

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF PEMBROKE
ZONING BOARD OF APPEALS



Case #30-15

February 24, 2016

DECISION OF THE BOARD OF APPEALS ON THE APPEAL AND PETITION OF JOHN J. PYRCZ, JR. & JOHN J. PYRCZ, JR. AS HE IS CONSERVATOR OF A MINOR.

Premises: 75 Barker Street, Pembroke as shown on Assessors' Map D-11, Lot 30.

Zoning District: Residence District A.

Petitioner: John J. Pyrcz, Jr. & John J. Pyrcz, Jr. as he is a conservator of a minor, c/o Robert W. Galvin Esq, Galvin & Galvin, PC., 10 Enterprise Street, Suite 3, Duxbury, Massachusetts 02332-3315.

Date of Filing Application: December 28, 2015 and December 29, 2015 (amended)

Dates of Public Notice: January 15, 2016 and January 22, 2016

Date of Mailing & Posting Notice: January 15, 2016

Date of Hearing: February 1, 2016

Petition: Appeal of a decision of the Building Inspector dated December 14, 2015 denying the Petitioner a building permit to reconstruct a new single family residence at 75 Barker Street, Pembroke, MA under Section VI, C. Administration, Enforcement and, in the alternative, a special permit to conduct a trade occupation under Section IV, B. 1. and VI, D.

The public hearing was held on Monday, February 1, 2016 at 7:15 p.m. in accordance with proper notice and advertisement. The full Board consisting of Frank Baldassini, Chairman, William Cullity, Vice Chairman, and Frederick Casavant, Alternate, heard the Petitioner's representative, Robert W. Galvin, Esq.. There were many abutters present at the hearing.

Decision: Unanimously granted as to the appeal of Building Inspector's decision; Unanimously approved to allow the withdrawal at the request of the Petitioner, without prejudice of the alternative application for a special permit to conduct a trade occupation.

In the exercise of its discretionary powers, at a regular meeting of the Town of Pembroke Board of Zoning and Building Law Appeals (hereinafter "the Board") held on February 1, 2016, the Board, with members, Frank Baldassini, William Cullity, and alternate member, Frederick Casavant IV, present and voting, voted unanimously (3-0) (1) to grant the petitioners, John J. Pyrcz, Jr. & John J. Pyrcz, Jr. as he is Conservator of a Minor (hereinafter collectively referred to as "Pyrcz") appeal of the decision of the Building Inspector denying a building permit to reconstruct a single family home under Sections VI.C (allowing the construction of the home to proceed and a building permit to issue) and (2) to allow the withdrawal, at the request of the Petitioner, without prejudice of the alternative application for a special permit to conduct a trade occupation at the premises under Section IV.B.1 & VI.D.

The Board bases its decision on the following facts:

1. DESCRIPTION OF PETITIONER, EXISTING PROPERTY AND USES AND DESCRIPTION OF PROPOSED RESIDENCE:

The petitioner, John J. Pyrcz, Jr. & John J. Pyrcz, Jr. as he is Conservator of a Minor, is the owner of the residential property located at 75 Barker Street, Pembroke, Massachusetts, a property formerly owned by Mr. Pyrcz grandmother.

As explained by the owner, Mr. Pyrcz and counsel, the petitioner, owns the single family residence and detached garage located at 75 Barker Street which is located in the Residence District A under the Bylaws.

The property is not located in the Historical District which is subject to the jurisdiction of the town's Historic District Commission. The residence on the structure although sufficiently old enough to qualify as a historic structure under the demolition delay bylaw has already been through the process according to the Building Commissioner provided for under the provisions of bylaw designed to encourage, if possible, historic structures to be preserved.

The garage was previous reconstructed on or after 2012 when Mr. Pyrcz acquired the property and is used by Mr. Pyrcz, his stepbrother, James (who is the minor) as a place where they repair as a hobby vehicles owned by them. The garage was designed with large garage doors and sufficient area for the hobby shared by the owners. The residence on the property as articulated by Mr. Pyrcz is in extremely poor condition, has been infested with rodents, has virtually no insulation causing the owner to pay \$800+/- per month for heating, and cannot be saved or moved at any reasonable expense. The conditions in the home have been observed by representatives of the town who are associated with the historical commission. The proposed home will be a three bedroom colonial with state of the art construction meeting all zoning requirements will be rotated towards Red Barn Road and when completed will occupied by Mr. Pyrcz and his stepbrother who is a senior in high school at present.

