

FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

SPECIAL PERMIT NO: 092-17

APPLICANT/OWNER: RANNE P. WARNER, TRUSTEE – Rose Garden Realty Trust
of New York, NY

SUBJECT PROPERTY: 18 Woodriff Lane, Woods Hole, Massachusetts
Assessor's Map: Map 50 Section 02 Parcel 008C Lot 001F

DEED/CERTIFICATE: Certificate 122192 – Lot F1 – Plate 15499B

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of October 16, 2017, the applicant applied to the Zoning Board of Appeals for Modification of Special Permits 58-92, 96-93 and 9-96 pursuant to Section(s) 240-23 I. and 240-3 C. of the Code of Falmouth to allow an accessory apartment on the upper level of the detached accessory structure on subject property known as 18 Woodriff Lane, Woods Hole, 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 December 7, 2017.
4. The public hearing was closed on January 25, 2018, wherein the Board consisting of Acting Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren, Member Paul Murphy and Alternate Gerald Potamis (sitting as voting member) made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was represented at the hearing by Attorney Robert H. Ament of Ament Klauer LLP, 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

12/06/2017 Letter from Joshua Bernstein of 282 and 288 Quissett Avenue to the Board of Appeals dated December 5, 2017 stating support of the proposed accessory apartment on subject property

12/07/2017 Letter from Craig Hattabaugh of 285 Quissett Avenue to the Board of Appeals dated December 6, 2017 stating no objection to the proposed accessory apartment

12/07/2017 Letter submitted to the file from Frederick L. Makrauer of 267 Quissett Avenue addressed to the Board of Appeals dated December 3, 2017 that states concerns regarding proposed accessory apartment on subject property

- 12/07/2017 Letter from Natalie N. Mather of 273 Quissett Avenue to Board of Appeals dated December 5, 2017, stating support of the proposed accessory apartment on subject property
- 12/07/2017 Letter from Matthew R. Lynch of Nixon Peabody LLP to the Board of Appeals dated December 7, 2017 – firm represents John C. Thomson and John H. Clymer both Trustees of the Fruit Orchard Trust (abutters to subject property – 32 acres of vacant land, Parcel ID 50-02-000-00F)
- 12/07/2017 Virginia Valiela handed in a copy of Falmouth’s 15 impaired estuaries and their watersheds – map
- 01/25/2018 Letter from Matthew R. Lynch of Nixon Peabody LLP to Board of Appeals dated January 24, 2018 suggesting Board not approve application based on bylaws noted in letter
- 01/25/2018 Virginia Valiela handed in at the hearing the Water Flow on subject property between 2011 and 2016

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

- 10/16/2017 Attorney Robert H. Ament submitted, on behalf of the applicant (Warner), a letter to Zoning Administrator dated October 16, 2017, an application, fee, letter of authorization, copies of floor and site plans, copy of Special Permit #'s 58-92, 9-96 and 96-93 and a copy of Title 5 Inspection from July of 2017 for each of the two septic systems on site
- 10/18/2017 Letter from Ament Klauer LLP to Town Planner Brian Currie dated October 18, 2017 regarding Site Plan Review application
- 11/06/2017 Letter from Attorney Ament dated October 25, 2017 to Steve Rafferty, Water Superintendent regarding referral submitted to the file from Mr. Rafferty.
- 11/06/2017 Email submitted to the file between Attorney Ament and Steve Rafferty, Water Superintendent in response to Attorney Ament’s letter of October 25, 2017
- 12/07/2017 Attorney Ament submitted at the hearing a revision of the floor plan for the accessory apartment that eliminates access to the adjacent recreation room on the 2nd level of accessory structure
- 01/19/2018 Cover letter from Attorney Ament to Board Chairman regarding Title 5 and number of bedrooms in main house – with attached letter from Attorney Ament to David Carignan, Health Agent, dated January 12, 2018 regarding number of bedrooms for purposes of Title 5 compliance – Mr. Carignan signed bottom of letter as agreement
- 01/25/2018 Letter from Attorney Ament to Board Chairman dated January 25, 2018 regarding bedroom count with attached proposed language for a condition to relocate a bedroom on the 2nd floor of dwelling (making it a den/study) to the detached barn structure so as not to increase number of bedrooms through this application

Letters/Referrals/E-mails from Town Departments

- 10/18/2017 Referral submitted to the file from the Planning Department staff that states: *Applicant has not filed with PB as of this date.*

