



# The Town of Barnstable

## Planning and Development

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Elizabeth Jenkins, Director

BARNSTABLE TOWN CLERK  
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### TOWN OF BARNSTABLE ACCESSORY AFFORDABLE APARTMENT PROGRAM

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#### MINUTES

March 28, 2018 – 6:30 pm Selectmens Conference Room

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**Present:** Alex Rodolakis, Hearing Officer - ZBA, Anna Brigham, Principal Planner – Planning & Development, Kathleen Thompson, Administrative Assistant Planning & Development

Hearing Officer Alex Rodolakis called the meeting to order at 6:30 p.m.

Notice of Recording: This meeting is being videotaped. The Chair inquires whether anyone else is taping this meeting and to please make their presence known. No response.

**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".

**Approval of Minutes:** January 10, 2018 and February 14, 2018 and March 14, 2018

Mr. Rodolakis approves minutes from January 10, 2018 and February 14, 2018 and March 14, 2018

Mr. Rodolakis reads into record:

#### 6:30 PM Appeal No.2018-017

#### Rangel

Miriam B. Rangel has applied for a Comprehensive Permit to convert 350 square feet of area to a one-bedroom accessory affordable apartment within the existing dwelling. The subject property is addressed 63 East Osterville Road, Osterville MA as shown on Assessor's Map 122 as Parcel 098. It is zoned Residence C.

#### Hearing Discussion: Miriam B. Rangel

Miriam Rangel stated that she has a single family ranch home that she had previously converted her garage with a bathroom to accommodate a family member. The family member has since passed away and she would like to convert this to a studio Accessory Affordable Apartment with a kitchen to rent. The Town has come out to inspect and approved.

Mr. Rodolakis asked if she understood the Rules and Requirements and the guidelines to have an Accessory Affordable Apartment with the Town.

Ms. Rangel answered yes.

Mr. Rodolakis asked if there was any public comment.

Response was yes and he asked them to come up.

Gail Sullivan representing the trust of 12 Sharon Circle in Osterville approached and stated that her property was adjacent to this property and that there were concerns about this request. Ms. Sullivan then stated that the



neighborhood was made up of small dwellings and their concerns were about the septic, parking, noise factors and upkeep since there are elderly people.

Mr. Rodolakis assured her that the Town reviews and inspects yearly to make sure the property complies, with restrictions on how many people can occupy the property and that the noise and upkeep are no different than being adjacent to any other property. The landlord is required to live on the premises.

Ms. Rangel approached once again and stated that she lives on the property and keeps her property impeccable. She is doing this for the extra income.

With no further public comments, Mr. Rodolakis continues.

### **Locus**

The subject property is a .41 acre lot and fronts onto East Osterville Road. The property is improved with a 3,744 gross square foot three-bedroom single family dwelling (1,760 of living area) constructed in 1977. The accessory apartment is a one-bedroom unit located in the principal residence, previously a garage. It is served by public water and an on-site septic system.

### **Background**

Miriam Rangel seeks to convert 350 square feet of area within the existing dwelling to a one-bedroom Accessory Affordable Apartment by a Comprehensive Permit pursuant to Chapter 40B of the General Laws of the Commonwealth of Massachusetts, and in accordance with § 9-15 of the Code of the Town of Barnstable, more commonly termed the "Accessory Affordable Apartment Program".

### **Procedural & Hearing Summary**

Miriam Rangel 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 27, 2017. 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 February 26, 2018. A public hearing before the Zoning Board of Appeals Hearing Officer was duly advertised in the Barnstable Patriot on March 9, 2018 and March 16, 2018 and notices were sent to all abutters in accordance with Section 11 of MGL Chapter 40A.

### **Findings of Fact**

At the hearing on March 28, 2018, 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:

The Applicant, Miriam B. Rangel, is the owner and occupant of the property located at 63 East Osterville Road, Osterville, MA, as evidenced by deed recorded at the Barnstable County Registry of Deeds on Book 28843 Page 226 recorded May 4, 2015. A signed Affidavit dated October 2, 2017, declares that 63 East Osterville Road, Osterville MA, is the primary residence of Miriam B. Rangel.

