

Approved
7:00 Wellfleet Zoning Board of Appeals
COA, 7:00 pm
Meeting Minutes of November 14, 2019

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Attendees: Sharon Inger, Bruce Drucker, Manny Heyliger, Wil Sullivan, Reatha Ciotti, Trevor Pontbriand, Jan Morrissey, and Christine Bates, Committee Secretary

Regrets: Mick Lynch

Chair Sharon Inger called the meeting to order at 7:00 p.m.

Public Hearing

7:00 pm

15-36 Bromberg, 195 Samoset Avenue, Map 28, Parcel 97: Pursuant to the Second Remand Order Issued by the Land Court (Vhay, J.) on September 23, 2019 in Case No. 16 MISC 000004, the Wellfleet Zoning Board of Appeals will hold a public remand hearing on the application of Frederick and Lauren Bromberg for a Special Permit pursuant to the Wellfleet Zoning Bylaws Section 6.1 and G.L.c. 40A, Section 6 for the alteration of a non-conforming single-family dwelling, on property located at 195 Samoset Avenue, Wellfleet, MA as shown on Assessors Map 28, Parcel 97. The ZBA will issue findings pursuant to the Second Remand Order. Janet Morrissey recused herself. The Board consisted of Sharon Inger, Bruce Drucker, Trevor Pontbriand, Manny Heyliger and Reatha Ciotti. Mr. Pontbriand and Ms. Ciotti signed the appropriate paperwork as replacements to the Board from the last remand. The Board made a site visit to the property. Ms. Ingers stated this is the 3rd time this project has come before the ZBA.

Attorney Jim Roberti represented the Coady's who are direct abutters to the Bromberg's. He stated he provided Findings of Fact as well as plans. He stated the neighborhood needs to be defined as the court requested, along with any detrimental issues to the neighborhood. He defined the neighborhood as abutters to abutters. He reiterated the value of Mr. Bennett's appraisal of the septic system and the fact that the wells are very close to the neighbors. Chair Inger stated the septic and wells are a Board of Health issue. Attorney Roberti stated sometimes the wells dry up in the summer, and Bennett stated many of the neighbors share the same well. Because this house is larger, this would be a detriment. He stated the septic will be detrimental to the Zinn property and the neighborhood. Coady will lose his views from his second floor. Privacy is another issue that if this house is built at the proposed height, people will be able to look into abutter's windows. The road will receive additional travel and impact the quality of the road. He stated this project is detrimental to the neighborhood.

There was discussion regarding the remand and the Court's request for the ZBA to review and determine if this project is more detrimental. Katie Laughlin, Town Counsel, explained that the previous remand decision was found to be insufficient by the Court. At the request of Attorney Zehnder, this remand came back to the Board. She proposed the Board review the proposed

Findings of Fact provided by Attorney Zehnder, representing the Bromberg's and Attorney Roberti who represents the Coady.

The Board discussed the definition of neighborhood, which has no statutory definition in the Bylaws or MGL. The Board took into account the geography and other structures in the area. Attorney Roberti stated he felt the neighborhood to consist of abutter to abutter. Attorney Zehnder had provided assessor's map 28 as the neighborhood. After discussion, the Board determined the neighborhood consisted of a portion of map 28 and more than abutter to abutter. The proposed dwelling will be a 2-bedroom house and the neighboring dwellings have always been there. Septic and well are a Board of Health issue. The septic system is in place. The Board stated any new project could reduce the views at any location. The structure was reduced in scale and height as requested by the ZBA at the original hearings. The Board doesn't feel there will be any impact to the road use as the as the proposed dwelling will not add traffic sufficient to impact the road. Loss of privacy from 2nd floor could be resolved with curtains or blinds.

Attorney Laughlin will review both Findings of Fact supplied by the Attorneys and make recommendations regarding if this project is more substantially detrimental to neighborhood. Attorney Zehnder pointed out there were several benefits to the town for this project including taxes and construction jobs.

Bruce Drucker moved to close the hearing and have Attorney Laughlin proceed with Findings of Facts per the determination of the ZBA at this hearing and further authorized the ZBA chair, Ms. Inger, to review & sign the findings and decision on behalf of the ZBA. seconded by Manny Heyliger; passed 5-0.

