



The Town of Barnstable Planning and Development

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Elizabeth Jenkins, Director

TOWN OF BARNSTABLE ACCESSORY AFFORDABLE APARTMENT PROGRAM

MINUTES

June 23, 2021 – 6:30 pm James H. Crocker Hearing Room

Present: Alex Rodolakis, Hearing Officer - ZBA, Anna Brigham, Principal Planner – Planning & Development. Also present was George Swift.

The Chair read:

Call to Order

Introduction

Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Minutes

May 26, 2021 - Approved

New Business

6:30 PM Appeal No. 2021-034

Swift

George Swift has applied for a Comprehensive Permit to designate a previously approved detached 539 square foot 1-bedroom Accessory Affordable Apartment, and Family Apartment, back to an Accessory Affordable Apartment. The subject property is addressed 71 Waterfield Road, Osterville, MA as shown on Assessor's Map 119 as Parcel 051. It is zoned Residence C (RC).

The Applicant, George Swift, is the owner and occupant of property addressed as 71 Waterfield Road, Osterville, MA. The Applicant has been the owner of the property since June 24, 2020, as evidenced by a deed recorded at the Barnstable County Registry of Deeds on Book : 33012 Page: 0085 recorded on June 24, 2020. A signed Affidavit dated March 29, 2021 declares that 71 Waterfield Road, Osterville, MA, is the primary residence of George Swift.

The property at issue is a 0.47 acre lot located at 71 Waterfield Road, Osterville, MA. The lot was developed in 1960 with a two-bedroom single-family home. The detached structure was constructed in 2002. The effective living area of the main residence is 1,085 square feet and the living area of the accessory structure is 539 square feet. The proposed accessory apartment is a one-bedroom unit detached from the principle residence. The square footage of the rental area is approximately 539 square feet.

The lot is served by public water and on-site septic, and is located within a Well Protection Overlay District. The town of Barnstable's Public Health Division reviewed the application, and on April 20, 2021, approved the structure for a total of three (3) bedrooms with the existing on-site septic system.

George Swift seeks to utilize 539 square feet of area in a detached structure from the principal dwelling as 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".

George Swift 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, April 8, 2021. 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 submitted and filed at the Town Clerk's Office on April 21, 2021. A public hearing before the Zoning Board of Appeals Hearing Officer was duly advertised in the Barnstable Patriot on June 4, 2021 and June 11, 2021 and notices were sent to all abutters in accordance with Section 11 of MGL Chapter 40A.

Findings of Fact

At the hearing on June 23, 2021, 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, George Swift, is the owner and occupant of the property located at 71 Waterfield Road, Osterville, MA, as evidenced by deed recorded at the Barnstable County Registry of Deeds on Book 33012 Page 0085 recorded June 24, 2020. A signed Affidavit dated March 29, 2021, declares that 71 Waterfield Road, Osterville, MA, is the primary residence of George Swift.

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 April 8, 2021. 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 utilize an area to an Accessory Affordable Apartment. The apartment will be 539 square feet, one bedroom, and located within a detached structure at 71 Waterfield Road, Osterville, 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.
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 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 George Swift 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. 2021-034 to George Swift for 71 Waterfield Road, Osterville, MA to allow the creation of an Accessory Affordable Apartment. The apartment is a one-bedroom affordable apartment unit located within a detached structure at 71 Waterfield Road, Osterville, MA 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 applicant/owner 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, as necessary.
8. It is the explicit intent that the applicants secure an occupancy permit and the unit be occupied by a qualified tenant as restricted by this comprehensive permit within one-year of the certification of the permit, if the Applicant has not done so already. 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.

The Chair Ordered

Comprehensive Permit No. 2021-034 is granted with conditions to George Swift for property addressed as 71 Waterfield 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 240-11 (A) Principal Permitted Uses in the RB Zoning Districts to permit a one-bedroom accessory affordable apartment unit within a detached structure on the same lot as 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.

Correspondence

None

Matters Not Reasonably Anticipated by the Chair

None

Upcoming Hearings

None scheduled

Adjournment

6:45 PM