

WEST TISBURY ZONING BOARD OF APPEALS
Minutes for Thursday, June 30, 2022 meeting

Approved on July 28, 2022

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

Also Present: Pam Thors, Bd. Administrator, Corey Revelson, Atty. Ellen Kaplan, Rocco Bellebuono, Katherine Wilson.

5:00 pm – During the discussion of the minutes of May 26th, Jeffrey mentioned that at the MV Artisans Festival hearing, a member of the public in attendance used the term "detrimental reliance". Larry asked Pam to locate this in the minutes and verify that the term was used and to identify the person who brought it up.

Pam said she would complete the "Also Present" list on the minutes as well. It was agreed that the minutes should be voted on at the next meeting.

Deborah asked about voting separately on the Appeal to the decision of the Building Inspector and the Special Permit.

Pam stated that she had looked into the procedure relating to Appeals applications and received information from Atty. Mark Bobrowski which was clear and helpful. Atty. Bobrowski suggested that the legal notice should list the request as:

- 1) An appeal to the Building inspector's decision under Chapter 40A, Sections 8 & 15 AND
- 2) A request for a Special Permit under the applicable Town Bylaw.

He stated that if the Appeal of the Building Inspector's decision is granted, the applicant should withdraw the application for Special Permit because overturning the Building Inspector's decision automatically allows the applicant to move forward with their project as presented. This should be reflected in the decision.

He stated that If the appeal is denied, the board may then move forward with reviewing and voting on the application for Special Permit under the advertised section of the Town bylaws.

5:15 pm - A Public Hearing on an Application for a Special Permit from **FFD Enterprises MA, Inc.** to amend Special Permit #2021-12 to allow the 3,000 sf. of canopy to be used for cultivation of both medical and recreational use marijuana, eliminating the original designation of 1,000 sf. for cultivation of medical use marijuana and 2,000 sf. for cultivation of adult/recreational use marijuana at 90 Dr. Fisher Rd., **Map 21, Lot 12**, LI-1 district under section 9.3-3 of the Zoning Bylaws

Larry read the hearing notice and narrative. He noted that originally, the only permits were for medical use marijuana. He said he doesn't believe that the bylaw restricts the sf. of grow area now. He said he believes that the 1000 sf. limit is left over in the bylaw from when the town initially allowed medical marijuana. He said that at that time, there was no reference to recreational use marijuana. He questioned whether in 2018, when medical marijuana was taken out of the Use Table, if the reference to the medical grow area limit should have been taken out of the Dimensional Table. He added that Town Counsel's advice was to let the boards work it out.

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

A suggestion was made to send a sample decision, reflecting the language in the Legal Ad, to Town Counsel for their review.

Larry noted that a new application for a grow facility could come in, requesting any amount of grow area. He verified that the applicant is requesting 3,000 sf. of medical marijuana grow area.

Casey asked if they are currently using the total 2,200 sf. Corey said that the reason their request is being made is that they would no longer have to label each plant as medical or recreational. He also stated that in Massachusetts, plants can be grown together but only labeled separately at "point of sale", adding that logistically it would be much more efficient. He said there would be no change in the number or type of plants, it would just be an internal designation when it is sold.

Larry noted that the Planning Board had, after their review, referred the application back to the ZBA for our review.

Larry said that when he discussed the application with Joe, the issue of the location of the easement came up. Larry stated that when the Building Inspector went out to check the easement, he found that it was not in the location specified on the recorded easement. He said there is about 12' of space between the easement and the lot line.

It was suggested that the plan be re-drawn and recorded as an update to the original recorded easement.

Larry stated that the violation prohibits the issuance of the requested Special Permit. He also reiterated that the bylaw issue must be addressed.

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

The board agreed that Town Counsel should be asked to review the proposed decision and that the Planning Board should be asked to look at the bylaw issue. They also agreed that the applicant should have the plan showing the easement re-drawn and recorded to override the original.

Ellen Kaplan stated that there is a second application that is now in front of the Martha's Vineyard Commission (MVC), scheduled for August 11th. She asked if tonight's meeting could be continued to that date.

Julius stated that any one of these dimensions are subject to ZBA relief. He asked why this request cannot be granted by the ZBA.

Larry reiterated that a sample decision should be sent to Town Counsel for review and that there should be a letter to the Planning Board asking if this can be removed. He said that this should give James Eddy time to redo the plan.

Corey asked if this request could be approved with conditions covering the ZBA concerns. Larry said that it would be better to get some of the issues resolved first.

Andy asked if all plants would be labeled as medical marijuana plants. Corey said that they would.

A motion was made to continue the hearing until August 11th at 5:35 pm.

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, C. Decker-yes.

5:35 pm – A Public Hearing on an Application for a Special Permit from **Rocco Bellebuono** to re-construct and add to a pre-existing, non-conforming storage shed over 676 sf. requiring 34 feet of west side yard setback relief on a pre-existing non-conforming lot under sections 11.1-3A & 11.2-2 of the Zoning Bylaws at 269 Great Plains Rd., **Map 17, Lot 146**, RU District.

Larry read the notice and Rocco Bellebuono presented the application. He explained that the storage shed that they would like to re-construct has been in disrepair for years.

Larry verified that the square footage of the proposed re-constructed shed will be 792 sf. He noted that the proposed location of the re-constructed shed will not, according to the site plan, be more non-conforming than the original storage shed.

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

*A motion was made and seconded to approve the Special Permit with the following resulting votes:
L. Schubert-yes, J. Lowe-yes, D. Wells-yes, A. Zaikis-yes, J. Kaye-yes, C. Decker-yes.*

Larry went over the 20-day appeal period.

5:55 pm – A Public Hearing on an Application for a Special Permit from **Katherine Wilson** to operate a home occupation, (therapeutic massage), at 625 Edgartown Rd., **Map 31, Lot 28**, RU district under section 8.5-1B of the Zoning Bylaws.

Casey stated that he would recuse himself for this hearing.

Larry read the hearing notice and Katherine Wilson, the applicant described her request. She said that she is hoping to operate a therapeutic massage business from the detached bedroom which will be built on the property also noting the following details;

- 1) The existing driveway will be extended to accommodate client parking.
- 2) She sees 0-3 clients per day one at a time.
- 3) Appointments last from one to two hours.
- 4) She has no employees.
- 5) Days & hours of operation are Monday through Saturday from 9:00am to 6:00pm.

It was also noted that the detached bedroom is allowed by right.

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

*A rollcall vote was taken to approve the Special Permit with conditions, with the following resulting votes:
L. Schubert, J. Lowe, D. Wells, A. Zaikis, J. Kaye.*

Larry went over the 20-day appeal period.

6:15 pm – A Public Hearing on an Application for a Special Permit from **Mark Mazer agent for Whit Griswold & Laura Wainwright** to add a bow window to a pre-existing, non-conforming structure requiring 24 feet of South side yard setback relief at 295 Lambert's Cove Rd, **Map 7, Lot 6**, RU District.

No one attended to present this application.

It was moved, seconded and voted to continue this application until August 11th at 5:55pm

Correspondence

Larry read the letter from the Planning Board regarding receiving feedback from the ZBA relating to the Planning Board review of applications. He said he would write a letter in response.

The board moved, seconded and voted to approve payment of the bill from Reynolds, Rapport, Kaplan and Hackney.

The meeting adjourned at 7:00pm.

Respectfully submitted,
Pam Thors - Board Administrator