

WEST TISBURY ZONING BOARD OF APPEALS

Thursday, November 17, 2022

Meeting Minutes

Approved December 1, 2022

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

Absent:

Also Present: Kim Leaird (*Board Administrator*), Ross Seavey, Esq., Cody Coutinho (VLSE), Patrick Barrett, Kate Warner, Hugh Phear, Brittany Czerniawski, Luiz Oliveira, Shelyn Garcia, John Hoff

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5:00 pm – The meeting minutes of November 3rd were approved 4-0. Julius and Jeffrey arrived late.

New Business

- **Pat Barrett** – Larry introduced Pat Barret to the board. Pat is interested in the open Associate Member position and was present to observe a board meeting.
- **Kate Warner** – Informal discussion about the pool bylaw and the standard conditions placed on pool permits granted by the board. Kate presented her proposed changes to the pool bylaw and while she knows that they need to go in front of the Planning Board she hoped to get the ZBA's comments before sending to them. The idea is that [the island] should try for a uniform pool bylaw with an energy focus. She has consulted with Joe Tierney on some of the language. The most controversial proposal is *requiring* fossil fuel-free energy vs. it being *recommended* and not sure it would pass at the Attorney General's office. She requested that the board review the language and mark up with changes by first of December so that she can submit warrant language by the deadline. She will then present it to the Planning Board and will eventually have a public hearing.

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5:15 pm – (*Continued from October 6, 2022*): 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 and opened the hearing at 5:22 pm. Present were Shelyn Garcia and attorney Ross Seavey. Eric Peters asked to be in the meeting on an attendee's phone. The board agreed he could listen in but could not participate with testimony. There was correspondence from the Building Inspector indicating that all of the fiberglass product had been removed from the garage.

The special permit was [originally] granted for the construction of an accessory structure for storing equipment and vehicles for Mr. Oliveira's spray foam business.

There are two accessory structures located side by side, joined together by the breezeway, it is now one accessory structure needing 28' of rear yard setback relief, requiring an amendment to the special permit. One of the structures is a deer cooler that the family uses for their own purposes. The breezeway connection has a roof so that the outdoor utility sink does not flood in to the septic when it rains. They did

not mean to be in violation of their special permit; there is general consensus that the current special permit is a bit messy and there was some confusion about what was and what was not allowed. Only spray foam insulation was named, not fiberglass. The hope is that some conditions may be clarified in an approved Special Permit amendment.

Jeffrey asked if the deer processing is a commercial activity and if they need a special permit for that. Mr. Seavey said, no -- they are here amending the permit because of the [breezeway]. The cooler was allowed by right but now that it's connected to the barn/garage by the breezeway it has become one structure and needs setback relief.

Discussion followed about the deer cooler. Jeffrey said it sounds a bit like a commercial enterprise. Mr. Seavey said the family are avid hunters and the deer cooler is for their own use. He also pointed out that the cooler is only about 10'x10' and the sink is a pretty standard size and [neither] could accommodate a commercial enterprise. He suggested the board might condition the special permit that it would be for non-commercial use only. Jeffrey asked if there would be any noxious fumes and if it would be shielded from the neighbor. The breezeway is open on the sides but is angled such that it is not visible by the neighbor. There will be no noxious fumes.

Julius said a breezeway off a workshop to a shed is not something that he finds to be significant; they are only here because it's an amendment to an existing special permit.

Larry asked if they were also intending to use it for butchering of other animals such as birds or livestock as deer season is only about three months. Shelyn said [the cooler] has been off until hunting started in October; they [only] just turned it on. The family does not hunt other animals and they would be comfortable if the board conditioned the amended permit for non-commercial use.

Mr. Seavey said the other questions center around what can be stored in the building. While it has been discussed before and conditioned, there was never any specific discussion about fiberglass. The earlier conversations centered around the adverse health effects of spray foam insulation and he believes the conditions should be clearer. Discussion followed about the ambiguity of saying *No storing of product*: does that mean any product that is for the insulation business? Or would it be only for some products, or just those that have adverse impacts.

Larry said the real concern was large truck deliveries backing in to the property as well as the storage of large quantities of insulation product.

