

WEST TISBURY ZONING BOARD OF APPEALS

Thursday, March 16, 2023

Meeting Minutes

Approved March 30, 2023

Present: Julius Lowe, Deborah Wells, Andy Zaikis, Jeffrey Kaye, Casey Decker, Pat Barrett

Absent: Larry Schubert

Also Present: Kim Leaird (*Board Administrator*), Joel Kirschbaum, Carl Folta, Moly Lemeris, Martha Moore, Felicity Russell, George Sourati, Michael Barclay, Farley Pedler, Sam Hall, Jennifer Haynes, Bruce Haynes, Kevin Bradley

**

5:00 pm – Minutes: There was a discussion about whether or not meeting minutes should be a transcript or if they must simply capture what happened at the meeting. Open meeting law does not require a transcript.

Jeffrey asked that a more detailed list of documents used and referred to at the Feb. 16 meeting be added to those minutes. Kim said that every hearing has a comprehensive application folder where all documents could be found upon request and that traditionally the meeting minutes have not included this detailed information as it is a given.

Jeffrey said he was not going to approve the [Feb. 16 and Feb. 23] minutes because, in his opinion, it was a settlement discussion that turned into a special permit decision. He thought it should have taken place in executive session and he would have wanted to see town counsel and the Select Board decide this issue and bring it to the board as a settlement instead.

Julius said that town counsel was already involved and this board is tasked with one thing: conducting a special permit hearing. If town counsel thought we should have been in executive session or had more of a legal structure to our minutes we would have been instructed that way. He said we can't treat this any differently than other hearings. We present the town as the zoning board.

Jeffrey said he would want to have Ron's opinion. Julius said that actually the board does not need to agree with Ron.

Deborah said that minutes are supposed to accurately capture the flavor and what happened at the meeting. She said we each may have feelings about what the board did, but that should not keep us from approving minutes.

Jeffrey said that the documents need to be included in minutes, which he classified as *prima facie* evidence, submitted as gospel.

Julius said the court will look at the minutes and then would call the chair to speak to the minutes.

Andy said he's concerned with including a list of documents when we never did so before. He said he does not remember past administrators ever including documents on file. Jeffrey said that he wants this case to be comprehensive. Julius said that anyone interested in seeing what's in the file will know how to access it.

The February 16 meeting minutes were approved 4-1-1: Jeffrey voted not to approve and Casey abstained.

The February 23 meeting minutes were approved 4-1-1: Jeffrey voted not to approve and Casey abstained.

The March 2 meeting minutes were approved 6-0.

Other business

The board reviewed the legal invoice dated Feb. 28, 2023 and had questions about whether or not all of the charges should be solely the board's responsibility. Kim said she'd discuss with town administrator.

**

5:15 pm – (Continued from February 2, 2023) A public hearing on an Application for a Special Permit from **Jeffrey and Carolyn Carney**, to construct a new 18'x42' inground swimming pool to replace an existing 18'x37' swimming pool with a new 8'x15' pool equipment shed to replace the existing shed under Section 8.5-4C and 6.1-5B of the Zoning Bylaws, at **80 Plum Bush Point Rd., Map 35, Lot 6.7** in the Inland and Shore Zones of the Coastal District within the RU district.

Julius read the hearing notice and read a request from the Applicant to continue their hearing as they are still working with their neighbors on location of pool shed.

*It was moved and seconded to continue the hearing until **March 30, 2023 at 5:40 p.m.***

A roll call vote was taken with the following resulting votes. Motion passed 6-0.

J. Lowe-yes, D. Wells-yes, A. Zaikis-yes, J. Kaye-yes, Casey Decker-yes, Pat Barrett-yes

**

5:35 pm – A public hearing on an Application for a Special Permit from **Middle Point Bend, LLC**, to construct a 14.5'x50' inground swimming pool and an 8'x13' spa (both with automatic covers), and a pool equipment shed under 8.5-4C and 6.1-5B of the Zoning Bylaws, at **216 Middle Point Rd., Map 39, Lot 7 and 8** in the Inland and Shore Zones of the Coastal District in the RU district.

Julius read the hearing notice and opened the hearing at 5:35 p.m. Engineer George Sourati and Architect Michael Barclay presented the project. The [combined] lot is conforming and fronts Tisbury Great Pond. A building permit was recently issued for the house and is under construction. They are here to permit a swimming pool and spa. The lot is over 3 acres. The land is in between shore zone of two ponds. Area on map is in coastal district but outside shore zone.

Julius asked about the retaining wall and overflow basin. The basin is essentially at grade and the pool is about 30" above grade so the pool is acting as a fence in this regard. George said Joe looked at it and okayed.

George described the fencing. It starts with the pool terrace and the fence runs under a porch, a 3-foot gate and goes down where the overflow of the pool acts as the fence and then it picks up again and connects to the house.

