

WEST TISBURY ZONING BOARD OF APPEALS

Minutes for Thursday, April 8, 2021 meeting

Online meeting via ZOOM- @ 5:00 PM

Approved on April 29, 2021

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

Absent: N/A

Also Present: Pam Thors, Bd. Administrator, Tony Brandon, Geoff Thors, George Sourati, Israel Fridman, Ellen Kaplan, Benjamin Zachs, Bill Coogan, David and Libby Fielder, Chris Egan

The minutes of the March 25th meeting were reviewed.

J. Rau moved and D. Wells seconded a motion to approve the minutes as written

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

The two letters of correspondence from Joe Tierney, Building Inspector, were read; one to Carlos from JR Construction, (65 Trotters Lane), regarding a pile of woodchips within 20 feet of the centerline of a Special Way and one to Chris MacLeod, (170 Lamberts Cove Rd), regarding a sign exceeding the size allowance.

The discussion of the Lambert's Cove Inn was brought up. John reiterated that the Board of Selectmen (BOS) agreed to approve the entertainment license for the coming season contingent upon reviewing condition #7 of the 2019 ZBA decision. He also noted that perhaps a typo was made in this condition when it refers to "Outdoor Amplified Speaking Events". He said that it probably should be corrected to "Outdoor Amplified Speaking Events and Weddings". Pam said she had spoken to Jen who said that it was not stated as an ultimatum.

Larry verified that John Cain's response to the email request was that they had not had any Outdoor Speaking Events since the start of the pandemic so there was nothing to review. It was agreed that the real issue at hand is any outdoor amplified events and the noise they generate pursuant to reports by a few of the neighbors at the BOS meeting from them during the last summer season.

John asked what the board should say to the BOS. Larry said to leave it on the agenda for the meeting and let the BOS know that it will be discussed. Pam mentioned that the meeting on the 22nd has been cancelled and that she would notify John Cain that they are on the agenda for the April 29th meeting instead. John asked if the abutters would be notified. Pam said that they would not because there is no statutory requirement to notify abutters of anything except a public hearing. She said it is the neighbors' responsibility to check with her or check the website for this information.

5:15 pm - A Public Hearing on an Application for a Special Permit from Anthony S. Brandon-Tr. of Sweet Meadow Nominee Trust for an extension/alteration of a pre-existing, non-conforming dwelling in the Historic District and the Major Roads Zone of the Island Roads District requiring 9' of north side yard setback relief under Sections 11.1-3(A), 11.2-2 and 4.3-3(D) of the Zoning Bylaws on Map 31, Lot 4, 685 Old County Rd., VR District.

The meeting notice was read and Geoff Thors, agent for the applicant explained the project. He stated that the setback requirement is 20 feet in the VR district and that the house has always encroached 9' on the north side yard setback. He explained that the 9' encroachment would not be increased but that there would be an additional 275 sf. within that 9' encroachment. He said that the addition would accommodate a portion of the back deck, garage storage, first floor bedroom and allow a more functional entryway.

The original house and subsequent additions were discussed.

Larry asked if the garage is being moved forward. Geoff answered that it is.

Larry asked what the distance is from the road to the garage. Casey said that it is 68'. Geoff explained that the grade falls off sharply beyond the house setting limits as to the location of the structures. He also stated that the owner wishes to add a more functional entryway.

Larry asked Pam about the garage being in front of the main house as this relates to the bylaws. Pam said that if the structure is attached to the main dwelling, it can be closer to the street without having to be 100' from the road. Julius agreed, citing section 4.2-2 © 2 of the bylaws which only refers to detached accessory structures in front of main dwellings.

Larry asked about the height of the addition. Geoff stated that the overall height is less than that of the original structure.

Pam read a letter from the abutters adjacent to the proposed addition, David and Colleen Burt, who are in favor of the application. She also mentioned that a letter from the Planning Board, stating that they have no opinion on the application and a Certificate of Appropriateness from the Historical District Commission were part of the file.

A. Zaikis moved and J. Lowe seconded a motion to close the public hearing and open the board meeting.

Larry noted that 275 sf. of space being added to a nonconforming structure is a lot to ask for but having an approval by the Historical District Commission assures that the structure be compliant with other dwellings in the neighborhood.

Casey said that the plan does not increase the nonconformity and he sees no issues with it fitting in with other dwellings in the neighborhood. Deborah agreed.

A motion was made and seconded to approve the application.

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

Larry went over the 20-day appeal process.

