

DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 011-18
APPLICANT: JAMES GORMLEY of Canton, MA
OWNER(S): James Gormley and Ellen Gormley of Canton, MA
DEED/CERTIFICATE: Certificate 195498 – Land Plan 33675-A
SUBJECT PROPERTY: 700 West Falmouth Highway, West Falmouth, MA
Map 24, Section 18, Parcel 003, Lot 000
SUMMARY: Special Permit Granted with Conditions

Procedural History

Under a date of February 12, 2018 the Applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 of the Code of Falmouth to rebuild the pre-existing nonconforming accessory shed structure on subject property located at 700 West Falmouth Highway, West Falmouth, Massachusetts.

A public hearing was opened on April 5, 2018 and terminated on April 5, 2018. Notice was duly given as required by Section 11, Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.

Board Members sitting: Chairman Kenneth Foreman, Vice Chairman Terrence J. Hurrie, Acting Clerk Ed Van Keuren, Member Paul Murphy and Alternate Robert Dugan sitting as voting member. Minutes of the hearing are on file in the Board of Appeals office.

The applicant was present at the hearing to discuss the proposed rebuilding of the existing shed on subject property.

Letters/E-mails from Abutters/Interested Parties

None

Letters/E-mails/Information from Applicant/Representative(s)

None

Letters/Referrals/E-mails from Town Departments

02/20/2018 Referral submitted to the file from Planning Department staff with no comment
02/20/2018 Referral submitted to the file from Director of Assessing with no comment

02/20/2018 Referral submitted to the file from the Water Department with no comment

02/21/2018 Referral submitted to the file from the Historical Committee that states: *Located in West Falmouth Historic District and will need a Certificate of Appropriateness if building a new accessory structure. We have not received an application as of 2/21/2018.*

03/19/2018 Referral submitted to the file from Town Engineering Department with standing comments and a recommendation to add dry wells, rain garden or other stormwater measure for the roof

Note: ZBA sent Referral requests to: Assessors, Building Department, Conservation Commission, Engineering Department, Board of Health, Fire Department, Planning Department, Historical Commission, Board of Selectmen and Water Department

Plans submitted by Applicant/Applicant's Representative

“Plot Plan for #700 West Falmouth Highway” prepared for William Aliski in Falmouth, MA as drawn by Falmouth Engineering, Inc. dated September 15, 2011 and revised on 9/21/2011 – plan is stamped and dated by Michael J. Borselli, PE and with a Board date ‘received’ stamp of February 12, 2018; and

“Existing Shed Remodel” consisting of four pages of hand drawn floor plans and elevations with a Board date ‘received’ stamp of February 12, 2018.

Hearing:

Mr. Gormley was present and explained to the Board that he would like to take the shed down to studs and rebuild it, including a bathroom. He explained that he was granted a permit in 2012 but didn't have the money then to take on the rebuilding. He said he uses the shed as an office and would like to keep a bathroom in it (see plan with existing water and septic line to shed).

The Board discussed plans with Mr. Gormley and asked about the Historical Commission. Mr. Gormley stated he is not in the Historic District as the shed is in the rear of the property and outside of the historic overlay. (It is noted that the neighborhood, including across the West Falmouth Highway is within the West Falmouth Historic District.) Zoning Administrator Budrow noted that a building permit requires sign off by the Historic District prior to issuance of a building permit.

Chairman Foreman asked for any public comment in support or opposition of the proposed project. There was no public comment.

Member Van Keuren made a motion to close the hearing. Member Hurrie seconded the motion. Motion carried 5 – 0.

Chairman Foreman closed the hearing.

Findings:

The Board of Appeals, after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

The subject property located at 700 West Falmouth Highway in West Falmouth contains 11,570 square feet of Business 3 and Residential B zoned land. The Applicant applied under Section(s) 240-3 of the Code of Falmouth to renovate/re-build the pre-existing nonconforming shed on subject property including a bathroom. The dwelling on subject property has a nonconforming front and side yard setback; the shed has a nonconforming side yard setback of 3' and a rear setback of 8.9' – both require a 10' setback pursuant to Section 240-68 A. of the Code of Falmouth. The Applicant intends to renovate the shed and use it as an office seasonally.

Section 240-3 C. of the Code of Falmouth allows the Board of Appeals to approve a special permit to extend, alter or change a pre-existing non-conforming structure or use if the Board deems said change is not substantially more detrimental than what exists.

