

**WEST TISBURY ZONING BOARD OF APPEALS**

**Minutes for Thursday, March 25, 2021 meeting**

**Online meeting via ZOOM- @ 5:00 PM**

**Approved on April 29, 2021**

**Present:** Larry Schubert, Julius Lowe, Deborah Wells, John Rau, Jeffrey Kaye and Casey Decker

**Absent:** Andy Zaikis

**Also Present:** Pam Thors, Bd. Administrator, Reid Silva-VLSE, Tucker Pforzheimer-MV Farmers Market, Woody Bowman, Joseph and Lydia Santangelo, James Moffat, Jonas Herbsman, Gail Tipton, R. Kirkham Safford and Kristine I. Scheffer, Tucker Hubbell, John Scherlis, Louisa Hufstader

The minutes of the March 18<sup>th</sup> meeting were reviewed and approved with corrections.

*A rollcall vote was taken with the following resulting votes; L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes and J. Kaye-yes, 5 in favor and 1 abstention, (Casey Decker).*

**Lambert's Cove Inn-** John stated that he had been present at the last Board of Selectmen's (BOS), meeting and the Lambert's Cove Inn's application for the event permits for the upcoming season was reviewed. He stated that Jen noted that Finding number 7 of the Decision rendered by the ZBA in 2019 for the Inn, requires a review of the "Outdoor amplified speaking events" one year from the date of the Decision. The BOS approved the event permits application with the caveat that the owners meet with the ZBA to review the overall effect of the outdoor amplified speaking events. John stated that there were three abutters at the BOS meeting who registered noise complaints. According to John, John Cain assured those present that this would not be a problem this coming summer because they would no longer be using the "English Garden", for outdoor events.

Larry asked Pam to draft a letter to John Cain to let him know that the board has put him on the agenda for the April 22<sup>nd</sup> meeting and to send a copy to Jen.

Larry noted that abutters to the Lambert's Cove Inn, Tucker Hubbell, John Scherlis and Louisa Hufstader were present.

**5:15 pm - A Public Hearing on an Application for a Special Permit from The West Tisbury Farmer's Market, Inc. to operate the Farmer's Market at the Martha's Vineyard Agricultural Society, Inc. property at 35 Panhandle Rd., Assessors Map 25, Lot 1.1 RU District for the 2021 season under Sections 3.1-1 and 8.5-2 of the Zoning Bylaws.**

The notice was read and Tucker Pforzheimer representing the Farmer's Market, Inc. read the narrative accompanying the application. The request is to hold the Farmer's Market at the Agricultural Hall this summer due to the ongoing issues of COVID-19. He explained that the Board of Health cannot allow the market to operate out of the Grange property because of the lack of space to continue safe social distancing. He said that the layout and procedure used last year at the Agricultural Society property will be implemented again. The dates of operation for this Special Permit run from June 12<sup>th</sup> to October 27<sup>th</sup>.

A letter was received from the Agricultural Society in support of the application. Included in the letter was reference to their opinion that the Farmer's Market should not be required to apply for a Special Permit to operate on their property. It was noted that the Board of Selectmen, (BOS), would not allow it without a Special Permit. Larry noted that historically, the BOS has been involved with the permitted uses of the Ag Society.

Woody Bowman spoke in support of the application, noting that last year the market, in the midst of the pandemic, was handled very well. He said he wonders why a Special Permit is necessary.

Julius asked if this could be approved as an ongoing use, rather than requiring a new application each year.

Tucker stated that although he appreciates the idea, he would rather focus on the upcoming season and his application for Special Permit as submitted.

Deborah asked if the conditions of the pandemic changed for the good, if the Farmer's Market could change their procedures without coming to the ZBA. Larry stated that any change to procedure, as described in the narrative, would require an informal hearing with the board who at that time, would decide if the change is de minimus or substantial enough to require another Public Hearing.

*J. Lowe moved and J. Kaye seconded a motion to close the Public Hearing and open the Board Meeting.*

*A rollcall vote was taken with the following resulting votes; L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, J. Kaye-yes, and C. Decker-yes.*

Larry went over the 20-day appeal process, noting that this is a use permit on a property not owned by the applicant and therefore did not need to be recorded.

**5:35 pm-A Public Hearing on an Application for a Special Permit from Joseph and Lydia Santangelo to construct a 12' x 24' in-ground lap pool and a 987sf. guest house with an attached garage on a lot located in the Inland Zone of the Coastal District under Sections 8.5-4 (C) and 6.1-5 (B) of the Zoning Bylaws on Map 1, Lot 38, 55 Naushon Rd., RU District.**

The notice was read and James Moffat, the engineer representing the applicants, presented the details of the project. He said that the proposed pool would be about 110 feet from the coastal bank and that the surrounding terrace is raised. The floor plans and elevations for the guest house and attached garage were also reviewed. James noted that a stone wall runs around the perimeter of the terrace and that the pool equipment would be located underneath. He said that alarms will be installed at all windows and doors adjacent to the pool area as well. He also stated that the lot is pre-existing non-conforming and that the garage is not accessible from the guest house. It was noted that the guest house is under 1,000 sf and below the 18' height restriction. He said that the main house was allowed to be 20.5 feet high because the Planning Board found the lot to be open in some areas and treed in others.

