

Final

Wellfleet Zoning Board of Appeals

February 22, 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

Regrets: None

Also in Attendance: Attorney Ben Zehnder, Attorney Christopher Senie, Alice and David Carter, Jen Elsensohn, Committee Secretary

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

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

7:00 pm

23-16, Carter, 94 Hiller Ave, Map 20, Parcel 71, applicant seeks a special permit pursuant to MGL. C 40A, s. 6, and Wellfleet Zoning Bylaw s. 235-6.1(E)(1)(b) and s. 235-8.4(b) to alter a pre-existing, non-conforming garage on a pre-existing, non-conforming lot to add one story of studio space with loft space above. (continued from October 12, 2023, November 9, 2023, December 14, 2023, and January 11, 2024)

Note: Chair Inger became aware that there was no sound on the Zoom, so Elsensohn recapped the proceedings with the virtual attendees, with which they expressed satisfaction. The sound worked correctly for the remainder of the hearings.

Attorney Ben Zehnder was present to represent the project. The reason that the hearings were continued since October was to create space for the homeowners and abutters to come to an agreement on the scope of the project. Zehnder had submitted updated plans for this project via email on February 19, and hard copies on February 20. The new plans were accompanied by a Landscape Conditions Plan, which was drawn up by Attorney Senie, who was representing abutters, Anne Jaffe and Paul Ridker. The revised project moves the garage away from the abutter's property line, further back away from the road, and reduces the height of the proposed new structure. Attorney Senie spoke, reporting that Jaffe and Ridker agree completely with the new plan, and that it is substantially less detrimental. Chair Inger acknowledged the mail that had been sent to the Board and read the letter of Carol Nelson into record. Nelson's primary concern was the parking situation on the street and requested that additional parking be considered in the plan, and her secondary concern is for the retention of the historical aspect of the home, which had been the Chequessett Neck Inn. Al Mueller asked whether any representative of the project had been in communication with Nelson to discuss her concerns. The homeowners shared that

they had been, and that they have moved some things on their property in order to make her parking situation more bearable. David Carter added that a paper road exists which overflow parking from parties can utilize. The couple has been making an effort to keep Nelson's way clear. Mueller clarified with the owner that the garage had been built in the 1940's and was not related to the historic Inn. Manny Heyliger noted that, since the first hearing, he requested that two parking spaces be added to the plan, and would still like to see it placed on the plan; especially in light of Nelson's letter. Zehnder stated that the garage counts for one parking space. Alice Carter asked whether parking the second car in front of the garage could be a solution. Zehnder said that he would be happy to find an additional space for parking on the property but would prefer to work it out with the homeowner than to have the plan revised again. It was determined that a condition in the filings would stipulate that a second parking space be designated. Jan Morrissey and Wil Sullivan's questions were satisfied. Trevor Pontbriand and Andy Freeman echoed Heyliger's points, and Mick Lynch and Trevor Pontbriand agreed that they do not like the project, but since the neighbors are in agreement, they will not vote against it. Chair Inger feels that the structure will be very close to the abutting property, but it is an improvement.

Wil Sullivan made a motion to move to findings, Trevor Pontbriand seconded; VOTE: Wil Sullivan, aye; Trevor Pontbriand, aye; Manny Heyliger, aye; Jan Morrissey, aye; Mick Lynch, aye. 5-0.

Findings of Fact:

This is an application for a special permit to alter a pre-existing, non-conforming garage on a pre-existing, non-conforming lot to add one story of studio space with loft space above. (Continued from October 12, 2023, November 9, 2023, December 14, 2023, and January 11, 2024.)

