

WEST TISBURY ZONING BOARD OF APPEALS

Thursday, October 6, 2022

Meeting Minutes

Approved October 20, 2022

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

Absent:

Also Present: Kim Leaird (*Board Administrator*), Brittany Czerniawski, Luiz Oliveira, Shelyn Garcia, Eric Peters, Michael Barclay, Bryan Collins, Hugh Phear, Reid Silva

**

5:00 pm – The meeting minutes of September 22, 2022 were approved.

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5:15 pm* – (*Continuation from August 11, 2022*) *A public hearing on an Application for a Special Permit from FFD Enterprises MA, Inc. to amend Special Permit #2021-12 to allow the 3,000 sf. of canopy to be used for cultivation of both medical and recreational use marijuana, eliminating the original designation of 1,000 sf. for cultivation of medical use marijuana and 2,000 sf. for cultivation of adult/recreational use marijuana at 90 Dr. Fisher Rd., Map 21, Lot 12, LI-1 district under section 9.3-3 of the Zoning Bylaws (*Note that applicant has requested to withdraw this application)*

Larry read the hearing notice.

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 6-0.

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

**

5:15 pm – A public hearing on an Application for a Special Permit from **Shelyn Garcia** to AMEND Special Permit #2017-07 to allow the construction of a breezeway with a utility sink between an existing storage building and shed requiring 28’ of rear yard setback relief under Sections 9.3-3 and 4.2-2D4 of the Zoning Bylaws, at **560 State Rd., Map 16, Lot 61**, RU district.

Larry read the hearing notice. He read the Oct. 6 email from Joe Tierney stating that the Garcia’s were still in violation due to fiberglass insulation in the barn at the back of the property. They must remove it and he noted that it will involve bringing a truck to the property to do so. Shelyn said she had met today with Joe and she asked board to clarify the conditions of their special permit 2017-07 as the conditions do not specify the prohibition of fiberglass.

The findings in Special Permit #2017-07 state, in part: *“The barn is for storage of equipment only. No storage of product is allowed with the exception of the small amount of product remaining in the hoses and trailer.”*

Julius said that while we did not discuss fiberglass vs. spray foam insulation in the decision, we did discuss deliveries. Shelyn said fiberglass does not pose any risk.

Larry said that as they consider this application, the board may re-look at the [original] conditions in order to clarify them and re-write them. Jeffrey said that attorney Eric Peters, here representing an abutter, probably has other things to state.

Joe determined that the violation on the property affects both this hearing and the following hearing.

In discussing the date to continue, Eric said he was concerned about running out the clock and a potential constructive approval. The application was received on August 28. The board has 65 days to hold a hearing and then 90 days from the opening of that hearing to act, or decide, the application. If an extension agreement is required Kim will prepare one. [Note that the board has until January 4, 2023, to act]

*A motion was made and seconded to continue the hearing to **November 17, 2022 at 5:15 pm.***

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5:35 pm – 5:35 pm – A public hearing on an Application from **Shelyn Garcia** to AMEND Special Permit **#2018-41** to allow the relocation of a Bedroom to the Basement and to change its use to a recreation room with kitchen under Section 9.3-3 of the Zoning Bylaws, at **560 State Rd., Map 16, Lot 61**, RU district.

Larry read the hearing notice.

*A motion was made and seconded to continue the hearing to **November 17, 2022 at 5:35 pm.***

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, A. Zaikis-yes

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5:35 pm* – (Continuation from August 25, 2022): 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** RU District. (***Note that applicant has requested to continue to Nov. 17.**)

Larry read the hearing notice.

*A motion was made and seconded to continue the hearing to **November 17, 2022 at 6:15pm***

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, A. Zaikis-yes

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5:55 pm* – (Continuation from August 25, 2022): A public hearing on an Application for a Special Permit from **Terra Search for Crown Castle and T-Mobile/Sprint** to AMEND Special Permit **#2020-10** granted on April 9, 2020, to allow the replacement of six antennas and the addition of three antennas; the replacement of six remote radio heads and the removal of six remote radio heads; the replacement of two cables and the removal of two cables; and the addition of associated antenna equipment, new fiber conduits and the removal of obsolete equipment under sections 8.8-1, 3.1-1 and 9.3-3 of the Zoning Bylaws **Map 28 Lot 1.25, 0 Airport (Rear), LI2 District.** (***Note that applicant has requested to continue to Oct.**)

Larry read the hearing notice.

*It was moved and seconded to continue the hearing to **October 20, 2022 at 5:15 pm***

*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, A. Zaikis-yes*

**

5:55 pm – A public hearing on an Application for a Special Permit from **Almostendofthedirtroad, LLC**, to construct a 2nd story roof deck in the Inland Zone of the Coastal District under Section 6.1-6A3 of the Zoning Bylaws, at **226 Middle Point Rd., Map 39, Lot 9**, RU district.

Larry read the hearing notice and opened the hearing. Present for the applicant were Bryan Collins from Sourati Engineering and Architect Michael Barclay.

Zoning Bylaw 6.1-6A3 allows construction in the inland zone with a special permit but they are in front of the ZBA because they are looking for 2'6" of height relief beyond the 13' limitation for a handrail. Building Inspector Joe Tierney directed them to the ZBA, and that in the past, the board has allowed handrails [that go beyond the 13' limit].

In April the ZBA issued the Applicant a pool permit (#2022-15) and there was a very tiny part of the roof deck that was located in the shore zone that enables entrance into the structure and architect Michael Barclay said it would have been a shame not to have this little triangle. Their proposal is to add access to the top of a different part of the structure and a second story deck above the living room (Building 1 on the site plan). They are seeking a special permit for height relief to allow the top of the handrail to be allowed at 15.6 above mean natural grade (or 2.6 feet beyond the limit. A bridge will connect the proposed deck to the existing lower decks. They were already approved for the deck stairway to the lower deck, which is under the 13-foot height restriction.

