

Final

Wellfleet Zoning Board of Appeals

September 14, 2023, 7:00 pm

In person and Zoom meeting held at the Adult Community Center

Board Attendees: Chair Sharon Inger, Al Mueller, Trevor Pontbriand, Jan Morrissey, Wil Sullivan, Manny Heyliger,

Regrets: Andy Freeman, Mick Lynch

Also in Attendance: Attorney, Benjamin Zehnder, Jen Elsensohn, Committee Secretary, Leslie Moore (Zoom), Martha Meader (Zoom), Todd Perry (Zoom), Ann Freyss, Sky Freyss-Cole (Zoom), Diane Wade (Zoom) and Courtney Wade (Zoom)

Sharon Inger called the Public Hearing to order at 7:00 pm.

Sharon Inger set the board: Sharon Inger, Trevor Pontbriand, Janet Morrissey, Manny Heyliger, and Wil Sullivan. Chair Inger took the place of Andy Freeman on the ReelTee, LLC hearing because Freeman was not present. Inger signed and put into record a copy of G.L. c. 39, s. 23D(a) (Mullin form).

7:01 pm

23-12 ReelTee LLC, 2619 Route 6, Map 21, Parcel 40: Requesting a special permit pursuant to Wellfleet Zoning Bylaw s. 235-5.2, s.235-5.3.A, s.235-6.23, and s. 235-8.4.b for Service Trade Home Business use for flea and tick spray business with apartment. (Continued from 8/24/23)

Attorney Zehnder spoke on behalf of the owner, explaining the new architectural plan for the home and business. With the new configuration, no more than 30% of the square footage will be purposed for the business to be compliant with the bylaw. The new plan includes a second-floor apartment and an exterior staircase to access said apartment.

Marianne McCaffrey had sent a letter to the Board, which Chair Inger read aloud. Members of the Board asked to see the math showing that the plan did indeed rectify the square footage allotted for the business. The math was correct. Members also revisited the issue of occupancy by the owner, and whether the owners had placed the son who would be inhabiting the home and operating the business on their LLC. The owners have multiple businesses associated with the LLC, and so it was not practical to add him to it. A new LLC will probably have to be created. Clarification was made regarding the amount of work vehicles that could be stored on the site, which is two only. The non-conforming sign was discussed. Zehnder stated that the owner intends to comply with the current sign bylaw.

Manny Heyliger made a motion to move to findings, Wil Sullivan seconded; VOTE: Sharon Inger aye; Trevor Pontbriand aye; Janet Morrissey aye; Manny Heyliger aye; Wil Sullivan aye; 5-0.

Findings of Fact:

23-12, ReelTee, LLC, 2619 State Highway 6, Map 21, Parcel 40, request for a Special Permit for a Service Trade Home Business (STHB) and two apartments.

1. The applicant is under contract with Cumberland Farms, Inc. to purchase the subject property. The subject property is zoned residential and was the site of a former gas station and convenience store both of which have been vacant for a number of years, and therefore no longer qualify as valid pre-existing nonconforming uses.
2. The applicant proposes to make improvements to the structure and convert it to business use for flea and tick spray and further allow for the construction of two apartments within the existing structure.
3. The Board has made a site visit.
4. The existing structure contains 1809 square feet, 884 on the first floor and 382 on the second floor. The business will occupy 543 square feet of the first floor.
5. The applicant is a limited liability company with the business address of 211 Union St., West Springfield Massachusetts. The owners of the applicant are Patrick and Kathy Mercer, both of whom do not intend to reside at the subject property.
6. The applicant states that a son of Patrick and Kathy Mercer and other employees will reside on the subject property. The Mercers have asserted that their son is a co-owner and operator of the business.
7. There was one appearance in support of the application.
8. There were no appearances or correspondence in opposition to the application.
9. There were two objections from abutters.
10. The definition of STHB states that it must be "an accessory use of a dwelling... conducted by a member of the resident family. While a limited liability company is not a family, in this instance the owners of the limited liability company will not reside at the subject property; however, a member of the family and co-owner and operator of the business will reside there.
11. In addition, the square footage of the business portion of the subject property cannot exceed 30% of the total square footage of the structure. The applicant proposes that the business portion of the proposed structure would be 543 square feet out of a total square footage of 1809 and therefore the application meets that criterion.
12. The Board finds that the applicant meets the criteria for a service trade home business and that the flea and tick spray business will not be substantially more detrimental to the neighborhood than the existing vacant retail space.

