

Final
Wellfleet Zoning Board of Appeals

November 9, 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, Manny Heyliger, Andy Freeman, Mick Lynch

Regrets: Wil Sullivan

Also in Attendance: Attorney, Benjamin Zehnder, Jen Elsensohn, Committee Secretary, Jeffery Perry, Eliza Cox

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

Sharon Inger set the board: Trevor Pontbriand, Janet Morrissey, Mick Lynch, Manny Heyliger, and Wil Sullivan. (Wil remained on the Board in his absence because only four votes were needed to continue the hearing)

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)

On November 7, Attorney Zehnder had asked for a continuance via email to December 14, 2023.

Mick Lynch made a motion to continue this hearing until December 14, Trevor Pontbriand seconded; VOTE: Mick Lynch aye; Trevor Pontbriand aye; Janet Morrissey aye; Manny Heyliger aye. 4-0.

7:01 pm

Sharon Inger set the board: Sharon Inger, Trevor Pontbriand, Janet Morrissey, Manny Heyliger, and Andy Freeman.

23-17 Perry, 114 Pamet Point Road, Map 3, Parcel 9, Special Permit for a pre-existing chicken coop.

A visit was made by members of the Board. Jeffery Perry was present to answer questions. Jan Morrissey noted that the owner of the property is Jesse Rose and asked whether Rose was aware of the presence of the coop. Perry responded that the property had belonged to Rose's uncle, who left the property to Rose and that there had always been a chicken coop on the property. Rose is

aware that Perry keeps chickens in the coop. The Board also asked for confirmation that the coop had been approved by the Board of Health. Perry reported that it has.

Jan Morrissey moved to move to the findings of fact, and Trevor Pontbriand seconded. VOTE: Sharon Inger aye; Trevor Pontbriand aye; Janet Morrissey aye; Manny Heyliger aye; Andy Freeman aye. 5-0.

Findings of Fact:

This is an application for a special permit under Wellfleet Zoning Bylaw 235-5.3 E. for a special permit farm family, livestock, to keep chickens.

1. The lot is in the National Seashore Park District.
2. The use is allowed in the NSP district with a special permit and approval of the Board of Health.
3. The applicant has received approvals from the Board of Health.
4. The Board has made a site visit of the property.
5. There were no appearances or correspondence in support of the application or in opposition to the application.
6. There were no objections from abutters.
7. The Board has found that pursuant to WZBL 235- 8.4.2.B:
 - Nearby land uses will not be damaged by the use.
 - Roads and drainage are adequate.
 - The site is not sensitive to environmental damage.
 - The proposal contributes to the diversity of services available.
 - Scenic views and public access are not affected by the use.
8. After considering the District Objectives for the zoning district as provided for in WZBL 235- 3.2 and the relevant criteria set forth in WZBL 8.4.2, the Board finds that the benefits of the proposal will outweigh any adverse effects on the Town and the vicinity.

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

7:06 pm

Sharon Inger set the board: Al Mueller, Janet Morrissey, Manny Heyliger, Mick Lynch, and Andy Freeman.

23-19, Johnson & Alford, 156 Pleasant Point Rd, Map 35, Parcel 110, Special Permit pursuant to 235-6.1 (E) (1) (b) to alter pre-existing non-conforming single-family residence to rebuild porch, expand deck, and expand second floor within East setback.

A site visit had been made by members of the Board. Trevor Pontbriand was not acting as a Board member at this time. Pontbriand presented this plan as the architect of the project, representing Aline Architecture. The plan proposes to rebuild the existing porch to add living space, expand the second floor, and expand the deck along the back of the house closer to the setback. The Board had no questions.

Manny Heyliger made a motion to move to findings, Al Mueller seconded; VOTE: Al Mueller aye; Janet Morrissey aye; Manny Heyliger aye; Mick Lynch aye; Andy Freeman aye. 5-0.

Findings of Fact:

1. This is an application for a Special Permit under the Wellfleet Zoning Bylaws (WZBL) to alter a pre-existing, non-conforming, single-family residence by rebuilding the porch, expanding the deck, and expanding the second floor within the east setback (hereby referred to as “the alteration”).
2. The dwelling is entitled to treatment as a lawfully pre-existing, non-conforming structure having been built in 1910 according to the Assessor’s Office.
3. The Zoning Board of Appeals (hereby referred to as “the Board”) has received and reviewed the plans and drawings pertaining to the alteration, all of which are in the file.
4. The Board has made a site inspection of the subject lot.
5. The dwelling is located on a lawfully pre-existing, non-conforming 13,113 sq. ft. lot in the R1 Residential District, where single family-residential use is allowed by right. In addition to the single-family dwelling, a cottage is located on the lot.
6. The existing nonconformities are inadequate lot area (13,113 sq. ft. where 30,000 sq. ft. is required), inadequate frontage (77.11 ft. where 135 ft. are required); and intrusion into the east setback (15.0 ft. where 25 feet is required).
7. The Wellfleet Conservation Commission has approved the project with conditions.
8. 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.
9. The alternation will not extend beyond the existing 15-foot intrusion into the east setback.
10. There will be no increase in building coverage (11.4% where 15% coverage is allowed).
11. There will be a volumetric increase in nonconformity.
12. There will be no change or increase in use.
13. There were no appearance(s) or correspondence in support of the application or in opposition to the application.
14. There were no objections from the abutters.
15. WZBL 235-6.1.E(1): The Board finds that the alteration will not be substantially more detrimental to the neighborhood than the existing non-conforming structure.
16. WZBL 235-8.4.B: The Board finds that the applicant has demonstrated that the benefits of the alteration will outweigh any adverse effects on the Town and the vicinity; that the

alteration is suitable in that it is compatible with nearby land uses which would not be damaged by its construction; that the alteration will not contribute to environmental damage; that the roads, drainage, and other public services are adequate; that the alteration 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.

