

WEST TISBURY ZONING BOARD OF APPEALS

**Minutes for Thursday, April 25, 2019 meeting
2nd Floor, West Tisbury Town Hall - @ 5:00 PM**

Approved on May 2, 2019

PRESENT: Nancy Cole, Larry Schubert, Bob Schwier, Julius Lowe, Tony Higgins and Pam Thors, Board Administrator

Also Present: See attached list

The minutes from the meeting on March 28th were reviewed and approved unanimously with corrections.

Bob Schwier told the board that he does not wish to be reappointed for another term. He said he would get back to them regarding when his last meeting will be.

5:15 pm: A hearing on an application from Carl Sobel for a Special Permit to operate a Home Occupation (Lumber Mill) under Section 8.5-1 (B) of the Zoning Bylaws, Map 17 Lot 42, 171 Otis Bassett Rd. RU district.

The notice was read and Mary Sobel explained the applicant's request. She stated that over the last year, there was more activity due to the three winter storms which increased Carl's workload. She said that they had never had a noise complaint from any of the neighbors before this and hoped that they could work out an arrangement to mitigate the impact on the abutters so that Carl could continue his saw milling in a limited manner. She explained that they are trying to finish their house with the lumber.

Emily Sobel stated that she feels they may be able to continue the milling operation by right according to the zoning bylaw section 8.5-1 (A) "Home Occupations Permitted by Right". She said they are willing to apply in order to appease the neighbors. Nancy read the cease and desist letter from Joe Tierney, Zoning Inspector and the rest of the correspondence, five letters in opposition, (see file). At this point, the applicant commented on the negative content of the letters and left the meeting. Mary stated that her husband does not operate the mill in the early hours. Emily stated that they just want to take whatever steps necessary to allow the milling to continue in a more limited capacity with set hours and maybe a fence to help with noise. The Home Occupation bylaw was reviewed. Business uses in the RU district were reviewed. Emily reiterated her opinion that the saw mill is not a business. Larry said that 8.5-1 (A) expects that negative impacts discussed in 8.5-1 (B) "Home Occupations by Special Permit" are not present. Nancy cited some examples of Home Occupations permitted by right such as an architect's office or a writer's studio.

The following abutters expressed their concerns relating to the application;

*Jeff Nelson stated that his objection to the project is the noise produced by the milling operation.

*Jonathan Baker stated his concerns with fire hazards, the road and the increasing activity on the property.

*Debra Cedeno spoke to the difficulty of dealing with a matter of contention with neighbors. She went on to say that the Sobels are nice people but the noise from the milling is extreme, causing her to leave her home at times to escape it. She expressed her concern for an increase in activity if the Special Permit is granted.

Mary stated that it was their intention to scale back and limit the hours of operation so that they could continue to work on finishing their house, etc. Nancy spoke about the lack of fairness in having a mill operating in a neighborhood for an unlimited amount of time. Julius asked if anyone else runs the mill other than Carl. Mary said that he does but is always there to supervise. She stated that the Fire Chief, Manny Estrella had visited the property and determined that there is no fire hazard present. Larry said that he didn't think they could allow an

activity producing this level of noise in an RU district. It was ascertained that the noise does travel beyond the property lines. He mentioned that if someone is building a house, the noise is tolerated because there is a limited time period involved. Nancy discussed the options available to the applicants. It was clarified that any action by the ZBA did not stay the cease and desist order issued by the Zoning Inspector. Larry suggested that perhaps the applicant could work with the Zoning Inspector to find ways to mitigate the noise so that they could carry on in a more limited capacity.

Emily Sobel suggested conditioning a permit to allow limited hours of operation. Nancy said that the hearing could be continued so that they have a chance to speak to Joe Tierney, Zoning Inspector. Julius said that the Zoning bylaws limit the power of the ZBA to grant this Special Permit. Nancy said she does not know what Joe is capable of approving for them. Emily said she would really like to make something work.

A motion was made, seconded and approved to continue the hearing until May 30, 2019 at 5:15pm.

