

Zoning Board of Appeals Decisions Decisions for: 01-21-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 114-15

APPLICANT/OWNER(S): L.I.F.E., INC. of Hyannis, MA

SUBJECT PROPERTY: 25 Maccini Way, East Falmouth, Massachusetts
Assessor's Map: Map 29, Section 06, Parcel 007, Lot 003

DEED/CERTIFICATE: Certificate 197526 – Lot 3, Plan 21423-C

SUMMARY: Granted With Conditions

PROCEDURAL HISTORY

1. Under a date of November 19, 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 25 Maccini Way, 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 January 21, 2016.
4. The public hearing was terminated on January 21, 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. Katherine Halicki was present on behalf of the applicant 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

11/24/2015 Referral submitted by the Planning Department with no comment.

12/8/2015 Referral submitted by the Falmouth Fire Rescue with no comment.

12/8/2015 Referral submitted by the Marine & Environmental Services with no comment.

12/9/2015 Referral submitted by the Conservation Commission Agent with no comment.

12/14/2015 Referral submitted by Building Commissioner Gore with no comment.

12/14/2015 Referral submitted by Board of Health Agent Carignan that states: The total number of bedrooms should not exceed five. The property is serviced by an alternate technology septic system component, which should be intact and maintained according to Department of Environmental Protection Requirements.

Plans submitted by Applicant/Applicant's Representative

11/19/2015 "Site Plan" prepared for Lee Ei of Lot 3 Maccini Way East Falmouth, MA as drawn and stamped by J.E. Landers-Cauley, P.E. – Sheet 1 of 2, dated 8/23/2004 and with a Board date 'received' stamp of November 19, 2015;

Hand drawn floor plan of accessory apartment with exterior landing and stairs to ground level with a Board date 'received' stamp of November 19, 2015; and

Architectural plans by Capestyle Bldrs dated 9/4/2003 consisting of pages 1 through 6 showing elevations and floor plans of the existing dwelling that will incorporate the accessory apartment – plans have a current Board date 'received' stamp of November 19, 2015.

Hearing:

Katherine Halicki explained that L.I.F.E. [Living Independently Forever, Inc.] is a non-profit organization that helps support adults with learning disabilities to live on their own. L.I.F.E., Inc. owns the subject property that has a five-bedroom dwelling that is currently a 'group' home. The dwelling had previously been granted a special permit for an accessory apartment in 2004 [special permit 141-04]. She explained that when L.I.F.E. purchased the property in 2012, the organization was not interested in having the accessory apartment, specifically the kitchen and had the kitchen removed through a building permit process. Now, the organization has an individual who can reside in the 'accessory apartment' with the ability to cook, and thus would like to reintroduce a kitchen and receive approval from the Board for an accessory apartment. She stated that the accessory apartment will exist as installed in 2004 – with no changes. Five bedrooms currently existing on subject property and there will be no increase in the number of bedrooms through this special permit.

The Board asked questions and stated concerns and asked specifically if Ms. Halicki understands that there can be no seasonal rentals or commercial accommodations on subject property. Ms. Halicki stated that there are currently five (5) individuals living in the dwelling at this time. All other concerns were addressed by Ms. Halicki.

Chairman Bielan asked for any public comment in support or opposition of the proposed project. 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 25 Maccini Way in East Falmouth contains 45,000 square feet of Agricultural A zoned land that is located within the Childs River Coastal Pond Overlay District. The subject property was granted a special permit in 2004 to allow the creation of an accessory apartment over the existing attached garage. In January of 2013 a building permit was issued to remove the stove and return the structure to a single-family dwelling with no accessory apartment. This application submitted by the applicant [L.I.F.E., Inc.] under Section 240-38 I. of the Code of Falmouth, is requesting to restore the accessory apartment and allow the stove to be re-installed. The subject dwelling is owned by the applicant who are a non-profit organization and houses individuals who could not otherwise live on their own. There will be no additional bedrooms created through this special permit approval.

Section 240-38 I. of the Code of Falmouth allows through a special permit by the Board of Appeals, to create an accessory apartment attached to or created within a single-family dwelling.

