

Zoning Board of Appeals

From: Michael Goldsmith <mgoldsmith@rrklaw.net>
Sent: Tuesday, January 25, 2022 12:25 PM
To: Zoning Board of Appeals
Subject: Sports Courts

Pam. I am offering some general points and observations on the current sport court issue before your board, and qualify that I have not studied plans (if they exist) or application materials. I have pasted and highlighted the key sections of the ZBL (under the ***) governing whether sport courts are permissible and, if so, require either a special permit, site plan review, both, or neither. (See Section 3.3 on permissible accessory uses: site plan review is required for residential accessory structures in excess of 2500 square feet.) The ZBL does not explicitly address sport courts (other than tennis courts) and, as I mentioned, planning boards in neighboring towns have begun to review those uses to establish particular rules and procedures for permitting them.

Generally, the ZBL can be characterized as permissive in spirit and uses that are not expressly prohibited are permitted. See Section 3.2, which expressly prohibits “noxious” uses, and 3.2-3, which expressly prohibits driving ranges, for example. Sports courts are **not** expressly prohibited, however.

Standing in contrast is Section 3.1, which states that “uses not listed below are prohibited, unless the Zoning Board of Appeals determines that a proposed use is so similar in character and impact to listed uses as to justify inclusion within a given use category.”

Further, the ZBL’s definition of “structure” is broad and includes tennis courts and pools, even though no portion may stand above 6 feet (typical building code definition). Note also that the ZBL’s definition of residential accessory use is also broad, and **is not limited to the uses** specifically identified, and therefore could encompass customary and incidental uses including “**other structures used for recreation by the residents . . .**”

Under the current ZBL, the usual process would be for the building official, in the first instance, to make a determination (whether it comes to him by application or by complaint) whether a particular use is an accessory recreational structure allowed by right or involves a level of construction and impact on surrounding properties that is, based on Section 3.1, “**so similar in character and impact to listed uses as to justify inclusion within a given use category**”, requiring a referral to the ZBA for analysis in the first instance. If the proposal is a recreations facility involving more than 2500 square feet, then the site plan review requirement is triggered.

The property owner, then, could either appeal the Building Official’s determination as to what is required to the ZBA or, in the alternative, seek special permit directly, where the ZBA would invoke the language in Section 3.1 and treat the application under the tennis court provisions and general special permit criteria.

Hopefully, this note is sufficient to provide you and the ZBA with the guidance it needs to address the present matter before you. Please let me know whether you have other questions. - Michael

SECTION 1.3 EFFECT OF THIS BYLAW Land shall be used and structures shall be located, constructed and used only as allowed in this bylaw.

SECTION 3.1 ALLOWABLE USES This bylaw is intended to protect the character of West Tisbury's existing landscape and historic settlements, **while allowing flexibility of land use and new development that is in keeping with the Town's**

rural character. **3.1-1 Use Table** The Use Table that follows indicates allowable uses in the districts shown. See Article XIV for definitions of the use categories. **Uses that are not listed below are prohibited, unless the Zoning Board of Appeals determines that a proposed use is so similar in character and impact to listed uses as to justify inclusion within a given use category.** The meaning of the symbols is as follows: P Designates a use permitted by right. Usually requires a building permit and/ or a certificate of occupancy from the Zoning Inspector. It may require approval of new construction by the Historic District Commission if the land is in a historic district, or a Special Permit from the Zoning Board of Appeals or Site Plan Review by the Planning Board if it is in an overlay district. PR Designates a use permitted by right subject only to Site Plan Review by the Planning Board unless otherwise designated (see Article IX), provided that the proposed use contains no more than 1,500 square feet of floor area in the RU and VR Districts, and 3,000 square feet in the MB and LI Districts. If the use involves structures with more floor area, a Special Permit must be obtained from the Zoning Board of Appeals (see Section 9.2). S Designates a use allowed by Special Permit, granted by the Zoning Board of Appeals unless otherwise indicated (see Section 9.2). -- Designates a prohibited use.

SECTION 3.2 PROHIBITED USES IN ALL DISTRICTS **3.2-1** Any building or structure or any use of any building, structure or premises which is injurious, obnoxious, offensive, dangerous or a nuisance to the community or to the neighborhood through noise vibration, odors, fumes, smoke, gases, dust, harmful fluids or substances, danger of fire or explosion or other objectionable feature detrimental to the community or neighborhood health, safety, convenience, or welfare.

3.2-2 Keeping of more than one motor vehicle which is, and for the immediately preceding thirty-day period has been, disabled, dismantled, or inoperative, or unregistered, unless such vehicle is enclosed within a building or is in an approved junkyard.

3.2-3 In addition, the following uses are specifically prohibited: golf courses, driving ranges, and fast-food restaurants.

SECTION 3.3 ACCESSORY USES In addition to the principal uses permitted in a district, accessory uses which are subordinate and customarily incidental to such permitted uses shall be allowed on the same terms as the principal use (i.e. by right, with Site Plan Review, and/or by Special Permit), **except that Site Plan Review shall be required for residential accessory structures that exceed 2,500 square feet**, including barns or stables (unless exempted as agricultural structures), riding arenas, **or other recreational facilities.** Common driveways shall be considered customary accessory uses, allowed with Site Plan approval unless the principal use involves the review of a Site Plan or subdivision plan showing the common driveway in connection with a Special Permit or subdivision approval.

Accessory Residential Structure: A habitable or non-habitable accessory structure on a lot principally used for residential purposes, **including but not limited to** subordinate dwellings, detached bedrooms, studios, garages, storage sheds, garden sheds, gazebos, **swimming pools, tennis courts, and other structures used for recreation by the residents of the principal dwelling.**

Structure: A static construction of building materials affixed to the ground, **including but not limited to** a building, dam, display stand, gasoline pump, installed mobile home or trailer, reviewing stand, shed, sign, **swimming pool, tennis court,** storage bin, or wall.

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