

# TOWN OF WOODBURY Zoning Board of Appeals

281 Main Street South  
Woodbury, CT 06798

203.263.3467 ▪ [www.woodburyct.org](http://www.woodburyct.org)

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## MEETING MINUTES – OCTOBER 21, 2024 - 7:30 PM Senior Community Center, 265 Main Street South

### MEMBERS PRESENT

Adam Goldberg  
Mike Novak, Chairman  
Robert Ratzenberger  
Claudette Volage

### MEMBERS ABSENT

Joe Donato

### ALTERNATES PRESENT

### ALTERNATES ABSENT

Jane Donn  
Seth Bernstein  
Demetrius Leonard

**NOTED OTHERS PRESENT:** Ted Mannello, Atty. Pilicy, Hiram Peck, Atty. Hoyler, Atty. Seeman, Atty. Kaelin (Town Attorney), Will Agresta (Town Planner), Gary Nurnberger, and Robert and Adele McCarthy

### OPENING OF MEETING

- Call to Order – Chairman Novak called the meeting to order at 7:31 p.m.
- Seating of Members / Alternates – Seated for the meeting were regular members Goldberg, Novak, Ratzenberger and Volage

### EXECUTIVE SESSION

**Discussion of Pending Litigation / Peck vs. Town of Woodbury Zoning Board of Appeals / 22-ZBA-2206 – 858 Main Street North / Map 25, Lot 30 / OS-60 District / Special Permit – Change of Nonconforming Use.** Ted Mannello (applicant/owner).

### **MOTION:**

To enter Executive Session to discuss Pending Litigation: Peck vs. Town of Woodbury Zoning Board of Appeals 22-ZBA-2206 – 858 Main Street North / Map 25, Lot 30 / OS-60 District / Special Permit – Change of Nonconforming Use. Ted Mannello (applicant/owner).

Moved by **RATZENBERGER**, Seconded by **GOLDBERG**

Vote: 4-0-0 – **Approved** – Motion Passed

Aye Novak, Goldberg, Ratzenberger, Volage

Nay None

Abstain None

Atty. Seeman, representing Hiram Peck of 21 Minortown Road Ext., requested the record reflect that they object to the executive session as there is no pending litigation, they did not feel this item qualified for the executive session to occur and it would be inappropriate to discuss anything on this in private, it should be openly discussed on the record.

Chairman Novak acknowledged the objection and proceeded into Executive Session with the Town Attorney at 7:33 p.m.

Members of the Board returned from Executive Session at 7:41 p.m. with no action taken.

#### **LITIGATION MATTERS**

**Peck vs. Town of Woodbury Zoning Board of Appeals / 22-ZBA-2206 – 858 Main Street North / Map 25, Lot 30 / OS-60 District / Superior Court Decision Remand to ZBA / Special Permit – Change of Nonconforming Use. Ted Mannello (applicant/owner)**

Chairman Novak noted that the judge has remanded the Board to look at four aspects of the decision they had made.

- 1) *The Woodbury ZBA is directed to either require the applicant to submit a site plan which is customary and consistent with the applicable regulations and to properly consider it, or to specifically waive such requirement and explain on the record why a site plan is not required for the Woodbury ZBA to make a reliable and lawful decision concerning the special permit application in this matter.*

Chairman Novak noted that a site plan has been submitted a few things to note are the required buffer and the watercourse. The Chairman inquired of the Board if there was anything submitted on the site plan that would make them reconsider their decision. Members did not note anything concerning.

Town Atty. Kaelin noted that the judge stated the Board should either require the site plan or explain on the record why one was not needed. A site plan was also submitted with an application to the Inland Wetlands for a Jurisdictional Ruling. The site plan does show the buffer along with its location, they can inquire with the applicant about the material.

Atty. Pilicy, noted that the site plan has been submitted, it doesn't show anything that wasn't anticipated to be shown and doesn't show anything that isn't readily available when you drive by.

