

WEST TISBURY ZONING BOARD OF APPEALS
AGENDA OCTOBER 3, 2007
TOWN HALL AT 6:30 PM

PRESENT: Eric Whitman, Tucker Hubbell, Nancy Cole, Tony Higgins, Larry Schubert

ABSENT: Bob Schwier, Toni Cohen

ALSO PRESENT for All or Part of the Meeting: Bill Black, John Black, Warren Mead, Maryanne Mead, Paul Pertile, Chris Alley, Chuck Sullivan, Bob Andrews, Richard Spillman, Joan Spillman, Richard Andre, Gary Harcourt, Bob Potts, Glenn Hearn, Cynthia Walsh, Carol Brandon, Lawrence Brandon, Mary Irving, Irene Mentzel

BUSINESS

- The minutes of Sept 19 were approved as corrected.
- Question re a proposed garage for Joel Anthony. Is he required to return to with an application as an amendment to his special permit. The Board agreed he does not, unless it's an over 676 sq ft structure on under 3 acre lot.
- Maciel Special Permit of '04 for a garage/apartment: Not built yet but foundation put in. The Board agreed they do not need to come back for new special pErmit unless they propose to build a different structure than what was approved.

6:45 The written decision and conditions for Flanders tower were reviewed. Report from Julie that one of the air conditioners was malfunctioning and noisy. Bill Black and Warren Mead had come into the office with a tape recording of the noise. She and Ernie Mendenhall went to the site; after calls to Thomas White and the Nextel number on the site, the unit was turned off and an adjoining one turned on; the noise ceased, according to separate visits by Ernie, Julie and Tucker. Thomas White, the applicant's agent, has kept in touch with the office to update the efforts to make the site compliant. On order is the fence and cable vault cover; Thomas said he would lock the stockade fence personally on Friday. As these safety measures were still actually not in place, the ZBA voted to send a letter to Ernie Mendenhall asking for the owner to be fined, as per zoning bylaws, if the cover, lock and locked gate are not installed in two weeks time.

The Board honed the wording of some of the conditions. Warren Mead and Bill Black voiced their concerns that there might be another, future application for a pole on the site; that an arborist determine the state of the trees that screen the pole; and that the immediately abutting houses be tested during any survey of radio frequency energy at the site. While the Board could not speak to any future application, the conditions did include abutters concerns voiced at the hearing and meeting. The abutters present also asked the ZBA to find out if the wireless companies boost their power during peak times or seasons, and if so, these should be the testing times. The bylaw does take this into account, i.e. routine testing is to be done in August. David Maxson of Broadcast Signal Lab who tests for the ZBA (paid for by the applicants) suggested that the pre survey required for the new installation be the post-survey done in April of 2006. The new post survey would take place after the new equipment is running.

HEARINGS

7:20 An application by John and Goldie Siffert for a Special Permit to extend a pre-existing, non-conforming (by setbacks) house: A single story 22' by 18' by 30' master bedroom with bathroom and a new dormer on the existing structure. 2' of setback relief from the front bound is being sought. Section 11.1-3 of Zoning Bylaws; Map 31, Lot 25; 643 Edgartown Rd; RU District. 1.2 acres. *Correspondence: 1) Abutter Harriet Bernstein*

Tony Higgins joined the meeting at this point, not having been present during the previous cell tower hearing. Harriet's letter was read, she was concerned that the addition would be at the front of the house, changing it's historical look and that it would also mean the removal of the chestnut tree at the front. The plans showed that the addition would be attached to the back of the house, albeit changing the look of the place. The tree, according to Architect Chuck Sullivan, will not be taken down and they are scheduled to go before the Historic District Commission. He further said that he had been to the Board of Health Agent, John Powers with his plans. There will be a new septic system, which he said John said would be adequate for the plans. Larry pointed out that the area along the road across the street had been trashed during extensive work on the house during the winter. Heavy trucks and equipment were parked there and as a result the area became rutted and eroded. Chuck said this work would not require as much large equipment. The Zoning Board accepted Chucks offer on behalf of the Sifferts to ensure that the area is returned to its former state and not further damaged by parking during the construction of this addition. The Board voted unanimously to grant the Special Permit as the construction would not be detrimental to the neighborhood.