This permit is subject to the following conditions:

1. The approval of this special permit is based on the representation that the apartment within the structure will be the primary residence of a member of ReelTee LLC or the ownership LLC of the flea and tick business which is conducted there. In the event that the apartment is not so occupied by a member, then the said approval shall terminate, and the Service Trade Home Business shall end. Notwithstanding the foregoing provision, if a member ceases to so occupy the apartment, ReelTee LLC or its subsidiary shall have six (6) months to place another member of the family into the apartment as his/her/their primary residence.
2. Not more than two (2) motor vehicles used exclusively for the STHB will be kept on the premises.

Trevor Pontbriand moved to accept the findings of fact, and Manny Heyliger seconded. VOTE: Sharon Inger aye; Trevor Pontbriand aye; Janet Morrissey aye; Manny Heyliger aye; Wil Sullivant aye. 5-0.

Manny Heyliger moved to grant the special permit, and Trevor Pontbriand seconded. VOTE: Sharon Inger aye; Trevor Pontbriand aye; Janet Morrissey aye; Manny Heyliger aye; Wil Sullivant aye. 5-0.

7:10 pm

Sharon Inger set the board: Al Mueller, Trevor Pontbriand, Janet Morrissey, Manny Heyliger, and Wil Sullivan.

23-13 Thor Construction, 1532 State Highway 6, Map 30, Parcel 30: Applicant appeals pursuant to Wellfleet Zoning Bylaws Section 235-7.31 and 235-8.4A from a zoning determination by the Building Commissioner that the applicant's sign is unlawful under the Sign Code and must be removed from its current location. The sign is located in the same non-conforming location as the previous owner's sign installed pursuant to Wellfleet Building Permit No. 12-024 issued January 24, 2012.

Attorney Zehnder spoke on behalf of his client, asking for a continuance of this hearing to October 26, 2023. Zehnder offered background on this case, saying that there is a dilapidated shed on the property that the owner is considering replacing. He will need time to assemble an application for that project and wanted to present the secondary application together with application #23-13.

Trevor Pontbriand moved to continue the hearing to October 26, 2023, and Al Mueller seconded. VOTE: Al Mueller aye; Trevor Pontbriand aye; Janet Morrissey aye; Manny Heyliger aye; Wil Sullivan aye; 5-0

7:23 pm

Sharon Inger set the board: Al Mueller, Trevor Pontbriand, Janet Morrissey, Sharon Inger, and Wil Sullivan.

23-14 Moore, 206 Holbrook Ave., Map 14, Parcel 161: Applicant requests Special Permit pursuant to Wellfleet Zoning Bylaws Section VI-6.1 Non-Conforming uses, 6.1.5 alterations to non-conforming single family residential structures, and 6.1.5B addition alteration is not substantially more detrimental.

Moore, Meader, and Perry attempted to speak on the project, but were having technical difficulties. The Board expressed a lack of need to discuss the project, as no one had any objections or questions. There were no comments from the community.

Trevor Pontbriand made a motion to move to findings, Al Mueller seconded; VOTE: Al Mueller aye; Janet Morrissey aye; Wil Sullivan aye; Trevor Pontbriand aye; Sharon Inger aye. 5-0.

Findings of Fact:

1. This is an application for a Special Permit under the Wellfleet Zoning Bylaws (WZBL) to add a 7'2" x 7'6" farmer's porch (hereby referred to as the "porch") with a height of 11'6" on the west elevation of the dwelling.
2. The dwelling is entitled to treatment as a lawfully pre-existing, non-conforming structure having been built in 1820 according to the Assessor's Office.
3. The Zoning Board of Appeals (hereby referred to as "the Board") granted a special permit in 2022 to the previous owner of 206 Holbrook Avenue for a two-story addition on the north side of the house (hereby referred to as the "approved addition") The Board incorporates by reference its Findings and Decision in case 22-22.
4. The proposed porch was the prerequisite for Historical Commission approval of the approved addition as they felt it elevated the style of the approved addition and was more in keeping with the existing neighboring structures.
5. The Board has received and reviewed the plans and drawings pertaining to the porch and approved addition, all of which are in the file.
6. The Board has made a site inspection of the subject lot.
7. The dwelling is a one and a half story, single family wood frame residential structure located on a lawfully pre-existing, nonconforming 12,657 sq. ft. lot in the R1 Residential District, where single family residential use is allowed by right.
8. The existing nonconformities are inadequate lot area (12,657 sq. ft. where 30,000 sq. ft. is required), inadequate frontage 60 feet where 135 feet are required; intrusion into the front setback (7.2 feet where 30 feet is required); and intrusion into both side setbacks (16.0

feet on the northerly side and 19.6 feet on the southerly side, where 25 feet is required). The approved addition will decrease the northerly side setback to 8.9 feet.