5:55 pm: A hearing on an application from Scott Stearns for a Special Permit to extend and alter a pre-existing nonconforming structure by adding a 9x18 foot mudroom requiring 25 feet of setback relief under Sections 11.1-3 (A) and 4.3-3 (D) of the Zoning Bylaws, Map 10 Lot 101, 33 Bailey Park Rd, RU district.

The notice was read and Scott presented the project plans. The dimensions were discussed. There was no correspondence.

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

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

Nancy went over the 20 day appeal process.

Informal Hearing-Valach

Petr presented the landscape plan for his property at 79 Great Plains Rd. A condition of his Special Permit #2018-19 was to bring in a landscape plan showing plantings that would screen the project from an abutting property. Petr stated that he will plant 3, 6 foot high evergreens on the Northeast property line. The board approved and signed the landscape plan as drawn.

6:15 pm: A hearing on an application from South Mountain Company, Inc. for an Amendment to a Comprehensive Permit under MGL Chapter 40B granted in 1998 that allowed commercial use to 1) Add 3,600 SF lumber storage/shop space, 2) Add 600 SF solar components storage, 3) Convert shop to meeting and office space and lumber storage to shop space, 4) Increase parking from 35 to 40, 5) Clear 12,000 SF of wooded area, 6) Raise allowable number of employees on site to 24, 7) Remove 1,350 SF hoop building. Map 8 Lot 37, 15 Red Arrow Rd, RU district.

The notice was read and John Abrams presented the application. An informal hearing had been held on April 25th. John said that he believed this application needs to be referred to the Martha's Vineyard Commission, (MVC). Nancy said that testimony at this hearing is not required as the project is being referred. John explained that the company is growing and they need more space. He said that they would like to give the ZBA more detail so asked if they know at this point what other information they might need to provide. He said that Christine Flynn from the MVC said that they should check with the Department of Housing and Community Development, (DHCD) and verify that the expansion of the commercial use complies with Ch40B. He said that the DHCD determined this to be a local concern only. Larry asked if a percentage of the development-commercial/affordable housing was used in the original DRI. John said that it was not. The single letter of correspondence was read aloud. The letter, (see file) addressed possible plantings for screening. The plan was

reviewed and details of the project discussed. Tony asked why South Mountain did not locate the commercial area further back on the lot. John explained that topography was an issue. Doug Ruskin stated that Ginger Norton, the Red Arrow Road Manager was asked to report to the Road Association about the process and a possible traffic study that the MVC may conduct. It was explained to them that the MVC would review and then send their findings to the ZBA to continue with their review of the project. Nancy signed the MVC Referral Form which will be sent via certified mail to the MVC along with a complete copy of the application file.

6:35 pm: Informal Hearing-Shelyn Garcia

Shelyn explained that she was here on the advice of Joe Tierney, Building Inspector regarding a change they would like to make to their Special Permit #2018- 41. She said that they would like to build a single story sunroom with skylights which would access the recently approved detached bedroom. Joe told her to ask the ZBA if another public hearing was required. She pointed out that the only change in the plan would be that the master bedroom would have access to a hallway (sunroom) leading to the detached bedroom. Julius stated that the impact of the change seemed to be di minimus in nature from the ZBA standpoint. Larry stated that the only impact he could see would be that the main structure would appear larger. Tony said that it looked like a good plan to have the bedroom attached. It was clarified that the application would not need another Public Hearing but that Shelyn would have to supply a new set of plans and elevations to be approved by the board.

Lambert's Cove Inn-Entertainment License for 2019

Nancy stated that the Board of Selectmen, (BOS) is giving the ZBA an opportunity to discuss the process by which they issue the annual Lambert's Cove Inn, (LCI) Entertainment License. Larry suggested that because the pre-existing, non-conforming use of the LCI directly relates to the Zoning Bylaw, a public hearing when there is an increase in use should be required. It was clarified that the BOS gave the Inn a license last year for 18 weddings.

John Cain said that the Entertainment License was brought up by the Selectmen's office. John said that many weddings and events are booked years in advance. Julius asked what the ZBA is being asked to weigh in on. Larry clarified that the Selectmen expanded the use of the Inn via an Entertainment License issued last year. He said that at some point there should be a Public Hearing so that abutters can weigh in on any increases being requested. John explained that he asked for 18 instead of the previously allowed 14 weddings due to the fact that they are open for a longer season. It was clarified that weddings have historically been allowed at the Inn. Tucker asked to read aloud the minutes of the May 30, 2018 BOS meeting which state that the Inn requested an Entertainment License, (see file).

