

WEST TISBURY ZONING BOARD OF APPEALS

Tuesday, August 29, 2023

Meeting Minutes

Approved September 21, 2023 (4-0)

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

Absent: Casey Decker

Also Present: Kim Leaird (*Board Administrator*), Ben Robinson, Thomas Bena, Marilyn Vukota, Carole Vandal, Doug Ruskin, Chris Murphy, Judith Fisher, Bill Cavanaro, Erik Adams, Thomas Humphrey, Larry Glick, Amy Upton, Prudy Burt, Joe Tierney

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5:00 pm –(Continued from August 25, October 6, November 17, 2022; January 5, February 16, March 30, April 27, June 8, July 6, July 20, and August 24, 2023): A public hearing on an Application for a Special Permit from **Stillpoint Martha’s Vineyard Inc.** to convert a barn/greenhouse, a pre-existing, non-conforming structure, to a Public Place of Assembly under sections 11.1-3A, 3.1-1, 8.5-2 and 8.5-3 of the Zoning Bylaws at **20 Stillpoint Meadows Rd., Assessor’s Map 22, Lot 4.11** in the RU District.

Larry read the hearing notice and opened the hearing at 5:00 p.m. Larry summarized the events that took place last Thursday, August 24, and that the board continued in order to review the final site plan which was provided today. Present for the applicant were Marilyn Vukota, Thomas Bena and Ben Robinson.

Ben presented the final site plan to the board. He pointed out the following additions and improvements:

- Individual parking spaces (#1-34) with 25 spaces for overflow (#35-59).
- A bike rack.
- Pedestrian access path that starts at the Land Bank parking area and goes behind all of the parking spaces (#54 to #1) to the barn.
- Three (3) handicapped parking spaces (#3, 4, 5); one will accommodate a van.
- Two (2) parallel parking spaces right in front of barn.
- Two (2) EV chargers.
- There is no vehicular access to Land Bank from locus.
- Sight lines: coming off of State Rd., they will clear 15 feet of underbrush to improve sight lines.
- One maple bush blocks view and will be removed.
- A division line will be added with six (6) lighter colored stone to demarcate travel lanes for entrance and exit.
- Boulders and rocks at edge of road will be removed so that vehicles are able to take the turn a little wide.
- Road gets narrower down to 12 feet past a private driveway. There is another tree they will need to remove in order to widen the road.
- They plan to re-open the construction entry road to create the parking loop.
- There are a few azalea bushes that are blocking sight lines as you exit and they plan to remove and re-plant elsewhere.
- They will resurface the existing road.

Pat asked how were only 25 spaces required for a 100-person event. Ben said it is one parking space per 4 attendees per West Tisbury [regulations], which is low so they are providing 34 regular spaces. The overflow spaces will be green and they do not expect to use them often.

Larry asked about lighting planned on the walking path. Ben said while there is no requirement in the town bylaw for lighting, the insurance company dictates how much is needed. They plan [a fixture] at the ramp, one at the handicapped spaces and then placed strategically throughout the parking area. They don't want to over-light and will set them to automatically go off. Deborah asked how far apart they would be placed and Ben said about 100-foot spacing.

Joe said he thought 120-foot spacing and is curious about the actual fixtures and suggested a potential condition for them to return with a lighting plan for review. He's concerned about the spread of the lights, and if they are low or high. Ben said they would be about 12"-18" off the ground. Larry asked Joe if his concerns were around light pollution or safety. Joe said both.

Jeffrey said the abutters are worried about the traffic and lighting, especially Ms. Fisher and asked if they had thought of a way to meet her concerns. Ben said they have not, but it is pretty well vegetated. However, in the winter they could potentially add some plantings [to fill in]. Julius stated that this is something they could work out directly with the Fishers and they said yes.

Jeffrey asked how Mr. Cavanaro's concerns would be addressed, but he said that he is not really affected by the lighting, he just objects to the whole transformation of what he considers a common area.

Marilyn said Stillpoint owns the road and can improve it. Mr. Cavanaro has an easement over the road, and while they want to be sensitive to his concern, he is subject to the same rights as anyone else. Thomas said this is a community project and hopes to do this work while Mr. Cavanaro is on island.

Julius asked about building a berm mentioned at last meeting. Ben said there is a lot of existing vegetation and they are thinking of adding to it. He said it is work in progress until Polly Hill feels satisfied but asked how tall it would need to be built. Julius thought at least 4 feet.

