

WEST TISBURY ZONING BOARD OF APPEALS
Minutes for Thursday, November 18, 2021 meeting
Online meeting via ZOOM- @ 5:00 PM

APPROVED ON DECEMBER 16, 2021

Present: Larry Schubert, Deborah Wells, John Rau, Andy Zaikis, Jeffrey Kaye and Casey Decker

Absent: Julius Lowe

Also Present: Pam Thors, Bd. Administrator, Reid Silva, Kevin Cusack, Jules and Judy Dienstag, Alexandra Ben David, Tucker Pforzheimer and Kimberly Revak

5:00 pm – The minutes of the October 21, 2021 meeting were approved as written.

All correspondence was reviewed.

The re-typed version of the ZBA application was discussed.

John asked if the language being added should appear on page 2. Pam said that it should and that she would correct that.

Deborah stated that directing the applicant to check one of the boxes relating to Section 9.2-2 compliance is confusing when there are just lines for checkmarks. Pam said she would add boxes to the form.

Casey asked about online applications. Pam explained that she has not been encouraging them because the paper application seems easier for most applications. She said that she can begin to encourage the Engineering Companies to get on board and see how that goes. She stated that the new system that enables this option is mostly for the Building Department's benefit and that she uses it for processing fees and uploading documents for the Building Department's reference.

5:15 pm – A Public Hearing on an Application for a Special Permit from John W. and Susan M. Poduska to construct a 17' x 40' pool under Section 8.5-4C of the Zoning Bylaws at 49 Hidden Village Rd., Assessor's Map 11, Lot 4.1 RU District.

Larry read the notice and Reid Silva, engineer for the project, briefed the board on the details and the location. The Site Plan was reviewed. Reid stated that there is a very steep hill addressed by a retaining wall. He described the location of the pool fence.

The size of the pool was shown on the Site Plan as being 17' x 34'. Pam asked Reid to get her a copy of this plan as the one submitted describes the pool as being 17' x 40'.

Reid described the photos of fencing choices being considered; adding that the pool is barely visible by any neighboring properties.

Larry asked what kind of heater the pool would have, noting the recent letter from the Board of Selectmen asking permitting boards to take CO2 emissions into account when reviewing projects. Kevin Cusack, the Contractor for the project, said that the pool will be heated with a solar powered electric heat pump. Larry noted that this will be a question asked for all pools going forward.

Kevin stated that the owner is committed to making the property energy self-sufficient.

Andy asked why the fence was so far away from the retaining wall. Kevin answered that aesthetically, this was a better option. He also said that the height of the wall in certain places negates the need for fencing.

Reid pointed out where on the site, the contour recedes to mean average grade.

Pam read the correspondence which consisted of a letter from the Planning Board referring the application back to the ZBA and a letter from abutters, Chris and Betsy Bowden, who voiced their concerns regarding lighting

and alarm systems which they said were not addressed in the application. Pam mentioned that a phone call was received by another abutter, Linda Katz, who had no concerns about the project. Jules and Judy Dienstag, abutters who were present, voiced their concerns for possible effects on the water table.

Kevin said that as far as these concerns go, the lighting will be downlighting and the alarms are designed to emit noise from the interior only. He also said that the project will have no effect on the water table because of restrictions imposed by Town Bylaws.

Larry brought up the “Boiler Plate” conditions which are listed in all Special Permit Decisions for pools.

A. Zaikis moved and D. Wells seconded a motion to close the Public Hearing and open the Board Meeting.

A rollcall vote was taken to approve the Special Permit with Conditions with the following resulting votes.

L. Schubert-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, and C. Decker-yes

J. Kaye abstained from the vote due to arriving late to the discussion.

Larry explained the 20-day appeal period.

Reid Silva commented that the Town of Chilmark has implemented these types of regulations as part of their bylaw.

Centerline Communications

Larry explained the history of Cell Towers in West Tisbury and the Town’s Personal Wireless Service Facilities bylaw Section 8.8. He said this application has been referred to the Martha’s Vineyard Commission (MVC) as a modification of a Development of Regional Impact, (DRI).

Kimberly Revak, representative for Centerline Communications stated that the application is for a co-location. She said that the Federal Government encourages sharing of infrastructure. She made note of the fact that the application includes the implementation of “Firstnet”, a program that supplies frequencies for first responders. She also said that towers are usually designed for future co-locations. She said that currently the application is for a 20’ extension of the tower allowing for the co-location, but that the tower design, (monopine), would remain the same. Other equipment in the request are a 17’ x 14’ walk in cabinet, a diesel generator on cement feet and the AT&T equipment on the tower itself. She explained FCC Section 6409, referring to the “Guidance for Municipalities”. She noted that all documentation regarding this Section is in the file submitted.

She went on to say that the application is currently before the MVC and that the Public Hearing will occur on December 2nd at 7pm. She said that questions they had were concerning the tower design; they were not particularly happy with the monopine, and the diesel generator. She noted that if the generator stands in the way of approval at the MVC level, they would be willing to offer a propane generator or a short term, battery operated generator. She said that the technology to provide a long term, battery operated generator is available but that the company is not in a position to offer this as part of this application.