- 10/19/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 10/23/2017 Referral submitted to the file from Water Superintendent that states: *Applicant shall provide a plan to the Water Department showing how water will be provided to the detached structure, how metered. Standard plans and specs are posted on Water's web page. 2-16) Para 3 "Each dwelling unit or building requires a separate water service from the main."*
- 10/24/2017 Referral submitted to the file from Director of Assessing noting property includes 1F and parcel 8C
- 10/31/2017 Referral submitted to the file from the Historic Commission that states: *Structure is considered historic based on the date of construction and does contribute to the character of the Quissett Historic District. However, since there is no intention to alter the exterior look of the detached accessory building, the Historical Commission supports the homeowners petition to convert the second floor into an accessory building.*
- 11/07/2017 Referral submitted to the file from Conservation Commission with no comment
- 11/09/2017 Referral submitted to the file from Town Engineering Department that states: *This application was reviewed only for impacts to public right of ways and public utilities. Woodriff Lane is a Private right of way in this area. Any connections or alterations to public utilities would require permission from the appropriate Town department.*
- 12/14/2017 Site Plan Review Decision from the Planning Board to Rod Palmer, Building Commissioner dated December 13, 2017

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Historical Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Board of Selectmen and Water Department

Plans submitted by Applicant/Applicant's Representative

"Plot Plan – Existing Conditions" prepared for Raynor Warner 18 Woodriff Lane Quissett, Massachusetts as drawn by BSS Design, Inc. on a plan dated October 25, 2017 – plan is stamped and signed by Thomas Jackson Bunker, PLS and with a Board date 'received' stamp of October 25, 2017;

"Plot Plan – Existing House and Subsurface Sewage Disposal System Upgrade" prepared for Raynor Warner 18 Woodriff Lane Quissett, Massachusetts as drawn by BSS Design, Inc. dated October 26, 2005 – stamped and signed by Jeffrey Edwin Ryther, PE – plan has a Board date 'received' stamp of October 16, 2017; and

Computer generated floor plans of the two-story main dwelling (2 pages) with Board stamp of October 16, 2017; floor plans of both floors of the boat house (2 pages) with Board stamp of October 16, 2017; and a floor plan for the proposed accessory apartment (1 page) received 12/7/2017 at hearing with a Board date 'received' stamp of December 7, 2017.

Hearing 12/7/2017:

Attorney Ament reviewed the existing 1.29 acre site that has a main dwelling and a 40' x 40' barn with a height of 25'. The proposed accessory apartment that has been revised from 600 square feet to 462 square feet in size will

be created within the barn structure where there is currently a workshop and boat storage on the lower level and recreation space on the upper level. The barn was permitted in 1992 and did not allow habitation when the occupancy permit was issued in 1995 as a modification of 1992 permit. Attorney Ament reviewed the history of complaints regarding the barn structure due to the applicant allowing players for the Commodores (ball team) to stay in the barn while in Falmouth. The Building Commissioner determined that there not be any overnight sleeping; it was noted that this was not a dwelling and there was no kitchen within the structure. He explained that the applicant is requesting, through the new bylaw approved in April of 2017, to create an accessory apartment in a detached accessory structure on a lot. The apartment may be used for a caretaker or a rental or family member. The apartment meets the size limit and there is no restriction as the property is not within a Coastal Pond Overlay District. The subject property has two (2) septic systems; one that serves the main dwelling and has a capacity for six (6) bedrooms and one that serves the barn structure that has a capacity for three (3) bedrooms. Attorney Ament explained that the barn has been in existence since the mid 1990's and approved through special permits issued by the Board of Appeals and with building permits. There is water service to the barn existing. He explained that the applicant, who is not a year-round resident, is trying to sell the property and that the special permit for an accessory apartment may or may not be exercised by a future owner, but that it shows it is allowed and is in place. The applicant is currently before the Planning Board for Site Plan Review as required in the bylaw.

The Board discussed plans with Attorney Ament. Concern was discussed with access from the apartment into the recreational room shown on the plans. Attorney Ament stated that the Planning Board had concerns and the plan has been revised so no access is available directly into the recreational area and the Planning Board is drafting a favorable decision we believe.

The Board asked about the right of way off the property. Attorney Ament explained that it gives access to the 32 vacant acres abutting subject property.

The Board discussed 'owner-occupied' requirement within the bylaw.

