

**FALMOUTH ZONING BOARD OF APPEALS
FINDINGS AND DECISION**

SPECIAL PERMIT NO: 059-18

APPLICANT/OWNER: ELLEN B. ITO of Hatchville, MA

SUBJECT PROPERTY: 48 Shady Lane, Hatchville, Massachusetts
Assessor's Map: Map 16 Section 03 Parcel 020 Lot 014

DEED/CERTIFICATE: Book 30839 / Page 219

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of July 16, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-162 F. of the Code of Falmouth to allow a Home Occupation on subject property known as 48 Shady Lane, Hatchville, MA.
2. Notice was duly given as required by Section 11 of 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.
3. A duly advertised public hearing was opened on September 6, 2018.
4. The public hearing was closed on September 6, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Paul Murphy and Associates Gerald Potamis and Robert Dugan sitting as voting members, made a decision to Grant the Special Permit with conditions. Minutes of the hearing(s) are on file in the Board of Appeals.
5. The applicant was present at the hearing and reviewed and discussed proposed Home Occupation and plans with the Board.
6. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

None

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

None

Letters/Referrals/E-mails from Town Departments

07/18/2018 Referral submitted to the file from the Planning Department staff with no comment

- 07/19/2018 Referral submitted to the file by Falmouth Fire Rescue Department with no comment
- 07/19/2018 Referral submitted to the file by the Water Department with no comment
- 07/19/2018 Referral submitted to the file from Director of Assessing that notes property includes Lots 14 and 19
- 08/03/2018 Referral submitted to the file from the Board of Health Agent with no comment
- 08/13/2018 Referral submitted to the file from Conservation Commission with no comment
- 08/14/2018 Referral submitted to the file from the Town Engineering Department with standard comments and a recommendation to add drywells, rain garden or other stormwater measure for the new garage roof

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

Plans submitted by Applicant/Applicant’s Representative

“Plan of Proposed Garage” prepared for Ellen Ito #48 Shady Lane in East Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated April 3, 2018 – plan is stamped and signed by Joel R. Kubick, PLS and has a Board date ‘received’ stamp of July 16, 2018; and

Architectural plans for Ellen Ito 48 Shady Lane Falmouth, MA as drawn by David McLean Architectural Design Studio and consisting of:

Drawing No. 1 of 6 – ‘Elevations’ dated 3/17/18 with a Board date ‘received’ stamp of July 16, 2018;

Drawing No. 2 of 6 – ‘Footings & Slab’ dated 3/17/18 with a Board date ‘received’ stamp of July 16, 2018; and

Drawing No. 3 of 6 – ‘Floor Plans’ dated 3/17/18 with a Board date ‘received’ stamp of July 16, 2018.

Hearing:

Ms. Ito informed the Board that she currently is renting commercial space but would like to be able to work at her home. She explained that there is an existing garage on her property that she is going to raze and reconstruct and would like to have her workshop on the second floor of said garage. She explained she removes precious metals from castings and also makes jewelry. The space on the second floor of the garage is less than 30% of the living space within her dwelling on subject property (see information sheet dated 7/22/2018 “Narrative for Home Occupation application at 48 Shady Lane, East Falmouth”). Ms. Ito informed the Board that she has no employees and no customers will be coming to her property regarding the proposed Home Occupation. She noted that there will be deliveries made to the site but no more than that for a single-family dwelling.

The Board discussed plans with Ms. Ito. All concerns and questions were addressed.

Chairman Hurrie asked for any public comment in support or opposition of the proposed project.

There was no public comment.

Member Potamis made a motion to close the hearing. Member Murphy seconded the motion. Motion carried 5 - 0.

Chairman Hurrie 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 48 Shady Lane in East Falmouth contains 32,774 square feet of Agricultural AA zoned land that is located within the Great Pond Coastal Pond Overlay District. The applicant applied under Section(s) 240-162 F. (1) of the Code of Falmouth to allow a Home Occupation on a substandard sized lot. The property is zoned Agricultural AA which requires 80,000 square feet, therefore the subject property is sub-standard size for this zoning district and is appropriately before this Board under said bylaw.

