

WEST TISBURY ZONING BOARD OF APPEALS

Thursday, July 14, 2022
Meeting Minutes

Approved July 28, 2022

Present: Larry Schubert, Julius Lowe, Deborah Wells, Jeffrey Kaye (*remote until 6:15pm*), Andy Zaikis (*at 6pm*), and Casey Decker (*remote at 6pm*)

Absent: N/A

Also Present: Kim Leaird (*Board Administrator*), Pam Thors, John and Linda Powers, Mike Sisco, Lisa Specht, Travis Ritchie (*RD Studio*), Cody Coutinho (VLS+E), Daniel Whiting, Carter Payne

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5:15 pm – A public hearing on an Application for a Special Permit from **Lynley Projects, LLC** to amend Special Permit #2020-28 to allow construction of an 18'x 15' rooftop deck on an existing structure on a pre-existing non-conforming lot in the Inland Zone of the Coastal District under sections 6.1-5B, 11.1-3A and 9.3-3 of the West Tisbury Zoning Bylaws at 63 Boghouse Way, Assessors' **Map 3, Lot 7, RU District**.

Representative Travis Ritchie said the application is for a rooftop deck that exists between two gable roofs. The plan was previously reviewed by the board. Larry said a letter was received from the Planning Board referring it back to the ZBA for its consideration without comment.

A motion was made and seconded to close the hearing and open the board meeting.

Larry said it is allowable under 9.3-3 (Amendment) and 6.1-5B (Inland Zone). It is a substandard lot under 2 acres. The building already received a special permit.

It was moved and seconded to Grant the Special Permit.

A roll call vote was taken with the following resulting votes. Motion passed 4-0.

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

Larry went over the 20-day appeal period and reminded applicant that once that expires, the decision must be recorded by applicant and a receipt brought back to the Building Inspector.

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5:20 pm – A public hearing on an Application for a Special Permit from **Rosa Notaroberto** to allow construction of a 959sf addition to a pre-existing, non-conforming structure requiring 12 feet of south side yard setback relief under sections 11.1-3A, and 4.3-3D of the West Tisbury Zoning Bylaws at 232 Longview Rd, Assessors' **Map 7, Lot 152, RU District**.

The public hearing was opened at 5:29 pm. Representative Cody Coutinho went over the plan with the board. House is white with a hatch; proposed addition is gray with a hatch. Current one-bedroom house is 41 feet from the south property line and proposed is 38feet to outdoor shower, but the house is actually 42 feet away, the shower will be closer. Lot is 1.71 acres.

Deborah asked for clarification of the septic plan which includes the language: “*Existing 1 Bedroom House with 4 Bedroom Addition*” and a 6-bedroom septic capacity. It was determined that is not worded the best, but Cody said that it is a one-bedroom house plus the proposed two plus one in the garage, but there is a total of four (4) bedrooms with the ability to have up to six (6) bedrooms in the future.

There was not a separate site plan, only the septic plan showing the setbacks. Larry said if they vote to approve they’d sign the other plans in the file. Deborah said she thought the clerical error on the septic plan should be fixed.

Larry said Bylaws 11.1-3A (Non-conforming Uses and Structures) and 4.3-3D (Exceptions to Lot Frontage Requirements) allow the board to vote and grant this appeal *if, in its opinion, such use will not have a material detrimental effect upon the established and future character of the neighborhood and the town....* He said the septic plan designed for 6 bedrooms does not pertain to setback relief which is why the applicant is in front of the board.

A letter was received and read into the record from the Planning Board referring it back to the ZBA for its consideration without comment. There was no other correspondence on this application.

A motion was made and seconded to close the hearing and open the board meeting. There were no other board questions or deliberations.

A motion was made and seconded to Grant the Special Permit.

*A roll call vote was taken with the following resulting votes. Motion passed 4-0.
L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Kaye-yes*

Larry went over the 20-day appeal period and reminded applicant that once that expires, the decision must be recorded by applicant and a receipt brought back to the Building Inspector.

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5:40 pm – A public hearing on an Application for a Special Permit from **Steven Katz** to allow re-construction of a man made, naturally filtered pool requiring 42’ of west side yard setback relief and 35’ of south side yard setback relief for the pool & pool equipment enclosure under sections 8.5-4C and 4.2-2D4 of the West Tisbury Zoning Bylaws at 46 Buttonwood Farm Rd., Assessors’ **Map 8, Lot 14.2, RU District.**

The public hearing was opened at 5:45 pm. Contractor Daniel Whiting, presented the project narrative to the board. Mr. Katz has had an existing man-made pond for the last 14 years. It has had trouble and needs a complete overhaul. During his work on it he discovered they wanted to change the use [for swimming as well] and he insisted they have a fence but they did not want one. He made the application to the ZBA for the change of use [pond to pool] and setback relief.

The difference between a pool and pond is an increase in the depth and the change of use. Because they stated to contractor that was their intended use, he wanted them to get a special permit from ZBA.

If this was just a pond there is not setback required but as soon as you make it a pool, there are setback limitations and required pool regulations. The area denoted is the edge of the pond, and then there is an area that is a regeneration zone. Larry said he has seen these, he calls them “echo pools” you create a wetlands filter and run them in but in order to do that you need a filter, pump and fence. The difference with a pond is that there is no infrastructure.

Larry asked why they needed so much setback relief. He said asking for 42ft on one side and 35ft on the other is a big ask in zoning. The pool bylaw requires that pool equipment be in a sound-insulated, enclosure. While [the enclosure] is existing, it does not meet regulations. Contractor said there is already a hole in the ground and it is retained on three sides right now.

The board had no questions but asked to hear correspondence.

Four letters were received and read into the record:

- 1) The Planning Board reviewed and refers it back without comment to the ZBA for their consideration.
- 2) Letter of support received from Robin Hyde.
- 3) Letter of support received from Elliot Kronstein and May Baldwin.
- 4) Letter received from the Martha's Vineyard Land Bank Commission encouraging the board to require the filter/pump system be sited in such a manner as to meeting prescribed setbacks.

The Land Bank is concerned with potential noise because there is a walking trail behind the Katz property. They are asking that the pump and equipment be moved to be 50ft from property line, per setback requirements.

Discussion followed about the details of this specific pond / pool.

- The pump is meant to take out water and filter it back through a chamber then floor.
- The equipment is already in place [from earlier use] and has been there, without a permit, for 14 years.
- It was noted that just because it has been there for 14 years, it does not confer any [special] rights.
- The footprint will remain the same.
- Fence will be split rail with compliant mesh and will meet pool code for height and gate latching.
- Pond/pool will not be heated, so noise associated with propane-fired pump will not be an issue.
- Two pump system: one is for regeneration, the other will run on speed 1 in the winter to keep it from freezing and alive.
- The height of the existing pool shed is substantially smaller than a traditional pool shed: just two feet sticking out of the ground; when done the height will still be two feet or less.

Julius said while it would be great to see the equipment shed not so close to the lot line, in the end, they are not going to heat this, and the newer pumps are quiet. If they occasionally go for a dip, he was not bothered.

Larry went over the pool conditions that are part of every pool permit. He also read the criteria of 8.5-4A and noted the required setbacks and sound-insulated enclosure. Usually it's the heat pump or propane-fired pump. This is an already existing vegetative wetland with the equipment already there. It's either move it to be within setbacks or the board allows it with stricter conditions than "shall be located in sound-insulated enclosure" and suggested four inches of insulation to help mitigate any remaining noise.

A motion was made and seconded to close the hearing and open the board meeting.

There were no other board questions or deliberations. It was determined that the changes were minimal to a specific type of pond/pool in a specific place.

A Condition was proposed to beef up the insulation on the pool equipment enclosure with 4 inches of rigid insulation.

A vote to approve the Special Permit with a Condition as stated was taken with the following resulting votes. Motion passed 4-0.

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

Larry went over the 20-day appeal period and reminded applicant that once that expires, the decision must be recorded by applicant and a receipt brought back to the Building Inspector.

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Andy Zaikis arrived at 6:00pm; Casey Decker left meeting at 6:00pm.

6:15 pm – (Continuation) A public hearing on an Application for a Special Permit from **Michael Sisco, Sisco Family Services** to operate a Service Business (Landscaping/Odd Jobs/Trucking) under section 8.5-2 and 3.1-1 of the West Tisbury Zoning Bylaws at 17 Oak Knoll Rd., Assessors' **Map 16, Lot 55, RU District**.

It was determined today that procedurally the board did not keep a valid board member quorum at each hearing on this application. There is no way to vote a valid vote because the requisite number of board members has not been present at every hearing for testimony. Larry asked that the applicant withdraw and re-apply and that they would vote to waive the fee. It would need to be re-noticed and scheduled. He apologized for this error of the board.

The applicant, Michael Sisco, asked to withdraw his application without prejudice and to reapply.

The board voted to approve with the following resulting votes.

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

A motion was made and seconded to waive the application fee.

A roll call vote was taken with the following resulting votes. Motion passed 4-0.

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

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Informal Hearing: Carter Payne

Granted setback relief for a barn / shop building in August 2021 and he has already poured the slab and three walls are up. He realized he had made an error with a post that is 8.5 feet away from the wall and would like to have space for tools. Right now, he can have a workbench but nothing else.

He would like to add three feet, or just under 150sf of space, to his plan. The elevation will look the same as originally granted. There was no correspondence when project originally came in front of board (August 19, 2021). The location is sited far away.

A motion was made and seconded to characterize this as a ***de minimis change***.

A roll call vote was taken with the following resulting votes. Motion passed 4-0.

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

*Larry said Kim would write a letter reflecting the board's vote that this is a *de minimis change* and he can then take it to the building inspector with new plan reflecting the additional 144sf.*

Correspondence

- *Planning Board request for response to their recommendation on Dan Larkosh project*, overruling their decision. Larry said under 9.2-1D, they have power to make comments, not to decide what is in front of the ZBA. Larry said he would formulate his thoughts over the next week into a letter.
- *Email from Building Inspector regarding food trucks and Calheta (laundry facility)*. Joe would like a formal letter of guidance after the board votes on an Appeal or a Use permit to understand what the board has voted. What often happens is that if the ZBA grants a change of use or an appeal, the applicant thinks they are done and continue operating instead of recording their decision and going back to Building. Discussion around how best to address this from falling through the cracks. Kim suggested a cover letter could be provided with decision to the applicant and then Joe could be notified via Permit Eyes of the board's decision.
- Email from Ellen Kaplan re: Fine Fettle and upcoming August 11 hearing. She requested to speak with Larry in advance to see if they could discuss potential resolutions before Reid Silva draws new plan. The board asked that a new plan be drawn that accurately reflects where the driveway easement actually is and that has not changed. Kim will reply and re-state that the resolution is a new plan.

Old Business

Extension of Time to Act

Board voted to extend the deadline for the board to take final action on the application of Mr. O'Donnell, 8 Waldrons Pond Rd. Time extended to November 3, 2022. Larry signed on behalf of the board.

In addition, plans for Cavanaro approved on June 23rd were signed by the board.

Approval of Minutes

The minutes of the meeting of May 26th were reviewed and approved with corrections. The June 23 minutes were not ready to review.

Upcoming Meetings

July 28 and August 4. Larry noted he will not be here 7/28.

The Meeting adjourned at 7:30 pm.

Respectfully Submitted,
Kim Leaird, Board Administrator