

WEST TISBURY ZONING BOARD OF APPEALS
MINUTES APRIL 29, 2009
HOWES HOUSE 6:45 PM

PRESENT: Eric Whitman Chair, Tucker Hubbell Vice Chair, Larry Schubert, Bob Schwier, Nancy Cole

ABSENT: Toni Cohen, Tony Higgins

Also Present for All or Part of the Meeting: Richard Knabel, Glenn Hearn, Franklin Flanders, Louis de Geofroy, Ginnie Jones, Tim Carroll

DISCUSSION

6:45 Frank Flanders re Joan Smith property: In '07 Joan Smith was given a special permit to move a camp back from dunes and wetlands to a more desirable location for them. The new location would not encroach any more into the old non-conforming setback. Evidently as it turned out, the building was found to be full of dry rot and other problems, and aside from not being viable, could not meet new hurricane standards. A building permit was issued. The issue before the ZBA was whether or not the deck, increased from 6' deep to 10' deep, needed to have a whole new hearing, or could the Board deem it OK at their meeting. Con-Com had gone out for a site visit on business of their own and found a new house, not the old one moved and the deck. She reported this to Ernie, who sent it along to the ZBA . Franklin said he of course would do anything asked of him to make it all right with the Town. He said he had talked with Prudy Burt of ConCom who said it might be more protective to have the wider deck. He said it might be disruptive to pull up the footings. The Board will wait to hear what ConCom says before they rule on the added 4 feet.

BUSINESS

- The minutes of April 15 and April 27 (meeting as guests of Planning Board) were approved with corrections.

HEARINGS

7:20 An application by John Early Contractors on behalf of Barry and Sherry Leiwant for a Special Permit to alter and extend a pre-existing, non-conforming (by setbacks) house: To add an 8'6" by 9' entry foyer; and to rebuild and expand by 200 sq ft an existing deck to the rear of the house. The additions will not encroach on the setback. Section 11.1-3 of Zoning Bylaws. Map 7, Lot 49; 26 Manaquayak Rd. RU District. *No Correspondence*

Louis deGeofroy presented the application. The existing dwelling is 44' feet from the north bound at its nearest point, making it pre-existing non-conforming, as setbacks are now required to be 50'. Neither the entryway nor the extended porch will encroach into any setback.

Section 11.13B states that the Building Inspector may issue a permit for such additions if the lot has at least 60,000 sq ft. This lot is under 60,000 sq ft and therefore needs a Special permit for the additions. The Board noted that the house seemed well screened. There was no correspondence and no one in attendance. It was determined that the minor additions would not be more detrimental to the neighborhood, and the Special Permit was granted.

OLD BUSINESS

DAS: Julie told of a phone call from Anderson & Krieger that afternoon representing AT&T who are interested in applying for a cell tower at the airport. Tim Carroll as an airport commission member said he was aware of it. Eric Whitman turned the meeting over to Vice-Chair Tucker Hubbell. Tucker began with a statement that he'd heard from 2 people that he didn't like cells, and he wanted to clear up any misconception. He uses a cell phone and does not hate cell towers, is not biased against them. He was the ZBA representative on the cell tower bylaw committee. He voted to appropriate the \$2500 for the RFP exploration for a DAS.

He said he is not at all interested in getting the Town involved in a suit. He feels the Town is adequately covered. Informally asking acquaintances if they had good coverage, he was told their coverage was good. This included Sprint, Nextel, Verizon, AT&T, I phones and 3G. Personally, his Verizon works at the Great Pond. His big concern is that after the RFP came out, the DAS committee should have held a public informational meeting, not having the first public forum as the 2 hearings for Aquinnah and Chilmark and the meeting for West Tisbury. What was needed was a process for citizens to talk about it.

Tucker said that previous applications to the West Tisbury ZBA have been from carriers. He asked, does our Bylaw cover the DAS proposal? Our Bylaw is ten years old, it needs to be brought up to date, this to be done not now obviously. He believes Section 8.8-2 in the Bylaw says that DAS should be permitted through a Special Permit. When it was just the whips on poles, the ZBA could have done a better job of researching the Bylaw, rather than just relying on the attorney's opinion. He said Dave Maxson mentioned that (in his report) DAS might be heard as repeaters. Tucker asked Tim Carroll and Richard Knabel if each antenna was under 20 watts. Tim said that would be 20 watts per carrier in a universal radio head. Both data and calls being served. Tim said it was ATC's problem to sort out what the Towns' bylaws said.

