

**WEST TISBURY ZONING BOARD OF APPEALS**

**Thursday, April 27, 2023**

**Meeting Minutes**

*Approved May 11, 2023*

**Present:** Larry Schubert, Julius Lowe, Andy Zaikis, Jeffrey Kaye, Casey Decker, Pat Barrett

**Absent:** Deborah Wells

**Also Present:** Kim Leaird (*Board Administrator*), Diana Gilmore, Larry Nesser, David Smith, Harriet Bernstein, Paul Magdid, Anita Botti, Bruce Bullen, Maria Bullen

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**5:00 pm** – The meeting minutes of April 6th were approved 6-0.

*Informal Hearings moved up:*

- **Diana Gilmore: 26 Machipscat Trail, Map 10 Lot 199.5. Request to extend again Special Permit #2020-13, extended for one year on March 24, 2022 to June 10, 2023.**

Diana Gilmore said that in 2020 she was approved for an 800 sq. ft. accessory apartment that was not built within the two-year period due to Covid and a lack of subcontractors. She came to the board in 2022 hoping to get it built this year but is encountering the same obstacles. Her septic is being designed now so the request is for an additional one-year extension, with the hope it will be completed by December.

Larry said that the plan approved with the original permit in 2020 must stay the same so that if anything changes, it must first be brought to the ZBA because the Building Inspector goes by what is approved in our files when issuing a building permit. Diana said she understood and that nothing is changing.

Finding that there was just cause to extend the special permit, a motion was made and seconded to extend the special permit from June 10, 2023 to June 10, 2024.

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

*L. Schubert-yes, J. Lowe-yes, A. Zaikis-yes, J. Kaye-yes, C. Decker-yes, P. Barrett-yes*

- **Larry Nesser: 237 Vineyard Meadow Farms Rd., Map 37 Lot 14. Request to move pool shed, Special Permit #2022-54.**

Larry Nesser said he was here because they would like to move the pool shed six more feet into the north yard setback along the property shared with his neighbors (the Daniels) and is hoping that this can be a *de minimis* change. After they cleared the area they realized that the current siting of the shed means that they are looking right at the Daniels’ giant studio but if they moved the shed, it would basically block the view between the pool and the studio.

They spoke to the Daniels who wrote a letter requesting certain plantings be used as screening. Larry read that letter and confirmed with Mr. Nesser that he was on board with their request – he said yes.

The letter stated in part, that they would “...*only be comfortable with the setback adjustment if he added even more trees to the border. Since the pool is where sound carries, we would like the border to extend to*

*just beyond the back extension of the pool (just beyond his back yellow bushes). We discussed the following proposed plantings: 1) Continue the already approved skip laurels to the edge of the existing pine trees, continuing beyond the shed with the skip laurels.”* The Daniels also included a proposed diagram.

Mr. Nesser agreed with the plan. He said the other concern he has is that they will not be able to secure the approved 10’x12’ shed as every company he’s called only has narrower 8’x12’ sheds. He asked if they could adjust the size without coming back to the ZBA for another review.

Larry said if that ends up being the case, Mr. Nesser should write a letter to the board with the exact shed dimensions and ask the board to approve a [second] *de minimis* change. The board would most likely review this administratively.

A motion was made and seconded to approve as *de minimis* the relocation of the shed six feet further into the setbacks for a total of 22 ft. of setback relief on the north side of the lot.

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

*L. Schubert-yes, J. Lowe-yes, A. Zaikis-yes, J. Kaye-yes, C. Decker-yes, P. Barrett-yes*

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**5:15 pm** – (*Continued from August 25, October 6, November 17, 2022, January 5, 2023, February 16, and March 30, 2023*): A public hearing on an Application for a Special Permit from **Stillpoint Martha’s Vineyard Inc.** to convert a barn/greenhouse, a pre-existing, non-conforming structure, to a Public Place of Assembly under sections 11.1-3A, 3.1-1, 8.5-2 and 8.5-3 of the Zoning Bylaws at **20 Stillpoint Meadows Rd., Assessor’s Map 22, Lot 4.11** in the RU District. **(\*Note that project is still being reviewed at the MVC).**

Larry read the hearing notice. It was noted that the MVC is scheduled to deliberate and make a decision on May 4, 2023.

*It was moved and seconded to continue the hearing until **June 8, 2023 at 5:15 p.m.***

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

*L. Schubert-yes, J. Lowe-yes, A. Zaikis-yes, J. Kaye-yes, C. Decker-yes, P. Barrett-yes*

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**5:20 pm** – A public hearing on an Application for a Special Permit from **Casey Decker** to construct a 641.7 sq. ft. ground-mounted solar array requiring 40’ of rear yard setback relief under 4.2-2D4 of the Zoning Bylaws, at **625 Edgartown Rd., Map 31, Lot 28** in the RU district.

Larry read the hearing notice. Casey Decker moved to the applicant side of the table with David Smith from Fuller’s energy. Larry said the zoning bylaw 4.2-2D4 allows the zoning board to grant setback relief for an accessory structure.

Casey explained that the lot is very narrow and with 50-foot setbacks, it does not leave a lot of space to be conforming. They are looking at a ground-mounted system because rooflines will not work with the large trees in the front yard. The location chosen was the most viable to stay away from septic system and because it is located within a natural clearing between large trees. He said he has spoken with his neighbors who abut at the rear (the Selby’s) and they said they are open to their request for setback relief.

