

**WEST TISBURY ZONING BOARD OF APPEALS**  
**Minutes for Tuesday, September 12, 2019 meeting**  
**2<sup>nd</sup> Floor, West Tisbury Town Hall - @ 5:00 PM**  
Approved at meeting of October 3, 2019

**PRESENT:** Nancy Cole-Chair, Larry Schubert, Julius Lowe, Toni Cohen and Deborah Wells

**Also Present:** Sheila Franklin, Travis Ritchie, Derek Avakian, Andy Zaikis, Doug Dowling, Patty Kirwin, Ro and Kenny Belain, Gale Tipton and Pam Thors, Board Administrator

**5:15 pm:** A hearing on an application from Graham Lewis for a Special Permit to construct a 1,584 sq. ft. two story barn to serve as a garage with storage and recreation area above and to amend a Special Permit to allow the addition of a roof top deck area to the previously approved new dwelling located in the Special Places district under Sections 6.3-5 (B) and 9.3-3 of the Zoning Bylaws, Map 12 Lot 40.3, 42 Fire Tower Rd., RU district.

The notice was read and Travis Ritchie, agent for Mr. Lewis explained the project. Sheila Franklin, an abutter reviewed the plan as well. It was confirmed that she would not be able to see the deck from her property but as she noted, she would be able to hear noise emanating from it. Larry reviewed the Special Permits so far; house, pool, roof height. Nancy read the only written correspondence from the Dienstags, who are immediate abutters. Sheila stated that her main concern is the height of the structure, saying that she and all the owners who have built there have had to comply with these restrictions. She noted that during the summer, the sound carries from the hill quite clearly. She mentioned her concern for the allowance of a pool as well because of potential water problems. Travis went over the second part of the application; a garage with storage/recreation space above. The plan for the 23' high garage was reviewed. He verified that there would be no plumbing in the garage and that the second floor rec space would be unfinished. Larry asked if the barn would be breaking the skyline. Travis said it would not. He said that from the water and any public way, structures may not break the skyline. He said that they have been very aware of the height issues. Sheila said her main issue is with noise. Travis asked if it makes a difference if the noise emanates from a ground level deck or patio rather than from a roof that would not be visible from the neighbors. Nancy said that noise coming from a higher point would carry further. Larry asked what the square footage of the roof deck would be. Travis said it would be about 400 sf. It was determined that the roof deck would look out to the north. Sheila stated that they would not be depriving the owners of patio or deck area. Julius brought up an earlier hearing for a roof deck application and the facts that surfaced regarding the ability for sound to travel from a higher floor. Larry stated that during the hearing for the elevated flat roof height relief, he asked if there would be a deck there and Travis had answered that there would not.

Travis mentioned that the garage needed setback relief. Pam said she had not advertised for that. Travis said he had sent a second narrative seeking the relief required since the garage is in front of the house and needs to be 100 feet back from the lot line. Pam said she did not recall getting that. She checked and found that it had been sent but that it was emailed after the date she had advertised. The board agreed that it would have to be re advertised to include setback relief. It was confirmed that the board can act on the two parts of the application separately.

*The board voted to allow the applicant to withdraw part of the application (referring to the barn) without prejudice.*

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

Julius stated that because they had already allowed height relief for the roof and it was determined at that hearing that there would be no roof deck, he would not be in favor of approving the roof deck now. Larry agreed. He said he only voted to allow the increase in height because there was not going to be a roof deck.

*A motion was made to deny the application for a Special Permit for a rooftop deck. The vote on the motion was unanimous.*

It was agreed that the applicant would need to reapply for the barn portion of the application including addressing the setback relief required.

**5:35 pm:** A hearing on an application from Christopher M. Zilla for a Special Permit to install a 20x40 foot in ground swimming pool under Section 8.5-4 (C) of the Zoning Bylaws, Map 37 Lot 20, 224 Vineyard Meadow Farms Rd, RU district.

The notice was read and Doug Dowling, agent for the Zillas presented the application. The plans for the pool were reviewed. He cited the great distance from the pool to abutters as well as the natural screening that exists. He asked the board about possible variations in the fencing. He said that the Zillas may want to run the fence into the wood line so that the fence on one end cannot be seen. Nancy discussed the proposed change in the pool bylaw at town meeting this year. Larry stated that the bylaw change regarding fencing around pools has not yet gotten through the Atty. General's office. He clarified with the applicant that any changes must come back to the board to be deemed to be d minimis or requiring a new application. He said that they are a ways away from the fencing in of the pool so would have time to make that decision. Nancy read the correspondence, (see file). The thick natural screening was discussed. Two abutters, (one next door and one across the street), to the project were there to support the application.

