

**Town of Barnstable**  
Growth Management Department  
JoAnne Buntich, Interim Director

Staff Report

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**Appeal 2009-061 - Lane**  
**Special Permit - Section 240-47.1(A)(1) Family Apartments**

Seeks a family apartment of 1,200 sq.ft.

**Date:** October 9, 2009  
**To:** **Zoning Board of Appeals**

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Art Traczyk – Regulatory Review/Design Planner

**Applicant:** Carole Mae Lane  
**Property Address:** 1025 Service Road, West Barnstable, MA  
**Assessor's Map/Parcel:** Map 129 Parcel 003  
**Zoning:** Residence F Zoning District  
**Deed Reference:** Book 15571, page 94

Filed; September 24, 2009, No Extension Hearing October 21, 2009 Decision Due January 19, 2010

**Copy of Public Notices:**

Carole Mae Lane has petitioned for a Special Permit pursuant to Section 240.47.1 A(1) Family Apartments. The petitioner is seeking the permit to allow a family apartment of 1,200 sq.ft. The property is addressed 1025 Service Road, West Barnstable, MA. It is shown on Assessor's Map 129 as parcel 003. It is in the Residence F Zoning District and the Wellhead (WP) Protection Overlay District.

**Background & Review:**

The subject property is a 0.81-acre lot fronting on the Service Road in West Barnstable. The Assessor's record describes the property as improved with a one-story, 3-bedroom, single-family dwelling with a living area of approximately 1,712 sq. ft. Construction of the dwelling dates to 1967. The property is in a Wellhead Protection Overlay District and is serviced by an on-site well and on-site septic system.

The dwelling is a raised ranch that the applicant owned jointly from 1994 to 2002 at which time it was transferred into her ownership only.

In 2003, the Building Division issued a stop work order for work being carried on in the dwelling that apparently was creating an apartment unit without the proper permits. According to the

applicant at that time, the work was being done to create a private area for her daughter and son-in-law who apparently were living in the home at that time.

In accordance with zoning at that time, the applicant applied for, and on April 16, 2003, was granted a Family Apartment Special Permit No. 2003-050 for the unit.<sup>1</sup> At that time the unit was presented as a one bedroom apartment consisting of 1,014 sq.ft. located in the dwelling's lower level along with a one-car garage area that measured 15x26 feet (390 sq.ft. gross). The unit was to be occupied by Ms. Lane's daughter and son-in-law.

In 2004, the applicant applied for and was granted Building Permit No. 77960 to convert the garage area to living area. That improvement was completed in September of 2004.

About 2007, Ms. Lane's daughter and son-in-law vacated the apartment and Ms. Lane made application under the Accessory Affordable Housing Program to convert the unit from that of a family apartment to that of an affordable housing unit in accordance with Chapter 9, Article II of the Code of the Town and MGL Chapter 40B Comprehensive Permits. That Comprehensive permit was issued on July 26, 2007 for the one bedroom, 850 sq.ft. apartment unit.

According to information submitted with this application, the applicant would now like to use the apartment for a family member, her daughter and grandchildren. According to the Accessory Affordable Housing (state) regulations, family members cannot occupy an affordable unit. Therefore, the applicant desires to convert the unit back to a family apartment. To do that she will have to surrender the Comprehensive Permit and remove those restrictions and then secure a family apartment special permit as the building division has determined that the unit now exceeds the 800 sq.ft. limitation imposed on family apartments.

Section 240-47.1 Family apartments, provision A(1) states "The apartment unit shall not exceed 800 square feet or 50% of the square footage of the existing single-family dwelling, whichever is less. The Zoning Board of Appeals may allow up to 1,200 square feet by a special permit finding. In any case, the apartment shall be limited to no more than two bedrooms" Appeal No. 2009-061 is seeking that special permit to allow a unit of 1,200 sq.ft.

### **Staff Comments:**

When submitted, the applicant entered a statement dated September 21, 2009. That statement includes items that are beyond the Zoning Board's authority to rule on.

- The letter cites an area for the apartment of 1,284 sq.ft. The Board can only give a permit for a maximum unit of 1,200 sq.ft. That 1,200 sq.ft. area is reflected in the application form submitted.