Larry asked about the height of the tower in comparison with the height of the trees, noting that branches have blown off. He asked if there is an approved pine branch that could be used, noting that the bylaw requires review of the tower and all equipment.

Pam confirmed that Dave Maxson of Broadcast Signal Labs has inspected the tower.

Kimberly said that the ZBA is in sync with the feelings of the MVC as they relate to powering the generator. She said that storms had a negative effect on the monopine, adding that part of the application would include cleaning up the area and adding new branches while constructing the extension. She said she has also urged American Tower Corporation to “up their game” as far as maintenance is concerned.

Larry stated that he doesn’t see the problems with the existing tower as being structural in nature. He asked if there will be a photo simulation of the extension. Kimberly replied that this is not usually provided with co-locations, only new installations.

Pam said she will send the letter regarding CO2 emissions and town projects to Kimberly to aid in her negotiations. Kimberly said that the power of Section 6409 puts more control in the hands of the Federal Government, she is trying to address town concerns as well.

Pam asked for clarification on the height of the existing tower and the proposed height of the extension. Kimberly said that the proposal is for a 75' high tower with a 5' allowance for the branch cap, bringing the total proposed height to 80'. Kimberly reminded those present that the height approval was based on the height of the trees in 2013. She went on to say that future growth of trees will necessitate more tower extension.

The 60-day time frame for approval noted in Section 6409 was discussed. Kimberly said that the time frame was set up to force towns to address applications in a timely manner. She said that mitigating circumstances such as the required MVC approval, are taken into consideration with regard to the 60-day time limit.

Larry commented that not acting within the time frame allotted, would possibly affect the town's ability to condition the approval. Pam stated that if the Public Hearing is scheduled for the December 16th meeting and approved at that meeting, the approval would fall within the allotted time frame. She said she will put this application on the agenda for that night, (time to-be-determined). She said she will send a copy of the Public Hearing Notice and a copy of the Agenda (containing Zoom info), to Kimberly.

Kimberly asked if there is anything else she can submit for the meeting. Larry said that she should just come, prepared for questions from the public.

Ben David-Agreement Extension

Pam explained that Alexandria Ben David, the applicant, is here to agree to a 2nd extension of the 65 day time limit for a Public Hearing on her application for a Special Permit to operate a service business at her property located at 43 Old County Rd., (Map 10, Lot 18.1). Pam stated that the applicant had contracted with an off Island Engineer to prepare her Site Plan and that it is expected to be done within a few days.

C. Decker moved and J. Kaye seconded a motion to approve the extension.

A rollcall vote was taken to approve the 2nd extension to run through January 31st 2022 with the following resulting votes.

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

Larry asked Alexandra to get the Site Plan to Pam as soon as possible.

Farmer's Market-Informal Hearing

Larry said he had received a phone call from a few of the Farmer's Market members requesting to hold two additional markets indoors at the Agricultural Hall, (Ag Hall), this year. The original Special Permit ran through October 27, 2021.

It was confirmed that the Board of Health has signed off on this request.

Larry said the ZBA would need to deem this as a "de minimis" change to Special Permit # 2021-7. He asked the opinion of the board.

John asked if there were any letters received. Pam said that there were not. John said he would call this a de minimis change.

Deborah said that the de minimis determination should apply to both markets being requested.

Larry suggested that if there are going to be future requests for ongoing use of the Ag Hall that the issue should be addressed by the Board of Selectmen, the Ag Hall and the Farmer's Market.

Deborah added that if Special Permits were needed going forward, they should consider a more, “global”, time frame.

A rollcall vote was taken to approve the 2nd extension to run through January 31st 2022 with the following resulting votes.

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

Casey Decker-Conflict of Interest Questions

Casey explained that he is an engineer who has been a paid subcontractor for Schofield, Barbini and Hoehn, Inc. for the last three years or so. He said that it was suggested to him that he should reach out to the State Ethics Commission to disclose a possible conflict of interest as a voting member of the ZBA. He said he would like the board to weigh in on this issue.

Larry asked if he has taken up the issue with the Select Board. Casey said he has only reached out to the Ethics Commission who advised that he address the issue with the appointing authority.

He said that if he was presenting an application such as the one that Reid Silva presented to the board tonight, he would have to recuse himself from the deliberations and vote.

Pam noted that the board is not individually financially responsible in the case of a lawsuit.

The specific details of Casey’s situation and how applications could be handled was discussed.

Deborah suggested that if an application was found to involve a plan stamped by Casey, Pam could make sure that a quorum would still be available if Casey had to recuse himself.

Andy noted that the Town of Aquinnah is presently involved with a charge by the State Ethics Commission and that it does happen that Towns are challenged.

Larry stated that the Select Board would probably consult Town Counsel.

Pam suggested that Casey get a copy of the Disclosure form to Jen so she can put the issue on her schedule as an agenda item.

Changes to ZBA Application

The pros and cons of how to deal with Section 9.2-2 in the ZBA Application were discussed. Larry asked if the board can revisit this issue at the next meeting.

The Meeting adjourned at 7:00 pm.

Respectfully Submitted,

Pam Thors-Board Administrator