Shelyn said they are using Carroll's Trucking for storage. When there is an insulation job, it is delivered and held with Carroll's and Luiz goes there to pick it up. She said that during the Covid pandemic there was a shortage of [fiberglass] product and they held on to it when there were leftovers after a job and need to store it. She said there have been no more than 15 deliveries over the past five years since the original permit was granted.

Deborah said if they put a restriction on deliveries there will confusion about what deliveries are allowed. Maybe it should be specific to no deliveries of "insulation product".

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

The board started to discuss possible conditions and said there are other town bylaws that address other issues such as lighting and noise. They also started to speak about amending the conditions of the special

permit: definition of product, types of deliveries. Julius said the board should end this conversation with the deer cooler discussion and keep all of the current conditions regarding deliveries and product.

It was determined that the Applicant would need to apply again for an amendment to the special permit in order to update and clarify the current conditions of SP #2017-07.

Larry briefly re-opened the public hearing in order to read correspondence from Attorney Eric Peters who represents neighbor Patti Linn. He read two emails dated October 6 and November 17, 2022. Mr. Seavey showed pictures standing at the garage looking at the neighbor's property and pointed out that the Applicant has done several plantings to completely shield the garage from the neighbor. The structure is sited as far away as possible that you could get from the neighbor.

Larry repeated that it is the deliveries of large quantities of product that the neighbor takes exception to. His inclination would be to say 'no deliveries of insulation product' but not change any conditions on the storage. The consensus was, however, that the conditions of SP #2017-07 would stay the same and that the Applicant will reapply to amend to clarify the questions brought up.

It was moved and seconded to Approve the Special Permit with the added condition that the deer cooler not be used for commercial purposes.

*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, A. Zaikis-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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5:35 pm – (Continued from October 6, 2022): 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 and opened the hearing at 6:12 pm. Attorney Seavey explained that the original Special Permit #2018-41 was for a detached bedroom with no kitchen and setback relief. They returned to the board when they wanted to attach it to the main structure and it was approved as a *de minimis* change (April 25, 2019). They are back to further include it as part of their house and relocate it to the basement, change its use to a rec room, and add a secondary kitchen. It is fully accessible to the main house, with the same footprint and no change to the structure.

Larry inquired about access. There is an internal spiral staircase from basement up to the main floor and no outside entry or egress. It is not a rental space. A total of 9-10 people resides on the premises.

Larry read the second half of Eric Peters' Oct. 6 comments pertaining to this second hearing. Mr. Seavey said this is a large family that wants to stay together and the applicant is comfortable with imposing a condition that prevents it from being separated and rented. Attendee and sister to the applicant, Alexia Garcia, spoke to how she was given a home by her sister and that this process had been very hard for their family.

Larry said more than one kitchen is allowed; there is no limit on the number of kitchens a single-family home can have.

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

Larry proposed they condition that there be no renting of the permitted changes. Julius said he did not think it was necessary to do so; there are other bylaws that would apply to that. He thought they should allow [the proposed changes] as presented.

It was moved and seconded to Approve the Special Permit.

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, A. Zaikis-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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5:55 pm – (Continued from October 6, 2022): A public hearing on an Application for a Special Permit from **Candice M. Webster**, to construct an 18’x36’ in-ground swimming pool with an 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.

Casey Decker disclosed that he is the engineer on this project. Larry read the hearing notice and opened the hearing at 6:27pm. Cody Coutinho from Vineyard Land Surveying represented the project.

Neighbor Hugh Phear asked to sit at table for the discussion and was allowed to do so.

Cody showed the plan and refreshed the board’s memory on the project which is an in-ground pool and pool house behind the main house. Larry read letters of support from direct abutters Simran Woods Foundation’s Linda Cohen and from Phyllis McMorrow and Zachary Wiesner.

Abutter Hugh Phear also wrote a letter with his concerns and a list of requests that included replacing the top 16” of the lattice privacy fence with non-see-through material; extending the fence 100’ southwest along the [shared] property line; planting of trees along existing fence line; and ensuring that exterior lighting not be visible from his property.