Section 240-162 of the Code of Falmouth – “Home occupations.” – Sub-section F. (1) states: *Any home occupation which otherwise meets the applicable provisions of § 240-162, except that it utilizes a lot which does not conform to the minimum lot dimensional requirements, shall require a special permit from the Board of Appeals.*

The Board finds that the applicant has submitted information that shows the square footage of the dwelling and the square footage of the accessory garage structure to be used and that said space to be utilized for the home occupation will be no more than 30% of the living space of the principal dwelling on subject property. The Board further finds that the proposed home occupation where, according to her testimony, she will be the only employee, will be located within the garage structure behind the dwelling with no exterior storage of material, no signage for proposed home occupation, and therefore the appearance of a single-family dwelling will be maintained. Furthermore, the Board finds that the proposed home occupation does not involve any creation of noise, vibration, fumes or any other interference or impact from any equipment that would impact a neighbor.

The Board finds that the proposed second floor space within the detached accessory garage structure will be heated to accommodate the home occupation proposed. The Board further finds that the first floor of the garage will be used solely as a garage for storage of vehicle(s) or storage of personal items. The Board further finds through testimony by the applicant that there is no intent to create any habitable space within the detached accessory garage structure represented herein.

In addition to the above findings, the Board finds that the proposed home occupation will be in harmony with the general purpose and intent of this chapter and does include consideration set forth in Section 240-216 of the Code of Falmouth as follows:

A. The site is adequate in terms of size for the proposed home occupation as the application meets the criteria of Section 240-162 A. through E. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and a home occupation is allowed as an accessory use according to Section 240-162 of the Code of Falmouth.

C. There will be no impact on traffic flow and safety as there is no increase in the use of subject property as the applicant will be the sole employee for the home occupation, and as she stated at the hearing, there will be no customers coming to the property to conduct any business regarding the home occupation.

D. The visual character of the subject property will be unchanged except for the improved garage structure; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system will be unaffected by this special permit approval. See referral submitted by the Board of Health Agent with no comment.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site.

G. The proposed home occupation discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. There was no Site Plan Review required by the Planning Board and the referral submitted to the file from the Planning Department had no comment.

I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformities stated herein.

J. The approval of this special permit does not include any affordable housing.

The Board of Appeals has weighed the effects of the proposed home occupation on subject property as discussed herein 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 Zoning Bylaw.

Member Murphy made a motion to Grant the Special Permit with conditions. Member Potamis 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 Ellen B. Ito (herein referred to as Applicant) under Section(s) 240-162 F. (1) of the Code of Falmouth to allow a home occupation on subject property known as 48 Shady Lane, Hatchville, Massachusetts. This special permit shall be subject to the following conditions:

1. The home occupation and use of detached accessory garage structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Plan of Proposed Garage” prepared for Ellen Ito #48 Shady Lane in East Falmouth, MA as drawn by Holmes and McGrath, Inc. – Sheet 1 of 1 dated April 3, 2018 – plan is stamped and signed by Joel R. Kubick, PLS and has a Board date ‘received’ stamp of July 16, 2018; and

- Architectural plans for Ellen Ito 48 Shady Lane Falmouth, MA as drawn by David McLean Architectural Design Studio and consisting of:

Drawing No. 1 of 6 – ‘Elevations’ dated 3/17/18 with a Board date ‘received’ stamp of July 16, 2018;

Drawing No. 2 of 6 – ‘Footings & Slab’ dated 3/17/18 with a Board date ‘received’ stamp of July 16, 2018; and

Drawing No. 3 of 6 – ‘Floor Plans’ dated 3/17/18 with a Board date ‘received’ stamp of July 16, 2018.

2. There shall be no employees except for the applicant for the home occupation business conducted on subject property.
3. The home occupation will be located on the second floor of the proposed accessory detached garage structure represented herein. The home occupation space shall be limited to no more than 30% of the living space of the principal dwelling on subject property.
4. There shall be no habitable space created within the detached accessory garage structure discussed herein.
5. 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.
6. The Applicant shall meet the requirements of the DPW Water Division.
7. 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.)
8. 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: **059-18**

Applicant: **ELLEN B. ITO of Hatchville, Massachusetts**

Subject Property: **48 Shady Lane, Hatchville, Massachusetts
Map 16 Section 03 Parcel 020 Lot 014**

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 Hurrie, Chairman, Board of Appeals

RECEIVED

SEP 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.