

**WEST TISBURY ZONING BOARD OF APPEALS**  
**Minutes for Thursday, May 26, 2022 meeting**

**Approved July 14, 2022**

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

**Also Present:** Pam Thors, Bd. Administrator, Jana Bertkau, Amy Upton, Andrea Rogers, Nevette Previd-Executive Dir. of Vineyard Preservation Tr., Doug Ruskin, Andrea Winter, Louisa Hufstader, Lisa Strachan, Debra Gaines, Jennifer Pillsworth, Eva Faber, Lexie Roth, Tom Ellis, Cynthia Pareja, Cecilia Minnehan, Jarus Flynn, Belden Radcliffe, Sarah K. Young, Kathy Logue, Laura Silber, Richard Bennett, Kate DeVane, Josh Aronie, Betsey Minnich.

**5:00 pm – Minutes of May 12, 2022.**

**Lynley Projects LLC** - A discussion ensued regarding Lynley Projects LLC which were approved for a Special Permit on April 28<sup>th</sup>. It was realized after the fact that the vote was invalid because the 4<sup>th</sup> member Casey Decker had to recuse himself due to a conflict of interest.

*A motion was made and seconded to re-advertise the application and waive the application fee with the following resulting votes.*

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

**Zilla request for extension** – Larry read the email from the Zillas requesting a two year extension of their Special Permit to build a guesthouse.

*A motion was made and seconded to extend the Special Permit for two years with the following resulting votes.*

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

**5:15 pm** – A Public Hearing on an Application for a Special Permit from David J. Reed to allow the operation of a Service Business (wedding venue) under section 8.5-2 of the West Tisbury Zoning Bylaws at 371 Edgartown Rd., Map 30, Lot 4, RU District.

It was noted that this application was referred to the Martha’s Vineyard Commission, (MVC) who has not reached a decision as of yet.

*A motion was made and seconded to continue this hearing until July 28, 2022 at 5:15 pm with the following resulting votes.*

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

**5:20 pm** – A Public Hearing on an Application for a Special Permit from Michael Daniels to allow a designated storage space to become usable workspace in an art studio and add decks to the structure requiring 7.5’ of south side yard setback relief and 3.6’ of north side yard setback relief under sections 4.2-2D4 and 11.2-2 of the zoning bylaws and to appeal a decision by the Building Inspector under M.G.L. Ch.40A sections 8 and 15 at 231 Vineyard Meadow Farms Rd., Assessors Map 37, Lot 13, RU District.

Casey Decker noted that he had done engineering work on this property in the past. Larry responded that as long as Casey had no future plans to work with the owners that any financial benefit would have already taken place. It was agreed that no conflict of interest exists.

Correspondence was read, (see file).

Discussion of the square footage ensued. The building inspector's calculations of the total square footage, which include the stairs and stair landings, were reviewed. The designated storage space was also discussed.

Jeffrey stated that it seems the issue is not so much the square footage as the change of use. He asked what the space will be used for.

Lisa Daniels said that it would allow her husband to work there, rather than using the space for storage.

Lisa said that there will be no traffic going back and forth from their main dwelling except for her husband and herself, other than having guests visit to look at the art she is working on.

Larry clarified that the Daniels are possibly calculating correctly, but that the building inspector calculates differently and his rules apply.

Lisa said she is just there so that they can put in their stairs which will allow use of the loft.

Larry verified that from the Planning Board's perspective, the artist studio's use does not include an office space.

Amy Upton asked if the board would consider a site visit. She commented that her impression of the structure is that it is a guest house in the guise of an art studio. She said that anyone who would look at the structure would say Wow, how was that guest house allowed.

Pam read 11.2-2.

Larry said that yes, this is why the applicants are before the board.

Lisa noted her dismay that someone would come in and accuse them of trying to build something other than an art studio.

Deborah asked about screening trees. Lisa explained that they have not planted screening yet but have discussed what type of trees and the number of trees they might be able to plant. She expounded upon the issue. When asked about the fence complained about by one of the abutters, Lisa said it was put up during the construction to contain any debris.

Andy asked why the applicant would need a second driveway to access the studio. Lisa said she uses it to bring in her art supplies.