5:35 pm- A Public Hearing on an Application for a Special Permit from Carlos Gomes Teles Filho and Sybil J. Teles to construct a 16' x 32' in-ground swimming pool under Section 8.5-4 (C) of the Zoning Bylaws on Map 29, Lot 86.16, 41 West Farm Rd., RU District.

The notice was read and the site plan was reviewed. George Sourati, agent for the applicant went over the project. He said he had verified with Joe Tierney that because this subdivision was developed as a cluster subdivision, the setbacks are 25'. He said that they are proposing a patio around the pool with a fence surrounding the area with an opening to the garage with living space above. He said that the pool equipment enclosure is attached to that structure and is 42' from the lot line.

Pam read a letter of support from Scott Brill, the abutter most closely affected by the project. Israel Fridman, an abutter in attendance, voiced his support of the project.

J. Lowe and J. Rau moved to close the public hearing and open the board meeting.

Larry went over the pool conditions that will be included in the decision.

A motion was made and seconded to approve the application with conditions.

A rollcall vote was taken with the following resulting votes; L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis, J. Kaye-yes, 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 FFD Enterprises MA, Inc. to operate a Medical Use and Adult-Recreational Use Marijuana Cultivation Facility under Sections 9.2-2 and 3.1-1 (Use Table) of the Zoning Bylaws on Map 21 Lot 12, 90 Dr. Fisher Rd, LI-1 District. This application seeks to transfer ownership and operational rights previously granted to Patient Centric, MV.

The notice was read and Ellen Kaplan, Attorney for the applicant went over the status of the locally required permits. She reported that the Community Host Agreement had officially been approved and signed by the Board of Selectmen, conditional upon approval of the transfer by the Cannabis Control Commission, (CCC).

She also reported that the Martha's Vineyard Commission, (MVC), had signed off on the administrative {name} changes for the grow facility at 90 Dr. Fisher Rd. and the dispensary at 510 State Rd. as well as the minimal interior changes implemented in the dispensary. Pam confirmed that a letter with this information is in the file.

It was noted that there is only the ZBA application and the CCC application left to complete the process.

Benjamin Zachs of FFD Enterprises MA, Inc. said that the CCC will meet on their application on April 16, 2021. He also stated that the grow facility is up and running with marijuana being grown and harvested. Benjamin went on to say that his is a family owned and operated business which originally worked in the cell tower industry. He said that they have many establishments in New England and have never had any infractions relating to the businesses. He said that they will have the same procedures and staff as had been approved for Patient Centric MV and hope to honor the Island by giving back to the Community. He also mentioned the company's focus on community awareness and support regarding addiction.

He explained that one of the few changes will be that they will have their own security team headed by an individual with extensive experience and knowledge related to the marijuana industry.

Larry asked for questions from the board. Deborah asked what if they are voting on a transfer of the existing Special Permits or on the granting of a new Special Permit. Larry said that the vote will be on a new Special Permit and noted that making changes to the conditions would not be inappropriate, but they are generally looking to abide by the details of the original Special Permit with a change of ownership.

Jeffrey stated that he would like to know more about their business, citing concern for community safety. Larry noted that this might be a question reserved for the discussion of the dispensary.

Pam suggested and John agreed that the hours of operation be changed from Findings in the decision to Conditions. She read the hours of operation for the grow facility which are Monday-Friday from 8:30am to 5:00pm and Saturday and Sunday from 12noon to 3:00pm.

Benjamin confirmed that this is the bulk of time that the facility will operate.

Larry stated that they could come back to this topic.

Jeffrey asked what Benjamin meant by equity employees when he was describing the staff. Ben said that he is an equal opportunity employer and that the operation will consist of 50% female employees and that the business will be open to all races and members of the LGBTQ Community.

Casey asked Ben to elaborate on the meaning of "hours of operation". The consensus was reached that any hours that employees are scheduled to work fall into this category but emergency hours do not.

Bill Coogan, an abutter to the facility asked about the smell. Ben explained that the smell of burning marijuana and processing marijuana are very different. He said that the processing produces a sweeter, grassier smell and that they have a state-of-the-art filtering system in place to limit smells. He also mentioned that there will not be a large amount of plant processing happening at any given time. He also explained that more product is extracted than dried which puts out less odor. He invited the abutters to contact him to arrange a visit so they

could have an up-close experience. He said that any smell evident at this point would represent what they can expect to smell in the future.

Fire security was discussed. Ben said that there is absolutely no source of fire in or around the facility.

Libby Fielder said that they are across the street and thought they should listen in to the meeting. Ben urged them to keep lines of communication open.