The Applicant, Candy Webster, submitted a 9-page response to Mr. Phear’s letter objecting to extending the fence 100’ through a heavily wooded area as well as replacing the lattice privacy fence that by its very name is designed for privacy. She has agreed to move her pickle shed so it’s 50’ back and requested that Mr. Phear remove his two sheds back from her property as they are along her property line and not 50’ back from it. She provided photos of the view of her property from 50-, 75-, and 100-ft down the wooded property line. She has done a number of holly tree plantings along the property line [in front of his two sheds].

The berm is where Mr. Phear has been leveling out his property and pushing the dirt over on top of Candy’s part of the hill 3 feet up on her land. They placed a fence 2 feet off of it on her property. There is no more issue with the gap in the fence. [The berm] is just a 3-ft mound.

Larry said it would appear that Ms. Webster had done several things already to separate her property from him with plantings and fencings. The ZBA is not an arbitration board between neighbors.

The board reviewed the photos of the berm and fencing and shed. Julius said he has a hard time making a demand of the applicant to add this much more fencing when it is sloping away from Mr. Phear's property and in a wooded area.

Cody said the pool is sited completely behind a 24' high house and what is probably an 18' high pool house. There is a very small window where you could see it from his property. He said he's never seen a pool where an applicant had to fence their entire property. He also pointed out that the immediate abutters nearest to where the pool is sited wrote in support of the project.

Deborah asked if the applicant were already planning the landscaping around the pool. It is unknown, but she has been planting holly trees.

Mr. Phear said his understanding was that the board asked him to come back with suggestions on what would make him comfortable about the project. These were his wishes.

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

Larry said he had looked at the cabana plans and did not see anything unusual. He thought Mr. Phear's request to replace the lattice fence is a big ask. Discussion followed about whether or not to condition the permit with the planting of some evergreens along the 100-foot line instead of adding fencing. Andy did not think they should do so and the board agreed. Julius said the most pertinent area and view is where the fence currently ends near the pickle shed. The board agreed that the only condition is that the Applicant plant three (3) eight-foot evergreen trees where the pickle shed is located after it is moved.

It was moved and seconded to Approve the Special Permit as conditioned. Larry explained that there are standard conditions that are part of every pool permit.

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, A. Zaikis-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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6:15 pm – (Continued from August 25 and October 6, 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 January 5, 2023).**

Larry read the hearing notice.

*A motion was made and seconded to continue the hearing to **January 5, 2023 at 6:15 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, A. Zaikis-yes, C. Decker-yes

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6:20 pm – A public hearing on an application from **Beth Horowitz and Michael Kazin** to AMEND Special Permit #2022-15 to allow modifications to the size of the inground swimming pool (from 16’x50’ to 18’x50’) and pool equipment shed (from 8’x8’ to 8’x12’) as well as modifications to the pool and fence locations under section 8.5-4C and 9.3-3 of the West Tisbury Zoning Bylaws at **50 Lookout Hill Rd., Map 12, Lot 41.1**, RU District.

Larry read the hearing notice and opened the hearing at 7:11 pm. John Hoff from Oak Leaf Landscaping presented the amended plans to the board. The original layout of the pool was very close to the slope of the hill and almost hanging in mid-air. It would have required a lot of cement and retaining.

The amended plan has it moved approximately 28’ to get it up to a more level area. It has been enlarged slightly and will be a lap pool. The new siting is one foot closer to the southwest property line at 84’ but still well within required setbacks.

They have also enlarged the shed to 8’x12’. John adjusted the fence so it’s more naturally placed and not so square. Everything is squeezed in between cryptomeria evergreens. Julius reminded him to make sure this siting is correct. John said the only thing that might change is that they might make the shed smaller. Julius said if that happens they still need to come back, most likely for a *de minimis* change, but the Building Inspector will be going on the plan that is approved tonight.

The Planning Board referred it back to the board without comment. There was no other correspondence.

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 Amended Plan and Special Permit. Larry explained that there are standard conditions that are part of every pool permit as before.

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, A. Zaikis-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.

Other Topics Not Reasonably Anticipated

- The board unanimously approved recommending that Pat Barrett be appointed to the second open Associate Member position.

The Meeting adjourned at 7:45 pm.

Respectfully submitted,
Kim Leaird, Board Administrator