The existing home is presently occupied also by Mr. Pyrcz sister, Ashley, and her fiance, Justin, and a friend, George Frazier, who is living temporarily at the home as he is separated.

Each of the persons living at the home have one or more vehicles which are shown in approximately 12-15 photos submitted during the hearing. These vehicles are:

John Pyrcz: 2005 Suzuki Motorcycle, 1988 Ford Mustang & 2006 Ford F350 (being rebuilt in the garage).

James Hill: 2006 GMC 1500

Ashley Pyrcz McNeill: Honda Odyssey Passenger Van (registered in name of fiancé, Justin Anderson)

George Frazier, 1997 Ford F350 (registered in his wife's name)

Mr. Frazier drives a tow truck in connection with his work also shown in a photo and is employed by Andy's Towing in Marshfield. Mr. Frazier is required by the condition of his employment to work 24/7 and bring his tow truck home with him to respond to incidents at any time of day or night. A letter from the owner of Andy's Towing was provided verifying the employment and need for the tow truck.

The petitioners explained that the 1988 Mustang was rebuilt by the Pyrcz after 2012 in the garage and is kept in the garage and displayed at car shows. The 2006 Ford F350 owned by Pyrcz is currently disassembled after it was in an accident and he is rebuilding it now in the garage. The frame work displayed on a picture (on back of a truck) was done off site and any painting work that he has done is also done elsewhere where he can comply with regulations. The Honda Van with front end damage is used by Mr. Pyrcz sister and has been damaged for some time.

The petitioners and counsel deny that they work on cars for money or profit and state they are not looking to engage in any business on the property only their hobby and offered to withdraw their special permit. The petitioners admit that they have friends over to their residence including recently for a barbeque but deny that there was any auto repair business.

The Building Commissioner, George Verry, indicated that he brought this matter to the Board because he observed cars at the property, a tow truck at the property, and vehicles appearing to need repair. The Building Commissioner agreed that he was able to observe Mr. Pyrcz truck being reassembled in the garage and did not disagree that the cars and trucks were all owned or being operated by persons living in the home. The Building Commissioner also agreed that he did not have any evidence there was an auto repair business being conducted from or at the property. Mr. Pyrcz indicated that he actually turned the air compressor located in the garage on and the sound was not unduly loud even at a short distance into the backyard.

Members of the public who were abutters or lived in close proximity also spoke concerning their observations of multiple cars and concerning the desire to maintain the home they believed was historic and should be preserved. No member of the public offered any proof of an auto repair business being conducted on the property.

Attorney Galvin argued that under the bylaw and Zoning Bylaws there was no basis to withhold the permit for the new home because of a zoning violation associated with the garage which violation was also disputed. The provisions of the Zoning Bylaws (Section VI.A.1) do not permit the Building Inspector to withhold a building permit as a result of a zoning violation, unless the construction, alteration or moving of the building would cause a zoning violation and since the home was a use that was permitted by the Zoning Bylaws. The parties were unable at the meeting to locate any general bylaw¹ that allowed the withholding of a permit other than one which allowed withholding permits based on a tax delinquency.

2. MATERIALS SUBMITTED FOR THE RECORD:

- Applications filed with the Town Clerk's Office on December 28/29, 2015 including Notice to Building Inspector with 12/14/15 decision;
- Certified List of Abutters
- Required Filing Fees.
- Letter dated February 1, 2016
- 12-15 Photos of Cars, Motorcycle, Van, Trucks (including Tow Truck) and Interior of Garage
- Letter from Andy's Towing dated 2/1/16
- Plans of the Proposed Home and Existing Garage were displayed but retained by Counsel

The application and notices of public hearings relative thereto, the Board's staff and consultant notes, if any, exhibits and correspondence, the transcript and minutes of all hearings and all other written submissions received in the ordinary course of the proceedings before the Board are incorporated by reference into the record.

4. FINDINGS:

A. The petitioner, John J. Pyrcz, Jr. & John J. Pyrcz, Jr. as he is Conservator of a Minor, is the owner of the residential property located at 75 Barker Street, Pembroke, Massachusetts, a property formerly owned by Mr. Pyrcz grandmother.

