

## WEST TISBURY ZONING BOARD OF APPEALS

Thursday, March 2, 2023

Meeting Minutes

*Approved March 16, 2023*

**Present:** Larry Schubert, Julius Lowe, Deborah Wells, Andy Zaikis, Jeffrey Kaye, Casey Decker, Pat Barrett  
**Absent:**

**Also Present:** Kim Leaird (*Board Administrator*), John Abrams, Jeffrey DuBard, Farley Pedler, Debra Cedeno, Stan Hersh, Beth and Patti Goodale, Brad Abbott, Alice Kyburg, Karen Ogden, Mary Fohlin, Delia Yapp, Bob Yapp, Taffy McCarthy, Heikki Soikkeli, Wyatt Hamilton, Annie Parr, Phil Regan

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*Julius Lowe recused. Andy Zaikis unable to act on application.*

**5:00 pm** – (*Continued from February 2, 2023*) A public hearing on an Application for Modifications to a Comprehensive Permit granted to **John Abrams and South Mountain Company** in 1998, for plans to subdivide **Assessor's Map 10, Lot 200** in order to create a 3.17-acre parcel that will have six (6) structures including four (4) housing units with a total of 11 bedrooms: one 2BR unit and two 2BR units (80-140% AMI) and one 3BR house to be sold to a West Tisbury family under M.G.L. Chapter 40B, Modifications to a Comprehensive Permit, at **0 Red Arrow Rd. (20 Rock Pond Rd.)** in the RU district.

Larry read the hearing notice. John Abrams said there was one minor error in the hearing notice: There will be three 2-bedroom units, and one 3-bedroom unit. Larry said that was the announcement, and he was not worried about [how it effects this hearing].

The hearing was opened on February 2 and Paul Haverty from Mass Housing Partnership was here to help us through the modification of the 40B process. The board was ready to vote on February 2 but had a note from the Building Inspector that there was a violation on the property and it needed to be cleared before it could be voted upon. There is correspondence from the Building Inspector that they are now in compliance.

Paul Haverty drafted the decision and it looks to be in order so once the board votes, this 3.17-acre parcel will no longer be part of the 40B development.

*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 Approve the Modification to the Comprehensive Permit, allowing the 3.17-acre parcel to be removed from the 40B development.*

*A roll call vote was taken with the following resulting votes. Motion passed 5-0.*  
*L. Schubert-yes, D. Wells-yes, J. Kaye-yes, Casey Decker-yes, Pat Barrett-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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**5:15 pm** – A public hearing on an Application for a Special Permit from **Farley J. Pedler**, to construct an 18’x44’ inground fiberglass pool with an automatic cover and electric heat pump under Section 8.5-4C of the Zoning Bylaws, at **50 Dr. Fisher Rd., Map 21, Lot 13.2** in the RU district.

Larry read the hearing notice and opened the hearing at 5:15 p.m. There was correspondence from the Planning Board that stressed the requirement that a fence surround the pool.

The board looked at the plot plan. Farley Pedler said the language from Mass. state law is that there be a four-foot barrier. Joe has a fairly liberal interpretation of that and will allow construction of a stone farm wall to act as a fence. Their plan is to have a combination of stone farm wall for one part and the rest will be vinyl fencing. It will begin at the screened porch and surround the pool and yard.

The pool equipment will be housed in an existing 18’x16’ shed that will be insulated on the side that houses the equipment. The shed is approximately 100 feet away from the pool. They are not asking for setback relief. There is a 400-foot limit to the West Tisbury School well site and the pool is 73’ away from the beginning of that limit. Larry asked if he was restricted by location on this piece of his property as it is near the West Tisbury school well. There are no setback requirement limits to the school’s public well supply, but Farley said restrictions include no septic, no discharge of pollutants on that part of his property. The lot is 4.78 acres.

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

There was no further discussion. Casey reminded the applicant that Joe goes exactly by the approved plan.

