

WEST TISBURY ZONING BOARD OF APPEALS
Minutes for Tuesday, June 13, 2019 meeting
2nd Floor, West Tisbury Town Hall - @ 5:00 PM
APPROVED AT THE MEETING OF JULY 25, 2019

PRESENT: Nancy Cole, Larry Schubert, Tony Higgins, Julius Lowe and Deborah Wells
Also Present: Nate Morgan, Nick Puner, John Cain, Tucker Hubbell, Dan Scherlis, Kate Scherlis, Theodor (Teddy) Karalekas and Pam Thors, Board Administrator
Absent: Toni Cohen

5:15 pm – A hearing for an appeal filed by Jay Theise, Esq., agent for Myron Garfinkle-Tr. of the MBG Realty Trust and Scott M. and Charlotte Caskey, of an April 4, 2019 decision by the West Tisbury Zoning Inspector to issue a building permit to construct a single family dwelling on Map 38, Lot 7.12, 118 Sarita Walker Rd, RU district. The appeal is filed under Sections 4.2 and 4.2-2 (A) 3 of the Zoning Bylaws and under MGL Ch40A, Sections 8 and 15 of the Zoning Act.

The hearing notice was read. It was explained that the attorney for the owner of the subject lot, Peter Brown of D’Ambrosio Brown LLP, had requested that the hearing be continued as he could not attend. It was noted that the other attorneys involved had been notified and were willing and able to accommodate this request.

A motion was made to continue the hearing without testimony until July 11, 2019 at 5:55pm. The vote on the motion was unanimous.

Nate Morgan presented an informal proposal to the board regarding an 8 home rental development he would like to do on Map 19, Lot 2, a 2.5 acre lot on County Road. He said that 75% of the units would have to, by law, be affordable. Nancy asked if this is a Ch40B project. Nate said no and cited the section of bylaw he would be applying under as Section 4.4-3 B-Multiple Family Housing by Special Permit. He expressed the hardship that he and his wife experienced during the first five years they lived here, moving six times in that five year period. He stated the many ways that island agencies are addressing the problem and his enthusiasm to help the community.

Tony asked if they are individual units. Nate said yes, they are trying to minimize the visual impact on the neighbors and to foster a feeling of ownership by doing individual units. He said they are interested in doing one person units. The state maximum for that size house is two people. He said he is working with Farley Peddler on design and financing the project. He mentioned that he is in construction and his wife is involved with interior design, so they have a good background and many contacts in order to address this type of endeavor. He said he would be the landlord but not live on the property. He has already met with David Vigneault to discuss the Affordable Housing constraints. Tony suggested that if the dwellings were more clustered, there would be more green space on the property and the units would not look so much like a “barracks”. Nate said the units would actually be somewhat scattered, unlike the plan presented, to avoid that appearance. He said

he would like them to be tight and efficient with an eye to renters being able to utilize the bike path for transportation or exercise. He suggested a future garden for the small community. Larry noted that under 4.4-3 (B) the Planning Board would be the permit granting authority. He asked if the Planning Board would grant the Special Permit and the ZBA would have to issue the Special Permit for the Affordable Housing piece.

Nate described the process by which the 2.5 acre lot became unbuildable, (rather than pre-existing, non-conforming-buildable under 11.1-3). He said that in addressing a frontage problem, the owners had changed the lot lines on the two adjacent lots. When that change was made, it removed the protection of the pre-existing, non-conformity thus rendering the lot unbuildable. Nancy stated that the first thing that would need to be addressed would be the buildability of the lot through application to the Planning Board. It was reiterated to Nate that lot line changes must also be addressed by the Planning Board. Nate said he would be meeting with them next week.

5:35 pm: - (Continued from 6/6/19) - A hearing on an application from John Cain for a Special Permit under Section 11.1-3 (A) of the Zoning Bylaws. The hearing will address the allowed uses at the Lamberts Cove Inn and Restaurant and the Town of West Tisbury Entertainment License issued annually by the Board of Selectmen, Map 7 Lot 99, 90 Manaquayak Rd, RU district.