Julius stated that if this were a garage or workshop, that no one would be questioning the addition of a driveway access.

Lisa said they are not doing anything dishonest and are just trying to get through the process.

It was suggested that the hearing be continued to June 2<sup>nd</sup> at 5:30pm.

It was also suggested that a site visit take place on May 31<sup>st</sup> at 5pm.

*A motion was made to conduct a site visit on May 31<sup>st</sup> at 5pm and to continue the hearing until June 2<sup>nd</sup> at 5:30pm with the following resulting votes.*

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

**5:40 pm** – A Public Hearing on an Application for a Special Permit from Andrea Rogers to allow a Food Truck at the Vineyard Artisans Festival held at the Grange Hall in West Tisbury this 2022 season, and to appeal a decision by the Building Inspector under M.G.L. Ch.40A sections 8 and 15 under sections 3.2-3 and 14.2 of the Zoning Bylaws at 1067 State Rd. Assessor's Map 32, Lot 66 RU District.

Larry introduced the board and stated that because his wife takes part in the Artisan's Festival each year, he will be recusing himself from taking part in this hearing.

Nevette Previd, Executive Director of the Vineyard Preservation Trust, explained the need for food at the events that take place at the Grange Hall and the lack of options available. She stated her support of the application before the board. She noted that to deny the permit for a food truck right before the season is unreasonably harsh and hopes that at least temporarily, they will be able to operate with a food truck for the upcoming season.

Andrea Rogers, owner and founder of the MV Artisans Festival read from the deed from the Town of West Tisbury to the MV Preservation Trust. She said that taking food away from this event will have a considerable negative effect on the revenue of artists at the festival. She noted that from the beginning, John Alley asked that all artists allowed be islanders. She said she has never faltered from this promise. She also noted that a plaque at the MV Museum lists them as part of island history over the course of the past 100 years. She also stated her opinion that being told at the 11<sup>th</sup> hour that they cannot do what they have done for the last 4 years regarding the use of food trucks is unfair. She noted what a hardship it would be for the Festival to take place without food.

Andy asked Andrea to confirm that they have enjoyed the benefits of food trucks for the past four years. Andrea stated that this is the case.

It was verified that one food truck is being requested.

Julius asked about the yearly process.

Andrea stated that the food trucks go through the board of health approval process and then come back to her. She said she gets approved by the Town Administrator and directs the food provider to get Board of Health approval.

She said that one permit is issued for the Festival as a blanket permit. She said she gets the permit for all the vendors but the food provider gets a permit from the Board of Health. She said that this is the way it has been for the last 26 years. Andrea went over the schedule of the Festival.

Julius said he keeps coming back to the fact that the event itself was approved by all boards including the Select Board. Andrea stated that it is only the food truck issue that was denied.

Julius stated that this has created a situation that should not be in front of the ZBA. He said that the way these events have always been done, is not appropriate or reasonable to put the onus on the ZBA or even the Zoning Official to straighten this out.

The new letter from Joe was discussed. See file. Julius stated that the first letter gave a definition that the ZBA did not agree with. The new letter is more specific and binding and puts this board in a more difficult situation.

Andrea stated that the second letter does not apply because they have deeded rights to do exactly what they have been doing at the Grange for years.

Julius said that the ZBA is not really the right entity to disentangle this issue. He said that it would have been more appropriate to have this come before the Select Board.

Andrea said that the ZBA can allow the festival to go forward because the MV Preservation Trust has deeded rights to do so.

Jeffrey said that this is an issue of precedence.

Julius noted that there are quite a few uses that have this same grandfathered aspect, ie: The Agricultural Fair.

He noted that when these small business owners that have been preparing for this all year, are left hanging, it is not fair.

Jeffrey suggested a temporary permit.

Kathy Logue noted that at this late date, any permit should be for the entire season. She noted that all you had to do is look out the window to see that this has been going on for years. She reminded the ZBA that they have authority over decisions of the Building Inspector that come before them as an appeal.

Eva Faber said that the food trucks have not been a problem. She asked the board to be aware of the short notice aspect of this and how stressful this has been for this small business. She said that there is a lot to prepare and orchestrate as well as deal with financial implications surrounding ordering food and supplies and hiring personnel.