The fact that the accessory structures are in front of the main dwelling was discussed. Pam said that they appear to be 100' back from the road, thereby complying with Section 4.2-2(D)3 which requires twice the front yard minimum setback, (50'). The site plan confirms that they are at least that far from the road.

Pam read the correspondence from Joe Tierney, Building Inspector, The Planning Board and an email from Maria, Conservation Commission, (Concomm), Board Administrator, (please see file).

Larry asked James if the lot and structures were staked out at the time that the Planning Board reviewed the application. James said that they were and that the Planning Board had reviewed the same plans as those included in the Special Permit application.

Deborah noted that Maria's email indicates that her board did not review the site plan. Larry said that if the project does not encroach on the buffer zone, the applicant is not required to file a "Notice of Intent" with the Concomm. He noted that the "limit of work" fence must be maintained throughout construction.

Pam mentioned the issue that came up regarding the retaining wall and Joe Tierney's view of whether or not it is a structure. If it were to be deemed to be a structure, it would require setback relief in one corner. Joe Santangelo said he had discussed this with Joe and was aware of the issue. James stated that this is a gravity wall with no foundation and that it is a landscape feature and not a structure. Casey concurred. Larry clarified that the Building Inspector's comments were related to his ability to issue a building permit and not related to the ZBA ability to grant the Special Permit.

Larry asked if there were any more public comments or questions.

*J. Lowe moved and D. Wells seconded a motion to close the Public Hearing and open the Board Meeting.*

Julius said that there don't seem to be any issues with abutters or setback relief, noting that the subdivision was created prior to the year 2000 and that even though he would rather that the garage be built as a separate structure, the Special Permit request seems reasonable.

*A rollcall vote was taken with the following resulting votes; L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, J. Kaye-yes, and C. Decker-yes.*

Larry went over the 20-day appeal process.

**5:55 pm - A Public Hearing on an Application for a Special Permit from Jonas Herbsman to construct a 14' x 30' in-ground swimming pool under Section 8.5-4 (C) of the Zoning Bylaws on Map 10 Lot 32.4 17 Great Plains Rd. RU District**

The notice was read and Reid shared the GIS map of the Herbsman lot to illustrate the adjacency of the proposed pool to neighboring properties. He then shared the site plan noting that the pool and 10'x10' pool equipment enclosure comply with setback requirements.

Jonas Herbsman commented that the pool would mostly be for he and his wife's use since they do not rent the property, so noise would not be a problem.

Jeffrey asked if the pool will be visible from Stoney Hill Farms. Jonas said that it would not. It was noted that the lot is a "back lot" and is about 750' from Great Plains Rd.

Pam read the two letters in opposition to the project, (see file). Jonas asked that copies be sent to him. He said he had reached out to his neighbors prior to the hearing.

Pam then read the letter from abutter Gail Tipton who offered information regarding some natural options that are designed to protect the water quality on Martha's Vineyard. She asked that the information be emailed to Jonas. Pam said she would do that.

R. Kirkham Safford and Kristine Scheffer, abutters to the property, asked many pertinent questions regarding draining of pools in regard to protection of their well. Reid explained that pools are not usually completely drained. He said that about 8" of pool water would be drained for the off season to leave space between the cover and the water level. He said the water would be drained into the woods, away from any wetland or well.

R. Kirkham said that this lot is predominantly made up of clay soil, which doesn't drain well. Reid said that it actually is sandy soil 6' below the clay in this area.

Larry cited the boiler plate conditions that apply to all Special Permits for pools; not draining toward any well and total drainage of a pool requiring water to be pumped into a tanker. He also noted that the Building Inspector inspects the fencing and the pool equipment shed.

R. Kirkham asked what sources exist here for water to fill pools. Reid said that Oak Bluffs and Tisbury have sources (standpipes). He noted that it is drinking water quality.

Gail asked the board to consider the flow and the fact that there is chlorine in town water. She asked about requiring a dry well. Larry said that the board has not discussed a dry well requirement for this application and to his knowledge, the ZBA has never required one for a pool.

R. Kirkham asked the applicant to cut as little foliage as possible in order to keep noise levels down. Jonas assured him that no trees would be removed.

Larry asked for any more comments or questions from the public.

L. Schubert moved and Julius Lowe seconded a motion to close the public hearing and open the board meeting.

Julius spoke to the concerns expressed regarding the hydrology of the island, agreeing that the concerns are viable. He said that good points were made regarding chemical use and options available to homeowners and on the importance of mitigating the use of ground water.

*A rollcall vote was taken with the following resulting votes; L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, J. Kaye-yes, and C. Decker-yes.*

Larry went over the 20-day appeal process, also noting that it is always good to have a discussion about pools.

Jonas thanked everyone for all the helpful comments, saying that he is happy to keep the lines of communication open with the Safford/Scheffer abutters so as to deal with any issues they may have as the project gets underway.

**Greenberg/Shipkin site plan update** – The board reviewed the new plan which shows the dimensions and location of the pool equipment shed and the location of the Special Way as it relates to the road, the lot line and the pool fence.

The Meeting adjourned at 6:55 pm.

Respectfully Submitted,

Pam Thors-Board Administrator