



The Town of Barnstable

Growth Management Department

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Elizabeth Jenkins, Interim Director

TOWN OF BARNSTABLE ACCESSORY AFFORDABLE APARTMENT PROGRAM

MINUTES

January 11, 2017 – 6:30 pm

Town Hall Hearing Room

Present: Brian Florence - Hearing Officer ZBA, Anna Brigham, Principal Planner - Growth Management and Kathleen Thompson, Administrative Assistant - Growth Management

Hearing Officer Brian Florence called the meeting to order at 6:30 p.m.

Notice of Recording: This meeting is being recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. The Chair must inquire whether anyone else is taping this meeting and to please make their presence known.

6:30 PM

Appeal No. 2017-005

O'Donnell

The Applicants, Stephen and Traci O'Donnell have applied for a Comprehensive Permit to establish a one bedroom Accessory Affordable Apartment within an existing dwelling. The subject property is at 304 High Street in West Barnstable, Ma.

Stephen O'Donnell steps up to the podium and states he would like to put an amnesty apartment in his home. There is a kitchenette which he would turn into a full kitchen and he would add stairs in the back and a door. The Building Commissioner has been out to the property.

Mr. Florence asked if he has read the draft decision which he had not so Officer Florence opened it up for public comment while Mr. O' Donnell reads the draft.

At this time, Ellie Johnson, an abutting neighbor takes the podium, introduces herself and states that she and her husband live at 61 Williams Path in W. Barnstable and has some questions and concerns.

- Is there a program in Town that oversees these apartments?
- How long has this program been around?
- How many occupants?
- Maximum pets allowed?
- Concerned about lower property values with the Affordable Apartments.
- What the owners motives are.
- Pointed out it's a wetland area and everyone is on well water.

After Mr. Florence gave answers to her questions, letting her know that there is a Housing Coordinator who monitors the program very well and there is no limits on pets. He then asked her if there was anything else to which she replied that they're mainly concerned about their property value and they were here to listen and learn.

Mr. Florence then asked Mr. O'Donnell to come back to the podium and asked if he had a chance to read and understand the Draft Decision to which Mr. O'Donnell replied yes and said he was not adding a bedroom or changing septic demands.

Mr. Florence replied that he understood and was ready to make his decision.

Findings of Fact

At the hearing on January 11, 2017, the Hearing Officer made the following findings of fact:

Concerning *standing*, the right of the applicant to seek a comprehensive permit, the Hearing Officer found:

1. The Applicants, Stephen and Traci O'Donnell, are the owners and occupants of the property located at 304 High Street, West Barnstable, MA, as evidenced by a deed recorded at the Barnstable County Registry of Deeds on January 31, 2012 as Book 26043 Page 158. A signed Affidavit dated September 6, 2016 declares that 304 High Street, West Barnstable is the primary residence of Stephen J. O'Donnell.
2. The application for a comprehensive permit was made in accordance with the Town of Barnstable's Accessory Affordable Apartment Program, Chapter 9 Article II of the Code of the Town of Barnstable. That program is structured as a self-regulating income-limiting local initiated housing program, a qualified funding program accepted under the Code of Massachusetts Regulations 760 Section 56.00 that governs grant of comprehensive permits.
3. In accordance with MGL Chapter 40B and 760 CMR 56.04 (4), a Site Approval Letter was issued to the Applicant for the subject property by Town Manager, Mark Ells on October 6, 2016. Notice of the Site Approval Letter was sent to the Department of Housing and Community Development, in accordance with the requirements of 760 CMR 56.04 (2), and no issues were communicated from the Department on this application.

Regarding *consistency with local needs*, the Hearing Officer found:

4. The Applicant is proposing to convert 800 square feet on the existing first and second floor of the attached garage to a one-bedroom accessory apartment within the principal dwelling. To permit the apartment as an accessory affordable unit under Chapter 9 Article II of the Code would represent no perceivable change in the neighborhood.
5. The Building Commissioner performed an initial review of the property and determined that an accessory apartment unit can be created in conformance with applicable state building codes. Prior to occupancy, a building permit shall be required and hardwired smoke detectors and carbon monoxide detectors shall be upgraded/installed and the unit shall meet all requirements of the Building Code.
6. The property is served by an on-site septic system adequate to accommodate the addition of a one-bedroom unit on the property.
7. The Applicant has been informed that building and occupancy permits shall be obtained prior to occupancy of the accessory apartment. This step is required to assure final approval that the apartment unit conforms fully to all applicable building, fire, and health codes and this decision.
8. The Applicant has been informed that upon certification of this Comprehensive Permit by the Town Clerk, a Regulatory Agreement and Declaration of Restrictive Covenants, restricting the accessory apartment unit in perpetuity as an affordable rental unit shall be executed. Thereafter both the Comprehensive Permit and the Agreement shall be recorded at the Registry of Deeds as binding covenants on the property. The documents limit the apartment to that of an affordable unit rented to a person or family whose income is 80% or less of the Area Median Income (AMI) of the Barnstable Metropolitan Statistical Area (MSA) and cap the monthly rental income (including utilities) to not exceed 30% of the monthly household income of a household earning 80% of the median income, adjusted by household size. In the event that utilities are separately metered, the

utility allowance established by the Town of Barnstable shall be deducted from rent level so calculated.

9. According to the Massachusetts Department of Housing and Community Development, Subsidized Housing Inventory, the Town of Barnstable has 6.6% of its year round housing stock qualified as affordable housing units. The town has not reached the 10% statutory minimum affordable housing required in MGL Chapter 40B or met any of the Statutory Minima provided for in 760 CMR 56.03(3).
10. The Town of Barnstable's Comprehensive Plan encourages the adaptive use of existing housing stock to create affordable units and the dispersal of these units throughout Barnstable. This application and the location of the unit conform to that objective.

Based upon the findings, the Hearing Officer ruled that the application of Stephen and Traci O'Donnell is deemed consistent with local needs because it adequately promotes the objective of providing affordable housing for the Town of Barnstable without jeopardizing the health and safety of the occupants provided certain conditions are imposed.

Decision & Conditions:

The Hearing Officer ruled to grant Comprehensive Permit No. 2017-005 to Stephen and Traci O'Donnell for 304 High Street, West Barnstable to allow the creation of a one-bedroom affordable apartment unit within the existing dwelling as provided for in Chapter 9, Article II of the Code of the Town of Barnstable and in conformity to the following conditions and restrictions:

1. Occupancy of the affordable unit shall not exceed two (2) persons.
2. The number of bedrooms in the Accessory Affordable Apartment shall be limited to one (1).
3. Family members of the applicants/owners shall not at any time occupy the accessory unit.
4. All leases shall have a minimum term of one year and have provisions that require the tenant to provide any and all information necessary to verify eligibility with the Accessory Affordable Apartment Program including income information of the tenant and rent and utility payments.
5. All parking for the accessory apartment and the principal dwelling shall be on-site. Overnight on-street parking is expressly prohibited.
6. Accessory lodging or renting of rooms is prohibited for the duration of this Comprehensive Permit.
7. The applicants shall, after certification of this Comprehensive Permit by the Town Clerk:
 - a. execute a Regulatory Agreement and Declaration of Restrictive Covenants, as approved by the Town Attorney's Office, and
 - b. make application for a building permit with the Building Division for the accessory apartment. Work required to bring the unit into compliance with present day code standards shall be completed prior to issuance of a Certificate of Occupancy for the accessory apartment.
8. It is the explicit intent that the applicant secure an occupancy permit and the unit be occupied by qualified tenant(s) as restricted by this comprehensive permit within one-year of the certification of the permit. The Building Commissioner and/or monitoring agent may extend this time for good cause.
9. To meet affordability requirements, the rent charged (including utilities) shall not exceed 30% of 80% of the median income for the Barnstable MSA, adjusted for family size, as calculated and published annually by the Town of Barnstable. In the event that utilities are separately metered, the utility allowance established by the town of Barnstable shall be deducted from rent level so calculated.