Laura Silber, an Artisan Festival member and Town voter stated that she is embarrassed for the Town in the way this has been handled. She urged the ZBA to issue a temporary permit for the entire calendar year and waive the application fee.

Josh Aronie noted the authority and responsibility of the ZBA to look at the intent of the bylaw. He said that it is the obligation of the ZBA to look at the big picture. He said that this would send a message to the powers that be that the way this has been handled is unfair. He also noted the complicated process that applicants need to go through in order to operate.

The director of the Field Gallery, Jennifer Pillsworth, stated that allowing a business to operate with certain parameters in place and then at the 11<sup>th</sup> hour, disallowing the businesses to proceed as it has historically been allowed to is in legal terminology, “detrimental reliance”. She noted the lack of consideration and fairness to business owners put in this position.

Andy stated that the complaint is valid and the board struggles with doing the right thing, but that they have a limited role in this process.

Julius stated that this discussion is important to the process of moving the town forward in dealing with this issue. He said that his rationale is that the Grange is a unique situation and that anyone who denies that retail sales are happening there is not seeing things realistically.

The granting of the appeal to Joe Tierney’s decision and how that affects things going forward was discussed.

Pam said that if the Building Inspector is denying the permit for the entire season, and the ZBA votes to grant the appeal, it should be to allow the food truck for the entire season. She said that in the case of the 20 day appeal period, she has known of situations where Joe allowed a start prior to the expiration of the period, “at your own risk” and that this is what may need to happen if the board voted tonight to grant the appeal.

Julius said that a vote to approve would be to overturn the decision of the Building Inspector to deny the operation of the food truck. The procedural aspects of the application were discussed.

Andrea said she would prefer that the 20-day appeal period be waived. Pam said that it cannot be as it is required under M.G.L. Chapter 40A.

*A motion was made and seconded to approve waiving the \$200.00 application fee with the following resulting votes:*

*J. Lowe-yes, D. Wells-yes, A. Zaikis-yes, Jeffrey Kaye-yes, C. Decker-yes.*

*A motion was made and seconded to approve the Special Permit to operate the MV Artisans Festival with a Food Truck for the remainder of the calendar year at the Grange Hall and the Agricultural Society property and to GRANT the APPEAL of the Building Inspector’s decision with the following resulting votes:*

*J. Lowe-yes, D. Wells-yes, A. Zaikis-yes, Jeffrey Kaye-yes, C. Decker-yes.*

**6:00 pm** - A Public Hearing on an Application for a Special Permit from Josh Aronie to operate a Food Truck at the West Tisbury School during the 2022 spring and fall soccer season and to appeal a decision by the

Building Inspector under M.G.L. Ch.40A sections 8 and 15 under sections 3.2-3 and 14.2 of the Zoning Bylaws at 401 Old County Rd. Assessor's Map 21, Lot 2 RU District.

Larry read the hearing notice and the correspondence.

It was verified that the school principal gave Josh permission to operate the Food Trucks at the WT Elementary School.

The letters from the Building Inspector were reviewed. Larry stated that he asked Town Counsel if the second letter from the Building Inspector is admissible. Town Counsel's opinion was that it is admissible.

Josh described his discussion with the Board of Health. He stated that Omar Johnson, Board of Health agent issued one permit for the entire season. He said that in 2019 Joe issued a denial letter. After that, with the pandemic, this spring was the first time that he has had to deal with the issue. He said that they are just trying to feed the families involved with MV United Youth Soccer.

Larry read the Narrative which lists the hours and days of operation. They are as follows:

- 1) May through June and September through November
- 2) 9am-4pm
- 3) Saturdays only

Correspondence in support from Donna Lowell Bettencourt-West Tisbury School Principal, Richard Bennett of MV United Youth Soccer and Glenn DeBlase.

Julius stated that in many ways this application is the same as the application to allow food trucks at the Grange, but because of the deeded rights to the Preservation Trust, it is somewhat different.

Casey said they have been serving food at the soccer season event since he was playing soccer many years ago.

Kate DeVane mother of 2 children voiced her support of the Food Truck at this venue.