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

Attorney Matthew Lynch with Nixon Peabody LLP represents the owners of the Fruit Orchard Trust (abutting 32 acre parcel), Mr. Lynch spoke on the seven month occupancy requirement stating that the applicant in the past seven (7) years has not been in residence for seven (7) months out of a year. He then spoke on the barn structure stating that he believes the barn structure was granted a special permit in 1992 which should have required a variance so it is in violation; and he feels that violations of the use of the barn in the past is relevant to the present application. He then spoke to the size of the proposed accessory apartment and stated his concern with a new owner adhering to the requirements and conditions for an accessory apartment. Attorney Lynch stated in closing that the property is located in a watershed area and that it 'essentially' is in a Coastal Pond Overlay District; and "the structure wasn't suitable in '96 and nothing has changed on the site that renders it any more suitable now".

Member Bielan asked Attorney Lynch how the proposed accessory apartment impacts his clients.

Attorney Lynch responded that he believes that there is nothing in the bylaw that says it has to adversely impact my client to have an objection. He suggested his client speak to this.

Markie Clowes, owner of abutting 32 acres, stated they own the abutting property and it has been in the family for quite a while. She stated that the applicant has not lived in this property but for maybe a couple of weekends in the summer. She said they may develop their 32 acres and that the barn structure is within 12' of her property line; the house is 850' from the harbor and Quissett Harbor she considers to be an impaired harbor with high nitrogen levels -- Woodriff Lane bisects the neighbor's property and it is very dangerous to add another residence there.

Zoning Administrator Budrow noted that the subject property is not within a Coastal Pond Overlay District according to the Town records.

Louise Makrauer, abutter to subject property, stated that the subject property has been a summer home and the prospective offering of the special permit is concerning and asks how the Board can issue a permit for a prospective use.

Eleanor Shaver, 50 Upland Ave., stated that the bylaw is supposed to help people find affordable units, not to enhance the value of the property. The applicant does not reside here, if the application is approved it will set a precedent for future exploitation.

Virginia Valiela, 193 Old Main Road, North Falmouth, stated her concern with density and impacts of additional nitrogen. The subject property is close to Quissett Harbor and suggested concern with additional flow in this watershed area.

The Board discussed that the application is still in front of the Planning Board for Site Plan Review and discussed submission of information from Attorney Ament and to continue the hearing. Information requested from Board: revision with reduction of 1 bedroom, no access to the recreation area and clear statement of Coastal Pond Overlay District.

Member Bielan made a motion to continue the hearing to January 25, 2018. Member Van Keuren seconded the motion. Motion carried 5 – 0.

Hearing 1/25/2018:

Attorney Ament reviewed the application as discussed at previous hearing on December 7, 2017. He reiterated that the applicant is not a year-round resident and is applying for a special permit prospectively for a future owner. If the Board approves, the owner of the property would be required to comply with Section 240-23 I. in order to utilize the accessory apartment, including occupancy on subject property for no less than seven (7) months of each year. The proposed accessory apartment could be used by a caretaker or an employee of one of the institutions in Woods Hole or anywhere in Falmouth as it is exactly what the purpose and intent of the accessory apartment bylaw is intended to meet. The future owner who decides to exercise rights under the special permit will only be able to do so if they are going to be in compliance, so current or past occupancy is not what is relevant here – it is compliance under the bylaw and Special Permit. Attorney Ament noted that a second issue from previous hearing was the number of bedrooms on site and whether the property is within the Coastal Pond Overlay. He said they maintain that, according to Town records, the property is not within a Coastal Pond Overlay and therefore not relevant to this application. Further he has submitted a letter to the file wherein Board of Health Agent Carignan agrees that the house qualifies as a five-bedroom house as is and with the accessory apartment there is a total of six (6) bedrooms on subject property as defined by Title V. He noted that if the property was within a Coastal Pond Overlay, the six (6) bedroom count would be allowed as the property is approximately 57,000 square feet in size (equals one bedroom per 10,000 sf). Attorney Ament submitted a proposed condition wherein a bedroom from the dwelling will be opened up (door removed with a cased opening) so as not to be considered a bedroom, thereby allowing one bedroom within the detached accessory apartment on the property.

The Board discussed with Attorney Ament the two existing septic systems on subject property: one that serves the dwelling (recently upgraded) and one that serves the existing detached accessory structure where the proposed apartment will be located within. Attorney Ament noted that the system serving the main dwelling is a six-bedroom system and the second system for the accessory structure is good for a three-bedroom structure (1,000 gallon tank).

