

NOTICE OF DECISION OF THE WAREHAM ZONING BOARD OF APPEALS

Petitions #38-16 [Reheard]

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 Hearings: First Hearing: July 27, 2016, September 28, 2016, Second Hearing:

October 12, 2016, October 26, 2016, Third Hearing: December 28, 2016, and January 25, 2017

Date of Notice of Decision: February 8, 2017

Procedure:

Within the past year, the Person Appealing, Patricia Moncey of 39 Oak Street, filed two appeals to the Wareham Zoning Board of Appeals [ZBA]; an Appeal of the Building Permit [ZBA file #31-16] and later an Appeal of the Certificate of Occupancy [ZBA file #38-16] as issued by the Wareham Building Inspector for the adjacent property at 41 Oak Street, owned by Dimitrios and Lefki Aevazelis, who recently built on the property.

This current hearing was opened to rehear the Appeal of the Certificate of Occupancy, #38-16. The reasons for rehearing the second Appeal were because of improper notice, the lack of new substance in the Appeal and the lack of jurisdiction of the ZBA over the issue of the Appeal.

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

The Zoning Board of Appeals opened the hearing and received testimony and then turned to Town Counsel, who assisted the ZBA in their deliberation, making findings and decisions on the Appeal, and recommending that the ZBA complete multiple votes.

Findings and Decisions:

1. While the parties disagree whether notice was properly made for the hearing on the second Appeal #38-16, they agree that the hearing notice has been properly made for this current hearing.

DECISION: The ZBA accepts and incorporates the documents and proceedings of the previous hearings on both Appeals into the record of the current proceeding.

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

2. The hearing on the second Appeal, #38-16, provided no new facts from the first hearing.

DECISION: The facts did not change between the three hearings.

VOTE: (3-0-1) By the Wareham Zoning Board of Appeals – Regular member Jan Kendrick abstaining because she was not at the second hearing

3. While the decision on the second Appeal #38-16 found that the heating pump was a structure and the accessory building was a garage, the ZBA made no decision on the request for revocation of the Certificate of Occupancy, which the ZBA noted is governed by the State of Massachusetts Building Code. Since the Appeal was for the Certificate of Occupancy and the decision did not revoke the Certificate of Occupancy, then the conditions of the decision are unenforceable.

DECISION: It was inappropriate for the ZBA to hold the second hearing on Appeal of the Certificate of Occupancy.

VOTE: (3-0-1) By the Wareham Zoning Board of Appeals– Regular member Jan Kendrick abstaining because she was not at the second hearing

4. Moreover, the letter issuing from the Building Inspector for occupancy of a building does not state that the ZBA has the authority to overturn that decision.

DECISION: The ZBA does not have jurisdiction to hear an Appeal of a Certificate of Occupancy.

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

FINAL DECISION:

The Board denies the request for revocation of the Certificate of Occupancy.

VOTE: Unanimous (4-0-0) 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.