

## **NOTICE OF DECISION OF THE WAREHAM ZONING BOARD OF APPEALS**

### **Petition #38-16**

**Person Appealing: Patricia Moncey**

**Address of Person Appealing: 39 Oak Street, Wareham, MA**

**Subject Property Address: 41 Oak Street, Wareham, MA**

**Subject Property Parcel ID: Assessors Map 39 – Lot T-33**

**Subject Property Owner: Dimitrios and Lefki Aevazelis**

**Subject Property Owner Address: 53 General Cobb Street, Taunton, MA 02780**

**Dates of Public Hearing: September 28, 2016 and October 12, 2016**

**Date of Notice of Decision: October 26, 2016**

### **Procedure:**

The Person Appealing, Patricia Moncey of 39 Oak Street, filed through her attorney, Robert G. Moore, an Appeal of the Certificate of Occupancy issued by the Wareham Building Inspector for the adjacent property at 41 Oak Street. The Zoning Board of Appeals received the following correspondence on this Appeal:

- Appeal of the Building Inspectors' issuance of a Certificate of Occupancy dated August 4, 2016, in the form of a letter from Robert G. Moore, Esq., with attachment of copy of a letter from David Gay, dated March 12, 2013.
- A letter of supplemental information from Robert G. Moore, Esq., dated October 12, 2016, with attachment of copy of excerpt from Webster's Dictionary, 3<sup>rd</sup> Edition.
- Color photo of subject property

The Zoning Board of Appeals provided public notice of the hearing with publication dates of September 1 and September 8, 2016, notices mailed to abutters, and copy for posting by the Town Clerk on September 13, 2016.

The Zoning Board of Appeals opened the hearing and received testimony and comment, then closed the hearing, deliberated, and made findings and made a decision on the Appeal.

### **Findings:**

The Zoning Board of Appeals made the following Findings:

1. The subject property has been improved with a reconstructed residential home and a reconstructed accessory structure in the front yard.
2. The Appeal is for the revocation of the Certificate of Occupancy because of the use of the garage and the location of the 'heat pumps.'
3. The issues before the Board are whether the accessory structure is a "garage," and whether the "heat pumps" are part of the structure and subject to zoning dimensional standards for the structure.
4. The garage is a separate, accessory structure in the front yard of the subject property. It is serviced with electricity but does not have plumbing. The building has a side egress door and an opening for a wide rear door.
5. In use, the garage is not a habitable unit, and may be used to store goods and equipment which are commonly stored in a garage.
6. In common usage, the accessory structure in the front yard is a garage.
7. The 'heat pumps' are air conditioner condensing units, part of the air conditioning of the residence and connected to the residence with fixed electrical service and plumbing service.

8. The 'heat pumps' are attached to the structure, may not be easily moved, and so are considered building "fixtures." As fixtures, the Board finds 'heat pumps' are part of the principal structure and are subject to zoning setback dimensional standards.

Decision:

1. The garage is not a habitable unit, may be used to store goods and equipment commonly stored in a garage, so the Board finds the Appeal does not prevail in the issue of that accessory structure.
2. The 'heat pumps' are a building fixture and subject to setback dimensional requirements of the Wareham Zoning Bylaws.
3. The Board makes no decision on the request for revocation of the Certificate of Occupancy, which is governed by the State of Massachusetts Building Code.

VOTE: Unanimous (4-0-1) By the Wareham Zoning Board of Appeals

Any person aggrieved by this decision of the Zoning Board of Appeals may file an appeal pursuant to the provisions of M.G.L. Chapter 40A, section 17 within twenty (20) days of the filing of this decision in the office of the Town Clerk. If no appeal is taken within the allotted time, the Clerk will so certify.