Public Comment:

Markie Clowes, owner of multiple properties around the applicant's property -- including the abutting 32 acre site, commented on the bylaws and what the Board may determine, what is defined as a bedroom and the intent of the applicant to remove a bedroom or change it to a sitting room. She stated that from her memory of what in the 'real estate world' is if it has a closet it is considered a bedroom. Ms. Clowes then commented on the nitrogen effect on Quissett Harbor and how the density of residents has a direct effect on that.

Virginia Valiela of North Falmouth submitted water records for the past five years on subject property noting that the flow is that of a seasonal dwelling not a year round dwelling. She stated her concern is that the Board approves this prospectively to an owner who is not year round -- what then. She said the town meetings intent was existing owners who had space could provide for an additional apartment; the idea of now using this bylaw as a vehicle on speculation is a concern. She had questions on how the Board would condition and how requirements of bylaw will be met.

Attorney Lynch of Nixon Peabody LLP on behalf of abutter (32 acre site), stated that the bylaw is clear that you have to have owner occupancy to qualify for an accessory apartment and if the Board does vote to grant the special permit then you are interpreting the bylaw as that it is not a requirement. He said the other point he wants to make is that Attorney Ament is reading into the bylaw a definition of a bedroom; the bylaw does not define it under Title 5. He then commented on the Title 5 inspection form noting seven bedrooms for purposes of Title 5 which is different than the information provided by the applicant.

The Board discussed 'owner-occupancy' with Attorney Lynch who said he believes the bylaw does not allow for prospective owners, but it requires that the applicant needs to be owner and occupy the dwelling for no less than seven (7) months of the year.

Attorney Ament stated that we have to go on the basis of compliance and not assume that people are going to be out of compliance; we are not required to create this accessory apartment by virtue of our request and the Board's issuance of the special permit -- the Board can condition that the building permit to create the apartment not be issued until such time an owner submits an affidavit as to their intent to occupy the property in the requisite period of time in accordance with the bylaw. He further stated that almost every special permit is prospective in that all conditions have to be complied with as well as requirements under the bylaw.

The Board discussed the application, testimony and information submitted to the file.

Member Bielan made a motion to close the hearing. Member Van Keuren seconded the motion. Motion carried 5 - 0.

Chairman Hurrie 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 18 Woodriff Lane in Woods Hole contains 1.29 acres of Residential A zoned land that is not located within a Coastal Pond Overlay District, but is partially (front portion of lot) located within the Historical District. The applicant applied under Section(s) 240-3 C. and 240-23 I. of the Code of Falmouth to allow the creation of an accessory apartment on the upper level of the detached accessory structure (barn) on subject property. The Board finds that the subject property was granted a Special Permit (#58-92) in 1992 to:

“Allow the construction of a new accessory structure to replace an existing nonconforming accessory structure located at 18 Woodriff Lane, Quissett. The proposed new structure will exceed 18 feet in height and may be considered a three car garage.” – This Special Permit was granted to allow the structure to exceed 18’ in height and with a condition that it shall not be used for habitation. In 1993 the applicant applied for modification of Special Permit 58-92 citing that the applicant has modified the plan to improve the building appearance and provide improved access to the second level. The Board granted Special Permit 96-93 with the condition that the building shall not change from what was approved in #58-92; the building shall be constructed in the footprint approved in 58-92; and that the building shall be redesigned so as to maintain a maximum height of 27 feet from the lowest point of the building to a point created if one were to extend the slope of the roof to an imaginary ridge formed in the cupola.

The Board finds that the only nonconformity on subject property is the 5.3’ setback from the main dwelling to the northerly side yard property line that requires a 10’ setback pursuant to Section 240-68 B. of the Code of Falmouth. The Board further finds that the subject property is in compliance with Section 240-69 A. regarding lot coverage on said property.

Section 240-3 C. of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the proposed creation of an accessory apartment within the detached accessory structure on subject property does not increase the existing nonconforming setback to the northerly side yard property line; and that there is no new nonconformity created through this application. Furthermore, the Board finds that the request for the accessory apartment within the existing detached accessory structure will not be substantially more detrimental than what currently exists on site.

Section 240-23 I. of the Code of Falmouth allows application to the Board of Appeals for approval of an accessory apartment within a detached accessory structure or as an accessory structure on a property in a residential district based on compliance of requirements set forth in sub-sections (1) through (7) of this section.