*It was moved and seconded to Approve the Special Permit.*

*A roll call vote was taken with the following resulting votes. Motion passed 7-0.*

*L. Schubert-yes, J. Lowe-yes, D. Wells-yes, A. Zaikis-yes, J. Kaye-yes, Casey Decker-yes, Pat Barrett-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. He also said there would be standard pool conditions as part of the special permit.*

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**5:35 pm** – A public hearing on an Application for a Special Permit from **Wyatt Hamilton**, to allow the transport of logs to his property on Tuesdays and Thursdays only; and to allow splitting wood Monday thru Friday on some rain/snow days only, Dec. thru Mar., 8am-3:30pm, under Sections 8.5-1B and 8.5-2 of the Zoning Bylaws, at **193 Otis Bassett Rd., Map 17, Lot 48** in the RU district.

Larry read the hearing notice and opened the hearing at 5:35 p.m. Wyatt Hamilton said he wants to be able to split firewood at his house. John Keene’s is closed for log dumps on Tuesdays and Thursdays which backs up his business and so he would like to bring the logs back to his house on those days and split them [for firewood]. The board asked several questions about the business once they determined splitting wood is for his business.

Wyatt said he owns a tree company and has been doing this work for two years. He filed for an S-Corp in May. He had been parking a dump truck and a bucket truck on his property but now rents space [elsewhere] because he was told he was not allowed to keep them there. He started splitting wood on his property last year.

Larry asked if he had received a notice from the Zoning Inspector [to cease work]? Wyatt explained that one of his neighbors threatened to call the police because the splitter was making too much noise. Joe Tierney came out and told him to stop or confine [the splitting] to 3-5pm. He told him if he did not want to have an issue about it, he could file for a special permit from the ZBA.

The type of equipment used is a hand-splitter (a 2-stroke engine that makes noise). Jeffrey asked what he uses to transport the logs to his property and if there was any way he could split them at John Keene's. Wyatt said he throws logs in the dump truck to his house. John Keene's is his own business and could not split the logs for him.

Pat asked if he could just bring the logs to Keene's to store without splitting them. Wyatt said he could but then his jobs get backed up.

Larry said transporting logs and splitting them for your own private use is different than selling firewood: this is a business. He is in front of the board for a Home Occupation by Special Permit which is much different than those allowed by right. He thought that #5 *regarding persistent or excessive sound, vibration or odor* was a requirement not in his favor. Processing wood is a noisy business.

#### **B. Home Occupations by Special Permit (8.5-1B)**

Home occupations that do not comply with Subsection 8.5-1(A) shall be allowed by Special Permit if, in the opinion of the ZBA, they satisfy the following requirements:

1. The occupation is clearly secondary to the use of the premises for dwelling purposes.
2. There is no exterior change which alters the agricultural or residential appearance of existing structures. Any new structure for the occupation conforms in appearance to the agricultural or residential character of the neighborhood.
3. No items are offered for retail sale unless produced on the premises, except for minor accessories customarily sold with the principal product or service provided.
4. No more than three persons are employed in any occupation or combination of occupations on the premises, unless the Zoning Board of Appeals agrees to reasonable modifications.
5. **There shall be no evidence of the occupation through persistent or excessive sound, vibration or odor at the boundaries of the premises.**
6. Any exterior storage of materials or equipment shall be screened from off-premises view by vegetation, grade or location, unless the Zoning Board of Appeals agrees to reasonable modifications.
7. Parking for the business or occupation shall be located off-street and screened as in f above, unless the Zoning Board of Appeals agrees to reasonable modifications.
8. Not more than two vehicles requiring registration as taxis, buses, and not more than two vehicles in excess of 10,000 pounds GVW shall be regularly parked on the premises.
9. Traffic generated shall not be more disruptive to the neighborhood than traffic normally resulting from agricultural or residential development considering volume, type and hours, unless the Zoning Board of Appeals agrees that reasonable modifications are justified by the size and location of the lot.
10. Such use shall not cause or contribute to any erosion of land or increase surface water drainage from the lot.
11. The occupation shall not create hazards, unacceptable disturbances, unacceptable injury to the neighborhood, or unsightliness visible from any public way or neighboring property.

