

**Minutes of the Westhampton Zoning Board of Appeals**  
**July 22, 2021 @ 7 PM**  
**Westhampton Town Hall (in person)**  
**Public Hearing for 1 Main Road Special Permit Request**

**Present:** Peter Ignatovich, Bill Tracy, Dave Loven, Laurie Sanders, John Kelsey

**Public in attendance:** See sign in sheet in file

Bill Tracy opened the hearing at 7:04 pm and introduced the special permit request at 1 Main Road.

Attorney Amanda Kemp spoke on behalf of the applicants, stating that they were seeking to alter/extend a non-conforming use. The business is family owned, with 6 employees and 4 vehicles. Two vehicles will be parked on site. At the current business site, the workers load up and leave by 7:15 am. They receive deliveries and do some indoor sheet metal fabrication, approximately every other week. The premises have been used as a landscaping business and retail store. She stated that the applicants are not planning to have a retail store, so there will be less traffic. As an alteration of a non-conforming use, she said it would be less impactful. A tenant has been operating the property as a landscaping business since 2019, with a month-to-month lease. The applicants plan to improve the building by painting and other cosmetic improvements.

Mark Reed, surveyor for Heritage Survey, presented photos of the site, showing access to 1 Main Road and 3 Main Road. The lot for 1 Main Road (Lot 2) was established in 1944. It is an ANR in Northampton, and in Westhampton there was no zoning in 1955. He showed that 1 and 3 Main Road had separate driveways. The access to 1 Main Road is through Northampton. The Access for 3 Main Road is in Westhampton.

Questions & Answers followed between the ZBA board members and applicant (Jesse Fortier). Fortier stated that he owns 2 pick-up trucks, 1 box truck and 1 van. He plans to park in the back of the building, and that there will be very little at the building. Most of the work is off site. The decibel level of the fabrication equipment is 50-60 decibel. He does not plan to use the building for retail, but will use the building for fabrication and storage of materials.

Tracy describes the use of the property over time (for lumber, plumbing and then landscaping). Behind the storefront is a large shop.

Fortier stated that he has various electric-powered tools for his HVAC business. He does not use any pneumatic tools. He fabricates mostly ductwork. Deliveries would come through a side entrance. His business includes mini-splits, A/C, etc. He normally receives 2 deliveries a week, and in 7 years, he has only had 2 deliveries via tractor trailer. Large equipment and material deliveries go directly to the job site. His interest in this site is because he would be the owner, vs a renter. He intends to install a sign in the same location and stay with the same style. The dumpster, which is currently in the front because the dumpster owner asked to place it there, will be relocated to the rear of the building.

Justin Pelis, current owner, added that when he and his partners were running the store and landscaping operation, they had higher traffic to deliveries, music, and fans running from the greenhouse. In spite of this, they had no complaints from neighbors.

Bill Tracy asked if there were comments from the public and people speaking in favor.

Ginny Curtis asked about the driveway, septic & well, and site plan details.

Mark Reed said the driveway and curb cuts are exists. The corner of the building is 4.5' to the property line and has existed in that location for 65 years.

Meaghan Conner stated that the Title 5 passed in 2020.

Pelis said the well is inside the building.

John McLaughlin, attorney for Maureen McMahon (1504 Main Road) said that his client is opposed to the project and that the Westhampton by-law states cannot change a non-conforming lot. He also stated that the use wasn't allowed according to grandfathering and stated that he believed the new use would be more detrimental than the old use ("substantially" worse). He stated that he does not believe the new owners have grandfathered rights. He also said that the issue of merger. He contended that the onwers had used 2 lots as one, which eliminates grandfathered rights.

Ignatovich disputed this and asked for case law.

Kemp stated that application shows the corporation has multiple owners.

McLaughlin, in response to a question from Kelsey, said that the ZBA could add a list of conditions. He also stated that Kemp cited MGL 48, Section 7, which related to structures, not uses. And that the accessory use (office) cannot be larger than the primary use.

Tracy notes Westhampton by-laws 3.31: structure of land use. Ignatovich does not believe the parcel is merged. McLaughlin disagrees.

Pelis: Delisle had general store and manufactured items; Stillman Brooks manufactured products, and Pelis says he manufacture wreaths and other items, although he originally intended landscape and garden center. Pelis says they always used the driveway on 1 Main Road and not 3 Main Road. He says 70 yard mulch trucks entered, and he had no complains.

Maureen McMahon supports what her counsel says. She says the discontinued use is a general store, but now it is a different business and substantially different use and believes it will be more detrimental. She agrees that there are deficiencies in the site plan. Tracy asked her opinion of the previous business and she says that she did not mind it.

Kelsey states that many of the concerns expressed can be addressed with conditions. McMahon agrees, but thinks a revised site plan is in order. Also requests information on hours of operation and future expansion. She is concerned about noise.

McMahon reads a letter from Eve Andrade (in file).

Ginny Curtis is concerned about zoning and how this project coordinates with the Table of Uses in the Westhampton by-laws, and what the ZBA has authority over (3.065, 3.084) vs Planning Board. Curtis notes points from her email that was submitted regarding history of ownership and uses, and historic sales of lots

including 2006. She does not believe the ZBA has authority to issue an extension because she believes that there is an issue with the legality of the lot due to 2006 sale.

Hillary Sackett Taylor, abutter, states the plans are lacking clarity and asks about the future uses of the structures and greenhouses.

Pat Coffey, planning board member, says inaccuracies in the letter submitted by Atty McLaughlin to the ZBA. He refers to the letter from the Town Counsel to ZBA regarding alteration vs extension.

Kemp says the proposed use will be less than before (no retail) and alter and amend allowed. She also speaks that the Doctrine of merger relates to lots that are vacant, not with buildings. In this case, a commercial structure on one lot and a house on the other. She states, it is a pre-existing non-conforming use and no merger occurred. States that there are separate and distinct uses on the 2 lots.

McLaughlin says that merger "may" be an issue, but regardless, the key is that Town Counsel should review Westhampton by-laws, especially 3.31.

Pelis: merger issue was never mentioned by his attorneys at the time of sale or by the planning board, which issued a Special Permit for the landscaping and retail business in 2005. Kemp notes that the 2005 plan in the application is the same plan from 1955.

Shirl Morrigan states that if the Special Permit is approved with conditions, she is concerned about how to enforce those conditions if they're violated.

Kemp: Town Counsel told Planning Board and her that her clients' next step was to go to ZBA. She states that her clients want to be in compliance.

Curtis states that Special Permits require sites plans, but not site plan approval (6.24 in by-laws). Cites deficiencies in plan and restates that she does not believe ZBA has authority.

McLaughlin request not to close the public hearing for additional public input.

Peter Ignatovich makes a motion to close the public input portion of the public hearing. Dave Loven seconds. All in favor.

Board conversation follows. Tracy states that he spoke to KP Law and Town Counsel Jon Eichmann would like to see the new information. Atty Eichmann thought merger was an unlikely issue as lots are separate.

Tracy stated that there was no issue with lot frontage because that's in Northampton, which only requires 175'. ZBA received an email from the Northampton Planner Carolyn Misch stating that the City had no issue with the application.

Kelsey: submit all new information to Town Counsel and get opinion so that ZBA can make an education decision. Loven, Ignatovich and Sanders concur.

Kelsey makes a motion to continue the hearing until August 10 at 7:15 pm. Ignatovich seconds. All in favor.

The meeting concluded at 9:45 pm.

Prepared by Laurie Sanders, ZBA Secretary