

WEST TISBURY ZONING BOARD OF APPEALS
Minutes for Thursday, October 22nd, 2020 meeting
Online meeting via ZOOM- @ 5:00 PM

APPROVED ON NOVEMBER 5, 2020

Present: Nancy Cole Larry Schubert, Julius Lowe, Deborah Wells, John Rau, Andy Zaikis and Jeffrey Kaye
Absent: N/A

Also Present: Pam Thors-Board Administrator, Geoffrey Rose, Phil Silverman, Abby Rabinowitz, Leslie Paulson, Chris Egan, George Brennan-MV Times.

Nancy opened the meeting at 5:00 pm.

The minutes of 9/24/20 were reviewed.

Larry moved and Deborah seconded a motion to approve the minutes of 9/24/2020 with corrections.

A rollcall vote was taken resulting in the following votes; N. Cole-yes, L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes.

Pam stated that there were three requests for informal hearings; one from the Farmer's Market, looking to extend their season, one from Linda Alley looking to hold her Island Made Christmas Shop in a different location and one from Jon Hartzband looking to store his pool's heat pump in an enclosure without a roof.

It was agreed that as long as the pool equipment was sound insulated according to the bylaw, the Building Inspector may decide what is permissible for the Hartzband pool equipment. Pam said she will email Joe Tierney, Building Inspector and let him know that the board is in agreement on this issue.

The Board agreed to meet on the other two informal hearings next Thursday, October 29th at 5pm.

5:15 pm: A Public Hearing on an application for a Special Permit from Patient Centric of Martha's Vineyard, Ltd. to amend Special Permit #2017-19 to allow the operation of an Adult/Recreational Use Registered Marijuana Dispensary, along with the Registered Medical Marijuana Dispensary previously approved at this location under sections and 9.3-3 and 3.1-1 (Use Table) of the Zoning Bylaws, Map 16, Lot 101, 510 State Rd., MB District.

The notice was read and Nancy clarified that bylaw section 9.3-3 is used to amend an existing Special Permit. She also noted that section 9.2-2 Review Criteria, part B5, which addresses traffic concerns, is the main issue being taken into consideration at this hearing. She noted that section 3.1-1 (Use Table) states the allowable uses in each Zoning District and the regulations that apply.

The two new correspondences were read into the record. One was from immediate abutter Tea Lane Associates and one was from an immediate residential neighbor abutting the rear lot line of the property. Both correspondences are in opposition to the location of the dispensary and to the hours and days of operation being requested.

Phil Silverman, Attorney for Patient Centric summarized the updated Narrative addressing changes to the site plan, changes to the hours and days of operation and data collection from other marijuana dispensaries.

Pam noted that a few closing times listed in the updated Narrative do not comply with the Martha's Vineyard Commission (MVC) conditions; the MVC only allowed hours until 8pm on Fridays and Saturdays. The updated Narrative lists hours until 8pm every day at certain times of the year. Phil said that this was an error and that they would abide by the conditions of the MVC decision.

Nancy also noted condition number 1 of the MVC decision which prohibits walk in sales. Pam said she asked Lucy Morrison from the MVC if there had been any discussion by them regarding the definition of “walk in sales”. Lucy told her that there was not but that it was clear that any vehicle entering the premises without a scheduled appointment would be considered a “walk in” by the MVC and therefore not allowed under the conditions. Pam also noted that the conditions require that all advertising, signs and promotional material clearly state this regulation.

Deborah asked if the hours allowed in the Medical Marijuana Dispensary decision of 2017 would remain in effect. Phil said that he believes that the intention is to amend the original Special Permit in its entirety. Deborah asked if the application allows this. Pam said that under section 9.3-3, the entire approval including conditions may be amended.

Geoffrey Rose stated that it had always been his intention to keep the days and hours of operation conditioned in the original Special Permit for Medical customers, adding that having two sets of hours would, in his opinion, not cause confusion.

Nancy noted that in the testimony made at the 9/24/20 hearing, it was projected that sales of Medical Marijuana would be decreased due to the availability of Recreational Marijuana. It was noted that sales of Medical Marijuana are not taxable.

It was found that the entrance to purchase Medical Marijuana is the same as that for Recreational Marijuana.

John said that if “By appointment only” means that you can pull into the lot and make an appointment with the parking attendant, traffic will be impeded. He suggested that the conditions should state that, “the premises include the building as well as the parking lot”. It was suggested that there be a sign at the entrance stating the “By appointment only” regulation. Geoff said that they already have a sign citing this regulation.

Larry noted that in a year, the data would show the numbers of customers. Phil said that they would know the total sales because the town will collect 3% from Patient Centric. Larry asked if each passenger in a vehicle would need an appointment. It was verified that this would be the case and the website must clarify this.

The total number of customers per day was calculated to be a maximum of 216. John said he is not in favor of delving into customer information because of privacy issues involved. Phil said that this info was requested by Deborah at the last hearing. Deborah stated that she was more interested in patterns relating to hours and days of operation.

Employee parking and landscaping were discussed. Joe Tierney had cited trees of a certain height being necessary for screening parking from State Rd.

