Final

Wellfleet Zoning Board of Appeals

July 13, 2023, 7:00 pm

**Zoom Remote Meeting**

**Attendees:** Chair Sharon Inger, Al Mueller, Trevor Pontbriand, Jan Morrissey, and Wil Sullivan,

**Regrets:** Mick Lynch, Manny Heyliger, Andy Freeman

**Sharon Ingers called the meeting to order at 7:00 pm.**

**The board was set for the meeting: Jan Morrissey, Wil Sullivan, Al Mueller, Trevor Pontbriand, and Sharon Inger.**

**7:00 pm**

**19-04 Habitat for Humanity of Cape Cod,** Old Kings Highway, Map 16, Parcel 110: Request to modify the condition to build all homes for first time sale at or below 65%, TO first sale of two homes (one 2-bedroom ranch and one 3-bedroom ranch) at or below 60^ AMI and two homes (one 2-bedroom ranch and one 3-bedroom ranch) at or below 80% AMI. All subsequent sales will be deed restricted (in perpetuity) to 80% AMI. Approval was received from the Housing Authority for this adjustment.

Habitat for Humanity attorney Warren Brodie outlined the history of the comprehensive permit and stated that Habitat would like to modify the condition that relates to AMI requirements for the proposed homes. State regulations require that changes to a comprehensive permit after issuance must be reviewed by the Board of Appeals to determine whether the change is substantial or insubstantial. Attorney Brodie’s opinion was that the requested change was insubstantial. Board members agreed with Attorney Brodie.

Wil Sullivan made a motion to move to findings, Al Mueller seconded; A roll call vote was taken, and the motion was approved 5-0.

**Findings of Fact:**

1. This is an application to Amend Comprehensive Permit 19-04, which was issued on 7/18/2019 by the Wellfleet Zoning Board of Appeals (hereby referred to as “the Board”) under the Wellfleet Zoning Bylaws (WZBL).
2. The Board incorporates by reference its Findings and Decision in case 19-04.
3. This is a request to modify the condition to build all homes for first time sale at or below 65% Area Median Income (AMI).
4. In the approval for the project on July 18, 2019. included in the Findings of Fact was item C: All four houses will be restricted as affordable dwelling units, subject to a deed restriction which shall remain in perpetuity or as long as the Project is not in compliance with the Town’s Zoning Laws, whichever is longer. The houses will be initially offered for sale to households earning at or less than 65% of Area Median Income, and thereafter will be offered for sale to households earning at or less than 80% of Area Median Income. Habitat will also request that DHCH allow the maximum number of units (70% or 2 houses) be set aside for Wellfleet residents under DHCD’s local preference guidelines.
5. As this is a change in the Comprehensive Permit, the applicant is required under condition 3 of the original permit to come before the Board for determination if the change is substantial or insubstantial and whether to modify the Comprehensive permit.
6. The Board finds these finding of fact:
7. Habitat has changed its policy to meet community requests for increased home ownership opportunities.
8. The Wellfleet Housing Authority has supported a change to AMI targets.
9. The Wellfleet Community Preservation Committee has also approved the change.
10. This change does not represent a substantial change.
11. The proposed wording of Findings of Fact C is as follows:

C: All four houses will be restricted as affordable dwelling units, subject to a deed restriction which shall remain in perpetuity or as long as the Project is not in compliance with the Town’s Zoning Laws, whichever is longer. Initial home sales for two homes will be to those earning at or below 60% AMI and two homes will be to those earning at or below 80% AMI. Subsequent home sales (resales) will remain restricted in perpetuity for sales to those earning at or below 80% AMI. Habitat will also request that DHCH allow the maximum number of units (70% or 2 houses) be set aside for Wellfleet residents under DHCD’s local preference guidelines.

Wil Sullivan moved to accept the findings of fact, and Al Mueller seconded. A roll call vote was taken, and the findings of fact were approved 5-0.

Wil Sullivan moved to grant the amendment, and Jan Morrissey seconded. A roll call vote was taken and the amendment was granted 5-0.

**7:10 pm**

**23-10 Eppley,** 19 School House Hill Road, Map 9, Parcel 632, Application for a Special Permit under WZB Section 235-6.24, 6.15, 8.4 and 8.4.3.1 “ relocate a bedroom, to make it larger and add an accessible bathroom within the setback; add a dormer on the second floor with a half-bath, and construct two shed-style dormers to the barn roof for additional storage as well as stairs within the setback.

The board was established: Jan Morrissey, Wil Sullivan, Al Mueller, Trevor Pontbriand, and Sharon Inger.

David Rowell spoke on behalf of the homeowner describing the project and clarifying questions regarding the National Seashore calculations that apply to this project. It was determined that the project is well within the requirements. Some of the questions from the National Seashore portion of the ZBA application had been missing, so Sharon Inger collected the information at this time. The owner will be relocating power lines underground. David reported that he had taken the plans to the historic commission, modifications were made, and the plan was approved. This plan will also be brought to the Board of Health.

Wil Sullivan made a motion to move to findings, Al Mueller seconded; A roll call vote was taken, and the motion was approved 5-0.