Atty. Hoyler expressed that the site plan is incomplete. It does not include a lighting plan as required by the Zoning Regulations, does not show drainage runoff control, erosion sediment controls, it shows the watercourse but does not identify soil types. There is an exterior light that is offensive to the neighbor Mr. Peck. A lighting plan is designed to prevent that from happening.

A portion of the judge's decision regarding the site plan was read by Atty. Hoyler regarding the importance of a site plan particularly indicating the outside use of the property for assessing the nonconforming use. Areas of outside storage of any associated business materials including tanks and propane delivery truck location would be of interest to be included on that plan.

Planner Agresta noted that there was no drainage controls or sediment controls noted on the plans as there was no physical work proposed. Regarding the storage of methanol, it was proposed during the hearing to be stored inside, so it would not show up on a site plan. They are not storing propane, other than what is in the trucks located in the parking lot which is clearly shown on the plan. Planner Agresta also noted that the plan indicates a propane tank on the corner of the building, this has since been relocated to an area outside the Inland Wetlands upland review area.

- 2) *The Woodbury ZBA is directed to either require the applicant to have its proposed activities reviewed by the Inland Wetlands Commission, or to state on the record why such review is not required despite the presence of a stream and the storage and handling of hazardous materials.*

Chairman Novak understood that the Inland Wetlands Agency has reviewed the application and approved it. The Agency's approval motion was read for the record. Board members had no additional comments on this item.

Both Town Counsel and applicant's Counsel had no comments for this item.

Atty. Hoyler noted that the Inland Wetlands Agency did determine that the propane tank within the upland review area was an ongoing violation. This has been moved now but would have required permitting. A letter from Atty. Hoyler dated October 18, 2024, was noted and submitted for review by the Board.

Chairman Novak noted that they had four questions to respond to from the judge and stated that the Board would not be going through the whole application from its beginning. Atty. Hoyler felt that the entirety of the site plan would be new information that should be addressed.

It was clarified that the comment regarding the propane tank has been resolved by moving it outside of the wetlands regulated area. There is nothing on the property now that requires a permit from the Inland Wetlands Agency. Atty. Hoyler noting that a propane tank in the upland review area would require a permit.

Atty. Kaelin explained that the addition of the propane tank was unrelated to the Board's approval and the terms and conditions of the approval. The applicant merely switched over their system from either electric or oil to propane.

Planner Agresta added that the permit that the ZBA gave did not discuss storage of propane on the site other than that which on the truck. The propane tank on the property is not for storing propane for the business it is for the mechanicals in the building, as opposed to oil or electric. The use of the building is not dictating the need for that tank.

The Attorneys argued that an incomplete special permit application, according to the Town's Regulations shall be denied. They cannot approve the permit if it requires some sort of Wetlands authorization. The change of use would not in itself require wetlands authorization, however, this propane tank shown in the upland review area required wetlands authorization.

This site plan was filed on the land records with the note that it is in accordance with the Zoning Board of Appeals approval. The propane tank is shown on that plan. It was not shown at the time of approval, but it is filed. Planner Agresta clarified the chronology of events in that the tank was not on the plans with the application, it did exist at the time the office signed off on it. The map was filed after the ZBA's ruling.

Members reviewed letter submittals from Mr. Peck's attorneys. The Board had no additional questions or concerns.

Atty. Hoyler noted that a 22A-19 intervention petition was submitted in June and should be part of the record. Atty. Kaelin responded that his opinion and advice to the extent that they are looking for a ruling on the petition. This would be the type of petition you would present when there is a hearing on an application. They have already had a hearing on the application and a decision. This is a hearing specifically to respond to the judge's remand order. He did not see anything that would allow Mr. Peck to intervene at this time. Additionally the purpose to intervene is to be heard, they have already submitted a motion with the court for verification if they have a right to be heard, they asserted their right to be heard just like in the petition and the court denied that motion and said it would be up to the Board on whether he would be heard and in what manner and the right to participate. Atty. Kaelin did not feel the petition was well taken and to the extent that there would be a ruling on it and recommended that they deny the petition.

