

WEST TISBURY ZONING BOARD OF APPEALS

Minutes for Thursday, May 28, 2020 meeting

Online meeting via ZOOM- @ 5:00 PM

Present: Nancy Cole, Larry Schubert, Deborah Wells and John Rau

Absent: Julius Lowe, Andy Zaikis

Also Present: Joe Tierney-Building Inspector, Dan Larkosh, Diana Gilmore, Byron Hartley, Ken Lobdell, Collins Heavener, Brian Athearn, Dr. Michael Jacobs, Atty. Rick McCarron and Pam Thors, Board Administrator.

The minutes of the meeting held on May 7th 2020 were approved with corrections.

The Board voted to approve payment of the following: Payroll-\$2,320.50 and MV Times bill-\$1,002.00

A discussion of the 2021 budget ensued. Pam said that Bruce Stone, the Town Accountant advised that only the Legal Line Item be reduced. She explained that Bruce wants them to leave all other line items alone as there may be a need for more money for advertising in the coming year. He said that money may be moved around as necessary within the operating budget. Pam further explained that the salary adjustments included in the budget would be amended by vote at the Town Meeting to table the increases from the Wage Study until next year.

L. Schubert moved to decrease the Legal Line Item in the 2021 Budget by \$2,000. D. Wells seconded the motion. The motion was approved. Roll call vote taken; Nancy Cole-yes, Larry Schubert-yes, Deborah Wells-yes, John Rau-yes

5:15 pm- A Public Hearing on an Application for Special Permit from Diana Gilmore to construct an 800sf., single story, one bedroom Accessory Apartment on a pre-existing, non-conforming lot abutting a Special Way under Section 4.4-3 (A) of the Zoning Bylaws, Map 10 Lot 199.5, 26 Machipsat Trail, RU District.

Diana Gilmore explained that she would like to build the apartment for her 80 year old mother. She explained that her lot is hilly and abuts Stoney Hill Path which is at a lower level than the ridge her lot sits on. Deborah asked about the proposed trees shown on the Landscape Plan. Diana said she would like to plant trees to most effectively shield the apartment from her neighbors. She stated that the trees in the area may not allow for a pre-fab structure but that she is fine with a stick built construction.

Immediate abutter Ken Lobdell voiced concern for the location, suggesting it be built closer to the main house, indicating advantages in regards to the septic. Nancy said that the board may only act on the plan that Diana has submitted and that if there are changes, she would have to come back before them. Diana stated that she tried to site the apartment to accommodate both the concerns of her neighbors and her mother's need for safe mobility around the apartment. She noted that the area closer to her house is hilly and does not accommodate these needs. She also stated that she does not want the apartment to be closer to the main house. She said she will need to address the septic issue but that there is plenty of room for it on the lot. She noted that the location is 73' from the property line and 96' from the Special Way. She also stated that she had notified all of her neighbors of her plans 6 months ago and received no responses.

Byron Hartley, an abutter and Chair of the Road Association, said he is sympathetic to the need to relocate elderly family members to the island but is concerned about the density in the area. Nancy stated that the Town explored the issue of density when they considered and eventually voted to allow Accessory Apartments. She said that the intent of the bylaw is to allow the exact use that Diana is proposing.

Byron brought up the Road Association Deed Restrictions on the property. It was stated that the ZBA does not concern itself with subdivision covenants, only with the Zoning Bylaws relating to the application.

Issues with the existing and proposed driveways were discussed. Diana stated that she has two curb cuts and that the hammerhead (where the two driveways meet) will be 20' from the road and no additional trees would be cut.

Byron suggested a site visit but Nancy stated that with the social distancing requirements in place, site visits should be avoided unless absolutely necessary.

Byron spoke to the lack of clarity in the Accessory Apartment Bylaw. It was pointed out that if the apartment is not rented, and is occupied by a family member, it does not need to comply with the rental restrictions.

