

## WEST TISBURY ZONING BOARD OF APPEALS

Thursday, July 20, 2023

Meeting Minutes

Approved August 3, 2023

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

**Absent:** Casey Decker

**Also Present:** Kim Leaird (*Board Administrator*), Deanna Ahearn-Laird, Ken Abbott, Ben Zimmerman, Sandy Smith, Jonathan Previant, Gayle Bradley, Robert Fox, Andrea Mintz, Michael Holtham, Thomas Humphrey

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**5:00 pm** – Minutes of June 22 were postponed to the next meeting of the board. Jeffrey said he would like more time to review and add information he feels is missing.

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**5:15 pm** – A public hearing on an Application for a Special Permit from Schofield, Barbini & Hoehn, Inc., on behalf of **Deanna Ahearn-Laird** to construct an inground swimming pool (16'x32'), shed (12'x20'), open-air pavilion (16'x18'), and garage (26'x26') on a pre-existing non-conforming lot under 8.5-4C, 4.3-3D and 11.2-2 of the Zoning Bylaws, at **72 Vineyard Meadow Farms Rd., Map 29, Lot 34** in the RU district.

Larry read the hearing notice. Present were homeowner Deanna Ahearn-Laird and Ken Abbott from Schofield, Barbini & Hoehn.

Deanna said she has lived on the island for 37 years and recently moved from Edgartown. She is here for a one-car, large-door garage with 24 feet of side yard setback relief, it will match shingles and siding of the house. Upstairs is a finished space with a bath (*Note: provided floor plan does not include a bath*), that she plans to use as a gym. In addition, she is asking for a 16x32 pool in the backyard – and 10 feet to the left of the pool, will be a 12x20 shed to be used as a pool house with a changing area and a bathroom (*Note: provided floor plan does not include a bathroom*), and a 16x18 open-air pavilion, like a cabana – no walls, where she plans having an outdoor kitchen. The pool equipment will be next to the pool shed.

Andy asked how the pool would be heated. Deanna said with propane. Larry asked if she had considered a heat pump because the town encourages all applications to limit the burden on the environment. She said she has not considered that, but does plan to eventually have solar panels in the back yard.

Board members asked why the placement of the garage with 24 ft. of setback relief was needed. Ken said as a pre-existing non-conforming (PENC) lot, at 50 ft. you'd have to stack it in front of the house or behind it. They were trying to keep a reasonable space between the house and the garage. Ken said it looks better separated by 20 feet. Pat said it could be attached. Ken said they are asking [for this placement] and asking board to determine if it's out of character with the neighborhood, adding that if you look at other lots in neighborhood they seem to be built in a similar way due to the shapes of the lots.

Andy said if you were to put the garage [down and] next to the pool [there is more space]. Deanna said she does not want the garage next to her pool.

Larry read correspondence received from abutters to the rear of her property (George and Maria Churchill at 84 Waldrons Bottom Rd.) who expressed concerns about the height of the garage being visible from his house as well as the magnitude of application.

Deborah asked about the gym and it potentially being a habitable space. Deanna said it would be a non-habitable structure with a half bath. (*Note: provided floor plan does not include a half bath*). Larry said that people cannot sleep in a non-habitable structure and no kitchen is allowed. Deanna said that is not her plan but if either were to change [she would come back to the board].

Deborah asked about the leaching pit location on the plan; if it were to fail they would need to upgrade. Ken said any new field would probably be in the same area. The current septic allows four bedrooms.

Discussion followed about what a finished space with a bathroom could be. Julius asked why wouldn't the board call it a bedroom. Larry said if someone applies for a garage and gets approved, Joe will ensure it's permitted as it's supposed to be.

#### Public comment

Robert Fox and Andrea Mintz (62 Vineyard Meadow Farms Rd.) said they are a direct abutter. They are surprised the applicant wants to violate 50% of the required [50 ft.] side yard setback and they do not support this. The plan she originally shared with them only asked for about two feet of setback relief and with plantings seemed reasonable [but this plan is different]. Their own property has a bedroom with bath but it meets setbacks. They do not want the ZBA to approve the application.

Gayle Bradley (78 Vineyard Meadow Farms Rd.) said she has setback concerns as well but asked whether the existing shed on the plan was going to be moved or not. Deanna said it's under 120 sq. ft. and she didn't need a building permit for it. Larry said that is true, however West Tisbury zoning regulations required that anything taller than 6 feet must be a minimum of 10 feet or at least the height of the building away from property line. So, if the shed is 11 feet high, then it must be at least 11 feet away.

Robert Fox said they had walked over to see the staking of the garage and wanted to know if the planned distance from the house to the pool would be 40 or 60 ft. as they had seen plans for both. Deanna said it will be 40 feet.

Andy said that he is very familiar with this area as the president of the road association and doesn't believe that there are many other structures that go in to the setbacks [like this] – this is not typical. Larry said that the applicant is still entitled to request setback relief. If it is granted as part of the special permit then it is not “in violation” of the setbacks.

Andrea Mintz said she didn't know about the second floor on the garage with a bathroom and it's a very fine line to say you'll use the upstairs as a gym vs. [another habitable use]. Larry said we are reviewing this application as submitted. Building code has different requirements for habitable vs. non-habitable space. The Building Inspector is the zoning enforcement officer.

Julius said he agreed but that generally they encourage applicants to specify the intended use. Deanna reiterated that she plans to use it as a gym in a non-habitable structure. (*Note: Plan only indicates storage space as intended use*). She asked if they could come back with a revised plan siting the garage requesting less setback relief. The board said yes.

