November 17, 2021

Staff Report

PB2021-22, 11 Rte 28, W. Harwich, Special Permit Modification

Christopher Pepe, dba Blackbeard’s Bait and Tackle, Tenant/ Applicant

**Planning Comments:**

**Recommended Findings**

1. The subject property is 11 Rte 28, West Harwich (Map 10 Parcel N3), located in the West Harwich Special (Zoning) District.
2. The applicant is tenant Christopher Pepe, dba Blackbeard’s Bait and Tackle.
3. The record property owner, Richton Investment LLC, has authorized the application.
4. The applicant obtained a use special permit and waiver of site plan review from the planning board for retail sales (a bait and tackle store) in March 2021 (Case No. PB 2021-02; decision recorded in Book 34009 Page 214).
5. A condition of approval in said Planning Board decision time-limited the approval to 11/30/2021.
6. The applicant now seeks to modify the decision to remove or make permanent the temporary nature of the prior Planing Board approval. In addition, the applicant seeks to remove the use special permit decision’s condition of approval that a new site survey plan be prepared.
7. The building on the property is a preexisting, nonconforming commercial building in terms of its required minimum 20’ west side yard setback. The building and property otherwise comply with the dimensional, parking and other requirements of the West Harwich Special District.
8. The building is not considered an “historic structure” for purposes of the West Harwich Special District (WHSD).
9. The applicant has re-used and proposes to continue to re-use the building and site ‘as-is,’ with no substantial changes to the site or structural or architectural changes or additions to the building.
10. As its site plan, the applicant submitted a copy of the most recent record septic plan (“Friendly’s”) for the site in previous case PB2021-02. The plan depicts the property substantially in its current, existing condition.
11. As the applicant has re-used the property and site building ‘as-is’ without substantial changes, the above-referenced plan is acceptable and no new site survey is required or necessary, which is similar treatment to other site plan and special permit reviews of the planning board where no building or site changes were proposed or required.
12. Retail sales greater than 1,000 sq ft in a ‘non-historic’ structure require a use special permit in the WHSD; retail sales proposed less than 1,000 sq ft or in a non-historic structure are prohibited in the WHSD. Thus, to be consistent with the use regulations in the WHSD, the planning board must modify its decision to allow the retail sales use to exceed 1,000 sq ft of floor area.
13. HZB Sec. 325-57C. does not prohibit a change of use greater than 1,000 sq ft from obtaining a waiver of site plan review under sec. 325-55F. (though such a waiver is not presumptive as in cases of less than 1,000 sq ft change of use set out in sec. 325-157B.)
14. Per HZB 325-55F, the proposed use does not substantially change the relationship of the building to the site or to abutting properties and structures.
15. There is no specific reason or basis identified, or otherwise suggested or required under the town’s zoning, to not make the approval granted in PB2021-02 permanent in nature, or at least permanent as to the applicant’s use and occupation.[[1]](#footnote-1)
16. The applicant’s use does not conflict with the stated purpose of the WHSD; the use as developed will not adversely affect the neighborhood; the siet is an appropriate one for the use; there will be no nuisance or serious hazard to vehicles or pedestrians; there are appropriate site facilities for the proposed use.
17. The Board held a hearing on the modification request November 30, 2021.

**Recommended Conditions of Approval**

1. The Decision shall be recorded with the Barnstable County Registry of Deeds and shall run with the land[[2]](#footnote-2).

**Recommended Motion/ Determination**

In Case No. 2021-22, Motion to:

1. Close the public hearing;
2. Modify the existing special permit decision for the property in Case No. PB2021-02 to: 1) make permanent the temporary use special permit and waiver of site plan review; 2) remove the requirement for a new site survey plan of the property; and 3) to remove the limitation that retail sales only occupy less than 1,000 sq ft of the existing building’s floor area and allow the entire existing building’s floor area to be used for retail sales but at a minimum, retail sales of at least greater than 1,000 sq ft of the existing building’s floor area.

***Staff Note:***

* Approval requires the affirmative super-majority vote of the Planning Board (may include associate/ alternate members) (5 votes).

1. Staff Note: the Planning Board could decide that the use special permit approval is ‘personal’ to the applicant and his tenancy rather than have it run with the property. [↑](#footnote-ref-1)
2. See FN 1. [↑](#footnote-ref-2)