

**FALMOUTH ZONING BOARD OF APPEALS  
FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 094-18

**APPLICANT/OWNER:** JOHN O. CALLINAN and BRENDA L. CALLINAN of W. Falmouth, MA

**SUBJECT PROPERTY:** 48 Frazar Road, West Falmouth, Massachusetts  
**Assessor's Map:** Map 24 Section 13 Parcel 004 Lot 004A

**DEED/CERTIFICATE:** Book 21577 / 020

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of October 12, 2018 the applicant filed with the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-23 I. and 240-68 A. of the Code of Falmouth to construct a detached garage with accessory apartment on second level in a front yard more than 50' from the front property line on subject property known as 48 Frazar Road, West Falmouth, 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 13, 2018.
4. The public hearing was closed on December 13, 2018 wherein the Board consisting of Chairman Terrence Hurrie, Acting Clerk Paul Murphy and Associates Gerald Potamis and Robert Dugan 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 present at the hearing and reviewed and discussed the request for a detached garage structure in the front yard of subject property with an accessory apartment on second level.
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**

12/13/2018 Email letter to Falmouth Zoning Board of Appeals from Peter and Kristen Marshall of 66 Frazar Road stating support of the proposed detached garage with accessory apartment.

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

- 11/29/2018 Email to ZBA staff from applicant stating that he has talked with Board of Health Agent and agrees to install a tank by the proposed detached garage structure and also agreed to have three (3) bedrooms in main dwelling and one (1) in accessory apartment.
- 12/12/2018 Email to ZBA staff from applicant in response to request for elevation of front façade of detached garage structure as proposed (pdf of elevations attached and submitted to file)

**Letters/Referrals/E-mails from Town Departments**

- 10/15/2018 Referral submitted to the file from Planning Department staff that states: *The applicant filed a site plan review application with the PB and is scheduled to be on the 11/20/2018 PB agenda.*
- 10/17/2018 Referral submitted to the file from the Water Department that states: *Applicant will be required to apply for new water service to said detached apartment.*
- 10/18/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 11/01/2018 Referral submitted to the file from Town Engineering Department with standard comments and a recommendation to add drywells, rain garden or other stormwater measure for new roof
- 11/03/2018 Copy of ‘Site Plan Review’ Decision from Falmouth Planning Board to Rod Palmer, Building Commissioner, dated November 3, 2018 submitted to the file by ZBA staff
- 11/6/2018 Referral submitted to the file from Director of Assessing with no comment
- 11/16/2018 Referral submitted to the file from Conservation Commission with no comment

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

**Plans submitted by Applicant/Applicant’s Representative**

“Plot Plan for 48 Frazar Road” prepared for John & Brenda Callinan in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 1 dated October 02, 2018 – plan is stamped, signed and dated by Gary S. Labrie, PLS on 10/4/2018 and has a Board date ‘received’ stamp of October 12, 2018;

Hand drawn plans of main dwelling at 48 Frazar Road consisting of three (3) pages showing Lower Level with office (previous 4<sup>th</sup> bedroom), sewing room, bathroom and TV room, First Floor showing two (2) bedrooms, living room, dining room, kitchen and bathroom and Upper Level showing master bedroom, bathroom and storage area; and

“Wenatchee Overlook” architectural plans drawn by Legacy Home Plans consisting of:

- Sheet 1 of 4 dated 6/14/2017 showing slab foundation, cross section and garage footing plans with a Board date 'received' stamp of October 12, 2018
- Sheet 2 of 4 dated 6/14/2017 showing garage floor plan and second floor apartment with window plan and with a Board date 'received' stamp of October 12, 2018
- Sheet 3 of 4 dated 6/14/2017 showing garage and second floor rafter plans with a Board date 'received' stamp of October 12, 2018
- Sheet 4 of 4 dated 6/14/2017 showing Elevations with a Board date 'received' stamp of December 13, 2018

Hearing:

The applicant, John Callinan, was present and reviewed the proposed construction of a detached garage structure in a front yard, more than 50' from front property line off Frazar Road as required under Section 240-68 A. (8) of the Code of Falmouth. He further reviewed the one-bedroom accessory apartment proposed on the second level of said garage structure. Mr. Callinan noted that the main dwelling has four (4) bedrooms and one in the lower level of the dwelling will be relocated to the accessory apartment so as not to increase the number of bedrooms on subject property. The eliminated bedroom in the lower level will become an office with the entrance door becoming a cased opening with no return.