Public comment will remain open at the continued hearing.

Discussion followed about conducting a site visit for the board and applicant and one was scheduled for **Tuesday, August 1, 2023 at 4:30 p.m.**

*It was moved and seconded to continue the hearing until **August 3, 2023 at 6:15 p.m.***

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

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

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**5:35 pm** – A public hearing on an Application for a Special Permit from **Benjamin and Thorunn Zimmerman** to install an 8’x14’ pre-cast concrete Soake Pool with cover under 8.5-4C of the Zoning Bylaws, at **380 Lamberts Cove Rd., Map 7, Lot 57** in the RU district.

Larry read the hearing notice and opened the hearing at 5:55pm. Present was Ben Zimmerman. Larry said this was not a hot tub but considered a swimming pool? Ben said it’s a hybrid and they wanted to err on side of caution [by getting a special permit].

Deborah asked about the weight (22,000 lbs.) and whether it was concrete or tiled. It is concrete.

Larry said there must be equipment to filter and heat it, and asked where it is going. Ben said [probably] next to it and to the left (closer to the road), and will be in a sound insulating enclosure. Larry said if we’re reviewing under the pool bylaw, fencing is normally required and this plan doesn’t show a fence.

Ben said when he spoke to Joe, the Soake pool has an AFCM-certified locking cover and per building code, it does not actually need a fence. He noted that if the board required it, he will do that.

Deborah asked how it was heated. Ben said it was electric yesterday but he may be propane because it is much harder to heat with electric. Discussion followed about merits of both and board encouraged the applicant to go electric.

Larry said if they vote to approve, all the boilerplate pool conditions will apply. He’d propose an additional condition that the Applicant return with a plan that shows location of the sound-insulating enclosure as Joe will want to see what was approved.

Pat asked what the size of the structure would be and said he thought a fence should be required, otherwise you’re always counting on someone to lock the cover.

Deborah asked if he planned to install solar panels on the house. Ben said it will be solar-ready.

*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 with conditions as stated. Larry went over the 20-day appeal period.*

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

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

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**5:55 pm** – A public hearing on an Application for a Special Permit from **Jessica and Michael Holtham** to construct a 765 sq. ft. 2-car garage with a 740 sq. ft. storage area above requiring 35 ft. of side yard setback relief under 4.2-2D4 and 11.2-2 of the Zoning Bylaws, at **575 Edgartown Rd., Map 31, Lot 34.1** in the RU district.

Larry read the hearing notice and opened the hearing at 6:10 p.m. Present was Michael Holtham. Larry and Andy asked why do they need so much setback relief and why they could not put it in the setback area. Michael said because it's lined up where the existing driveway is and they would like to not compromise the trees behind the house.

Larry said the Town of West Tisbury is the most impacted with Scott's Grove as the direct abutter. Andy said he doesn't feel a strong argument why it can't be placed elsewhere in the 1.5 acres they have.

Julius said the applicant originally came to the board back in May with the garage and an accessory apartment above. He explained that they are already impacted by the dense development on their side yard and placing it here would prevent them from having to cut down more trees and clear their side yard which is pristine. The siting serves as a sort of screening. They withdrew their application back in May as the issue was their ability to afford and do the whole project if approved.

There was no new correspondence and no public testimony. Michael said in May, however, they had reached out to their neighbors and the board was provided with 4-5 letters of support. Larry asked if Island Housing Trust (IHT) had said anything to them or if they had spoken to IHT, and they had not.

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

Larry said the vote here is to approve exactly what was read in the hearing notice which is 35 ft. side yard setback relief, for a non-habitable structure, noting that the fire code requirements are what make habitable structures expensive to build.

*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 4-0.*

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

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**6:15 pm** – (Continued from August 25, October 6, November 17, 2022, January 5, February 16, March 30, April 27, June 8, and July 6, 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.

Larry read the hearing notice at 6:25 p.m. Larry said after our last meeting we reached out to town counsel with questions formulated at the last meeting. They provided some verbal feedback and are preparing a written legal opinion, but yesterday said it would not be ready by tonight. Larry, as the chair, decided it would not be productive tonight without that legal advice. Stillpoint agreed to continue and signed and Extension of Time to Take Final Action to August 31, 2023.

Stillpoint is unable to meet August 3 and they suggested August 10, but that date does not work for the board. August 9 was considered, but there were not enough board members who could attend.

*It was moved and seconded to continue the hearing until **August 24, 2023 at 6:15 p.m.***

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

*L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Kaye-yes, C. Decker-yes, P. Barrett-yes*

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### **Other Business**

- **Discussion about archived records in the Town Hall basement.** The town administrator asked town departments to go through archived records to consolidate and/or throw away what is not required to be retained. Larry asked the board if we should give Kim the power to determine what is extra or not extra or should we as a board decide to have her go and consolidate to take up less space but not necessarily to remove anything from it. Perhaps the board would need to ask the Select Board for more storage space if it's a space issue.

Kim said she already went downstairs to take an inventory of zoning records. There is one tall and wide 4-drawer cabinet; two short 2-drawer cabinets and two file boxes. Everything is stored by map and parcel number. There are thick folders pertaining to cell towers that could maybe be consolidated. Board consensus was to not throw anything away.

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The Meeting adjourned at 6:45 p.m.

Respectfully submitted,  
Kim Leaird, Board Administrator