The Board finds that the proposed renovation/re-build to the pre-existing nonconforming accessory shed structure on subject property is not substantially more detrimental than what currently exists. The Board further finds that the accessory shed structure will remain accessory only to the primary single-family dwelling use on subject property and the nonconforming setbacks of said shed will remain as existing and not be increased. Furthermore, the Board finds that the Applicant gave testimony at the previous 2012 hearing that there will be no heat installed and the water line will be drained at end of each summer; there is no intent to have any cooking facilities or sleeping accommodations within the shed. (See previous Special Permit #16-12 submitted to the file.)

The Board finds that the proposed renovation/re-build of the accessory shed structure on subject property will not adversely impact the visual character of the neighborhood, including any view or vista. The Board further finds that the subject property is within the Historic overlay off West Falmouth Highway and that the subject property, along with other properties off West Falmouth Highway are within the Registered Historic District (see map submitted to file). Furthermore, the Board finds that the 'Plot Plan' submitted to the file did not show the Historic District zone on subject property and it did not note that the subject property is within said Registered Historic District.

The Board finds there will be no adverse impact on traffic flow or safety by the granting of this permit as it will not be used for sleeping and it will remain accessory to the primary dwelling. The Board further finds that the accessory shed structure will not be rented out separately from the main dwelling structure.

The Board finds that the proposed, as it is relevant, meets the criteria set forth in Section 240-216 of the Code of Falmouth.

The Board finds through testimony by the Applicant/Owner that there is no intent whatsoever to install any cooking facilities or sleeping accommodations within the shed.

The Board finds there are adequate utilities to the site including town water.

There is no decision of the Planning Board to consider, as this proposal is not subject to review by the Planning Board under Site Plan Review.

This Board finds there will be no effect on the adequacy of the supply of affordable housing as this property has neither been designated for nor represented as affordable housing.

The Board has weighed the beneficial and adverse effects of the proposed renovation/re-build of the accessory shed structure on subject property and finds that the beneficial effects of granting this permit outweigh any negative effects there may be. The Board further finds that the granting of this permit will be in harmony with the purpose and intent of the Bylaw.

Member Murphy made a motion to Grant the Special Permit with conditions. Member Hurrie seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted **5 – 0 to Grant the Special Permit** to James Gormley (herein referred to as Applicant) under Section(s) 240-3 of the Code of Falmouth to rebuild and renovate the pre-existing nonconforming accessory shed structure on subject property located at 700 West Falmouth Highway, West Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The renovation of the accessory shed structure, height of shed, setbacks, lot coverage and use of the shed shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Plot Plan for 700 West Falmouth Highway” prepared for William Aliski in Falmouth; drawn by Falmouth Engineering, Inc., Sheet 1 of 2, dated September 15, 2011 – revised 9/21/11 and with a Board date ‘received’ stamp of February 12, 2018; and
 - “Existing Shed Remodel” – hand drawn plan that includes floor plan and elevation of shed (4 pages) with a Board date ‘received’ stamp of February 12, 2018.
2. The applicant shall apply to the Falmouth Historic Commission prior to the issuance of a building permit.
3. The subject accessory shed structure shown on “Plot Plan” noted in Condition 1 above shall remain accessory to the primary use of the existing single-family dwelling and shall not be rented separate from said dwelling.
4. There shall be no cooking facilities of any kind allowed in the subject accessory shed structure. Cooking facilities not allowed shall include, but not limited to, a stove or oven, microwave oven or hot plate.

5. There shall be no bedroom or sleeping accommodations created within the subject accessory shed structure.
6. There shall be no heat installed within the subject accessory shed structure.
7. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.
8. This permit shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days has elapsed after the decision had been filed in the office of the Town Clerk with no appeal being filed, or an appeal has been filed within such time, is recorded in Barnstable Registry of Deeds. (Any person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.)
9. This permit shall lapse three (3) years from the date on which this decision is filed in the Town Clerk's office if a substantial use of the Special Permit has not sooner commenced except for good cause as determined by the Board of Appeals.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: **011-18**

Applicant: **JAMES GORMLEY of Canton, MA**

Subject Property: **700 West Falmouth Highway, West Falmouth, MA
Map 24, Section 18, Parcel 003, Lot 000**

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: **5 – 0 to Grant the Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.**




Terrence J. Hurrie, Vice Chairman, Board of Appeals

RECEIVED

APR 13 2018

FALMOUTH TOWN CLERK



Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.