

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

SPECIAL PERMIT NO: 066-18

APPLICANT/OWNER: JERRY E. ROGERS of R & P FALMOUTH LLC of Rochester, MA

SUBJECT PROPERTY: 689 Gifford Street, Falmouth, Massachusetts
Assessor's Map: Map 34 Section 01 Parcel 003 Lot 000

DEED/CERTIFICATE: Book 29972 / Page 025

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of June 31, 2018, the applicant applied to the Zoning Board of Appeals for a modification of Special Permits #57-07, #15-08 and #80-10 pursuant to Section(s) 240-3 C., 240-204 B. and 240-72.3 C. (8) of the Code of Falmouth to eliminate the Budget Truck/vehicle rental operation and in its place construct an additional storage building on subject property known as 689 Gifford Street, Falmouth, Massachusetts.
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 20, 2018.
4. The public hearing was closed on November 1, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, Acting Clerk Ed Van Keuren, Member Paul Murphy and Associate Robert Dugan (sitting as voting member) 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 hearings and reviewed and discussed proposed 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)

07/31/2018 Letter submitted to the file from the applicant to the Board of Appeals regarding need in the Town of Falmouth for the proposed application to eliminate the truck rental and construct a new storage building

07/31/2018 Letter submitted to the file from the applicant to the Board of Appeals regarding parking for proposed structure and unit mix on subject property for proposed additional storage use

Letters/Referrals/E-mails from Town Departments

08/03/2018 Referral submitted to the file from Director of Assessing with no comment

08/03/2018 Referral submitted to the file from Board of Health Agent with no comment

08/03/2018 Referral submitted to the file by Water Superintendent with no comment

08/06/2018 Referral submitted to the file by Falmouth Fire Rescue Department in the form of a letter to Board of Appeals dated August 3, 2018 four (4) requirements/recommendations

08/13/2018 Referral submitted to the file by Conservation Commission with no comment

09/20/2018 ZBA staff submitted previous special permits for subject property and use into the file [#57-07, #15-08 and #80-10] [added to file on 10/31/18 Original Use Variance #1201 and #2912]

09/20/2018 ZBA submitted to the file a copy of a memo from Town Planner to Zoning Administrator regarding Site Plan Review and modification to Cape Cod Commission (Planner attached copies of referral from Town Engineering Department, previous Site Plan Review Decisions and plot plans previously used in review of property)

09/20/2018 Email communication between Zoning Administrator and Jonathan Idman of Cape Cod Commissioner regarding verification of comments from Town Planner for review of subject property

09/27/2018 Email from Zoning Administrator to Town Engineer regarding site visit to clear up confusion and issues in referral from Engineering

09/28/2018 Memo submitted to the file from Engineering Department regarding comments discussed at site visit to subject property by applicant, Zoning Administrator and Town Engineer

10/30/2018 The Planning Department submitted to the file a draft decision for Site Plan Review – the decision is an approval with conditions

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

“Site Plan Proposed New Building” prepared for Jerry Rogers 689 Gifford Street Falmouth, Mass. as drawn by Warwick & Associates Inc. on a plan dated 6/13/2018 with

a final revision date of 10/15/2018 – plan is stamped, signed and dated by John Landers-Cauley, PE on 10/16/2018 and Gary S. Labrie, PLS on 10/16/2018 – the plan has a Board date ‘received’ stamp of October 23, 2018; and

“Falmouth Self Storage 689 Gifford Street Falmouth, MA” as drawn by Jeffrey M. Metcalfe, RA – Drawing A1 dated July 24, 2018 with a Board date ‘received’ stamp of July 31, 2018.

Hearing – September 20, 2018:

Jerry Rogers of R & P Falmouth LLC reviewed the existing storage facility on subject property that was approved through special permit in 2007 (eliminating the auto salvage use and structure to construct a self-storage facility), 2008 special permit was modified to allow Budget Rental Trucks to be staged on site in the rear corner of subject property and in 2010 the Board allowed modification to special permit allowing for 12 additional vehicle rentals on said property. Mr. Rogers explained that he will be eliminating the Budget Rental Truck operation which would eliminate the use on the paved parking area at the southeast corner of the property and where he is now requesting to construct a new storage building on said paved area thereby not increasing lot coverage on the lot. He explained that the building will be the same color and height as the existing building, and that he has been working with the Fire Department regarding alarms and fire suppression. He noted that the existing loading dock will be removed to address the Fire Department’s concern regarding turning radius. Mr. Rogers added that he is currently in front of the Planning Board for Site Plan Review and is awaiting drainage calculations to continue that review.