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<sup>1</sup> Note: In 2003 all family apartment units required a special permit from the Board. Today's Section 240-47.1 that permits family apartments as-of-right was amended into the Ordinance on November 18-2004 [TC Order No. 2005-026].

- The applicant has requested a 4<sup>th</sup> bedroom for the property. That request is outside of the purview of the Zoning Board. The property is now restricted by the Board of Health and the on-site septic system to a total of three bedrooms on the property.
- The plan for the apartment shows three-bedrooms. Provision A(1) of the family apartment regulations states that “In any case, the apartment shall be limited to no more than two bedrooms”.

**Suggested Conditions:**

Should the Board find to grant the special permit to allow for a family apartment in excess of 800 sq.ft., it may wish to consider the following conditions:

1. The area of the family apartment is limited 1,200 sq.ft. as allowed by special permit pursuant to Section 240-47.1.A(1).
2. The apartment shall comply with, and be maintained, in full compliance with all other requirements of Section 240-47.1 for a family apartment as-of-right as well as all conditions in this decision.
3. The total number of bedrooms permitted on the property shall be as permitted by the Health Agent.
4. Any, and all requirements of the Building Division, shall be fully complied with to assure that the unit and building meets all applicable codes including building, fire, and health.
5. All parking shall be on-site and not within 10 feet of neighboring properties.
6. Occupancy of the dwelling and the family apartment unit is restricted to family members only and there shall be no renting of the unit or rooms to non-family members.

Copies: Petitioner/Applicant  
Attach: Application and Materials Submitted

**Copy of Section 240-47.1. Accessory Uses - Family Apartments.** [Added 11-18-2004 by Order No. 2005-026]

This section intends to allow all residential zoning districts one temporary family apartment occupied only by a member(s) of the property owner's family as accessory to an owner-occupied single-family residence. A family apartment may be permitted, provided there is compliance with all conditions and procedural requirements herein.

- A. Conditions. A family apartment shall comply with and be maintained in full compliance with all of the following conditions:
- (1) The apartment unit shall not exceed 800 square feet or 50% of the square footage of the existing single-family dwelling, whichever is less. The Zoning Board of Appeals may allow up to 1,200 square feet by a special permit finding. In any case, the apartment shall be limited to no more than two bedrooms;
  - (2) Occupancy of the apartment shall not exceed two family members;
  - (3) The apartment shall be located within a single-family dwelling or connected to the single-family dwelling so there can be internal access between units. The apartment must comply with all current setback requirements for the zoning district where it is located.
  - (4) At no time shall the single-family dwelling or the family apartment be sublet or subleased by either the owner or family member(s). The single-family dwelling and family apartment shall only be occupied by those persons listed on the recorded affidavit.
  - (5) When the family apartment is vacated, or upon noncompliance with any condition or representation made including, but not limited to, occupancy or ownership, the use as an apartment shall be terminated. A building permit must be applied for to remove all cabinets, countertops, kitchen sinks and appliances from the family apartment, and the water and gas service utilities must be capped and placed behind a finished wall surface.
- B. Procedural requirements. Prior to the creation of a family apartment, the property owner must have an application for a building permit with the Building Commissioner. This application must provide any and all information deemed necessary to assure compliance with this section including, but not limited to, scaled plans of any proposed remodeling or addition to accommodate the apartment, signed and recorded affidavits reciting the names and family relationship among the parties, and a signed family apartment accessory use restriction document.
- (1) Certificate of occupancy. Prior to occupancy of the family apartment, a certificate of occupancy shall be obtained from the Building Commissioner. No certificate of occupancy shall be issued until the Building Commissioner has made a final inspection. His inspection consists of inspection of the apartment unit, single-family dwelling, and a copy of the family apartment accessory use restriction document as recorded at the Barnstable Registry of Deeds and submitted to the Building Division.

- (2) Annual affidavit. Annually thereafter, a family apartment affidavit, reciting the names and family relationship among the parties and attesting that the property is the year-round primary residence of the property owner and family member(s), shall be signed and submitted to the Building Division.