The hearing notice was read and John Cain, the owner, presented his thoughts on the pre-existing, non-conforming use of the Inn and the use going forward. He said that he was asked to summarize the events and activities, including weddings they would like to have going forward. He said he had originally asked for 14 weddings with a preference towards more in the shoulder season rather than in July and August, although there would be some during those months. He addressed the types of other events and their wish for them to be family friendly. He said that he would be willing to look at these numbers and reach compromise if necessary. He said he is looking at 14 weddings with the max at 250 people, although the average is 150 people, and music to be turned off by 9:30pm. He said they have monitored the decibel level and as far as they know there hasn't been an issue with that (amplification). He said that there haven't been any issues they are aware of regarding the noise from these gatherings. He said they are very careful about the parking on Manaquayak Rd and keeping that access open. He mentioned that they require people to shuttle to the Inn so parking has not been a problem. He said that the numbers for this year have already been approved so this would be for next year and going forward.

The correspondence was read. There were 10 letters in opposition citing traffic, food at pool area, blocking of the right of way, (Manaquayak Rd), and excessive noise due to the change in the size and amplification of the weddings and the fact that weddings are now held in July and August, (which was not the case previously). A number of abutters cited 3-5 weddings in the spring and approximately the same number in the fall. July and August have historically been wedding free months according to a few abutters. The continuation of this restriction was requested. 8-10 weddings per year were suggested. Ticketed events were cited by one abutter as a new use and vehemently opposed by them. One abutter commented on the rewriting of bylaws in 2011 in which

the RU and VR Districts were reviewed, stating that the only reason the Inn is allowed at all is due to the fact that its use as an Inn and restaurant predates zoning. It was suggested that the Inn apply for an amendment to the Special Permit for the pool in order to allow dining there and that this use is in violation of the original Special Permit. It was also suggested that indoor events be considered separately from outdoor events. It was noted that abutters need to deal with traffic and noise involved with setup, event and then breakdown at every event. Many abutters supported the use continuing as an Inn and Restaurant including weddings but not ticketed events, as they were cited as not part of the pre-existing, non-conforming use. Indoor ticketed events were in general supported as long as the total restaurant capacity was enforced. 11.1-3 (A) only affords extension/alteration of a non-conforming use as long as the impact is not detrimental to the neighborhood. "The few small weddings of the past" was the language used by one abutter to describe weddings at the Inn in the early days. "Noise was only moderately and infrequently a nuisance" as opposed to "painfully noisy" weddings presently taking place. Prohibition of loud speakers was suggested. "Relentless MV was supported in one letter because it is the brainchild of the Cain's. A maximum limit of 100 people was suggested as a continuance of the original non-conforming use. The poolside BBQ was cited as a new use. Problems with access to driveways were described as an issue by one abutter. Allowing no new ticketed events was requested.

The letter from the Board of Health states that if the 70 seat maximum is adhered to the owners should be able to serve food by the pool provided they obtain the required approval, (ZBA?).

Nancy stated that they have a list of all Special Permits that have been issued and the conditions for each. She went through the following list.

- 1) 1982-"to enlarge one guest room and dining room. To build a new laundry to replace existing laundry in basement and to build a much needed office for the Inn.
- 2) 1989-"to enlarge the existing Manager's Apartment from a single bedroom with full bath to an efficiency unit with sitting room/kitchenette-bedroom-bath; plus a manager's office and lavatory.
- 3) 1995-"to change a pre-existing, non-conforming use which involves moving a parking lot from in front of the carriage house to the adjacent woods.
- 4) 2005-"A Special Permit for a 20'X40' semi-public, outdoor, in-ground pool and associated fencing and equipment housing.
Condition #4 – The public's use of the pool is for overnight guests only, not for dinner or other mealtime patrons.
- 5) 2006-"to enclose an existing deck; to relocate the current main dining room to the enclosed deck area; to relocate the current library to the vacated main dining room space; to relocate the secondary dining room to the vacated library area. The number of dining seats (70) will remain the same.
Condition #1-The number of dining seats is limited to 70
#2- Handicap access will be installed as shown on building plans approved 2/15/2006.
- 6) 2019- "To substitute elevated seating for 9 of the 70 seats allowed at the Inn".

