

WEST TISBURY ZONING BOARD OF APPEALS

Minutes for Thursday, January 13, 2022 meeting

Online meeting via ZOOM- @ 5:00 PM

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

Absent: N/A

Also Present: Pam Thors, Bd. Administrator, Tim and Nisa Webster, Corey Revelson-FFD Enterprises MA, Alexandra and Alex BenDavid, Marc Rosenbaum, Jim Eddy, Dan Larkosh, Elizabeth Carroll, Wayne Greenwell, Peter Mauro, Belinda Ritchie, Ben Childs

5:00 pm – The minutes of the meeting of December 16th were reviewed and approved via a rollcall vote unanimous in favor.

The vehicle weight referenced in Sections 8.5-1 and 8.5-2 was discussed. Presently the bylaws allow two vehicles over 10,000 GVW but because personal vehicle truck size has increased over the years the bylaw may need to be updated. This conversation was put on hold until the end of the meeting.

5:15 pm – A Public Hearing on an Application for a Special Permit from Timothy and Nisa Webster to construct a 2 story 22'x 40' addition requiring 4' of east side yard setback relief and a 29'x 22' deck requiring 19' of south side yard setback relief to a pre-existing, non-conforming structure and a 36'x24' barn/workshop with utility sink and 2nd floor storage loft requiring 60' of front yard setback relief and 30' of east side yard setback relief on a pre-existing, non-conforming lot under Sections 11.1-3A, 11.2-2 and 4.2-2D4 of the Zoning Bylaws at 233 Great Plains Rd., Assessor's Map 17, Lot 139, RU district.

Larry read the Hearing Notice. Pam read the Narrative relating to the additions proposed for the dwelling. The Site Plan was reviewed.

John said that he has no problem with the addition to the main dwelling since it is further away from the setback but since the deck increases the structures encroachment on the setback, he is concerned.

A letter from Grantley Schenk and Catherine Ford whose lot is located diagonally across from the applicant was read. The wrote in opposition to the application citing concerns about waiving setback requirements and possible future use of the proposed barn.

Rebecca Solway who is not an abutter but lives in the subdivision voiced her support of the project but mentioned that expired covenants prohibited Commercial activity. She questioned whether the plan was to have two dwellings.

Nisa Webster assured her that the dwelling is a single family dwelling with one kitchen. She stated that they already have an affordable accessory apartment on the property. She also clarified that the proposed barn is for their personal use.

Marc Rosenbaum, an abutter spoke in favor of the application. He requested that there be no lights shining into his house. He noted that the lots were created prior to zoning and that they are very limited. He also said that adding on makes a lot of sense.

Larry noted that the barn plans submitted are inadequate for zoning board consideration and approval. Pam explained that she had been told that the applicant would not be building the barn until the main dwelling was built and that having plans drawn up now was not something they could afford. She said she hoped that the board would consider the application and possibly continue it until the plans were complete or approve with the condition that the ZBA approve building plans for the barn prior to the issuance of a building permit.

The setback relief being requested was discussed. Larry asked why the applicant couldn't ask for less.

Tim Webster said that the location of the septic leaching field, other buildings and the established garden were considered when they made the decision to locate the proposed barn on the plan.

The 40' "No build zone" was discussed and found to be set aside when the subdivision was developed for emergency use.

Jeffrey asked Tim what line of work he is involved in. and whether the barn would ever be used for business purposes. Tim said he is in the construction trade and that the barn would only be used for personal projects and to store recreation equipment and tools.

Casey asked about the septic capacity on the lot. Tim said he had discussed this with Doug Dowling and is aware that they may have to improve it. Casey clarified the location of the leaching field.

Andy asked if the setback relief could be reduced.

Tim explained that the neighbors fence creates the actual lot line as it has developed. He added that the neighbors who own the fence have been involved in the discussion of the setbacks. Nisa stated that the barn will actually create more privacy for the neighbors and that they have voiced no concerns about the project.

Larry stated that as they are, the barn plans cannot be approved. He said that the granting of the Special Permit would have to be conditioned on the review and approval of a complete set of building plans for the barn prior to a building permit being issued.

Rebecca noted that the road may be resurveyed to accommodate repaving and wants to make sure that this would not be a problem for the applicant going forward.

Julius Lowe moved and Deborah Wells seconded a motion to close the Public Meeting and open the Board Meeting.

The following condition was formulated;

"A full set of building plans for the barn must be submitted to the ZBA for their approval prior to the issuance of a building permit".

A roll call vote was taken to grant the Special Permit with Conditions with the following resulting votes;

L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes, C. Decker-yes.

Larry went over the twenty day appeal period.

5:35 pm - A Public Hearing on an Application for a Special Permit to Appeal a November 15, 2021 Decision of the West Tisbury Zoning Inspector to enforce the West Tisbury road development regulations at 90 Dr. Fisher Rd., Assessor's Map 21, Lot 12, LI district. The appeal is filed by FFD Enterprises MA, Inc. under MGL Ch40A, Section 8 and Section 15, of the Zoning Act.

