

# WEST TISBURY ZONING BOARD OF APPEALS

Thursday, January 18, 2024

## Meeting Minutes

Approved February 1, 2024 (4-0)

**Present:** Larry Schubert, Julius Lowe, Deborah Wells, Andy Zaikis, Jeffrey Kaye, Pat Barrett

**Absent:** Casey Decker

**Also Present:** Kim Leaird (*Board Administrator*), Simon Athearn, Tom O'Brien, Diana Gilmore, Russell Hartenstine, Marc Rosenbaum, David Broderick, Amy Lyon, Jonathan Smylie, Nancy Cole, Peter Rodegast, Rich Huffam, Farley Pedler, Paul Karasik, Chris Newcomer, Pamela Phillips, Tristan Atwood, Eric Peters, Quezia Andrade

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**5:00 pm** – Minutes of January 4, 2024 meeting were approved 6-0.

### Informal Hearing:

- **Diana Gilmore, 26 Machipscat Trail, Map 10 Lot 199.5** Proposed changes to accessory apartment floor plans approved as part of SP #2020-13 and revised site plan showing full length of driveway and hammerhead 20ft. from road (*permit extended to June 10, 2024*)

Diana Gilmore and Peter Rodegast explained the floor plans had changed slightly but it is still an 800 sq. ft. accessory apartment. In addition, it has been rotated very minimally. The board confirmed that there is now a hammerhead and full driveway on site plan and voted to approve the presented changes as de minimis. Kim will write a letter to the Building Inspector.

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**5:15 pm** – A public hearing on an Application for a Special Permit from O'Brien's Fine Home Builders Inc. on behalf of **Simon and Robyn Athearn** to construct a 1212 sq. ft., 32-foot tall Barn requiring 32 ft. of rear yard setback relief and 2 ft. of height relief under Sections ~~4.4-3D~~ **4.3-3D** and 4.3-2C of the Zoning Bylaw at **35 Road to Great Neck, Map 31 Lot 68** in the RU district.

Larry read the hearing notice and opened the hearing at 5:15pm. Present were Simon Athearn and Tom O'Brien. The applicant seeks setback relief and also owns the affected adjacent property which has a family restriction prohibiting its sale for more than \$30,000 and can only be used for certain agricultural uses. The existing barn is on his [3-acre] home parcel and only five feet from the property line. There is a Land Bank restriction on one of the parcels (forest area). The cleared land in that 15-acre parcel is protected from building. His plan is to set the barn on the edge of forested land and leave a row of trees to protect it from southern view

Simon explained that if they adhere to the setbacks the barn will be visible to two of his neighbors and would also make every trip longer from produce gathering and greenhouses to the barn. By moving it into the setback it will not be visible and also shorten the trips.

The existing barn was built in 1958 and while in reasonable condition, it is meant for livestock and is not conducive for vegetables and flowers. The larger plan is to add employee housing in the form of five one-bedroom cabins but they are allowed by right. They will be insulated and could be heated, but they are meant for [just] seasonal employment.

Larry read a letter from the Planning Board – they approved a site plan review in December and wrote a letter in support. In addition, two letters from the Building Inspector were read into the record that pointed the applicant to the Zoning Board for the setback and height relief they seek tonight.

Public comment

Peter Rodegast, a direct abutter, said he supports the application in general but has a few concerns about the development and size of the buildings, noise and light pollution as he knows there is a grow room in the basement. Concern around noise about air conditioning and/or compressors. He also is concerned about road maintenance with increased traffic.

Nancy Cole asked whether lighting would be pointed down, and Larry said there are town bylaws that address lighting.

Applicant said the grow room is for tulip production and there are no windows in the basement. There are outside compressors but uses an air conditioning system vs. refrigeration as it is a quick and efficient way to cool. It is a commercial farm, and there will be tractors starting early. They don't plan to have direct heat in the building but will have electric heat (mini splits, ceramic wall board heater, etc.). The building was directly oriented so that barn blocks headlights to Rodegast property and main entrance is on the field side, and although the refrigeration is on the forested side closest to [the Rodegasts], it is only a 16x12 area that is cooled.

