

Final

Wellfleet Zoning Board of Appeals

March 14, 2024, 7:00 pm

In person and Zoom meeting held at the Adult Community Center

Board Attendees: Chair Sharon Inger, Trevor Pontbriand, Al Mueller, Jan Morrissey, Manny Heyliger, Wil Sullivan, Mick Lynch, Andy Freeman (Zoom)

Regrets: None

Also in Attendance: Attorney Ben Zehnder, Attorney Marian Rose, Brad Whitman, Thor Baum, Jeremy Young, Jerry Houk, Holly Robinson, and Jen Elsensohn, Committee Secretary

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

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

7:00 pm

24-02 Thor Construction, Inc., 1532 State Highway 6, Map 30, Parcel 30: Special Permits pursuant to MGL c 40A, sec. 6 and Wellfleet Zoning Bylaw ss. 235-5.3B and 235-8.4 to demolish and replace a pre-existing, non-conforming accessory building, and for Service Trade Business use of the property for a construction business.

A site visit was made by the Board. Manny Heyliger recused himself for this hearing. Attorney Ben Zehnder was present to represent the project. Before he began his presentation of the case, Zehnder offered for the Board to mull over that the Harwich Zoning Board of Appeals does not set the board for public hearings until the presentation is completed. Thor Construction is a service trade business. Currently existing on the property is a dilapidated garage, which the project proposes to remove and replace with a new, much larger accessory building at the back of the property. The building will be mainly used as shop space, material and machine storage, with the possibility of periodic vehicle storage. The choice of location for the building was to keep away from a wetland located on the eastern side of the lot, not to exceed the 10' setback at the back of the lot, and to maintain the side setback. The building will be about five feet under the 28 foot height restriction, and will respect the lot coverage requirement. When asked about the parking situation, it was explained that the approximately fifteen parking spots are generally used by about three employees, periodic customers, and mostly sub-contractors. The question was raised whether the direct abutter on the back of the property had been contacted about the project. Thor Baum noted that they would have been contacted via the abutter letters sent by the Zoning Board of Appeals Secretary, and that Baum had spoken to the homeowner and no concerns were expressed.

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. The lot is in the Commercial District.
2. The lot is dimensionally conforming (60,549 square feet where 40,00 square feet is required.) The principal structure, which is used as an office, is pre-existing non-conforming on the southerly front setback (23.3 feet where 100 feet are required.) The garage is pre-existing non-conforming with regard to the westerly side setback (26.9 feet where 35 feet are required.)
3. There is an isolated wetland at the easterly side of the lot, and all existing and proposed structures are outside of Conservation Commission jurisdiction.
4. The applicant wishes to demolish the existing 292 square foot garage and replace it with a new 2,400 square foot (40' by 60') single story steel-frame and steel-clad accessory building. The accessory building would be located 11 feet from the rear line, in compliance with the 10-foot rear setback for accessory building. The new building requires a special permit to alter and extend the pre-existing non-conformity of the 27-foot setback where 35 feet is required.
5. In addition the applicant requires a special permit under use table Bylaw 235-5.3 (B) for a Service Trade Business which is allowed in the district by special permit.
6. The Board has made a site visit and examined all material submitted by the applicant.
7. There will be no change in use.
8. There will be no increase in use.
9. There were no appearances or correspondence either for or against the project.
10. There was no objection from the abutters.
11. The project will increase building coverage from 1.5% to 4.6% where 25% is allowed.
12. The Board has found that pursuant to WZBL 235-8.4 (B (1)):
 - The property is in an area of commercial uses which would not be affected by this use. The residential zone surrounding the commercial district will not be damaged by this use.
 - Roads, drainage, and other public services are adequate in relation to the location.
 - The accessory building is located far from the isolated wetland on the property.

The Board has found that pursuant to WZBL 235-8.4 (B (2)):

- The proposed building will be used in the applicant's construction business which contributes to diversity of services in the area.
- There are no seasonal consequences.
- The business provides year-round service and employment opportunities.

The Board has found that pursuant to WZBL 235-8.4 (B (3)):

- There are no scenic views or access to the shoreline.
- Other than three parking spaces at the front, all parking is in the rear of the structure.