Atty. Hoyler asserted that the application was incomplete as submitted and under the regulations needed to be denied.

- 3) *The Woodbury ZBA is directed to specifically consider the quality and character of the proposed use, including the storage of hazardous materials, and to explain on the record why the character of the new proposed use is or is not an inappropriate expansion of the previously allowed non-conforming uses.*

Chairman Novak noted that they reviewed this application in detail and had a very specific ruling including nine points. The Board felt that the harmony with the neighborhood was similar if not better to the business that was previously there. The use was less intensive with vehicles not being there during the day, work not being

conducted all day long, storage of materials could be debated but refinishing materials are far more toxic to the environment than gas which would dissipate if released.

Member Ratzenberger noted the buffer was added as a condition of the Boards approval. It was noted that the approval was for the applicant to meet with the Town Planner and come up with a suitable buffer.

Ted Mannello, applicant, spoke to the buffer requirement. At the request of his neighbor, Mr. Peck, a fence was installed to the edge of his parking area. The location and length of the fence was shown on the site plan and the fence was described to be 6 ft. tall.

Member Goldberg clarified with Mr. Mannello that he is not storing propane. They have a residential size 115 gallon propane tank for the purpose of their heating system. He explained the process of cleaning the propane tanks with methanol to dry out the inside of the tank. There is a 55 gallon drum of it along with HVAC ductwork etc. As Member Goldberg understood, the previous tenant had multiple chemicals perhaps in lesser quantities but seemingly more dangerous.

It was noted that this business the employees come, get their stuff and leave with one person at the building. He recalls the previous tenant had six people in the building running machinery. Member Goldberg felt the previous business was more intrusive than this one.

Mr. Mannello confirmed that the propane delivery truck in the wintertime is out every day, leaving in the morning, coming back at night. In the summer, two to three days a week.

The lighting was questioned. Mr. Mannello explained that there had been two existing traditional flood lights on the building. Mr. Peck had notified him that the lights were a problem, so he installed new lights that shine straight down. It was confirmed that he could install motion sensors for the lights and it was clarified that the flood lights were existing. It was noted that one of the lights is actually never used.

Noise was addressed. There are no machinery noises, perhaps vehicles pulling in.

Atty. Kaelin addressed the issue that the original site plan received lacked the strict definition of the regulations and it did not include that there was a watercourse on the property. It was noted that under ASD of the Return of Record there was a property boundary survey submitted before the Board decided the matter. It may not have met all the requirements of a site plan but it did show the property boundary in relation to Route 6 and to the neighbor and also included the watercourse. According to the transcripts, this plan was taken out by the applicant, reviewed and discussed with the Board. It would be assumed that the Board was aware there was a watercourse. Also in the Return of the Record A8 there is a full size map of this same survey. He argued that the Board was not deprived of knowledge or lack of information because the Board was shown these items, although the document submitted was not a site plan as specifically defined by the regulations. In addition, a similar property survey was submitted in the prior application and prior use, showing the watercourse. This is found in the 2017 Return of Record; it is also noted that the four members at this meeting also heard the application from 2017. The watercourse was in the record for this application, as well as the prior use record.

Atty. Seeman questioned what Atty. Kaelin was addressing, no one was arguing that the Board was unaware of the watercourse, they are there for the four remand issues. He also noted that the application submitted was incomplete as it asked questions if the property was in a wetland regulated area, a flood plain, etc. and these items were not checked off on the application to affirm in either way. Atty. Kaelin responded he addressed both 1 and 2 of the remand order.

There was discussion about the differences between the prior business and what is at the location now. Chairman Novak argued that the Board reviewed items such as nature of the use, how busy, traffic, noise, hours of operation etc. Atty. Hoyler reminded that for a nonconforming use to replace another nonconforming use it has to be of the same or equal intensity and has to fit with the use and character of the prior use, feeling this use is not. Chairman Novak's opinion was that the uses did not need to match. Atty. Hoyler explained that changes in the use of an area of the nonconforming property is an illegal expansion of a nonconformity. Areas that were not previously used are now used for storage which is an illegal expansion of a nonconforming use. Chairman Novak disagreed,

they are using the property in a different manner replacing one nonconforming use to a nonconforming use that was less intensive in nature than it was prior.