Chris Egan, another abutter present at the meeting said he has little confidence in the project and can already smell the product outside the facility. He also mentioned that the roadway from the Bizzarro property has not been opened up for access to Dr. Fisher Rd. He noted that Bizzarro is still using Pine Hill Rd. Larry stated that in order for the facility to comply, that this condition needs to be adhered to, see condition #1.

Larry explained the procedure for abutters if conditions are not adhered to.

D. Wells and J. Rau moved and seconded a motion to close the public hearing and open the board meeting.

Larry stated his opinion that the hours of operation should be listed as a Condition of the decision.

All concurred that the hours of operation are reasonable.

A motion was made and seconded to approve the application with conditions.

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

6:05 pm - A Public Hearing on an Application for a Special Permit from FFD Enterprises MA, Inc. to operate a Medical Use and Adult-Recreational Use Marijuana Dispensary under Sections 9.2-2 and 3.1-1 (Use Table) of the Zoning Bylaws on Map 16 Lot 101, 510 State Road, MB District. This application seeks to transfer ownership and operational rights previously granted to Patient Centric, MV.

Larry read the notice.

Ellen reiterated the status of the local permits. She said that the Community Host Agreement had been transferred contingent upon the approval of the license transfer by the Cannabis Control Commission. She said that the Martha's Vineyard Commission, (MVC), had approved the name change to the operation of the dispensary and the change to one interior wall of the building, without requiring MVC review as a modification to the previous DRI. She noted that the Building Inspector will still need to review the interior space.

She mentioned the change to the Security Team as well as the change in signage.

John asked if the changes to the interior are within the purview of the ZBA. Larry said that the plan showing the change may be approved. Julius asked if the change to the interior had been advertised. Pam explained that the advertisement of the new Special Permit request encompassed any changes or alterations presented by the applicant.

Ben stated that the change to the interior is to allow more operational efficiency.

The process for online shopping was reviewed.

Jeffrey questioned the privacy issue. Ben said that customers will have an appointment and that they encourage people to put in their order ahead of time. He stated that they will be parked by an attendant and asked to present a government issued ID with a picture in order to be allowed to enter the dispensary. If they are approved, the information provided is stored for only 24 hours. He said that customers may opt to be notified of products, sales, etc. but that no "cookies" will be dropped on their phone or email, so there is no danger of information being revealed. He went on to describe the website which includes products for sale, prices, etc. Andy asked about looking at the product while visiting the dispensary and Ben said that no product will be visible in display cases...only packaging.

Julius asked that the Board stay on topic.

Ben noted that the company supports community efforts at fighting addiction and that they want marijuana to be a force for good.

Pam asked about the conditions for screening listed in the original decision and whether they have been completed. She went over the list. Ben said he has been in communication with the immediate abutters regarding screening options and the fencing and screening outlined in the landscape plan is well underway.

Larry asked about communication with Fire and Police Departments and who the point person will be in the case of an emergency. Ben said that the Manager and Assistant Manager as well as the security team and their backup team will all be notified of an emergency and the Fire and Police will have all of their contact information and access to any and all security device information.

Chris Egan mentioned the change to the interior of the structure and its' relation to the "creep factor", that he perceives to occur in some uses allowed by Special Permits for businesses. He asked that the ZBA mind this effect when determining the conditions of this Special Permit.

Julius noted that the limiting factor for this business are the limitations on hours of operation and numbers of appointments allowed per day, citing the irrelevancy of the creep factor in this instance.

Larry agreed but said he also understands Chris' point. Referring back to the town's allowance of medical marijuana and then, with the change of state laws, the allowance of recreational marijuana.

Ben noted that no signage or advertising paraphernalia will include pictures marijuana and that the dispensary space is still separated by the layout.

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

Larry recouped the changes that FFD Enterprises MA. Inc is requesting:

- Change in ownership
- Change in signage
- Use of their own security team
- Removal of one wall at the 510 State Rd. dispensary

It was noted that the days and hours of operation will be listed as a Condition which will be enforced by the Building Inspector.

A motion was made and seconded to approve the application for Special Permit with Conditions.

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

Geoffrey Rose of Patient Centric thanked the board for all their efforts during the process.

Lamberts Cove Inn-Pam was asked to write to the Board of Selectmen to let them know that the Lambert's Cove Inn will be on the agenda for the April 29th meeting.

The Meeting adjourned at 7:30 pm.

Respectfully Submitted,

Pam Thors-Board Administrator