7:35 pm

19-19 Slackman, Inc., 255 Commercial Street, Map 21, Parcel 113: Appeal from a decision of the Building Commissioner declining a request for enforcement regarding Mac's Seafood to remove picnic tables from adjoining public land because the placement of such tables intended for its customers constitutes an unlawful expansion of Mac's Seafood's use as a drive-in restaurant. The Board consisted of Sharon Inger, Bruce Drucker, Trevor Pontbriand, Manny Heyliger and Janet Morrissey. At the request of the applicant's lawyer, Trevor Pontbriand moved to allow the Appeal from Person Aggrieved be withdrawn without prejudice; seconded by Janet Morrissey, passed 5-0.

7:39

19-25 Joseph Wanco, 317 Main Street, Map 14, Parcel 176: Application for a Special Permit under WZB 5.3.2 and 5.4.13 to change the use of the street level of building from food service to retail (clothing). The Board consisted of Sharon Inger, Bruce Drucker, Trevor Pontbriand, Manny Heyliger and Reatha Ciotti. Michelle Wanco appeared for the applicant & stated the building has been vacant for over a year and the family decided to repurpose the building for use as clothing store. The Bisette family will be running the store. The demands on the water and septic will be reduced. The apartment upstairs will become a year-round dwelling. Richard

Robicheau from the audience stated this is a great idea. Bruce Drucker moved for Findings of Fact; seconded by Trevor Pontbriand; passed 5-0.

1. This is an application for a Special Permit under WZBL5.3.2 & 5.4.13 to change the use of the street-level portion of the 2-story building located at 317 Main St., Map 14 parcel 176 from a restaurant and bar to a retail clothing establishment.
2. The building is in the Central District & Main Street Overlay District.
3. The ZBA has inspected the building.
4. For approximately 40 years the building's street-level has been used as a popular restaurant and bar called the Lighthouse. The second floor of the building has been used for an apartment. The lower level has been used for retail. The applicant proposes to change the street-level use to a retail clothing store.
5. The proposed change will be no more an intense use, and probably a less intense use, than the prior use.
6. There were no objections to the proposed use. There was 1 person at the hearing in support of the proposed use
7. The proposed use conforms with the objectives of the Central District as stated in WZBL3.2 and is consistent with other similar uses in the Central District.
8. The roads, drainage, and other public services are adequate for the proposed use.
9. Parking for the proposed retail use will be no more than, and likely less than, parking for the prior use.
10. Pursuant WZBL 9.2.6 the parking requirements specified in WZBL6.3.1 are waived.
11. The proposed retail clothing store use will not be more substantially detrimental to the neighborhood & district than the prior restaurant & bar use 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 district as provided for in WZBL 3.2 and the relevant criteria set forth in WZBL 8.4.2.

Manny Heyliger moved to approve the Findings of Fact; seconded by Trevor Pontbriand; passed 5-0. Bruce Drucker moved to grant the Special Permit based on the Findings; seconded by Trevor; passed 5-0.

7:50

19-26 Peter O'Neill, 385 Bound Brook Way, Map 6, Parcel 12: Application for Special Permit in the National Seashore District under WZB 6.1.5(b) for demolition of existing one story, 3-bedroom cottage with drive under garage to be replaced on same footprint with 2-story, 3 bedroom home with drive under garage. A site visit was made by the Board. The Board consisted of Sharon Inger, Bruce Drucker, Trevor Pontbriand, Manny Heyliger and Janet Morrissey. Chris Cannon, architect, stated they have a dwelling in the National Seashore which is very poor condition and he wants to rebuild a new dwelling on the same footprint. It will be a 65% increase in size. This will not impact the views to anyone. A letter from the National Seashore was read into the record stating there were no concerns. Bruce Drucker moved for Findings of Fact; seconded by Janet Morrissey; passed 5-0.