The Board discussed plans with Mr. Rogers. All concerns and questions were addressed.

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

Paul Miskovsky of 393 Brick Kiln Road spoke in support of the proposed storage building noting that Mr. Rogers operates a good business and that storage units such as this are needed in the Town of Falmouth.

John Netto of Brick Kiln Road stated supported of the proposed project noting that Mr. Rogers has helped the Town of Falmouth with storage issues.

David Pires of 701 Gifford Street (immediate abutter) stated his support of the applicant – he lives next door and has had no issues with the existing and proposed.

The Board discussed a date in the future to continue as the applicant is scheduled for another hearing before the Planning Board for Site Plan Review.

Member Foreman made a motion to continue the hearing to October 18, 2018 at 6:30 PM. Member Potamis seconded the motion. Motion carried 5 – 0.

Hearing – October 18, 2018:

A request from the applicant for continuation to November 1, 2018 was submitted to the file as the applicant was still before the Planning Board for Site Plan Review.

Hearing – November 1, 2018:

Mr. Rogers was present and stated that he has received a draft decision for approval from the Planning Board and believes a copy was submitted from the Town Planner to the ZBA.

The Board discussed the draft Site Plan Review decision, the proposed removal of Budget Truck Rental, proposed additional storage building and parking.

Member Foreman made a motion to close the hearing. Member Potamis 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 689 Gifford Street contains 4.08 acres of Agricultural B zoned land that is located partially in a Wild Life Corridor, is located within the Water Resource protection Overlay District and is in the Little Pond Coastal Pond Overlay District. The subject property was previously a pre-existing nonconforming auto salvage yard, auto repair, auto painting operation, used vehicle sales and Budget Truck Rental through a use variance issued in 1959, #1201, which has been modified for uses through the years under Special Permits #2912, #57-07. The applicant purchased the property and in 2007 requested and received approval through Special Permit #57-07 to eliminate the auto salvage, car sales, car repair, auto painting and Budget Truck Rental operations from site and construct a two-story, 80,000 square foot climate controlled storage facility with parking; Special Permit #15-08 modified Special Permit #57-07 allowing Budget Rental truck operation on site; and through Special Permit #80-10 a modification of previous special permits allowed for 12 additional rental vehicles (automobiles only) on subject property (operating currently by Hertz). The applicant is now requesting modification of previous special permits to eliminate the Budget Rental Truck operation that is located on a paved portion of the lot at the southeasterly corner of subject property and to construct an additional storage building that will be two (2) stories with a footprint of 4,900 square feet.

The Board finds that the applicant applied under Section 240-204 B. of the Code of Falmouth as the subject property previously operated a use variance allowing an auto salvage, auto repair and auto painting business and since has modified said permit and use variance as noted above. The Board further finds that the applicant is properly before the Board of Appeals pursuant to Section 240-204 B. of the Code of Falmouth to modify the previously approved special permits and use variance.

The Board finds that the applicant applied under Section 240-72.3 C. (8) of the Code of Falmouth as it requires any use or activity that renders impervious area on a lot within the Water Resource Protection Overlay District of more than 15% or 2,500 square feet shall require a special permit by the Board of Appeals.

The Board finds that the applicant is appropriately before the Board of Appeals under Section 240-72.3 C. (8) of the Code of Falmouth. The Board further finds that the applicant has appropriate drainage on site that has been reviewed by the Town Engineering Department; and that the current application in front of this Board has been reviewed and found to be appropriate by the Town Engineering Department.

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 additional climate controlled storage facility building to be located in the rear (southeast corner of property) will not be substantially more detrimental than what currently exists as the Board feels that the elimination of the Budget Rental Truck operation on subject property will lessen trips to and from the site, will improve the site appearance as the trucks tended to park at the front of the facility and add a use of additional storage capability that the Town is in need of. The Board further finds that the applicant and the current storage facility is always maintained and kept free of any debris on site and landscape is maintained as well.

The Board finds that the applicant is amenable to the recommendations made by the Falmouth Fire Rescue Department in the August 3, 2018 letter to the Board of Appeals. The letter specifically notes that the building will be required to have a Knox box on the new building for after-hours access and to have the new building tested for adequate radio signal strength for emergency responders. The Board further finds that the request from Falmouth Fire Rescue Department to install a sprinkler system for the new building is required through the Massachusetts State Building Code. Furthermore, the Board finds that the applicant revised the "Site Plan" showing removal of the loading dock to insure the turning radii and road width at the rear of the existing building and in front of proposed building is adequate for emergency vehicles access as requested by Falmouth Fire Rescue Department.