Larry asked Joe if he had any other comment on the site plan. Joe said only the concern about the lights. Discussion followed about putting together a lighting cut sheet and putting it on or over the plan. Ben asked if the board had a goal for the lighting, maybe they could add a condition where they start with a minimum of x number of lights not to exceed x number of lights? Julius said you would want to have two different zones, with the primary lights at the front.

Deborah asked if they have thought about a plan to manage the egress and if and how they would keep track of events to proactively anticipate what staffing might be needed. Thomas said they have and if they have a staff member it would be at entrance but not on State Rd. He said he recognizes how other nearby events, such as the Farmer's Market on Wed. and Sat. mornings, also affect traffic turning in to Stillpoint so will also put thought into scheduling their own events.

Jeffrey said they should have a police detail to see how it goes. Thomas said if the police chief doesn't require it he doesn't know why they would. Ben said the ZBA could require it for the first year, or maybe for their first five [large] events to determine if there's an issue.

Julius said to Deborah's point, he thought they should have a policy that states their plan to manage the traffic at least between spring and fall. Ben said maybe they could make it a policy for three (3) years or x time, at which point the board could waive that policy dependent on what it has found.

Andy said we are dealing with something that has not gotten off the ground yet and while the concerns are very real, it is hard to project what this will look like 2-3 years from now. He suggested the board grant a conditional permit for 1-2 years at which point they could return to extend their permit. This way the board could review all the different issues that we can't possibly know yet: traffic flow, lighting, vegetation, and noise control.

Pat agreed and thought they should consider doing a slow rollout but it's only the 100-person events that concern him. He added that they could get a better feel on these issues if they agreed to do half [of what they are requesting/allowed] for the bigger events. Ben said they are already limited to three 100-person events per week. Ben said they would want some assurance that if they had a trial period they would remain in operation.

Marilyn said what she thinks Andy is saying is not so much [granting] a conditional permit but a permit with *conditions* that are subject to review after a certain period. Larry said they would not be revoking the permit – it would be to come back to look at the conditions.

Jeffrey said he agreed with Andy about making it a conditional permit for one year given the lack of specificity about events planned. He'd like to look at the Dover questions over that time because they owe it to the town to address any conditions not met. He said this is a big project, which will be a big footprint in West Tisbury and will establish and set precedent for other nonprofits seeking to create other venues in West Tisbury. It was his opinion, given the concerns of the neighbors, especially traffic and parking, that the board should not give final approval for a project still in the works. *(Jeffrey asked that the record reflect that Town Counsel had not analyzed, in its legal opinion dated August 23, 2023, whether or not Stillpoint's proposed use is in fact, a Dover-protected educational use.)*

Julius said they should get back to more of the meat of site plan review and thought the applicants have done a commendable job of opening their process up and allowing the board to look at some things not necessarily covered under site plan review. He asked them if they were agreeable to coming back in 1-2 years for another public hearing to have the town look at it again.

Marilyn said it would need to just be to review something specific within the conditions. Thomas said they'd be willing to come back once a year for the first three years to talk about the issues you want to discuss, but not call it a conditional permit.

Public comment

Chris Murphy wanted to inform the board about their job and the process. The application comes to you to approve or disapprove, the zoning officer is the one to enforce. He thought the board was getting bogged down about the future and in his opinion, they do not get to come back every year to chew on it again.

Prudy Burt said she agreed and was encouraged by Andy's suggestion to look at [Stillpoint] again in a year or two. She said Dover really overpowers and eliminates the community conversation about managing all of this change. She spoke about the MVC process and conditions around development on lots 4.9 and 4.10 restricted to a floor area of no more than 1200 sq. ft. and that it was never clarified that the floor area is restricted to one building. She was concerned there could be ten 10x12 tiny houses on each of those lots which would mean more traffic, tree cutting, nitrogen.

Larry said to Prudy's point, if there is more development it would go back to both the MVC and the Town unless it is a single-family home. Ben said there is a section in the Bylaw that addresses camps (4.4-1C) and does not feel they could do what she envisions.

Carole Vandal from Aquinnah spoke in strong support. She said this project is adding to the community in a good way, there are no detriments.

Ben said in their mind it's been a community and conservation project all along. They had a broader vision but have scaled back to fit abutters, the town's concerns and nature's concerns. This is an existing building sitting on 4 existing lots that could have been sold and built on instead. This is a year-round facility for the benefit and use of the island community. Yes, they are introducing a non-residential use in the RU district but noted that there are other places in town also non-residential – Polly Hill, Glass Works, and the Ag Society, and they enrich the community.

