

## WEST TISBURY ZONING BOARD OF APPEALS

Thursday, April 6, 2023

Meeting Minutes

Approved April 27, 2023

**Present:** Larry Schubert, Julius Lowe, Deborah Wells, Andy Zaikis, Jeffrey Kaye

**Absent:** Casey Decker, Pat Barrett

**Also Present:** Kim Leaird (*Board Administrator*), Heikki Soikkeli, Bruce Bullen, Maria Bullen, Joe Tierney

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**5:00 pm** – The meeting minutes of March 30th were approved 5-0. In addition, Kim shared that Fine Fettle had contacted the office about coming back to the board in May to review the hours of operation as outlined in Decision 2022-39. (“...*review of daily and/or weekly walk-in traffic data AND to re-visit allowing Sunday hours to start June 1, 2023*”). She will forward decision to board and schedule them for an informal hearing.

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**5:15 pm** – (*Continued from March 2, 2023*): 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. Joe Tierney issued a letter today that spoke to the advisability of either applying for a variance or appealing his determination which states: *The existing structure exceeds 120sf and would have required a building permit, at the time of construction, under 780 CMR 6<sup>th</sup> Edition Section 110.3(1)*. He was unable to locate a building permit for the [pool house] structure. Now that ten years have passed Chapter 40A Section 7 would apply, making it a *legally non-conforming structure* subject to Chapter 40A Section 6. This directs applicant to apply for the extension or alteration of a preexisting nonconforming (PENC) structure, which is the current application. However, he believes that the ZBA is unable to approve an alteration that exceeds what is allowed by the Zoning Bylaws.

Mrs. Bullen said she had looked at the 1997 ordinance and believes the Rosbecks must have built the current structure as a ‘subordinate dwelling’ and noted there was no ‘detached bedroom’ definition back then. She also noted that at the time, subordinate dwellings were allowed only for family members. Given this information, she had believed they should apply for an increase in the use under 11.1-3A.

Andy said the simple solution would be to keep the proposed renovation at or below the 400sf. Andy said the downstairs is not currently habitable and they propose to make it habitable [and over what is allowed].

Mrs. Bullen said this a preexisting building and the bedroom is on second floor. They are not expanding the structure or footprint, they are trying to simply change the use of the existing structure. On the first floor is a closet with noisy pool equipment that they hope to move outside to a shed. They want to move the indoor/outdoor shower so it is completely outside behind the PENC structure. There is no new construction.

Heikki said he's not sure this building was not permitted back in 1997. Plans show a pool house as part of the permit set. They don't show a bedroom but they do show a loft. The existing structure has 162sf of habitable space on the first floor. That means the current building has 450sf of habitable space and it already exceeds what the current bylaw is for a detached bedroom. The Applicant is asking to convert 100 sq. ft. of the first floor to habitable space by moving the shower outside and creating a fully indoor shower.

Heikki said that the Applicant wants a small apartment for their adult son. Heikki said this could be termed an affordable accessory apartment, however, the subdivision rules do not permit guest houses and most likely would not allow affordable accessory apartments either. The neighborhood's Architectural Review committee already approved the expansion of the detached bedroom. This is not a guest house, there are no kitchen facilities [and none planned].

Julius said one way around this is to make the interior space accessible only via the outside with stairs. However, if it was permitted back in 1997 – there are certainly other conditioned accessory structures that are not habitable – such as pool houses with offices or studios. He said we don't give special permits for making structures larger than what is outlined in our dimensional table. He wondered if it was more logical to think of this as an accessory dwelling unit, since an "ADU" is not a guest house.

Jeffrey said that Joe had issued an opinion that they need a variance or an appeal of his decision and thought this seems to be the procedural issue right now in front of them.

Larry asked Joe about the PENC structure determination he made. Joe said per Ch.40A Section 7, he determined that because there does not appear to be a building permit for this structure, it converts to a "building for storage". The desired use they've applied for exceeds what's allowable in the Zoning Bylaws.

Larry clarified for all that this is Joe's opinion and if and when someone appeals his decision, the ZBA determines whether or not he's correctly interpreted the zoning bylaws of West Tisbury. A variance is limited to hardship: financial, topography and otherwise.

Jeffrey agreed and said he thought the board has a lot of discretion to grant a variance.

Deborah asked the Bullen's if this is a habitable space their son will use. Mrs. Bullen said it will be a separate living space for their 34-year-old disabled son. Julius thought in this particular case, what they want to do may be more suitable for a variance.

Jeffrey asked if the homeowners association was going to weigh in again. Mrs. Bullen said she had many conversations with them and they are only concerned that it not be a guest house – she has assured them this would not be one.

Mrs. Bullen said that she has plans that show the pool house, the first floor with a staircase leading up to the second floor with an arrow pointing to the loft and assumed they came from the building department. In the old 1997 ordinance, the definition of a bedroom included sleeping lofts and she would think it was permitted at the time.

Joe said the Board of Health does not have any documents indicating that this was a bedroom. He also has not located a building permit for the pool house, only the main house and the pool and spa. He said he's not seen that plan with the loft.

Heikki said the plot plan for the Board of Health shows the septic system and the pool house with a connection to the bathroom in the pool house. At some point somebody had to know about it because it was all done at the same time.

Joe said there is a plumbing permit for a bathroom downstairs. He agreed that the bathroom was included, but there's no record for the bedroom in the existing pool house.

Larry said logic says that a plumbing permit would not have been issued for a bathroom in that structure if the building department and official did not think the pool house was included.

Joe said back then, plumbing permits were issued by the Board of Health.

Julius said rather than trying to rehash what documents exist, he thought there are four paths forward: 1) Change the footprint of the PENC to make it 400sf; 2) apply for a variance; 3) apply to make it an accessory dwelling unit; or 4) appeal Joe's decision.

Larry said he would suggest the Applicant consider withdrawing their application and reapplying for a variance. If the board votes to allow a variance we can still condition it (i.e.: can't be rented separately from main house, not used as a guest house, no kitchen, etc.)

Maria Bullen requested to withdraw their application without prejudice.

*It was moved and seconded to allow the Applicant to withdraw the application*

*A roll call vote was taken with the following resulting votes. Motion passed 5-0.*

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

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The Meeting adjourned at 6:00 p.m.

Respectfully submitted,  
Kim Leaird, Board Administrator