B. The subject property which includes an old colonial farmhouse and detached garage is located in the Residence District A under the Zoning Bylaws. The property is not located in the Historical District which is subject to the jurisdiction of the town's Historic District Commission.

C. Although the residence on the structure is sufficiently old enough to qualify as a historic structure under the demolition delay bylaw, the Building Commissioner indicated has already

¹ There was located after the close of the meeting a bylaw provision in the General Bylaws which permits the denial of permits if there is a zoning violation, Gen. Bylaw, (Miscellaneous) §§23, sub 19. This bylaw does not preclude the issuance of a building permit in light of the Board's decision on the appeal.

been through the demolition delay process. The Board accepts the testimony of Mr. Pyrcz that the residence on the property is in extremely poor condition, has been infested with rodents, has virtually no insulation causing the owner to pay \$800+/ per month for heating, and cannot be saved or moved at any reasonable expense. The Board accepts the testimony by Mr. Pyrcz that the conditions in the home have been observed by representatives of the town who are associated with the historical commission.

D. The proposed home displayed on plans exhibited at the meeting will be a three bedroom colonial with state of the art construction meeting all zoning requirements will be rotated towards Red Barn Road and when completed will occupied by Mr. Pyrcz and his stepbrother who is a senior in high school at present.

E. The garage was previous reconstructed on or after 2012 after Mr. Pyrcz acquired the property and is used by Mr. Pyrcz, his stepbrother, James (who is the minor) as a place where they repair as a hobby vehicles owned by them. Mr. Pyrcz and counsel indicated that they do not seek to conduct a business on the property and only asked for a special permit as alternative relief which they offered to withdraw immediately at the beginning of the meeting.

F. The garage was designed with large garage doors and sufficient area for the hobby shared by Mr. Pyrcz and his stepbrother over whom he has custody.

G. The existing home is also presently occupied by Mr. Pyrcz sister, Ashley, and her fiancé, Justin, and a friend, George Frazier, who is living temporarily at the home as he is separated. Each of the persons living at the home have one or more vehicles which are shown in approximately 12-15 photos submitted during the hearing. Mr. Frazier drives a tow truck in connection with his work also shown in a photo and is employed by Andy's Towing in Marshfield. Mr. Frazier is required by the condition of his employment to work 24/7 and bring his tow truck home with him to respond to incidents at any time of day or night. A letter from the owner of Andy's Towing was provided verifying the employment and need for the tow truck.

H. The Board finds that Mr. Pyrcz credibly explained that the 1988 Mustang was rebuilt by Mr. Pyrcz after 2012 in the garage and is kept in the garage and driven and displayed at car shows and that the 2006 Ford F350 owned by John Pyrcz is currently disassembled after it was in an accident and that Mr. Pyrcz is rebuilding it now in the garage.

I. The Board finds that the work being done on the property at present in the garage is in the nature of a hobby and does not constitute an auto repair business and there was no credible evidence of an auto repair business being conducted at the property. The Board accepts that major auto body work and any painting were also done elsewhere.

J. The Board also finds that the detached garage may be used as a place to repair the Pyrcz' cars as long as their hobby does not become an automotive repair business which is not allowed in the zoning district.

K. No member of the public offered any proof of an auto repair business being conducted on the property.

5. REASONS FOR DECISION:

Based on the foregoing findings that there was no zoning violation, the decision of the Building Inspector is overturned and the Building Department shall forthwith issue the Building Permit subject only to customary application, fees and state building code regulations.


The decision to allow the withdrawal of the application for a special permit is reasonable in light of the decision of the Board and intentions' of the parties.

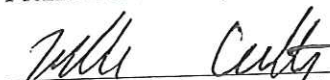
6. CONDITIONS:

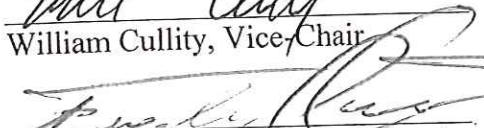
None.

Any judicial appeal from this decision shall be made pursuant to Mass. Gen. L. c. 40A, §17 and any such appeal shall be filed within twenty days from the filing of this decision with the office of the Town Clerk of Pembroke.

PEMBROKE ZONING BOARD OF APPEALS


Frank Baldassini, Member


William Cullity, Vice-Chair


Frederick Casavant IV, Alt. Member