

FALMOUTH ZONING BOARD OF APPEALS

ADMINISTRATIVE DETERMINATION

SPECIAL PERMIT NO: 141-05

APPLICANT/OWNER: MARK V. GARNER of East Falmouth, Massachusetts

SUBJECT PROPERTY: 46 Edmar Road, East Falmouth, Massachusetts
Assessor's Map: Map 18, Section 03, Parcel 006, Lot 168

DEED/CERTIFICATE: Book 27389 / Page 230

SUMMARY: Removal of Special Permit #141-05

PROCEDURAL HISTORY

1. Under a date of October 14, 2005, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-38 I. of the Code of Falmouth to create an accessory apartment within the single-family dwelling on subject property known as 46 Edmar Road, East Falmouth, MA.
2. A duly advertised public hearing was opened on December 7, 2005, and said public hearing was terminated on February 8, 2006, wherein the Board made a decision to Grant the Special Permit with conditions based on the criteria of said bylaw.
3. In April of 2017, Town Meeting voted Article 7 (Annual Town Meeting - approved by Attorney General in June of 2017) to allow an accessory apartment as a by-right use, without affordable restrictions, if it is constructed within or attached to a single-family dwelling on the same property.
4. On May 5, 2017, Mr. Garner (Applicant) requested that the Board of Appeals remove the Special Permit #141-05 and conditions relative to the accessory apartment from subject property known as 46 Edmar Road in East Falmouth.
5. The new bylaw and the criteria for an accessory apartment approved by Town Meeting in April of 2017 replaces bylaw Sections 240-23 I. and 240-38 I. in their entirety, which previously required a special permit and allowed the accessory apartment contingent upon certain conditions.
6. Therefore, Special Permit #141-05, which allowed the accessory apartment, subject to certain conditions set forth in said decision of special permit, is no longer required in the Code of Falmouth (Section 240-23 I. and 240-38 I. – Zoning Bylaws) for subject property.

7. Notwithstanding the foregoing, the accessory apartment approved in #141-05 shall be maintained in accordance with the new bylaw (Section 240-38 I.) as voted at Town Meeting in April of 2017 and approved by the Attorney General on June 14, 2017.
8. The dissolution of Special Permit #141-05 as set forth herein, is not intended to, and does not eliminate, any obligation of the Applicant to comply with any approval requirements of the new bylaw that may be applicable as of the date hereof, or which may become applicable in the future, including, but not limited to, the receipt of site plan approval from the Planning Board.

At an open meeting held on September 14, 2017, the Board voted unanimously to allow the dissolution of Special Permit #141-05 based on the new bylaw (Section 240-38 I.) approved by Town Meeting vote in April 2017.



Terrence J. Hurrie, Vice Chairman, Board of Appeals

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