

WEST TISBURY ZONING BOARD OF APPEALS

Thursday, November 30, 2023

Meeting Minutes

Approved December 14, 2023 (5-0)

Present: Larry Schubert, Julius Lowe, Andy Zaikis, Casey Decker, Jeffrey Kaye, Pat Barrett

Absent: Deborah Wells

Also Present: Kim Leaird (*Board Administrator*), Christine Stonbely, Jesse Fuller, Keith Bassett, Keith Moskow, Heather Maciel, Seth Vincent Maciel, Peter Huntington, Frances Fisher Copeland, Donald Ward, Eric Peters, Ronaldo Andrade, Quezia da Silva, John Pascarel, Laura Grahame, Mike Urias

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5:00 pm – Minutes of November 16, 2023 meeting were approved 6-0.

Short-term Rental Bylaw, Planning Board meeting update: Larry attended the zoom meeting, there were about 30 people. There will be another information meeting in January. Several legal questions came up and it was his feeling if they write a bylaw that addresses short-term rentals, they will need to adjust some of the town's existing bylaws so they do not conflict. They would like to discourage and even disallow multiple owners of property, like Hilton Hotels that bought up several houses on Nantucket to rent out. While the ZBA is not front and center, Larry thought the Planning Board could use help from our board.

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5:15 pm – A public hearing on an Application for a Special Permit from The Fullers Company on behalf of **Christine and George Stonbely**, to construct a 16'x40' in-ground fiberglass swimming pool under Section 8.5-4C of the Zoning Bylaw, at **100 Pond Rd., Map 30, Lot 2.84** in the RU district.

Larry read the hearing notice and opened the hearing at 5:17pm. Pat disclosed that he is on this neighborhood's review committee and thought he could be fair and impartial. Christine Stonbely and Jesse Fuller presented the application.

No setback relief is being requested. The pool equipment shed is outside the fence and the fence will go around the concrete decking. It's a one-piece fiberglass drop-in pool. The applicant received permission from the Homeowners' Association (HOA) to clear 12 trees in order to bring the pool in. All of the trees are outside the NHESP line except for two that were approved. Jesse Fuller said there will be no need to take trees down along the road – maybe some branches. Pat added that they have a really long driveway.

Andy asked about the propane heating system and if they'd thought of more environmentally friendly heat pump or solar panels. Christine said they had considered heat pump – but it is a cost consideration for them – it would take a whole lot more electricity to actually heat the size of the pool than propane and added that electricity is still not as clean as it could be. She said she runs a sustainability committee and is very carbon conscious. While they decided to go with propane she thinks that as things get better with electric, they could change that in the future. She also said they would like to put solar panels on the house which is no issue with the HOA as long as it's in the back. Larry said there are standard pool permit conditions and went over them.

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

There was no further discussion.

It was moved and seconded to GRANT the Special Permit as conditioned. Larry went over the 20-day appeal period.

*A roll call vote was taken with the following resulting votes. Motion passed 4-0.
L. Schubert-yes, J. Lowe-yes, A. Zaikis-yes, J. Kaye-yes*

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5:35 pm – A public hearing on an Application for a Special Permit from **Keith Bassett**, to rent five (5) bedrooms (known as the West Tisbury Inn) under Section 8.5-7 of the Zoning Bylaw, at **1070 State Rd., Map 32, Lot 90** in the VR district.

Larry read the hearing notice and opened the hearing at 5:35pm. Keith Bassett was present. He was granted a special permit in 2021 but did not record it at the Registry of Deeds [making it invalid], so he is here with the same application. The special permit allowed him to rent five of his six bedrooms. During the months of July and August, he is allowed to rent out the whole house weekly to families.

Larry pointed out that the bylaw 8.5-7 mentions “4 or more bedrooms” and wondered why the board had granted the renting of only five. Larry went over the findings from 2021 hearing and noted that with the new permit they may move the requirements of 8.57 from Findings to Conditions.

Jeffrey asked if the Applicant had received a letter from the Building Inspector. Keith said yes but it wasn’t part of the application. Jeffrey asked if he rented it year-round and was told yes. Kim told Larry she wasn’t sure if renting it year-round was part of the permit granted in 2021.

Jeffrey asked the Applicant if he had a criminal case pending. Board discussion followed about the relevance of an applicant’s personal life to a special permit hearing. The only relevant information the Board must consider is if an applicant owes back taxes or has unpaid fines in the town. The Board thought Jeffrey’s question not germane to the application and outside the scope of the Zoning Board’s purview.