Mick Lynch moved to accept the findings of fact, and Andy Freeman seconded. VOTE: Al Mueller aye; Janet Morrissey aye; Manny Heyliger aye; Mick Lynch aye; Andy Freeman aye. 5-0.

Jan Morrissey asked for a clarification of the Finding of Fact #9: the word “exist” was read, but “extend” is what was written down.

Manny Heyliger moved to grant the special permit, and Al Mueller seconded. VOTE: Al Mueller aye; Janet Morrissey aye; Manny Heyliger aye; Mick Lynch aye; Andy Freeman aye. 5-0.

7:16 pm

Mick Lynch recused himself from the Board as an abutter of this property.

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

23-18, Rispoli Ventures, LLC, 15 Lecount Hollow Road, Map 30, Parcel 22, Special Permit pursuant to MGL c. 40A, s. 6 and bylaw s. 235-5.4B note 2 to install a decorative structure less than 100’ from the front property line, at 65’ from Route 6 and 77’ from Lacount Hollow Road.

Attorney Ben Zehnder was present to speak on behalf of the project, as was Eliza Cox, co-owner of Rispoli Ventures, LLC. This case, the proposal to place a replica of the Eiffel Tower on the property of PB Boulangerie, had been before the Zoning Board of Appeals some years ago, and was denied on the basis of the structure being designated by the Board as a “sign.” The case went to Court, where the Board’s decision was upheld, but the Court determined that the structure was not a sign, but an accessory structure. When looking for the best location to propose to the Board this time, the applicant considered keeping it as far from the wetlands as possible and placing it where patrons could enjoy it and it would not obstruct operations of the business. The proposed location does not observe the required setback. The proposed placement does not make the structure visible from Route 6, but, Zehnder argued, would add artistic interest to the property and ambiance. The structure is 21 feet high, will be placed on a concrete base, is lighted by something akin to Christmas lights that are attached by clips to the outside of the structure. The concrete pad will be roughly 8 feet on each side. Clarification on the specs of the lights, as well as the height of the concrete slab were requested. Concerns about the lighting creating a dangerous focal point for fatigued drivers, the height of the structure when placed on the concrete pad, the maintenance of the landscaping to keep a buffer between the Tower and Route 6, the lights being on too late which would trouble abutters, and the dangers of lightening

striking the structure were raised. Abutter, Mick Lynch, strongly cautioned about adding anything to that dangerous corner that could add to the peril. Fatal accidents have occurred there. Zehnder requested a continuance to December 14 so that he could provide information on the thickness of the concrete slab, the exact height the Tower will be when set on the slab, suggest limitations on when the Tower will be lit, whether the Tower should be grounded for lightening, and very precise information about the lighting on the Tower.

Jan Morrissey moved to continue this hearing until December 14, and Al Mueller seconded.
VOTE: Al Mueller aye; Janet Morrissey aye; Sharon Inger aye; Trevor Pontbriand aye; Manny Heyliger aye. 5-0

Business:

Approval of the minutes for October 12, 2023, Executive Session. Manny Heyliger made a motion to approve the minutes, seconded by Mick Lynch. VOTE: Al Mueller aye; Janet Morrissey aye; Mick Lynch aye; Trevor Pontbriand aye; Manny Heyliger aye; Andy Freeman aye; Sharon Inger aye. 7-0.

Approval of the minutes for October 12, 2023 Hearings. Mick Lynch made a motion to approve the minutes, seconded by Manny Heyliger. VOTE: Al Mueller aye; Janet Morrissey aye; Mick Lynch aye; Trevor Pontbriand aye; Manny Heyliger aye; Andy Freeman aye; Sharon Inger aye. 7-0.

Approval of the minutes for October 26, 2023, meeting. Al Mueller made a motion to approve the minutes, seconded by Jan Morrissey. VOTE: Al Mueller aye; Janet Morrissey aye; Mick Lynch aye; Trevor Pontbriand aye; Manny Heyliger aye; Andy Freeman aye; Sharon Inger aye. 7-0.

Andy Freeman moved to adjourn at 7:39 pm; seconded by Al Mueller. VOTE: Al Mueller aye; Janet Morrissey aye; Mick Lynch aye; Trevor Pontbriand aye; Manny Heyliger aye; Sharon Inger aye; Andy Freeman aye. 7-0.

Respectfully submitted by,



Jennifer Elsensohn, Committee Secretary

Documents:

Carter, request for continuance

Perry, application and supporting documentation

Johnson/Alford, application and supporting documentation

Rispoli Ventures LLC, application and supporting documentation

Minutes for October 12, 2023 (executive session and hearings), October 26, 2023

