

**TOWN OF WENHAM  
ZONING BOARD OF APPEALS**

**RECORD AND DECISION**

1 Settler's Lane, Wenham Massachusetts

Petitioner: Alan Berry on behalf of Christopher and Kathryn Payne

The Zoning Board of Appeals for the Town of Wenham, Massachusetts, conducted a Public Hearing in accordance with MGL Chapter 40A, Section 11 and the Town of Wenham Zoning Bylaw on Thursday June 21, 2018 at 7:30 p.m. at the Wenham Town Hall, 138 Main Street, Wenham, MA on the petition of Alan Berry, for a Special Permit pursuant to Wenham Zoning Bylaw Section 4.3.2 (Special Permit for Accessory Apartment) and Section 13.4 (Special Permits) to construct a new single residential dwelling with an accessory apartment at 1 Settler's Lane (Map 8 Lot 15). Present at all hearing were the following members of the Board:

Anthony M. Feeherry (Chairman)  
Evan Campbell (Associate Member)  
Dana Begin (Associate Member)

A notice of public hearing on this application was advertised as follows, a true copy of which is on file in the office of the Zoning Board of Appeals:

1. Published in *The Hamilton Wenham Chronicle*, a newspaper of general circulation in the Town of Wenham on Thursday June 7, 2018 and Thursday June 14, 2018
2. Posted at the Town Clerk's office on May 31, 2018.
3. Mailed June 4, 2018 to the petitioner, abutters, owners of the land directly opposite the property in question on any public or private street or way, abutters to abutter within 300 feet of the subject property.

The public hearing was opened and closed on June 21, 2018.

**DRAWINGS & REPORTS: (ALL INCORPORATED HEREIN BY REFERENCE)**

- A one (1) page Site Plan entitled Sanitary Disposal System Plan, Settler's Lane, Lot 1 Wenham, Mass, prepared by Hayes Engineering, Inc. 603 Salem Street, Wakefield, MA 01880 dated June 10, 2014
- A seven (7) page architectural plan entitled 1 Settlers Lane, Wenham, MA prepared by Essex Bay Designs, Anthony Cavalieri, 240 Andover Street, Danvers, MA 01923 dated as follows:

<b>Sheet #/Plan Description</b>	<b>Plan Date</b>	<b>Recent Revision Date</b>	
Sheet - 1	Final Basement	5/25/2018	N/A
Sheet - 2	Final 1 <sup>st</sup> Floor	5/25/2018	N/A
Sheet - 3	2 <sup>nd</sup> Floor	5/25/2018	N/A
Sheet - 4	Front Elevation	5/25/2018	N/A
Sheet - 5	Back Elevation	5/25/2018	N/A
Sheet - 6	Side Elevation	5/25/2018	N/A
Sheet - 7	2 <sup>nd</sup> Floor In-Law	5/25/2018	N/A

**RELEVANT FACTS AND BYLAW PROVISIONS**

With respect to the requested Special Permit, the relevant provisions in the Zoning Bylaws are Section 4.3.2.2 (Special Permit for Accessory Apartments). The Petitioner proposes to construct a new single family home with a 2 bedroom accessory apartment over the attached garage on the site within the required setbacks. The Petitioner proposes to construct a 990 square foot accessory apartment consisting of a combined kitchen and living area, two bedrooms, and a bathroom on top of the garage and has indicated that this apartment will be for use by an in-law. The total floor area of the principal unit is 4,350 sq ft and the accessory apartment is 990 sq ft which is 23% of the principal unit. This confirms to the requirement that the floor area of the accessory apartment not exceed 35% of the floor area of the principal structure. The proposed structure will be built within all required setbacks. There is adequate lot area as required by the Zoning Bylaw. Adequate parking has been provided for the accessory apartment and primary structure. The Board of Health has commented and indicated to the ZBA that although the lot is within the aquifer protection area the septic system can be designed to accommodate the six proposed bedrooms. The Petitioner has been advised that the septic system will be required to adhere to all regulations of the Board of Health. There is adequate provision for access and egress to and from the building. The Petitioner has been advised that they will need to adhere to all safety, health and building requirements that are imposed when building permits are requested. No other Departments had any comment regarding the project.

