

WEST TISBURY ZONING BOARD OF APPEALS

Minutes for Tuesday, July 25, 2019 meeting

2nd Floor, West Tisbury Town Hall - @ 5:00 PM

APPROVED ON AUGUST 1, 2019

PRESENT: Nancy Cole-Chair, Larry Schubert, Tony Higgins, Julius Lowe, Deborah Wells

Also Present: Nicholas Puner, Tucker Hubbell, Dan Scherlis, John and Keya Cain, Pam Thors,
Board Administrator

Absent: Toni Cohen

5:15 pm: 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 notice was read and Nancy explained that since the Public Hearing had been closed at the June 13th meeting, no new correspondence or public comment could be considered going forward. She also expressed the need to not rush through the process, since the Inn is already halfway through the season. She also stated that she would like the board to consider the whole project under the section (11.1-3A) of bylaw referenced in the notice but to address the previous Special Permits for the pool and the parking if they are to be altered or expanded. Pam noted that re-advertising the Hearing would allow more testimony to be heard. Larry suggested and the board agreed that they had gotten consistent and plentiful testimony already. He said that he hopes that the board can take each issue and systematically resolve them with the information that they have. Nancy suggested that each topic be stated clearly in the decision along with applicable findings and conditions. She noted that the Inn has over the last 10 years or so expanded without permission from the board and since more is being requested, the issue of impact on the neighborhood needs to be carefully reviewed. Nancy asked the applicant to sign an extension to allow the board to stay within the guidelines of the Special Permit timeframe. John said he is not interested in extending the deadline, citing that this is the third meeting that has been held. He said that he thought they had gotten close at the end of the June 13th meeting and would hope to complete the process without an extension. Pam suggested that John agree to the extension as a matter of convenience for everyone involved. Nancy stated that the agreement is up to the applicant and that they may need to hold another hearing in August in order to stay within the legal timeframe.

John presented the parking plan that he had put together. He had drawn in the parking spots on a previously engineered site plan himself. Pam stated that the number of Handicap Spaces required is 1 per 25 parking spaces. Only one was represented on the plan. It was noted that two Handicap spots are required; one van accessible, (16' wide), and one for a normal sized vehicle, (13' wide). The layout was discussed. Pam suggested an engineered site plan with measurements on the parking spots be required in order to thoroughly review the parking. Larry spoke about the spaces that were

overgrown with brush and were therefore not usable. John said that they could be cleared to free up more space. The Right of Way was discussed. John said that it has only been blocked a few times. The abutters in the room disagreed. Nancy said that it is not acceptable that this happens at all and that putting up a sign delineating the Public Way may be necessary. She suggested that Building Inspector Joe Tierney look at the plan and check it for accuracy. Pam went over the parking requirements in the bylaw, (Section 8.2-1). John pointed out areas that could accommodate additional parking.

Tucker Hubbell, an immediate abutter voiced his concern that new information is being presented by the applicant, yet the public cannot voice their reactions to this information because the Public Hearing is now closed. Nancy stated that she can still ask questions of the public but cannot take any additional comments. Tucker explained that he had come in to look at the file and was able to review the parking plan and has new and conflicting information. He stated his concern that this is the situation. Nancy asked him what new information he has. Tucker presented an older plan from 1995, stating his opinion that the town had designated certain parking areas at that time. Tucker said he agrees with everything that John shows on the plan but stated that due to a Stop Work order for parking, the town changed the parking area where the 4-5 spaces are represented on the plan. He said they moved the parking area because of complaints. He said that Scott and Kell had various gardens planted on the lot but since 2000, there is no vegetation where there had been in these areas. John stated that his plan shows where the road is, also stating that the restaurant is twice the size now than it was then. He said that the road is represented clearly on the engineered plan he had done a year ago, and that it is a more reliable source of information than the plan from 1995. He said he just wants to address the issues.