1. This is an application for a Special Permit under WZBL 6.1.5 (b)& 6. 24 & 8.4.2_pursuant to which the applicant seeks to demolish the existing one-story, 3-bedroom cottage with drive under the garage and replace it with a two-story, 3-bedroom home with drive under the garage on the same footprint.
2. The lot is in the NSP District.
3. The dwelling is a lawfully pre-existing, nonconforming structure having been built in 1950 according to the Assessor's Office.
4. The existing non-conformities regarding the structure are inadequate lot area (37,164 SF where 3 acres is required) intrusion into the side setbacks (17' from northern lot line and 12'feet from south lot line where 35' is required. frontage)
5. The lot is lawfully pre-existing nonconforming.
6. The addition to the structure will be constructed entirely on the current footprint. A second story will be added increasing the height from 15' 4" to 25' 3"
7. There will be no change in use.
8. There will be no increase in use.
9. The use conforms with the objectives of the NSP district.
10. There were no appearances or correspondence in support of or in opposition to the application.
11. The roads, drainage, and other public services are adequate for the project.
12. The project has received approval from the Conservation Commission/Board of Health.

13. There was no objection from the abutters. The Cape Cod National Seashore sent a 10/1/19 email stating the Seashore has no concerns with the project
14. There will be a volumetric increase on the side setbacks due to the addition of the second floor.
15. The Board has found pursuant to WZBL 6.24.3:
 - Disturbances to the landscape will be minimized as the new house will be on the same footprint
 - No changes will be made to scenic or public views
 - Drywells are proposed for storm runoff
 - Lighting will closely match existing lighting and will be down-facing.
 - Pursuant to the Cape Cod National Seashore's 50% expansion guideline, a lot of this size is allowed 2156 square feet of gross floor area. The plan meets this standard by proposing an increase from 773 square feet to 1256 square feet.
16. The Board has found that pursuant to WZBL 8.4.2.3:
 - Scenic views from public ways and developed properties have been considerably treated
 - Reasonable efforts have been made to minimize visibility of parking and service areas from public streets.
 - Traditional public access to or along the shoreline has been maintained.
17. The proposal will not be more substantially detrimental to the neighborhood (herein considered to be the Bound Brook Area) 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.

Bruce Drucker moved to approve the Findings of Fact; seconded by Janet Morrissey; passed 5-0.
Bruce Drucker moved to grant the Special Permit based on the Findings of Fact; seconded by Manny Heyliger; passed 5-0.

8:06 pm

19-27 Davis's Corner LLC, 1446 State Highway, Map 30, Parcel 6: Application for a Special Permit under WZB 5.1 for retail use in Commercial District and WZB 6.3.13 for a development of significant impact (DSI). Trevor Pontbriand recused himself. The Board consisted of Sharon Inger, Bruce Drucker, Manny Heyliger, Wil Sullivan and Reatha Ciotti. Chair Sharon Inger stated the application is missing critical information and the hearing will have to be continued. Chair Inger stated that the applicant and the applicant's representative should make a brief statement in support of their application and the board will inform the applicant of the additional information needed in order for the board to make a decision. Joy

Cumming, architect, John Kenney, lawyer, and Matt Christiana came to the table. Ms. Cumming stated she didn't feel this application would have to go before the Planning Board because the use is going from retail to retail but asked the board for its thoughts on whether a recommendation from the Planning Board is required. The actual square footage is 4,500 sq. ft based on the plan from Felco which includes the Beachcomber store. The square footage for the retail marijuana will be approximately 3,500 and according to the applicant will not include the Beachcomber store. The upstairs will become storage space for the retail and not used for habitable space. The second-floor space is approximately 1000 ft.². She stated this project has been developed per all the codes and regulations. There will be a large waiting area inside, and security issues have been considered. There will be 5 to 7 employees year-round and up to 15 during the summer tourist season. The hours of operation will be: Monday thru Thursday 10:00 am to 10:00 pm. Friday and Saturday will be 10:00 am to 11:00 pm. and Sunday hours will be 12:00 to 8:00 pm.

Natural Ventures is the company that oversees several outfits; and this store will be called Cape Cod Cannabis Wellfleet NV, LLC. Attorney Kenney stated people will not be standing outside and the store made commitments to the Select Board that they will work with Police Department to hire details if there are traffic issues but isn't committing to paying for year-round police details. He stated they anticipate a rush in sales initially, but sales will settle down. Chair Inger requested a security plan.

