

Final

Wellfleet Zoning Board of Appeals

December 14, 2023, 7:00 pm

In person and Zoom meeting held at the Adult Community Center

Board Attendees: Chair Sharon Inger, Al Mueller, Jan Morrissey, Manny Heyliger, Andy Freeman, Wil Sullivan

Regrets: Mick Lynch, Trevor Pontbriand

Also in Attendance: Attorney Benjamin Zehnder, Jen Elsensohn, Committee Secretary

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

Sharon Inger set the board: Janet Morrissey, Al Mueller, Andy Freeman, Sharon Inger, and Wil Sullivan.

Manny Heyliger removed himself from the Board table for this hearing.

7:00 pm

23-13 Thor Construction, 1532 State Highway 6, Map 30, Parcel 30: Applicant appeals pursuant to Wellfleet Zoning Bylaws Section 235-7.31 and 235-8.4A from a zoning determination by the Building Commissioner that the applicant's sign is unlawful under the Sign Code and must be removed from its current location. The sign is located in the same non-conforming location as the previous owner's sign installed pursuant to Wellfleet Building Permit No. 12-024 issued January 24, 2012. (*Continued from September 14, 2023, and October 26, 2023*)

On December 8, Attorney Zehnder had asked for a continuance via email to January 25, 2024. The Board expressed their inclination to hear the case. Zehnder explained that this hearing had been continued twice as he awaited plans to address a shed on the back of the property, which had not come to him until this past Monday. Zehnder had intended to present both applications together. Zehnder had been in contact with the Wellfleet Building Commissioner, Angelo Salamone, who informed him that if the State Highway Department did not take issue with the placement of the sign, neither would he. The sign is approximately two feet over the owner's property line, onto State property. The placement of the sign is exactly the same as that of the previous owner's sign, which had been permitted by the Town. It conforms to the bylaw in all other areas. Jan Morrissey noted that this sign is brand new—a reconstruction—and therefore should be in compliance with the current bylaw. Zehnder stated that the Wellfleet bylaw is not in line with the State law regarding signs.

Wil Sullivan made a motion move to the finding of fact, Andy Freeman seconded; VOTE: Al Mueller aye; Sharon Inger aye; Janet Morrissey aye; Andy Freeman aye, Wil Sullivan, aye. 5-0.

Finding of Fact:

1. The lot is in the Commercial District.
2. The sign is located in the same non-conforming location as the previous owner's sign, installed pursuant to Wellfleet Building Permit 12-024, issued January 24, 2012.
3. A previous business also installed its sign in the same non-conforming location.
4. The non-conformity is that the sign does not meet the requirement of Wellfleet Zoning Bylaw 235 7.4, which requires signs to have a two-foot setback from the property line. The current sign within the setback.
5. There are no other non-conformities.
6. There were no appearances or correspondence in support of or in opposition to the application.
7. The Board has found that pursuant to WZBL 235-8.2A that the nonconformity has been in existence for more than 10 years and is legally non-conforming under MGL c. 40A s.7.
8. The Board overrules the Building Commissioner's determination and finds that the sign may legally remain.

Al Mueller made a motion to accept the finding of fact, Andy Freeman seconded; VOTE: Jan Morrissey, aye; Al Mueller, aye; Wil Sullivan, aye; Sharon Inger, aye; Andy Freeman, aye. 5-0.

Jan Morrissey made a motion to overrule the Building Inspector's ruling that the sign is unlawful and must be removed, Al Mueller seconded; VOTE: Jan Morrissey, aye; Al Mueller, aye; Wil Sullivan, aye; Sharon Inger, aye; Andy Freeman, aye. 5-0.

It was noted that the applicant must obtain a permit for the new use of the property.

Sharon Inger set the board: Manny Heyliger, Trevor Pontbriand, Will Sullivan, Jan Morrissey, Mick Lynch. Inger noted that it was not necessary to have substitutes for this hearing.

7:10 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 and November 9, 2023)

On December 6, Attorney Zehnder had asked for a continuance via email to January 11, 2024. Zehnder informed the Board that the direct abutter to this property had obtained counsel and the two parties have been in a back-and-forth dialogue asking for concessions for the design. Issues

of height, the roof, and location have all been in contention. Zehnder stated that he would be back to the Board when the two parties come to an agreement.

Wil Sullivan made a motion to continue this hearing until January 11, 2024, Manny Heyliger seconded; VOTE: Manny Heyliger, aye; Janet Morrissey, aye; Wil Sullivan, aye. 3-0.

7:13 pm

23-05, Vermehren (Fox and Crow), 70 Main Street, Map 15, Parcel 5. Review of correspondence from applicant regarding formal notice of surrender of special permit issued by the Wellfleet Zoning Board of Appeals. Vote(s) may be taken.

Chair Inger read the letter of surrender of the permit.

Al Mueller made a motion to accept the surrender of the permit, Andy Freeman seconded; VOTE: Jan Morrissey, aye; Al Mueller, aye; Wil Sullivan, aye; Sharon Inger, aye; Manny Heyliger, aye; Andy Freeman, aye. 6-0.