The application was referred to the Planning Board who sent it back without comment for the board's determination.

Larry asked if the railing would be a cable rail and was told yes, it won't be solid and will disappear as much as possible into the surroundings. Due to an administrative error, the hearing notice did not advertise the top of the handrail would be 15'6" but the board determined that even though the 2'6" height relief requested was not included, that it was advertised as a 2nd story roof deck and anyone concerned could have contacted the ZBA office. It was noted that the trees are taller than the other structures and it is not visible from the [surrounding] properties.

*A motion was made and seconded to close the hearing and open the board meeting.
There were no additional comments.*

It was moved and seconded to Approve the Special Permit.

*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, A. Zaikis-yes, C. Decker-yes*

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

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6:15 pm – A public hearing on an Application for a Special Permit from **Candice M. Webster**, to construct an 18'x36' in-ground swimming pool with a 8'x29' pool house to include a sitting area, outdoor kitchen, bath,

shower and changing area, under Section 8.5-4C of the Zoning Bylaws, at **2 Simran Rd., Map 2, Lot 8**, RU district.

Larry read the hearing notice and opened the hearing at 6:18 pm. Reid Silva was present for the applicant. The property is in the upper northeastern portion of West Tisbury. To get here, you need to go up through Merry Farm and back roads through Nature Conservancy and Land Bank lands. The property is 3.35 acres and on the Tisbury town line.

There is an existing house and they plan two additions but are in front of the ZBA for an 18'x36' pool and a long narrow pool house (8'x29') with a refrigerator and gas grill and sink. A discussion followed about the definition of an "outdoor kitchen" and Reid said he would leave that up to the Building Inspector. It's not a dwelling because there is no bedroom and it is not conditioned even though there are sliding barn doors that closes it off. Everything sits on a hill. Larry asked about the location of the fence and pool equipment and Reid showed the board on the plans.

There was a letter from the Planning Board referring it back to the ZBA for determination without comment.

Meeting attendee Hugh Phear, a direct abutter, expressed concerns that there has been a lot of construction on this property and in past conversations with the applicant she did not mention the pool and pool house. She has already built a trench and a fence to contain her five dogs. He had asked her to reconsider the driveway because of difficulty of large vehicles turning around and backing up instead and asked her to consider a circular driveway. She said at the time that she was putting in a garage with a master bedroom and wouldn't be able to deal with the driveway.

Larry asked for more information about the fence. Hugh said that he had created a berm about 25 years ago and some of it was on her property and so she built a trench to put the fence in for her dogs and while she did mostly follow the contours, there is a break. Deborah clarified with him that it's not a barrier and acts more as a screen.

Hugh said he is concerned about noise and what he can see [and will be able to see] from his property and thought there was a requirement for the pool placement to be "as far away as possible" [from him] and was told that 8.5-4C does not say that, only that the pool equipment [shed] should be placed as far away as possible and it is 95' from property line -- well within the 50' setbacks. The planned pool and pool house both also meet the required setbacks. The equipment must also be in a sound insulated enclosure.

Andy asked him what his concerns were -- Is it too visible? Too big? Is it too close?

Julius said all of what has happened there to date has been by right and Hugh has not had an opportunity to comment before now.

Jeffrey asked Hugh if he was asking the board for more time [for comments]. He said yes.

Andy asked Reid if there are time constraints in getting the pool constructed. Reid said no but that the applicant has the right to apply and propose her project and that of all the pools they have sought permits for, this pool does not have any flexibility in where it is sited.

Larry suggested that if they vote to continue the hearing that Hugh could then come back with more considered comments. The board would be interested to hear his thoughts on how it could be screened from

his property, noting that there are lighting and noise bylaws in the town of West Tisbury. It is possible the applicant could be asked to submit a landscaping plan that would address his concerns.

Andy suggested that Hugh and the applicant make an attempt to communicate directly and that if he were to submit his concerns in writing to the board in the next two weeks while copying the applicant then perhaps they could come to the next hearing prepared.

*A motion was made and seconded to continue the hearing to **November 17, 2022 at 5:55pm***

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, A. Zaikis-yes

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Other Topics Not Reasonably Anticipated

- A request was made by an abutter to Lambert's Cove Inn, Andy Kaye, requesting that the October 13 hearing be conducted in the same hybrid fashion as the first time. The board discussed the request and reaffirmed their desire not to hold hybrid meetings, finding them cumbersome but acknowledged they are important should the board need a quorum to conduct business. If an abutter wants to comment they can write a letter to the board in advance of the hearing. Larry said the Oak Bluffs Select Board had recently decided that hybrid meetings did not work and were considering allowing the public to attend still via zoom, but only as observers with no participation allowed [similar to a webinar]. *The board voted to keep their meetings in-person only and to respond in the negative to Mr. Kaye's request.*
- Larry said he had received an invitation from the Vineyard Preservation Trust to attend the October 11 Community Forum listening session they are holding for the public to discuss the role of the Grange Hall in the town. The board determined that it was not a good idea to attend so that they would not be unduly influenced in future special permit hearings. The board also discussed responding in a letter to the VPT's last letter.
- Larry gave a small update on the Zoning Amendments Committee work and said we're narrowing down work to Use Table and definitions for limited retail sales and we're making an outline that planning board can then take and move forward.

The Meeting adjourned at 7:15 pm.

Respectfully submitted,
Kim Leaird, Board Administrator