1. 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.

2. 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 27, 2017. 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:

3. The Applicant is proposing to convert an area within the existing dwelling to an Accessory Affordable Apartment. The apartment is 350 square feet, one bedroom, and located in the principal dwelling at 63 East Osterville Road, Osterville. 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.
4. 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.
5. The property is served by an on-site septic system adequate to accommodate the addition of a one-bedroom unit on the property with a restriction from the Health Department if required.
6. 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.
7. 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.
8. According to the Massachusetts Department of Housing and Community Development, Subsidized Housing Inventory, the Town of Barnstable has 7.14% 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).
9. 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 Miriam B. Rangel 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. 2018-017 to Miriam B. Rangel for 63 East Osterville Road, Osterville to allow the conversion of the area of the principal dwelling, formally the garage, to a one-bedroom affordable apartment unit at 63 East Osterville Road, Osterville 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. The Applicant must register the unit with the Regulatory Services Department at 200 Main Street, Hyannis.



14. Whenever a vacancy occurs, notice shall be given to the Housing Coordinator/Monitoring Agent before reengaging the tenant selection process previously cited.
15. Annual Income, to determine program eligibility, will be calculated per 24 CFR Part 5.
16. The Housing Coordinator of the Planning and Development 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. This Comprehensive Permit shall be exercised as conditioned herein or it shall expire.

**Ordered**

Comprehensive Permit No. 2018-017 is granted with conditions to Miriam B. Rangel for property addressed as 63 East Osterville Road, Osterville MA. This permit is not transferable without prior permission of the Hearing Officer. The zoning relief issued in this Comprehensive Permit is that of a variance to Section 240-13(A) Principal permitted uses in the RC Zoning Districts to permit a one-bedroom accessory affordable apartment unit within the principal dwelling.

A written copy of this decision will be forwarded to the Zoning Board of Appeals as required by the Town of Barnstable Administrative Code Chapter 241, Section 11. If after fourteen (14) days from that transmittal and provided that the members of the Zoning Board of Appeals take no action to reverse the decision, this decision shall be filed with the Town Clerk's Office. It shall then become final only after 20 days has expired and certified by the Town Clerk that no appeal was filed on the decision.

Appeals of this decision, if any, shall be made to the Barnstable Superior Court pursuant to MGL Chapter 40A, Section 17, within twenty (20) days after the date of the filing of this decision in the office of the Town Clerk. The applicant has the right to appeal this decision as outlined in MGL Chapter 40B, Section 22.

Public Comment - None

**Ordered** - Hearing Officer approves/grants Comprehensive Permit No. 2018-017



Mr. Rodolakis reads into record:

**6:31 PM Appeal No.2018-019**

**Ricardo**

Denise Ricardo is seeking to transfer Comprehensive Permit No. 2006-011 into new ownership. Ms. Ricardo has applied for a Comprehensive Permit to convert 400 square feet of area to a one-bedroom accessory affordable apartment within the existing dwelling. The subject property is addressed 15 Oak Street, Hyannis MA as shown on Assessor's Map 310 as Parcel 072. It is zoned Residence B.

**Hearing Discussion:**

Denise Ricardo and daughter, Marinella Ricardo

Ms. Ricardo stated her address at 15 Oak St., Hyannis, Ma. And that she is seeking the transfer of an existing comprehensive permit for a one bedroom Accessory Affordable apartment on the premises. This property is her home and she will be living on the premises.

Mr. Rodolakis asks if there was any public comment.

Donna Medeiros, Trustee of property at 78 Linden St., Hyannis stated that she was born and brought up here and has watched the depreciation of her home over the years. She also stated that there have been problematic properties in the neighborhood especially at 79 Linden St. which has been zoned for three apartments and now has five or six with the absentee landlord living in New Jersey. There are also broken down cars on this property. At 15 Oak St. there was a problem tenant who told her he was living in the garage illegally. She wants to make sure this is a legal transfer.