The Board finds that the applicant has appropriately applied to allow an accessory apartment created within the existing detached accessory structure. The Board further finds that the subject property consisting of 1.29 acres is an appropriate site for an accessory apartment and the increase of one-bedroom density to said site. Furthermore, the Board finds that the application qualifies as following:

- (1) Purpose: the proposed accessory apartment represented herein will offer a unit that may be affordable to rent and that the character of a single-family property will be maintained through this special permit approval.
- (2) Accessory Apartment: the accessory apartment will be located within an existing detached accessory structure on subject property and will continue to maintain the appearance of an accessory use to a primary use of a single-family dwelling on subject property.
- (3) Requirement: a) The applicant understands that there shall be only one accessory apartment on subject property as approved herein; b) the applicant understands that either the primary dwelling or the accessory apartment shall be owner occupied for a period of no less than seven (7) months in each calendar year or owned by a nonprofit organization for affordable housing; c) either the principal dwelling or the accessory apartment shall not be rented during the five (5) month absence of the owner; the dwelling or the apartment shall not be rented for less than six (6) months at a time; neither the principal dwelling or accessory apartment shall be used as commercial accommodations; d) plans show that the apartment is only 462 square feet in size and is less than 40% of the gross floor area of the dwelling; the subject; e) the subject property is greater than 20,000 square feet; and f) the subject property is not located within a Coastal Pond Overlay District or Water Resource Protection Overlay District.

- (4) Design Standard: a) the architectural effect of the existing detached accessory structure as approved through a previous special permit noted above shall not be changed through approval of this application; b) the architectural integrity of the existing detached accessory structure (known as a barn) is incidental to the existing dwelling on site as previously approved in a special permit noted above; and c) parking has been provided and will not be visible from the roadway and therefore not affect the general integrity of the neighborhood.
- (5) Procedures: a) the applicant has been approved through Site Plan Review – see file for Planning Board’s decision; and b) the application is appropriately before the Board of Appeals after seeking approval from the Planning Board through Site Plan Review.
- (6) Enforcement: The applicant understands that any violation will be required to be brought into compliance as may be ordered by the Building Commissioner.
- (7) Monitoring: The applicant is aware that an affidavit will be required to be filed with the Building Commissioner every year to prove compliance of occupancy.

The Board finds according to testimony by the abutter (Clowes) that her complaint is that the subject accessory structure [barn] is 12’ from abutter’s property line of the 32 vacant acres and that if and when the abutter develops the land, the subject accessory structure will be quite close. The Board further finds that according to the bylaw, Section 240-68 B. of the Code of Falmouth, the accessory structure is in compliance with the requirement of a 10’ setback to a side and/or rear property line. Furthermore, the Board finds that the proposed accessory apartment in the detached accessory structure represented herein is an approvable accessory use to the primary use on subject property as maintained under Section 240-23 I. of the Code of Falmouth.

The Board finds that the Town meeting voted the bylaw for an accessory apartment and that the subject property size is appropriate for an accessory apartment as it has ample room for parking and density of the bedroom count is not overwhelming to the site. The Board further finds that there are two (2) septic systems on subject property, one that serves the main dwelling that has a six-bedroom capacity and one that serves the detached accessory apartment that has a three-bedroom capacity. Furthermore, the Board finds that the applicant agreed to five (5) bedrooms in the main dwelling and one (1) bedroom in the accessory apartment for a total of six (6) bedrooms on subject property.

The Board finds that Attorney Ament submitted plans showing the potential to reduce the number of bedrooms on the second level of the main dwelling, in essence relocating a seventh bedroom in the house to the detached accessory structure as a bedroom for the proposed accessory apartment – thereby keeping the bedroom count on subject property to seven (7). The Board further finds that Attorney Ament submitted proposed condition for same – see file. Furthermore, the Board finds that using the Title 5 definition for bedroom count is appropriate, and that, as stated by the Health Agent, the house counts as a five bedroom house under Title 5. Where the house may be considered as having only five bedrooms under Title 5 (regardless of the number of rooms that could be used as bedrooms), adding one (1) bedroom in the accessory apartment would make a total of six (6), the subject property would then be deemed to have met the requirements of the Coastal Pond Overlay District under Title 5, even though the Board concludes that the subject property is not within the Coastal Pond Overlay District, the applicant is taking into consideration the concern for the watershed and nitrogen level in Quissett Pond.