L. Schubert moved and John Rau seconded a motion to close the Public Hearing and open the Board Meeting.

Larry suggested that Diana have the Site Plan redone to show the full length of the driveway with an indication that the hammerhead is located 20' from the road. Diana agreed to have the plan updated with this information.

The following conditions of approval were recommended;

- 1) Updated Site plan showing location of driveway (at hammerhead) to be 20' from the road must be submitted prior to the issuance of a Building Permit.
- 2) Applicant will work with neighbors to site plantings to screen the Accessory Apartment from abutting lot, (Map 10, Lot 199.4).

L. Schubert moved to approve the Special Permit with Conditions. The motion was unanimously approved. Roll call vote taken; Nancy Cole-yes, Larry Schubert-yes, Deborah Wells-yes, John Rau-yes

5:35 pm- A Public Hearing on an Application for Special Permit from MV Farmer's Market, Inc. to operate the Farmer's Market at the Martha's Vineyard Agricultural Society, Inc. property at 35 Panhandle Rd., Assessor's Map 25, Lot 1.1, RU District for the 2020 season under Sections 3.1-1 and 8.5-2 of the Zoning Bylaws.

The notice was read and Collins Heavener from the Farmers Market explained the application. He said that due to COVID-19, the Farmers Market has a need for a larger space to accommodate the social distancing required and that they would like to hold it this summer at the Agricultural Hall property. He said that parking will be managed by one of their staff people along with the Agricultural Society Facilities Manager.

Brian Athearn of the Agricultural Society asked if they could leave the Special Permit open ended since no one knows how long the Pandemic is going to last. Pam reminded the room that the application (narrative) and advertised Legal Ad and Abutters Notice stated that the request was for the 2020 season only. Brian said that he didn't actually see the reason that a Special Permit was required and that he would like the Board to say that it was not required considering the Agricultural Society standard uses. Nancy agreed that it seems like the Farmers Market is just what the Agricultural Society property should be used for but since it was required by the Building Inspector that they should just act on the application as submitted.

Rick McCaron argued that the Zoning Enabling Act should allow this use without a Special Permit and that the only reason they are before the ZBA is that the Act is not totally clear. It was indicated that they would like a "No Special Permit Required" statement from the ZBA. Joe Tierney, Building Inspector, said the Permit is necessary because the use does not meet Ch40A Sec. 3 requirements and that Town Counsel agreed with him.

L. Schubert moved and D. Wells seconded a motion to close the Public Hearing and open the Board Meeting.

L. Schubert moved to approve the Special Permit for the 2020 Season. The motion was unanimously approved. Roll call vote taken; Nancy Cole-yes, Larry Schubert-yes, Deborah Wells-yes, John Rau-yes

Larry asked about allowing the market to open prior to the expiration of the 20 day appeal period. The room agreed with Rick McCaron that the applicant may start "at their own peril".

Pam asked about Conditions. It was suggested that the Plan be noted in the Findings only.

Brain Athearn stated that they had formed an abutters committee and that they will be having a meeting within a few weeks.

Collins said he would get the updated Site Plan to Pam. Nancy said it would be required prior to the Decision being filed.

5:55 pm- A Public Hearing on an Application for Special Permit from Nickolas Peters Construction, LLC to operate a Service Business (Construction) under Sections 3.1-1 and 8.5-2 of the Zoning Bylaws, Map 11 Lot 111, 343 State Rd., RU District.

Nick stated that the home excavation/landscaping/construction business was begun in 1987 by his parents. He said he eventually took over when he father moved off the property and that all tools and machinery belongs to him. He mentioned that three of his neighbors run some type of Service Business from their properties as well. He said he has no off site employees, no customers visiting the property, no additional traffic and no home office. He stated that he tries not to start too early in the morning and ends his days as early as possible citing no complaints from neighbors for the last 20 years. When asked if he would be expanding the business, he stated that any additional clearing on the lot would be used for flower and vegetable gardens.

Dan Larkosh, an abutter stated that smells coming from equipment use could be of concern to him but that Mr. Peters screened his property well and that no excess noise emanates from the site. He stated his support for the business as long as it is owner occupied.