Mr. Rodolakis assured Ms. Medeiros that the Applicant is taking the right steps to make this legal apartment a legal transfer with the Applicant living on the premises. As with all legal apartments in the Town of Barnstable this apartment will be inspected every year to make sure everything is in compliance.

With no further public comments, Mr. Rodolakis continues.

**Locus**

The subject property is a .39 acre lot and is located at the intersection of Oak Street and Linden Street. The property is improved with a 3,758 gross square foot three-bedroom single family dwelling (2,224 of living area) constructed in 1933. The accessory apartment is a one-bedroom unit located in the principal residence and is served by public water and sewer.

**Background**

Denise Ricardo seeks to transfer Comprehensive Permit No. 2006-011 into new ownership. Ms. Ricardo seeks to permit 400 square feet of area within the existing dwelling to a one-bedroom Accessory Affordable Apartment by a Comprehensive Permit pursuant to Chapter 40B of the General Laws of the Commonwealth of Massachusetts, and in accordance with § 9-15 of the Code of the Town of Barnstable, more commonly termed the "Accessory Affordable Apartment Program".

**Procedural & Hearing Summary**

Denise Ricardo 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 February 20, 2018. 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 February 28, 2018. A public hearing before the Zoning Board of Appeals Hearing Officer was duly advertised in the Barnstable



Patriot on March 9, 2018 and March 16, 2018 and notices were sent to all abutters in accordance with Section 11 of MGL Chapter 40A.

### **Findings of Fact**

At the hearing on March 28, 2018, 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:

The Applicant, Denise Ricardo, is the owner and occupant of the property located at 15 Oak Street, Hyannis, MA, as evidenced by deed recorded at the Barnstable County Registry of Deeds on Book 31006 Page 327 recorded January 5, 2018. A signed Affidavit dated January 5, 2018, declares that 15 Oak Street, Hyannis, MA, is the primary residence of Denise Ricardo.

10. 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.
11. 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 February 20, 2018. 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:

12. The Applicant is proposing to permit an area within the existing dwelling to an Accessory Affordable Apartment. The existing apartment is 400 square feet, one bedroom, and located in the principal dwelling at 15 Oak Street, Hyannis, MA. 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.
13. 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.
14. The property is served by the municipal sewer system and is adequate to accommodate the addition of a one-bedroom unit on the property.
15. 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.
16. 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.

17. According to the Massachusetts Department of Housing and Community Development, Subsidized Housing Inventory, the Town of Barnstable has 7.14% 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).
18. 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 Denise Ricardo 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. 2018-019 to Denise Ricardo at 15 Oak Street, Hyannis to allow the conversion of the area of the principal dwelling to a one-bedroom affordable apartment unit at 15 Oak Street, Hyannis 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:

22. Occupancy of the affordable unit shall not exceed two (2) persons.
23. The number of bedrooms in the Accessory Affordable Apartment shall be limited to one (1).
24. Family members of the applicants/owners shall not at any time occupy the accessory unit.
25. 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.
26. All parking for the accessory apartment and the principal dwelling shall be on-site. Overnight on-street parking is expressly prohibited.
27. Accessory lodging or renting of rooms is prohibited for the duration of this Comprehensive Permit.
28. 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.
29. 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.
30. 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.

31. The applicant shall engage in open and fair marketing of the unit and provide documentation of the activity to the Housing Coordinator/Monitoring Agent.
32. 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.
33. 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.
34. The Applicant must register the unit with the Regulatory Services Department at 200 Main Street, Hyannis.
35. Whenever a vacancy occurs, notice shall be given to the Housing Coordinator/Monitoring Agent before reengaging the tenant selection process previously cited.
36. Annual Income, to determine program eligibility, will be calculated per 24 CFR Part 5.
37. The Housing Coordinator of the Planning and Development 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.
38. 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.
39. 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.
40. 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.
41. 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.
42. This Comprehensive Permit shall be exercised as conditioned herein or it shall expire.