Tucker referenced information available on the Town of West Tisbury website under Entertainment Licenses. He recounted his experience as far as weddings held at the Inn, suggesting that there may have been around 14 but that they were never held in July and August, probably because of the traffic and activity during those months. Tucker said he thought, based on the recent minutes that the music events would be to entertain diners at dinner or Sunday brunch. He reiterated that the pre-existing, non-conforming use had to do with the Inn, the restaurant and smaller quieter weddings. He said that he and his wife had no problem with that because it appeared to be part of the pre-existing, non-conforming use. He said that this really is a Zoning Board issue, stating that last year the BOS approved 18 weddings and 2 outdoor ticketed events per month, (18). He said that his point is that the Inn started having larger, louder weddings.

Larry asked if the Entertainment License is for all events, (weddings and other events). John said that he believed this to be true. Nancy asked how many large weddings they do. Christina Cain said that most are between 135 and 150. John said they expect to have 9 weddings this year. Nancy said that if there was a hearing, with abutters present, they might want to come up with a cap which if exceeded in any given year, they would have to come before the board with an application for increased use which would include abutter and public legal notification.

Dan Scherlis, an abutter made reference to the change of use not so much in numbers of events but type of events. He said that the weddings experienced last year were over amplified and noise off the property was extensive. He cited noise as their main concern, mentioning late night out-door partying and guests showing up at their door! He said he would like to see the Inn thrive conducting the pre-existing non-conforming uses that have been held before.

Tucker Hubbell, an abutter asked the owner specific questions about the various ticketed events on their application. It was clarified that the bazaar listed would not include sale of goods and that alcohol would not be served because it would take place outside. Christina Cain stated that the weddings held last year that Dan Scherlis mentioned were totally prebooked and stated that she would be monitoring the decibel levels. She said that all weddings scheduled for this year are going to be more controlled as far as the noise goes and that they would only allow music to go until 9:30pm in their contracts even though according to the bylaws, they could go until 10:00pm.

Nancy suggested a Public Hearing during which the issues being discussed are addressed. Kate Scherlis suggested that decibel levels, time limits, number of guests allowed and amplification be addressed. Tucker mentioned that the Cain's use of shuttles has been very helpful and made a difference in the impact of the weddings. Tucker suggested that the ZBA be included in the list of boards notified of events permit applications so that the ZBA could check for Special Permits that may or may not exist. He suggested that the ZBA allow the Selectmen to approve a License for this year which would include any events and weddings that have already been booked. Nancy said she hopes this will not be an annual thing but stated that if in any given year, the use is increased, the Cains would be required to apply to the ZBA for an increase in use.

Nancy said that in the decision on the upcoming hearing, they can specify that it take effect on January 1st. It was agreed that John would send a list of the specific events they would like to conduct this year.

The application for Special Permit is on the ZBA calendar for June 6, 2019 at 5:15pm.

Tucker mentioned the use of the pool area which was approved via Special Permit and the current use, (dining/events as well as swimming). He suggested that the Cain's consider looking at that so that if it needs to be addressed in the next Special Permit it can be. Pam was asked to put together a history of all the Special Permits including conditions for the hearing on June 6th.

The meeting adjourned at 7:40 pm.

Respectfully Submitted, Pam Thors, Board Administrator

Attachment to minutes of April 25, 2019 ZBA meeting

Also Present:

MARY SOBEL

EMILY SOBEL

CARL SOBEL

JONATHAN BAKER

DEBRA CEDENO

JEFFREY NELSON

NANCY ROGERS

PETR AND OLGA VALACH

SCOTT STEARNS

GINGER NORTON

DOUG RUSKIN

BETH KOSTMAN

DAN AND KATE SCHERLIS

TUCKER HUBBELL

JOHN CAIN

LISA CAIN

JOHN ABRAMS & ASSOCIATE