

Zoning Board of Appeals Decisions Decisions for: 09-15-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 084-16

APPLICANT/OWNER(S): CHRISTOPHER D. HARRIS and ALISSA K. HIKE HARRIS
of North Falmouth, MA

SUBJECT PROPERTY: 116 Highland Avenue, North Falmouth, Massachusetts
Assessor's Map: Map 04A, Section 17, Parcel 000, Lot 210A

DEED/CERTIFICATE: Book 24527 / Page 327

SUMMARY: Special Permit 084-16

PROCEDURAL HISTORY

1. Under a date of July 29, 2016, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-162 F. (1) of the Code of Falmouth to allow for a home occupation of an architecture firm on subject property known as 116 Highland Avenue, North 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 September 15, 2016.
4. The public hearing was terminated on September 15, 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 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

8/1/2016 Referral submitted to the file by the Conservation Commission Agent that states: No work to be done.

8/2/2016 Referral submitted to the file by the Assessor that has no comment.

8/2/2016 Referral submitted to the file by the Planning Department staff with no comment.

8/4/2016 Referral submitted to the file by Falmouth Fire Rescue Department with no comment.

8/16/2016 Referral submitted to the file by Engineering Department that has standard comments with

addition of recommendation that the project must not direct any stormwater runoff to public property, abutters or rights of ways.

Plans submitted by Applicant/Applicant's Representative

"Plot Plan – Proposed House and Connection to the Town Sewer System" prepared for Christopher D. Harris Lot 210A Highland Avenue North Falmouth, Massachusetts as drawn by BSS Design, Inc. – Sheet 1 of 1 dated Feb. 22, 2010 – stamped and signed by Jeffrey Edwin Ryther, PE and with a Board date 'received' stamp of July 29, 2016; and

Plans consisting of two pages: 1) 'First Floor House and Garage Plan' drawn by Salt Architecture; and 2) 'Second Floor Plan' drawn by Salt Architecture – both with a Board date 'received' stamp of September 7, 2016 [Note: Proposed office is shown in garage area – not labeled as garage.]

Hearing:

Christopher and Alissa Harris explained to the Board that they have an architectural firm, "Salt Architecture", they would like to operate from the detached accessory garage structure that they will convert to an office. They will not have any signage for the operation on site; and they would like the office hours to be 9:00AM to 5:00PM daily. There will be no storage of any materials on the subject property. They explained that currently they do not have any employees but would like to have an employee in the near future. Mr. Harris stated that they usually go to the job sites or homes of clients but there may be a client at the property once in a while.

The Board discussed the plans with the Harris' and asked about the intent of an employee. The Board explained that a home occupation cannot have employees, however a home-based service business may have up to two employees.

After discussion Member Foreman made a motion to amend the application from a home occupation to a home-based service business. Member Van Keuren seconded the motion. Motion carried 5 – 0.

Chairman Bielan asked for any public comment in support or opposition of the proposed project.

Michael Connors, abutter at 114 Highland Avenue stated concerns with additional traffic to the site and explained that the applicants access their property through an easement across Mr. Connors' property. He further asked if the Board grants this special permit, to condition only one employee and that said special permit not be transferrable when property may be conveyed.

Member Van Keuren made a motion to close the hearing. Member Foreman 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 116 Highland Avenue contains 26,136 square feet of Residential C zoned land that is located within the Wild Harbor River Coastal Pond Overlay District. The applicant applied under Section(s) 240-162 F. (1) of the Code of Falmouth to allow a home occupation on an undersized lot and the Board unanimously voted to amend the application from a home occupation request to a home-based service business request as the applicant intends to hire employees in the near future which is allowed in home-based service business and not with a home occupation.

The applicant stated that there will be no materials stored on site and any examples of tile or hardwood that they have will be stored within the detached accessory garage structure that will be converted to an office located at the northeast corner of subject property.

Section 240-162 F. of the Code of Falmouth allows the Board of Appeals to approve a special permit to allow a home-based service business that meets the criteria set forth in Section 240-162 F. (1) through

(3)3 of the Code of Falmouth.

The Board finds that the detached structure is less than 30% of the gross floor area of the principal dwelling on site (240-162 A.); that there shall be no change in the appearance of the existing single-family dwelling and no storage of materials on site (240-162 B.); that the home-based service business of an architectural firm will not create any noise, fumes, will not involve any equipment or interference to any neighbors TV or radio receiver (240-162 C.); and there will be no increase in traffic volume that would normally be expected in the area and no more than two additional vehicles on site during hours of operation (240-162 D.). The Board further finds that testimony by the applicant was that there is no intention to have a sign on the premises as would be allowed under Section 240-162 B.

The Board finds that the home-based service business under Section 240-162 F. (3) (c) requires that there be no more than two employees, who are not family members assigned to work on the premises of the home-based service business; that the business may employ other individuals to perform work at off-site locations with only limited visits of an occasional nature to the premises by said employees for not more than 30 minutes at a time. The Board further finds that the applicant is amenable to having one employee and if an additional one is necessary, the applicant will request a modification from the Board. The Board feels due to the site location and situation of property off Highland Avenue that an additional employee on site may be too great of an impact to the site and neighborhood.

In addition to the above findings, the Board finds that the proposed home-based service business of an architectural firm 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 home-based service business as there will be no additions to the existing dwelling or accessory structure and it is a use allowed by special permit from this Board pursuant to Section 240-162 F. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and will maintain the appearance of a single-family dwelling pursuant to Section 240-162 B.

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 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 to subject property by virtue of an existing dwelling on site. G. The proposed home-based service business 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-based service business 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 Christopher D. Harris and Alissa K. Hike Harris (herein referred to as Applicant) under Section(s) 240-162 F. of the Code of Falmouth to allow a Home Based Architectural Firm Service Business on subject property known as 116 Highland Avenue, North Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The home-based architectural firm office and parking shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan – Proposed House and Connection to the Town Sewer System" prepared for Christopher D. Harris Lot 210A Highland Avenue North Falmouth, Massachusetts as drawn by BSS Design, Inc. – Sheet 1 of 1 dated Feb. 22, 2010 – stamped and signed by Jeffrey Edwin Ryther, PE and with a Board date 'received' stamp of July 29, 2016; and
- Plans consisting of two pages: 1) 'First Floor House and Garage Plan' drawn by Salt Architecture; and 2) 'Second Floor Plan' drawn by Salt Architecture – both with a Board date 'received' stamp of September 7, 2016 [Note: Proposed office is shown in garage area – not labeled as garage.]

2. There shall be no more than one employee outside of the family members for the home-based architectural firm operation without further approval from the Board of Appeals.

3. There shall be no more than two (2) additional vehicles, outside of the personal vehicles of the applicant's, on subject property at one time.

4. Hours of operation of the architectural firm shall be Monday through Saturday from 9:00AM to 5:00 PM

5. There shall be no exterior storage of any materials related to the home-based service business approved herein.

6. This Special Permit is for the applicant only and shall not be transferrable to any other individual(s) or organization and shall not withstand conveyance of subject property.

7. 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.

8. 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.)

9. 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: 084-16

Applicant: Christopher D. Harris & Alissa K. Hike Harris

Subject Property: 116 Highland Avenue, North Falmouth, Massachusetts
Map 04A, Section 17, Parcel 000, Lot 210A

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 084-16 Harris / Filed w/Town Clerk 9/21/16