John responded to the correspondences by saying that the abutters don't really have any idea what numbers of weddings and events and numbers of people in attendance took place. He said that the barbeques by the pool have simply been a substitute for the seating allowed in the restaurant for the Pool side dining. Pam commented on Condition #4 in the Special Permit for the pool that addresses who can use the pool. One abutter spoke to the website for the Inn which advertises the barbeques and taking "one last dip in the pool". John stated that many people including marketing agencies have added to the website and that they would have to remove those words. Tucker Hubbell, an immediate abutter, suggested that the board review the minutes of the meeting and the conditions stated in the Special Permit and whether the discussion of the pool application lumps the pool area and patio together as part of the "Pool Special Permit". Tucker said that in his opinion, the owners should need to apply for an amendment to the original Special Permit to allow dining by the pool. John stated that in the last 15 years they have been using the pool for cocktail hour during weddings. Dan Scherlis, an immediate abutter, brought up the concert series as an event that would increase the traffic problem. Tucker stated that he thinks the board needs to clarify the language in the conditions of the special permit. He said that having been at the meeting where the previous owners asked for the pool, that they were not just talking about the pool but rather the whole pool area. He said that when the ZBA approves a pool, the approval includes the pool, the pool area, the fence and the equipment shed etc. John said that for 15 years, wedding guests have been allowed to have their cocktail hour by the pool. Tucker said that if the Inn chose to have patio seating for the restaurant that is an expansion of use. He cited the 2006 Special Permit (changing the library and deck area/patio to become part of the restaurant). He said that if State Rd. restaurant would like to have outdoor seating, they would have to come before the ZBA for a Special Permit for that use of the pool area. He said that the Application for Special Permit would bring up the main difference presented by poolside dining, which is the level of noise generated at the pool.

Nancy asked the neighbors if they were disturbed by the music during barbeque night dining at the pool. Tucker said that he likes Mike Benjamin but that it does add more noise in the neighborhood.

Teddy Karalekas, an abutter, stated that he loves music and has never minded the music rolling up the hills to his property. Tucker reminded the board that Teddy's property is 1,200 feet through the woods to the Inn.

Dan stated that his family had supported the Inn when they applied for the pool, they wanted the Inn to be competitive and healthy. He said they were always opposed to anyone but Inn guests using the pool and pool area.

He stated his concern that the board may treat long standing violations as part of the pre-existing, non-conforming use.

Tucker said that the board will have to decide if dining by the pool is in violation of the 2006 Special Permit. He said that this is separate from the weddings and the ticketed events. He said that weddings may have never been grandfathered because they were never part of the activities of the

original lodging facility, but have been going on for a long time. He said that whether it is 1—12 or 14, he would be very surprised if there were any 300 guest weddings. He said that his recollection is that there are, by and large, 150 guests per wedding. He noted the difference between a 50 guest wedding and a 200 guest wedding and the amount of noise and traffic they produce.

Kate Scherlis, an immediate abutter, suggested to her husband that they vacate their home on August 17th, when a 150 guest wedding will be taking place with amplified band music. Teddy suggested that they go to his restaurant, Lobsterville, in Oak Bluffs that night.

Larry said that in looking at the correspondence, he took away that most abutters cited about 10 weddings per year. John said that he had researched the books for 6 months prior to purchasing the Inn and he thought that 14 weddings is the most they had with the average being about 12.

Pam noted that the original pool plan was in the file. This plan shows no outdoor seating for dining in the pool area.

