

**WEST TISBURY ZONING BOARD OF APPEALS**  
**Minutes for Thursday, May 12, 2022 meeting**  
**Online meeting via ZOOM- @ 5:00 PM**

**Approved on June 2, 2022**

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

**Also Present:** Pam Thors, Bd. Administrator, See attached sign in sheet.

**5:00 pm**

*The minutes of the meeting of April 28, 2022 were approved as written.*

*A motion was made to approve two extension agreements, one for the Aronie application and one for the Reed application.*

*A roll call vote was taken with the following resulting votes.*

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

*A motion was made to approve the Reserve Fund Transfer for \$2,500.00 to fund payroll during the training period for the Board Administrator new hire.*

*A roll call vote was taken with the following resulting votes.*

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

**5:15 pm** –Application for a Special Permit from Douglas R. Hoehn of Schofield, Barbini and Hoehn, Inc. agent for S. Fain Hackney-Tr. of Lot 3A West Tisbury Realty Trust to construct a 1,580 sf. pool, a 1,841 sf. subordinate dwelling and a 791 sf. garage in the Inland Zone of the Coastal District at 111 Little Homer’s Pond Rd. Assessors Map 43, Lot 9, RU District under Sections 8.5-4C and 6.1-5 A&B of the Zoning Bylaws.

Doug Hoehn presented the application beginning with explaining the location and shape of the lot. He noted that the lot is 12.5 acres. He said they are there for the pool and for the structures in the Inland Zone of the Coastal District that the Building Inspector deemed to be not minor, non-habitable. He noted that the plans had been reviewed by the Conservation Commission and the Planning Board.

The Landscape Architect for the project explained the location of the pool and physical features of the lot. He said the pool enclosure comes out from the walls of the house and that on the south side there is a retaining wall for the pool which serves as the 4’ barrier. It was noted that the pool equipment will be located in the basement of the guest house. Larry noted that there is no setback relief being requested. Larry went over the boiler plate conditions for pools.

It was noted that the lot size allows the owner to build a subordinate dwelling of any size. The building plans were reviewed. It was noted that the height of the structures is under 24’. It was also noted that the structures are not visible from the water or any abutting properties.

There was no correspondence received.

The architect said that they want to maintain the natural buffer as much as possible and have a minimal effect on the landscape.

Pam asked Doug Hoehn to bring in file sized plans for the board to sign at their next meeting. Larry suggested that a condition of approval be that the applicant comply with Bylaw Section 6.1-6.

*It was moved and seconded to approve the application.*

*A roll call vote was taken with the following resulting votes.*

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

**5:35 pm** – Application for a Special Permit from William Potter, Squash Meadow Construction, agent for Luiz DeMiranda and Lucinda Perregil to utilize an existing 672 sf. dwelling as an Affordable Accessory Apartment under section 4.4-3A of the Zoning Bylaws at 33 Kaitlyn Farm Way, Assessors Map 10, Lot 192.4, RU District.

Woody, representative for Squash Meadow Construction, explained that the applicant would like to designate the 2 bedroom 672 sf. bedroom above the garage as an affordable accessory apartment and build a 4-bedroom main house. The septic design is for six bedrooms. The structure complies with all setback requirements. Larry noted that the main house is not built yet so issuing a Special Permit for an Accessory structure is not possible. Larry read the bylaw and also the restrictions that apply. Woody noted that they wanted to make sure there is no problem having the affordable accessory apartment prior to working on the main house.

Larry noted that the apartment could not be accessible from the garage. Woody said they would be happy to wall off the stairway. It was noted that the door to the garage will be walled off and the second form of egress would be via an outdoor stairway. The architect noted that there will be no access into the garage from the apartment. The Planning Board letter referring back to the board was read.

Larry reiterated that issuing a permit for an accessory apartment is usually not allowed if the main dwelling does not exist.

Pam suggested that the permit could be approved with the condition that the building permit for the apartment will not be issued until the building plans for the main house have been submitted to the Building Department.

*It was moved and seconded to approve the application with the following condition.*

*“A building permit for the affordable accessory apartment will not be issued until the building plans for the main house have been approved by the Building Department”.*

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

*A motion was made and seconded to Grant the Special Permit with Conditions.*

*A roll call vote was taken with the following resulting votes.*

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

*Larry went over the 20-day appeal period.*

Larry asked Pam to copy the building plans for the affordable accessory apartment and put on the next mtg agenda for the board to sign.