10. The applicant shall engage in open and fair marketing of the unit and provide documentation of the activity to the Housing Coordinator/Monitoring Agent.
11. Information regarding the income level of any prospective tenant shall first be submitted to and approved by the Housing Coordinator/Monitoring Agent before any lease is signed.
12. Annually, the applicant shall work with the Housing Coordinator/Monitoring Agent to provide necessary information and documentation of tenant income eligibility and conformance with the Accessory Affordable Apartment Program.
13. Whenever a vacancy occurs, notice shall be given to the Housing Coordinator/Monitoring Agent before reengaging the tenant selection process previously cited.
14. Annual Income, to determine program eligibility, will be calculated per 24 CFR Part 5.
15. The Housing Coordinator of the Growth Management Department shall be the monitoring agent for the accessory apartment. Annual monitoring shall include verification of tenancy, affordability, and compliance with Comprehensive Permit. The homeowner shall be responsible for the fee for Housing Quality Standards (HQS) inspections.
16. Every twelve months the applicant shall review the income eligibility of the tenant of the Accessory Affordable Apartment unit. No later than a year from the date of issuance of this Comprehensive Permit, the applicant shall file with the Housing Coordinator/Monitoring Agent an annual affidavit stating the rent charged and income of the unit tenant along with all required supporting documentation. The property owners and/or tenant shall provide any additional information deemed necessary to verify the information provided in the affidavit and annual monitoring documents.
17. Upon any report from the Housing Coordinator/Monitoring Agent that the terms and conditions of this permit are not being upheld, the Hearing Officer of the Zoning Board of Appeals may hold a hearing to revoke this permit or cause enforcement action to be taken for compliance.
18. This Decision, the Regulatory Agreement and Declaration of Restrictive Covenants and all other necessary documents shall be recorded at the Barnstable County Registry of Deeds prior to application for a building permit.
19. Should ownership of the subject property transfer, the permit holder identified herein shall notify the Housing Coordinator/Monitoring Agent and provide, within 60 days of the date of transfer, the name and current contact information for the new owner of the subject property.
20. This Comprehensive Permit shall be exercised as conditioned herein or it shall expire.

Mr. Florence ended with granting the Comprehensive permit.

6:45 PM Appeal No. 2017-006

Lister

Mr. Florence opened the meeting with a statement that he knows Mr. Lister personally and would like this on public record in the event Mr. Lister would like him to stand down. He knows that he can make a decision fair and justly. Mr. Lister replied that there is no problem with this.

Mr. Lister then proceeded to state that when he bought the property in 1994 it had a separate apartment which he changed to accommodate his children. Now that they're grown he would like to make it into an Accessory Affordable Apartment. After the fir the building inspector came out and asked about the stairs and he then explained the options. Mr. Lister spoke to Arden Cadrin and Paul Roma from the Town. Since then he has been preparing for the apartment in case this permit is approved.

Mr. Florence questioned if this was a grandfathered apartment to which Mr. Lister replied he was uncertain but would like to proceed.

Mr. Florence asked Mr. Lister if he had read and understood the documentation and conditions to which Mr. Lister replied "Yes".

Mr. Florence asked if there was any Public comment to which there was none.

Procedural & Hearing Summary

September 28, 2016, William Lister submitted an application for a Site Approval Letter as prescribed in the Code of Massachusetts Regulations 760 Section 56.00 and provided for within the Accessory Affordable Apartment Program of the Town of Barnstable. The application was submitted as a local initiated Chapter 40B. Notification of the application was submitted to the Department of Housing and Community Development. A Site Approval Letter was issued to the Applicant for the subject property by Town Manager, Mark Ells on November 8, 2016. Notice of the Site Approval Letter was sent to the Department of Housing and Community Development in accordance with the requirements of CMR 760 56.00.

An application for a Comprehensive Permit was filed at the Town Clerk's Office on December 12, 2016. A public hearing before the Zoning Board of Appeals Hearing Officer was duly advertised in the Barnstable Patriot on December 23 and 30, 2016 and notices were sent to all abutters in accordance with Section 11 of MGL Chapter 40A.