Paul Karasik, abutter, said his family supports their expansion but he has serious concerns about the road and traffic and would like a strong commitment from the Athearns to take a heavier hand in maintaining the road.

There is no road association, but Simon said he is open to informally committing to doing so, but not formally. He has a tractor onsite and “takes a lick” to road every couple of weeks. While there will probably be an increase in total traffic he has already been running his farm for 8-9 years with a daily staff of 12. He said they all “take a lick” at the road every couple of weeks. They do have deeded access to road which they purchased from the Looks.

Deborah asked if he would respond to the neighbors should the sound be bothersome. Simon said he always responds to reasonable concerns and in the past has gone to great lengths to accommodate concerns as long as they are reasonable, but commercial agriculture is protected. In the past he has built a baffle over one but it increases the electricity output does not really change the sound output, it only muffles it. Julius asked about the location of walk-in cooler. Pat asked about hours as it relates to noise. Staff works 7am to 5pm, but it's mostly hand labor – set up fields in spring and tear down in fall.

*A motion was made and seconded to close the hearing and open the board meeting.*  
There was no further discussion.

*It was moved and seconded to GRANT the Special Permit. Larry went over the 20-day appeal period.*

*A roll call vote was taken with the following resulting votes. Motion passed 5-0.*  
*L. Schubert-yes, J. Lowe-yes, A. Zaikis-yes, D. Wells-yes, J. Kaye-yes*

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**5:35 pm** – A public hearing on an Application for a Special Permit from Farley J. Pedler on behalf of **Richard R. Huffam** to install a 588 sq. ft., 24 ft. high dual axis solar tracker under Section 8.10-4B of the Zoning Bylaw at **64 Island Farms Rd., Map 16 Lot 17** in the RU district.

Larry read the hearing notice and opened the hearing at 5:52pm. Present were Richard Huffman and Farley Pedler. The dual-axis solar tracker mounts on a central pole and has a gyro that follows the light of the sun and there are two pivots, one follows laterally and the other horizontally. The tracker itself, when completely vertical is around 20 feet from bottom of base to top of panel. The base has another foot of concrete. There are 24 panels and offset approximately 72% of their electrical usage. Looked at the roof but there is a limit with Eversource how large the array can be (limited to a 15kw system or less) and a diminished return on investment (ROI). The tracker is 200% more efficient.

Larry read a letter from direct abutters Jonathan Smylie and Amy Lyon with concerns about potential glare or shadow from the tracker to their yard and whether or not there would be noise. They were also in attendance and added that it's very close to their property and is the same height of their own house. They asked why it could not be relocated elsewhere. Farley said the location is to maximize sun collection and he did not think there would be glare or shadow cast. In regard to noise, there is only a very faint click every 30 seconds as the tracker is calibrating and you could only hear it if you were standing right there. Jeffrey asked if it would be possible for the neighbors to listen to a tracker already installed. Farley said that they installed one for the Haynes and there is one on Great Plains Rd.

Discussion followed about the reasons the applicant chose this spot and the feasibility of possible relocating it. It was suggested that the hearing be continued to give applicant and neighbors time to think about the placement.

A motion was made to continue hearing to **February 1, 2024, at 5:55pm.**

*A roll call vote was taken with the following resulting votes. Motion passed 5-0.*

*L. Schubert-yes, J. Lowe-yes, A. Zaikis-yes, D. Wells-yes, J. Kaye-yes, P. Barrett-yes*

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**5:55 pm** – A public hearing on an Application for a Special Permit from Martha's Vineyard Engineering & Design on behalf of **Christian Newcomer** to construct a 24'x32' two-car garage with a 768 sq. ft. Accessory Apartment above, under Section 4.4-3A of the Zoning Bylaw at **225 Great Plains Rd., Map 17 Lot 133** in the RU district

Larry read the hearing notice and opened the hearing at 6:18pm. Present were property owners Christian Newcomer and Pam Phillips. Tristan Atwood presented the project: a two-car garage with a one-bedroom, one-bath accessory apartment above, conforming with setbacks. Mechanicals will be on first level. There are two forms of egress and they plan to keep the same architectural style as the house. It is to be used for family use only [at this time].