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

Larry and Kim worked on a draft decision with input from town counsel. It was distributed to the board today and Kim gave copies to the applicant. It is not the board's custom to share a draft decision with an applicant outside of the public meeting to talk about it. He read through the general and specific findings and then moved to the draft conditions.

Deborah said she had no questions on the draft and proposed conditions.

Jeffrey asked about the terminology of *nonprofit educational corporation* and questioned whether it was a *hybrid corporation* saying it's not defined. He asked if this is going to be a rental situation.

Larry said they have represented themselves as educational and it was his opinion that if they are not operating as an educational entity he'd assume they would fix their paperwork so that they would meet the requirements of being that educational entity. Jeffrey said he's referring to the groups to whom they would rent.

Larry said anyone who uses this facility will use it in an educational manner. He said he'd entertain different language.

Jeffrey said they don't know what rental fees they would charge others. Andy said that is not for the Zoning Board to know, it is not under site plan review. Jeffrey said the board should have oversight, though, of the three events per year allowed as an incidental use.

Larry said as laid out, the incidental events would entail notifying Joe 30 days before for the event takes place. Deborah suggested we add "Incidental" to Condition No. 2 so it is clear we're speaking to the accessory use.

Marilyn objected to Specific Finding No. 5 and wanted to remove the "ALL" or "100% must be educational purposes." She recommended they add "religious" anywhere educational appears. She added that the vast majority of classes and events would be conducted by non-educational entities in an educational manner and that Stillpoint's nonprofit status is the umbrella under which they are teaching so she disagreed with saying they must be educational entities.

Larry and Andy said in their prior representations to the board Stillpoint has not included “religious” at all in their narratives, nor have they represented that events will include religious ones. Larry said they’ll take the suggestion but the board must ultimately decide the language.

Marilyn said they are here under Dover and educational and religious activities are protected under Dover.

Discussion followed about nonprofit entities vs. individuals. The board decided that both terms are being used to give Stillpoint the flexibility to allow groups that may have a religious bent. Julius said she makes a good point that there will be people who will come to teach a class who are not organized as a nonprofit and suggested we strike “entities formed as nonprofit educational corporations” and the board agreed.

Deborah suggested we take out “educational and religious” and simply say *Dover-protected*. The board agreed. Marilyn said 100% of the events would qualify under Dover.

Jeffrey said they never mentioned religious during the MVC hearing process. Larry reminded him that they were in the board meeting and were not going back to open the public hearing.

Marilyn also objected to the second part of Specific Finding No. 5c because she maintained that Stillpoint would have the right to charge a teacher to come in and, in turn, that teacher could charge a fee for the education provided. There is no prohibition to renting to an educational use.

Andy asked if somewhere in the decision should “Event” be defined. Ben said the MVC did so in their decision.

Revised Finding under Specific Findings:

5) During the course of the special permit proceedings, Stillpoint represents to the Board, both in writing and verbally, that:

*a.) 100% of its programming ~~would~~ will be conducted for *Dover-protected* ~~educational~~ **AND RELIGIOUS** purposes ~~by entities formed as nonprofit educational corporations;~~*

*b.) Stillpoint ~~would~~ will not authorize use of the Site by third-parties not created for ~~educational~~ **OR RELIGIOUS** *Dover-protected* purposes; and*

c.) Stillpoint representatives will oversee and have a role in all program events. ~~by other nonprofit educational corporations and would not charge fees for programming held by third parties.~~

The board moved to discussing the draft conditions. Deborah said we should change language throughout and replace “educational” with “Dover-protected”.

Joe said regarding Condition No. 8 – reports submitted to the Building Inspector could be changed to January 15th instead of January 1st each year.

Larry said an additional condition should be to provide the lighting plan acceptable to the Building Inspector.

Andy was asked if he wanted to add a condition around the safety conditions of the site plan. Andy said if we reach that level of specificity he’d be an advocate of having them return for a review. But right now, they are general requirements and restrictions.

Julius said to add a Finding that the applicant offered to have a staff person at entrance for large events for the first year.

Ben said the board could add a 10th condition requiring Stillpoint to return to the town and to the zoning official to review a final event policy that [outlines] traffic, parking and lighting requirements. Thomas said anything more than 90 people they could have a staff person at the road for first year during times of entrance and egress. The condition will be reviewed informally at a 48-hour noticed meeting.