7:40 An application by Peter Farrelly for a Special Permit to build a standard 60' by 120' tennis court and to seek 8' of setback relief at one point and 19' at the nearest point from the NW bound. Sects. 3.1-1, 11.2-2 and 9.2-2 of the Zoning Bylaws. Map 15, Lot 8.1; 161 Indian Hill Rd. RU Distr. 4.38 acres. *Correspondence: 1) Richard and Joan Spillman; 2) Lynn Buckmaster Irwin*

Correspondence was read. Ms Irwin had no objection as long as the court was in the spot she viewed on plans at the ZBA office. The Spillmans had no objection as long as there was no outdoor lighting at the court. The applicant had resubmitted a plot plan, after further surveying showed the court to be closer to the lot line as originally calculated. The first plan showed the court to be approx 41 from the NW lot line. The Board voiced concern that Ms Irwin should be contacted about the change, as Julie wasn't sure which plan Ms Irwin looked at. Upon a look at the assessors map of the area, the Board could see that her property is in front of the Farrelly lot and the court is at the back of Farrelly's lot. The court would now be even further away from the Irwin property, which Julie reported had been her concern. The owner of the property closest to the court did not correspond or attend.

Chris Alley for Schofield, Barbini & Hoehn and tennis constructor Paul Pertile were on hand for the application. Chris explained the court would be pitched for water runoff so that the runoff would stay on the property; there would be sub-surface drainage. The fencing would be treated wood and "non-visible" fencing. Paul submitted photos of similar court constructions. The Board voted to grant the Special permit with conditions, including no lighting or nighttime playing.

8:00 An application by Island Pools & Spas on behalf of Steve and Sally Harr for a Special Permit for an 18' by 40' in-ground pool with attached 8' by 8' spa with associated patio, equipment pad and fencing. Sects. 3.1-1, 8.5-4 of Zoning Bylaw; 34 Pond Rd; Map 30 Lot 2.4; RU Dist.; 1.39 acres. *Correspondence: 1) Agent Bob Andrews*

Bob Andrews described where the property is located, that the pool would meet zoning setbacks, no-cut and no-build setbacks, and that there is plenty of room on the property for the pool. After a brief discussion, the ZBA voted to grant the Special Permit with the usual conditions for pools on the grounds it would not be detrimental to the neighborhood.

8:20 An appeal filed by Richard Andre under Sects. 3.1-1 and 4.3-2C of the Zoning Bylaws and MGL 40A Sects. 15 and 8. The applicant proposes to install a wind turbine, 114' at its highest point. Map 31 Lot 16; 674 Old County Rd; RU Dist. 9.5 acres *Correspondence: 1) Ernie Mendenhall; 2 Planning Board; 3) Article from Cynthia Walsh*

Correspondence was read. Ernie Mendenhall's August 20 letter referred Richard Andre's application to the Board because he felt he couldn't issue a permit as it wasn't a listed use in the Use Table of the Zoning Bylaws. The Planning Board wrote that they felt Section 4.3-2 specifically describes the conditions under which wind energy conversion systems may be built. They also felt that turbines fall within the definition of accessory structures/uses not specifically listed in the Use Table and not in need of a special permit. Abutter Cynthia Walsh submitted a 2001 scientific internet article regarding the noise small turbines can make, stating this was just one of her many concerns.

This application is an Appeal of the August 20, 2007 decision of the West Tisbury Building Inspector that Wind Turbines are not a listed use in the Zoning Use Table and therefore he is unable to issue a building permit unless the ZBA determines that the use is similar in character and impact to listed uses to include it within a given use category. The applicant proposes to install a wind turbine, 114' at its highest point on his property. Eric said the ZBA has to resolve the issue of whether the Planning Board or Ernie is correct. There was discussion of if it is decided it doesn't need a Special Permit, should the Board not hold a hearing and not vote. But as the applicants and abutters and other interested parties were present, the Board went forward with the hearing (which was correct procedurally as the application is an appeal not a Special Permit application).