Deborah asked if any of the firewood is picked up by customers or if it's all delivered. Wyatt said it is all delivered.

Andy asked to clarify that normally he would bring logs to Keene's, get them cut, and then get paid. Now he wants to bring the logs to his property -- not just to store them but also to split them. If they are stored [on the property], the cut wood needs to sit for a year to season. Andy asked how many cords he intends to store and how large the cut piles of would be.

Wyatt said he didn't know but he has approximately 12 cords right now. Discussion followed that if he were splitting his wood for his own personal use there would not be a limit on the amount of wood he could cut. But as a business [in a residential district] this is not neighborly.

Jeffrey referenced traffic review criteria under West Tisbury zoning bylaw 9.2 regarding traffic and asked how many trips he anticipated to make back and forth per day. Wyatt said one per day.

#### Public comment

Larry read letters of concern received from *Jonathan Baker, Kate DeVane, Elle Lash, Nancy Salon, Mike Houghton*, and the *Planning Board*.

Deborah Cedeno (attendee) is president of the Road Association and an abutter who lives across street. She said that almost all of the abutters on both Otis Bassett Rd. and Skiffs Lane are here tonight objecting to this application. She said technically the road association should have been noticed of the hearing and recognized that concerns of abutters usually take precedence but, in this case, the [entire] neighborhood owns the road.

She said that while she and Wyatt have been neighborly, she is here because it's a business and, in the past, there was a chipper for a really long time and it was very loud (a previous owner). She wanted the board to know that the skid steer that actually moves the equipment is super loud too and vibrates the ground. This is not personal; it's for the quiet enjoyment of [the neighbors'] property. She said that she's had to move company indoors because it's too loud to hear anyone. When Carl Sobel was denied before one of the important things to qualify is if there were an approval of a business to cut wood – there are so many open-ended ramifications. She said it is important the board understand the disruptiveness.

Jeffrey asked if there was anything in the road association rules that governs this type of activity on this road. Deborah Cedeno said, no, not right now but that was going to change. He asked if it impacts neighbors beyond the 300ft. She said yes, there's dust kicked up with transportation, noise, potholes, etc.

Taffy McCarthy, (attendee) is an abutter on Skiffs Lane directly behind the business part of the property. She said it already feels like a really big business. There appears to be a whole other wing to the business now. There are mountains of ground-up wood and dust over a big area, which worries her for rodents. She said it already feels like she's at Keene's; it's not in any way a small [operation]. She said they get a cord of wood for winter and [just] one is a lot of wood. She said it's aggravating to look at, it's invasive, and takes a lot of her energy. She added that he was responsive to her request that he install an electric fence to keep his dogs contained after his dog visited her property and cat.

Larry asked if any other board members had questions. No one did. He told Wyatt that once they close the public portion of the hearing, they would discuss the application. He said if the board votes no, he could not come back to the board with a similar amended application for two years and offered him the chance to ask to withdraw his application without prejudice. Wyatt said he applied to get a decision.

*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 DENY the Special Permit. A roll call vote was taken with the following resulting votes. Motion passed 7-0.*

*L. Schubert-no, J. Lowe-no, D. Wells-no, A. Zaikis-no, J. Kaye-no, Casey Decker-no, Pat Barrett-no*

*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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*Pat left meeting at 6:20pm.*

*Annie Parr, who was scheduled for 6:15pm was allowed to go before the 5:55pm hearing for Maria and Bruce Bullen*

**6:15 pm** – A public hearing on an Application for a Special Permit from **Annie Parr**, to allow a 20’x20’x1” sign for a home occupation under 8.5-1B and 8.5-2 of the Zoning Bylaws, at **5 Murphy’s Rd., Map 32, Lot 4** in the RU district.

