



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

SPECIAL PERMIT NO: 082-19

OWNER: Mellon Trustee Bank NA – c/o Scott Gonaware Trustee, P.O. Box RKM, Ligonier, PA

APPLICANT: Cassandra Mellon Milbury and E. Van Milbury

P.O. Box RKM, Ligonier, Pennsylvania

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. On November 25, 2019 an application was filed with the Zoning Board of Appeals requesting a Special Permit, pursuant to Section(s) 240-23 G.1 (b), 240-70D and 240-68A.(8) of the General Code of the Town of Falmouth, to modify Special Permit # 085-17, to allow habitable space above the detached garage at 87 Penzance Road, Woods Hole, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the most recent tax list.
3. The previous Zoning Board of Appeals case for the Premises was a Special Permit granted on November 16, 2017, and filed with the Town Clerk on November 22, 2017, for a detached garage with storage space, and no habitable space above.
4. The advertised public hearing was opened on January 23, 2020. Board members present included Terrence J. Hurrie, Robert B. Dugan, Edward Van Keuren, Gerald Potamis, and Mary Barry.

5. Gregory Jones, architect, 31 High Street, Dartmouth, Massachusetts, appeared before the Board, representing the Applicant.

6. The public hearing was closed on January 23, 2020, following a motion made by Mr. Dugan, seconded by Mr. Van Keuren, and unanimously voted. Minutes of the hearing(s) are on file with the Zoning Board of Appeals.

7. The following documents and information are on file in the office of the Zoning Board of Appeals at Town Hall, as set forth below:

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

- Gregory Jones, architect/ representative for applicant filed an application for special permit, filing fee, owner authorization and appropriate plans; application was filed with the Town Clerk on November 25,2019
- Five (5) pictures of existing detached garage structure

Letters/Referrals/E-mails from Town Departments

- Referral from Planning dated November 26,2019 – no comment
- Referral from Fire dated November 26,2019 – no comment
- Referral from the Health Department dated December 2,2019 signed by Scott McGann, Health Agent stating: *A 4 bedroom septic system was installed for this accessory / garage*
- Referral from Assessors dated December 2, 2019, signed by Trisha Favulli, Director of Assessing: *Includes lots 10,15,16B; Assessor's request prior to final sign off*
- Referral from Engineering, signed by Scott Schluter P.E. dated December 10, 2019 stating: *This application was reviewed for impacts to public right of ways and public utilities. Penzance Road is a private right of way in this area. No site work is proposed. We recommend the following condition be included in any approval (or similar): "the Applicant shall post the addresses for the both that garage and the house on this parcel per §99-1 Affixing of legible numbers required; time limit for compliance." Given the multiple driveways on this lot, and the distance this accessory detached structure is from the main house, we have assigned the garage the address 87A Penzance Road. Attached is the assignment sheet sent out. We request that any approval includes a condition to post a sign at the island between the main house driveway and the garage driveway indication #87 is to the right and #87A is to the left.*
- Referral from Conservation dated December 27,2019 – no comment
- Previous special permit #085-17 submitted to file by ZBA staff

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

Letters/E-mails from Abutters/Interested Parties: none

Plans submitted by Applicant/Applicant's Representative

- 'Plot Plan' for #87 Penzance Road prepared for E. Van R. Milbury in Falmouth dated September 6, 2017 as drawn by Falmouth Engineering Inc., plan is stamped and signed by Gary S. LaBrie, PLS 9/29/17;
- 'Proposed Garage – First and Second Floor Plans' dated December 13, 2017 sheet A-01 for E. Van R. Milbury – The Long House 87 Penzance Road Woods Hole, Ma as drawn by Gregory Jones – Architect 31 High Street, South Dartmouth, Massachusetts;
- 'Proposed Renovations – Proposed Floor Plans' dated November 5, 2019 sheet SK-01 for E. Van R. Milbury – The Long House 87 Penzance Road Woods Hole, Ma as drawn by Gregory Jones – Architect 31 High Street, South Dartmouth, Massachusetts; and
- 'Proposed Renovations – Proposed Floor Plans' dated November 5, 2019 sheet SK-02 for E. Van R. Milbury – The Long House 87 Penzance Road Woods Hole, Ma as drawn by Gregory Jones – Architect 31 High Street, South Dartmouth, Massachusetts

Hearing:

The Notice of Hearing and referrals were read into the record.

Appearing before the Board was Gregory Jones, with the builder. Mr. Jones reported that the original garage contemplated only storage above. However, he reported that the owners would like to finish the space, to provide additional finished living area for guests. Mr. Jones noted that the space is large, and typically only occupied 2 months of the year. To finish the space, they are planning a single bedroom, an area for a murphy bed, a single bathroom, and a wet bar. The original approval for the 4-car garage, with bathroom, and laundry on the ground level will remain the same.