Larry continued going over the findings from the 2021 special permit. He noted that Finding 5 should be moved under Conditions.

- 1) The Inn has six (6) bedrooms but only five (5) may be rented at any given time.*
- 2) The Inn will have six (6) delineated parking spaces.*
- 3) Improvements being made are to the interior and grounds only.*
- 4) The entire Inn is rented weekly to individual families in July and August.*
- 5) The owner is aware of and agrees to comply with all requirements of Section 8.5-7 (Renting of Rooms).*

Jeffrey asked whether he rented the rooms nightly year-round because he noticed four adults there. Larry said 8.5-7 does not speak to how and when you rent [the premises].

Larry pointed out that if an entire family rents they do use the six bedrooms. Keith said in the first hearing, discussion revolved around it being a short-term rental if he rented exclusively by the week and would take him out of [the status of] operating as a nightly inn. Julius suggested the permit could be worded differently so it does not pertain to when you rent. Or it could be worded more explicitly to say “When the whole place is rented to one family then all 6 bedrooms are used. When the inn is rented by room rather than by house, only 5 bedrooms will be rented.”

Larry said he did not see in the bylaw that the board can't grant a special permit for six bedrooms, it is based on an owner-resident living on the premises. Keith said he does not live in the Inn but in the guest house behind it. This still qualifies him as an owner resident.

Discussion followed about why the permit couldn't be granted for the rental of six bedrooms. There is a 10-bedroom septic. Keith said Joe mentioned [back in 2021] that he'd need a fire inspection if he rented six bedrooms vs. five so this may have played a role.

Jeffrey asked him what Joe had denied him in his letter. [Note: Kim has no letter from Joe, nothing was submitted with his application].

Pat wondered if it might be best to keep the same findings.

Keith said it is possible, he'd like to be able to rent the six bedrooms. Casey suggested the board continue the hearing to get clarity around the six bedrooms kicking him into a different class with a fire inspection requirement, etc. Larry asked applicant to go speak with the Building inspector.

*A motion was made and seconded to continue the hearing to **January 4, 2024, at 5:35pm.***

A roll call vote was taken with the following resulting votes. Motion passed 6-0.

L. Schubert-yes, J. Lowe-yes, A. Zaikis-yes, J. Kaye-yes, C. Decker-yes, P. Barrett-yes

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5:55 pm – A public hearing on an Application for a Special Permit from Moskow Linn Architects on behalf of **Gene Stupnitsky** to amend Special Permit #2023-31 and to construct a 15'x30' in-ground swimming pool under Sections 9.3-3 and 8.5-4C of the Zoning Bylaw at **26 Chappaquiddick Ave., Map 1 Lot 53** in the RU district.

Larry read the hearing notice and opened the hearing at 5:55pm. Keith Moskow presented the application. The lot in question is both in West Tisbury and Tisbury. Keith explained they had originally planned the pool on the Tisbury side of the lot the Tisbury Zoning Board could not see how to permit it so while they would prefer to have the pool on the Tisbury side, they've redesigned the plan so that the pool is instead on the West Tisbury side. Nothing else that was granted in August 2023 in Special Permit #2023-31.

The pool equipment will be in the basement of the guest house [approved in previous plan] with bluestone pavers around the house. Julius spoke to using a heat pump vs. propane and it was agreed to suggest this in the findings. If for some reason, Tisbury did approve the pool, he would simply return to the town and withdraw the pool permit. Julius asked about plantings on the plan – were they to hide fence? Yes, and to provide some measure of privacy. Larry went over pool conditions.

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

There was no further discussion.

It was moved and seconded to GRANT the Special Permit as conditioned. Larry went over the 20-day appeal period.

A roll call vote was taken with the following resulting votes. Motion passed 4-0.

L. Schubert-yes, J. Lowe-yes, A. Zaikis-yes, J. Kaye-yes

6:15 pm – A public hearing on an Application for a Special Permit from **Ronaldo Andrade and Quezia da Silva** to construct a 60’x40’ garage and operate a service business (seasonal landscaping, tree and stone work) to include the storage/parking of five (5) trucks: (2) over 10,000 GVW and (3) under 10,000 GVW, under Sections 8.5-2, 3.1-1 and 14.2 of the Zoning Bylaw at **364 State Rd., Map 11 Lot 57** in the RU district.