The applicant indicated that the unit would be used by their in-laws during the spring and summer as the in laws spend winters in warmer climates. The Board informed the applicant that the apartment could be rented for no less than 6 month periods in order to avoid transient use and the applicant agreed to the stipulation. They also confirmed with the applicant that the unit would be used for family and any change in that use would need to come before the Zoning Board for further review.

**DECISION**

**Action on Application for Special Permit under Section 4.3.2.2 (Special Permit required for Accessory Apartment): APPROVED WITH CONDITIONS**

**VOTE:** (Yes) Anthony M. Feeherry (Chairman), (Yes) Evan Campbell, (Yes) Dana Begin

On June 21, 2018, after holding a public hearing and taking testimony from the Petitioners and members of the public and after reviewing all materials and comments received, the Board voted to close the public hearing and then deliberated toward a decision.

The Board made the following findings of fact:

- The Board determined that all notice provisions of G.L.c.40A, §§9 and 11 and ZBL §13.4 were satisfied.

- The Proposed accessory apartment conforms to all of the requirements of Section 4.3.2.1 (General Requirements for Accessory Apartments).
- The Proposed accessory apartment will conform to section 4.3.2.2 as
  - One (10) of the units shall be occupied by the resident owner of the premises and
  - The accessory apartment does not exceed thirty five percent (35%) of the floor area of the principal structure or one thousand (1,000) square feet, and 2 bedrooms.
- The Board finds that there are no adverse effects of the proposed accessory apartment on the Town or Neighborhood. There is a need for housing in the Town of Wenham, particularly for senior residents that is affordable. There is adequate parking and access provided to the site. The site is adequately served by utilities and other public services. There will be no impact on town services, tax base or employment. There may be an increase in tax revenue to the Town from additional assessment of the property.

Now, therefore, by a vote of 3 to 0, a supermajority vote, the Zoning Board of Appeals hereby approves the subject application for Special Permit under Wenham Zoning Bylaw Section 4.3.2.2 (Special Permit for Accessory Apartments) subject to the below Special Conditions:

**SPECIAL CONDITIONS**

1. The Petitioner has agreed that the accessory apartment shall be utilized by residents related to the owners of the property and shall not be rented to unrelated occupants. In the event that the Petitioner or owners determine that they require any material change to the use of the apartment by other than family members they would need to come before the Board again for further review and possible revision to the special permit.
2. One of the units shall be occupied by the resident owner of the premises at all times.
3. This Special Permit shall run with the owner of the property and not with the land and shall lapse at the expiration of one year from the date of granting. This Special Permit will automatically be renewed on an annual basis unless written objection is filed with the Town Clerk prior to the anniversary date. In the event of written objection, a public hearing shall be held prior to deciding whether the Special Permit will be renewed. If the property is sold, any new owners shall be required to obtain approval by the Zoning Board of Appeals to continue the accessory apartment.
4. The Petitioner shall be responsible for adhering to all other pertinent provisions and requirements of the Town of Wenham Zoning Bylaw.
5. The Petitioner shall secure all requisite permits prior to commencing any use under this Special Permit. We specifically call your attention to the possibility of the need for permits or other approvals from the Board of Health, Fire Department, Water Department, Conservation Commission, Wenham Historical Commission, Tree Warden and the Building Department. The applicant shall address any other outstanding issues raised in the interdepartmental review of the proposed project.

6. The Petitioner shall ensure that the structure adheres to the Board of Health Title V regulations.
7. This Special Permit shall automatically terminate upon the sale, transfer or other change in ownership of the property of which such accessory apartment forms a part unless the property is being purchased with the intent to continue the use. In such case, the new owner shall make an application to transfer the Special Permit or for the issuance of a new Special Permit, which must be submitted to the Zoning Board of Appeals within 60 days of the sale or transfer of the property.

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Anthony M. Feeherry (Chairman)

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Dana Begin (Associate Member)

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Evan Campbell (Associate Member)

DATE:

FILED IN THE OFFICE OF THE TOWN  
CLERK ON

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BY