Larry read the Notice and Corey Revelson, representing FFD Enterprises MA, Inc. (FFD) explained the application. He said that they comply with State and Federal regulations but only have a temporary Certificate of Occupancy, (CO), with the Town which is about to expire. He said that they feel that the interpretation of condition of the Special Permit relating to the clearing of the easement by the Building Inspector is out of line with the language used in the condition.

He went on to say that in this area, all the roads are dirt roads and the easement should not have to be anything more than that, especially since the easement may not even be used by Bizarro. He also mentioned that tying the clearing of the easement to the CO seems unfair and looking at the cost of work involved in clearing and finishing as requested by the Building Inspector is unreasonable.

Larry said that in the initial hearings, it was noted that Bizarro trucks could use the easement instead of Pine Hill Rd., but that nothing in the decision requires them to use it.

Pam read the email to Jim Eddy from the Building Inspector dated October 22, 2021 explaining his expectations for finishing the easement.

Larry asked the ZBA if they agree that the Building Inspector's requirements are outside the scope of what the ZBA can uphold.

Jeffrey asked what the difference is between "use", and "intended use".

Corey said that FFD has no use for the easement and that it does not impede the access to their business.

Julius stated that the ZBA does need to talk about the clearing of the easement at least.

Corey said that they have gotten quotes to clear to the degree that fulfill what they perceive to be required by the condition, but that in speaking to the Building Inspector, this would not be enough. He said they are prepared to clear but don't want to do that and then find that the Building Inspector is not satisfied and have to have more done. He said this would increase the already high cost of the improvements. He stated that going ahead with improvements being required by the Building Inspector would cost 10 times more than simply clearing the easement.

Larry noted that in his email to Jim Eddy, the Building Inspector uses the term, "intended use", but in the decision, the wording is, "cleared and prepared for use". He went on to say that a paved or gravel road was not the intention of the ZBA at the time of the hearing.

Jim Eddy, owner of the property said that he was not at the ZBA hearing on the FFD application but did sit in on the Martha's Vineyard Commission, (MVC) hearings which required him to "grant a recorded easement to the neighboring property.

Larry stated that subsequently FFD has applied for their Special Permit and this condition of approval was part of the decision. He said that they are not here to remove the condition but to decide if the Building Inspector's interpretation is correct as far as degree of finish. He went on to say that the decision tonight will be to support the Building Inspector's interpretation of the condition or not.

Dan Larkosh, an abutter claiming to be a beneficiary of the recorded easement, said that he always envisioned the condition to mean that a dirt road would be created. He said that all the roads in this area are dirt roads and people seem to like that; adding that the road association might be opposed to a paved road. He said that he supports the clearing but that any sort of paving is excessive.

Julius agreed that clearing and putting down a little hardener would more than fulfill the condition.

Deborah clarified that the condition calls for the easement being, "cleared and prepared for use". She asked if a new condition would serve to make it clear to the Building Inspector what the ZBA intended.

Pam suggested that leaving the condition as is and presenting findings in this decision that serve to clarify the intent might be a simpler solution.

Corey said they would prefer to not have the CO tied to the clearing issue because the easement has nothing to do with the use or the structure.

Larry stated that if the findings in this decision are clearly stated, there would be no reason to withhold the CO.

Andy moved and Jeffrey seconded a motion to close the Public Hearing and open the Board Meeting.

Larry reiterated that a vote to approve would be a vote to say that the Building Inspector was wrong to request that the road be improved to the degree that he is requiring.

The finding approved is as follows:

The easement will be cleared, topsoil stripped and a layer of RAP, (recycled asphalt product), applied to a width of 10 feet.

Larry stated that he would always prefer to uphold the determination of the Building Inspector.

A roll call vote was taken to grant the Special Permit with Conditions with the following resulting votes;

L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes, C. Decker-yes.

Larry went over the twenty day appeal period.

5:55 pm - A Public Hearing on an Application for a Special Permit from Alexander BenDavid to operate a Service Business, (landscaping and power-washing), in a residential neighborhood under Sections 8.5-2 (Non-residential Uses in the RU and VR Districts) and 3.1-1 (Use Table), of the Zoning Bylaws at 43 Old County Rd., Map 10, Lot 18.1, RU District

Larry read the Hearing Notice. Alexandra Ben David presented the application. She stated that they have two F 150 Isuzu MPRs, 2 trailers and bobcats, 3-4 employees in season and 1-2 employees year-round. She went on to say that the hours of operation are 7am to 6pm Monday through Saturday. She stated that they are running the business from their home out of necessity and the business is not big enough to afford renting a commercial property.

Jeffrey said that the neighbors say the traffic is much worse.

Alex BenDavid said that the property was vacant for years and the house was rundown. He said that now that they live there, they have family and friends visiting and they are trying to improve the property.

Jeffrey asked if they have spoken with neighbors about their concerns.

