

WEST TISBURY ZONING BOARD OF APPEALS

Minutes for Thursday, May 7, 2020 meeting

Online meeting via ZOOM- @ 5:00 PM

APPROVED AT THE MEETING OF MAY 28, 2020

Present: Nancy Cole, Larry Schubert, Deborah Wells and John Rau

Absent: Julius Lowe, Andy Zaikis

Also Present: Geoff Rose, Edilson De Meireles, Patrick Medeiros, Carrie White-Attorney, John Powers, Eric Serpa, Joe Tierney-Building Inspector, Dan Larkosh, Brian Packish, John McDonough and Pam Thors, Board Administrator.

The minutes of the meeting held on April 9th 2020 were approved with corrections.

The Board voted to approve payment of the following: Payroll-\$2,320.50

5:15 pm- A Continuance of a Public Hearing on an application for a Special Permit from Patient Centric of Martha's Vineyard, Ltd. to amend Special Permit #2017-19 to allow the operation of an Adult/Recreational Use Registered Marijuana Dispensary, along with the Registered Medical Marijuana Dispensary previously approved at this location under sections and 9.3-3 and 3.1-1 (Use Table) of the Zoning Bylaws, Map 16, Lot 101, 510 State Rd., MB District.

It was noted that since the Martha's Vineyard Commission has not acted on this application, the ZBA may not take action at this time.

A motion was made and seconded to continue this hearing without testimony until June 11, 2020 at 5:15pm.

The vote on the motion was unanimous.

Lamberts Cove Inn parking: John asked about the letter to the Board of Selectmen regarding the Lamberts Cove Inn Entertainment License and how the parking issue will be addressed. Nancy explained that after receiving feedback from Tucker Hubbell, one of the immediate abutters, she advised Pam to express the ZBA's approval of the issuance of the Entertainment License to the Board of Selectmen but to leave out references to the parking issue at the Inn. It was noted that the parking issue is listed in the findings of the Decision but not the conditions. It was agreed that Pam should draft a letter to Mr. Cain that the board can review at the next meeting.

2021 Budget: Ways to reduce the budget for 2021 were discussed. It was agreed that the Legal Line Item could be reduced with the acknowledgement that if additional funding were required, the board could request a transfer from the Town's Reserve Fund. It was also agreed that the Travel and Training Line Items could be reduced. Pam said she will post the budget online for the next meeting so that the Board can take a vote on reductions.

Virtual Meetings: The "Stay at Home" ban was discussed in relation to how soon the Town can resume Public Hearings at the Town Hall. It was noted that it may be some time before this will take place even after the State ban is lifted.

A motion was made and seconded to hold virtual meetings until the Town Hall is open for Public Hearings, provided that this option is approved by the Board of Selectmen at their next meeting..

The vote on the motion was unanimous.

5:35 pm- A Public Hearing on an Application for Special Permit from Edilson De Meireles to operate a service business/home occupation (Welding and Mechanical Work) under Sections 8.5-1 (B) and 8.5-2 of the Zoning Bylaws, Map 16 Lot 32, 36 Oak Knoll Rd., RU District.

The notice was read and Nancy explained that a new more comprehensive Narrative had been submitted by the applicant. Carrie White, attorney for the applicant read the new Narrative, (see file).

A letter from Mr. and Mrs. McDonough, (direct abutters), was read. The letter asks that the fence and green belt of evergreens extend to run along the length of their property which is on the left side of the De Meireles lot. They also ask that the work is limited to 3 days/week with the additional employee working only when Mr. De Meireles is also working.

John asked if Mr. McDonough is looking for a new fence to be built. Mr. McDonough said that a portion of the fence on his side is damaged. He stated that the applicant had put a new fence in on the other side of the property and that he would like to see the same done on his side.

A letter in support of the application from Geoghan Coogan was read, (see file). Carrie said that Mr. De Meireles purchased the property because the use was already taking place there. John said that the previous use should not influence the results of this new application. Carrie agreed that Mr. De Meireles should not be penalized due to the actions of the previous owner. Carrie said that the applicant is trying to minimize the effect his business has on the neighborhood and that if he oversteps his bounds that the neighbors have the option of registering a complaint. It was agreed that the aim of the ZBA is to condition approval based on specifics which would avoid such complaints.

Nancy asked if all work will be done in the garage and if large vehicles will be worked on there. Mr. De Meireles stated that all work will be done inside the garage and that vehicles which are done will be removed if they have not been picked up within 48 hours of the work being completed.

Larry asked about limiting the days of operation to 3/week. Carrie said that limiting Edilson (Mr. De Meireles), to that number of days interferes with his successful running of the business and seems unfair. A lengthy discussion ensued regarding possible ways to ensure that the concerns of the neighbors are taken into consideration by limiting hours, days and numbers of jobs.

John asked about vehicles waiting to be serviced. Carrie said that the vehicles must be dropped off by appointment only when the garage can accommodate them so there are not additional vehicles being stored outside.

Eric Serpa, a direct abutter asked why when the Narrative states that only 10% of Edilson's work hours are done on the property, he needs to be able to operate 6 days per week. Carrie stated that the 10% is based on Edilson's extra work hours and that he already has a full time job off site. Eric asked who will monitor this use. Nancy said it is up to the neighbors to file a complaint with the Building Department if they are unhappy with the business activities. Various limitations were discussed.

Findings:

- 1) The use requested is intended to allow a part time use by the owner.
- 2) Applicant is currently adding fencing and planting trees to provide screening from the road
- 3) There will be no exterior change to the structures on the property.

- 4) There will be little to no noise emanating from the garage due to the work taking place.
- 5) This business helps other island companies to continue to be productive when welding of equipment is necessary.
- 6) The application is compliant with Section 9.2-2 Review Criteria of the Zoning Bylaws.