No one further appeared on the application. The hearing closed, following a motion made by Mr. Dugan, seconded by Mr. Van Keuren, and unanimously voted.

Findings:

The subject property, 87 Penzance Road, Woods Hole, Massachusetts (the "Premises") comprises 10.25 acres of Single Residence AA zoned land, and was granted a Special Permit in 2017 to construct a detached garage for more than 2 cars, exceeding 900 square feet in area, with a height less than 25 feet, as an accessory structure in the front yard. Mr. Jones explained that the space above the garage will be finished to provide for a single bedroom, area for a murphy bed, a single bath and a wet bar. Mr. Jones testified that the space will never be rented, will not comprise an apartment, as there are no cooking facilities. The only changes will be to the interior use of the space.

In addition to the above findings, the Board finds that the proposed dwelling will be in harmony with the general purpose and intent of the By-Law, and does include consideration, as set forth in Section 240-216 of the Code of Falmouth.

The Zoning Board of Appeals weighed the effects of finishing the space above the garage to be habitable space at the Premises, as discussed herein, and found that the beneficial effects of granting this special

permit outweigh any negative effects there may be. The Board further found that the granting of this special permit will be in harmony with the purpose and intent of the Zoning By-Law, and that the change, extension or alteration shall not be substantially more detrimental to the neighborhood, and will not nullify or substantially derogate from the intent or purpose of the By-Law.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under Section(s) 240-23 G.1 (b), 240-70D, and 240-68 A. (8) of the General Code of Falmouth, following a motion made by Mr. Potamis, and seconded by Mr. Van Keuren, voted unanimously, to grant a modification to Special Permit # 085-17, to allow finishing of the space above the garage, at 87 Penzance Road, Woods Hole, Massachusetts (the "Premises"). This special permit shall be subject to the following conditions:

Conditions:

1. The construction shall be substantially as shown on:
 - 'Plot Plan' for #87 Penzance Road prepared for E. Van R. Milbury in Falmouth dated September 6, 2017 as drawn by Falmouth Engineering Inc., plan is stamped and signed by Gary S. LaBrie, PLS 9/29/17;
 - 'Proposed Garage – First and Second Floor Plans' dated December 13, 2017 sheet A-01 for E. Van R. Milbury – The Long House 87 Penzance Road Woods Hole, Ma as drawn by Gregory Jones – Architect 31 High Street, South Dartmouth, Massachusetts;
 - 'Proposed Renovations – Proposed Floor Plans' dated November 5, 2019 sheet SK-01 for E. Van R. Milbury – The Long House 87 Penzance Road Woods Hole, Ma as drawn by Gregory Jones – Architect 31 High Street, South Dartmouth, Massachusetts; and
 - 'Proposed Renovations – Proposed Floor Plans' dated November 5, 2019 sheet SK-02 for E. Van R. Milbury – The Long House 87 Penzance Road Woods Hole, Ma as drawn by Gregory Jones – Architect 31 High Street, South Dartmouth, Massachusetts
2. The address for the Premises, as well as the assigned address for the garage, shall be posted as provided in the 12/10/19 Engineering referral, at the island between the main house driveway and garage driveway, to provide wayfinding for any emergency responders. The address shall also be posted, in accordance with §99-1, on the garage, prior to the final sign off on the building permit.
3. The property owner shall provide for an inspection by the Assessor.
4. The finished space above the garage shall include habitable space, including a single bedroom, an area for a murphy bed, a single bath and a wet bar.
5. The space above the garage may not be rented, nor used as an accessory apartment, and may not contain cooking facilities.
5. Any deviation, no matter how minor, from plans submitted and approved by this Board, shall be submitted to the Board for approval, prior to implementation of said change. The Zoning Administrator may make a determination as to whether the changes are minor in nature, and can be approved

administratively, or whether they will require a hearing for an amendment. Changes made prior to an approval may be subject to a full hearing, and are at risk that the ZBA may deny the request.

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 special permit shall lapse three 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 Zoning Board of Appeals.

8. The Zoning Board of Appeals reserves the right to recall the Applicant, with such notice as the Board deems proper, to discuss any unresolved matters of concern.

Action: The Zoning Board of Appeals, by the signature below, certifies the vote of the Board, as follows, for the above referenced hearing:

Vote: 5 to 0 to grant the Special Permit, as represented to the Board, based on the Findings stated herein, and with the above stated Conditions.

The Zoning Board of Appeals, by the signature below, certifies the vote of the Board:



Terrence J. Hurrie, Falmouth Zoning Board of Appeals

RECEIVED
FEB 14 2020 AM 8:39
TOWN CLERK

Date Filed With Town Clerk