Alex said that the traffic is heavier because he is trying to do so much work on his own property. He stated that the activity should start becoming less soon because they have accomplished much of what they need to do. He said he had spoken to Ben Childs about limiting their work on Sundays by starting at no earlier than 9:30am. He said they are willing to do that and also to work within the parameters established by the board.

Larry asked about trees planted for screening. Alex said that the trees shown on the plan are already planted but they would be happy to do more screening.

Pam read the following correspondence, (see file);

- 1) Planning Board letter referencing safeguards to ground water and parking of trucks to reduce back-up beeping in the morning hours.
- 2) Letter in opposition from Elizabeth Carroll, an immediate abutter
- 3) Memo to ZBA from Pam outlining objections related to her on a phone call with Janet Alley, abutter
- 4) Letter in opposition from Wayne Greenwell, an abutter

Larry asked that it be noted that the Carrolls and the BenDavids are not getting along as neighbors.

Wayne Greenwell expressed his concern for the noise that may be generated by the backhoes, trailers, tractors and dump trucks. He added that he is a writer and has lived on the property for 13 years. He said that construction level equipment is not appropriate for this quiet location. He noted that the applicant says he would like to keep it quieter but that the machinery is noisy.

Julius asked to direct the BenDavids to the bylaw, citing the various restrictions. He noted that he just wants them to be aware of them.

Alexandra said they are prepared for the conditions required by the board. She asked if she could address the most recent comments. Larry said that she may but only if they do not personal in nature.

She noted that

- 1) The chemicals used in power-washing are not collected and brought to the property. Bleach is used at the job sites.
- 2) The fires referenced are bonfires that they have for family and friends that all are welcome to attend.
- 3) They are prepared to respond to concerns over traffic as much as possible.
- 4) They are prepared to repair the road as necessary.
- 5) Speed will be limited.
- 6) Machines that cause vibration were used to get the road in shape but should not be necessary and will be removed from the property once they are further along with the landscaping of the lot.
- 7) Alex has used his motor bike there occasionally but has been using a designated track at a different location.
- 8) Addressing the Planning Board concerns, Alex said that the fertilizer they use is stored off the ground so as to avoid seepage into the groundwater, and that they are willing to change their hours of operation as needed.
- 9) In response to Elizabeth Carroll's concerns, they were not aware that the road was a Special Way and were excited to fix potholes and resurface the road to keep it usable and safe, adding that there was no ill intent.
- 10) In reference to the length of time it took to address the application, the lack of availability of land surveyors to complete a site plan was noted.

Other concerns addressed were the commercial grade mowers used at the property and occasional large deliveries made to the property. She addressed Mr. Greenwell stating that she does not want to interfere with his artistic pursuits but that a lot of work needed to be done on his side of the property. She apologized and assured him that most of that work has been done.

Rebecca Solway expressed her concern for the Town's Special Ways, noting that there are many violations in that area. She added that many families have children who would like to be able to ride their bikes to school and asked if there is any room to designate a path for this use.

Peter Mauro, an abutting summer resident said that the noise bothers him. He suggested that if this application is allowed, it will pressure the board to approve future similar applications.

Larry explained that Special Permits for Home Occupations do not set a precedence.

Julius agreed, stating that each application for a Special Permit is considered on its own merits.

Peter Mauro disagreed.

Jeffrey stated that the job of the ZBA is to determine if it is within the character of the neighborhood.

Julius agreed stating that they always consider the concerns of abutters.

Belinda and Morgan Childs said that they haven't had any problems with any of their neighbors but are concerned with the volume of traffic. She said she sees 4 vehicles with the company logo on them.

Morgan said that the applicants have always been considerate and that vehicles are parked in designated areas. He noted a concern that the business may grow and also that they may want to someday use the dogleg to Yellow Brick Road as their access.

Larry mentioned the late hour and suggested a continuance. He asked if anyone else would like to speak.

Elizabeth Carroll said she doesn't want any ill will but feels that the whole thing was approached inappropriately. She noted her concern for the Special Way and also noted that the property has had renters.

Marc Rosenbaum stated that enforcement of the bylaws in Town is poor and that as soon as a permit is issued, things only get worse.

Jeffrey suggested that the BenDavids review and come up with a plan to appease the neighbors prior to the next meeting.

Alex said that this has been a great meeting and that he has learned a lot about the concerns of his neighbors and the various regulations. He said he plans to eventually grow his business and move to a commercial location.

A motion was made and seconded to continue the meeting until January 27, 2022 at 6:10 pm.

A roll call vote was taken to grant the Special Permit with Conditions with the following resulting votes;

L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes, C. Decker-yes.

The board continued the discussion regarding changing the allowable Gross Vehicle Weight, (GVW) of the 2 vehicles allowed by Special Permit for Home Occupations, 8.5-1B and 8.5-2.

A motion was made and seconded to change the GVW to 14,000 pounds

A roll call vote was taken with the following resulting votes;

*L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-No, A. Zaikis-No, J. Kaye-yes, C. Decker-yes.
(5 in favor, 2 opposed)*

The Meeting adjourned at 8:00 pm.

Respectfully Submitted,

Pam Thors-Board Administrator