Larry read a letter from the Planning Board that referred it back to the board without comment. There was a letter of support from direct abutter, Tim Webster, however, he asked that there be a "no-light-casting" provision that would bar the outdoor lights from being on all night. Larry said the town has a lighting bylaw but it does not address turning lights on and off.

Deborah asked about the open space under deck on plan. The applicant said he would consider that as sheltered space for a wood stack.

Larry spoke about the Accessory Apartment bylaw and said that if the permit is approved it comes with standard conditions of the affordable accessory apartment bylaw and requires annual affidavits to the Town. It can't be called a guest house and if they were to sell it remains an affordable apartment.

Public comment

Marc Rosenbaum said this neighborhood is fairly crowded and flat and noise and light in summer in particular is significant. He asked the board to condition the permit that orders lights turned off at 11pm and no music played on the second-floor deck.

Discussion followed about whether or not the board could do this or if it was an overreach. There are town bylaws that address both lighting and noise. The board briefly considered a condition that stated “no continuous lighting of the exterior” but ultimately agreed that simply putting a finding that states “the applicant has heard the concerns of neighbors around night-time lighting and sound and they will be neighborly” was sufficient.

*A motion was made and seconded to close the hearing and open the board meeting.*

No other conditions were proposed aside from those pertaining to Accessory Apartments.

*It was moved and seconded to GRANT the Special Permit as conditioned. Larry went over the 20-day appeal period.*

*A roll call vote was taken with the following resulting votes. Motion passed 5-0.*

*L. Schubert-yes, J. Lowe-yes, A. Zaikis-yes, D. Wells-yes, J. Kaye-yes*

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**Informal Hearings:**

- **Jeffrey and Carolyn Carney, 80 Plum Bush Point Rd., Map 35 Lot 6.7** Contractor has minor changes to approved site plan for review by the board as part of SP #2023-48.

Contractor Russ Hartenstine explained to the Board that after the ZBA granted the special permit to the Carneys, the Conservation Commission (who had already given approval) did not like the requirement that they plant rhododendrons and wanted a different plant species. He also wanted to let the board know that he needs to widen the access point in order to actually do the work and has some adjustments to the retaining wall. The board had no issue with the access point or retaining wall.

The board discussed whether or not the board could call *de minimis* a request to change the species when the condition specifically determined rhododendrons would be planted. The board concluded that they could not do so. It was a long arduous negotiation with the neighbors and this is the condition of the permit.

The board voted to write a letter to the ConCom explaining that through negotiations with the applicant and the neighbors, the landscape plan as designed is what we incorporated in the special permit. If required, they will need to apply for an amendment.

- **Quezia da Silva and Ronaldo Andrade, 364 State Rd., Map 11 Lot 57-1.** Board to review and approve landscaping / screening plan if ready.

Eric Peters presented a new landscape plan with a narrative proposing a combination of fencing and trees. The plan shows a 7-foot-high wood fence set back six (6) feet from the property line. On the Fisher side they propose 215 feet of fencing and the planting of five (5) evergreen trees. On the Brissette side, they propose another 155 feet of fencing along the driveway down to the curve in the road with the planting of four (4) evergreen trees. On the back side, they will add fencing to stagger with Brissette's fence but no trees will be planted. They offered to stain the wooden fencing a light green or keep it natural or neutral. The board reviewed and approved the landscape plan, noting the fence will be 7 feet high, the style can be to applicant's liking, and of a natural or neutral tone. The nine trees to be planted will be 5-6 feet high.

The Meeting adjourned at 7:05 p.m.

Respectfully submitted,  
Kim Leaird, Board Administrator