Larry read the second letter from the Building Inspector regarding the two Food Trucks applying to the ZBA tonight, (see file).

Josh asked whether all of the food he serves is not agriculturally related. Larry said that the Building Inspector is saying that it is not.

Richard Bennett stated that they can't understand why with the school's permission, and after serving the families for a number of years it is all of a sudden not possible. He reiterated the effectiveness of having the food truck there during days that can be quite long, especially for families with more than one child.

Pam read the definition of "Retail Business", and the list of examples given within the definition. The word "establishment" came into question.

The question arose to the validity of the second letter which describes a different interpretation by the Building Inspector.

Amy Upton noted that the issues with the lack of clarity of the bylaw are one issue but getting through this year under these circumstances are what the ZBA is tasked with. She noted that Town officials are aware of and are addressing things.

Josh said he realizes that once an issue has been brought forward, it is hard to go back but that he hopes there is a way for them to serve this community this year while the more complicated issues of changing the bylaw are addressed.

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

Larry stated, in defense of the building inspector's reasoning, that he must make his determination based on the written language in the bylaw.

Issuing a special permit for the remainder of the calendar year was discussed.

The discussion included the possibility of upholding the building inspector's decision but allowing the Food Truck to operate for the remainder of the calendar year.

Jeffrey Kaye said that "based on the totality of the circumstances" the board could do this.

Josh said that this same thing happened with his application to the Town of Edgartown.

Andy said that they basically agree to the interpretation of the bylaw but wish to make an exception for this calendar year.

Julius said that the use of the word "establishment" in the bylaw is problematic considering the actual definition of the word. He said that every use of the phrase retail business in the bylaw includes the word establishment and addresses a continued use.

Larry stated that the Zoning bylaws are written for established brick and mortar businesses but the Artisans Festival and the Soccer practices are events. He said this seems to be where the town is headed.

If granted, the applicant will receive A Special Permit to allow the Food Truck to operate at the West Tisbury School during the MV United Soccer events for the remainder of the calendar year and granting the appeal of the building inspector's decision.

Larry said that he hopes the Town can go forward in dealing with these event permits effectively.

Larry went over the 20-day appeal period.

*A motion was made and seconded to approve waiving the \$200.00 application fee with the following resulting votes:*

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

*Julius moved and Andy seconded a motion to approve the Special Permit.*

*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, J. Kaye, C. Decker-yes*

**6:20 pm** - A Public Hearing on an Application for a Special Permit from Derrill Bazy agent for Island Autism Group to construct a 60'x30' non-habitable barn for agricultural use requiring 46' of north side yard setback relief under section 4.2-2D4 of the Zoning Bylaws at 515 Lamberts Cove Rd. Assessor's Map 11, Lot 2 RU District.

Larry read the hearing notice.

Kate Devane, representing the Island Autism Group presented the application. She said the lot line they are seeking setback relief from is owned by the Land Bank. She said that James Lengyel from the Land Bank chose the location of the barn with her.

#### Reasons

- #1-At the proposed location, it will look out over the adjacent meadow and trees will not have to be removed.
- #2-The only neighbors who expressed an interest in not seeing or hearing activity/noise, are on the other side farthest away from the proposed location.

She noted this was a 17.5 acre piece of property. They bought 7.5 and the Land Bank retained 10 ac. There is an agricultural restriction that the Land Bank had with the Childs property with a 3 acre building envelope. The barn is located outside of that 3 acres.

Deborah asked about the topography of that area. She asked about moving it to a different location which was indicated by the site plan as being open. Kate said that the area is actually heavily treed.

Correspondence was read, (see file).

One of the letters was from the MVC who is still reviewing the project. They don't want a permit issued until they have approved the project but didn't want to hold up the ZBA application for setback relief.

It was noted that the Planning Board referred the application to the MVC.

Larry suggested that a condition of approval could be that, *the building permit for the barn is contingent upon Martha's Vineyard Commission's approval of the Island Autism Group's Master Plan.*

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

It was noted that the request is for 46' of side yard setback relief.

*A motion was made and seconded to approve the Special Permit with Conditions with the following resulting votes:*

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

The Meeting adjourned at 6:45 pm.

Respectfully Submitted, Pam Thors-Board Administrator