



Town of West Tisbury
BUILDING & ZONING INSPECTOR
West Tisbury, Massachusetts 02575

April 6, 2023

Bruce Bullen & Maria Krokidas
P.O. Box 1809
Edgartown, Ma 02539

Re: Application to alter existing pool house

Dear Bruce & Maria,

I have reviewed the application and additional supporting documentation to alter the existing pool house located at 89 Pond Rd., Map 30 Lot 2.68 and I must deny the application.

1. The proposal to alter the pre-existing non-conforming structure appears to exceed the maximum allowable square footage for a detached bedroom. West Tisbury Zoning Bylaws Section 4.2-2(E)

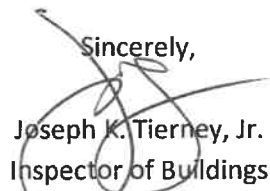
The existing structure exceeds 120sqft and would have required a building permit, at the time of construction, under 780 CMR 6th Edition Section 110.3(1). I could not locate any building permit for this structure in the town records or with the assessor's office. Since there was no building permit for the structure, and 10 years has passed since the construction of the structure, Chapter 40A Section 7 would apply and appears to indicate that the structure is now a legally non-conforming structure subject to Section 6. Section 6 directs the applicant to apply for the extension or alteration of a pre-existing non-conforming structure, which the applicant has done. I don't believe the ZBA can approve an alteration that exceeds what is allowed by the Zoning Bylaws.

As I stated previously, this should be an application for an Appeal or the applicant may also choose to seek a Variance under Section 10.3-2.

If you feel aggrieved by this determination you may file an appeal with the West Tisbury Zoning Board of Appeals within 30 days of this notice.

Feel free to contact me if you have any additional questions.

Sincerely,


Joseph K. Tierney, Jr.
Inspector of Buildings
Town of West Tisbury

Cc: ZBA
Planning Board
Gustavo Batista
Heikki Soikkeli

COPY

780 CMR 109.0 APPROVAL

109.1 Approved materials and equipment: All materials, equipment and devices approved by the building official shall be constructed and installed in accordance with such approval.

109.2 Used materials and equipment: Used materials, equipment and devices which meet the minimum requirements of 780 CMR for new materials, equipment and devices shall be permitted; however, the building official may require satisfactory proof that such materials, equipment and devices have been reconditioned, tested, and/or placed in good and proper working condition prior to approval.

109.3 Alternative materials and equipment:

109.3.1 General: The provisions of 780 CMR are not intended to limit the appropriate use or installation of materials, appliances, equipment or methods of design or construction not specifically prescribed by 780 CMR, provided that any such alternative has been approved. Alternative materials, appliances, equipment or methods of design or construction shall be approved when the building official is provided acceptable proof and has determined that said alternative is satisfactory and complies with the intent of the provisions of 780 CMR, and that said alternative is, for the purpose intended, at least the equivalent of that prescribed in 780 CMR in quality, strength, effectiveness, *fire resistance*, durability and safety. Compliance with specific performance based provisions of 780 CMR, in lieu of a prescriptive requirement shall also be permitted as an alternate.

109.3.2 Evidence submitted: The building official may require that evidence or proof be submitted to substantiate any claims that may be made regarding the proposed alternate.

109.3.3 Tests: Determination of acceptance shall be based on design or test methods or other such standards approved by the BBRS. In the alternative, where the BBRS has not provided specific approvals, the building official may accept, as supporting data to assist in this determination, duly authenticated engineering reports, formal reports from nationally acknowledged testing/ listing laboratories, reports from other accredited sources. The costs of all tests, reports and investigations required under these provisions shall be borne by the applicant.

109.3.4 Approval by the Construction Materials Safety Board: The building official may refer such matters to the Construction

Materials Safety Board in accordance with 780 CMR 123.0 for approval.

780 CMR 110.0 APPLICATION FOR PERMIT

110.1 Permit application: It shall be unlawful to construct, reconstruct, alter, repair, remove or demolish a *building* or *structure*; or to change the use or *occupancy* of a *building* or *structure*; or to install or alter any equipment for which provision is made or the installation of which is regulated by 780 CMR without first filing a written application with the building official and obtaining the required permit therefor.