9. The applicable provisions for this application under the WBZL are: 235-5.4.A Minimum Lot Requirements; 235-5.4.B Minimum Yard Requirements; 235-6.1.E(1)(b) Alterations to nonconforming single- or two-family residential structures; and 235-8.4.B Special Permits.
10. The porch will not intrude further into the existing or approved addition setbacks.
11. The porch will increase the building coverage 0.54% to 9.55% (15% coverage is allowed).
12. There will be a volumetric increase in nonconformity.
13. There will be no change or increase in use.
14. There were no appearances or correspondence in support of or in opposition to the application.
15. There were no objections from the abutters.
16. WZBL 235-6.1.E(1): The Board finds that the porch will not be substantially more detrimental to the neighborhood than the existing non-conforming structure.
17. WZBL 235-8.4.B: The Board finds that the applicant has demonstrated that the benefits of the porch will outweigh any adverse effects on the Town and the vicinity; that the porch is suitable in that it is compatible with nearby land uses which would not be damaged by its construction; that the porch will not contribute to environmental damage; that the roads, drainage, and other public services are adequate for the porch; that the porch will not affect diversity of services or housing opportunities or have seasonal consequences; and that there will be no adverse effect on scenic views, existing parking areas, or traditional public access to or along the shoreline.

Trevor Pontbriand moved to accept the findings of fact, and Janet Morrissey seconded. VOTE: Al Mueller aye; Janet Morrissey aye; Wil Sullivan aye; Trevor Pontbriand aye; Sharon Inger aye. 5-0.

Trevor Pontbriand moved to grant the special permit, and Al Mueller seconded. VOTE: Al Mueller aye; Janet Morrissey aye; Wil Sullivan aye; Trevor Pontbriand aye; Sharon Inger aye. 5-0.

7:40 pm

Sharon Inger set the Board: Al Mueller, Jan Morrissey, Wil Sullivan, Trevor Pontbriand, Manny Heyliger.

23-15, Freyss, 26 Hamblen Farm Road, Map 12, Parcel 12-24-0: Applicant requests Special Permit pursuant to Wellfleet Zoning Bylaw 6.1E.1 to alter a pre-existing, non-conforming dwelling on their property by rebuilding with alterations to use as a year-round rental.

The homeowner, Ann Freyss, represented herself with input by her daughter who was present online. The initial intention of Freyss was to simply remodel the home, but three separate builders told her that she needed to rebuild the structure, as there was no foundation beneath it. It is not usable in its current state. Freyss would like to make the proposed house a year-round dwelling, and create an accessory dwelling unit for year-round rental on the location of an existing summer cottage. Freyss spoke with the Historical Preservation Society and they determined that the current structure is not historically significant. While she does not yet have architectural drawings, she does have companies prepared to work with her.

Abutting neighbor, Diane Wade, presented questions regarding the setbacks and zoning bylaws. Wade had been given information at the Wellfleet Building Department regarding her own property and was told that her property was not zoned for a similar undertaking. Wade objected to the proposed second story, where there is currently none, because of the proximity to her dwelling. The Board explained to Wade that Freyss' home was grandfathered in and a project of this sort would be permissible as long as it does not make the structure more non-conforming than it already is. Obtaining a special permit does not require that the new structure be conforming.

Due to a lack of vital information, the Board could not accept the plans as they were. An engineer-certified new plan with proper information should be submitted for a future hearing. The Board commended Freyss for including affordable housing in her plan.

Trevor Pontbriand moved to continue this hearing until October 12, and Al Mueller seconded. VOTE: Al Mueller aye; Janet Morrissey aye; Wil Sullivan aye; Trevor Pontbriand aye; Manny Heyliger aye. 5-0

Business:

Approval of the minutes for August 24, 2023. Al Mueller made a motion to approve the minutes, seconded by Wil Sullivan. VOTE: Al Mueller aye; Janet Morrissey aye; Wil Sullivan aye; Trevor Pontbriand aye; Manny Heyliger aye, Sharon Inger aye. 6-0.

Wil Sullivan moved to adjourn at 7:50 pm; seconded by Jan Morrissey. VOTE: Al Mueller aye; Janet Morrissey aye; Wil Sullivan aye; Trevor Pontbriand aye; Manny Heyliger aye, Sharon Inger aye. 6-0.

Respectfully submitted by,



Jennifer Elsensohn, Committee Secretary

Documents:

RealTee, revised site plan

Thor, request for continuance

Moore, application and supporting documentation

Freyss, application and supporting documentation

Minutes for August 24, 2023