**5:55 pm** – 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. at 35 Panhandle Rd., Assessors Map 25, Lot 1.1, RU District under Sections 3.1-1 Use Table and 8.5-2 of the Zoning Bylaws.

Larry read the hearing notice.

Elana Carlson, Farmer’s Market co-manager and Emily Fisher, Farmer’s Market committee member presented the application. She also verified that the applicants are applying under section 3.1-1 Retail business not listed elsewhere.

Larry went over the history of the Farmer’s Market being held at the Agricultural Hall. He noted that Covid was the extenuating circumstance that allowed the market to be held there. He said that most applications to the board do not trigger a review by the Martha’s Vineyard Commission, (MVC). He said that coming before the board without extenuation circumstances the process is to review the checklist to see if it needs to be referred to the MVC. He said that he and the Board Administrator went over the MVC referral form to see if there were issues that needed to be reviewed by the MVC. He said it would be voted by the board as to whether to refer the application to the MVC or not. He said he had noted checklist items # 3.1-f, 3.1-h, 3.1-i, 3.1-j 3.4-h and 6.2-a. He said the MVC would review the checklist items to see if the application would need a full review or not. He said that at this time he wants to open the discussion to board members only to discuss the checklist items.

Larry noted that this is the first time the Farmer’s Market has come before the ZBA for a permanent permit to operate at the Agricultural Hall because the extenuating circumstance no longer exists. He said that the market has always operated at the Grange Hall via an event permit from the Select Board. He noted that event permits issued by the Select Board are not on a daily basis but only on the date of the special event.

Rob McCaron noted that he had written a memorandum, (see file), regarding the Agricultural Preservation Restriction (APR) on the subject property. He said that the use of the Agricultural Hall for the Farmer’s Market could be substantiated by Ch40A Section 3. He said that there is no case law defining this, but that it is the general opinion that it is allowable. He noted that there is a requirement by this section that says that the produce must be grown by the owner of the property on the property but they (the Ag Society), is a member organization who farms the produce sold.

Larry said that he had warned the Farmer’s Market that the same “emergency relief” they received during Covid would not be available for them in coming years and that they should pursue their goals by working with the Select Board. Larry said he would rather have seen the Farmer’s market request an event permit from the Select Board since that is the customary process.

Elana said she went to the various departments but no one would sign off on the event permit. She said that she was told that they, (building department and board of health) would not sign off because they didn’t know where the market was going to be held or if the market was going to operate at all. She said that coming to the ZBA was the only way forward for them.

Larry noted that in the fall when the managers of the market came before the ZBA to extend the time period for the market to operate, he asked them to move toward a permanent solution in preparation for the next market season. He said that since this application is not for “emergency relief”, the standard procedure would be to look at the checklist to see if there are triggers indicating that a referral is in order.

Elana asked if this is a ZBA issue or whether they should just be referred back to the town.

Rob McCaron said he would disagree with taking this action because the town can still approve the application under the Retail Sales Special Permit provision in the bylaws. He said that they would still need an event permit from the Select Board.

Julius asked if when the Ag. Society developed the Agricultural Hall, if it was reviewed as a DRI. The general consensus was that the building was a DRI but not the property. He said that uses such as weddings, the Ag. Fair and other traffic heavy events have already been taking place there. He said that the Farmer's Market, in his opinion falls into the same category as those existing uses.

Andy asked Larry if it is his position that the application should be referred to the MVC.

Larry stated that he would call for a vote on that after the board finished their discussion.

Andy asked if there would still be the need for an event permit. He asked what effect a ZBA approval would have on the process of getting an event permit. Alana said they are planning to get an event permit.

Emily asked if the ZBA approved the Special Permit if it would help to move the event process forward.

Elana said that the Town Officials who refused to sign the event permit said they couldn't because they weren't sure that the Farmer's Market was allowed to operate at the Ag Hall.

A discussion ensued regarding the use and whether allowing the Farmer's Market to operate there is a new or expanded use. Pam asked if the Select Board issued an event permit for the winter months. The managers weren't sure.

Emily stated that the issue seems to be whether to refer the application to the MVC. She said that they have been getting event permits from the Town for years and wonders if the change of venue justifies the MVC review process.