The Board finds that the applicant met with the Town Engineering Department on site to review deficiencies required in previous special permits, which include, revising handicap parking at front of building to include the loading access aisle, changes to existing curb cut and elimination of abandoned curb cut and to create a sidewalk off Gifford Street in front of subject property. The Board further finds that the parking on subject property for existing storage facility, the remaining twelve (12) vehicle rental operation (Budget Truck Rental eliminated – currently Hertz) and the proposed storage building is appropriate, including the handicap parking spaces.

In addition to the above findings, the Board finds that the proposed addition of a two-story building with a footprint of 4,900 square feet as a climate controlled storage facility 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 additional building as there will be no increase to the total lot coverage on subject property and the lot coverage by structures proposed is still below the 25% allowed by special permit through the Board of Appeals.

B. The site is suitable for the proposed use as the property is zoned Agricultural B and the uses on said property have been through benefit of Use Variance and Special Permits.

C. There will be no impact on traffic flow and safety as there is no increase in the number of bedrooms on the property and there is no change in the location of the existing driveway on site.

D. The visual character of the subject property will be improved as there will be no large Budget trucks parked in the front yard of subject property and the proposed building will not impact the character as it will be located at the rear corner of said property so there is no impact on the neighborhood's visual character; and there is no impact on any view or vista from the roadway or abutting properties.

E. The sewage disposal system is in place and a referral submitted to the file by the Board of Health with no comment on the proposed modification to add another storage facility building on site.

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

G. The proposed additional building on site as discussed and represented herein will have no effect on the supply of affordable housing in Falmouth.

H. There was Site Plan Review by the Planning Board and a draft decision for approval for said Site Plan Review was submitted to the file and this Board has reviewed the decision and taken it into consideration for approval of the modification of previous special permits and use variance for subject property.

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 elimination of Budget Truck Rental operation and construction of a new climate controlled storage facility building 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 Potamis made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 Modification of Special Permit and Use Variance** to Jerry Rogers of R & P Falmouth LLC (herein referred to as Applicant) under Section(s) 240-3 C., 240-204 B. and 240-72.3 C. (8) of the Code of Falmouth to eliminate the Budget Truck Rental operation and in its place construct an additional storage building on subject property known as 689 Gifford Street, Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The location and construction of proposed storage building, all setbacks, lot coverage, height of proposed building, parking, curb cuts and use of proposed building shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - "Site Plan Proposed New Building" prepared for Jerry Rogers 689 Gifford Street Falmouth, Mass. as drawn by Warwick & Associates Inc. on a plan dated 6/13/2018 with a final revision date of 10/15/2018 – plan is stamped, signed and dated by John Landers-

Cauley, PE on 10/16/2018 and Gary S. Labrie, PLS on 10/16/2018 – the plan has a Board date ‘received’ stamp of October 23, 2018; and

- “Falmouth Self Storage 689 Gifford Street Falmouth, MA” as drawn by Jeffrey M. Metcalfe, RA – Drawing A1 dated July 24, 2018 with a Board date ‘received’ stamp of July 31, 2018.
2. There shall be no more Budget Truck Rental operation on subject property. All Budget Trucks shall be removed from the site prior to issuance of a building permit for the proposed additional climate controlled storage facility represented herein.
 3. There shall be no more than twelve (12) rental vehicles (currently as Hertz rental) located on subject property at the southwest corner of subject property.
 4. There shall be no derogation from conditions set forth in Special Permits #57-07, #15-08 and #80-10, except as stated and conditioned 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 Board herein adopts the Site Plan Review Decision and conditions for project represented herein.
 7. The Applicant shall meet the requirements of the DPW Water Division.
 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: **066-18**

Applicant/Owner: **JERRY ROGERS of R & P FALMOUTH LLC of Rochester, MA**

Subject Property: **689 Gifford Street, Falmouth, Massachusetts
Map 34 Section 01 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 Modification of previous Use Variance and Special Permits noted herein as represented to the Board, based on the Findings stated herein and with the above stated Conditions.



Terrence Hurrie, Chairman, Board of Appeals

RECEIVED

NOV - 2 2018

FALMOUTH TOWN CLERK

one 10:45am

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.