Joe Tierney, building inspector asked about the number of employees and referred to the Home Occupation Bylaw and the Agricultural Exemption under MGL. Ch.40A. Chris Alley stated that the applicant applied for a Service Business and that there is no Agricultural Component to the request.

Larry asked about vehicles stored on the property, referencing the allowance of only two vehicles over 10,000 pounds GVW (Gross vehicle weight-empty). Nickolas state that most of the vehicles are at job sites but that he does have four vehicles in excess of 10,000 pounds. Larry asked about vehicles parked on what appears to be the neighboring lot. Nickolas replied that he has moved them and cleaned up the area where they were parked.

The number of outbuildings on the property was discussed. Nickolas stated that he built the sheds years ago to keep his machinery out of the weather. Joe Tierney said he has not been out to do a site visit.

Deborah asked if the business was allowed prior to Zoning Bylaws limiting businesses in the RU District. Dan Larkosh answered that the current bylaw must be adhered to if a new application is before the board, and that it Can only be pre-existing non-conforming if it had been permitted back then. Nancy said that if a permit wasn't required at the time.... She said the hearing should be continued until research into the bylaw has been done and Town Counsel has weighed in on the application.

A motion was made to continue the hearing to June 25th at 6:15 pm. The vote on the motion was unanimous. Nancy Cole-yes, Larry Schubert-yes, Deborah Wells-yes, John Rau-yes

6:05 pm- A Public Hearing on an Application for Special Permit from MV Distilling Company for 5 feet of setback relief to bring an existing building into compliance under Section 4.3-3 (D) of the Zoning Bylaws, Map 11 Lot 111, 343 State Rd., RU District.

The steel building which will house the proposed "Farmer" Distillery was discussed. The building which was put up without a building permit was 4.5' into the 50 foot side setback. Nickolas said that when he eventually went to Ernie, he was told that the setback was not an issue. He said that now he would like to request a Special Permit so that the building is in compliance. The board reviewed the Site plan.

Findings:

- 1) The lot size is 3 acres
- 2) The building was constructed in 2013 without a Building Permit. Building Inspector at that time was not concerned about the setback encroachment.

L. Schubert moved and J. Rau seconded the motion to close the Public Hearing and open the Board Meeting.

L. Schubert moved to approve the Special Permit for 5' of setback relief. The motion was unanimously approved. Roll call vote taken; Nancy Cole-yes, Larry Schubert-yes, Deborah Wells-yes, John Rau-yes

Nancy reviewed the 20 Day Appeal process

6:15 pm- A Public Hearing on an Application for Special Permit from MV Distilling Company to operate a Wholesale Business (Distillery) under Sections 3.1-1 and 8.5-2 of the Zoning Bylaws, Map 11 Lot 111, 343 State Rd., RU District.

Nickolas explained that the business had been run in the Town of Tisbury but in 2016 he moved it to the family property in West Tisbury. He said that originally it started as a hobby and then turned into a small family run wholesale business utilizing various botanicals grown on site. He said that he makes and bottles the product and delivers to various locations for retail sale. His file contains the many State licenses and permits necessary to run this business. He said that the production is currently on hold but that he has been approached by various governmental agencies who have asked him to produce hand sanitizer in the wake of the pandemic. He stated that they experimented and made some which was donated to the Edgartown Police Dept., the Food Pantry and a few retail locations for their use, (not sale). When asked if he would have customers coming to the property for tastings or other promotional events, Nick stated that he would not.

A Condition of Approval agreed upon was that the business shall be run according to the submitted Narrative.

J. Rau moved and D. Wells seconded the motion to close the Public Hearing and open the Board Meeting.

L. Schubert moved to approve the Special Permit with Conditions. The motion was unanimously approved. Roll call vote taken; Nancy Cole-yes, Larry Schubert-yes, Deborah Wells-yes, John Rau-yes

Nancy reviewed the 20 Day Appeal process.

