this special permit.
- C. There will be no impact on traffic flow and safety as the plan for the driveway servicing the dwelling and accessory apartment is in keeping with the neighborhood.
- D. The visual character of the subject property will be that of a single-family 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 signed off as a four bedroom system by the Board of Health.
- F. There are adequate utilities proposed to subject property by virtue of referrals submitted by the Engineering Department and the Water Department.
- G. The proposed accessory apartment discussed and represented herein will have no effect on the supply of affordable housing in Falmouth as testimony by the applicant was that the intent is to have the accessory apartment available to family and friends, with no renting of said apartment or dwelling.
- 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 and the intent is the use of

apartment will be for family and friends and therefore is not governed by Section 240-216 J. of the Code of Falmouth.

Member Murphy 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 a Special Permit to Michael and Susan Lynch (herein referred to as Applicant) under Section(s) 240-23 I. of the Code of Falmouth to create an accessory apartment within the single-family dwelling on subject property known as 264 Central Avenue, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

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

- "Site Plan" prepared for Michael & Susan Lynch of 264 Central Avenue Falmouth, MA as drawn by J.E. Landers-Cauley, P.E. – Sheet 1 of 2 dated 7/31/15 with a final revision date of 10/20/15; and Sheet 2 of 2 "Design Data" (septic system) dated 7/31/15 with a final revision date of 10/05/2015 – both Sheets have Board date 'received' stamp of December 23, 2015; and

- "Custom Home Design Lynch Residence 264 Central Ave. East Falmouth, MA" as drawn by Architecture by SPB consisting of Drawings A1 through A4 and S1 through S3 – all dated 11/2/2015 and with a Board date 'received' stamp of December 23, 2015.

2. There shall be no more than four (4) bedrooms allowed on subject property.

3. There shall be no bedrooms created within the basement or garage spaces.

4. The applicant shall draft a restrictive covenant, forward it to the Board of Appeals for approval process, submit approved covenant for Town signature, file the signed covenant with the Barnstable Registry of Deeds and then submit copy of filed covenant to the Board of Appeals. A copy of the filed restrictive covenant shall be submitted to the Board of Appeals prior to final sign off of building permit and prior to issuance of a Certificate of Occupancy for the dwelling.

5. The applicant shall maintain compliance of Section 240-23 I. of the Code of Falmouth at all times for the property, the use of the dwelling and apartment and on-site parking.

6. 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.

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: 130-15

Applicant: MICHAEL J. LYNCH and SUSAN M. LYNCH of East Falmouth, MA

Subject Property: 264 Central Avenue, East Falmouth, Massachusetts

Map 41, Section 01, Parcel 000A, Lot 029

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 Lynch / Filed with T.C 2/16/16