Larry read the hearing notice and opened the hearing at 6:15pm. Present for the hearing was Ronaldo Andrade, Quezia Silva and Attorney Eric Peters. Larry explained the relevant bylaws – 8.5-2 is for a Non-residential use in the RU district.

Atty. Peters presented that the Applicants have been here for 16 and 22 years and have run Andrade’s Landscape for 14 years and the last 10 years, both their business and residence has been at the corner of State Rd. and Cournoyer Rd. (across from Cronigs), where they rented. He went over the following nine bullet points which were captured in a letter sent to the Zoning Board.

1. Their 3-acre parcel is heavily wooded and about an average of 500 feet deep from State Road. The barn and service business area are within the south 200 feet portion of their property.
2. Their property will be served by a separate driveway for their lot to State Road, which has [already] been approved by the Planning Board. Their vehicular traffic will be only on their own property and not on any other residential road.
3. There will be no visual impact to the public from State Road, other than the driveway. There is already screening on the south of their lot maintained by Jarret Brissette-on his property at Map 11, Parcel 57.1 (rear abutter), which has been the subject of four special permits and modifications. Mr. Brissette has also planted screening on the east side of his access road adjacent to the Andrades along a cleared portion of the property. The Andrades agree to plant screening on the opposite side of this cleared area next to the Fishers and to maintain wooded screening along the rest of the Fisher property as needed.
4. A service business in a residential zone subject to [the Zoning Board’s] approval by special permit has been allowed under West Tisbury zoning for many years. This property is conforming in size under zoning, unlike many older lots in the neighborhood.
5. As shown on their site plan, the Andrades plan on living at this location and so they have no intention to operate their business in a manner that would negatively impact their home.
6. Their trucks will leave in the morning and return at the end of the day, just as they have at their current location. Only rarely does a vehicle need to return in the middle of the day. There will not be constant vehicular traffic through the day. They do not operate their business from January through March.
7. Their landscaping business is conducted off site. When there is stone work done for a customer, the material is delivered to the customer and the work performed there. Plantings are not grown or stored on the property. Rather, they are purchased and brought directly to the customer sites.
8. The approximate location of vehicular parking is shown on their site plan. The barn will be used for the storage of other equipment, such as mowers, bobcats, leaf blowers, etc.
9. The proposal conforms to the requirements of Zoning Bylaw Sections 8.5-2 and 9.2.

The barn will be storage for things like mowers, bobcats, leaf blowers and other equipment. The garage is part of the application because it’s over 2000 sq. ft. Larry said we had discussion with Joe about a service business without a dwelling – the dwelling would have to meet the size restrictions so when they want to

build the main house, it couldn't be bigger than the main house. Atty. Peters said the applicant has been told by the Building Inspector that no business can take place until there is a building permit for [the dwelling].

Correspondence

Board members read letters of concern* into the record from:

- Bronwen Buckley and Jesse Sonneborn (*5 Nip 'n Tuck Lane*)
- R. Scott trustee of Angels Realty Trust (*384 State Rd.*)
- Davina and Fergus Porter (*24 Nip 'n Tuck Lane*)
- Roberta Hearn (*365 State Rd.*)

Concerns include noise and dust pollution and the non-residential use in the RU district.

Letters of support were also read into the record from:

- Nancy Carignan (*491 State Rd.*)
- Tamara and Stanley Hersh (*459 State Rd.*)
- Dr. Steve and Sandy Atwood
- Steve Bernier (*Cronigs, current neighbor*)
- Heather Gardens
- Reid Silva (*current neighbor, not read at 11/30 hearing, will include for 1/4 hearing*)

*NOTE: all letters are part of the public record

Support attested to the current business location and the professionalism of applicants.

Discussion followed about what sort of materials would be stored on the lot – brush, stones, topsoil? Would they have a work yard? Ronaldo said all materials will be from John Keene and they normally dump what's not used and try to purchase just what is needed.

Jeffrey asked why they were moving and it is because they have been renting for 10 years. Eric said he had helped them find the right location and this one has already received a curb cut permit from the Planning Board.

Larry said one of the requirements of non-residential use in the RU district is to screen exterior buildings housing the use and exterior storage of materials or equipment should be screened from off premises view by vegetation, grade or location. The garage will have parking around it and at some point, the screening should be dense enough and appropriate enough so that the neighbors to the north won't be able to see the trucks parked business equipment. There should be a contained area and thought they should have a discussion about what that might look like. Eric said the abutter to the rear has already embedded much of the screening on his side.

