

## Zoning Board of Appeals Decisions Decisions for: 05-26-2016

[Close Window](#)

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 050-16

APPLICANT: BRIAN D. SKRICKIS of East Falmouth, Massachusetts

OWNER(S): Brian D. Skrickis and Lisa M. Skrickis

SUBJECT PROPERTY: 62 Elain Avenue, East Falmouth, Massachusetts  
Assessor's Map: Map 20, Section 06, Parcel 060A, Lot 124

DEED/CERTIFICATE: Book 12561 / Page 13

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 21, 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 create an accessory apartment within the single-family dwelling on subject property known as 62 Elain Avenue, 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 May 26, 2016.
4. The public hearing was terminated on May 26, 2016, wherein the Board consisting of Vice Chairman Kenneth Foreman acting as Chairman, Clerk Terrence Hurrie, Member Ed Van Keuren and Associate Mark Cool sitting as voting member, 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)

4/21/2016 Applicant submitted application, fee, and plans for proposed accessory apartment.  
4/21/2016 Applicant submitted a copy of 'Certificate of Compliance' for 4 bedroom septic; and photos of existing dwelling structure.

Letters/Referrals/E-mails from Town Departments

4/22/2016 Referral submitted to file by Conservation Commission with no comment.

4/22/2016 Referral submitted to the by the Planning Department staff with no comment.

4/26/2016 Referral submitted to the file by Falmouth Fire Rescue with no comment.

4/29/2016 Referral submitted by the Interim Building Commissioner with no comment.

5/3/2016 Referral submitted by the Engineering Department with standard comments.

Plans submitted by Applicant/Applicant's Representative

"Foundation Certification" drawn by Yankee Land Surveyors & Consultants dated 10/14/2008 with a Board date 'received' stamp of April 21, 2016;

Hand drawn existing and proposed floor plans of dwelling and proposed apartment five pages) with a Board date 'received' stamp of April 21, 2016

Hearing:

Brian Skrickis [applicant] explained that the space above the garage is currently a 'man cave' with a wet bar and bathroom and he would like to convert it to an accessory apartment. He will be putting in a second means of egress from the second floor with stairs to ground level. The accessory apartment will be used by friends and family only. There is parking to the right of the garage or in driveway for apartment tenant. The apartment will be no more than 21% of the gross floor area of the single-family dwelling.

The Board discussed plans with the applicant. All concerns and questions were addressed.

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

Member Van Keuren made a motion to close the hearing. Member Hurrie seconded the motion. Motion carried 4 - 0.

Chairman Foreman 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 62 Elain Avenue in East Falmouth contains 15,000 square feet of Agricultural A zoned land that is located within the Childs River Coastal Pond Overlay District, the Water Resource Protection Overlay District, the Zone II Overlay and the Wildlife (migration) Corridor Overlay. The applicant applied under Section(s) 240-38 I. of the Code of Falmouth to create an accessory apartment within the dwelling in a space above the attached garage that is currently a 'man cave' (see plan in file). The existing dwelling is served by a four-bedroom capacity septic system as verified by the 'Certificate of Compliance' from 1999.

The Board finds through testimony by the applicant that a second means of egress from the accessory apartment will be created at the rear façade of the dwelling, second floor, apartment bathroom window will become a 30" door to a landing with stairs down to ground level. The Board further finds that the applicant understands that the creation of the door requires a building permit from the Building Department and shall be built according to current Massachusetts State Code.

Section 240-38 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 240-38 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 455 square feet of space;

(3) The lot size of subject property is more than 15,000square 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 the 'Certificate of Compliance' 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 that the appearance of the structure remains that of a single-family dwelling (above the existing attached garage).

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 not be for bedroom use or sleeping accommodations.

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 with Town Code.

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 and will remain as existing.

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 to subject property by virtue of an existing single-family dwelling.

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 is to have the accessory apartment available to family and friends.

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.

The Board of Appeals has weighed the effects of the proposed 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 Cool 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 4 – 0 to Grant the Special Permit to Brian D. Skrickis (herein referred to as Applicant) under Section(s) 240-38 I. of the Code of Falmouth to create an accessory apartment above the attached garage as discussed herein for subject property known as 62 Elain Avenue, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

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

- "Foundation Certification" drawn by Yankee Land Surveyors & Consultants dated 10/14/2008 with a Board date 'received' stamp of April 21, 2016;

- Hand drawn existing and proposed floor plans of dwelling and proposed apartment five pages) with a Board date 'received' stamp of April 21, 2016

2. The applicant shall be in compliance with the current Massachusetts Building Code for egress of proposed apartment as approved herein. The applicant shall apply for a building permit to create egress door from apartment bathroom window with landing and steps to ground level.

3. The applicant shall at all times maintain compliance of Section 240-38 I. (1) through (8) of the Code of Falmouth.

4. The applicant shall submit to the Board of Appeals for approval, a draft Deed Restriction for the accessory apartment and subject property. After Board's approval process and Town's signature, the applicant shall file the Deed Restriction with the Barnstable Registry of Deeds and then submit a copy of the filed Deed Restriction with the Board of Appeals. There shall be no final sign-off by the Building Department and the Zoning Board of Appeals until the approved and signed Deed Restriction is filed with the Registry of Deeds and a copy submitted to the Board of Appeals.

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: 050-16

Applicant: BRIAN D. SKRICKIS of East Falmouth, MA

Subject Property: 62 Elain Avenue, East Falmouth, Massachusetts  
Map 20, Section 06, Parcel 060A, Lot 124

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 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 050-16 / Skrickis / Filed w/Town Clerk 6/3/16