**Findings of Fact:**

1. The lot is in the NSP district.
2. The dwelling is a lawfully pre-existing, nonconforming structure having been built in 1875 according to the Assessor’s Office.
3. The existing non-conformities regarding the structure are inadequate lot area (1.86 acres where 3 acres are required) intrusion into the front setback (31.5 feet where 50 feet is required) and intrusion into the side setback (16.3 feet where 35 feet is required.)
4. The existing building coverage is 1,358 square feet. Additional allowable coverage is 1,650 square feet. The project will add an additional 644 square feet to the first floor and result in building coverage of 2,002 square feet which is below the maximum allowable coverage of 3,008 square feet.
5. The addition will be built on a level lot which has already been developed so there will be no disturbance of habitat.
6. There will be volumetric increases on the side setback.
7. The residential use conforms with the objectives of the NSP District as stated in WZBL 235-3.2 E
8. There were no appearances or correspondence in support of or in opposition to the application.
9. There were no objections from abutters.
10. The roads, drainage, and other public services are adequate for the project.
11. The Board has found that pursuant to WZBL 235-8.4.B.3:
    * Scenic views from public ways and developed properties have been considerately treated.
    * Traditional public access to or along the shoreline has been maintained.
12. The proposal will not be more substantially detrimental to the neighborhood than the existing nonconforming structure, and the applicant has demonstrated that the benefits of the proposal will outweigh any adverse effects on the Town and the vicinity after considering the District Objectives for the National Seashore Park district as provided for in the Wellfleet Zoning Bylaws regarding alteration of non-conforming structures and lots and for granting of a National Seashore Park Special Permit.

Wil Sullivan moved to accept the findings and Trevor Pontbriand seconded. A roll call vote was taken, and the findings were accepted 5-0.

Wil Sullivan motioned to grant the special permit, and Trevor Pontbriand seconded. A roll call vote was taken, and the special permit was granted 5-0.

**7:34 pm**

**23-11 Salty Local LLC (Myya Beck),** 14 Commercial Street, Map 15, Paracel 93: Application for Special Permit in Commercial District for Change of Use from gallery to Pilates Studio pursuant to Wellfleet Bylaw Section 235-5.3, 5.3.2 and 8.4.2.

Attorney, Christopher Fiset, spoke on behalf of his client, Myya Beck. The proposed Pilates studio will provide exercise classes ranging from one-on-one sessions, to small groups. Exercise is a healthy practice, and this will be a benefit to the town. The available parking of eight spaces exceeds the requirement based on square footage. Additional parking is available close by. The owner is a resident of Wellfleet and a professional. There is precedent for such a business as there is a Yoga studio on the same street. The board asked whether there was an apartment on the property and how this would affect the parking situation. There is an existing apartment above the studio where a renter currently lives. There is a designated parking spot for that resident, leaving seven spots for clients, which still meets the criteria.

Wil Sullivan made a motion to move to the findings, Trevor Pontbriand seconded, a roll call vote was taken, and the motion was approved 5-0.

**Findings of Fact:**

23-11, Salty Local LLC, 14 Commercial Street, Map 15, Parcel 93, request for a Special Permit to permit allow a Pilates studio in a space currently used as a gallery.

1. The applicant owns a building located in the Commercial District with a mixed use, residential use on the second floor and an art gallery on the first floor. The applicant proposes to use the entire first floor consisting of 840 square feet as a Pilates studio and retain the second floor as residential use.

2. The use as a Pilates studio is a permitted use under Wellfleet Zoning Bylaw 235-5.3 B as a Personal Service but requires a Special Permit.

3. The square footage of the proposed Pilates studio is 840 square feet.

4. The parking requirements are set forth in Section 235-6.3 of the Wellfleet Zoning Bylaws, 1.5 spaces for apartments and for the commercial use 1 space for each 3 employees and 1 space for each 150 feet of gross floor area.

5. The plan submitted by the applicant shows that 8 parking spaces are located on the property.

6. There were no appearances or correspondence in support of or in opposition to the application.

7. There were no objections from abutters.

8. The applicable provisions for this application under the Town of Wellfleet Zoning Bylaws are Section 235-5.3 B, Section 235-6.3 and Section 235-8.4.B.

9. Section 235-8.4.B.1:

A. The Board finds that the use of the premises as a Pilates studio is compatible with nearby land uses, which would not be damaged.

B. The Board finds that the roads, drainage and other public utilities would not be affected by the proposed use.

C. The Board finds that the proposed use will not contribute to environmental damage.

10. Section 235-8.4.B.3: The Board finds that the proposed use will not adversely affect scenic views from public ways or neighboring properties.

Wil Sullivan made a motion to accept the findings of fact, Trevor Pontbriand seconded, a roll call vote was taken, and the findings were accepted 5-0.

Trevor Pontbriand made a motion to approve the special permit, Al Mueller seconded, a roll call vote was taken, and the permit was approved 5-0.

**Business:**

Approval of minutes for June 8, 2023, and June 22, 2023. Jan Morrissey motioned to accept both sets of minutes, Wil Sullivan seconded, a roll call vote was taken, and the minutes were approved 5-0.

There is no meeting July 27. The next possible meeting date is August 24.

Town Council will confirm the remand date for 1065 State Highway. There will be an Executive Meeting prior to the hearing.

Al Mueller moved to adjourn at 7:50 pm; seconded by Trevor Pontbriand. A roll call vote was taken, and the motion was passed 5-0.

Respectfully submitted by,

Jennifer Elsensohn, Committee Secretary

**Documents:** Habitat for Humanity; request for amendment

Eppley; application for SP and backup

Salty Local LLC; application for SP and backup