The following conditions of approval were agreed upon;

- 1) No outdoor storage allowed.
- 2) Work may only be done inside the insulated garage.
- 3) Storage and completed projects only allowed within the fenced area next to the garage.
- 4) Only one additional employee is allowed to work on the property.
- 5) Hours and days of operation allowed; Monday through Friday from 8am to 5pm.
- 6) Drop offs allowed; Monday through Friday from 9am to 3pm.
- 7) No more than 5 jobs per week allowed.
- 8) Vehicles that have been repaired must be removed from the premises within 48 hours of completion.
- 9) All air removed from the garage will pass through the air collection filtration system.
- 10) Only off street parking allowed for customers.
- 11) Fencing on the left side of the property will be replaced and extended
- 12) Approved Application to be reviewed within one year of the expiration of the 20 day appeal period.

A motion was made to close the Public Hearing and open the Board Meeting.

A motion was made to approve the Application with Conditions. The vote on the motion was unanimous.

Nancy explained the 20 day appeal process

5:55 pm- A Continuation of a Public Hearing on an Application from Daniel J. Larkosh to Appeal the decision of the Building Inspector to issue a Notice of Violation under Sections 10.2-2 (A), 3.2-2, 14.1, and 3.1 of the Zoning Bylaws. The appeal is filed under MGL Ch40A sections 8 and 15 of the Zoning Act, Map 21 Lot 12.2, 93 Dr. Fisher Rd., RU District.

The notice and correspondence were read. The correspondence, (see file), consisted of a letter in opposition to the Appeal from Connie Breese, a letter in support of the Appeal by Brian Packish, one of the tenants, and a letter from the Planning Board dated April 27th 2020 which sites one corner of the lot which is in use without a Special Permit and the necessary fence to conceal the storage from the road.

It was verified that the emails between Dan and Joe Tierney, Building Inspector, (see file), have been reviewed by the board members.

Larry asked about the pictures sent by Connie Breese. All members said they had reviewed them. They are part of the file.

Nancy reported that the site visit showed that things had been tidied up quite a bit mentioning tires owned by Carvalho may or may not be usable and a truck cab that was there. She said that repairing the gate mentioned in the Planning Board letter would make a big difference for abutters driving or walking by the property. She said that there does seem to be some progress.

The leases were discussed. Dan said that Joe Tierney had received a copy of the Carvalho lease and that Brian Packish's would have to be redone because neither he nor Brian could find copies. He said that all of his leases are identically worded.

Nancy stated her belief that Joe Tierney was doing his job to enforce the Town's bylaws as required by the Board of Selectmen. She noted that it was most unfortunate that the press received notice of the Violations prior to Dan's receipt of his letter. She added that these are in fact public records.

Brian Packish said that he is the one who may be in violation of his Special Permit granted by the Planning Board, for the portion of the lot that he leases from Dan. He stated that he never heard about the Notice of Violations until April 9th. He said he is happy to work with Joe on this but feels, and his attorney agrees that his rights have been violated. He explained that since he didn't have this info until after the construction ban was in place, that he was unable to visit the site to review conditions listed on the Notice of Violation. He agreed that there were some unsightly conditions on his lease lot and said he spent the last three days working on cleaning it up. He also said that there will be improvements made to the gate. He said he supports Dan Appeal request and asks that Joe Tierney work with him to bring things up to compliance with his Special Permit.

Dan stated that he rents to his tenants by right and any violations should be addressed to them as holders of the Special Permits issued by the Town. He cited the Notice of Violation dated 1/27/20, (see file), as the first correspondence he received. He said that the violations cited never occurred and the he is not legally responsible and in fact has no legal means to correct the situation.

The violation related to unregistered vehicles was discussed. Joe said that this issue has been resolved and he will make note for the record that the violation no longer exists.

Brian Packish stated that he is responsible for the violations and that he would like Joe to rescind the Notice of Violation sent to Dan. He said he would like Joe to work with him to get the issues resolved.

Nancy said that ultimately, there is still work to be done and the goal is to get the lot tidied up.

Larry said that if Joe had the tenant information, perhaps he could have sent the Notice of Violation to them instead. He added that Joe could apologize, agree to send the Notice to them and Dan could withdraw his application to the ZBA. Dan said that he wants it to be corrected for the record. Dan said that the tenant information is posted on the lot and that Joe could have notified them.

Pam suggested that the violations could be taken care of and Joe could write a letter to that effect and Dan could withdraw his Appeal to the ZBA.

Joe Tierney said that he did apologize to Dan but now he just wants the site to be cleaned up, noting that he does not have a copy of the Packish lease and that Town Counsel refers to leases in the email to the ZBA. Brian said he can write up and sign a new lease with Dan.

John cited the owner's ultimate responsibility for the property and suggested that if a new Notice of Violation is sent that it go to both owner and tenant. Dan said that he was the only one notified and mentioned that he had not seen the letter from Town Counsel.

A motion was made to continue the hearing until May 28, 2020 at 6:30pm.

6:15 pm- A Public Hearing will be held on an Application for Special Permit from Diana Gilmore to construct an 800sf., single story, one bedroom Accessory Apartment on a pre-existing, non-conforming lot abutting a Special Way under Section 4.4-3 (A) of the Zoning Bylaws, Map 10 Lot 199.2, 26 Machipscat Trail, RU District.

A motion was made to continue this hearing until May 28, 2020 at 5:15pm in order to re-advertise with a correction to the Map and Lot number. The vote on the motion was unanimous.

The meeting adjourned at 7:45pm.

Respectfully Submitted,
Pam Thors-Board Administrator