

Zoning Board of Appeals Decisions Decisions for: 07-14-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 070-16

APPLICANT/OWNER(S): RALPH HERBST, TRUSTEE of East Falmouth, MA

SUBJECT PROPERTY: 121 Regis Road, East Falmouth, Massachusetts
Assessor's Map: Map 09, Section 01, Parcel 004, Lot 268

DEED/CERTIFICATE: Certificate 177357 – Lot 268 and 269, Plan 16583-O (Sheet 6)

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 17, 2016, 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 allow for an accessory apartment within the single-family dwelling on subject property known as 121 Regis Road, 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 July 14, 2016.
4. The public hearing was terminated on July 14, 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 was represented at the hearing by Attorney Robert H. Ament of Ament Law Firm 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

None

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

6/17/2016 Attorney Ament submitted on behalf of the applicant, an application, authorization, a completed 'Accessory Apartment Worksheet', floor plans and fee for a special permit.
7/5/2016 Attorney Ament submitted photos of rooms that make up the two bedroom apartment existing and photos of each elevation.

Letters/Referrals/E-mails from Town Departments

6/20/2016 Referral submitted to the file from the Planning Department staff with no comment.

6/23/2016 Referral submitted to the file from Falmouth Fire Rescue Department with no comment.

7/6/2016 Referral submitted to the file from Interim Building Commissioner Brandolini that states: Building Permit for kitchen will be issued when Board grants petition.

7/5/2016 Referral submitted to the file from Marine & Environmental Services with no comment.

7/12/2016 An e-mail from Assistant Zoning Enforcement Agent in response to e-mail from Zoning Administrator regarding proper egress for accessory apartment.

Plans submitted by Applicant/Applicant's Representative

"121 Regis Road Floor Plans" consisting of three (3) pages showing floor plan of main dwelling and accessory apartment with a Board date 'received' stamp of July 5, 2016; and

"Plot Plan" drawn by RAS Associates, stamped and signed by Stephen W. Cartwright, PLS, dated 6/28/2016 and with a Board date 'received' stamp of July 5, 2016.

Hearing:

Attorney Robert Ament reviewed the existing site conditions and the existing accessory apartment. He informed the Board that the apartment was created shortly after construction of the home in 1988 for housing of a caretaker for the property as the applicant traveled (airline pilot) and his home had been vandalized. The subject property is 40,000 square feet in size and has lot coverage by structures of approximately 5%; the accessory apartment is 669 square feet in size and does not exceed 30% of the dwelling. He reviewed the site noting that there is plenty of parking on the site. He further offered documentation showing rental income.

Attorney Ament noted that the Building Commissioner and Assistant Zoning Enforcement Officer inspected the premises and made a few suggestions for corrections, pending approval from this Board, the corrections will be completed.

The Board discussed plans with Attorney Ament and had questions relative to occupying the premises for seven months out of each year, possible lease through a non-profit or other avenue. Attorney Ament answered that the applicant occupies the dwelling year-round except for when he visits family out of state or spouse who resides in Mashpee. In response to lease of property, Attorney Ament explained that the applicant will do a restricted covenant and will comply with Town requirements.

Chairman Bielan asked for any public comment in support or opposition of the proposed project. Joan Bates of 29 Redland Road spoke in favor of the application.

Jonathan Snyder of 18 Crystal Spring Avenue in North Falmouth stated opposition and cited that applicant does not reside on subject property for seven months of each year. He submitted a copy of a 'Declaration of Homestead' signed by applicant's wife regarding property in Mashpee, Massachusetts (bordering Town).

Member Van Keuren made a motion to close the hearing. Member Hurrie 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 121 Regis Road in East Falmouth contains approximately 40,000 square feet of Agricultural A zoned land that is located within the Bournes Pond Coastal Pond Overlay District and the Wild Life Corridor Overlay District. The applicant applied under Section(s) 240-38 I. of the Code of Falmouth to allow for an accessory apartment within the existing single-family dwelling on subject property. The applicant's representative established that the accessory apartment has existed for several years and was created for a caretaker to reside on the premises. There was no verification as to when the five bedrooms were created; there was no verification submitted to the file that a five-bedroom Title 5 septic system exists on subject property. Information was submitted to the file as proof that the accessory apartment size and percentage of dwelling meets the criteria of Section 240-38 I. of the Code of Falmouth (see file for "Accessory Apartment Worksheet" submitted June 17, 2016 to the file).

Section 240-38 I. of the Code of Falmouth allows the Board of Appeals to approve a special permit to create an accessory apartment within or attached to a single-family dwelling in an Agricultural zoned district based on criteria set forth in this section as (1) through (8).