Larry suggested that Joe Tierney let John know how many parking spots are required and review the engineered plan when it is finished so that they would know that the parking is in compliance with the current use. He suggested that John have the engineer add them to the existing engineered plan. He said that if they need more space, they add it to the plan and ask the board to approve the increase. Nancy stated that if the parking is going to be expanded, there may need to be another hearing to specifically address it. Keya Cain clarified with the board that they would only need to hold another hearing if they were going to create more parking spaces. It was agreed by all that the road is represented correctly on the recent, (2018), plan.

Nancy introduced the poolside dining situation. She verified that the dining facility was changed twice via Special Permit and that all dining up to 2006 was inside. She verified that they never spoke of outdoor dining and that it came along without the town's permission. She said that it is a noise concern. Larry read from the minutes of the June 13th meeting which refer to condition #4 of the pool decision of 2005. This condition states, "The public's use of the pool is for overnight guests only, not for dinner or other mealtime patrons". The question of whether, "the pool", referenced is just the actual pool or whether "the pool", is meant to mean the pool surround and patio area as well.

The Board discussed the possible interpretations. Nancy reiterated that they would also need to specify whether the restaurant is closed when dining by the pool is taking place. The pool decision was reviewed. John said he is fine with just Inn guests swimming in the pool but has a problem with not being able to allow wedding cocktail hour and barbeque nights by the pool. Nancy asked the abutters in attendance whether they hear the music and activity by the pool during barbecue nights. Tucker stated that he only hears the amplified music. Dan Scherlis stated that he is not usually here on Tuesday nights. Nicholas Puner said that he doesn't think that he hears the noise from this event. Tucker stated that he doesn't necessarily have a problem with the barbecue nights but that having been a part of hundreds of pool decisions; he can safely say that when pools are considered, the board tends to look at the pool and the pool area as one. Comments were made regarding the standard pool application and whether or not the patio and/or surround are included. Tony stated that in the past, pool activities were not discussed as part of the application. Julius spoke to the hypothetical construction of a patio somewhere else on the property where dining could take place. He said that they wouldn't be having this conversation. Tucker said that unless they applied for expansion, they would not be allowed to build a patio for outdoor dining. Nancy stated that outdoor dining would constitute a new application for expansion of use because originally, at the time the pool permit was issued, there was no outdoor dining at the Inn. She mentioned that if the parking is expanded that a new application would also be required. Keya asked if they could choose to make less spots and not expand the parking. Nancy stated that Joe Tierney will decide what the number of spaces needs to be.

John suggested that the number and size of weddings and special events is more important than some of these specifics, noting that he is already trying to book events two years from now. Nancy stated that some of these issues relate to problems cited by abutters and need to be dealt with. She reiterated that the outdoor dining is an expansion that will have to be looked at. She reiterated the problems brought up by abutters; Noise, parking, blocking of the Right of Way, Special Events and amplification.

Larry went back to the discussion related to weddings and other outdoor events. He said he would like to talk about weddings and other outdoor events as one issue. Nancy noted that some abutters believed that historically there were only 8-10 weddings per year and that other outdoor events did not take place. Julius asked if the events could influence traffic. Keya stated that they shut down the restaurant on barbecue nights because their kitchen could not handle the 70 seat restaurant and the barbecues by the pool. Pam stated that each issue will have to have a separate vote taken for the decision.

Nancy asked if there had been outdoor events when the Repplier's owned the Inn. Dan Scherlis said that there had not, and that there had not been any weddings in July and August. John stated that previous owners Scott and Kell had told him, prior to his purchase of the Inn, that they had 14 outdoor events per year.