Richard Andre presented his proposal: He said he was in the process of building a year round residence on his 1,300 ft long, 9.6 acre lot between Elias lane and Cynthia Walsh. He has subdivided a 3 acre lot on the property, but hasn't registered it yet, as he's not sure if this is what he and his family want to do with the property. The wind turbine is proposed to be 114' at its highest point: a 105' high "tilt-up" pole with a wind turbine that has a 9' radius. In order to meet the setback requirement, the proposed wind turbine must be sited at the required 50' plus an additional 84'. As submitted on the plans, this turbine meets these requirements. The turbine will be at the rear of the lot, as near the house as possible. It will be 1,400' from Cynthia Walsh's house and about 1,200' from the road. The Nachbar house is 900' away. Abutters Gadowski and Mazza (not present) have told him they are fine with the proposal, supporting turbines. The turbine will supply energy for the Andres' needs and what isn't consumed will be sold back to NStar. He also said he felt the wind turbine was a permitted use, but understood Ernie's point of view and went along with applying to the ZBA.

Gary Harcourt of Great Rock Power discussed his own wind turbine and explained that the height of the Andre facility is determined by being over the tree line. Eric said that the Town of West Tisbury is in favor of non-fossil fuel energy, and then asked those in attendance for their comments. The abutters asked how the neighboring Nachbars felt about the project and were told by Richard that they had seen the plans. They asked if it would be visible from Old County Rd. Gary Harcourt said you might see the top. Mr. Brandon asked if the height of the trees is about 70', why add 44' on top. Gary said to get a true reading of the wind, you have to go above. Mrs. Mentzel asked about noise. Gary said there is not excessive noise; it does make sound in excessive wind, about 58 decibels. Cynthia Walsh said her Old County Road house has

a 70' elm that she can see from State Road. Gary and Richard said, yes you could probably see it from some points of State Road. Mr. Brandon asked Gary if his turbine was seen from the road and could he drive down to look at it. Gary said his 85' high turbine near Norton Farm on Edgartown-Vineyard Haven Road is 1200' in from the road and can be seen from higher elevations and Mr. Brandon was welcome to come take a look. Nancy said maybe it won't be seen from Old county Road, but yes, from higher places. Tucker said you can only see South Mountain's turbine from higher locations.

Tony Higgins said there have always been wind turbines in rural communities; they look different now and can be good looking. We just have to get used to looking at wind turbines as we got used to looking at telephone poles. Across the country there are monopoles, big ones; we're moving into a new era. This is not like people who live near oil refineries; this is nothing compared to that.

Cynthia Walsh said she was worried the noise might affect her children when they lived here in the future. Mary Irving said she did not oppose the project; her questions were answered and she applauds the effort. Mr. Brandon asked if there would be a wind turbine on the front lot as well, which is in the historic district. Tucker and Nancy said maybe he could put one up with sails! Tucker told Mr. Brandon they were only dealing with the current application. Glenn Hearn said he applauded Richard's plan; that it was a good new technology and would not make a lot of noise. Larry said that due to a disc brake, this turbine will be quieter. The hearing was closed. The ZBA voted unanimously that the application would not require a Special Permit, that it was provided for in the Bylaws and was an accessory use, thereby upholding Richard Andre's appeal. The Board noted that if it is felt that wind turbines should be by Special Permit and need more regulation, the Zoning Bylaw should be modified.

OTHER CORRESPONDENCE

- Phone talks with Thomas White updating his and Flanders' efforts
- Workshops at MVC, enclosed
- Bruce Stone...budget statement
- Pl. Bd...Notice of hearing for Land Bank

The meeting was adjourned at 9:15.
Respectfully submitted, Julie Keefe, Bd. Admin.