Julius re-stated to say: “Applicant will come back to review the adequacy of the site review conditions.” Deborah suggested they change it to have them return in 18 months, not one year, so they can have two summers of data to share. She suggested they come back to also review the days and hours of operation.

Ben said they could always come back to amend their permit if they wanted to change the hours of operation. Marilyn said she thought the 18-month review should be limited to safety issues, not [another] site plan review.

Julius re-stated again to say: “Applicant will return in 18 months for an informal hearing to review traffic management policy AND the adequacy of the site review conditions?” For the first year, all events exceeding 90 attendees will have a staff member at the entrance of Stillpoint.”

Jeffrey said board is being remiss in not having them come back in a year for a public hearing in order to review how it has gone and so the public could voice added concerns.

Julius said it would have to be for a very specific reason, looking at one issue like traffic. Marilyn said it would be easier to just make it an administrative approval.

Marilyn said they have concerns about [other] conditions, specifically No. 3 and said that “fundraisers that support the missions of other nonprofit entities should not be allowed UNLESS they are educational or Dover-protected events.”

Discussion followed about who and what is covered under Dover. Marilyn argued that if the organization is providing an educational offering, that fundraiser should be allowed [whether or not the organization is a 501(c)3].

Julius said maybe Conditions 2 and 3 should be rolled into one because they are allowed three (3) accessory events and a “non-educational” fundraiser could fall under one of those “accessory uses”.

Larry said the point of Condition 3 is that you get into running an event hall if it’s a fundraiser event for another entity. Marilyn said [under Dover] that if it is an educational or religious [Dover-protected] event, the board does not get to see or ask whether it’s a fundraiser or not. Thomas said he wants to be able to allow other nonprofits to use the barn for their own fundraisers for educational or religious organizations, not just any organization and thinks No. 2 with only three events allowed is not enough.

Larry said if the board votes to approve and the applicants don’t like conditions on the special permit, they can appeal it. That being said, Larry said he does not want to produce a decision that the applicants will want to appeal so we should all be clear in the conditions of the decision.

Deborah asked if there’s a way to parse the difference between a “fundraiser” and an event that raises funds in the decision.

Larry said if an educational organization has their annual fundraiser at Stillpoint it is a “raising funds” event, it’s a cocktail party, an auction [not Dover-protected]. But, if you invite somebody who gives a class and takes in funds, that is the allowable use.

Marilyn said the distinction is they are not talking about organizations that qualify as educational or religious, they are talking about the EVENTS that take place. So long as the event is educationally or religiously significant, the town is not allowed to tell them whether it’s a fundraiser or not. She said by changing language of the findings from nonprofit organizations to events would help to clarify.

Marilyn also added that being limited to only 3 fundraisers/accessory uses under Condition 2 is completely unreasonable. Julius said it was based on the legal precedent on what constitutes accessory uses, for example weddings. Marilyn pointed out that refers to residential homes conducting weddings but Dover-exempt allows ancillary activities. Julius said he thought Condition 2 was speaking to non-Dover exempt issues is it not? Ben said they support the Dover-exempt uses but are not the primary Dover-exempted uses.

Larry said the accessory uses are incidental to support Stillpoint’s mission, i.e., you can have three cocktail parties.

Thomas said when the MVC allowed them 20% off mission events, and they will be potentially open 300 days with a total of 1500 events, 20% would have been 300 off-mission events. They are just asking for 10 events instead of three. Marilyn said uses that are accessory to the primary exempt purpose are permissible so long as the dominant purpose remains educational.

Jeffrey thought we should go back to town counsel with their concerns and get an answer.

Marilyn said the only fundraisers that will be non-educational would be Stillpoint’s own and that those 10 would be the “non-educational events”

Julius thought we should increase the accessory use from 3 to 10 events.

Andy said this is an important clarification – when the board originally talked about 3 or 10 accessory events he thought that meant renting it to non-educational and non-religious entities, but no – he is hearing it would be pure fundraising events for Stillpoint. If that is the case, he is more comfortable giving them the ability to hold 10 accessory events to raise money for themselves.

Julius agreed and said they should increase the number to 10, it would be not more than one per month.

Marilyn asked if the 10 accessory/incidental uses could be spread out to include two per month during June, July, and August.

Andy said he’s far more inclined to give them 10 and 2 during summer [months]. The fact they will have the ability to do all these fundraising events doesn’t square with the fact that they are a lot of work and sometimes they don’t raise as much as an organization would want.

