

**FALMOUTH ZONING BOARD OF APPEALS**

**FINDINGS AND DECISION**

**SPECIAL PERMIT NO:** 085-17

**APPLICANT/OWNER:** CASSANDRA MELLON MILBURY & E. VAN R. MILBURY  
of Ligonier, PA

**SUBJECT PROPERTY:** 87 Penzance Road, Woods Hole, Massachusetts  
**Assessor's Map:** Map 49 Section 02 Parcel 015 Lot 000

**DEED/CERTIFICATE:** Book 2136 / Page 5800

**SUMMARY:** Special Permit Granted with Conditions

**PROCEDURAL HISTORY**

1. Under a date of October 2, 2017, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-23 G. (1)(b) of the Code of Falmouth to construct a detached four-car garage with more than 900 square feet of space and a building height of 24.8' on subject property known as 87 Penzance Road, Woods Hole, 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 16, 2017.
4. The public hearing was closed on November 16, 2017, wherein the Board consisting of Acting Chairman Terrence Hurrie, Acting Clerk Associate Robert Dugan, Member Ed Van Keuren, Member Paul Murphy and Associate Gerald Potamis (Associates 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 represented at the hearing by Greg Jones, Project Architect, 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)**

None

### **Letters/Referrals/E-mails from Town Departments**

- 10/02/2017 Referral submitted to the file from Planning Department staff with no comment
- 10/03/2017 Referral submitted to the file from Director of Assessing noting property includes Lots 10, 15 and 16B
- 10/03/2017 Referral submitted to the file from Falmouth Fire Rescue Department with no comment
- 11/08/2017 ZBA received a memo from Conservation Commission Agent Mark Kasprzyk that states: *The proposed location is outside Conservation Commission jurisdiction though most of the parcel is within resource area buffer. If the work stays outside the wetland buffer to coastal banks then no filing is needed.*

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**

“Plot Plan for #87 Penzance Road” prepared for E. Van R. Milbury in Falmouth, MA as drawn by Falmouth Engineering, Inc. on a plan dated September 6, 2017 – Sheet 1 of 1 (plan) is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/29/2017 with a Board date ‘received’ stamp of October 2, 2017; and

“Proposed Garage for E. Van R. Milbury The Long House 87 Penzance Road Woods Hole, MA” as drawn by Gregory Jones – Architect consisting of Drawing Number SK-01 dated September 20, 2017 ‘Proposed Floor Plan’ and Drawing Number Sk-02 dated September 20, 2017 ‘Proposed Elevations’ – both Drawings have a Board date ‘received’ stamp of September 26, 2017.

#### Hearing:

Greg Jones reviewed the existing site that consists of 10.25 acres of Residential AA zoned land and has a single-family dwelling that is 144.6’ from the front property line off Penzance Road. The proposal is to construct a four-car garage that will have a ½ story on the second level and will have a height of 24.8’. He explained that the applicant would like to have room for family cars when in residence. The plans show a half-bath and washer and dryer on first level of garage; and the second floor (with stairway access from first floor) will be used as storage. The applicant would like the capability of using the washer/dryer for items used to keep the cars clean so as not to have to use the dwelling for such things. A septic system is proposed for the garage use as the septic for the dwelling is quite a ways from the garage location.

The Board discussed plans with Jones. 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 Gerald Potamis made a motion to close the hearing. Member Ed Van Keuren 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 87 Penzance Road in Woods Hole contains 10.25 acres of Residential AA zoned land that is not located within any overlay district. The applicant applied under Section(s) 240-23 G. (1)(b) and 240-70 D. of the Code of Falmouth to construct a four-car garage with a height of 24.8'. The property has no nonconforming dimensional requirements. The applicant applied under Section 240-23 G. (1)(b) to allow a garage for more than two (2) cars with square footage of said garage over 900 square feet, which requires a special permit pursuant to the Code of Falmouth. The applicant also applied under Section 240-70 D. of the Code of Falmouth for approval of a special permit to allow a detached accessory structure (proposed garage) to have a height more than the required 18' height, but not more than 25' in height if on a lot with two (2) or more acres. The applicant also required filing under Section 240-68 A. (8) of the Code of Falmouth to allow an accessory structure in a front yard more than 50' from the front property line. The proposed detached garage (accessory structure) is in the front yard with a proposed setback of 75' from the front property line. The proposed garage structure will have a second level that will be used for storage (see Drawing SK-01 noted herein). The applicant is proposing the garage to allow for storage of vehicles when in residence on subject property. The garage contains a one-half bath and a laundry closet. The laundry closet will be used to wash cloths used in maintaining the vehicles so as not to take them into main dwelling for cleaning. There will be heat in the proposed garage structure with no habitable space proposed.

Section 240-23 of the Code of Falmouth – “Special permit uses.” – Sub-section G. (1)(b) allows the Board of Appeals to approve a special permit for a garage for more than two (2) cars and that has a footprint of more than 900 square feet in size.