Chair Inger opened the hearing to the audience. Abutter Richard Blakely stated work has been going on in the building and to his knowledge, there was no building permit issued. He opposes the project and stated this location is only 15 feet from the bike trail. Thelma Blakely, direct abutter, expressed concern with the intersection in general, which includes the Post Office parking, bike trail parking, LeCount Hollow Road traffic as well as the restaurant parking across the street. She stated she is very opposed to the project and feels this is a true detriment to the neighborhood. She stated there is a Police Officer between 9 and 12 on weekends at the intersection of Lecount Hollow & Route 6 due to traffic and parking. Bill O'Connor, abutter, states this is not the type of business for this neighborhood and traffic will be a nightmare and the intersection is deadly. A letter from Michael Morin was read into the record objecting to the project due to safety, parking, and requested reasonable hours and be on an appointment basis only.

The Board stated the applicant must go to the Planning Board per the WZBL. Bruce Drucker stated the project isn't exempted from WZBL parking requirements and a Planning Board recommendation because it's claimed to be "retail to retail." Going from a grocery type store to a marijuana retail store is a change of use within the meaning of the WZBL which requires a special permit, adequate parking, etc. If the applicant wanted to claim some exemption because of allegedly being "retail to retail", which Mr. Drucker does not feel is permitted under the WZBL in this situation, the applicant would have to first demonstrate that the prior use as a grocery store was a lawful use either because it preexisted zoning and had been continuously in use or because it obtained a special permit to operate as a grocery store and had been continuously in use. No such proof has been offered by the applicant for the board to even consider the argument that going from retail to retail allegedly provides an exemption from various requirements of the WZBL. There would have to be approximately 23 parking spaces

based on the square footage and that doesn't count the employees or the 2nd floor for which more parking is needed. Bruce Drucker recommended removing the planters in front of the building for additional parking. He stated the traffic study provided didn't deal with the real problems of the area, namely, cars speeding from route 6 through the South Wellfleet store area to avoid traffic backups at Lecount Hollow Road and gridlock that develops on Lecount Hollow Road with cars backed up trying to turn onto Route 6.. Bruce Drucker recommended the abutters talk to the Select Board regarding the 3% of gross sales received from the store to be used for the neighborhood, such as police details, road maintenance, etc. ZBA member Morrissey reviewed many deficiencies and absent information in the alleged traffic study provided by the applicant. Board member Sullivan pointed out that the applicant should have come before the board with all the necessary paperwork, reports, etc.

The Board requested the following information: specific parking plan; calculations showing the number of required parking spots under the WZBL, updated traffic study for peak hours and the conditions at the site; traffic volumes and delays and the impact on the community; what are specific improvements planned for the community impact; hours of operation; written plan of security for the store and the square footage of areas clearly spelled out on the plan with the Board not having to figure out the scale; the identity of the person or persons who will be managing the proposed marijuana store; and the identity of all entities owning, operating, having an interest in or controlling the store and the principles of each entity.

Chair Sharon Inger recommended they continue. Attorney Kenney stated they will need to discuss the issues with their client and on behalf of the applicant request a continuance until 12/12/19 Bruce Drucker moved to continue to Thursday, Dec 12, 2019; seconded by Manny Heyliger; passed 5-0.

8:40

19-28 Vern Hatt, 79 Clark Ave., Map 20, Parcel 119: Application for a Special Permit under GML c.40A, s. 6 and WZB 6.1.5.1b to remove an existing deck on the west side of a pre-existing, no-conforming two-level house and construct a 16'x22' two-level addition. The first level will be a garage and the second level will be expansion of existing second level living space. The Board consisted of Sharon Inger, Bruce Drucker, Manny Heyliger, Trevor Pontbriand and Janet Morrissey. Mr. Hatt gave an overview of the project, stating they had purchased an additional abutting lot. The house is already pre-existing, non-conforming and the proposed addition will increase the non-conformities by a small amount. A letter from Brian Hathaway was read into the record requesting the project include privacy screening for the outdoor shower which the applicant agreed to. Trevor Pontbriand moved for Findings of Fact; seconded by Manny passed 5-0.

1. The application is for a Special Permit to allow for an addition to the property of a 16' x 22' two floor addition and a 20' x 10' deck both of which are hereinafter referred to as "the additions". Without a special permit the additions would not be allowed due to the fact that they would result in an enlargement of the building currently within the current non-conforming pre-existing setback and the additions, if approved, would further increase the non-conformity of the rear setback by 2.5 feet

2. The applicable provisions for this application under the Town of Wellfleet zoning bylaws are Section 6.1.5.1 b and Section 8.4.2.