7:15 pm

Sharon Inger set the Board: Al Mueller, Jan Morrissey, Sharon Inger, Wil Sullivan, Manny Heyliger.

Wil Sullivan signed a Mullin form. Andy Freeman left the room.

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. Zehnder had supplied the Board Members with structural information about the proposed footings, as well as photographs of the unassembled structures with detailed photographs of the lights. The precast pillars will be mostly underground, with three inches remaining above ground. Each foot of the tower will be bolted to a corresponding pillar using rebar and coil bolts. The height of the structure is twenty-one feet, so the combined height will be twenty-one feet, three inches. Zehnder demonstrated the size of the lights that will be wrapped around the entire structure using his pinky as a reference. The lights, according to Zehnder, are approximately the size of a pinky, with the semi-translucent bulb portion being approximately the size of one joint. Heyliger asked if this structure would replace any parking spots. Zehnder explained that it would not and would actually be placed on a paved portion of the parking area where two lots come together, creating an otherwise unusable space. The structure will be placed on an already paved area that also allows the owner to keep it further from the wetland. There was a short discussion on how wind might affect the tower, Zehnder reminded the Board that this will require a building permit, which will ensure documentation about the safety features. The Board and Zehnder discussed adding a condition to the permit regarding parameters about when the structure could be lit. It was decided that it would be permissible to light the structure during business hours, and no later than 11:00 pm.

Wil Sullivan moved to move to the findings of fact, and Al Mueller seconded. VOTE: Al Mueller, aye; Jan Morrissey, aye; Sharon Inger, aye; Wil Sullivan, aye; Manny Heyliger, aye. 5-0.

Findings of Fact:

1. The lot is in the Commercial District.
2. The lot is improved with a one-story building used as a restaurant which is entitled to treatment as a lawfully pre-existing, non-conforming structure having been built in 1972 according to the assessor's office.
3. The applicant proposes locating a 21 foot 3 inch tall scaled reproduction of the Eiffel Tower. According to the Court's Findings of Fact and Rulings of Law in Orleans District Court Docket No.2026CV0074, the tower constitutes a structure accessory to the primary restaurant use and not a sign and is therefore allowed by Special Permit.
4. Under Bylaw 235-5.4B minimum yard requirements, Note 2, the 100 foot minimum front yard setback distance in the Commercial district may be decreased to 50 feet for a non-residential use, provided the principal building is wood sided. The proposed location is 65 feet from the property's Route 6 line and 77 feet from its Lecount Hollow property line.
5. The Board has made a site visit of the property and has reviewed the plans and drawings pertaining to the tower, which are on file.
6. There were no appearances or correspondence in support of or in opposition to the application.
7. There were one objection from an abutter.
8. The Board has found that pursuant to WZBL 235-8.4.2.
 - Nearby land uses will not be damaged by the proposed structure.
 - Roads, drainage and other public services are adequate.
 - The applicant has located the tower more than 50 feet from the freshwater wetland on the property to avoid environmental damage.
 - The proposal will not affect diversity of services or have seasonal consequences.
 - No scenic views will be affected.
9. The proposed structure will not be more substantially detrimental to the neighborhood than the existing nonconforming restaurant 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.

Condition:

1. The lights will be off when the restaurant is closed and/or by 11 p.m.

Al Mueller made a motion to accept the condition in the findings of fact, Wil Sullivan seconded. VOTE: Al Mueller, aye; Jan Morrissey, aye; Sharon Inger, aye; Wil Sullivan, aye; Manny Heyliger, aye. 5-0.

Will Sullivan made a motion to accept the findings of fact, Al Mueller seconded. VOTE: Al Mueller, aye; Jan Morrissey, aye; Sharon Inger, aye; Wil Sullivan, aye; Manny Heyliger, aye. 5-0.

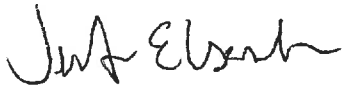
Jan Morrissey moved to grant the special permit, and Manny Heyliger seconded. VOTE: Al Mueller, aye; Jan Morrissey, aye; Sharon Inger, aye; Wil Sullivan, aye; Manny Heyliger, aye. 5-0.

Business:

Approval of the minutes for November 9, 2023 Hearings. Al Mueller made a motion to approve the minutes, seconded by Jan Morrissey. VOTE: Al Mueller, aye; Jan Morrissey, aye; Sharon Inger, aye; Manny Heyliger, aye; Andy Freeman, aye. 5-0-1. Wil Sullivan abstained.

Wil Sullivan moved to adjourn at 7:29 pm; seconded by Al Mueller. VOTE: Al Mueller, aye; Jan Morrissey, aye; Sharon Inger, aye; Wil Sullivan, aye; Manny Heyliger, aye, Andy Freeman. 6-0.

Respectfully submitted by,



Jennifer Elsensohn, Committee Secretary

Documents:

Thor, request for continuance

Carter, request for continuance

Fox and Crow, notice of surrender of special permit

Rispoli Ventures LLC, application and supporting documentation

Minutes for November 9, 2023

