



TOWN OF HINGHAM

Board of Appeals

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NOTICE OF DECISION SPECIAL PERMIT

IN THE MATTER OF:

Applicant: Sarah C. Hanlon, Trustee of the Sarah C. Hanlon Family 2013 Trust
#149 Stayner Drive
Hingham, MA 02043

Property: 138 Nokomis Road, Hingham, MA 02043

Deed Reference: Plymouth County Registry of Deeds Book 55382, Page 115

Plan References: Plans entitled, "Plot Plan for Accessory Dwelling Unit," prepared by Grady Consulting, L.L.C., 71 Evergreen Street, Suite 1, Kingston, MA 02364, dated December 28, 2022 and revised through February 22, 2023 (1 Sheet)

Floor Plans of 138 Nokomis Road, Hingham MA submitted by Grady Consulting, L.L.C, 71 Evergreen Street, Suite 1, Kingston, MA 02364, date stamped February 22, 2023, unsigned, undated (4 sheets)

SUMMARY OF PROCEEDINGS:

This matter came before the Board of Appeals (the "Board") on the application of Sarah C. Hanlon, Trustee of the Sarah C. Hanlon Family 2013 Trust (the "Applicant") for a Special Permit A1 under § V-K of the Zoning By-Law (the "By-Law") and such other relief as necessary to create an Accessory Dwelling Unit at 138 Nokomis Road in Residence District A.

The Board heard the application at a duly advertised and noticed public hearing on Tuesday, February 28, 2023, during a meeting held remotely via Zoom as an alternate means of public access pursuant to Chapter 107 of the Acts of 2022 and all other applicable laws temporarily amending certain provisions of the Open Meeting Law. The Board of Appeals panel consisted of its regular members Robyn S. Maguire, Chair, Paul K. Healey and Jed Ruccio. The Applicant's representatives, Attorney Adam J. Brodsky, of Drohan Tocchio & Morgan, P.C. and Nicholas Leing of Grady Consulting L.L.C., along with the Applicant, attended the meeting to present the request. At the conclusion of the hearing, the Board voted unanimously to grant the requested special permit, subject to the conditions set forth below.

Throughout the hearing, the Board has been mindful of the statements of the Applicant and the comments of the general public, all as made or received at the public hearing.

BACKGROUND AND DISCUSSION:

The subject property consists of approximately 18,596 SF of land located in the Residence A District and is improved by a modern style, single-family dwelling (ca. 1975), including an attached garage. The proposed plan locates an accessory dwelling unit (“ADU”), consisting of a living/kitchen area and a half-bath on the first floor and a bedroom and bathroom on the second floor, within the existing structure. The ADU is proposed to be 750 SF.

During the hearing, the Board reviewed the application in detail to confirm compliance with the eligibility requirements for ADUs. These requirements include the following:

- a. As of the date that the application for a special permit is filed with the Board of Appeals, the total number of accessory dwelling units in the Town shall not exceed two and one-half percent (2.5%) of the total single-family dwelling units in the Town (the “ADU Cap”). The ADU Cap shall be determined by a fraction represented as follows: the numerator shall be the total number of accessory dwelling units allowed by special permit pursuant to this Section V-K plus the number of accessory dwelling unit permit applications pending approval before the Board of Appeals and the denominator shall be the total number of single-family dwelling units existing in the Town as classified in the Hingham assessors’ records. **This is the seventeenth ADU application received by the Board; the Town has not exceeded the ADU Cap of 156 based on the 6,241 single-family dwelling units presently classified in the Hingham assessors’ records.**
- b. The applicant shall, at the time application is made for the special permit, be the owner of the lot and single-family dwelling thereon in which the accessory dwelling unit is proposed and must certify in such application that (i) the owner currently occupies the single-family dwelling or will occupy the principal dwelling or accessory dwelling unit as his or her primary residence immediately upon issuance of the special permit and (ii) that the other unit shall be occupied by a family member. **The Applicant owns the property as evidenced by the submitted deed. The Applicant also confirmed via the ADU application checklist that they will reside in the home and the ADU will be occupied by family.**
- c. The area of the lot on which the existing single-family dwelling is located shall not be less than five thousand (5,000) square feet or, in the case of new construction, shall comply with the applicable minimum lot size for the single-family zoning district in which the single-family dwelling is proposed. **The lot consists of approximately 18,596 SF of land, which exceeds the minimum area required to be eligible for an ADU special permit.**