The Board finds that the proposed accessory apartment meets the criteria set forth under Section 240-38 I. as follows:

- (1) The principal or accessory unit is owned by a nonprofit organization whose purpose it is to provide affordable housing;
- (2) The accessory apartment occupies 24.4% of the floor area of the principal structure – which is less than the maximum 30% allowed and has one bedroom and is approximately 470 square feet in size;
- (3) The subject property has more than 15,000 square feet of land;
- (4) The accessory apartment is being created within an existing dwelling that has five (5) bedrooms with no new bedrooms being created through this special permit and the subject property has benefit of an alternative subsurface sewage treatment system as shown by the referral submitted from the Board of Health;
- (5) Driveway and parking is compatible with that of the neighborhood and will be in front of the existing garage;
- (6) The applicant understands that the dwelling or accessory apartment may not be used as commercial or seasonal rentals;
- (7) The applicant herein is a nonprofit organization and the occupant(s) receive rental assistance due to income or asset qualification or on account of a disability;
- (8) The accessory apartment will be created so that the appearance of the building remains that of a single-family residence.

The Board further finds that the applicant is a non-profit organization that serves the community.

The Board finds that the special permit is attached to the property and in the event the applicant, who is a non-profit organization, conveys ownership, the new property owner shall fully comply with Section 240-38 I. of the Code of Falmouth and all sub-sections. The Board further finds that a new owner shall notify this Board as to use of the accessory apartment, whether it be rented or used by family members on a yearly basis. Furthermore, the Board finds that if the new property owner rents a dwelling unit, it shall be rented to a household with an income of 80% or less of the Barnstable County median income.

The Board finds that if the applicant herein conveys subject property to an individual or entity that is not a non-profit, the new owner shall immediately draft a deed restriction, covenant or other suitable instrument, acceptable to and enforceable by the Town and forward it to the Board of Appeals for approval and signature by the Town and then applicant shall file said document with the Registry of Deeds and submit a filed copy to the Board of Appeals forthwith.

The Board finds that there will be no increase in the number of the existing five bedrooms on subject property. The Board further finds that there will be no change to the exterior of the dwelling through this special permit.

The Board finds that the file shows that there is no street sign/directional sign for Maccini Way and herein recommends that the applicant contact the Engineering Department to request a sign in the event that there is a medical or fire emergency.

In addition to the above findings, the Board finds that the proposed accessory apartment 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 there will be no change in the footprint of the structure and no increase in lot coverage.
- B. The site is suitable for the proposed use as the property is zoned residential and an accessory apartment is an allowable accessory use to the primary single-family dwelling by benefit of a special permit.
- 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 be unchanged 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 is in place and signed off as a five bedroom system by the Board of Health (see Board of Health referral submitted to the 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 system.
- G. The proposed accessory apartment 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 may include an affordable housing unit as the applicant is a non-profit organization and the dwelling is used as a 'group home' for disabled individuals who may or may not receive monetary assistance.

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 a Special Permit to L.I.F.E., Inc. (herein referred to as Applicant) under Section(s) 240-38 I. of the Code of Falmouth to create an accessory apartment within the existing dwelling structure [above the existing attached garage] on subject property known as 25 Maccini Way, East Falmouth, MA. This special permit is subject to the following conditions:

1. The 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 Lee Ei of Lot 3 Maccini Way East Falmouth, MA as drawn and stamped by J.E. Landers-Cauley, P.E. – Sheet 1 of 2, dated 8/23/2004 and with a Board date 'received' stamp of November 19, 2015;

- Hand drawn floor plan of accessory apartment with exterior landing and stairs to ground level with a Board date 'received' stamp of November 19, 2015; and

- Architectural plans by Capestyle Bldrs dated 9/4/2003 consisting of pages 1 through 6 showing elevations and floor plans of the existing dwelling that will incorporate the accessory apartment – plans have a current Board date 'received' stamp of November 19, 2015.

2. There shall be no more than five (5) bedrooms allowed on subject property.

3. In the event the applicant, who is a non-profit organization, conveys subject property, the new owner shall be required to draft a deed restriction, covenant or other suitable instrument, acceptable to and enforceable by the Town stating that the apartment or dwelling will be used by family members only or will be rented to a household 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 further at a gross annual rent not to exceed 30 percent of said median income. The draft document shall be submitted to the Board of Appeals for approval and signature and then returned to new property owner for filing with the Barnstable Registry of Deeds. The new property owner shall then submit a copy of the filed documents to the Board of Appeals forthwith.

4. The subject property shall always remain within compliance of Section 240-38 I. of the Code of Falmouth.

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. 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.)

7. 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: 114-15

Applicant: L.I.F.E., INC. (Living Independently Forever, Inc.) of Hyannis, MA

Subject Property: 25 Maccini Way, East Falmouth, Massachusetts
Map 29, Section 06, Parcel 007, 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.

Kimberly Bielan, Board Chairman

_____ 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 114-15 LIFE, INC - Filed w/ Town Clerk 1/29/16