

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: 086-16

APPLICANT/OWNER(S): KATHLEEN E. HALL of Falmouth, MA

SUBJECT PROPERTY: 66 Shore Street, Falmouth, Massachusetts
Assessor's Map: Map 47B, Section 01, Parcel 004, Lot 001

DEED/CERTIFICATE: Book 26158 / Page 063

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of August 4, 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 a home occupation for an art gallery on subject property known as 66 Shore Street, 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

8/5/2016 Referral submitted to the file by the Planning Department staff with no comment.

8/9/2016 Referral submitted to the file by the Conservation Commission with no comment.

8/10/2016 Referral submitted to the file by the Assessor with no comment.

8/11/2016 Referral submitted to the file by Falmouth Fire Rescue Department with no comment.

8/16/2016 Referral submitted to the file by Engineering Department (S. Schluter) with standard

comments and a question of where gallery visitors will park.

Plans submitted by Applicant/Applicant's Representative

Hand drawn floor plans of dwelling structure (1st and 2nd floor) and the arrow showing the 14' x 15' living room where paintings will be shown – with a Board date 'received' stamp of 8/4/2016;

Photograph of dwelling showing capability of parking in driveway of four cars; and

"Site Plan" showing subject property with a Board date 'received' stamp of August 4, 2016 (copy does not note surveyor or date of plan).

Hearing:

Ms. Hall (applicant) explained to the Board that she has been an artist/painter for about thirty-five (35) years and currently sells most of her paintings through the Artist Guild. She said that she sits on her front porch and paints and that she would like to be able to invite people who walk by her property in to view her paintings and possibly sell some paintings. She said she anticipates most of the visitors to be pedestrians who are out for a walk. She brought to the hearing a modest sign she painted, approved by the Historic District, that would be located at the front of the property. The living room right off the front entrance that is approximately 14' x 15' in size is proposed as the gallery space where people would be able to see her paintings. She informed the Board that she has no intent of holding art/painting classes on site and that the only items or art to be sold on site would be art by her. She stated that she has a large driveway that can accommodate at least eight (8) vehicles.

The Board discussed plans with Ms. Hall and asked questions regarding hours of operation, if there is any intent to have an employee and the bylaw requirement of no more than two additional vehicles (outside of personal vehicles) on site at one time. Ms. Hall stated that she would like to be able to have hours of 9:00 AM to 5:00 PM daily. She said there will be no employees at all and understands the requirement of no more than two cars from individuals visiting the gallery at one time in the driveway.

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 66 Shore Street contains 11,512 square feet of General Residence zoned land that is located within the Historic District. General Residence zoning allows by-right a two-family dwelling. The applicant applied under Section(s) 240-162 F. (1) of the Code of Falmouth to allow a Home Occupation of an art gallery where she can stage her paintings and invite 'passers-by' to come into to view them – possible sell a few. This subject property has a two-family dwelling and the proposed home occupation will only affect the first floor unit; and the calculation for the requirement of no more than 30% of gross floor area is based on the first floor unit only. Criteria for a Home Occupation is set forth in Section 240-162 A through E. and requires that no more than 30% of the gross floor area can be used to conduct the home occupation; there shall be no change in the outside appearance of the dwelling where home occupation is being conducted, no storage of materials no trading of merchandise; one sign on premises is allowed; no equipment or process on subject property that emits or creates noise, fumes, odors or electrical, visual or audible interference to any radio or TV receivers off premise; no traffic shall be generated that would be in greater volume than would normally be expected and which may jeopardize safety of the neighborhood; and there may be no individuals outside of the resident's family employed with said home occupation. The application discussed herein meets all the requirements of Section 240-162 A. through F. (1).

Section 240-162 Code of Falmouth – “Home occupations.” – Sub-section F. (1) requires a special permit from the Board of Appeals for a home occupation if the subject property does not conform to the minimum lot dimensional requirements.

Section 240-13 of the Code of Falmouth – “Definitions” – ‘Home Occupations’: Use of a dwelling unit, or an accessory building, that is clearly incidental and subordinate to its use for residential purposes, by its family residents for employment involving the manufacture, provision or sale of goods and/or services. For the purposes of this definition, the home occupation must be owned and operated by the resident of the premises.

The Board finds that the applicant, is the owner and year round resident of the subject property; that the proposed gallery will be operated in the living room area of the dwelling, which is no more than 30% of the gross floor area of the dwelling unit (first floor unit) and is an incidental use to the primary residential use on subject property pursuant to Section 240-162 A. The Board further finds that the proposed gallery does meet the criteria set forth in Section 240-13 of the Code of Falmouth - “Definitions” - of the Code of Falmouth as a home occupation.

The Board finds that the proposed home occupation of the small art gallery within the existing nonconforming dwelling will fit into the neighborhood as it will not change the integrity or the character of the neighborhood. The Board further finds that there are no employees involved with the proposed art gallery pursuant to Section 240-162 E.; it is strictly operated by the resident artist herself. Furthermore, the Board finds that the applicant understands that pursuant to Section 240-162 D., there shall be no more than two additional vehicles (other than personal vehicles) allowed on site at one time during gallery hours.

In addition to the above findings, the Board finds that the proposed home occupation of an art gallery 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 occupation as it requires no addition and meets the requirement of no more than 30% of gross floor area of the dwelling to be used within the home occupation.
- B. The site is suitable for the proposed use as the property is zoned General Residence and its use will not be affected by the home occupation of an art gallery.
- 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 except for a sign that may be allowed to note home occupation of art gallery; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is unaffected by the proposed home occupation discussed herein and there was no referral from the Board of Health submitted to this file.
- 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 for an art gallery 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 the Special Permit to

Kathleen E. Hall (herein referred to as Applicant) under Section(s) 240-162 F. (1) of the Code of Falmouth to allow a home occupation for an art gallery on subject property known as 66 Shore Street, Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The art gallery home occupation, parking for gallery and hours of operations of said gallery shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- Hand drawn floor plans of dwelling structure (1st and 2nd floor) and the arrow showing the 14' x 15' living room where paintings will be shown – with a Board date 'received' stamp of 8/4/2016;
- Photograph of dwelling showing capability of parking in driveway of four cars; and
- "Site Plan" showing subject property with a Board date 'received' stamp of August 4, 2016 (copy does not note surveyor or date of plan).

2. Hours of the proposed art gallery approved herein shall be Monday through Saturday 9:00AM to 5:00PM with appointments on Sunday.

3. There shall be no more than two vehicles in addition to the personal vehicles of the residents on site during operating hours of the art gallery.

4. This home occupation shall not have any employees.

5. Any items sold at the art gallery shall be items created by the applicant named herein.

6. This home occupation shall not be transferrable upon conveyance of property or tenancy.

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: 086-16

Applicant: KATHLEEN E. HALL of Falmouth, MA

Subject Property: 66 Shore Street, Falmouth, Massachusetts
Map 47B, Section 01, Parcel 004, Lot 001

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 # 086-16 Hall / filed with Town Clerk 9/21/16