1. The lot is in the R1 district.
2. The garage is entitled to treatment as a lawfully pre-existing nonconforming structure having been in existence for at least 10 years as provided for in Wellfleet Zoning Bylaw 235-8.2. (B).
3. The existing non-conformities regarding the structure are (inadequate lot area, 10, 233 square feet where 30,000 square feet is required/ intrusion into the front setback, 0.6 feet over where 30 feet is required / intrusion into the side setback .6 feet where 25 feet is required and inadequate frontage 80 feet where 135 feet is required)
4. The Board has made a site visit and examined all material submitted by the applicant.
5. The addition to the structure will be constructed .5 feet from the front setback and 3 feet from the property line which is a slight improvement over the current footprint.
6. There will be no change in use.
7. There will be no substantial increase in use.
8. There were five letters from abutters including Margaret Tribble, Carol Nelson, Janet Rustow and David Aronow, Steven Albee and Paul Ridker The abutters were in support of the project with agreed landscape conditions.
9. There will be a volumetric increase within the side and front setbacks.

10. The alteration will not be more substantially detrimental to the neighborhood than the existing non-conforming structure.
11. The Board has found that pursuant to WZBL 235-8.4 (B (1)):
- Nearby land uses would not be damaged by having the proposed use nearby.
 - Uses of the site would not be preempted by this use.
 - Roads, drainage, and other public services are adequate in relation to the location.
 - The site is not more sensitive than similarly zoned sites to environmental damage from a proposal such as this, considering erosion, siltation potential, groundwater or surface water contamination habitat disturbance or loss of valuable natural vegetation.

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

- The proposal does not contribute to the diversity of services or housing opportunities available locally.
- There are no seasonal consequences.
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The Board has found that the factors in WZBL 235-8.4 (B (3)) are not applicable.

12. 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 substantially detrimental to the neighborhood than the existing nonconforming structure because the existing structure is not in good repair and the alteration will improve the look of the garage while preserving the character of the house and neighborhood.. Further the applicant has worked with the neighbors to agree on landscaping conditions which will be incorporated into this special permit. Thus, the applicant has demonstrated that the benefits of the proposal will outweigh any adverse effects on the Town and the vicinity.

Conditions

1. The agreed upon landscape conditions (Exhibit A) are hereby incorporated by reference.
2. The applicant will furnish an updated site plan showing a second parking space on the property.

Exhibit A:

Agreed Landscape Conditions

1. The pitch pine tree marked as “8” Pine” in the northeast corner of the Jaffe & Ridker property to the west of the project site (86 Hiller Avenue), which pine is located very close to the location of the applicant’s planned raze and rebuild shall be removed by a qualified landscaping company hired by the applicant prior to the commencement of construction. The parties have consulted Bartlett Tree Experts who have opined that the 8” pitch pine is not likely to survive the excavation work and construction. The excavation would likely damage 25% of the tree’s root system including anchoring and feeding roots. *(Removing the tree after it has died will be more expensive because an aerial lift will be needed to remove it.)*

2. After installation of the new foundation and the construction is complete, including painting, the applicant shall plant at its expense three Eastern Red Ceders 10-12 feet in height at planting. Two trees shall be planted 8' from the property line, 12' apart and centered on the side of the new 2-story structure. The third tree shall be planted 16' from the property line and equidistant from the other two trees (in a triangle pattern).
3. The Applicant shall take appropriate measures during construction, as determined by the Wellfleet Building Department, to protect all other existing landscaping on the Jaffe & Ridker property. Such protection means to ensure against any destabilization, erosion, loss of lateral support or loss of existing vegetation (other than the 8" pine). All measures in this regard required by the Building Department shall be followed.
4. The applicant shall be responsible for any damage caused to the Jaffe/Ridker property by the demolition and construction work allowed under this permit.
5. The three Eastern Red Ceders and any other new plantings the Building Department requires the applicant to plant on the Jaffe & Ridker property, if any, shall be warranted for a period of three years. If any do not survive, the applicant will replace them.
6. The applicant will coordinate with Jaffe Ridker access to the property to complete any such planting.
7. With regard to plantings on the property of Jaffe Ridker, before disturbing the land, the applicant will confirm with the Town the location of the water service line--located in the northeast corner of the property--to ensure against damage to the line. If it is necessary to adjust the location of the new trees to protect the line, the application will consult with Jaffe and Ridker to agree on new locations.