Specifically using areas that were not used previously are now being used for storage of empty propane tanks. Chairman Novak feeling that storage of empty propane tanks is a commensurate use of a propane business. Atty. Hoyler arguing that the prior use of this property is not consistent with a propane business. They are using areas for storage that were not previously used for storage.

Atty. Hoyler requested that the Board hear from Hiram Peck with regards to the uses of the property from what was there before and what is there now, the Board feeling that this was not what was before them. The judge has asked what was done for reasoning and what were their quantitative and qualitative reasoning as to how they arrived at the decision. They now want to introduce new material on how they feel it is a different nature.

The judge stated that they could not have evaluated the change in character and use because they did not have a proper site plan. The Board now has a site plan which Atty. Hoyler believed everything included on this new site plan is now before the Board allowing Mr. Peck to introduce more information. The Board then needs to decide whether the character and use is of the same nature as the previous use.

Chairman Novak stated that they have already made the decision, they have been asked to either require the submittal of a site plan or explain why they waived it. A site plan has been provided. A site plan is important in assessing the nature of the nonconforming use and its impact on the neighbors. It is of the opinion of the neighbor that this use is not in character with the previous use.

Planner Agresta noted that the Board had required a buffer plan to screen the neighbor which goes to the quality and character of the neighborhood. The buffer would screen the existing parking area, and any business activity that may occur outside.

Hiram Peck addressed the Board noting prior uses. The building was previously used for furniture storage warehouse and repair. The most recent tenant was a furniture design and furniture build. Mr. Peck indicated that those activities were all done inside the building, with the exception of employee vehicle parking. Historically all uses have been performed inside the building with no outside storage. Mr. Peck indicated that this business has expanded siting: multiple industrial trucks have been parked at the property, light trespass in violation of the Zoning Regulations, expansion of hours of operation, illegal deliveries, noises that never occurred there before, junk storage outside the building, a propane truck parking near the dumpster. In summary a significant portion of the site is now used for these activities which was never done before, it is an expansion of a nonconforming use. The impact on the residential area from truck noise, changes to operating hours and storage of hazardous materials. All reasons that this should be application should be denied.

Atty. Pilicy responded that expansion is when the footprint is expanded. If there was an existing parking lot and you only used a portion of it, you can use the rest of it. It is not an expansion; you are using what is there. This building and this parking lot have not changed. Intensification is when you have more of the same. You can have more customers or more business activities there. With this case there are significantly less business activities taking place there than before. The starting point for this application included all points previously approved for this site. There was less activity than what was already approved for this site. The business has one person inside during the day and there are employee vehicles where they park and go off to their job site.

Mr. Mannello explained that they are doing what they applied for. He explained that a snapshot of a 500 gallon tank being dropped off is turned around and delivered to the customer. This takes place in the parking lot. It sits there for one to two days at the most. The area of the dumpster is located behind the fence. When a project is done, scrap metal is placed next to the dumpster for pick up. These activities are done behind the fence and at the back of the building, to observe them you would have to come onto his property. Other than that they store in the building what they need for their jobs and stage for the jobs exactly as he applied for. The business does not use the entirety of the building. It is an office, a warehouse and parking spaces.

Planner Agresta clarified the hours, both previous approvals and the current approval talk about "normal business hours." These are not the only hours of operation; these are the hours where a majority of the business occurs.

Chairman Novak noted they have established the businesses are different. After review of what they approved and looking at what was there prior he felt they properly considered for quality and character of the proposed use in their previous decision. Member Ratzenberger noted there has not been a real change, the footprint is the same, parking lot is the same. Trucks load up and go out in the morning and a propane truck goes out and makes deliveries. He is not storing propane, he has just the truck which is what he said he was doing.