13. After considering the District Objectives for the district as provided for in WZBL 235-3.2 and the relevant criteria set forth in WZBL 235-8.4 (B), the Board finds that the proposed alteration will not be more detrimental to the neighborhood than the existing structure and that the use as a service trade is consistent with other uses in the district, and the applicant has

demonstrated that the benefits of the proposal will outweigh any adverse effects on the Town and the vicinity.

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

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

Sharon Inger set the board: Manny Heyliger, Will Sullivan, Jan Morrissey, Trevor Pontbriand, Sharon Inger.

7:18 pm

24-03 Witman, 950 Gross Hill Road, Map 9, Parcel 608: Special Permit under Wellfleet Zoning Bylaw 235-6.2 to construct a greenhouse at the rear of the property.

A site visit was made by the Board. Homeowner Bradley Whitman and his representative, Jeremy Young, were present to represent the project. Whitman explained that the property has served as a summer home for his family for about twenty years, with an increase in use within the past couple of years. Whitman's wife likes to garden and would like to extend her growing season by installing a greenhouse on the property. The location of the greenhouse was chosen for the convenience of access while retaining existing features in the yard. Whitman has spoken with Lauren McKean at the National Seashore Park (NSP), who furnished him with lot usage calculations and other NSP requirements. Chair Inger also mentioned that she had spoken with McKean, and that the NSP has no issue with this project. Mick Lynch reported that, during the Victorian age, when there were no markets close by, greenhouses were allowed by right if they were growing food. They were deemed a necessity. Jan Morrissey questioned the discrepancy between the lot coverage calculations provided by Don Poole and the ones provided by Lauren McKean. It was noted that the McKean calculations appeared to be more accurate. Morrissey commented that she was unsure why this application had been made. There appears to be no setback concerns, and the greenhouse appears to meet all zoning requirements. Whitman reported that he was advised to apply for a special permit by the Building Commissioner, Angelo Salamone. Lynch noted that, if no special permit is necessary, the fee needs to be refunded to the applicant. Whitman replied that he appreciates the work already put in by the Board and does not want a refund. Lynch stated that it is a requirement.

Trevor Pontbriand made a motion to determine that the project does not require a special permit because the greenhouse as an accessory building meets the 10-foot setback requirement. The Board further finds that the Town should refund the application fee to the applicant as per past practice. Manny Heyliger seconded; VOTE: Manny Heyliger, aye; Sharon Inger, aye; Trevor Pontbriand, aye; Wil Sullivan, aye; Jan Morrissey, aye. 5-0.

Sharon Inger set the board: Trevor Pontbriand, Will Sullivan, Jan Morrissey, Manny Heyliger, Mick Lynch. The board has remained the same throughout the span of continuances.

7:32 pm

24-01, Belvernon LLC, 75, 91 and 95 Commercial Street, Map 21, Parcel 133, 129 & 128:

Special permit to relocate existing outdoor dining use allowed by seasonal permit No. 23-02 from a seasonal tent located on 95 Commercial Street to a seasonal pergola located on 75 Commercial Street and to construct a related covered deck and ramping to connect the primary structure, Mac's Shack, 91 Commercial Street, to the proposed new outdoor seating. Upon arrival, the existing tent seating would be removed.

Attorney Marian Rose was present to represent the application. Attorney Rose requested by email on March 4, 2024 that a continuation be allowed until May 23, 2024 respond to concerns of the Board and some mail received by abutters, and because the applicant, Mac Hay, has been out of the country and unable to be reached. Rose revised the request at the hearing, stating that their team was confident that they could have the required information and response to concerns of the Board and abutters by May 9, 2024. Rose also noted that she had been in contact with Building Commissioner, Angelo Salamone, who answered some of her questions. The revised intention for the project, which was expressed via a new narrative and updated application, is to merge the properties of 75 and 91 Commercial Street, to address the concerns of neighbors, to provide plans that include scale, renderings that accurately show details of the proposed project, and address parking concerns. Jerry Houk, abutter, expressed his concerns about the view that some of his neighbors will lose and the parking situation. In the current state of the restaurant, resident parking spaces are routinely taken by patrons of Mac's Shack. Houk is concerned that this will be exacerbated by the proposed outdoor dining area. Holly Robinson, of 70 Commercial Street, was also present to express her concerns about the health, safety, and habitat of animals and vegetation in the marsh, that her view will be disrupted, that noise will be increased, that the tides regularly flood into the proposed area, what additional lighting might introduce issues, and how high the proposed pergola will be. Robinson noted that she is speaking only for herself, and that her condo neighbors have not discussed this project. Robinson provided a letter at that time for future review by the Board.

