

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

SPECIAL PERMIT NO: 033-18

APPLICANT/OWNER: DAVID J. MACCINI and ELIZABETH E. MACCINI of No. Falmouth, MA

SUBJECT PROPERTY: 39 North Hill Drive, North Falmouth, Massachusetts
Assessor's Map: Map 02 Section 07 Parcel 005 Lot 022

DEED/CERTIFICATE: Book 24618 / Page 346

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of April 25, 2018, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-23 G. (1) of the Code of Falmouth to construct an attached three-bay garage on subject property known as 39 North Hill Drive, North 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 May 24, 2018.
4. The public hearing was closed on May 24, 2018, wherein the Board consisting of Chairman Kenneth Foreman, Vice Chairman Terrence Hurrie, Clerk Kimberly Bielan, Member Ed Van Keuren and Alternate Gerald Potamis (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 represented at the hearing by Geoffrey Bright, who 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)

05/02/2018 Email from Mr. Bright clarifying referral from Water Department, stating that there is no plan to run water to the new garage proposed (existing garage becoming habitable space)

Letters/Referrals/E-mails from Town Departments

- 04/26/2018 Email referral from Wastewater Superintendent stating no Town sewer to subject property existing
- 04/26/2018 Referral submitted to the file from Planning Department staff with no comment
- 04/30/2018 Referral submitted to the file from Director of Assessing with no comment
- 05/02/2018 Referral submitted to the file from Water Department that states: *Will need application for water service if running water to building*
- 05/03/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 05/07/2018 Referral submitted to the file from Town Engineering Department with standard comments and noting that they recommend adding drywells, rain garden or other stormwater measure for the roof
- 05/09/2018 Referral submitted to the file from Conservation Commission Agent with no comment
- 05/10/2018 Referral submitted to the file from Board of Health Agent with no comment

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 for David & Elizabeth Maccini 39 North Hill Road, North Falmouth, Mass” as drawn by Warwick & Associates Inc. on a plan dated 6/14/2011 with a final revision date of 01/04/2018 – plan is stamped, signed and dated on 01/25/2018 by Gary S. Labrie, PLS and has a Board date ‘received’ stamp of April 25, 2018;

“Sewage Disposal System Design” prepared for 39 North Hill Road, Falmouth, Massachusetts on a plan drawn by Warwick & Associates Inc. dated 06/14/2011 – plan is stamped and signed by Jack Landers-Cauley, PE and has a Board date ‘received’ stamp of April 25, 2018; and

“39 North Hill Dr, North Falmouth, MA – Reconstruction Addition” – hand drawn and computer generated plans consisting of nine (9) pages showing existing and proposed elevations, floor plans and framing plans for proposed three-bay garage – plans are not authored or dated – but all have an April 25, 2018 Board date ‘received’ stamp.

Hearing:

Geoffrey Bright was present to review the proposed three-bay garage addition attached to the existing dwelling and garage. He explained that the existing garage space will be converted to habitable space

allowing for the family expansion and that the proposed three-bay garage will be attached. He noted that there will be no habitable space above the proposed garage – just storage area with no access from second level to the dwelling; and there will be no basement under proposed garage addition.

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

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

Lorraine Piscopo of 65 Heather Lane stated concerns with the subject property in that there continue to be mounds of dirt directly across from her. She stated she would not be able to see proposed garages.

Member Bielan made a motion to close the hearing. Member Van Keuren 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 39 North Hill Road contains 28,700 square feet of Residential B zoned land that is located within the Megansett Harbor Coastal Pond Overlay District and the Wildlife Corridor – Foraging Area 2 – Overlay District. The applicant applied under Section(s) 240-23 G. (1) of the Code of Falmouth to construct a three-bay garage attached to the existing dwelling and garage. The subject property is in compliance with all setbacks pursuant to Section 240-68 A. and B. of the Code of Falmouth, all lot coverage is in compliance with Section 240-69 A. of the Code of Falmouth and the lot has two front yards, which under Section 240-13 of the Code of Falmouth, the applicant can request the Building Commissioner to designate a front yard, the other front yard becoming a side yard for intent of zoning purposes. It is herein noted that the applicant has not pursued a front yard designation from the Building Commissioner. The existing attached garage will be converted to habitable space and the proposed three-bay garage will be attached to converted structure. The second level of the proposed garage is for storage space only and there will be no basement under the proposed garage.