110.2 Temporary Structures:

110.2.1 General: A building permit shall be required for temporary structures, unless exempted by 780 CMR 110.3. Such permits shall be limited as to time of service, but such temporary construction shall not be permitted for more than one year.

110.2.2 Special approval: All temporary construction shall conform to the structural strength, fire safety, *means of egress*, light, ventilation, energy conservation and sanitary requirements of 780 CMR as necessary to insure the public health, safety and general welfare.

110.2.3 Termination of approval: The building official may terminate such special approval and order the demolition of any such construction at the discretion of the building official.

110.3 Exemptions: A building permit is not required for the following activities, such exemption, however, shall not exempt the activity from any review or permit which may be required pursuant to other laws, by-laws, rules and regulations of other jurisdictions (e.g. zoning, conservation, etc.).

1. One *story* detached accessory buildings used as tool or storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet.
2. Fences six feet in height or less.
3. *Retaining walls* which, in the opinion of the building official, are not a threat to the public safety health or welfare and which retain less than four feet of unbalanced fill.
4. Ordinary repairs as defined in 780 CMR 2. Ordinary repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam, column or other loadbearing support, or the removal or change of any required *means of egress*, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs

Part I ADMINISTRATION OF THE GOVERNMENT

Title VII CITIES, TOWNS AND DISTRICTS

Chapter 40A ZONING

Section 7 ENFORCEMENT OF ZONING REGULATIONS;
VIOLATIONS; PENALTIES; LEGALLY
NONCONFORMING STRUCTURES; NOTICE OF ACTION;
JURISDICTION OF SUPERIOR COURT

Section 7. The inspector of buildings, building commissioner or local inspector, or if there are none, in a town, the board of selectmen, or person or board designated by local ordinance or by-law, shall be charged with the enforcement of the zoning ordinance or by-law and shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of any zoning ordinance or by-law; and no permit or license shall be granted for a new use of a building, structure or land which use would be in violation of any zoning ordinance or by-law. If the officer or board charged with enforcement of zoning ordinances or by-laws is requested in writing to enforce such ordinances or by-laws against any person allegedly in violation of

the same and such officer or board declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within fourteen days of receipt of such request.

No local zoning by-law or ordinance shall assess a penalty of more than \$300 per violation; provided, however, that nothing in this section shall be construed to prohibit local zoning by-laws or ordinances from providing that each day the violation continues shall constitute a separate offense. No action, suit or proceeding shall be maintained in a court, nor an administrative action or other action taken to recover a fine or damages or to compel the removal, alteration or relocation of a structure or part of a structure because of a violation of a zoning by-law or ordinance except in accordance with this section and sections 8 and 17. If real property has been improved and used in accordance with the terms of the original building permit, no criminal or civil action intended to compel the abandonment, limitation or modification of the use allowed by the permit or the removal, alteration or relocation of a structure erected in reliance upon the permit by reason of an alleged violation of this chapter or of an ordinance or by-law adopted under this chapter shall be maintained unless the action, suit or proceeding is commenced and notice of the action, suit or proceeding is recorded in the registry of deeds for each county or district in which the land lies or, in the case of registered land, the notice is filed in the registry district in which the land lies within 6 years of the commencement of the alleged violation.

No criminal or civil action intended to compel the removal, alteration, or relocation of a structure by reason of an alleged violation of this chapter or of an ordinance or by-law adopted under this chapter or the conditions of a variance or special permit shall be maintained unless the action, suit or proceeding is commenced and notice of the action, suit or proceeding is recorded in the registry of deeds for each county or district in which the land lies or, in the case of registered land, the notice is filed in the registry district in which the land lies within 10 years of the commencement of the alleged violation.

If real property has been improved by the erection or alteration of 1 or more structures and the structures or alterations have been in existence for a period of at least 10 years and no notice of an action, suit or proceeding as to an alleged violation of this chapter or of an ordinance or by-law adopted under this chapter has been recorded in the registry of deeds for the county or district in which the real estate is located or, in the case of registered land, has been filed in the registry district in which the land is located within a period of 10 years from the date the structures were erected, then the structures shall be deemed, for zoning purposes, to be legally non-conforming structures subject to section 6 and any local ordinance or by-law relating to non-conforming structures.