Attendee and abutter to the west, Harriett Bernstein, expressed her concern about the visibility of the array from her house and thought maybe it should be moved to comply with setbacks so that she doesn't have to see any of it. She asked if it could be designed and placed differently.

David Smith pointed out that if they were to move it to comply with rear setbacks it would actually be more visible to her and said that if they did that they would not need a special permit at all. These arrays are only nine feet tall at the very highest from ground level and there will be a lot of vegetation between the array and her house.

A letter of support was received from Kevin Selby and JoAnn Hathaway who are the neighbors most affected by the encroachment into rear setback.

Larry said he was not in favor of re-designing the project at the table, that the board is reviewing the application as submitted. He suggested a site visit might be in order and it was decided that Casey would put up corner stakes with ribbon to show placement and angle of the array so the board and Harriet would be better able to see what is being proposed. Casey also offered to plant trees to block her view.

A site visit was scheduled for **Wednesday, May 10, at 5:00 p.m.**

*It was then moved and seconded to continue the hearing until **May 11, 2023 at 5:35 p.m.***

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

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

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**5:35 pm** – (Continued from February 2, 2023, March 16, and March 30, 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. (\*Note that applicant has requested to continue to a date and time certain).

Larry read the hearing notice. *It was moved and seconded to continue the hearing until **June 8, 2023 at 5:55 p.m.***

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

*L. Schubert-yes, J. Lowe-yes, A. Zaikis-yes, J. Kaye-yes, C. Decker-yes, P. Barrett-yes*

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**6:00 pm** – A public hearing on an Application for a **Variance** from **Maria and Bruce Bullen**, to allow the conversion of 100 sq. ft. of non-habitable space to habitable space, expanding a pre-existing non-conforming detached bedroom under 10.3-2 and 4.2-2E of the Zoning Bylaws, at **89 Pond Rd., Map 30, Lot 2.68** in the RU district.

Pat Barrett recused himself from this hearing. Larry read the hearing notice and summarized events from the last meeting. The Applicants had originally filed for a Special Permit to alter a pre-existing non-conforming (PENC) structure and the Building Inspector found that no building permit had been pulled for the pool house at 89 Pond Road. The house and the pool house (with a loft) were both built in the late 1990s before the town adopted the Detached Bedroom bylaw.

The PENC structure is 450 sq. ft.—50 sq. ft. over the 400 sq. ft. limit as outlined in the Detached Bedroom bylaw. Because the Applicants are asking to expand the habitable space by 100 sq. ft., and the building inspector could not locate a building permit for the pool house with loft, he determined it would be allowed to remain but would revert to its “least conforming use” which in this case would be *storage*.

Larry said there were plans in the town archives that show the house and the bathroom in the pool house connected to the septic system. While he personally believed that the pool house building permit was part of the house building permit, the Building Inspector did not agree and said in order to achieve what Applicant wants is through a Variance to change the use of a non-conforming use. Applicant withdrew their special permit application on April 6 and the application for a variance is now in front of the board.

Larry read **10.3-2 Variances** for the record: *Upon appeal or petition, the Board may grant a variance for the terms of this bylaw with respect to particular land or structures, provided that the board finds that literal enforcement of this bylaw would involve substantial hardship, financial or otherwise, to the appellant or the petitioner. And that desirable relief may be granted without substantial detriment to the public good. And without nullifying or substantially denigrating from the intent and or the purpose of this bylaw. Such relief may only be granted from the dimensional requirements of this bylaw. This relief may only be granted upon specific findings made by the board that the claimed hardship is due to circumstances related to soil conditions, shape or topography, especially affecting the land or structures, which do not generally affect the zoning in which the land or structures are located. Procedures for granting of variances are contained in the Zoning Board of Appeals Rules and Regulations. The board may require review costs to be borne by the applicant as provided in Section 9.5.*

The board discussed that a variance could be granted for financial or situational hardship, that it is at their discretion. If they were to deny a variance, the detriments to the Applicant would be financial – they would have to then change the shape of the building or possibly get into protracted legal work with their road association because they might not approve your plans for moving for an affordable accessory apartment.

The road association sent a letter the first time around that indicated guest houses are not allowed in this subdivision per the decision of the Martha’s Vineyard Commission. As long as it remains a detached bedroom / dwelling, they are fine.

Maria Bullen also said they want to preserve the character of the structure and if they were to attempt to take out 50 sq. ft. it would denigrate the architecture which is something the architectural review committee would also object to.

The board determined that there would be substantial hardship if they did not approve the variance to allow for a detached bedroom that is 150 sq. ft. larger than what a detached bedroom is under the bylaws. All rules and regulations for a detached bedroom will apply if variance is granted, including no kitchen facilities, etc.

*It was moved and seconded to Approve the Variance.*

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

*L. Schubert-yes, J. Lowe-yes, A. Zaikis-yes, J. Kaye-yes, Casey Decker-yes*

*Larry 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.*

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Informal Hearings

- **Katherine Walsh: 694 Old County Rd., Map 31 Lot 17. Request to extend again Special Permit #2018-18, extended for two years on July 15, 2021 to July 3, 2023.**

Katherine Walsh was not present but wrote a letter explaining their request for a 4-year extension on their special permit. The board approved a one-year extension on your special permit with an expiration date of July 3, 2024. Because the original permit was granted in 2018, the board determined that if more time is needed beyond this, she must apply for a new special permit.

The Meeting adjourned at 6:30 p.m.

Respectfully submitted,  
Kim Leaird, Board Administrator