Tim said he had wanted a joint meeting on April 6, but no decision that night so the individual towns could retire to other rooms or their own Town to continue. The last meeting was painful. He'd like to see a group presentation at the next meeting, with all 3 Boards able to ask questions and then the public. Start at 6, end at ten; have a group presentation, not fractured.

Richard Knabel said his question of last fall was does DAS fall under the Bylaw. It will be a challenge to make the Bylaw work on DAS. We don't have an application before us. He said however there will be a radio box and back up now. Richard and Tim continued to give some technical information. Continuous wave tests determine where the lodes are located, probably about 22 in West Tisbury. NStar doesn't want anything over their wires. Richard said that ATC would meet next week with NStar to see which poles might be suitable to have whip antennas, which might reduce the number of new poles needed. DAS committee members and other Town representatives will review the locations.

Ginny Jones spoke of a situation in California. It has been reported that the Malibu fires of a year or so ago were caused by poles falling over, due to so much equipment put on the poles. They were meant to sustain at least 90 mph winds, and toppled in 50 mph winds. This, she said, might spook NStar. Glenn Hearn spoke of technical properties of the system and said they were good for urban settings such as hospitals, malls, casinos, tunnels, etc. He went on to say that Brookline and Hilton Head use DAS.

Tucker asked Glenn and Richard why they think DAS would be good for West Tisbury. Glenn said he realized how coverage and service has improved in West Tisbury over the last 2 years. As a Selectman he had approached various cell companies about putting up a tower. He finds towers more practical and cheaper to put up, but in Aquinnah they want DAS. Tucker asked again, in terms of West Tisbury, why do you think it is the best system for us? Glenn said we wouldn't want to see more cell towers. Tucker said that in 10 years, we've had 3 cell towers, and one was already in place, the Firetower. He thinks a new tower at the airport would be a good spot. Glenn said the FAA would require it to be quite low. They spoke of how capacity has been driven by voice, and now more capacity is needed for data, and of how coverage is re-upped when new technology is applied. Companies' coverage overlap each other, which is helpful.

Tim Carroll said so many in Chilmark are off the beaten path and don't get DSL, Fios or cable; low computer coverage. The agreement would be \$150,000 per carrier, so \$50,000 per town, plus a percentage for the life of the contract. ATC also would include 12 fiber optic cables which the communications center and other safety networks could use rather than phone lines. Richard Knabel said if West Tisbury says no, we would lose out on these. Also a new DAS application might come down the line without providing these "goodies". Tucker felt this wasn't likely as we have at least 4 major companies and 3 towers. Ginny Jones pointed out that at the moment we don't have any carriers on board at all.

Larry Schubert itemized what he thought were the steps in front of the ZBA: 1) He made a motion that the ZBA must hear the DAS application by American Tower Co; members voted unanimously in favor. 2) If ZBA gets an application, decide how and if our current Bylaw applies; hire our consultant Dave Maxson. 3) If there is a hearing, the ZBA votes, not the voters. Tucker interjected that the Selectmen should hold a public meeting before, for the voters. 4) Condition the Special Permit that there must be carriers and the "goodies". Tim Carroll commented, if the schedule (of hearings) doesn't work for West Tisbury, please do the process and do come to the June meeting.

ZBA members asked that a letter be sent to the BOS that they feel a DAS application should come to the ZBA for a Special Permit. Tucker said should we join with the two other towns or do it by ourselves. He feels the DAS committee and the BOS should hold a public meeting for West Tisbury first; such a meeting could be the required Pre-Application discussion (to be held 30 days prior to the submission of an application. Nancy said there should be a meeting, not held by the ZBA, to get the sense of how the Town feels about this ATC proposal. Bob voiced agreement. Richard said ATC would still have the right to apply.

Tim Carroll said the proposal will be ready around June 1. Ginny said there should be a joint informational meeting and then 3 separate hearings. Tucker said, if we have a public meeting and hear no one wants such a system, they would still have every right to apply, but if that were the tenor of the Town, might they not bow out? Richard said there is a memo of understanding with the Towns, not a contract.

Larry suggested that the June 22nd meeting, the group presentation to the three Towns, be West Tisbury's informational meeting. After that the West Tisbury ZBA could schedule a pre-application conference. Richard Knabel said it was important to have everyone there at the same time; to have at least one joint session. The Board agreed that they would not participate in the

June 22 hearings, but would use that informational meeting/hearings as a meeting for West Tisbury Townspeople, which will be advertised as such.

OTHER CORRESPONDENCE

Tim Carroll; Chuck Hodgkinson re copies of legal ads for Das hearing of June 22

The meeting was adjourned at 9:15.

Respectfully submitted, Julie Keefe Bd. Admin.

Approved on May 13, 2009