

THE COMMONWEALTH OF MASSACHUSETTS

TOWN OF WEST TISBURY

ZONING BOARD OF APPEALS

**DECISION OF THE BOARD OF APPEALS ON THE PETITION OF ALLEY'S STORE
Filed with the West Tisbury Town Clerk on April 18, 2008. ZBA Case File 2008-12**

- Applicant:** Martha's Vineyard Preservation Trust on behalf of Alley's General Store Inc, PO Box 5277, Edgartown MA 02539
- Owner:** Martha's Vineyard Preservation Trust, PO Box 5277, whose title to the property of Assessors Map 32 Lot 58 is recorded at the Dukes County Registry of Deeds and described in Book 621 Page 371 dated 12/09/1993 and Map 32 Lot 58.2 in Book 621 Page 377 dated 12/09/1993.
- Locus:** 1041 State Road; Assessors Map 32, Lots 58 and 58.2, West Tisbury, MA, 02575; Village Residential District; .64 and .03 acres. Condo parcels.
- Agent:** Chris Scott, Martha's Vineyard Preservation Trust, PO Box 5277, Edgartown MA 02539
- Plans:** 1) Floor Plan: Alley's Produce Shed, A2, Moore II Architects, West Tisbury MA 02/04/2008; 2); Elevations South & West, Moore II Architects, 02/15/2008. 3) Partial Site Plan: Alley's Produce Shed, Moore II Architects, 02/05/2008; 4) Narrative of Application for Special Permit dated March 24, 2008. Approved and signed April 16, 2008. On file in West Tisbury ZBA office.
- Notice:** Certified abutters list mailing sent out on March 25, 2008. Advertised in Martha's Vineyard Times, March 27 and April 3, 2008.

Hearing & Request:

April 9, 2008 at 7:35 PM and continued and closed on April 16, 2008 at 5 PM: An application by Martha's Vineyard Preservation Trust for a Special Permit for change in use and expansion of a pre-existing, non-conforming use: To reconstruct the former bike rental place at the back of Alley's General Store Inc to be used seasonally as additional retail space for Alley's General Store.

Requirement:

Section 11.1-3A of West Tisbury Zoning Bylaws: The ZBA may grant a Special Permit to allow a non-conforming structure or use to be extended or altered, provided it will not be substantially more detrimental to the neighborhood.

Section 9.3-1C2: Once a Special Permit has been granted, it shall apply to the approved use, as well as to any subsequent use of the property in the same use category (as shown in the Use Table), provided that the new use has no greater impact on adjoining properties, complies with all terms and conditions of the Special Permit, and does not involve new construction, enlargement, exterior alteration of existing structures, increased parking or traffic generation, or significant changed use of outdoor areas. Such change of use shall require only a use permit from the Zoning Inspector. Any change to another use category allowed by Special Permit or any expansion of a Special Permit use shall require the granting of a new Special Permit or a Special Permit amendment.

Present: Eric Whitman (Chair), Bob Schwier, Tony Higgins, Larry Schubert, Toni Cohen

Absent: Nancy Cole, Tucker Hubbell

Decision: The Board of Appeals voted unanimously to GRANT a Special Permit with Conditions to Martha's Vineyard Preservation Trust for a Special Permit for change in use and expansion of a pre-existing, non-conforming use: To reconstruct the former bike rental place at the back of Alleys General Store Inc to be used seasonally as additional retail space for Alley's General Store.

Vote for: Whitman, Schwier, Higgins, Schubert, Cohen

Vote Against: None

Findings:

- 1.) Alley's store is a pre-existing non-conforming place of retail business in the Village Residential District established in 1858. The shed to the rear of the property has had a history of uses for the store, such as storage, garage, generator housing. In 1998 a ZBA Special Permit was granted allowing that the shed could be used as a bicycle rental shop, a use that continued through the summer of 2007. A third business, Garcia's Deli and Bakery is to the rear of the lot. The businesses share common parking. There is a legal agreement concerning what the two establishments may sell in regard to each other. This agreement did not concern the bike business.
- 2.) The applicant has submitted it is their intention to use the shed as a place to sell primarily fruits and vegetables, and to be open seasonally, that is, approximately June, July and August with lesser hours in the shoulder season. There will be coolers as indicated on the floor plan to be used primarily for storage for the produce and fruit and for drinks.
- 3.) The use of the shed will be an expansion of what the general store already does: Sell a variety of goods including fruits and vegetables. The expansion of use will not have a greater impact on adjoining properties.
- 4.) The change of the use of the shed from bike rental to general store retail as part of Alley's General Store Inc will not be substantially more detrimental to the neighborhood as both draw customers and it is assumed that there will not a substantive increase in traffic or parking. It's possible that bike renters left their cars for longer periods of time in the parking lot.
- 5.) The Board accepts the applicant's testimony that anything sold in this shed will be consistent with the general merchandise customarily sold at a general store.
- 6.) The applicant has stated that there are foundation and other structural problems with the current building; that an engineer will submit to the Building Inspector that the building is not structurally sound or salvageable. The replacement shed will be on the same footprint but approx one foot higher in order to raise the western "bump out" of the shed to make it usable. The building will be handicap accessible.
- 7.) The Historic District Commission has approved the reconstruction plans.
- 8.) The reconstruction applied for will not be substantially more detrimental to the neighborhood and Town, and the construction is in harmony with similar development in the neighborhood and town in scope, size, and design.
- 9.) The applicant stated there would be a small sign on the premises to indicate that it a part of Alley's Store.
- 10.) The application met the Review Criteria of Section 9.2-2 of the West Tisbury Zoning Bylaws.

Conditions: 1) No exterior compressors.

No Variance or Special Permit shall take effect until:

1. **A period of twenty days has elapsed from the date of the filing of the Board's written Decision with the Town Clerk,** and the applicant has received a copy of the Decision bearing the certification of the Town Clerk that a period of twenty days has elapsed from the filing of the Decision and that no appeal has been filed, or the appeal has been denied or dismissed. A Certificate of Granting will also be issued.

2. The **Certified Decision** and the **Certificate of Granting** are recorded at the Dukes County Registry of Deeds and the recording fee has been paid at the Dukes County Registry of Deeds. **Only Original Documents will be accepted at the Registry.**
3. A receipt for the recording stamped by the Dukes County Registry of Deeds has been returned to the **Building & Zoning Inspector of West Tisbury** or to the office of the West Tisbury Board of Appeals who will turn over the receipt to the Building and Zoning Inspector.
4. **The applicants may proceed with applying to the appropriate Town of West Tisbury Officers and Boards for any other development permits which may be required by law.**

Any person aggrieved by this Decision of the West Tisbury Board of Appeals **may appeal to Superior Court** and must notify the Town Clerk of the action and submit a copy of the complaint within twenty days after the Decision has been filed in the office of the Town Clerk.

A Special Permit shall lapse in 2 years if not utilized. A Variance shall lapse in one year if not utilized.

The Building and Zoning Inspector and the Zoning Board of Appeals must approve any substantive or material changes made to the approved plans or made to a structure during actual construction and/or to a use. Please consult with the Inspector regarding change. Failure to do so may nullify your permit and may require removal of the unapproved construction.

Filed with the West Tisbury Town Clerk on _____