Jan Morrissey echoed Robinson's concern about additional lighting and, citing Section 6.14 of the zoning bylaws, noted that she disagrees with the Building Commissioner's determination that a flood plain exemption is unnecessary. Morrissey continued that the merging of the two lots may not be enough square footage to make it a conforming lot as certain wetland delineations are exempt from the calculations of lot square footage. Morrissey asked whether it was the intention of the applicant to submit a new site plan. Rose confirmed that it was. When asked about the future parking situation, Rose said that additional parking would be created where the existing tent is currently located and will be removed. Lynch stated that the proposed structure is not, by definition according to the Merriam Webster Dictionary, to be a pergola and that the application should be resubmitted with a different structure name on it. Lynch noted that he disagrees with the Building Commissioner's definition of "pergola", and that approving an application with the structure being called "pergola" will cause future problems for the Town. Rose suggested that it is not a black and white definition. Lynch asserted that it is. Heyliger stated that he would like to

see a site plan that shows both the seating plan and parking safety strategies. Heyliger noted that placing a seating area so close to an existing parking area could cause a safety hazard, and some kind of structure should be put in place to keep cars out of the seating area. Pontbriand remarked that he looks forward to a future presentation of a new plan and appreciates the points made by his fellow Board members. Pontbriand acknowledged that this plan would exacerbate the already existing parking problem. Sullivan agreed with all previous comments and questions, asked whether a bar would be placed in the structure, and wants to make sure that the merger plans are made clear. Rose said a bar is not going in the structure. Freeman agreed with all previous questions and comments and suggested that having a parking attendant present in the Bradford parking area as they do in the main parking area could be helpful for keeping that lot clear for residents. Jerry Houk made a final comment saying that the area in question floods at high tides and may cause a problem for that section.

Trevor Pontbriand made a motion to continue this hearing until May 9, 2024, Manny Heyliger seconded; VOTE: Wil Sullivan, aye; Trevor Pontbriand, aye; Manny Heyliger, aye; Janet Morrissey, aye; Mick Lynch, aye. 5-0.

Business:

Continuance Form:

Chair Inger shared with the Board that Secretary Elsensohn had presented to Inger a Continuance form wondering whether it was something that should be in use. Chair Inger noted that the form requires the signature of every Board member and was not certain that it was necessary. Inger suggested that, since next week's meeting has only one hearing, and that Town Counsel would be present, it would be beneficial to ask Counsel their opinion. All agreed.

Minutes from February 22, 2024

Al Mueller made a motion to approve the minutes for February 22, 2024, seconded by Manny Heyliger. VOTE: Al Mueller, aye; Jan Morrissey, aye; Wil Sullivan, aye; Trevor Pontbriand, aye; Sharon Inger, aye; Andy Freeman, aye; Manny Heyliger, aye; Mick Lynch, aye. 8-0-0.

Mick Lynch moved to adjourn at 8:03 pm; seconded by Manny Heyliger. VOTE: Al Mueller, aye; Jan Morrissey, aye; Wil Sullivan, aye; Trevor Pontbriand, aye; Sharon Inger, aye; Andy Freeman, aye; Manny Heyliger, aye; Mick Lynch, aye. 8-0.

Respectfully submitted by,



Jennifer Elsensohn, Committee Secretary

Documents:

Thor, special permit application and supporting documents

Whitman, special permit application and supporting documents

Belvernon, updated special permit application and narrative, letter from attorney requesting a continuance

Minutes for February 22, 2024