There was no specification as to how many vehicles could be parked, it was noted that the propane truck would be parked outside.

Member Volage noted that the building is on a state highway, with car and truck noise all the time. Employees drive to the site and just park their car.

Member Goldberg felt that an antiques or furniture business would also have had truck deliveries, sounds of trucks coming in and out.

Chairman Novak noted that just because the current business is being run more appropriately doesn't change the fact that this nonconforming use that was approved is less intense than what was there. The business is different in nature but that doesn't change the character and nature of the use. They specified that no fabrication would occur on the premises, as opposed to what was there, which was fabrication and manufacturing.

- 4) *The Woodbury ZBA is directed to specifically describe on the record the construction, location and extent of the buffer that is required to be installed.*

The ZBA approval directed the applicant to follow up with the Town Planner with regards to the appropriate buffer. The buffer installed was a fence. Mr. Mannello explained he was going to put up shrubbery, but Mr. Peck requested he put up a fence. Members felt he did more than what had been required.

Atty. Pilicy noted that the applicant was allowed to put up shrubs or a fence and felt like he was doing something better because Mr. Peck asked for the fence. Once the fence was installed he brought in a plan to show the Town Planner where the fence was.

Mr. Peck indicated that a site plan filed on the land records shows a fence that is not complete and was not signed off by the Chairman. Chairman Novak expressed that he has been Chairman for about 15 years and has never signed a site plan. Planner Agresta's interpretation was that the ZBA approval directing it to the Town Planner's Office was giving him the authority that they hold. There is also no state statute requiring a site plan be filed on the land records. The remand is asking if the buffer is adequate. The site plan they have shows the fence, the Board should determine if that was sufficient for what they had required as a condition of the approval.

Mr. Peck noted the regulations specify that these vehicles are not to be visible from the road or from any other abutting property. They clearly show from the road and can be seen over the fence. He has observed two propane trucks and commercial vehicles which would be in violation of the Zoning Regulations.

The item regarding the fence being incomplete was explained. The plan filed on the land records shows the fence extending into the upland review area. This portion has not been constructed. The Board should determine if the map in front of them is adequate or inadequate, if inadequate they should instruct the applicant what to do to make it adequate.

Member Ratzenberger felt the fence was big enough. Shrubs would have been shorter, would take longer to grow in and could die. Member consensus was that what has been installed is adequate and was what the neighbor had requested.

The four items on the remand from the judge were discussed. Chairman Novak put to the Board the question whether any of these items would change how they felt with the nature of this approval. All members indicated that they stood by their original decision.

Upon guidance from the Town Attorney, the Board closed discussion of the remand and requested staff to draw up a draft resolution for the next meeting.

**MOTION:**

To close discussion on Peck vs. Town of Woodbury Zoning Board of Appeals / 22-ZBA-2206 – 858 Main Street North / Map 25, Lot 30 / OS-60 District / Superior Court Decision Remand to ZBA / Special Permit – Change of Nonconforming Use. Ted Mannello (applicant/owner) and direct staff to prepare a draft resolution for consideration at their next regularly scheduled meeting.

Moved by **RATZENBERGER**, Seconded by **GOLDBERG**

Vote: 4-0-0 – **Approved** – Motion Passed

Aye Goldberg, Novak, Ratzenberger, Volage

Nay None

Abstain None

**PUBLIC HEARINGS**

**24-ZBA-0003 / 57 Main Street North / Map 105, Lot 69 / MSD & HD#1 Districts / Robert and Adele McCarthy (owner/applicant), Gary Nurnberger (agent) / Special Permit application pursuant to Zoning §1.4.2.3 and §8 to permit expansion of an existing residence building with a nonconforming side yard setback of 10.8 feet (18.64 feet is required based on the average height of the principal dwelling) by a rear addition with a proposed side yard setback of 15.83 feet (no closer than the existing non-conforming side yard setback).**

**MOTION:**

To open public hearing on item 24-ZBA-0003 / 57 Main Street North / Map 105, Lot 69 / MSD & HD#1 Districts / Robert and Adele McCarthy (owner/applicant), Gary Nurnberger (agent) / Special Permit application pursuant to Zoning §1.4.2.3 and §8 to permit expansion of an existing residence building with a nonconforming side yard setback of 10.8 feet (18.64 feet is required based on the average height of the principal dwelling) by a rear addition with a proposed side yard setback of 15.83 feet (no closer than the existing non-conforming side yard setback).