6:30 pm- A Public Hearing on an Application from Daniel J. Larkosh to Appeal the decision of the Building Inspector to issue a Notice of Violation under Sections 10.2-2 (A), 3.2-2, 14.1, and 3.1 of the Zoning Bylaws. The appeal is filed under MGL Ch40A sections 8 and 15 of the Zoning Act, Map 21 Lot 12.2, 93 Dr. Fisher Rd. RU District.

The Notice was read and Nancy asked where things stand with this application. Joe Tierney stated that he emailed a letter to the ZBA today stating that all Violations on the Larkosh property have been addressed, (see file). Pam read the letter to the Board. She also read emails from Dan dated 5/15/20 and 5/28/20, (see file).

Dan went on to say that he never received responses from Joe, that all the information Joe needed was in the Planning Board files for his tenants and that if Joe is willing to rescind his letter, he is fine. Nancy stated that she does not think that Joe's actions were malicious and that he has apologized for the way this incident played out.

Dan stated that prior to this incident, the only contact he had with Joe was when he inquired about a tree house for his sons. He expressed his feelings that he was being singled out and that he disagrees with the process whereby the building department only focuses on properties that receive a complaint. He cited other lots on the road that have debris and equipment from their businesses in sight from the road and suggested that these businesses may not have received the same treatment. He also reminded the board that he has no permits with

the Town so could not have committed the Violations. He said he has been deprived of his Right to Due Process and asked the ZBA if they endorse this treatment of a taxpayer. He made mention of cases he has had as an attorney in Oak Bluffs that he won where the opposing attorney was West Tisbury Town Counsel Ron Rappaport's office stating that he has "nothing to lose". He made mention of the letter which accuses him of trespassing and how that and the Notice of Violations issued affects his reputation and livelihood.

Joe Tierney stated that the tenant, Brian Packish had cleared up the violations and that if they hadn't existed, this would not have taken place.

J. Rau moved and L. Schubert seconded the motion to close the Public Hearing and open the Board Meeting.

Larry stated that both the Building Inspector and Dan feel that their reputation is at stake and so both are somewhat dug in. He noted that one way or another, the case may end up in court and that in the best interest of the Town, he would like to end this right now and leave the two parties to decide the outcome. He suggested calling for a vote.

Deborah asked if there is another choice to explore.

Nancy said that this is a most unfortunate situation, stating that Joe is not supposed to go around Town looking for violations but is only supposed to respond to direct complaints, per the instructions of the Selectmen.

*N. Cole voted to **approve** the Appeal to the Building Inspector's decision to issue the Notice of Violations.*

N. Cole-Yes

John stated that if there were no Violations present, the action taken to address them would not have occurred.

*J. Rau voted to **deny** the Appeal to the Building Inspector's decision to issue the Notice of Violations.*

J. Rau-No

Larry stated that as a longtime island resident, he appreciates the cooperation of Town Officials with residents to avoid issues such as this taking place.

*L. Schubert voted to **approve** the Appeal to the Building Inspector's decision to issue the Notice of Violations.*

L. Schubert-Yes

Deborah stated that she agrees with John's statement that if there were no Violations, there would not have been obvious actions to address them and that to support the appeal she would need more evidence that the problems did not exist.

*D. Wells voted to **deny** the Appeal to the Building Inspector's decision to issue the Notice of Violations.*

D. Wells-No

In the case of a Tie vote, an approval may not take place. Therefore, the Building Inspector's Decision is upheld.

The Lambert's Cove Inn letter was briefly discussed. Nancy asked that the letter be circulated to all members and that the issue is added to the agenda for the next meeting.

The request by the Zilla's to extend Special Permit number 2018-26, to build a subordinate dwelling on their Property was discussed.

L. Schubert moved to approve an extension of two years until September 18, 2022. The motion was unanimously approved. Roll call vote taken; Nancy Cole-yes, Larry Schubert-yes, Deborah Wells-yes, John Rau-yes

The meeting adjourned at 8:05pm.

Respectfully Submitted, Pam Thors-Board Administrator