Notice of an action, suit or proceeding shall include the name of not less than 1 of the owners of record, the name of the person initiating the action and adequate identification of the structure and the alleged violation.

The superior court and the land court shall have the jurisdiction to enforce the provisions of this chapter, and any ordinances or by-laws adopted thereunder, and may restrain by injunction violations thereof.

Joe Tierney

From: Principal Assessor <assessors@westtisbury-ma.gov>
Sent: Thursday, April 6, 2023 1:59 PM
To: Joe Tierney
Subject: RE: 89 pond rd.

They got bumped by a lot of inspections it looks like. I'm always happy to look one up on the system if you need it. And if you want a PK terminal let me know. But I don't mind looking at all!

Also, I got a call from Nearmap complaining about people sending them messages from their backyards...you wouldn't know anything about that would you 😊

Type	Pmt Description	Insp Date	By	Pmt No	Pmt Date	Amount	%Compl As of FY	%Compl On Insp	C of O Date	Grwth FY	Note
40	VISION EXT F	4/26/2011	DWM			0	100	100		0	
32	M&L EXT; NO	10/14/2010	TS			0	100	100		0	10/14/10 LEFT CARD. CHG FPL3.
40	VISION EXT F	6/4/2007	SF			0	100	100		0	
32	M&L EXT; NO	11/14/2006	TS			0	100	100		0	CLOSED UP. NEW PHOTOS. NEW IF
40	VISION EXT F	6/1/2001	JD			0	100	100		0	
31	M&L EXT; INT	10/1/1999	JR			0	100	100		0	
30	M&L ALL	9/11/1998	JR			0	100	100		0	
31	M&L EXT; INT	3/11/1998	JR			0	100	100		0	
1	NEW CONSTR			97135	12/22/1997	25,000	100	100		0	POOL&SPA
1	NEW CONSTR			97126	12/1/1997	400,000	100	100		0	SFR

Permit Note (Fiscal Year Specific)

From: Joe Tierney <inspect@westtisbury-ma.gov>
Sent: Thursday, April 6, 2023 1:43 PM
To: Principal Assessor <assessors@westtisbury-ma.gov>
Subject: RE: 89 pond rd.

Mac,

Ok. Can't seem to find building permits issued for this property in the new assessor software?
Any tips on where to find this?

Joe

From: Principal Assessor <assessors@westtisbury-ma.gov>
Sent: Thursday, April 6, 2023 12:29 PM

To: Joe Tierney <inspect@westtisbury-ma.gov>

Subject: RE: 89 pond rd.

I don't know that for sure. I could look in our paper files in case we have a card going back that far...we might well. I'm hoping to

From: Joe Tierney <inspect@westtisbury-ma.gov>

Sent: Thursday, April 6, 2023 12:11 PM

To: Principal Assessor <assessors@westtisbury-ma.gov>

Subject: RE: 89 pond rd.

mac,

so the bedroom in the pool building has been on the card since 1988?

Joe

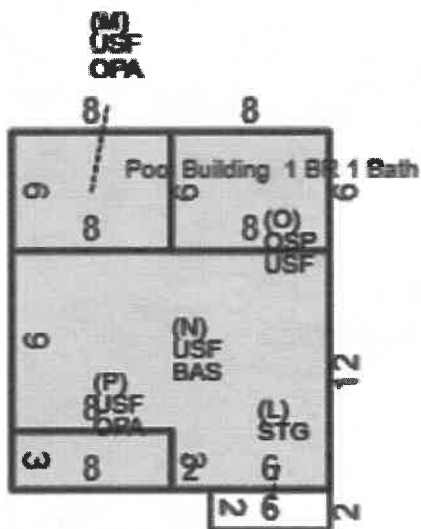
From: Principal Assessor <assessors@westtisbury-ma.gov>

Sent: Thursday, April 6, 2023 10:38 AM

To: Joe Tierney <inspect@westtisbury-ma.gov>

Subject: RE: 89 pond rd.

Two things. A note mentioning the total BR Count and notes on the sketch in our system



Parcel Note

[POOL HSE ON SKETCH CF365 03/08/1988 68] [FPL1=GAS UNIT IN MBR
#BR&BTHS INCL POOL BLDG]