Moved by **GOLDBERG**, Seconded by **RATZENBERGER**

Vote: 4-0-0 – **Approved** – Motion Passed

Aye Goldberg, Novak, Ratzenberger, Volage

Nay None

Abstain None

Chairman Novak reminded members of the conflict of interest statutes and regulations. No members expressed a conflict.

Gary Nurnberger was present representing property owners Robert and Adele McCarthy. An addition is requested encroaching 10.8 ft. into the side yard setback. No principal building within the MSD district may be closer to a side or rear property line than the average height of the principal building. The midpoint of the roof establishes the setback line, this calculation was reviewed with the Board. The proposed addition on the side and to the rear of the home was described along with an explanation of the setback line. The addition will not extend further than the current building, it will be smaller. They have received Historic and Health Department approvals. Architectural drawings were reviewed. The total footprint of the addition is 468 sq. ft. (18 x 26). The area of the “shed” is being converted to living space and getting wider. It was confirmed that abutter notifications had been received and are in the file. Members had no further questions and no one was present from the public to speak.

**MOTION:**

To close the public hearing on item 24-ZBA-0003 / 57 Main Street North / Map 105, Lot 69 / MSD & HD#1 Districts / Robert and Adele McCarthy (owner/applicant), Gary Nurnberger (agent) / Special Permit application pursuant to Zoning §1.4.2.3 and §8 to permit expansion of an existing residence building with a nonconforming side yard

setback of 10.8 feet (18.64 feet is required based on the average height of the principal dwelling) by a rear addition with a proposed side yard setback of 15.83 feet (no closer than the existing non-conforming side yard setback).

Moved by **RATZENBERGER**, Seconded by **VOLAGE**

Vote: 4-0-0 – **Approved** – Motion Passed

Aye Goldberg, Novak, Ratzenberger, Volage

Nay None

Abstain None

**MOTION:**

To open deliberations on application 24-ZBA-0003 / 57 Main Street North / Map 105, Lot 69 / MSD & HD#1 Districts / Robert and Adele McCarthy (owner/applicant), Gary Nurnberger (agent) / Special Permit application pursuant to Zoning §1.4.2.3 and §8 to permit expansion of an existing residence building with a nonconforming side yard setback of 10.8 feet (18.64 feet is required based on the average height of the principal dwelling) by a rear addition with a proposed side yard setback of 15.83 feet (no closer than the existing non-conforming side yard setback).

Moved by **GOLDBERG**, Seconded by **RATZENBERGER**

Vote: 4-0-0 – **Approved** – Motion Passed

Aye Goldberg, Novak, Ratzenberger, Volage

Nay None

Abstain None

Member consensus was that the expansion was not encroaching on anything more than the existing building is. Board members had no further concerns.

**MOTION:**

To approve application 24-ZBA-0003 / 57 Main Street North / Map 105, Lot 69 / MSD & HD#1 Districts / Robert and Adele McCarthy (owner/applicant), Gary Nurnberger (agent) / Special Permit application pursuant to Zoning §1.4.2.3 and §8 to permit expansion of an existing residence building with a nonconforming side yard setback of 10.8 feet (18.64 feet is required based on the average height of the principal dwelling) by a rear addition with a proposed side yard setback of 15.83 feet (no closer than the existing non-conforming side yard setback).

