

WEST TISBURY ZONING BOARD OF APPEALS

Thursday, October 13, 2022

Meeting Minutes

Approved October 20, 2022

Present: Larry Schubert, Julius Lowe, Deborah Wells, Jeffrey Kaye, Casey Decker

Absent: Andy Zaikis

Also Present: Kim Leaird (*Board Administrator*), Jon Saunders, Bridget Sampson, Tucker Hubbell, John Scherlis, Nick Puner, Eunki Seonwoo (*MV Times*), Andy Kaye, Dan and Kate Scherlis, Stephanie Saunders, Larry Hawkins, Thomas Humphrey (*Vineyard Gazette*)

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This meeting provided hybrid access via Zoom

5:00 pm – (*Continued from September 8*): A public hearing on an Application for a Special Permit from **LCI Hospitality, LLC**, to AMEND Special Permit #2019-33 to allow limited outdoor dining from 5pm to 9pm with no amplified music, for a maximum of 25-30 guests, under Sections 9.3-3 and 11.1-3A of the Zoning Bylaws, at **90 Manaquayak Rd., Map 7, Lot 99**.

Larry read the hearing notice. Present were owner Jon Saunders and innkeeper Bridget Sampson. In September, the board heard testimony from both the applicant and the abutters. Since the board last convened, a few more correspondence was received.

When asked what they were hoping to happen tonight, Applicant Jon Saunders said his request is that they be granted a non-transferrable special permit for the outdoor dining so when and if the property is sold, the special permit would be revoked.

Larry said he had spoken with town counsel about the ZBA granting a one-year permit, conditioning it for review after a year and was told that while it's in the power of the board to do so, it is not advisable to get in the "enforcement business". The zoning inspector is enforcement.

Larry asked if the Applicant had put any thought into what they might do to help mitigate the sound to their neighbors. Jon said that they would adhere to whatever conditions the board imposed.

Larry recalled that in the September 8 hearing Jon had said his business would be decimated without outdoor dining but it has only been a year and he did not think they have any numbers to base that upon. Jon said even if there were that specific barometer there would still be something else to weigh it against, can't isolate just the outdoor dining.

Jeffrey asked about the months they are considering for outdoor dining and was told mid-June to mid-September. Bridget said that still many people call and request outdoor dining.

Deborah asked them about the enclosure, had they thought about how they might mitigate sound and enclose the area? Jon said they do not want to have tents and besides, he does not think that it would have an effect on the noise level. Bridget had spoken with John Scherlis about a company that can mitigate sound.

Julius said that the nearness [of the English garden] to the parking area means a fence is hard to place there. A tall stone wall would of course be the best at sound mitigation.

Larry asked about the weddings they host and if a tent is considered in the English Garden? Bridget said only the ceremony happens in the garden and there are no tents.

Public comment: Several letters were read into the record. A letter of support was received from Jennifer and Larry Garfield. Second letters of opposition were received from Andrew Kaye and Tucker and Martha Hubbell and a new one from Nicholas Puner.

Meeting attendee Tucker Hubbell said that he does stand by his letter submitted for the Sept. 8 hearing and spoke about the increasing the pre-existing non-conforming use.

Meeting attendee John Scherlis said he also stands by his comments from last meeting and agrees with statements made by Tucker and Andy Kaye. He added that while the primary issue is noise, lighting is also a factor although that could be easily mitigated. There are people who work as “acoustic consultants” and if it were possible to mitigate sound he would not have an issue with the outdoor dining.

Jon Saunders said they could put up a sound barrier and then review it after a year.

Zoom attendee Dan Scherlis thanked the board for holding a hybrid meeting. To clarify, he did not think appropriate for the board to take under consideration the fact that the applicant hadn’t done his homework. He believes the Select Board should have extended outdoor dining through April 2023 as allowed by the state legislature and they opted not to do so. He maintained the outdoor dining is a detriment to the neighborhood.

Zoom attendee Andy Kaye said noise and lighting are factual issues, not simply his opinion. Noise is number one consideration and he is frustrated that this has been a 3-year problem without any mitigation sought or tried. He agreed with Dan Scherlis’ comment about the Select Board.

Bridget Sampson said it’s not possible to move location of outdoor location due to where the kitchen is located. If they moved it to main lawn they would need to build an extra temporary kitchen.

John Scherlis said the area between the main house and former carriage and greenhouse there is a winding asphalt path well north to where the tables are set up – is that an area that could be looked at.

Larry said we are not going to design their application.

Julius said at the last meeting he spoke about not increasing the nonconforming nature of the property and giving up things that are already detrimental to allow for what is thought of as a new detrimental. He feels that could be an avenue for the applicant to move forward as well.

Jeffrey said he’s not convinced that the sound is excessive, we are taking it on hearsay. He said he feels it’s in the rural character of West Tisbury to allow outdoor dining. If it is a problem, the applicant should be able to do noise barriers of some type. He does not see noise as being a given.

Larry said sometimes when there is so much testimony from the neighbors he thinks the applicant could come back with a better plan. When asked, Jon said they would do what the board imposes but Larry said it would be better if instead he came back to the board with a plan that says “This is what we are going to do [to address the concerns of the neighbors].” Julius has talked about a “horse trade” (giving up something for

outdoor dining), and as far as someone measuring sound by a professional, he thinks that could also be done. Larry told him that if we close the hearing and open board meeting the applicant could risk getting denied and not be able to come back for two years.

Jon and Bridget made a request to withdraw their application without prejudice.

A motion was made and seconded to approve the request to withdraw the application without prejudice.

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

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

Other Topics Not Reasonably Anticipated

- The board again discussed hybrid meetings. Tonight's hearing for the Lambert's Cove Inn was allowed hybrid access at the last minute after several complaints from attendees of the first hearing. It was suggested the board have an official policy for addressing how and when a hybrid meeting would be allowed but the general consensus was that when and if it is allowed that it be a one-way window with attendees only allowed to observe, not participate. Applicant representation and testimony should only be allowed in-person. No official vote was taken to modify the vote taken on October 6, 2022, for meetings of the board to be in-person only.

The Meeting adjourned at 6:45 pm.

Respectfully submitted,
Kim Leaird, Board Administrator