Dan asked where the authorization was, for any non-wedding events. Nancy said that there has never been a Special Permit to allow weddings but that it is a use that has evolved over time. Dan stated that he recalls weddings held prior to 1973 outside on the lawn but stated that outdoor ticketed events such as concerts etc. were never part of the pre-existing, non-conforming use. It was verified that the grandfathered use, according to him, did not include these types of outdoor events but that there were luncheons etc. that were held indoors. Nancy stated that outdoor ticketed events may be in violation. John suggested that this is a gray area. Nancy disagreed with this statement.

John stated that the music is always off at a very reasonable time. This time is represented as 9:30 – 9:45 pm. John said that it isn't fair to blame all misbehavior in the neighborhood on the Inn. Nancy stated that there must be parking problems as they are outlined extensively in the correspondence. John said he has never seen the Scherlis's driveway blocked. Dan cited a few issues that he has had just this spring. John said that he doesn't think that parking is a big issue at all. Kate cited a recent trip to Cronigs where her way was blocked leaving and returning to her house. Dan cited vehicles double parked...one on Manaquayak Rd blocking him. He also said he has had to move the golf cart to get through as well. He said that they are lucky to have 10 feet of area on Manaquayak Rd when the way is supposed to be 25 feet wide.

John said "Let's be realistic and not blow this out of proportion", and that "once in a while these things are going to happen". Tony suggested signage for Inn guests designating parking spaces. Pam brought to the attention of the board Massachusetts General Laws, Chapter 140 Licenses Section 183A-Concerts, Dances, Exhibitions, Public Shows, etc. Section 183A addresses rules and regulations for licensed events. Page 3 of 5 states that events may be licensed if they (last paragraph part b) "prevent an unreasonable increase in the level of noise in the area caused by the licensed activity ...".

Teddy made reference to John's monetary investment in the Inn and his wish to relocate his family to start a new life. He said he needs to get a few bucks in to at least have it flush out a living for him. He suggested that everybody get together and get along....

Nancy said that all the neighbors appreciate that but there have been incremental increases in use that have never been approved. John said he does not agree with that. Nancy mentioned that no eating at the pool is not a gray area even though it has been happening for 15 years. John said that he had 30 people in support of his application for the cabins and that there were only 9 people in opposition. Pam said that there was an overwhelming number of abutters who opposed the cabins. Nancy noted that there were letters in support that were not even from abutters.

Tucker suggested working on the parking lot issue. He showed everyone his deed stating that maybe John doesn't truly grasp that Manaquayak Rd is a Right of Way. He presented the map that had been part of the application for the parking lot expansion in 1995. He explained that along the fence it was always all grass so the road was very obvious. The undergrowth, in his opinion, has affected the amount of parking spaces people feel comfortable using. He said everyone parked on the grass originally. He said, and Kate agreed that the parking area and the road used to be a bigger area. Julius suggested a border, such as pavers to delineate parking spaces so people can see where the road is or moderation of the fence with accompanying signage.

Tucker explained the workings of a "Right of Way"; it can never be blocked but as well, cars utilizing it may not stop and sit on the Right of Way. John stated that they can take care of the undergrowth so that parking spots are more evident. Larry cited that Manaquayak Rd runs through the parking lot, not on the edge of the property. He suggested moving the "Right of Way", (ROW) to the edge of the property so that there could be two entrances-one to Inn parking and one to ROW. John said that making sure that people are parking correctly should take care of the issues.

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

Nancy went over the list of weddings. She suggested that weddings not be scheduled in July and August as this regulation was enforced by the previous owners because of the general increase in traffic during those months. John said he would not be able to guarantee that there would be no outdoor weddings scheduled during July and August. Nancy said that they might have to insist on this due to the pre-existing, non-conforming use relating to weddings.

Nancy stated that it seemed that 10-14 weddings seemed to be the average number allowed in the past. She asked about other events they would like to have and whether they were outdoors. John said they would be outside and there would usually be under 100 people attending. The list of outdoor events and the traffic generated by some of them, (ie: the 250 person event listed), were discussed.

