

WEST TISBURY ZONING BOARD OF APPEALS
Minutes for Thursday, June 23, 2022 meeting

Approved on July 28, 2022

Present: Larry Schubert, Julius Lowe, Deborah Wells, Andy Zaikis, Jeffrey Kaye

Absent: Casey Decker

Also Present: Pam Thors, Bd. Administrator, James Graham, Joseph O'Donnell, Tabitha Calheta, Cody Coutinho (VLSE)

5:00 pm – The minutes of the meeting of June 2nd were reviewed and approved with corrections.

MV Preservation Trust- Pam read the Building Inspector's letter to the Martha's Vineyard Preservation Trust in which he asks the Trust to file an application for a Special Permit to address what he sees as an increase of use (see file). The letter prompted a letter appealing the Building Inspector's determination that a Special Permit was necessary. Pam said she called Rob McCarron the day after receiving the letter to ask Atty. McCarron if he wished to also file an application to the ZBA for the appeal. She said she explained that the ZBA application is part of the Appeal Process as described in Ch. 40A S. 8&15. Atty McCarron said that he does not wish to file the ZBA application.

Julius said that this seems to be an indication that the Trust, represented by Atty. McCarron, may wish to move this issue to the level of court action, as opposed to complying with Town processes due to the fact that deeded rights to property use exist.

Jeffrey verified that at this time there is nothing related to this issue before the ZBA at this time.

The contents of the letter from Atty. McCarron were discussed.

It was confirmed that the Building Inspector was sent a copy of the letter and that the ball is now in his court.

Deborah asked if Atty. had the time to file a complete ZBA application to appeal after speaking with Pam.

Pam said that the letter was filed with the Town Clerk's office on Thursday and that she called Atty. McCarron on Friday. The deadline to file with the ZBA (30 days from date of Building Inspector's letter) was the following Monday.

5:15 pm – An application for a Special Permit from **Joseph O'Donnell** to construct an accessory structure (1,872 sf. Sport court) over 676 sf. on a non-conforming lot under Sections 3.1-1 Tennis Courts, and 11.2-2 of the Zoning Bylaws at **8 Waldrons Bottom Rd., Map 29, Lot 45.2.**

Larry read the notice and the narrative. He read the Planning Board letter which refers the application back to the ZBA for their determination.

The noise associated with pickle ball was discussed. It was noted that the higher frequency of sound and the higher pitch of the sound can be very annoying and is therefore an extremely controversial issue.

Pam asked Jeffrey Kaye if he may have a conflict of interest. She explained that in speaking with Jay Segel who wrote in opposition to pickleball in residential neighborhoods, Jeffrey's name was mentioned. She said that for the record, it would be best to clarify his position on this.

Jeffrey stated that he does not feel that he has a conflict of interest in this case. He said that he is a concerned citizen who has no other interest which would conflict.

Mr. O'Donnell explained that pickleball may not be the most frequent activity on his proposed "Sport Court".

Larry noted that there are still many unanswered questions regarding pickleball noise generation.

Jeffrey noted that pickleball is a great sport but the jarring noise associated with the sport is what he has a problem with. He said that he thinks the issue should not be decided by the ZBA but should be presented to the town to approve or disapprove at a Town meeting.

It was noted that anyone may purchase a pickleball set and place it in their driveway.

Deborah stated that the Pickleball Association has recognized the noise issue and offers tools to mitigate the offensive noise.

Larry asked the applicant if he would be willing to do some research on the noise and provide it at the next meeting. He suggested the following two options to Mr. O'Donnell:

- 1) Request that the ZBA remove pickleball from his application.
- 2) The application could be continued to a later date, during which time, Mr. O'Donnell could gather information to support his application.

James Graham who was in attendance, asked the board if any of them had any part in writing the letter submitted by Jay Segel. All board members confirmed that they had not taken part in the writing of the letter. James then asked Jeffrey specifically if he had anything to do with the writing of the letter.

Jeffrey said that he did not.

Larry asked James if he would like Jeffrey to recuse himself from the hearing.

James said he just wants Jeffrey to fully answer the question. He said he is here to advocate for not disallowing pickleball in West Tisbury.