Larry read the service business definition from 14.2: *A business or non-profit organization that provides services to the public, either on or off the premises, including but not limited to building, electrical, plumbing, and landscape contracting, arts instruction or studio, auto repair, business and educational services, catering, health club, house cleaning services, locksmith, photocopying, repair and restoration services, tailoring, typing, and word processing. Service business does not include retail business, restaurants, warehouses, or other uses separately listed in the Use Table.*

Pat asked if all five trucks planned to be stored there have a backup alarm. Ronaldo says yes.

Public Comment in Support

Donald Ward said he has known the applicants for 20 years and spoke in strong support.

Frances Fisher Copeland (362 State Rd.) A direct abutter and one of the sellers – they subdivided their lot and sold the other half to the Andrades. She spoke in strong support and said that she does not hear the Brissettes [and would not hear the Andrades either]. She said she finds the contention in their neighborhood upsetting and pointed out that a number of vehicles also have backup alarms – Brunos, Packers (propane), UPS, etc. She advocated for giving the applicants a chance to establish themselves.

Peter Huntington (15 Nip 'n Tuck La.). It's hard enough for working people to get a hold on island and stay here and spoke in strong support of the applicants.

Public Comment of Concern

John Pascarel and his wife, Laura Grahame (39 Nip 'n Tuck La.) Worried about noise in a residential area with landscaping equipment like blowers and equipment maintenance. Not so much concerned about the visual [impact] as much as the potential for noise and not sure about enforcement ability. Also concerned about the proposed size of the garage at 2400 sq. ft. which is significantly smaller than the proposed house. It feels like commercial is encroaching on [residential area].

Larry explained that during the hearing process, the board will discuss conditions to the special permit.

Vince Maciel (476 West Tisbury/Edgartown Rd.) thought they applicant was applying for a home occupation without a home. Larry said it is a service business not a home occupation but yes, they cannot operate the service business until they are residents and added that a special permit for a service business goes with the applicant, not the property.

Heather Maciel (476 West Tisbury/Edgartown Rd.) asked if the proposed dwelling was a guest house and was told no. She said if you're running a landscape business there are trucks coming and going all the time and enforcement only happens if a complaint is made.

Frances Fisher Copeland pointed out that Heather Gardens has had heavy deliveries in and out and everybody gets UPS and it's a more dangerous place where their landscaping is now [across from Cronig's] where they are now with the with all the

Mike Urias (Skiffs Lane). Concerned about commercial properties coming close to residential areas. He said in general, he is not a fan of [this practice].

John Pascarel asked for clarification on the accessory nature of the proposed dwelling and Larry said that in the town, there can be an accessory apartment 800 sq. ft. or less. If the applicant chooses to build it first, it would be built as their primary residence. If they later want to build a larger main house they would return to the Zoning Board for a special permit for the accessory apartment. Detached bedrooms can't have a kitchen, but an Affordable Accessory apartment can.

Julius said it's important not to get caught up in whether or not this is an accessory apartment or not. For our purposes, it is a primary dwelling [to start].

The applicants said everything they have done, the order in which they are applying, has been in consultation with the Building Inspector. First, they obtained the curb cut, then to the Zoning Board for a

service business, then return to Joe for dwelling permit. Quezia said they are willing to meet requirements set by the board and the town.

Board discussion followed about how conditioning the special permit on getting a building permit first would ensure that a service business would not be operated until condition is met.

Larry said he would compile some thoughts and bullet points that the applicant could address before the next hearing.

*A motion was made and seconded to continue the hearing to **January 4, 2024, at 6:15pm**
A site visit was also scheduled for **Tuesday, Jan. 2, 2024 at 9:00 am.***

*A roll call vote was taken with the following resulting votes. Motion passed 6-0.
L. Schubert-yes, J. Lowe-yes, A. Zaikis-yes, J. Kaye-yes, C. Decker-yes, P. Barrett-yes*

Other Business

- Board rules and regulations, updates: Kim will sit down with Larry to come up with an updated draft to be reviewed at a future meeting.
- Discuss FY25 Zoning Board budget.

The Meeting adjourned at 7:45 p.m.

Respectfully submitted,
Kim Leaird, Board Administrator