Andy asked if it was similar to an infinity pool and was told yes. George said the design is such that the top of the pool is level with the deck. The bottom of the pool is minus 8.75 of the high-water table. George said it's at elevation 8.

Deborah asked about two photos showing vegetation and why they look so different. Michael said they were taken at two different angles and the height of the vegetation is about 30". The pool and deck are at the same elevation. Andy asked about the location of the shed – it is sited 51 feet from the corner.

Deborah asked about heating of the pool and whether or not they had considered electric. Michael said the plan is for propane right now but he would consider that and discuss with the owner. He said what he's heard is that a hot tub needs propane [to reach high temperature fast].

Andy asked if solar panels were considered, that there is plenty of space for an array [on ground] or on top of one of the other buildings. It was noted that some of the concern in opposition is the overdevelopment of the lot and a ground array could be considered more development.

Michael said if the pool contractor can guarantee it will satisfy the requirements of the owner that would be fine. Deborah said speaking personally, she has a hot tub and it is powered by electric which is almost exclusively supplied by solar.

Andy added that solar is efficient. If it is not used it goes to the grid; if you use too much you take from the grid.

Julius said it looks like the pool meets setbacks and compliance for fencing. It was noted that the pool has no deep end; it is a lap pool to be filled with salt water.

Julius read one letter of concern from Martha Moore. There was another sent by Joel Kirschbaum but not received in the Administrator's office before the hearing.

Public comment

Attendee Martha Moore gave a summary of what has been approved already since April 2022, which included a project for a plunge pool and a 3-car garage. She said she is distressed that there is very little land left when once these parcels were really pristine. Even though the Natural Heritage and Endangered Species Program (NHESP) approved [project], there are no laws protecting the existing flora and fauna. She thought there has been so much degradation of land and hoped the board would not approve.

Jeffrey asked if this is a Planning Board issue. Applications are usually referred to them before a hearing, but in this case the Planning Board had not met longer than usual as the administrator was on vacation.

George said the Planning Board did review the house and approved it. The Conservation Commission has also approved. They were asked to make the house smaller and change the deck layout and they did both. The ConCom also approved the pool the ZBA is currently reviewing. The old hunting shack is there and he said they have already told others that they will be back to renovate the shack which is over 100 years old; they will need to raise the floor.

Martha said she thought the cumulative projects would have gone to MVC if they had been presented at the same time. Julius said he does not believe the single-family house would have triggered the DRI checklist.

Jeffrey said they are here for a pool permit and those are the [only] parameters being reviewed.

Felicity Russell said she does not see the property unless she's at beach. It was confirmed that the board's purview is to look at the pool, hot tub, and pool shed – how they relate to the other structures and the square footage approved overall for the house and deck – does not have any impact on the board's decision on this application.

Julius said we are limited in our purview. All pools are either by right or special permit. And all inground pools are by special permit in front of the ZBA. While the Planning Board usually looks at applications they did not this time due to scheduling and when they do comment it is meant as guidance only. The Planning Board has no authority over this application.

Joel Kirshbaum said he submitted a letter that was not received. He felt there was a lot of bait and switching going on and that it seemed a plan was submitted early on to the Planning Board but is not the same plan that was reviewed with [subsequent] deletions and additions. The original plan has been expanded and does not cover all of the development on that site.

Julius asked what he's referring to when saying things have been added to the plan, the size of the house and the decks? George told the board he means the garage. They started with the house and then made it smaller. He said they may be talking about the abutting lot that is owned by the same owner.

Julius told Mr. Kirshbaum said its common for there to be multiple permits by different boards. He said a certain square footage was approved on the property and the garage adds to the square footage. Discussion followed about the approximate square footage: the house is about 4,500 sq. ft.; the decks and porches are another 4,000 sq. ft. There is almost 9,000 sq. ft. on 3 acres. Casey said that while it may feel that they are trying to get more by you, every addition needs to go through the Building Inspector.

Julius said the board's purview is the pool, spa and shed. That's all that is front of us.

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

Julius said we have a pool that meets setbacks and is compliant – we're talking about salt water, so it's better from a chemical standpoint.

George suggested they make a recommendation an electric pump be used. The board agreed to do so in the Findings. As far as the spa – it's even farther from setbacks and tucked in there fairly tightly. It's 16" above deck surface. Julius asked if it would be seen from shore and it would not; you'd need to be out at another point.

Deborah thought they should be specific in the findings. In addition to recommending an electric heat pump thought they should be encouraged to look at solar panel siting possibilities in consideration of being a good neighbor so you're minimizing what you're doing with respect to non-renewables.

Pat asked if they need to talk more about the shed being insulated. Those are included in the boilerplate conditions for pools. Michael said the heat pump heaters really need to be outside. The board agreed that would apply to the compressor.

It was moved and seconded to GRANT the Special Permit. A roll call vote was taken with the following resulting votes. Motion passed 6-0.

J. Lowe-yes, D. Wells-yes, A. Zaikis-yes, J. Kaye-yes, Casey Decker-yes, Pat Barrett-yes

**

Casey Decker recused from the following hearing.