Mr. O'Donnell explained that he would like a place for his grandchildren to play outside...basketball, pickleball and with two-wheeled toys.

The noise that playing pickleball makes was again discussed. Mitigation through softer more quiet balls, sound insulating walls and other options were reviewed.

Mr. O'Donnell informed the board that none of his closest neighbors were opposed to his application. He also reminded them that he is directly across the street from the airport.

Pam read the letter from Jay Segel who is not an abutter within 300 feet of the property and who opposes pickleball in residential neighborhoods.

Julius asked what information the board wants from Mr. O'Donnell. Larry said he would like information on pickleball noise and whether it is considered to be over the threshold of what is allowed by state law.

Jeffrey asked if the ZBA may deem pickleball to be the same use as Tennis.

Julius said that if the ZBA is assured that the noise level is within that allowed by the State that he would feel comfortable approving the application.

Deborah asked if the results of noise level testing were to prove that it is over the State limits, could Mr. O'Donnell employ noise mitigating measures.

Mr. O'Donnell state that the real noise problem on his property is the noise of planes landing and taking off overhead.

*A motion was made, seconded and approved to continue the hearing until **September 22nd** at 5:15 pm.*

5:35 pm – An application for a Special Permit from **Cynthia and William Cavanaro** to construct a 12' x 75' swimming pool on a conforming lot under Section 8.5-4C of the Zoning Bylaws at **5 Stillpoint Meadows Rd., Map 22 Lot 4.1.**

Larry read the notice and Corey Coutinho from Vineyard Land Surveying and Engineering explained the location and the site plan.

The fence was discussed and it was verified that no setback relief is required for the pool. It was also verified that the project is outside the jurisdiction of the Conservation Commission as shown on the site plan.

Larry said that if the ZBA were to approve the application, he would like to see the "limit of work" area shown on the plan.

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

Larry went over the "boiler plate" conditions for all pools in West Tisbury. Pam asked if the extra condition of approval would be that a new site plan showing the "Limit of Work" area must be submitted to the ZBA prior to the issuance of a building permit. This was confirmed.

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

A rollcall vote was taken with the following resulting votes;

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

Larry went over the 20-day appeal period.

5:55pm – An application for a Special Permit from **Tabitha Calheta** to Appeal the Decision of the Building Inspector to deny a permit for a washer-dryer in a detached bedroom under Chapter 40A Sections 8 and 15 of the Massachusetts General Laws and under Sections 4.2-2E and 14.2 (definitions) of the West Tisbury Zoning Bylaws at **27 Heather Trail, Map 30, Lot 2.**

Larry read the notice of Appeal. It was confirmed that the detached bedroom is currently under construction. Tabitha Calheta said that there is a bedroom and, as allowed in the bylaws, a sanitary facility. She said that the definition is vague and that she should be allowed to have a washer and dryer in the sanitary facility as well.

Larry stated the following two findings;

- 1) the bylaw does not state that you cannot have a washer/dryer in a detached bedroom.
- 2) The washer and dryer would be inspected along with the other plumbing fixtures.

He noted that as long as the detached bedroom is not used as an Airbnb [it is fine].

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

A motion was made and seconded to approve the Appeal to the Building Inspector's decision and to approve the Special Permit.

A rollcall vote was taken with the following resulting votes;

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

6:15 pm – An application for a Special Permit from **Luiz Oliveira and Shelyn Garcia** to construct a breezeway with a utility sink which will connect an existing shed and workshop requiring 28' of rear yard setback relief and to amend Special Permit #2018-41 to re-locate a bedroom to the basement and to change its use to a recreation room with kitchen under Sections 9.3-3 and 4.2-2D4 of the Zoning Bylaws at **560 State Rd., Map 16, Lot 61.**

Larry read the hearing notice and the narrative. He also read the letter from the Building Inspector, (see file) which cites a violation by the owners of their Special Permit to operate a Service Business on their property. Larry stated that the ZBA may not approve an application for a Special Permit when a violation exists. The applicant then requested that she be allowed to withdraw her application without prejudice.

A motion was made and seconded to approve the request to withdraw the application without prejudice with the following resulting votes:

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

The meeting adjourned at 7:40pm.

Respectfully submitted,
Pam Thors, Board Administrator