

**WEST TISBURY ZONING BOARD OF APPEALS**  
**Minutes for Thursday, December 3<sup>rd</sup>, 2020 meeting**  
**Online meeting via ZOOM- @ 5:00 PM**

**Present:** Larry Schubert, Julius Lowe, Deborah Wells, John Rau, Andy Zaikis and Jeffrey Kaye

**Absent:** N/A

**Also Present:** Pam Thors-Board Administrator, Debra Polucci, Liza Williamson, Barbara and Jay McGurren, Nancy Cole, Joseph Dick, Marianna Cigalossia, Steven Savard, Lauren Salem, Reid Silva, David Rhoderick, George Sourati, Adam Debettencourt,

Larry opened the meeting at 5:00 pm. The payroll was reviewed and approved. The minutes of the November 19<sup>th</sup> meeting were reviewed and approved with corrections.

*A rollcall vote was taken with the following resulting votes; L. Schubert-yes, Julius Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes*

The 2022 budget was briefly reviewed. Pam noted that she would see fit for the board to approve a \$1,000.00 increase in the advertising line item since the department was over budget by about 800.00 this past year. John asked if why the Legal Line Item was shown to be level funded for FY2022 considering that there is an active court case, (Larkosh) that is still pending. Larry advised that the Board of Selectmen would be funding the legal costs for this since the building department is involved. Deborah suggested that the name of the chair be changed from Nancy to Larry. Pam said she would correct the paperwork. It was suggested that this issue be taken up at the next meeting.

**5:15 pm** - A Public Hearing on an Application for a Special Permit from Debra Polucci to amend Special Permit Case 1997-34 to allow an existing, non-operational Day Care Center a.k.a. Island Montessori School to be utilized as a Guest House under Section 9.3-3 of the Zoning Bylaws on Map 31, Lot 69.1, 10 Road to Great Neck, RU District.

The notice was read. Pam read the letter from the Planning Board which asks that the applicant apply to them to remove the condition of approval which disallows subordinate dwellings, prior to applying for a guest house with the ZBA.

Larry suggested that the hearing be continued without testimony until after the Planning Board has met with Debra Polucci.

Liza Williamson, the applicant's niece, explained that her Aunt is in a situation where she needs housing because she no longer resides in California due to the wildfires and the pandemic. She said that her Aunt got a letter from Joe Tierney, Building Inspector, letting her know that she was in violation of the Zoning Bylaws while living in the school building. She said that the school has been closed and will remain closed forever due to the pandemic and her Aunt's lack of interest in reopening at any point in time. Debra said that she wants to work with the town to make the school a compliant living space for her. Both noted that Joe had been very helpful and is allowing Debra to stay in the school building until she is able to go through this process.

Julius stated that even though the conditions of approval voted by the Planning Board do not allow a guest house, she may be able to have it approved for use as an accessory apartment.

Debra noted that she was approved for a detached bedroom at the school and has lived there during the summer months.

Julius said that he doesn't want to get caught up in the semantics and that making it an approved living space may still be possible.

*A unanimous vote was taken to continue the hearing until December 17, 2020 at 6:15 pm.*

Pam said she will ask Jane to put the application on the Planning Board agenda for their Dec. 14<sup>th</sup> meeting.

**5:35 pm:** A Public Hearing on an Application for a Special Permit from Joseph Dick agent for WMVY Radio to allow the construction of a pergola demarcating a handicap entrance requiring 24' of side yard setback relief and to allow the alteration of a pre-existing, non-conforming structure by the addition of an overhanging eave requiring 1' of side yard setback relief under Sections 4.2-2(D)4 and 11.1-3(A) of the Zoning Bylaws on Map 16, Lot 232, 489 State Rd., MB District.

The notice was read. Joseph Dick explained that the proposed pergola demarcates the existing non-conforming, (setback) handicap ramp leading to the basement door. He said it is 3' wide and requires 24' of side yard setback relief. He said that the basement level access is for the staff, handicapped and general public. He explained that the roof overhang which is at the lower (basement level) marks the entrance and protects those using the access from inclement weather.

Larry stated that section 4.2-2(C)1c speaks to an allowance for "cornices, eaves and other similar architectural features to encroach 1.5 feet into any required setback".