Many people in attendance spoke to the many benefits of having the market at the Ag Society and the importance of the renewed interest in farming in the community and how it has brought people together.

Julius stated that he thinks that this use was probably just the type of use envisioned at the time that the Ag. Society was moved to the new location. He questioned what would have been the intention at the time with all the land and parking and space available if not to hold the Farmer's Market there. He went on to say that he would never vote to prevent the Farmer's Market to operate this summer. He noted that this is not a new use as far as the scope of the activity there but that it is more of a continuation of the original use.

Larry said he is going to call for the vote and then see where the discussion goes. Larry said that one consequence of not referring to the MVC could be legal action taken against the board.

Andy said that he feels comfortable not referring the application to the MVC because he sees the application as something that the MVC would not find objectionable.

A vote was on whether or not to refer the application to the Martha's Vineyard Commission with the following results;

*J. Lowe-No, D. Wells-No, A. Zaikis-No, C. Decker-No, L. Schubert-abstained.*

Event Permits and Special Permits were discussed. Elana said they would like to apply for a Special Permit into perpetuity to operate at the Agricultural Society property.

Elana noted that they made the move due to COVID and found that the venue is a much better location due to the constraints of the prior in town location. Emily said that there is such a vibrant community activity that is allowing businesses and young people to thrive with very limited impact on the Island. She said that any farmer who applies and conforms with the bylaws are allowed to take part. She said that they do site visits to verify that farmers are growing what they say they are. She noted the added commerce and the benefits of the social aspect of the market. She said that there are not many opportunities to start a, “brick and mortar”, business these days but the market allows this.

Elana said they would never be able to allow all farmers in if they didn't have all the space available at the Ag. Society property.

Andy asked if they foresee the growth of the market to exceed the space available at the Ag. Society.

Emily said that farmland on the island is not growing and in fact stands to decrease so doesn't see that happening.

Pam said that there were 15 letters in support and 2 letters requesting that the market be moved back to the Grange Hall. Larry noted that there are 4 more letters in support that were received.

Comments from the public-

Allen Whiting noted that his great grandfather started the market and part of the impetus was to create a supportive community for farmers.

This is the right place for the Farmer's Market.

Agricultural is something that we still all believe in and support the activity there.

Many people volunteer and the administration keeps everything organized and moving forward. The founders of the Farmer's Market realized the support it would supply to farmers who didn't live near one another.

The traffic and the crowds at the Grange became too much for families. At the Ag. Society location, families can spread out, don't have to deal with traffic and parking problems and can share the benefits of local agriculture.

Larry asked about the process going forward. He said that one issue that can be resolved is the location.

The question of who would oversee the details of operating at the Ag. Hall was raised.

A suggested Condition was that a Management plan be put together laying out specifics of parking, scheduling and general organization of the operation.

Pam noted that the bylaw has restrictions on items that can be sold. Elana said they are working on that aspect of the operation.

Larry asked about music. Emily said that outdoor acoustics would not work without amplification.

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

Larry suggested that through the Conditions of the Decision, the Board could fine tune this.

Alana noted the many benefits of having the Farmer's Market at the Ag. Society property.

Larry said that if they were to approve this, there should be a requirement to get authorization from the Board of Health. He said that once a Special Permit is granted, it takes it out of the hands of the Building Inspector but sign offs from the Board of Health, Fire Department, and the Police Department should still be required every year.

It was noted that the APR considerations are something that will be reviewed with the Conservation Commission to become part of a Management Plan.

Elana noted that there is a lease with the Ag. Society that is signed every year.

*Condition-Once per calendar year, they must review the operation with the Board of Health, Ambulance, Fire Chief and The Police Chief.*

*Emily said that they have considered having an afternoon winter market. The general consensus was that hours and days of operation could be handled by the Ag. Society pursuant to the management plan they are working on with the Conservation Commission.*

*A vote to approve the Special Permit was taken with the following resulting votes.*

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

Larry said that he hopes this Special Permit clarifies the process.

The board voted to continue the hearings for Mike Sisco, Pool and Service Business until June 2<sup>nd</sup> at 5:45 pm.

The Meeting adjourned at 6:45 pm.

Respectfully Submitted, Pam Thors-Board Administrator