Larry read the hearing notice and opened the hearing at 6:26 p.m. Annie Parr said that Chris Murphy sent a letter of support but it was not received by the Administrator.

This is a home occupation allowed by right under 8.5-1A. The only reason the Building Inspector required her to get a special permit is because she wants a sign and they are explicitly not allowed under 8.5-1A.

*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 Approve the Special Permit to allow Applicant to put a sign on her home.*

*A roll call vote was taken with the following resulting votes. Motion passed 6-0.*  
*L. Schubert-yes, J. Lowe-yes, D. Wells-yes, A. Zaikis-yes, J. Kaye-yes, Casey Decker-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** – A public hearing on an Application for a Special Permit from **Maria and Bruce Bullen**, to convert 100 sq. ft. of non-habitable space in existing pool house to habitable space, expanding to a total of 262 sq. ft. of habitable space on the first floor, (550 sq. ft. both floors), and relocate pool equipment and outdoor shower behind the pool house under 11.1-3A of the Zoning Bylaws, at **89 Pond Rd., Map 30, Lot 2.68** in the RU district.

Larry read the hearing notice and opened the hearing at 6:35 p.m. This is an existing pool house that already has a bedroom in it. Larry said he saw an old plan in the Building files and asked Jeffrey Fisher if he had any certificate of occupancy for the pool house and he did not. Larry also spoke to Board of Health and there was a file with a septic plan that approved the 5-bedroom system. Heikki interjected that it was for six bedrooms.

A 1989 plan found in building files shows the house and the pool house with the bedroom. The applicant is applying to reconfigure the first floor of an already existing bedroom in a pool house.

Architect Heikki Soikkeli said the building is approximately 18'x18' and right now there is a bathroom, a traffic area, and a large closet that houses pool equipment in addition to an outdoor shower --inside but open to the outside. They would like to take the pool equipment closet and move it outside the building to an underground crawl space 'shed' attached to the building and then move the outdoor shower behind the building [so that it is fully outside].

The plan is to convert the space left behind and increase the habitable area on the first floor by constructing more of a bathroom (floor plan shows the addition of a shower) and a sitting area. Heikki said that they are expanding the habitable space within the existing structure but not expanding the existing footprint.

Julius said doing this takes it over the maximum square footage allowed for a detached bedroom and increases the nonconformity. Heikki said it was over the maximum square footage to begin with. He thinks the pool house was built in 1997 and it was 2015 when the detached bedroom bylaw was incorporated into the zoning bylaws, making it a pre-existing use. It is nonconforming now and he confirmed they want to increase the nonconformity.

Larry said under 11.1-3A this board can vote to allow that. Heikki said the reason they are looking to convert this first floor is that they have an adult son who needs his own space apart from his parents. He does not need to cook, his parents make his meals, but they want to expand the first floor so that the son has his own space to watch TV, etc., so a sitting area.

Larry said if they were to approve it, they would probably condition that it couldn't be rented, etc.

There was a letter from the Building Inspector that said his opinion is that *"the pool shed appears to be a conforming structure and meets current setback requirements but the detached bedroom was added without a building permit, by a previous owner. That does not make it nonconforming, it is a violation of Section 10.1-1A of the Bylaws."* There was also a letter from the Deep Bottom Pond Owners' Association that says their development does not allow guest houses due to a clause prohibiting them in the decision from the Martha's Vineyard Commission. They would not oppose, however, the approval of a "detached bedroom."

Larry said that a couple of things could happen. Either Joe rescinds his opinion or Applicant appeals Joe's opinion and the Board could act. Based on the plan Larry found downstairs, the house and pool house were built at the same time and the plan was labeled as a pool house with detached bedroom. In his opinion, it was not created illegally, but he suggested they continue this hearing in order to discuss the matter further with Joe.