5:55 pm – A public hearing on an Application for a Special Permit from **Bruce C. Haynes** to construct a 26’x21’ pole-mounted dual-axis solar array requiring 7’10” of front yard setback relief under 8.10-4B, 8-10-4C and 4.2-2D4 of the Zoning Bylaws, at **32 Vineyard Meadow Farms Rd., Map 29, Lot 40** in the RU district.

Julius read the hearing notice and opened the hearing at 6:16 p.m. Farley Pedler and Bruce Haynes presented the project. Farley said that Bruce contacted them about doing a PV project looking to offset his electricity usage using renewable panels. They looked at maximizing roof space which only gave an 80% offset of his usage. His neighbor, Rod, has a ground-mounted array so they started looking at possibilities of ground but drawback is that it takes a lot of space. They have a dual-axis tracker which takes up a much smaller footprint and gets him to 120% of his usage. What he does not use through his PV he is going to give to his son.

Deborah asked if there were 24 panels and was told yes, 6 panels wide by 4 panels long.

The plans indicated a 24 ½ ft. maximum elevation but the tracker is never fully vertical. Typically, it’s at a 60-degree angle or a 22 ft. height – it automatically tracks and adjusts.

Andy said they are asking for 8 feet of front yard setback relief and asked why they couldn’t place it back the full 100 ft. Bruce said the way the tree line falls, it would not have received full sun. They are trying to avoid cutting down big trees.

Deborah asked if they were able to hook up to Eversource now. Farley said they will cross that bridge when they get there and that what they’ve seen in some neighborhoods, not all, is that Eversource is putting a 15 kilowatts cap so you can’t be above 15 kilowatts in generation. Eversource is working on infrastructure.

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 Approve the Special Permit.

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

Julius went over the 20-day appeal period and reminded applicant that once it expires, the decision must be recorded by applicant and a receipt brought back to the Building Inspector.

**

5:55 pm – (*Also advertised at 5:55pm, in error*) A public hearing on an Application for a Special Permit from **Blu Water Capital, LLC**, to operate a seasonal, mixed food/retail concession at the Martha’s Vineyard Airport in an 11’x11’ unconditioned area exclusive to guests departing aboard commercial aircraft (with products to be warehoused on the premises), Memorial Day through Columbus Day, 10am-6pm, under 3.1-1 of the Zoning Bylaws, at **71 Airport Rd., Map 28, Lot 1** in the LI2 district..

Julius read the hearing notice and opened the hearing at 6:28p.m. Kevin Bradley from Blu Water Capital presented the project. He said he has been in the aviation industry for 24 years, including at Martha’s Vineyard Airport. Even back then there were no services for departing travelers past security. Recently, they had a conversation with the TSA manager who could not understand why someone didn’t do

something about the [lack of services] in that area. When there would be flight delays or cancellations, people would leave security to find food and drink, and would then need to come back through TSA security which would often create a backup. So [this project] began by looking at ways to alleviate backup at TSA security.

Last year they started as a self-serve micro pop-up and now they are ready to take the next step and include merchandising (such as tumblers and blankets) and have staff. The application proposes a mixed food/retail concession inside the security area so that there are food choices available.

The space is outside under a plywood awning and a seasonal tent. There will be no permanent fixed walls. There will be a refrigerator, a counter and a couple of slot walls to hang bags of chips as well as a small gondola for products. Merchandise will include nice quality, Vineyard-designed products. The plan is to integrate on-island businesses as much as possible. He has spoken with both Mad Martha's and Edgartown Market as future possibilities.

Deborah asked about planned water containers. whether he was planning the use cartons, cans or other metal. Kevin said they are focused on canned Dasani water, Boss water and Path water in a stainless-steel reusable container. They will not use plastic bottles for water. He asked if carbonated beverages could be in bottles or not. Board thought that was a question for either the airport or the Select Board.

Jeffrey asked who is Blu Water LLC and why should they be the "face of the Vineyard"? Kevin said Blu Water was just himself, and this is the only airport he has right now. He said this is a service to customers. Some of the JetBlue board members reside on island and Martha's Vineyard was a very high focus location for them.

The board confirmed he has already been in front of the MV Airport Commission. Kevin said he has a license agreement. Kim said Joe Tierney has already looked at this application and is well aware of project parameters.

It was moved and seconded to close the public hearing and open the board meeting.
There was no further discussion.

A roll call vote was taken with the following resulting votes. Motion passed 6-0.
J. Lowe-yes, D. Wells-yes, A. Zaikis-yes, J. Kaye-yes, Casey Decker-yes, Pat Barrett-yes

Julius went over the 20-day appeal period and reminded applicant that once it expires, the decision must be recorded by applicant and a receipt brought back to the Building Inspector.

**

The Meeting adjourned at 6:45 p.m.

Respectfully submitted,
Kim Leaird, Board Administrator