The Board finds that the proposed detached four-car garage will be an accessory use to the primary use of the dwelling and that said garage will be approximately 1,580 square feet in size. The Board further finds that the proposed detached garage structure will have a second level for storage only and shall not be used as habitable space.

Section 240-70 of the Code of Falmouth – “Maximum building height.” – Sub-section D. allows the Board of Appeals to approve a special permit for an accessory structure, located on lots two (2) acres or more, to be no more than 25' in height. It further requires that no accessory apartment shall be allowed and that the subject property where the accessory structure and dwelling are located shall not be subdivided below two (2) acres.

The Board finds that the subject property consists of 10.25 acres, greater than two (2) acre requirement to allow for a height of an accessory structure to be no more than 25' in height. The Board further finds that the applicant has submitted plans showing that the proposed garage will have a height of no more than 25'. Furthermore, the Board finds that the applicant understands the requirement of not subdividing the property below two (2) acres on the portion that the dwelling and accessory garage approved herein is located.

Section 240-68 of the Code of Falmouth – “Setbacks.” – Sub-section A. (8) allows the Board of Appeals to issue a special permit for an accessory structure in a front yard, but no closer to the street frontage than 50 feet.

The Board finds that the proposed garage is within a front yard and pursuant to Section 240-68 A. (8) the Board of Appeals may approve an accessory structure in a front yard as long as it is no less than fifty feet (50') from the front property line off the roadway. The Board further finds that the proposed garage location is 75' from the front property line off Penzance Road. Furthermore, the Board finds that the proposed garage will be well buffered and screened from the roadway as there is existing vegetation from the roadway to the proposed garage location (see “Plot Plan”).

The Board further finds that in 2017, Town Meeting approved an Article that considerably changed the accessory apartment bylaws in Section 240-23 I. and Section 240-38 I. of the Code of Falmouth. The Board further finds that if the applicant is desirous of creating an accessory apartment in the approved detached garage represented herein, the applicant will be required to apply to the Planning Board for Site Plan Review and the Zoning Board of Appeals for a special permit to allow an accessory apartment within the detached accessory structure.

In addition to the above findings, the Board finds that the proposed detached four-car garage on subject property 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 four-car garage as there are no nonconforming setbacks or lot coverage issues and the proposed will not create any new nonconforming setbacks or nonconforming lot coverage.

B. The site is suitable for the proposed use as the property is zoned residential and the proposed detached garage is an allowed accessory structure use to a primary dwelling use on a 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 on site.

D. The visual character of the subject property will be unchanged as the detached garage proposed will be buffered/screened by plantings existing on subject property; and there is no impact on any view or vista from the roadway or abutting properties.

E. The plans show a proposed septic system for the detached garage as represented herein. A sign off by the Board of Health on appropriateness of the proposed system will be completed prior to issuance of a Building Permit.

F. There are adequate utilities to subject property by virtue of an existing dwelling on site. However, the Applicant will have to contact the Town Water Department regarding updating of water system.

G. The proposed detached garage structure with no habitable space included within it, as 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 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 Van Keuren 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 Cassandra Mellon Milbury and E. Van R. Milbury (herein referred to as Applicant) under Section(s) 240-23 G. (1)(b), 240-70 D. and 240-68 A. (8) of the Code of Falmouth to construct a detached four-car garage in a front yard more than 50 feet from front property line with a height of 24.8' on subject property known as 87 Penzance Road, Woods Hole, Massachusetts. This special permit shall be subject to the following conditions:

1. The construction of the detached four-car garage, its location, all setbacks, lot coverage, height of garage structure and use of garage structure shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:
  - “Plot Plan for #87 Penzance Road” prepared for E. Van R. Milbury in Falmouth, MA as drawn by Falmouth Engineering, Inc. on a plan dated September 6, 2017 – Sheet 1 of 1 (plan) is stamped, signed and dated by Gary S. Labrie, P.L.S. on 9/29/2017 with a Board date ‘received’ stamp of October 2, 2017; and
  - “Proposed Garage for E. Van R. Milbury The Long House 87 Penzance Road Woods Hole, MA” as drawn by Gregory Jones – Architect consisting of Drawing Number SK-01 dated September 20, 2017 ‘Proposed Floor Plan’ and Drawing Number Sk-02 dated September 20, 2017 ‘Proposed Elevations’ – both Drawings have a Board date ‘received’ stamp of September 26, 2017.
2. There shall be no habitable space on the second floor of proposed detached garage.
3. The lot shall not be subdivided below two (2) acres where the dwelling and detached garage structure are located.
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. The Applicant shall meet the requirements of the DPW Water Division.
6. 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.)
7. This permit shall lapse two 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: **085-17**

Applicant: **CASSANDRA MELLON MILBURY & E. VAN R. MILBURY  
of Ligonier, PA**

Subject Property: **87 Penzance Road, Woods Hole, Massachusetts  
Map 49 Section 02 Parcel 015 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, Acting Chairman, Board of Appeals**

**RECEIVED**

**NOV 22 2017**

**FALMOUTH TOWN CLERK**

**Date Filed With Town Clerk**

*11/22/17 Tam*

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.