**Ordered**

Comprehensive Permit No. 2018-019 is granted with conditions to Denise Ricardo for property addressed as 15 Oak Street, Hyannis MA. This permit is not transferable without prior permission of the Hearing Officer. The zoning relief issued in this Comprehensive Permit is that of a variance to Section 240-13(A) Principal permitted uses in the RB Zoning Districts to permit a one-bedroom accessory affordable apartment unit within the principal dwelling.



A written copy of this decision will be forwarded to the Zoning Board of Appeals as required by the Town of Barnstable Administrative Code Chapter 241, Section 11. If after fourteen (14) days from that transmittal and provided that the members of the Zoning Board of Appeals take no action to reverse the decision, this decision shall be filed with the Town Clerk's Office. It shall then become final only after 20 days has expired and certified by the Town Clerk that no appeal was filed on the decision.

Appeals of this decision, if any, shall be made to the Barnstable Superior Court pursuant to MGL Chapter 40A, Section 17, within twenty (20) days after the date of the filing of this decision in the office of the Town Clerk. The applicant has the right to appeal this decision as outlined in MGL Chapter 40B, Section 22.

**Ordered** - Hearing Officer approves/grants Comprehensive Permit No. 2018-019

Hearing Officer reads into record:

**6:32 PM Appeal No.2018-016**

**Lane**

Carole Mae Lane has applied for a Comprehensive Permit to convert 850 square feet of area to a one-bedroom accessory affordable apartment within the existing dwelling. The subject property is addressed 1025 Service Road, West Barnstable, MA. as shown on Assessor's Map 129 as Parcel 003. It is zoned Residence F.

**Hearing Discussion:**

Carol Mae Lane stated that she is the owner of the property at 1025 Service Rd., West Barnstable, Ma. Ms. Lane has gone through section 8 and rented for two years and has had family apartments over the years. She has an 800 square foot apartment with a living room, bedroom, full kitchen, full bath and laundry room. The Building Commissioner inspected and expressed concern over the low ceiling in the bedroom. She then went before the Zoning Board for the Commonwealth of Massachusetts on February 9, 2018 and got approved to put up 5/8" bluerock on the ceiling. She is requesting a Comprehensive Permit before the building permit so that she can do the work.

Mr. Rodolakis asked if she has reviewed the paperwork and she responded yes.

Mr. Rodolakis asked if there was any public comment.

With no public comment Mr. Rodolakis continues.

**Locus**

The subject property is a .81 acre lot and fronts onto Service Road Avenue near Exit 5 of the Mid Cape Highway. The property is improved with a 3,336 gross square foot three-bedroom single family dwelling (1,712 of living area) constructed in 1967. The accessory apartment is a one-bedroom unit located in the lower level of the principal residence, previously a Family Apartment and prior to that an Accessory Affordable Apartment. It is served by well water and an on-site septic system.

**Background**

Carole Mae Lane seeks to convert 850 square feet of area within the existing dwelling to a one-bedroom Accessory Affordable Apartment by a Comprehensive Permit pursuant to Chapter 40B of the General Laws of the Commonwealth of Massachusetts, and in accordance with § 9-15 of the Code of the Town of Barnstable, more commonly termed the "Accessory Affordable Apartment Program".

**Procedural & Hearing Summary**

Carole Mae Lane 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 January 19, 2018. 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 February 7, 2018. A public hearing before the Zoning Board of Appeals Hearing Officer was duly advertised in the Barnstable Patriot on February 23, 2018 and March 2, 2018 and notices were sent to all abutters in accordance with Section 11 of MGL Chapter 40A.