Moved by **RATZENBERGER**, Seconded by **GOLDBERG**

Vote: 4-0-0 – **Approved** – Motion Passed

Aye Goldberg, Novak, Ratzenberger, Volage

Nay None

Abstain None



**OTHER BUSINESS**

**ADMINISTRATIVE**

- **Meeting Minutes** – 09/16/24

**MOTION:**

To approve the Minutes of the September 16, 2024, meeting as presented.

Moved by **VOLAGE**, Seconded by **NOVAK**

Vote: 4-0-0 – **Approved** – Motion Passed

Aye Goldberg, Novak, Ratzenberger, Volage

Nay None

Abstain None

**PRIVILEGE OF THE FLOOR** – There was no one present for privilege of the floor.

**ADJOURNMENT**

To adjourn the meeting at 9:16 p.m.

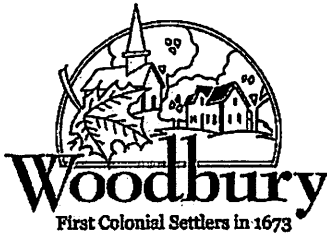
Made by **RATZBENBERGER** with no objections.

Respectfully Submitted,

*Anne Firlings*

Anne Firlings, ZBA Clerk

RECEIVED & FILED  
IN WOODBURY, CT  
This 25<sup>th</sup> day of Oct 2024  
at 4:05 o'clock P M  
M. Mancini  
Town Clerk



# Town of Woodbury Zoning Board of Appeals


281 Main Street South  
Woodbury, CT 06798  
203.263.3467 • [www.woodburyct.org](http://www.woodburyct.org)

## SPECIAL PERMIT APPROVAL

### 24-ZBA-0003 – 57 Main Street North

Special Permit Per Zoning §1.4.2.3 – Expansion of Nonconforming Dwelling Within Side Yard Setback  
Robert and Adele McCarthy (owner/applicant)

Date of Approval	October 21, 2024
Approval Expiration*	April 21, 2025
*If the conditions of approval are not timely completed.	

Applicant	Robert and Adele McCarthy	
Owner	Robert and Adele McCarthy	
Application	24-ZBA-0003	
Project	Special Permit pursuant to Zoning §1.4.2.3 seeking approval for the expansion of an existing nonconforming residence building located within a required side yard setback with an addition also within the required side yard setback but no closer than the existing residence building to the side property line.	Approved by Zoning Board of Appeals
Address	57 Main Street North -- Map 105, Lot 69	
Site Acreage	0.5 acres	Approval Date: <u>10/21/24</u>
Zone	MSD District	Signature: <u></u> Town Planner

WHEREAS the Woodbury Zoning Board of Appeals ("ZBA") has received application 24-ZBA-0003 as submitted by Robert and Adele McCarthy (applicant/owner) seeking a Special Permit pursuant to Zoning §1.4.2.3 to permit the expansion of an existing nonconforming residence building located within a required side yard setback with an addition also within the required side yard setback but no closer than the existing residence building to the corresponding side property line; and

WHEREAS according to the property Assessor Card, the house was originally constructed circa 1769, which is prior to April 1, 1969, as is required per Zoning §1.4.2.3 for eligibility of the requested Special Permit; and

WHEREAS the existing subject property is located within an MSD District with frontage and street access via Main Street North. The existing lot area is approximately 0.5 acres; and

WHEREAS the existing residence building is partially located within the applicable westerly side yard setback. The property also includes a detached accessory outbuilding located substantially within the easterly side yard setback. As such, both the existing dwelling and accessory building are "dimensionally nonconforming" structures; and

**WHEREAS** the plan proposes to remove a one-story addition to the rear of the existing residence and construct a new two-story addition in its place. The new addition will be no closer to the side property line than existing, in fact such be slightly less. Also, the addition is to the rear of the existing residence and is not generally visible from the abutting street; and

**WHEREAS** the current use of the premises is a three-bedroom single-family residence. Under former ownership, a portion of the residence was used as a commercial kitchen under Zoning Commission Special Permit (#970), which use no longer exists (note the recent Health District septic approval dated 10/16/24 also indicates “no food service approved.” The addition will eliminate the former commercial kitchen replacing it with a contemporary sized residential kitchen and additional bedroom (master suite); and