The Board finds that the existing accessory apartment is before the Board to properly permit said apartment. The Board also finds pursuant to sub-section (1) through (8) the following:

- (1) The applicant's representative gave testimony that the applicant does and will occupy in the dwelling no less than seven (7) months per year;
- (2) The accessory apartment on subject property is 669 square feet in size and does not occupy more than 30% of the floor area of the dwelling;
- (3) The subject property is 40,000 square feet in size and has five bedrooms (including the accessory apartment bedrooms), however, no verification was submitted to the file as to when the two bedrooms were created and verification of a five-bedroom septic system on subject property;
- (4) The subject property is located within a Coastal Pond Overlay District, however the dwelling when constructed in 1988 was for a five-bedroom dwelling and is existing with the accessory apartment as a five-bedroom dwelling;
- (5) The parking area on subject property is past the front façade of the dwelling and the lot is buffered from the roadway by existing trees and bushes which reduces the view of the parking area from the roadway;
- (6) The applicant understands that the accessory apartment cannot be rented as commercial accommodations or as a seasonal rental;
- (7) The applicant's representative gave testimony that he will draft a Restrictive Covenant for the Town's review for subject property and accessory apartment; and
- (8) The existing accessory apartment within the dwelling was created so as not to change the visual character and appearance of a single-family dwelling.

The Board finds that the applicant's representative submitted to the file, a statement signed by five abutters (9 signatures) who have no opposition to the accessory apartment on subject property.

The Board finds that the accessory apartment has been existing on subject property for many years without a complaint. The Board finds that the Interim Building Commissioner and Assistant Zoning Enforcement Officer conducted a walk-through of the premises and suggested some changes that will be required before a Certificate of Occupancy can be issued. The applicant's representative stated that the changes suggested will be completed when the Board approves the Special Permit request.

The Board finds that there will be no change in the footprint of the existing dwelling or any material changes to the dwelling through this Special Permit approval.

In addition to the above findings, the Board finds that the 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 accessory apartment as there will be no change to the existing footprint of the dwelling and all setbacks are in compliance with Section 240-68 A. and B. of the Code of Falmouth and the lot coverage is in compliance with Section 240-69 A. of the Code of Falmouth.
- B. The site is suitable for the proposed use as the property is zoned Agricultural A and a single residential use is allowed by right; and an accessory apartment is herein reviewed as 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 applicant's representative gave testimony at the hearing that a five-bedroom Title 5 septic system is currently on subject property; there was no referral submitted to the file from the Board of Health for verification or acknowledgement.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The accessory apartment discussed and represented herein will meet the criteria of an accessory apartment as set forth in Section 240-38 I. and according to a Restrictive Covenant to be submitted, approved by the Town and filed with the Registry of Deeds.
- 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 under this sub-section in that a Restrictive Covenant will be in place, there will not be a monitoring agent – but the applicant will report to the Board of Appeals on a yearly basis as to the tenant and any fees charged.

The Board of Appeals has weighed the effects of this Special Permit request for the existing accessory apartment 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 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 Ralph Herbst, Trustee (herein referred to as Applicant) under Section(s) 240-38 I. of the Code of Falmouth to allow an accessory apartment within the existing single-family dwelling on subject property known as 121 Regis Road, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

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

- "121 Regis Road Floor Plans" consisting of three (3) pages showing floor plan of main dwelling and accessory apartment with a Board date 'received' stamp of July 5, 2016; and

- "Plot Plan" drawn by RAS Associates, stamped and signed by Stephen W. Cartwright, PLS, dated 6/28/2016 and with a Board date 'received' stamp of July 5, 2016.

2. There shall be no more than five (5) bedrooms located on subject property at any time.

3. The applicant shall file for a building permit to complete the suggested changes made by the Building Commissioner during a walk-through that was conducted of the premises. Once a final approval by the Building Department is made, the applicant shall request a Certificate of Occupancy for the accessory apartment. The applicant shall submit a copy of the Certificate of Occupancy to the Board of Appeals.

4. The applicant shall obtain verification from the Board of Health and Building Department that a five bedroom septic system has existed on subject property. The verification shall be submitted to the Board of Appeals prior to issuance of a Certificate of Occupancy from the Building Department.

5. The applicant shall submit a draft copy of a Restrictive Covenant for review by the Board and Town Counsel and approved, signed by the Town Manager and then filed with the Registry of Deeds. The applicant shall submit to the Board of Appeals a copy of the Restrictive Covenant after being filed with the Registry of Deeds and prior to issuance of a Certificate of Occupancy for the accessory apartment by the Building Department.

6. The applicant shall complete conditions 3, 4 and 5 above within six (6) months of the filing of this decision with the Town Clerk so as not to perpetuate a violation of zoning and to protect any tenant on premises. In the event that applicant fails to complete conditions 3, 4 and 5 above, the Board shall request zoning enforcement.

7. The subject property, single-family dwelling and accessory apartment shall maintain compliance of Section 240-38 I. of the Code of Falmouth.

8. 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.

9. 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.) 10. 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: 070-16

Applicant: RALPH HERBST, TRUSTEE of East Falmouth, Massachusetts

Subject Property: 121 Regis Road, East Falmouth, Massachusetts
Map 09, Section 01, Parcel 004, Lot 268

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 070-16 Herbst, Tr / filed w/Town Clerk 7/25/16