Andy asked if the ramp is already in place. Larry said that the existing ramp is a switchback type running to the basement level and that there is no elevator in the building.

Larry asked about correspondence. Pam said that there is only one letter from the Planning Board referring the application back to the ZBA.

John asked about the purpose of the pergola. Joseph said that it announces the location of the handicap ramp so it is clearly visible to those people in the parking area. He added that it will be lit up at night.

Andy asked if there is another entrance to the basement level. Joseph pointed out the other entrance on the back of the building, drawn on the site plan. Andy asked if the entrance to the basement is for everyone's use. Joseph confirmed that it is.

*Julius moved and Deborah seconded a motion to close the public hearing and open the board meeting.*

Larry asked if there were any more comments.

*A motion was made and seconded to grant the special permit.*

*A rollcall vote was taken with the following resulting votes; L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes.*

Larry went over the 20 day appeal period.

**5:55 pm:** A Public Hearing on an Application for a Special Permit from Lauren E. and Deeb A. Salem to allow construction of a 22'x50' in-ground swimming pool requiring 21' of south side yard setback relief, a pool equipment shed requiring 38' of north side yard setback relief and a porch requiring 18' of south side yard setback relief under Sections 8.5-4(C), 4.2-2(D)4 and 4.3-3(D) of the Zoning Bylaws on Map 30, Lot 2.54, 229 Pond Rd., RU District.

The notice was read. Pam said that the letter from the Planning Board refers the application back to the ZBA with no opinion.

Reid presented the application stating that the existing pool is to be replaced with a larger pool with a spa which will be further from the house. He said they are requesting 21' of side yard setback relief for the new pool, 18 feet of side yard setback relief for the porch and 38' of side yard setback relief for the pool equipment shed. He

noted that the adjacent lot on the porch and pool side is also owned by the applicant. He said that the lots were developed under a “compact siting plan” which allows undersized lots to be lawfully created. He said they are applying for setback relief so that if in the future the family wishes to sell the lot, the setback relief is on record.

Reid noted that originally he thought the pool equipment shed could be permitted under 4.2-2(D)1 which allows one detached accessory structure to encroach on the setback without the need for a special permit. He said that Pam spoke to Joe Tierney about this and agreed that the pool bylaw overrides this allowance in the language it contains regarding minimizing noise impacts on neighboring properties.

Larry asked how the shed came to be placed at this location on the site plan. Lauren Salem responded that there is an area with screening trees and brush that she would like to utilize for the pool shed rather than putting it in the middle of the open lawn area which is used for recreation by her family and which fronts on the pond. She noted that locating the shed on the opposite side of the house is not practical.

Andy asked why they can't locate the shed outside of the setbacks rather than being located 12' from the lot line. Reid responded that the undersized lots were legally created as part of a “Cluster subdivision” and result in a tighter configuration for the desired buildings and other structures. He asked what the harm would be in granting the setback relief.

Julius noted that despite the language in the bylaw which dictates that the pool equipment is located away from abutters and at least outside of the required setbacks, the board has given setback relief for these structures many times. He also mentioned that leaving existing screening has always been seen as a positive aspect to locating structures and is sometimes found to be a valid reason for setback relief.

The letter from the Shropshires, abutters to the north of the property most affected by the location of the pool shed, was reviewed. Larry suggested that in light of this letter and the language in the bylaw concerning location of pool sheds, the applicant amend her request for setback relief to 20' from the property line.

Other possible locations for the pool shed were discussed. Andy suggested that the applicant reconsider her request for setback relief and locate the shed outside of the required setbacks. John suggested that she reach out to the abutters and give them information about the project and the plans. Lauren said that she had already done this and even has a meeting set up to show the abutter, (Shropshire) where the shed is being proposed. She said that the tone of the email to the board was quite different than her personal interaction with him and that she believes him to have no express objections to the location.

David Rhoderick, Chairman of the Architectural review committee of the subdivision, said that they were waiting on the results of this hearing to make their decision on the application presented to them, noting that they have more concerns related to shingling and design than to actual zoning issues.

Deborah asked why the pool is being replaced. Lauren said that they want to add a spa which adds 10' to the length of the pool and that the pool is located quite close to the house which appears to her to be dangerous since she has young children.