Julius said to that point they are already restricted to the number of events they can hold per day and per week – these ten will fall within those limitations so [the number per month] will make little difference.

Ben suggested it could say “Ten maximum and no more than 2 in a month.” Discussion followed about removing that sentence altogether. Julius said if we’re allowing 10 it doesn’t much matter if we restrict what time of year they are held. Deborah advocated for removing that sentence altogether saying that the fundraising landscape on Martha’s Vineyard is so full that having 10 in the summer would not happen anyway.

Jeffrey made another plea for them to be conditionally roll out [their operation] and make it less expansive if we allow them to do 10 events and then see how it progresses. Larry said they are already held to the standards under 8.5-2.

Revised Conditions (to be supplemented with those discussed tonight*):

- 1) Stillpoint will use the Site only for ~~educational~~ **Dover-protected** purposes ~~either run by it or in conjunction with another nonprofit educational corporation.~~
- 2) Stillpoint may hold up to TEN (10) ~~three (3)~~ events annually to directly support its educational mission as accessory uses customarily and incidental to its primary educational use. ~~Stillpoint may not hold more than one (1) event in any given month.~~ For these events, Stillpoint shall follow the standards outlined in Section 8.5.2 of the ZBL governing non-residential uses in the AR district, including but not limited to, Section 8.5.2(G), that “[t]he use shall not create... unacceptable disturbances... to the neighborhood.”
- 3) Stillpoint shall not use the Site for **non-Dover exempt fundraisers or events** to support the missions of other entities.
- 4) Stillpoint shall provide notice to the Building Official and the Town Administrator thirty (30) days in advance of any event identified in par. 2, shall obtain any other necessary or required permit governing that event (e.g., food service from the Board of Health), and shall otherwise comply with all other conditions of this Special Permit.
- 5) This Decision incorporates the elements and features of the site plan that Stillpoint submitted to address the Parking Requirements under ZBL 8.2, the applicable General Design Requirements of ZBL 8.3, and the issues raised in the Letter from the Building Inspector dated July 6, 2023 regarding Site Plan A-1: *number of spaces, bicycle racks, screening between property and Polly Hill Arboretum, pedestrian paths in the parking area and issues around accessibility as laid out in 521 CMR.*
- 6) Consistent with its offer to the Board, Stillpoint may be open six (6) days per week. The day of the week that Stillpoint is closed can be flexible and change week to week.
- 7) The hours of operation permissible during Stillpoint’s six days per week are as follows:
 - Monday-Saturday 7:00am to 9:00pm and
 - Sunday 8:00am to 5:00pm
- 8) As required by condition No. 2 of the MVC Decision, Stillpoint shall keep records of the frequency of events, including the entity or entities associated with each event, the basic nature of each event, and the number of attendees per event. These records shall be provided to the MVC **AND** the Building Official, every six months during the first two years that events occur at the Site **AND** once per year thereafter to the Building Official by **January 15th** of every year.
- 9) This Special Permit incorporates all conditions of the MVC Decision, DRI 279-M, dated May 24, 2023, and recorded on May 26, 2023, in Book 1656, Page 112.
- 10) To the extent the conditions imposed here are more restrictive, Stillpoint shall observe the more restrictive conditions, all of which were imposed by its agreement with the Board, as identified in the conditions or the specific findings in this decision.

** Plus additional conditions as discussed at tonight’s hearing re: lighting plan; returning in 18 months for an informal hearing and review of traffic management and safety policy; and having a staff member at road for events exceeding 90 attendees.*

Discussion followed about whether or not to vote to approve or deny tonight then continue the deliberations to a following meeting where the final decision could be reviewed and voted.

Larry said he would call for the vote and then hold open the deliberations to vote on the final written decision. Deborah questioned the benefit of doing so, there is no time clock until we [do so]. If we are

going to vote the decision as we edited it tonight, the edited version will be the record. Jeffrey said he does not want to vote without seeing the final decision.

Andy made a motion to call the vote on the whole project [and decision]. Deborah seconded the motion saying the board would trust Larry and Kim to write the [final] decision as is the practice of the board.

It was moved and seconded to GRANT the Special Permit. Larry went over the 20-day appeal period.

A roll call vote was taken with the following resulting votes. Motion passed 4-0-1.

L. Schubert-yes, J. Lowe-yes, D. Wells-yes, A. Zaikis-yes, J. Kaye-no

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The Meeting adjourned at 7:10 p.m.

Respectfully submitted,
Kim Leaird, Board Administrator