It was noted that the apartment must be rented to an employee or to a full time working island resident. This is a condition of the MVC decision. Geoff said that there are two spaces behind the building that will fulfill the requirements of the bylaw. Jeffrey noted that there should be a “no trespassing” sign in this location.

Pam brought up the employee parking, noting that the bylaw requires one space per employee present. The interpretation of this line in the bylaw, (section 8.2-1 C) was discussed. Larry stated that the Building Inspector has the final say on interpreting the bylaws. He said that he was hoping that Joe Tierney would have been able to give the board a clear answer by tonight’s meeting. Nancy said that parking should be put aside for now and that Phil should discuss the employee parking issue with Joe. It was confirmed that Pam would also be in touch with Joe regarding getting a final determination from him that the plan is allowable on all fronts, in time for the next meeting.

The board moved on to discuss days and hours of operation. Larry proposed that the hours be 9am-6pm Monday through Saturday with no hours on Sundays, and 9am-7pm Monday through Saturday with no hours on Sundays, during July and August. He said that for the sake of the abutting neighbors, he would like to see Sunday hours off the table.

Jeffrey mentioned that some islanders work six days a week with only Sundays off. He said that this would disallow these customers access.

John proposed the 9am-6pm hours Monday through Friday, 10am-5pm on Saturday and no hours on Sunday. He said this would leave no room for confusion and satisfy the needs of abutters.

Nancy invited public and ZBA comments. Julius said he would rather accept something more restrictive at first in order to get the business operational and experience the effect on the neighborhood before allowing Sunday hours.

Chris Egan stated that the Sunday hours would filter out other business. He said that the Tisbury facility will be open on Sundays and that he believes there will be ample opportunity for business. He also suggested a wait time between phone calls to book an appointment and the actual appointment time. He said that he had hoped that the word marijuana was not permitted in the signage in the original decision.

Andy said that he would like to see some flexibility on both sides in considering the possibility of Sunday hours.

Phil noted the difference in appointment only sales. He also noted the huge costs involved in the grow facility in relation to the importance of Sunday hours. Geoff added that to eliminate Sundays would have a challenging effect on the business.

Nancy noted that the medical marijuana decision does not include Sunday hours and that the addition of recreational sales would surely increase revenues. Geoff said that he initially expected more income from medical marijuana sales because recreational had not yet been approved by the State.

The neighbor's objections to Sunday hours were discussed. John said that liquor stores historically not being open on Sundays just meant that folks needed to stock up on Saturdays. Deborah noted that conceding to the neighbor's wishes regarding Sundays might in the long run be more beneficial for the business. Jeffrey asked Geoff if he would consider shorter hours on Sundays as a compromise.

Larry questioned the 9am start time for medical marijuana. Geoff said that the agreed upon hours for these sales was never questionable in his mind. Larry stated that he is more concerned with the evening hours and total hours open in any given day. He added that the ZBA and the Building Inspector are not going to want to have to concern themselves with wondering if sales taking place at this time are all medical or if recreational sales are happening as well.

Nancy asked if they could leave the hearing with a definitive straw vote regarding the days and hours of operation. All agreed that this would save time and energy at the next hearing. After much deliberation, the following schedule was agreed upon by all members:

- 1) Monday through Saturday 9am-6pm September through May.
- 2) Monday through Saturday 9am-7pm June, July and August.
- 3) Sunday-Closed, but revisited one year from opening day.

Geoff proposed no Sunday hours during some months; January through April, November and December. He stated that during the other months he would concede to the hours of 12n-6pm in May and June and 10am-8pm in July and August.

John said he is in favor of allowing 12n-6pm during July and August only.

Julius said he is in favor of limiting hours on Sundays to 4 hours per day in the months of May through October.

Geoff said he would concede to 12n-7pm during July and August and 12n-5pm during May, June and September.

Nancy suggested that having no Sunday hours in the summer months would be her preference as people tend to be out in their yards during the nicer months and would probably appreciate days where there was no traffic noise. She reiterated the importance of recognizing that this will be a very busy place.

Constance Goodwin, an immediate abutter to the rear property line asked that there be no hours on Sundays.

Jeffrey suggested that Sunday hours be limited but not eliminated.

Nancy went over some of the conditions that need to be part of the decision;

- 1) No vehicles are permitted on the premises, which include the building and the parking lot, without a previously scheduled appointment.
- 2) A sign at the entrance to the premises and all promotions and advertising must clearly state that sales are by appointment only.
- 3) The Special Permit and all conditions may only be appealed after one year of operation of the dispensary.

Geoff said that there is no opening date scheduled for the recreational dispensary and that they are currently cultivating medical marijuana.

Larry stated that Pam will ask Joe Tierney to review the plan with the knowledge that there will be eight employees working during peak hours. He stated that the board wants a letter saying that the plan is approved/adequate considering the number of employees and the ride share program being proposed.

Phil said he will also speak to Joe about this issue.

A motion was made and seconded to continue this hearing until October 29, 2020 at 5:25pm.

A rollcall vote was taken resulting in the following votes; N. Cole-yes, L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes.

The meeting adjourned at 7:10 pm.

Respectfully Submitted, Pam Thors-Board Administrator