3. Section 8.4.2.1:

A. The Board finds that the additions are suitable in that they are compatible with nearby land uses which would not be damaged by the additions.

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

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

4. Section 8.4.2.2:

Not applicable

5. Section 8.4.2.3:

The Board finds that the building and site design will not adversely affect scenic views from public ways or neighboring properties.

Manny Heyliger moved to approve the Findings of Fact; seconded by Bruce Drucker; passed 5-0. Bruce Drucker moved to grant the Special Permit based on the Findings of Fact; seconded by Janet Morrissey; passed 5-0.

19-29 Mark Baker and Janice Elsesser, 210 Kendrick Ave. #2, Map 20, Parcel 29:

Application for Hearing and Findings of Fact under WZB 6.1.5 and a flood plain exemption under WZB 6.14 to rebuild an existing single-family residential structure. An existing seasonal cottage in a state of disrepair will be removed and a new seasonal cottage will be constructed on a new foundation with flood vents, raised in height to meet the flood plain height requirements. The Board consisted of Sharon Inger, Bruce Drucker, Trevor Pontbriand, Janet Morrissey and Reatha Ciotti. Manny Heyliger recused himself. Michael Holmquest, architect, represented the applicants. This will be a demolition and rebuild. The foundation and floor heights will match the units to the right and left. The existing square footage is 718 square feet and will be increased in the rear of the building. The Board felt this is more appropriate for the neighborhood. The foundation will have flood vents. Bruce Drucker moved for Findings of Fact; seconded by Trevor Pontbriand; passed 5-0

1. This is an application for a Special Permit under WZBL 6.1.5 & 6.1.4 to rebuild an existing single-family seasonal cottage and for a floodplain exemption. The cottage is located at 210 Kendrick Ave. # 2 Map 20 parcel 29 and is in the Residential District.
2. The existing cottage is in disrepair. The applicants propose demolishing the existing cottage and constructing a new seasonal single-story cottage on a new foundation with flood vents raised in height to meet the floodplain height requirements. The footprint of

the cottage will be increased from 718 ft.² to 780 ft.². The number of bedrooms will be reduced from 3 to 2.

3. The ZBA has inspected the property and has reviewed all plans, drawings and other documents submitted with the application.
4. There will be no change in use.
5. There will be no increase in use.
6. The use conforms with the objectives of the Residential District.
7. The proposed cottage will be consistent in use and appearance with the neighboring cottages.
8. There was one correspondence in support of the application.
9. There were no appearances or correspondence in opposition to the application.
10. The roads, drainage, and other public services are adequate for the proposed new cottage.
11. The project has received approval from the Conservation Commission & Board of Health.
12. The proposed new cottage will not be more substantially detrimental to the neighborhood than the existing cottage and the applicants have 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 district as provided for in WZBL 3.2 and the relevant criteria set forth in WZBL 8.4.2.

Floodplain Exemption

13. The lot is in the Floodplain District.
14. The applicant has obtained approval of the Wellfleet Conservation Commission in accordance with MGL Chapter 131, S. 40, the Wetlands Protection Act, and with the Town of Wellfleet's Environmental Protection Bylaw
15. The ZBA finds that the granting of the floodplain exemption will not result in increased flood heights, decreased flood storage capacity, additional threats to public safety, extraordinary public expense, cause fraud on or victimization of the public, or conflict with existing local laws.

Trevor Pontbriand moved to approve the Findings of Fact; seconded by Reatha Ciotti; passed 5-0. Bruce Drucker moved to grant the Special Permit and Floodplain Exemption based on the Findings of Fact; seconded by Trevor Pontbriand with the following conditions; passed 5-0.

- A. The applicants will comply in all respects with the State Building Code, Section 744.0.
- B. Further, the applicants are advised pursuant to WZBL 6.14.4 that the issuance of the floodplain exemption may result in increased premium rates for flood insurance.

Business: - none

Meeting Minutes: Trevor Pontbriand moved to approve the October 10, 2019 meeting minutes; seconded by Janet Morrissey; passed 7-0.

Janet Morrissey moved to adjourn at 9:15 pm; seconded by Trevor Pontbriand; passed 7-0.

Respectfully submitted,

Christine Bates, Committee Sec'y