A motion was made to continue the hearing to April 6, 2023 at 5:15 p.m. Casey noted that he would not be present on April 6.

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

*L. Schubert-yes, J. Lowe-yes, D. Wells-yes, A. Zaikis-yes, J. Kaye-yes, Casey Decker-yes*

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## **Informal Hearing**

### **71 Carl's Way, Map 35 Lot 7, Phil Regan, Hutker Architects –**

Phil Regan said that before they file an application with the ZBA they wanted to make sure their request would be reasonable. They had a first hearing with the Conservation Commission and return March 28. The commissioners have a lot of questions in regard to the development of the property. There are a series of setbacks, including the river setback. The existing house straddles the river setback line and touches the floodplain line. There is also an existing guest house. Their plan is to move everything back but it's a confined area within the 50' setbacks on a 3-acre lot.

There is a split-level bedroom wing designed to go downstairs to get to two lower bedrooms, then up a half flight to get another two bedrooms.

When set up the lower level was at elevation 7 ½ but in December and January they were seeing groundwater readings higher than ever at around 5. When they first designed the plans, they thought they'd be 3-4 above groundwater but are now worried about that in light of the higher readings.

Their thought is to request 4 feet of height relief so they can do a traditional second floor instead. They'd still have a lower bedroom level, probably about four steps down and then up 10 steps to the second level and this would get them a couple of extra feet above groundwater. The ConCom did say they'd like to see them as far away above groundwater as possible.

Phil said that when he spoke informally with the Planning Board last year about this property they said it's open terrain. The portion they'd be requesting height relief is obstructed by the house and tucked in to the vegetation. He shared floor plans with the board and showed the portion of the building in question. They're at 18 feet now and if they could add 4 feet it would help. It would be 22 feet in just in that one section.

Phil said he did not bring it to the Planning Board formally yet.

Discussion followed briefly about under what section of the bylaws would they be able to grant height relief and whether or not it should go to the Planning Board first as they called it open terrain.

Larry asked if they didn't get to build up, would they expand the footprint? Phil said they tried to do that first but there are so many setback lines that makes that hard. They are trying to save a couple of trees and keeping the same grade.

Andy suggested the property owner discuss with his neighbor about setback relief vs. height relief. Phil said he'd relay that to the owners. The only reason they're here inquiring is that the groundwater is much higher than expected.

Larry said that he, Kim and Jane should talk and see how to proceed.

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## **Other**

- **Minutes of February 16, 2023.** Pat said he was okay with them. Jeffrey said he didn't want to vote on these minutes without also reading the February 23, 2023, minutes. Kim said she'd get him the audio of both meetings.

- **Appoint a new Affordable Housing committee representative.** Larry said last time they talked about this they were waiting for a recommendation, but have not yet received one.
- **April meeting schedule.** In light of election day and town meeting dates, the board voted to meet April 6 and April 27.
- **Jeffrey Dubard.** Asked for board's input on a Planning Board issue. Sometimes really useful houses like one on Little Homer's Pond Rd. in Chilmark are knocked down when they could be re-used or repurposed elsewhere. Larry said in West Tisbury, if a demolition permit is requested, Joe is required to go out and inspect the structure. We already have that bylaw. Jeffrey said there should be a formal process, one flagged by Joe, that would require an RFP [for what? Unclear]. Larry said that would be the Planning Board and then you'd have to get support for it with the community. Deborah agreed and said they have that mechanism, not the ZBA.
- **Chris Cottrell, 274 Indian Hill Rd.** The board voted to accept Mr. Cottrell's request to withdraw his application in front of the ZBA without prejudice. It had not yet been noticed as we had been awaiting plans, but the time to act expires on March 16.

The Meeting adjourned at 7:35 p.m.

Respectfully submitted,  
Kim Leaird, Board Administrator