Trevor Pontbriand made a motion to approve the findings of fact, Mick Lynch seconded; VOTE: Wil Sullivan, aye; Trevor Pontbriand, aye; Manny Heyliger, Jan Morrissey, aye; Mick Lynch, aye. 5-0.

Trevor Pontbriand made a motion to approve the special permit, Mick Lynch seconded; VOTE: Wil Sullivan, aye; Trevor Pontbriand, aye; Manny Heyliger, Jan Morrissey, aye; Mick Lynch, aye. 5-0.

Attorney Zehnder remained to speak to the Board about a couple of concerns he wanted to share. First, Zehnder informed the Board that whenever plans are approved by a Town, Zehnder emails his clients to ensure that they are aware that there may be no deviation from the approved plan, and if there is any intention to, they must speak with the Building Commissioner first. Second, Zehnder made a request that a portion of the Zoning Board of Appeals (ZBA) application be revisited. There is currently a requirement that the fee page be reviewed and signed by the Building Commissioner. This step is not helpful, but instead can hold up the filing if the Commissioner is in the field and not available. The contractor of a project is the person who makes the calculations, not the Building Commissioner; it doesn't really make sense to keep this step. Third, Zehnder proposed adding a step to project filings. In other Towns, the Building Inspector or Commissioner will review all building projects and determine whether they would need a special permit or variance. Often, the Inspector will issue a letter of denial delineating what bylaws are not respected by the project so that applicants will know for what exactly they

will need to go before the ZBA. Chair Inger noted that there was a time when this practice was in use, and that she would speak to the new Town Planner, Beth Pyles, about these issues. The Board members agreed with this course of action.

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

7:36 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 requested by email on February 20, 2024 that a continuation be allowed until March 14, as business owner, Mac Hay, would not be available for the hearing, and to give opportunity to respond to some mail received by abutters.

Wil Sullivan expressed that he wanted to discuss this project tonight, even though it will be continued. The Board agreed; there were many questions generated by the vagaries of this application. Each Board member shared concern and questions which included: that no answer was given for #4 on the application which would cite to which bylaws this application pertains, whether the applicant's intention is to merge two parcels in order to effect this project, the project appears to extend over a property line, very little explanation of the project was offered, that a flood plain application would likely need to be submitted, the application is lacking a site plan that would show the height of the structure, elevation, and other specifications, there is no indication of what will be placed as a floor material, the technical drawing of the pergola was unclear, whether there will be any insect, temperature, or weather barriers, the setbacks are not legible, the average calculations page was confusing, the appearance that the covered deck will create a new non-conformity, and whether the new structure would further obstruct the view of the salt marsh from the Bradford and from the road. Chair Inger reported that, before the public hearings began, several residents from the Bradford had arrived to share concerns. Additionally, a letter of concern was sent from residents of the Bradford. Chair Inger alerted the individuals that the hearing would be continued, but that a preliminary discussion was going to occur tonight. The residents chose to leave and attend the March 14th hearing. Chair Inger did not feel that it was appropriate to hear the abutters without representation present. Inger encouraged the lawyer representing the project to watch the video of the conversation.

Wil Sullivan made a motion to continue this hearing until March 14, 2024, Manny Heyliger seconded; VOTE: Wil Sullivan, aye; Trevor Pontbriand, aye; Manny Heyliger, aye; Janet Morrissey, aye; Mick Lynch, aye. 5-0.

Business:

Minutes from January 11, 2024

Jan Morrissey made a motion to approve the minutes for January 11, 2024, seconded by Al Mueller. 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 7:57 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,

A handwritten signature in black ink, appearing to read "Jennifer Elsensohn", written in a cursive style.

Jennifer Elsensohn, Committee Secretary

Documents:

Carter, updated, stamped plans, series of emails of support

Nelson, letter of concern

Bradford Residents, letter of concern

Belvernon, special permit application, supporting documents, letter from attorney requesting a continuance

Minutes for January 11, 2024