Section 240-23 G. (1) of the Code of Falmouth allows the Board of Appeals to approve a special permit to allow for a garage space for more than two (2) cars if the subject property is less than 30,000 square feet in size or if the footprint of the garage is more than 900 square feet or 50% of the footprint of the principal structure – whichever is less.

The Board finds that the proposed attached three-bay garage structure is for more than two (2) cars and is more than 900 square feet in size and less than 50% of the floor area of the dwelling (including the conversion of existing garage to habitable space). The Board further finds that the application is appropriately before the Board and applicant's representative has submitted complete application and plans for Board's review. Furthermore, the existing attached garage structure will be converted to habitable space through renovation of the existing dwelling and said garage space; and the proposed three-bay garage represented herein will become the only garage structure on subject property.

The Board finds that the proposed attached three-bay garage structure will not have any habitable space created within it either on the first level or the second level of said proposed structure. The Board further finds through testimony by the applicant's representative that the second level will be used for storage only and will not have access to the dwelling whatsoever – access will only be on ground level of the garage structure. Furthermore, the Board finds through testimony and plans submitted, that the proposed three-bay garage structure will be constructed on a slab and will not have any basement area.

The Board finds through testimony by the applicant's representative that there is no intent to have plumbing or heating installed within the proposed three-bay garage.

The Board finds that there were concerns stated at the hearing by an abutter regarding time table and status of existing site work being done that is not affiliated with the proposed three-bay garage as represented. The Board further finds that the abutter stated at the hearing that she has no concern with the proposed garage as she will not be able to see it from her property.

In addition to the above findings, the Board finds that the proposed attached three-bay garage structure at 39 North Hill Road in North Falmouth 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 three-bay garage structure as there are no nonconforming setbacks existing or proposed and the lot coverage is in compliance with Section 240-69 A. of the Code of Falmouth.

B. The site is suitable for the proposed use as the property is zoned residential and the proposed three-bay garage structure is an allowed accessory use to the primary use (dwelling) on subject property.

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 approved through this special permit.

D. The visual character of the subject property will be changed and there does not appear to be any 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 will be unaffected through this special permit approval. However, the process for a building permit includes review and sign-off by the Board of Health prior to an issuance of a building permit in the event of a septic issue.

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

G. The proposed dwelling expansion and an attached three-bay garage 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 attached three-bay garage structure at 39 North Hill Road in North Falmouth 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 Bielan 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 Special Permit** to David J. Maccini and Elizabeth E. Maccini (herein referred to as Applicant) under Section(s) 240-23 G. (1) of the Code of Falmouth to construct an attached three-bay garage to the existing/renovated single-family on subject property known as 39 North Hill Road in North Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The conversion of the existing attached garage structure, construction of the attached three-bay garage structure, all setbacks, height of structure, lot coverage and use of the proposed three-bay garage structure and dwelling shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
 - “Site Plan for David & Elizabeth Maccini 39 North Hill Road, North Falmouth, Mass” as drawn by Warwick & Associates Inc. on a plan dated 6/14/2011 with a final revision date of 01/04/2018 – plan is stamped, signed and dated on 01/25/2018 by Gary S. Labrie, PLS and has a Board date ‘received’ stamp of April 25, 2018;
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 - “39 North Hill Dr, North Falmouth, MA – Reconstruction Addition” – hand drawn and computer generated plans consisting of nine (9) pages showing existing and proposed elevations, floor plans and framing plans for proposed three-bay garage – plans are not authored or dated – but all have an April 25, 2018 Board date ‘received’ stamp.
2. There shall be no habitable space whatsoever created within the proposed attached three-bay garage structure herein approved. The second level of the garage will be used for storage only.
3. Testimony by the applicant’s representative was that there will be no heat or plumbing within the proposed garage approved herein.
4. 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.
5. 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.)

6. 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:

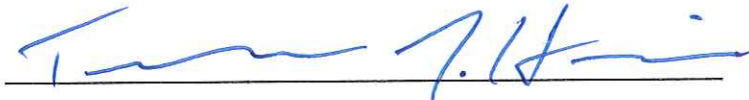
Special Permit Number: **033-18**

Applicant: **DAVID J. MACCINI and ELIZABETH E. MACCINI of North Falmouth, MA**

Subject Property: **39 North Hill Road, North Falmouth, Massachusetts
Map 02 Section 07 Parcel 005 Lot 022**

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

JUN - 5 2018

FALMOUTH TOWN CLERK

AD @ 8:30 am

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.