- d. The application must be accompanied by written confirmation from either (i) the Board of Health that the requirements of the Massachusetts Title 5 septic system regulations and the Hingham Board of Health Supplemental Rules and Regulations for septic systems have been or can be met or (ii) the Sewer Department that there exists available capacity in the applicable sewer district, in either case, to support the total number of bedrooms proposed for the lot inclusive of the accessory dwelling unit. **The property is located in the North Sewer District and connected to public sewer service. The Sewer Department confirmed via an email dated December 22, 2022 that there is capacity within the District to serve a combined four bedrooms. The floor plan submitted shows four bedrooms on site, including the one bedroom proposed in the ADU.**
- e. Only one accessory dwelling unit shall be permitted within a single family dwelling and per lot so that the total number of dwelling units per lot shall not exceed two. **The total number of dwelling units on the lot will not exceed two.**
- f. In Residence District D and in Business Districts A and B accessory dwelling units are only permitted in preexisting nonconforming single-family dwellings. **Not applicable. The property is located in Residence District A.**

The By-Law also includes a number of dimensional and design requirements with which the proposed plan complies. These include the following:

- a. The architectural character of a detached single-family dwelling shall be maintained. **Per the floor plans submitted by the Applicant, the proposed ADU will be located in the garage addition. Half of the garage will be the ADU, the other half will be a single bay garage. The ADU will not alter the architectural character of the property.**
- b. All stairways accessing an accessory dwelling unit above the ground floor of a single-family dwelling shall be enclosed within the exterior walls of the single-family dwelling. **All stairways accessing the second story portion of the ADU are interior to the dwelling.**
- c. The maximum area of an accessory dwelling unit shall be the lesser of 750 square feet or 30% of the gross floor area of the principal dwelling. For this calculation, the gross floor area shall be as defined in Section VI of this By-Law. **The proposed ADU, at 750 SF, complies.**
- d. An accessory dwelling unit shall not be created by any extension of a nonconforming building dimension, including the front, side or rear yard setback. **The ADU is being created within a attached garage where all of the setbacks conform.**

- e. Any new entrance for the accessory dwelling unit or principal dwelling shall be located to the side or rear of the single-family dwelling. **There is a sliding door located at the rear of the ADU. Interior access between the ADU and the principal dwelling will also be provided.**
- f. Water and sewer utilities serving the accessory dwelling unit shall not be metered separately from the principal dwelling. **There will be shared metering of water and sewer service.**
- g. Additional or modified landscaping, fences or other buffers may be required to protect abutting properties from potential negative visual or auditory impacts of the accessory dwelling unit. **There will be no negative visual or auditory impacts resulting from the ADU that would require mitigation. The design of the addition is consistent with that of the existing dwelling and surrounding neighborhood.**
- h. The parking requirement for an accessory dwelling unit is one space per bedroom in addition to the minimum required parking spaces for a single-family dwelling. **The single-family home requires 2 parking spaces. The proposed ADU has 1 bedroom, which requires 1 parking space. The combined parking requirement is therefore 3 spaces. They plan depicts 7 parking spaces, which exceeds the minimum required.**
- i. An accessory dwelling unit may not have more than two (2) bedrooms. **The ADU will have 1-bedroom.**

FINDINGS:

Based on the information submitted and presented during the hearing, and the deliberations and discussions of the Board during the hearing, the Board made the following findings in accordance with the Special Permit Approval Criteria under Section I-H, 2:

1. Use of the property is in harmony with the general purpose and intent of the Zoning By-Law. **The proposed Accessory Dwelling Unit is in harmony with the purposes and intent of the By-Law because this is an allowed accessory residential use in a residential district. The proposed secondary unit will not affect the public health, safety, or welfare.**
2. The proposed use complies with the purposes and standards of the relevant sections of the By-Law. **The project, which creates an additional housing unit for family members with diverse housing needs, without altering either the character of the principal dwelling or the neighborhood, advances the purposes specified in Section V-K. Additionally, the Accessory Dwelling Unit meets all eligibility, dimensional, and design requirements.**

3. The specific site is an appropriate location for the proposed use and is compatible with the characteristics of the surrounding area. **The exterior of the structure will maintain the appearance of a single-family home, consistent with both the architectural style of the existing modern style, single-family dwelling, and the character of the neighborhood.**
4. The use as developed and operated will create positive impacts or the potential adverse impacts will be mitigated. **There will be no adverse impacts associated with the proposed Accessory Dwelling Unit. Additional housing will be created with no impact on the neighborhood.**
5. There will be no nuisance or serious hazard to vehicles or pedestrians. **There is sufficient parking on site, including one space within the existing attached garage, to serve both the principal dwelling and Accessory Dwelling Unit. There will be no nuisance or hazard to vehicles or pedestrians resulting from the creation of an Accessory Dwelling Unit.**
6. Adequate and appropriate facilities exist or will be provided for the proper operation of the proposed use. **Adequate facilities will be provided to accommodate the addition of the ADU. The principal dwelling has three bedrooms; the ADU will add a fourth and the applicant has confirmed there is enough sewer capacity with the DPW.**
7. The proposal meets accepted design standards and criteria for the functional design of facilities, structures, stormwater management, and site construction. **The proposed Site Plan is stamped by a registered engineer and meets accepted standards.**

DECISION

Upon a motion made by Paul K. Healey and seconded by Jed Ruccio, the Board voted unanimously as follows:

That the application by Sarah C. Hanlon, Trustee of the Sarah C. Hanlon Family 2013 Trust for a Special Permit A1 under §§ III-A, 1.8.9 and V-K of the By-Law to construct an Accessory Dwelling Unit at 138 Nokomis Road in Residence District A is hereby granted, subject to the following conditions:

1. The work shall be completed in accordance with the approved plans and representations made during the public hearing and shall be stamped by a registered architect.
2. The space on the second floor of the ADU, entitled on the plans "Utility Room", is not to be converted into habitable space and become a part of the ADU; it (the "Utility Room") can be used as part of the primary dwelling.

3. In accordance with Section V-K, 5, this special permit is subject to the following general conditions:
- a. The owner of the single-family dwelling shall occupy either the principal dwelling or the accessory dwelling unit as the owner's primary residence. Temporary absences of the owner for a period of not more than nine months in the aggregate in any twelve month period and active military service of the owner for any length of time shall not be deemed a violation of this requirement provided that the dwelling units may only be occupied by family members of the owner during the owner's absence.
 - b. The owner shall recertify annually, by submission of a notarized letter to the Building Commissioner that the owner will continue to occupy either the primary dwelling or the accessory dwelling unit as the owner's primary residence, except for a bona fide temporary absence as provided above in subsection 5.a.
 - c. Upon the sale or other conveyance or transfer of a single-family dwelling which has been issued a permit for an accessory dwelling unit, if the new owner wishes to maintain the special permit for the accessory dwelling unit use, such new owner must, within thirty (30) days of such transfer, submit a notarized letter to the Building Commissioner certifying that the new owner will occupy one of the dwelling units as the new owner's primary residence and comply with the other conditions of the accessory dwelling unit use.
 - d. Neither the principal dwelling nor the accessory dwelling unit may be sold or otherwise conveyed or transferred separately from the other.

For the Board of Appeals,



Robyn S. Maguire, Chair
March 13, 2023

This decision shall not take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed since the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded with the Plymouth County Registry of Deeds and/or the Plymouth County Land Court Registry, and indexed in the grantor index under the name of the record owner or is recorded and noted on the owner's certificate of title.