**WHEREAS** the application materials received include the following:

- Application for Special Permit
- Project Narrative and Statement of Use, 09/10/24
- Certificate of Appropriateness, Woodbury Historic District Commission, 06/12/24
- Septic Plan Approval, HVHD, 10/16/24
- Zoning Location Survey, Roy V. Cheney, 08/2024
- T.0 – Title Sheet, Gary Nurnberger, AIA, 09/19/24
- A.0 – Existing Conditions & Demolition First Floor & Basement, Gary Nurnberger, AIA, 09/13/24
- A.1 – Foundation Plan First Floor Construction Plan Second Floor Existing Conditions, Gary Nurnberger, AIA, 09/13/24
- A.2 – Second Floor Construction Plan Electrical/Wind Bracing Plans, Gary Nurnberger, AIA, 09/13/24
- A.3 – Exterior Elevations, Gary Nurnberger, AIA, 09/13/24
- A.4 – Roof Plan Building Sections Wall Section, Gary Nurnberger, AIA, 09/13/24; and

**WHEREAS** the subject lot is located within Historic District #1. A Certificate of Appropriateness is required for the project and was obtained on June 12, 2024, from the Historic District Commission; and

**WHEREAS** the subject lot does not include wetlands, watercourses, regulated upland review area or 100-year floodplain; and

**WHEREAS** a duly noticed public hearing as published in Voices on October 9 and 16, 2024 was opened and closed on October 21, 2024, at which time interested persons were afforded an opportunity to be heard; and

**WHEREAS** the ZBA has considered all the information submitted and received, including all verbal and written public comments received (none were received);

**NOW THEREFORE BE IT RESOLVED** upon consideration of the information received, the ZBA, consistent with Zoning §1.4.2.3, §8.2 and §9.6.1.3, hereby **APPROVES** Special Permit Application **24-ZBA-0003** and authorizes the publishing and filing of a Notice of Decision as required, subject to the following conditions:

#### **CONDITIONS OF APPROVAL**

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1. **Final Plans Endorsement** – The Special Permit Site Plans as submitted shall be stamped on behalf of the ZBA Chair by the Town Planner as “approved.” The Special Permit granted herein shall be limited and specific to that detailed herein and as shown on said plans. Said final plans are not required to be recorded on the land records
2. **Zoning Permit / Other Permit Approvals Required** – This Special Permit Approval is not authorization to commence any site disturbance or construction work until all other applicable permits and approvals have been duly obtained by the applicant/owner. A Zoning Permit as well as other permit approvals are separately required.

3. **Land Record Recording Required** – To effectuate the Special Permit approved herein, the applicant/owner shall record on the Town of Woodbury Land Records an original copy of this Special Permit Approval (in the form of a **Land Record Information Form**), as signed by the Town Planner and provided by the Land Use Office. The applicant shall provide a copy as recorded to the Land Use Office.
4. **Expiration** – Failure to record the Land Record Information Form within six (6) months of the date of this approval shall render the granted ZBA Special Permit null and void without further written notice.
5. **Applicant/Owner Acceptance** – Acceptance of this Special Permit approval and the conditions set forth herein shall be evidenced by the recording of the Land Record Information Form, indicating the applicant/owner's agreement that this approval is contingent upon the strict compliance with the Town's Regulations, requirements and the approval conditions set forth herein.
6. **Continued Compliance Required** – Failure to maintain compliance with this approval and the final plans as endorsed shall constitute a violation of the terms of this approval and the Zoning Regulations, subject to revocation. Any changes in use or variation from or alteration of the approved final plans shall require prior review and separate approval and permit.

**MOTION**

Made by **RATZENBERGER**, Seconded by **GOLDBERG**

Vote: 4-0-0 – **Approved** – Motion Passed

Aye Novak, Goldberg, Ratzenberger, Volage

Nay None

Abstain None