The Hearing Officer, Brian Florence opened the Public Hearing on January 11, 2017 at 6:30 p.m. Present at the hearing was:

Findings of Fact

At the hearing on January 11, 2017, the Hearing Officer made the following findings of fact:

Concerning *standing*, the right of the applicant to seek a comprehensive permit, the Hearing Officer found:

11. The Applicant, William Lister, is the owner and occupant of the property located at 2000 Main Street, Marstons Mills, MA, as evidenced by a deed recorded at the Barnstable County Registry of Deeds on June 10, 1994 as Book 9232 Page 202. A signed Affidavit dated September 28, 2016 declares that 2000 Main Street, Marstons Mills is the primary residence of William Lister.
12. The application for a comprehensive permit was made in accordance with the Town of Barnstable's Accessory Affordable Apartment Program, Chapter 9 Article II of the Code of the Town of Barnstable. That program is structured as a self-regulating income-limiting local initiated housing program, a qualified funding program accepted under the Code of Massachusetts Regulations 760 Section 56.00 that governs grant of comprehensive permits.
13. In accordance with MGL Chapter 40B and 760 CMR 56.04 (4), a Site Approval Letter was issued to the Applicant for the subject property by Town Manager, Mark Ells on November 8, 2016. Notice of the Site Approval Letter was sent to the Department of Housing and Community Development, in accordance with the requirements of 760 CMR 56.04 (2), and no issues were communicated from the Department on this application.

Regarding *consistency with local needs*, the Hearing Officer found:

14. The Applicant is proposing to convert 350 square feet on the second floor to a studio accessory apartment within the principal dwelling. To permit the apartment as an accessory affordable unit under Chapter 9 Article II of the Code would represent no perceivable change in the neighborhood.
15. The Building Commissioner performed an initial review of the property and determined that an accessory apartment unit can be created in conformance with applicable state building codes. Prior

to occupancy, a building permit shall be required and hardwired smoke detectors and carbon monoxide detectors shall be upgraded/installed and the unit shall meet all requirements of the Building Code.

16. The property is served by an on-site septic system adequate to accommodate the addition of a one-bedroom unit on the property.
17. The Applicant has been informed that building and occupancy permits shall be obtained prior to occupancy of the accessory apartment. This step is required to assure final approval that the apartment unit conforms fully to all applicable building, fire, and health codes and this decision.
18. The Applicant has been informed that upon certification of this Comprehensive Permit by the Town Clerk, a Regulatory Agreement and Declaration of Restrictive Covenants, restricting the accessory apartment unit in perpetuity as an affordable rental unit shall be executed. Thereafter both the Comprehensive Permit and the Agreement shall be recorded at the Registry of Deeds as binding covenants on the property. The documents limit the apartment to that of an affordable unit rented to a person or family whose income is 80% or less of the Area Median Income (AMI) of the Barnstable Metropolitan Statistical Area (MSA) and cap the monthly rental income (including utilities) to not exceed 30% of the monthly household income of a household earning 80% of the median income, adjusted by household size. In the event that utilities are separately metered, the utility allowance established by the Town of Barnstable shall be deducted from rent level so calculated.
19. According to the Massachusetts Department of Housing and Community Development, Subsidized Housing Inventory, the Town of Barnstable has 6.6% of its year round housing stock qualified as affordable housing units. The town has not reached the 10% statutory minimum affordable housing required in MGL Chapter 40B or met any of the Statutory Minima provided for in 760 CMR 56.03(3).
20. The Town of Barnstable's Comprehensive Plan encourages the adaptive use of existing housing stock to create affordable units and the dispersal of these units throughout Barnstable. This application and the location of the unit conform to that objective.

Based upon the findings, the Hearing Officer ruled that the application of William Lister is deemed consistent with local needs because it adequately promotes the objective of providing affordable housing for the Town of Barnstable without jeopardizing the health and safety of the occupants provided certain conditions are imposed.

Decision & Conditions:

The Hearing Officer ruled to grant Comprehensive Permit No. 2017-006 to William Lister for 2000 Main Street, Marstons Mills to allow the creation of a one-bedroom studio affordable apartment unit within the existing dwelling as provided for in Chapter 9, Article II of the Code of the Town of Barnstable and in conformity to the following conditions and restrictions:

21. Occupancy of the affordable unit shall not exceed two (2) persons.
22. The number of bedrooms in the Accessory Affordable Apartment shall be limited to one (1).
23. Family members of the applicants/owners shall not at any time occupy the accessory unit.
24. All leases shall have a minimum term of one year and have provisions that require the tenant to provide any and all information necessary to verify eligibility with the Accessory Affordable Apartment Program including income information of the tenant and rent and utility payments.
25. All parking for the accessory apartment and the principal dwelling shall be on-site. Overnight on-street parking is expressly prohibited.
26. Accessory lodging or renting of rooms is prohibited for the duration of this Comprehensive Permit.