In addition to the above findings, the Board finds that the proposed accessory apartment within the detached accessory structure previously allowed by special permit 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 it does not increase the existing nonconforming setback to the northerly side yard property line, lot coverage is and will be conforming, and the accessory apartment will not create any new nonconformity on subject property.

B. The site is suitable for the proposed use as the property is zoned residential and the accessory apartment within a detached accessory structure is allowed by special permit under Section 240-23 I. and its requirements set forth in sub-sections (1) through (7).

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 the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties.

E. There are two septic systems on subject property and a signed document submitted to the file that shows Board of Health Agent Carignan is aware of the septic systems and the bedroom count on subject property. It is also noted that the Board of Health will review the building permit application prior to its approval.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed accessory apartment discussed and represented herein will have no effect on the supply of affordable housing on the Town's Subsidized Housing Inventory, however, the intent is to create workforce housing within the Town of Falmouth.

H. There was Site Plan Review as required and the Site Plan Review Decision for the accessory apartment is submitted to the file.

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 per se, but may increase the availability of workforce housing which may be considered affordable.

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 Bielan 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 Ranne P. Warner, Trustee (herein referred to as Applicant) under Section(s) 240-3 C. and 240-23 I. of the Code of Falmouth to allow an accessory apartment on the upper level of the detached accessory structure on subject property known as 18 Woodriff Lane, Woods Hole, Massachusetts. This special permit shall be 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:
 - "Plot Plan – Existing Conditions" prepared for Raynor Warner 18 Woodriff Lane Quissett, Massachusetts as drawn by BSS Design, Inc. on a plan dated October 25, 2017 – plan is stamped and signed by Thomas Jackson Bunker, PLS and with a Board date 'received' stamp of October 25, 2017;
 - "Plot Plan – Existing House and Subsurface Sewage Disposal System Upgrade" prepared for Raynor Warner 18 Woodriff Lane Quissett, Massachusetts as drawn by BSS Design, Inc. dated October 26, 2005 – stamped and signed by Jeffrey Edwin Ryther, PE – plan has a Board date 'received' stamp of October 16, 2017; and
 - Computer generated floor plans of the two-story main dwelling (2 pages) with Board stamp of October 16, 2017; floor plans of both floors of the boat house (2 pages) with Board stamp of

October 16, 2017; and a floor plan for the proposed accessory apartment (1 page) received 12/7/2017 at hearing with a Board date 'received' stamp of December 7, 2017.

2. The applicant and/or any future owners of subject property shall maintain compliance with Section 240-23 I. of the Code of Falmouth – which shall include sub-sections (1) through (7) in their entirety. Failure to comply with this bylaw may cause revocation of the special permit and removal of the accessory apartment.
3. This Special Permit will withstand conveyance of subject property and future owners of subject property shall be held to compliance of this Special Permit when the accessory apartment is created.
4. Before an occupancy permit may be issued for the accessory apartment, one of the seven (7) rooms labeled “Bedroom” on the house floor plan submitted with the application must be altered so as not to be considered suitable for use as a bedroom. This condition does not prohibit other alterations, renovations or additions to the house, or reconstruction thereof, so long as there is no more than a total of seven bedrooms in the house and the accessory apartment (no more than seven bedrooms on subject property – one of which may be allowed in an accessory apartment as in the detached accessory structure as approved herein). The Board of Appeals may require proof of compliance with this condition by submission of photographs or inspection. This condition shall not apply if both the principal dwelling and the accessory apartment are connected to the municipal sewer or to an on-site septic system with enhanced nitrogen removal approved by the Board of Health.
5. The accessory apartment created within the detached accessory structure shall not have any direct access to the adjacent recreation room from said apartment (see acceptable floor plans for the apartment submitted to the file with a Board date ‘received’ stamp of 12/14/2017, showing access from the apartment to the landing at the top of the stairs from the lower level, with a separate door from the landing to the recreation space.
6. 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.
7. 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.)
8. This permit shall lapse three (3) 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: **092-17**

Applicant: **RANNE P. WARNER, TRUSTEE of Rose Garden Realty Trust
of New York, NY**

Subject Property: **18 Woodriff Lane, Woods Hole, MA
Map 50 Section 02 Parcel 008C Lot 001F**

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, Acting Chairman, Board of Appeals

RECEIVED

FEB - 7 2018

FALMOUTH TOWN CLERK

AD @ 11:50 am

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.