It was noted during the hearing process that the applicant has discussed proposed accessory apartment with the Board of Health agent and the applicant agrees to install a tank near the new structure discussed herein (see email submitted to the file from applicant on 11/29/2018).

The Board discussed plans with Mr. Callinan and asked him if he understood the criteria for an accessory apartment as set forth in Section 240-23 I. of the Code of Falmouth. Mr. Callinan stated he does understand the requirements for an accessory apartment as applied for. All concerns and questions were addressed.

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

Member Dugan made a motion to close the hearing. Member Potamis seconded the motion. Motion carried 4 - 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 48 Frazar Road in West Falmouth contains 43,733 square feet of Residential B zoned land that is located within the West Falmouth Harbor Coastal Pond Overlay District and the Wildlife Corridor Overlay. The applicant applied under Section(s) 240-23 I. of the Code of Falmouth to allow a detached accessory apartment as well as Section 240-68 A. (8) of the Code of Falmouth to construct the detached accessory structure in the front yard more than 50' from the front

property line off Frazar Road. The existing dwelling on subject property has four (4) bedrooms, one of which will be relocated to the accessory apartment and the vacated room will become an office with a cased opening. The detached accessory garage structure will be a two-car garage with the apartment above. All setbacks from structures, existing and proposed, to property lines are in compliance with Sections 240-68 A. and B. of the Code of Falmouth and the lot coverage is well below the maximum percentage allowed under Section 240-69 A.

Section 240-23 I. of the Code of Falmouth allows the Board of Appeals to approve a special permit allowing a detached accessory apartment according to the criteria set forth in said section.

The Board finds that the applicant, according to requirements of Section 240-23 I., has applied to the Planning Board for Site Plan Review and received approval as shown in the Decision by the Planning Board submitted to the file dated November 30, 2018. The Board further finds that the Planning Board set forth conditions in said Decision that this Board shall adopt herein (see Conditions below).

The Board finds through testimony by the applicant, that he understands the requirements of Section 240-23 I. (1) through (7) of the Code of Falmouth and shall adhere to said requirements. The Board further finds that the applicant resides on subject property year round. Furthermore, the Board finds that the proposed accessory structure meets the criteria set forth in said section under sub-section (3) as follows:

- (a) there will be only one (1) accessory apartment on subject property
- (b) the applicant intends to reside in the main dwelling on subject property at this time but maintains the right to reside in either the main dwelling or the accessory apartment
- (c) the applicant understands that if they are not in residence during a five month period, only one dwelling unit [main house or apartment] may be allowed to be rented out
- (d) the accessory apartment has one bedroom; the apartment is 750 square feet in size; and less than 40% of the main dwelling living space
- (e) there shall be no more than four (4) bedrooms on subject property based on the septic system as designed, however, the subject property is more than 20,000 square feet in size
- (f) the total number of bedrooms on subject property – four (4) – does not exceed the requirement of one bedroom per 10,000 square feet of land for a property within a Coastal Pond Overlay District – in this case the lot is 43,733 square feet in size; there are four (4) bedrooms proposed; and the property is located within the West Falmouth Harbor Coastal Pond Overlay

The Board finds that the applicant has applied to the Planning Board under ‘Site Plan Review’ as required in Section 240-23 I. (5)(a) of the Code of Falmouth and has received approval in the form of a ‘Site Plan Review Decision’ dated November 30, 2018 (see file).

Section 240-68 A. (8) of the Code of Falmouth requires a special permit through the Board of Appeals to allow an accessory structure in a front yard of a property no closer than 50’ to the front property line of said property. The Board further finds that the detached accessory garage structure has a height of 19’.

The Board finds that the proposed detached accessory garage structure shall be located 65.7’ from the front property line off Frazar Road and 12’ from the northerly side yard property line that requires a 10’ setback pursuant to Section 240-68 B. of the Code of Falmouth.

The Board finds through testimony by the applicant, he intends to install drywells or rain garden to maintain stormwater runoff from proposed accessory garage structure.

In addition to the above findings, the Board finds that the proposed detached accessory garage structure with an accessory apartment on the second level 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 as the property is 43,733 square feet in size with a total bedroom count of four (4) and there are no nonconforming setbacks or lot coverage issues on subject property.
- B. The site is suitable for the proposed use as the property is zoned residential and an allowed use of an accessory apartment is approvable under Section 240-23 I. of the Code of Falmouth. The property remains as a single family dwelling use with an accessory use of an apartment.
- 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 changed but 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 sewage disposal system is in place and signed off as a five (5) bedroom system by the Board of Health, however there shall be no more than four (4) bedrooms allowed on subject property unless and until an alternate sewer system is installed per the requirements of Section 240-23 I. of the Code of Falmouth.
- F. There are adequate utilities to subject property by virtue of an existing dwelling on site.
- G. The proposed accessory garage structure with an accessory apartment on the second level as discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was Site Plan Review as required by the Planning Board and a copy of the 'Site Plan Review' Decision is on file with the Board of Appeals.
- 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 detached 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 Potamis made a motion to Grant the Special Permit with conditions. Member Murphy 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 John O. and Brenda L. Callinan (herein referred to as Applicant) under Section(s) 240-23 I. and 240-68 A. (8) of the Code of Falmouth to construct an accessory structure in a front yard more than 50' from the front property line and to allow an accessory apartment on the second level of said

detached accessory garage structure on subject property known as 48 Frazar Road, West Falmouth, MA. This special permit shall be subject to the following conditions:

1. The location of the detached accessory garage structure, the accessory apartment, all setbacks, lot coverage, septic system and use of the dwelling and apartment shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

“Plot Plan for 48 Frazar Road” prepared for John & Brenda Callinan in Falmouth, MA as drawn by Falmouth Engineering, Inc. – Sheet 1 of 1 dated October 02, 2018 – plan is stamped, signed and dated by Gary S. Labrie, PLS on 10/4/2018 and has a Board date ‘received’ stamp of October 12, 2018;

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2. There shall be no more than four (4) bedrooms allowed on subject property. The distribution of said bedrooms shall be as shown on the plans noted above as two (2) bedrooms on the main floor of the dwelling, one (1) master bedroom on the upper level of the dwelling and one (1) bedroom in the accessory apartment above the detached garage structure approved herein.
3. The vacated bedroom on the lower level of the main dwelling (bedroom relocated to garage structure) shall become an office with a cased opening. The doors shall be removed and not replaced, the office space shall be open to the surrounding living space on the lower level of the dwelling.
4. The applicant shall maintain the subject property, dwelling and apartment in compliance with Section 240-23 I. (1) through (7) of the Code of Falmouth.
5. The applicant shall install stormwater runoff mitigation as recommended by the project engineer to ensure runoff remains on site.

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. The Applicant shall meet the requirements of the DPW Water Division.
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 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: **094-18**

Applicant/Owner: **JOHN O. CALLINAN and BRENDA L. CALLINAN of W. Falmouth, MA**

Subject Property: **48 Frazar Road, West Falmouth, MA  
Map 24 Section 13 Parcel 004 Lot 004A**

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 Hurrie, Chairman, Board of Appeals**

RECEIVED

DEC 20 2018

FALMOUTH TOWN CLERK

00e8<sup>30</sup>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.