

**WEST TISBURY ZONING BOARD OF APPEALS**  
**Minutes for Thursday, December 13, 2018 meeting**  
**2<sup>nd</sup> Floor, West Tisbury Town Hall - @ 5:00 PM**  
**Approved on February 14, 2019**

**PRESENT:** Nancy Cole-Chair, Larry Schubert-Vice Chair, Julius Lowe, Bob Schwier, Toni Cohen and Tony Higgins

**Absent:** N/A

**Also Present:** Joe Tierney, Carmine Cerone, Julie Horgan, Gerald Susser, Graham Lewis, Joseph Capeche, Travis Ritchie, Leo DeSorcy, Melissa Thomas and Pam Thors – Zoning Board Administrator

An Invoice from the Martha’s Vineyard Times (\$124.95) was approved and signed.

**5:15 pm: A hearing on an appeal filed by Julie Horgan, of a November 26, 2018 decision of the West Tisbury Zoning Inspector to deny legal status of a basement apartment under Section 4.4-4(C) of the Zoning Bylaws. The Appeal is filed under MGL Ch40A Section 8 and Section 15, of the Zoning Act. Map 7 Lot 155, 225 Longview Rd, RU District.**

Nancy read the notice and the two correspondences from immediate abutters in opposition to the application, (see file). Nancy invited Julie to explain her application. She stated that the house and basement apartment was built in 1977. She explained that 12 years ago she started renting the property on a year round basis. She said she has been paying taxes and insurance on a two family all along. She said that 7 years ago her Real Estate agent spoke to Ernie Mendenhall who told her that the apartment was grandfathered.

The letter from the current building inspector dated November 26, 2018 denying the applicant’s request to legalize the apartment was read, (see file). Joe referred to the original building application from 1977 which was for a One Family Residential dwelling. Pam brought to the attention of the board that there was a window of opportunity for illegal apartments to receive amnesty by the building department up until January 1, 2010 under Section 4.4-4 (C) of the bylaws. Nancy stated her concern that there was never a building permit issued for the apartment. She explained the restrictions in the Accessory Apartment bylaw. Carmine stated that the apartments have been rented to year round families at a very reasonable rate. Nancy asked what the square footage of the apartment is. Julie said it is about 780 square feet. Larry referred to the Use Table in the bylaws and also spoke to “density permitted by right” in Section 4.4-4 (B) of the bylaws. He said he wanted to find out if the application in 1977 was for a two family, would the apartment have been legal. Nancy stated that the issue is really that there was never a building permit for the apartment.

Carmine asked how owners would have been made aware of the amnesty period. Larry said that no residents get notifications that zoning changes have occurred. Nancy stated that it is the owner’s responsibility to stay updated on any changes that may or may not directly relate to their lot. Julie mentioned the statement that Ernie Mendenhall had made regarding the grandfathered status of the apartment. Nancy reiterated that unfortunately there is no written record of this. Julie said that the fact that she has been paying taxes all these years for a two family dwelling is not fair. The board agreed. Larry said that the assessors should claim some culpability in this situation. He said that if Julie were to submit an application for an Accessory Apartment that he would look favorably on it. Whether or not the bylaw allows an accessory apartment and the main dwelling to be rented at the same time was discussed. Gerald Susser asked if perhaps the abutters who wrote in opposition to the application believed that Julie was asking to add an apartment rather than asking to permit an existing apartment. The Accessory Apartment option was discussed. Tony asked if an after the fact accessory apartment can be approved. Nancy said that it can and explained the process. Julie mentioned that she is putting the house up for sale and noted that a potential buyer may be put off by the restrictions that apply to Accessory Apartments. All agreed that this could be the case but that this is the only option available.

*Julius moved and Toni seconded the motion to close the hearing and open the board meeting.*

Nancy stated that the fee for a future application for an Accessory Apartment may be waived.

*A motion was made to deny the application, thereby upholding the November 26, 2018 decision of the Building Inspector. The vote on the motion was unanimous.*

Nancy explained the 20 day appeal process.

**5:35 pm: A hearing on an application from Joseph Capece, Centerline Builders, LLC, agent for Nancy Kilson and Martin Klotz, for a Special Permit to construct a detached bedroom/studio-craft space in the Roads District requiring 9' of height relief under Section 6.2-3(D) of the Zoning Bylaws, Map 16 Lot 95, 20 Cardinal Way, RU district.**

Nancy read the notice and the letter from the Planning Board dated December 4, 2018 approving the sink in the studio-craft space after site plan review, (see file). Joe stated that the applicant plans to make the proposed new structure "green". It was noted that there was no correspondence received. Larry said that the property is very well screened with evergreens.