### **Findings of Fact**

At the hearing on March 28, 2018, 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:

19. The Applicant, Carole Mae Lane, is the owner and occupant of the property located at 1025 Service Road, West Barnstable, MA, as evidenced by deed recorded at the Barnstable County Registry of Deeds on Book 15571 Page 94 recorded September 9, 2002. A signed Affidavit dated September 6, 2017 declares that 1025 Service Road, West Barnstable, is the primary residence of Carole Mae Lane.
20. 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.
21. 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 January 19, 2018. 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:

22. The Applicant is proposing to convert an area within the existing dwelling to an Accessory Affordable Apartment. The apartment is 850 square feet, one bedroom, and located in the lower level of the existing principal dwelling at 1025 Service Road, West Barnstable. 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.
23. 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.
24. The property is served by an on-site septic system adequate to accommodate the addition of a one-bedroom unit on the property with a restriction from the Health Department if required.
25. 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.



26. 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.
27. According to the Massachusetts Department of Housing and Community Development, Subsidized Housing Inventory, the Town of Barnstable has 7.14% 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).
28. 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 Carole Mae Lane 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. 2018-016 to Carole Mae Lane for 1025 Service Road, West Barnstable to allow the conversion of the area on the lower level of the principal dwelling to a one-bedroom affordable apartment unit at 1025 Service Road, West Barnstable, 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:

43. Occupancy of the affordable unit shall not exceed two (2) persons.
44. The number of bedrooms in the Accessory Affordable Apartment shall be limited to one (1).
45. Family members of the applicants/owners shall not at any time occupy the accessory unit.
46. 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.
47. All parking for the accessory apartment and the principal dwelling shall be on-site. Overnight on-street parking is expressly prohibited.
48. Accessory lodging or renting of rooms is prohibited for the duration of this Comprehensive Permit.
49. The applicants shall, after certification of this Comprehensive Permit by the Town Clerk:
  - e. execute a Regulatory Agreement and Declaration of Restrictive Covenants, as approved by the Town Attorney's Office, and
  - f. 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.

50. 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.
51. 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.
52. The applicant shall engage in open and fair marketing of the unit and provide documentation of the activity to the Housing Coordinator/Monitoring Agent.
53. 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.
54. 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.
55. The Applicant must register the unit with the Regulatory Services Department at 200 Main Street, Hyannis.
56. Whenever a vacancy occurs, notice shall be given to the Housing Coordinator/Monitoring Agent before reengaging the tenant selection process previously cited.
57. Annual Income, to determine program eligibility, will be calculated per 24 CFR Part 5.
58. The Housing Coordinator of the Planning and Development 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.
59. 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.
60. 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.
61. 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.
62. 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.
63. This Comprehensive Permit shall be exercised as conditioned herein or it shall expire.



**Ordered**

Comprehensive Permit No. 2018-016 is granted with conditions to Carole Mae Lane for property addressed as 1025 Service Road, West Barnstable, MA. This permit is not transferable without prior permission of the Hearing Officer. The zoning relief issued in this Comprehensive Permit is that of a variance to Section 240-13(A) Principal permitted uses in the RF Zoning Districts to permit a one-bedroom accessory affordable apartment unit within the principal dwelling.

A written copy of this decision will be forwarded to the Zoning Board of Appeals as required by the Town of Barnstable Administrative Code Chapter 241, Section 11. If after fourteen (14) days from that transmittal and provided that the members of the Zoning Board of Appeals take no action to reverse the decision, this decision shall be filed with the Town Clerk's Office. It shall then become final only after 20 days has expired and certified by the Town Clerk that no appeal was filed on the decision.

Appeals of this decision, if any, shall be made to the Barnstable Superior Court pursuant to MGL Chapter 40A, Section 17, within twenty (20) days after the date of the filing of this decision in the office of the Town Clerk. The applicant has the right to appeal this decision as outlined in MGL Chapter 40B, Section 22.

Hearing Officer approves/grants Comprehensive Permit No. 2018-016

Hearing Officer Alex Rodolakis moves to close the Public Hearing. Meeting Adjourned at 7:00 p.m.

Respectfully Submitted  
Kathleen Thompson  
Administrative Assistant  
Planning and Development Department

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":