27. The applicants shall, after certification of this Comprehensive Permit by the Town Clerk:
 - c. execute a Regulatory Agreement and Declaration of Restrictive Covenants, as approved by the Town Attorney's Office, and
 - d. make application for a building permit with the Building Division for the accessory apartment. Work required to bring the unit into compliance with present day code standards shall be completed prior to issuance of a Certificate of Occupancy for the accessory apartment.
28. It is the explicit intent that the applicant secure an occupancy permit and the unit be occupied by qualified tenant(s) as restricted by this comprehensive permit within one-year of the certification of the permit. The Building Commissioner and/or monitoring agent may extend this time for good cause.
29. To meet affordability requirements, the rent charged (including utilities) shall not exceed 30% of 80% of the median income for the Barnstable MSA, adjusted for family size, as calculated and published annually by the Town of Barnstable. In the event that utilities are separately metered, the utility allowance established by the town of Barnstable shall be deducted from rent level so calculated.
30. The applicant shall engage in open and fair marketing of the unit and provide documentation of the activity to the Housing Coordinator/Monitoring Agent.
31. Information regarding the income level of any prospective tenant shall first be submitted to and approved by the Housing Coordinator/Monitoring Agent before any lease is signed.
32. Annually, the applicant shall work with the Housing Coordinator/Monitoring Agent to provide necessary information and documentation of tenant income eligibility and conformance with the Accessory Affordable Apartment Program.
33. Whenever a vacancy occurs, notice shall be given to the Housing Coordinator/Monitoring Agent before reengaging the tenant selection process previously cited.
34. Annual Income, to determine program eligibility, will be calculated per 24 CFR Part 5.
35. The Housing Coordinator of the Growth Management Department shall be the monitoring agent for the accessory apartment. Annual monitoring shall include verification of tenancy, affordability, and compliance with Comprehensive Permit. The homeowner shall be responsible for the fee for Housing Quality Standards (HQS) inspections.
36. Every twelve months the applicant shall review the income eligibility of the tenant of the Accessory Affordable Apartment unit. No later than a year from the date of issuance of this Comprehensive Permit, the applicant shall file with the Housing Coordinator/Monitoring Agent an annual affidavit stating the rent charged and income of the unit tenant along with all required supporting documentation. The property owners and/or tenant shall provide any additional information deemed necessary to verify the information provided in the affidavit and annual monitoring documents.
37. Upon any report from the Housing Coordinator/Monitoring Agent that the terms and conditions of this permit are not being upheld, the Hearing Officer of the Zoning Board of Appeals may hold a hearing to revoke this permit or cause enforcement action to be taken for compliance.
38. This Decision, the Regulatory Agreement and Declaration of Restrictive Covenants and all other necessary documents shall be recorded at the Barnstable County Registry of Deeds prior to application for a building permit.

39. Should ownership of the subject property transfer, the permit holder identified herein shall notify the Housing Coordinator/Monitoring Agent and provide, within 60 days of the date of transfer, the name and current contact information for the new owner of the subject property.

40. This Comprehensive Permit shall be exercised as conditioned herein or it shall expire.

Mr. Florence ended with granting the Comprehensive permit.

Hearing Officer Florence moves to close the Public Hearing.

Meeting Adjourned at 7:05 p.m.

Respectfully Submitted
Kathleen Thompson
Administrative Assistant
Growth Management Department

List of Exhibit Documents

Exhibit A Draft Comprehensive Permit Decision and Notice, Comp Permit No. 2015-005
O'Donnell

Exhibit B Draft Comprehensive Permit Decision and Notice, Comp Permit No. 2015-006
Lister

Further detail may be obtained by viewing the video via Channel 18 on demand at <http://www.town.barnstable.ma.us>

Public Hearings: Pursuant to Chapter 40A, Section 11 of the General Laws of the Commonwealth of Massachusetts, and all amendments thereto, a public hearing before the Hearing Officer will be held on the following Comprehensive Permit applications, made pursuant to Chapter 40B of the General Laws of the Commonwealth of Massachusetts and Chapter 8, Section 15 of the Code of the Town of Barnstable, the “Accessory Affordable Apartment Program”: