

**WEST TISBURY ZONING BOARD OF APPEALS**

**Minutes for Thursday, February 20, 2020 meeting**

**2<sup>nd</sup> Floor, West Tisbury Town Hall - @ 5:00 PM**

Approved at the meeting on March 26, 2020

**Present:** Nancy Cole, John Rau, Julius Lowe, Larry Schubert, Deborah Wells and Andy Zaikis

**Absent:**

**Also Present:** Joshua Baker, Simon Thompson, Kevin Cusack, Geoff Rose, Chris Egan and Pam Thors, Board Administrator.

The minutes of the meeting held on February 6, 2020 were approved with corrections.

The following invoices were reviewed and signed-Payroll-\$2,320.50

Nancy read the letter from the Building Inspector to Patricia Peters dated 2/5/2020 regarding an unpermitted accessory structure and 2 businesses operating without permission by the town on the property; Map 11, Lot 111. The board discussed the letter and the location of the property.

Nancy read the letter from the Planning Board to the ZBA supporting the allowance of a bar sink in the pool house on the O'Connell property; Map 15, Lot 1.1.

**5:15 pm-** A Continuation of a Public Hearing on an Application from Crown Castle for Sprint to amend a Special Permit granted on March 15, 2000 to allow the addition of three remote radio heads 10"x15.8" (non-antenna), and to modify their antenna mount at the top of the existing tower under Section 8.8-1, 3.1-1 and 9.3-3 of the Zoning Bylaws, Map 28, Lot 1, 71 Airport Rd., LI2 District.

The notice was read and Pam stated that the final Martha's Vineyard Commission (MVC) hearing on this application is taking place tonight.

*The Board voted unanimously to continue the hearing without testimony until March 12<sup>th</sup> at 6:15pm.*

Nancy read the letter from Joe Tierney, Building Inspector to Julie Flanders regarding violations on Map 22, Lot 7, 66 Old Courthouse Rd. pertaining to the dilapidated fence around the cell tower.

**5:35 pm-** A Public Hearing on an Application for Special Permit from Simon and Zoe Thompson to construct a 30'x15' in ground swimming pool and a 30'x15' pool house with a full bath on a lot located in the Coastal District under Section 8.5-4 (C) of the Zoning Bylaws, Map 38 Lot 3.2 40 Watcha Club Rd. RU District.

The notice was read and Simon presented the application to the board. He said he has been working diligently to stay within the confines of the Conservation Restriction on the property and the Zoning Bylaws while developing the plans. He explained that they had moved the location of the pool to be further from the 100' buffer zone. Josh Baker from Schofield, Barbini and Hoehn outlined the fencing, landscape and lighting plan. Simon said that they are looking to have the development cause as little impact as possible.

Simon described the pool house. He said that it will have an open plan with a few sets of glass sliding doors to allow as much air flow as possible. He stated that the structure will be uninsulated per the restraints of the Conservation Restriction. He said the pool will not be chlorinated but will utilize the most up to date filtration system and materials. Pam asked about the digging for the pool, referencing the Conservation Commission's request to dig from the side opposite the buffer zone to limit disturbance to that area. Simon said that they will be digging toward the buffer zone and will utilize silt fencing to limit the impact of construction.

*A motion was made to close the Public Hearing and open the Board Meeting.*

*A motion was made to Grant the Special Permit with Conditions. The vote on the motion was unanimous.*

**5:55 pm-** A Public Hearing on an Application from Kevin Cusack to Appeal an October 26, 2019 Decision of the West Tisbury Zoning Inspector to deny a building permit for a 2,520 sf. pole barn on a lot located in the Major Roads zone under section 4.2-1 of the Zoning Bylaws. The Appeal is filed under MGL Ch40A Section 8 and 15 of the Zoning Act. Map 25, Lot 9, 22 Scotchman's Ln., RU District.

The deadline date for the appeal was discussed. The letter from Joe Tierney dated October 26<sup>th</sup>, was also reviewed. It was determined that the appeal was not filed in a timely manner (within thirty days from the date on the letter). Kevin Cusack described their point of view; the building inspector was calling the structure a non-residential structure which cannot be, according to the dimensions table in the bylaws, over 2,000 sf. The definitions for Accessory Residential Structure and Non-residential structure were compared. The applicant claims that the building has a strictly residential, (as opposed to commercial) use.

Larry brought up the fact that the site plan indicates that the lot is under 3 acres and asked if accessory structures on a non-conforming lot that are over 676 sf are allowed by Special Permit and what the limit is for size. Julius said that it's not that they can't build the structure but they have to come before the ZBA under section 11.2-2, Accessory Structures on Non-conforming Lots. Nancy stated her opinion that Joe is interpreting the use incorrectly but because the lot is actually undersized, they would still need a Special Permit. Nancy suggested that the appeal be withdrawn without prejudice and that a letter be sent to Joe stating that the ZBA is in agreement with the applicant and that if the lot is indeed 3 acres, that he issue a building permit. Nancy said that if Joe deems the lot to be under 3 acres, the applicant should come back to the ZBA. John stated his concern for allowing a withdrawal. It was explained that granting permission to withdraw without prejudice allows the applicant to come back to the ZBA inside of 2yrs time. Julius stated that the applicant should withdraw this application and come to ZBA for a Special Permit under 11.2-2. Kevin said that he believes that the lot was re-measured and that it is in fact less than 3 acres. He asked the ZBA for permission to withdraw the application.

*A motion was made to close the Public Hearing and open the Board Meeting.*

*A motion was made to accept the request to withdraw the application without prejudice. The vote on the motion was unanimous in favor.*

**6:15 pm-** A **Continuation** of a Public Hearing on an application for a Special Permit from Patient Centric of Martha's Vineyard, Ltd. to amend Special Permit #2017-03 to allow an 1,800 sf. internal expansion of cultivation area and conversion of a second floor storage space to a vegetative room within an existing structure approved for the cultivation of Medical Marijuana under section 3.1-1 and 9.3-3 of the Zoning Bylaws, Map 21, Lot 12, 90 Dr. Fisher Rd., LI1 District.

The notice was read and Geoff Rose presented the application. It was determined that the prior hearings were continued without testimony awaiting action of the Martha's Vineyard Commission (MVC). Geoff stated that he had applied to them in September to modify the DRI in effect to allow the use of 1,800 sf. on the first floor of the building that was slated for use by Big Sky Tent Rental for storage. This part of the ZBA application was approved at that time. The part of the ZBA application asking for the "conversion of a second floor storage

space to a vegetative room”, was not addressed by the MVC at that time. It has since been approved by them so the ZBA is now empowered to act on this application.

Larry asked about selling the recreational use marijuana. Geoff said that he came before the ZBA on Feb. 6<sup>th</sup> and the application was referred to the MVC. So, the application for Special Permit to sell from the previously approved Medical Marijuana Dispensary has not yet been approved by either the MVC or the ZBA. He then asked if the marijuana that is grown can be sold by someone else. Geoff said it cannot be sent off island to a different retailer because of the Federal Laws in place which prohibit the transfer of marijuana on Steamship Authority vessels but could be sold to another on island retailer to sell. He said that ideally he will be able to cultivate and sell but that they are two totally separate Special Permits.

Chris Egan expressed his concern that there is no limit on the amount of recreational use marijuana that may be cultivated. Nancy said that the limit is dictated by the size of the grow facility. She recapped that Geoff is limited to 1,000 sf. of Medicinal Marijuana and 1,800 sf. of recreational marijuana. Julius reiterated that the built in limitation is the size of the building. Nancy voiced the concern expressed by the neighbors that the business could grow. Geoff mentioned that the number of parking spaces limits the production as well. He said that the product is going to be transferred by Ford F150 Vans...not huge trucks. Deborah asked if there is a difference in the product-medical vs recreational. Geoff said that the only difference would be price. He said that difference is in the 20% sales tax which will be recouped in part by the town. Nancy asked which is cheaper and Geoff verified that the medicinal is cheaper because it cannot be taxed. Andy asked Chris if he had to make a choice to limit the size of the facility or limit the sales to West Tisbury residents only, which he would prefer. Chris said that neither is an attractive option. He said that the idea of it being sold in town at all is objectionable to him. John said that this part of the equation has already been settled as the bylaws allow it. John asked if a condition of approval can be made that limits future applications to the ZBA. Larry said that since the bylaw does not limit the total grow capacity, the only limit is the size of the building.

Geoff mentioned the “fear factor” which caused the limit to be put on the allowable canopy area of medical marijuana cultivation. He said that it is seven years later and that the fear factor should be put aside. Nancy suggested that some townspeople may not, when they approved the cultivation of recreational use marijuana, have wanted to see it sold in town, creating traffic issues and introducing an element not unlike having a liquor store in town. Geoff stated that his application included a very thorough traffic study which he hoped would alleviate traffic issues. Larry spoke to the process of going through the Planning Board to change or update the bylaws. Chris stated whether the dispensary is in town or not is not his concern but the growth of the business over time is. Julius said that it is not within the purview of the ZBA to condition approval that puts limits on future applications and that they can only act of the bylaw as presently exists.

Nancy reminded the room that the application before them is the conversion of the 209 sf. storage space to a vegetative area. Chris asked if the commercial kitchen in the building seems to be a flaw in what was allowed. All agreed that this is a Board of Health issue which has nothing to do with the decision before them.

*A motion was made to close the Public Hearing and open the Board Meeting*

*A motion was made to approve the Special Permit with Conditions. The vote on the motion was unanimous.*

Nancy explained the twenty day appeal period.

The meeting adjourned at 7:15 pm. Respectfully Submitted, Pam Thors - Board Administrator