Reid proposed and made changes to the site plan showing the shed to be 31' from the lot line. All agreed that the reduced amount of setback relief is preferable. Various locations were discussed in regard to distance from the lot line and location of existing screening. The possibility of granting a specified amount of setback relief with the actual location to be represented and approved via a site plan provided at a later date was discussed. Larry stated that this has been done many times in the past by adding this as a condition of approval.

The setback relief for the porch and the pool itself were discussed. Andy asked if the lot next to the subject lot is saleable. He asked if the two lots have been merged due to common ownership and being undersized. Reid reiterated that this is not an undersized lot. He stated that it was developed as a cluster compact siting lot.

After much discussion, it was agreed that the board could approve 25' of setback relief for the pool shed with the condition that a new site plan be approved by the board showing the newly established location 25' from the lot line. It was determined that this would allow the application in its entirety to be decided and the location of the shed to be determined by the applicant after considering the location of existing screening and the opinions of the abutters.

Larry summarized the setback relief being requested as follows:

- 1) 21' of side yard setback relief for the pool
- 2) 25' of side yard setback relief for the pool equipment shed.
- 3) 18' of side yard setback relief for the porch addition.

The conditions were noted as follows:

- 1) A corrected site plan showing the pool equipment shed at a minimum of 25' from the lot line will be submitted prior to a building permit being issued.
- 2) All "boiler plate", conditions related to the filling, maintaining and emptying of pools.

*A motion was made and seconded to grant the special permit with conditions.*

*A rollcall vote was taken with the following resulting votes; L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes.*

Larry went over the 20 day appeal period process

**6:15 pm:** A Continuation (from 11/19/20), of a Public Hearing on an Application for a Special Permit from Mark A. Beaudoin-Trustee of the Paul's Point Area Realty Trust to construct a 64 sf. spa with automatic cover and surrounding deck in the Coastal District under Section 8.5-4(C) of the Zoning Bylaws on Map 6, Lot 6, 271 John Cottle Rd., RU District.

The notice was read and the site plan reviewed.

Larry stated that Michael Goldsmith, Town Counsel had reviewed the letter regarding the pool bylaw changes submitted to the Attorney General's (AG's) office for their approval. Michael explained that the AG's office allowed the change of language to the bylaw, (requiring fences) but with notice that if the bylaw was challenged in court, the Town would lose. As stated in the letter from the Attorney General, he reiterated that town bylaws, which address an issue cited in the state building code may not be more restrictive.

Jeffrey stated that the AG's office is not the final arbiter of the law and that the town should pursue the fence requirement. Larry agreed but stated that for this hearing, the spa in question, as proposed is in compliance with both the state building code and the town bylaw.

George described the project. He said that it is a small project on a large lot over 6 acres which has no pool. The owners would like to add an 8 x 8 spa surrounded by decking. They would like to have an automatic pool cover and no fence around it. He said that the deepest part of the spa is 3'4" in the middle of the tub with a more shallow seating area around the sides.

John clarified that the board is only acting on the spa under 8.5-4.

Jeffrey asked if allowing the spa to have only the automatic pool cover would be setting a precedent for future similar applications. Larry said that no precedent would be set because every special permit is decided on a case by case basis.

The elevation of the spa area was reviewed.

Jeffrey asked how the pool cover will be monitored. Adam DeBettencourt, caretaker for the property, stated that the switch to open or close the cover is key operated and therefore very secure.

*Deborah moved and John seconded a motion to close the public hearing and open the board meeting.*

Larry said that this is a very standard pool application.

It was verified that this hearing was continued without testimony on 11/19/2020, allowing all members present to vote.

*A motion was made and seconded to grant the special permit with conditions.*

*A rollcall vote was taken with the following resulting votes; L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-Nay. 5 votes in favor, 1 vote opposed.*

The board agreed that the only conditions of approval would be all “boiler plate”, conditions related to the filling, maintaining and emptying of pools (spas) and lighting in the pool (spa) area.

Larry went over the 20 day appeal process.

The meeting adjourned at 7:05pm.

Respectfully Submitted, Pam Thors-Board Administrator