Size of events was discussed. John stated that he doesn't believe that the numbers of guests affects the noise level. Dan Scherlis, abutter was asked if he thought this was the case. Dan agreed with him. John stated that he had measured the sound decibels during a few events and found that it was at 95. Acceptable decibel levels were discussed. Dan said that they have all been affected by the noise but agrees with John that the number of guests does not necessarily determine the noise levels. The noise level measurement was discussed. Larry said that the West Tisbury noise bylaw mentions, "persistent noise", and that state laws cite 50 dba as being acceptable. He said that it would probably not be loud enough, for a wedding band though, adding that they don't want to set a standard that doesn't allow amplification but need to set a standard that doesn't break the law. John said he likes Larry's opinion that persistent noise could be interpreted as more than three hours or so. Nancy asked about the length of various events and how many would be amplified. She stated that they had discussed the option of no weddings in July and August because windows are open and excessive noise is hard to avoid. Julius stated that he would like to begin compiling a list of things that the applicant needs to bring to the board. He cited the engineered parking plan asking what other things they need. Larry cited the need for a determination of what is an acceptable level for amplification so that they can approve that level for any event. He said he wants to be able to assure the neighbors that the level was determined systematically. Tucker suggested a different format for the next hearing. He stated his dissatisfaction with talking to John's back etc., saying he wished he could sit and just talk with his neighbor to work things out.

Nancy said that they have a high of 14 and a low of 10 as far as numbers of events go. Larry stated that at one point at the last meeting, they were talking about 14 weddings and 18 family events. That was a reduction from what the Selectmen had originally approved. He stated that it was more quality than quantity. The numbers of guests was discussed. Larry asked what people thought was a reasonable number of allowed guests. Julius said that if they are talking about 14 events, he thinks that the Inn should be allowed a number of larger and a number of smaller events. The question of the duration of events came up. Julius suggested that 3 hours of amplification at a wedding should be sufficient. One abutter stated that they would be happy with that. Talking versus music was discussed, with the talking cited as not being as much of an issue as long as it was not audible from the property line. Outdoor events of not more than 100 people were suggested by an abutter. Julius suggested that 4 at 175 or less and 10 at 100 or less was a possibility. Nancy stated that she doesn't think that any larger (175) events should be allowed from July 1st through Labor Day. Julius suggested that no more than two per month of the smaller events be allowed. John was asked how many guests would be allowed in the restaurant during a day or evening that an event was scheduled. It was suggested that if there were an event of 100 people or more that the restaurant would need to be closed. One abutter asked if they could have a list of outdoor events for the rest of the summer so they could avoid renting their home that week. He suggested that the noise management plan include contact information. John made reference to the noise that emanates from rental properties. Julius stated that this is not a part of the discussion. Larry spoke of two events per month as a possibility.

Nancy agreed that this was a good option. An abutter stated that this is not something that was ever allowed. The board agreed that they are discussing expansion of use. Nancy suggested two per month in July and August under 100 guests each, all guests shuttled. She wondered if there was a way to re-orient the tent set up for weddings as a means of noise management. Larry stated that the 14 outside events should be limited to one day events. The three hour limit on the music was discussed. Larry said it should be a block of hours in total. Amplified music to be limited to three hours was determined by the board to be fair.

Tucker stated that all the things that are being discussed as far as noise management is concerned are not going to happen. He said he can accept the weddings and the inevitable noise but does not want them to happen in July and August. Nancy suggested that one of the two July and August events be without music. Julius suggested one outdoor event in each month without a limit on the number of guests. Tucker made note of the difference between an amplified music event and an amplified speaking event. Julius said he doesn't want to differentiate between music and speaking events. Nancy said that the music is the problem when it comes to noise. Larry asked if they could begin to put together an outline. The conditions, subject to changes, were outlined as follows;

- 1) Number of outdoor weddings/events 14 per year total.
- 2) 4 events with a limit of 175 guests that cannot take place between July 1st and Labor Day
- 3) 10 events with a limit of 100 guests
- 4) 2 events per month July 1st through Labor Day. 1 with amplified music and 1 without amplified music
- 5) For events with amplified music, the duration of amplification allowed is no longer than 3 consecutive hours
- 6) Guests at events occurring during restaurant hours must be shuttled from an offsite location.

Nancy stated that when they meet on this again, that this will be the starting point.

The board voted to continue the hearing to August 22nd at 5:15 pm.

Tony Higgins let the board know that he is retiring after 27 years. He said he will be available for the meeting on August 22nd.

The meeting adjourned at 7:30pm.

Respectfully Submitted,
Pam Thors, Board Administrator