*Larry moved and Julius seconded the motion to close the Public Hearing and open the Board Meeting.*

Larry went over the intent of the Special Ways bylaw. Tony stated that the lower side of the building is what faces Indian Hill Rd. Larry suggested and the Board agreed that approval should hinge on the following condition:

- 1) Owners will maintain screening from Indian Hill Rd.

*A motion was made to approve the application with one condition. The vote on the motion was unanimous.*

Nancy explained the 20 day appeal process.

**5:55 pm: A hearing on an application from Graham Lewis for a Special Permit to construct a Single Family Dwelling within the 500' radius of Fire Tower Hill designated a Special Place (Hilltop Zone) under Section 6.3-5(B) of the Zoning Bylaws, and to construct an in ground swimming pool under Section 8.5-4(C) of the Zoning Bylaws. Map 12 Lot 40.3, 42 Fire Tower Rd., West Tisbury, RU district.**

Nancy read the Hearing Notice. Travis Ritchie presented the application. He said that the State of Massachusetts maintains Fire Tower Road and they have applied to the State for a curb cut. He said that the Planning Board determined the tree height as 24'. The views from the water and from the Public Roads were discussed and found to be unaffected by the proposed construction of the swimming pool and pool surround.

Travis addressed the View Vector, the Greenbelt (no cut Zones) and the Surface Use Area, (see site plan).

The pool fence was discussed and it was determined that the retaining wall can only be accessed by a four foot gate. All pool equipment will be under the patio and totally enclosed. The lighting is all down facing. Mr. Lewis described the proposed dwelling and pool to be very sensitive to the contours of the lot.

*Julius moved and Larry seconded the motion to close the Public Hearing and open the Board Meeting.*

*A motion was made to approve the application. The vote on the motion was unanimous.*

Nancy explained the 20 day appeal process.

**6:15 pm: Cont'd from November 15<sup>th</sup> and then from December 6, 2018-A hearing on an application from Leo DeSorcy for a Special Permit to allow the extension of a pre-existing, non-conforming use and construction of a 30'x40' structure and green house, for the sale of agricultural products and construction goods and for employee housing under Section 11.1-3 (A) of the Zoning Bylaws. Map 8 Lot 18, 4 State Road, RU district.**

Nancy read the Hearing Notice. Nancy said that Mark Bobrowski replied to the Board's question regarding whether they need to require Leo to reapply under Section 9.3-3., (see file). The Board remarked that the reply is somewhat vague. Larry stated that his interpretation is that the Board would not be doing something illegal if they allowed the application without the inclusion of 9.3-3. Leo said that he spoke to his neighbor Ralph Packer who wrote a letter to the Board stating that it is his recollection that retail sales did take place on the property prior to zoning, (see file). The 1981 Special Permit application and its impact on future applications was discussed. The new plan, received on the day of the meeting was reviewed. Leo said that the plan needs another update because they decided not to build the greenhouse, which still shows on the plan. Leo asked for another continuance so that they can be fully prepared to present the amended application.

Nancy suggested that they continue to discuss the application regardless of the continuance. She said that she doesn't think they can approve a retail use considering that retail sales are not allowed in the Residential District and that whatever the Board approves, has to be defensible should they be taken to court. Home businesses, signs and other businesses in the area were discussed. Nancy referenced a home business on New Lane which was originally approved for a yarn store, which morphed into a business which sold other people's products and was eventually shut down. A home occupation on this property was discussed but it was ascertained that no one lives on the property. Melissa asked who they could appeal to in order to be allowed to conduct retail sales on the property. Larry said that the Planning Board has the ability to propose changes to zoning designations at Town Meeting but that the reasons for the change would have to apply to more than one property in the area. Nancy stated that otherwise this would fall into the category of "Spot Zoning". She described the origination of the various zoning areas. Melissa stated that zoning came into being after a commercial property was established and that in her opinion; the property was incorrectly designated as residential at that time. Julius asked what proof should be acceptable as far as what was happening on a property prior to zoning. Larry stated that the North Tisbury Farm Market came before the board with testimony that claimed that prior to zoning, items other than farm products were sold there. The board accepted the testimony and allowed the sales of these items from then on.

Nancy stated that the DeSorcy property had an issue with a building permit that brought to the attention of the town that the use should be addressed. She cited the intention of the town to keep businesses in specific areas of town. She stated that the Planning Board creates the bylaws and the Zoning Board of Appeals has the job of deciphering the intent of the bylaws with each case that comes before them. She reiterated her opinion that the Board could not grant a Special Permit to operate a retail business in the RU District and asked Pam to email Mark Bobrowski and ask him to render his legal opinion on this issue. The Board voted to hold a site visit on Tuesday, January 22<sup>nd</sup> at 4:00pm and to continue the hearing until January 24<sup>th</sup> at 5:15 pm.

The meeting adjourned at 7:10pm  
Respectfully Submitted,  
Pam Thors, Board Administrator