Nancy asked what other events had been held at the Inn? John mentioned a Jaws Fest with 300 people and a screening of the movie. Tucker said that must have been 35 years ago. Nancy said that 300 just seems to be too large a number of guests for the neighborhood to handle. Lunches on the lawn were discussed. John said that this event is about 250 people. Nancy asked where the guests would park for these events. John said that guests would be shuttled from their hotels and carpool. Tony asked if wedding guests outnumber the guests at ticketed events. John said that weddings are usually less than 100 people. He said there was one that was 175 guests and one that was 150 people.

Larry asked if they could size the limit of people to 150 and lower the number of weddings plus special events to 16? He asked if that number was okay with the abutters, the other board members and John. Dan said he actually remembers weddings being about 6-8 in number.

Julius said that 150-200 guests should be the maximum at any event or wedding.

Dan asked how many people were at the Elizabeth Warren event. John said it had not been handled well and that there were about 150 people in attendance. Nancy said that any event of that size would constitute shuttling of guests. Julius said that the noise factor has to be considered as directly related to the number of events. Nancy agreed saying that managing the noise level is a major concern. Many ideas as to the numbers of weddings, events, guests etc. were discussed. Nancy suggested again that there be no big events in July or August stating her opinion that events with less than 100 guests are okay during these months.

The following list of regulations was suggested;

- 1) 16 events-never more than 150 people
- 2) No outdoor events in July and August over 100 people.
- 3) Regulation of amplification-John said that legally they were under the decibel level but it was still too loud for the neighbors. Dan asked what the level was. John said that he didn't know the exact number. Dan mentioned that the difference between the ambient noise levels in Boston and those on Manaquayak Rd. should be taken into consideration.

Larry quoted the first line of the noise regulation in Section 8.5-2 (A) of the bylaws, " There shall be no evidence of the use through persistent or excessive sound, vibration or odor at the boundaries of the property". He suggested that there be a limit to the time allowed for amplification, i.e. 3 hours. He asked John how long the amplification usually goes for. Dan asked if he was going to have to come to the Island every weekend there was a wedding scheduled so that he could remove his mother from the premises because three hours of constant loud noise is stressful and unpleasant. He added that 3 hours of amplification is not reflective of the historical use and that in 1973, there were a handful of weddings that were under 100 people and that here the board is looking to authorize an unprecedented number of events and weddings that the abutters are stating were not included in the pre-existing, non-conforming use. He said there were never 16 weddings per year with 150 people. He said he doesn't understand why this board is supporting this increase in use. Nancy said that the problem is that things have been going on for years that have not been permitted uses. She stated that

the outdoor weddings have been going on for years. She said they are trying to get to a number that will be the law of the land going forward.

Pam asked the board to remember that they are talking about a pre-existing, non-conforming use, not the use that has evolved over time. Nancy said that since zoning, the uses at the Inn have changed but the changes have never been permitted. Tony suggested that they need to focus on numbers of events and numbers of guests. He asked about 16 total events with 150 people allowed. Nancy said that she is thinking that 16 total events with the number of events up to 150 guests being limited. She said that the next thing they need to talk about is the amplification.

Nancy stated that shuttling for the larger events is a necessity. She said that ideally, events that are going to draw lots of islanders should have satellite parking and shuttling arranged. She said there are ways to make it work. Pam asked if there would be a cutoff number for shuttling. It was verified that about 60 cars can fit in the current lot. Nancy asked for a parking plan. Pam asked if it should be engineered showing Manaquayak Rd. Nancy said no, but that it should show dimensions of the property and the number and location of parking spots. It was agreed that Manaquayak Rd. should show on the parking plan as well.

Nancy requested a sound mitigation plan be put together as well. John said that he could do that. Dan suggested that ambient noise levels be considered in the plan.

A motion was made to continue the hearing until July 25th at 5:15pm.

Nancy requested that nothing else be put on the agenda for that meeting.

The meeting adjourned at 8:00 pm.

Respectfully Submitted,

Pam Thors, Board Administrator