

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

SPECIAL PERMIT NO: 093-18

APPLICANT/OWNER: SUSAN J. AUGUSTA of East Falmouth, Massachusetts

SUBJECT PROPERTY: 366 Hayway Road, East Falmouth, Massachusetts
Assessor's Map: Map 17 Section 01 Parcel 035 Lot 008

DEED/CERTIFICATE: Book 29646 / Page 127

SUMMARY: Special Permit Granted with Conditions

PROCEDURAL HISTORY

1. Under a date of October 10, 2018, the applicant filed with the Zoning Board of Appeals for a Special Permit pursuant to Section 240-38 G. (1)(b) of the Code of Falmouth to construct a detached garage creating space for more than two (2) cars on subject property known as 366 Hayway Road, East 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 November 29, 2018.
4. The public hearing was closed on November 29, 2018, wherein the Board consisting of Chairman Terrence Hurrie, Vice Chairman Kenneth Foreman, Acting Clerk Paul Murphy and Associates Gerald Potamis and 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 represented at the hearing by Attorney Christopher G. Lebherz who reviewed and discussed the request for special permit 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

11/29/2018 Attorney Lebherz submitted a letter at the hearing from Mary E. Kastin and William J. Kastin of 372 Hayway Road, East Falmouth that states support of the proposed project – letter signed by both Mary and William Kastin and dated 11/29/2018

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

None

Letters/Referrals/E-mails from Town Departments

- 10/11/2018 Referral submitted to the file from Planning Department staff with no comment
- 10/15/2018 Referral submitted to the file from Water Department Superintendent with no comment
- 10/16/2018 Referral submitted to the file from Director of Assessing noting full bath and kitchen in pool house (see building permit submitted to file)
- 10/18/2018 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 10/22/2018 Referral submitted to the file from Conservation Commission with no comment
- 11/01/2018 Referral submitted to the file from Town Engineering Department with standard comments and a recommendation to add drywells, rain garden or other stormwater measure for the proposed barn.

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

“Proposed Pool & Barn Plan” prepared for Susan J. Augusta as drawn by Cape & Islands Engineering dated September 12, 2018 – plan is stamped and signed by Matthew C. Costa, PLS and with a Board date ‘received’ stamp of October 10, 2018; and

“Susan Augusta 366 Hayway Falmouth, MA” architectural plans drawn by David McLean Architectural Design Services consisting of Drawing 1 of 3 ‘Elevations’ dated 10/23/2018 and Drawing 2 of 3 ‘Foundation’ dated 10/23/18 – drawings were not stamped and have a Board date ‘received’ stamp of October 31, 2018.

Hearing:

Attorney Lebherz reviewed the 3.3 acre subject property and the proposed detached 36’ x 52’ garage structure noting that the applicant wishes to store a boat and vehicles within the subject structure. He reviewed the lot coverage noting that it will remain well below the maximum percentage allowed in this agricultural zoned district. He stated that there will be no plumbing/water installed but that the applicant is intending to have electrical and heat within the garage structure. He further commented that there is no intent to create any habitable space within the proposed garage structure.

The Board discussed plans with Attorney Lebherz. All concerns and questions were addressed.

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

William J. Kastin of 372 Hayway Road spoke in support of the proposed project noting that the applicant has improved the property

Roberta Rowe of 342 Hayway Road spoke in support of the proposed project

Member Foreman 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 366 Hayway Road in East Falmouth contains 3.3 acres of Agricultural A zoned land that is located within the Green Pond Coastal Pond Overlay District, the Water Resource Protection Overlay District and the Wild Life Migration Overlay District. The applicant applied under Section(s) 240-38 G. (1)(b) of the Code of Falmouth to construct a detached garage structure for more than two (2) cars that is more than 900 square feet in size. The existing structures on subject property are in compliance with all setbacks under Sections 240-68 A. and B. of the Code of Falmouth and the lot coverage on said property is also in compliance under Section 240-69 A. of the Code of Falmouth. The subject property has an existing detached garage that was previously a garage structure and was converted to a pool/recreation house through a building permit issued in May of 2017. The structure does have a kitchen and full bathroom. The proposed detached garage structure will have a height of no more than 22' as allowed as maximum height pursuant to Section 240-70 of the Code of Falmouth for an accessory structure.

Section 240-38 G. (1)(b) of the Code of Falmouth allows the Board of Appeals to approve a special permit allowing garage space for more than two (2) cars if the square footage of said garage is more than 900 square feet in size.

The Board finds that the proposed detached garage structure is appropriately before the Board as it is shown on the plans to be 52' x 36 (approximately 1,872 square feet of first floor space) with no second floor level. The Board further finds that the applicant's intent is to use the structure for vehicle, boat and personal storage with no intent to use for habitable space. Furthermore, the Board finds that the applicant is proposing electricity and heat within the proposed garage structure.

The Board finds that there was an existing detached garage on said property that was converted in a pool house/recreation use through a building permit issued in May of 2017 and that said structure does have a full bathroom and kitchen located within it. The Board further finds that the intent of the applicant's use of the structure is not to be used as a dwelling or sleeping accommodations, but strictly for recreational purposes and not as a dwelling or sleeping accommodations.

In addition to the above findings, the Board finds that the proposed 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 detached garage structure as it will meet all setback requirements pursuant to Sections 240-68 A. and B. of the Code of Falmouth; it shall not have a height greater than 22' as required for an accessory structure under Section 240-70 of the Code of

Falmouth; and the lot coverage by structures on subject property will remain well below the maximum percentage allowed for an Agricultural zoned property under Section 240-69 A. of the Code of Falmouth.

B. The site is suitable for the proposed detached garage structure for vehicle and personal storage use as the property's primary use is residential and a garage is an allowed incidental accessory use.

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 unchanged as the garage structure will not be seen from the roadway, 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 by the proposed detached garage structure as there are no bathrooms or bedrooms within said structure.

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

G. The proposed detached garage structure 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 detached garage structure 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 Foreman made a motion to Grant the Special Permit with conditions. Member Dugan 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 Susan J. Augusta (herein referred to as Applicant) under Section(s) 240-38 G. (1)(b) of the Code of Falmouth to construct a detached garage structure for more than two (2) cars on subject property known as 366 Hayway Road, East Falmouth, Massachusetts. This special permit shall be subject to the following conditions:

1. The detached garage structure, its height, all setbacks, lot coverage and use of subject garage shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

“Proposed Pool & Barn Plan” prepared for Susan J. Augusta as drawn by Cape & Islands Engineering dated September 12, 2018 – plan is stamped and signed by Matthew C. Costa, PLS and with a Board date ‘received’ stamp of October 10, 2018; and

“Susan Augusta 366 Hayway Falmouth, MA” architectural plans drawn by David McLean Architectural Design Services consisting of Drawing 1 of 3 ‘Elevations’ dated 10/23/2018 and Drawing 2 of 3 ‘Foundation’ dated 10/23/18 – drawings were not stamped and have a Board date ‘received’ stamp of October 31, 2018.

2. There shall be no habitable space created within the proposed detached garage structure approved herein.
3. 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.
4. 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.)
5. 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: **093-18**

Applicant/Owner: **Susan J. Augusta of East Falmouth, Massachusetts**

Subject Property: **366 Hayway Road, East Falmouth, Massachusetts
Map 17 Section 01 Parcel 035 Lot 008**

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.

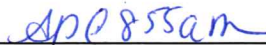


Terrence Hurrie, Chairman, Board of Appeals

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DEC - 4 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.