Larry went over the "boiler plate" conditions that are included in all pool decisions.

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

*A motion was made and seconded to approve the application. The vote on the motion was unanimous.*

Nancy went over the 20 day appeal period and also reminded the agent for the Zillas that if the plans for the fence change, they must come before the board for either an approval as a d minimis change or with a new application.

**5:55 pm:** (Continuation from April 25<sup>th</sup>)- A hearing on an application from South Mountain Company, Inc. for an Amendment to a Comprehensive Permit under MGL Chapter 40B granted in 1998 that allowed commercial use to 1) Add 3,600 SF lumber storage/shop space, 2) Add 600 SF solar components storage, 3) Convert shop to meeting and office space and lumber storage to shop space, 4) Increase parking from 35 to 40, 5) Clear 12,000 SF of wooded area, 6) Raise allowable number of employees on site to 24, 7) Remove 1,350 SF hoop building. Map 8 Lot 37, 15 Red Arrow Rd, RU district.

The notice was read and Nancy asked John Abrams of South Mountain Company, Inc. to explain any changes to the application. They explained that there was one minor change to the site; removal of dumpsters from an area of the property.

John went over the specifics being requested in the ZBA application.

- 1) Add a 3,600 SF lumber storage and shop space
- 2) Add a 600 SF solar components storage building
- 3) Convert existing shop to meeting space and offices
- 4) Convert lumber storage space to shop space
- 5) Removing temporary 1,350 SF hoop building
- 6) Increase number of parking spots from 35 to 40
- 7) Clear additional 12,000 SF of wooded area
- 8) Increase the number of full time employees on site from 18 to 24

Pam asked if there were changes to the narrative. John said that the 7/23/2019 version is the latest one which includes the Affordable Housing offer. Pam copied this for the file and for the board members.

The correspondence from Manny Estrella West Tisbury Fire Chief was read, (see file). Nancy commented that if the application were to be approved, that complying with the requirements by the Fire Chief as referenced in this letter, would be a condition.

John noted that the Martha's Vineyard Commission Decision outlines all the specifics of the application completely. Larry commented on the terms of the Affordable Housing piece.

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

Larry commented that if the application were denied, the company would most likely have to create a site elsewhere thereby creating more traffic on Red Arrow Rd.

Nancy read the letter from abutters Jennifer and Stefan Knight. John said he had spoken to them and that there will be screening mutually agreed upon.

*A motion was made to approve the application. The vote on the motion was unanimous.*

Nancy explained the twenty day appeal period.

**6:15 pm:** ("Continuation from August 29<sup>th</sup>)-A hearing on an application from Carter Hakala for a Special Permit to construct a 1,440 square foot barn containing an Accessory Apartment, a studio, an office and garage storage under Section 4.4-3 (A) of the Zoning Bylaws, Map 10 Lot 192.1, 19 Kaitlyn Farm Rd, RU district.

The notice was read and Travis Ritchie, agent for the applicant reviewed the request. Nancy reminded the room that the hearing had been continued to get information from Town Counsel on the 1991 Planning Board Conditions of Approval for the subdivision, which prohibit “subordinate dwellings (guesthouses)”. She read the correspondence from abutter Patty Kirwin who wrote to express her concerns about increased noise and traffic and the possibility of a future home occupation.

The question regarding whether the Conditions of Approval would apply to Accessory Apartments was discussed. The email to Town Counsel, Michael Goldsmith and his response were reviewed, (see file). Nancy explained that Michael’s advice to the ZBA is to act on the application before them without considering the Conditions of Approval of 1991. She said that according to Michael, the Building Inspector in his capacity of Enforcement Official would have the authority to deny a building permit based on the Conditions of Approval if he found that to be an appropriate action. The email also advises that the applicant may approach the Planning Board and request a waiver from this condition since it was applied nearly 30 years ago.

Diane Emin asked why the Planning Board would have a say in this when the Conditions are listed in each of the deeds. She said she doesn’t think the Attorney would comment on this. Pam said she had not sent a copy of one of the deeds to him, wondering if his response would have been any different if she had.

Diane stated her concern for the traffic considering that there are three other houses there that could go ahead and build an Accessory Apartment. She noted the lack of clarity in regards to the Conditions of Approval of 1991 and what they actually prohibit.

Larry questioned the order of events that the lawyer is suggesting. All agreed that this seems like a “cart before the horse” scenario. Nancy stated that the applicant could withdraw without prejudice and look into the Planning Board waiver option and/or whether or not the Building Inspector would issue a permit.

Larry read the definition of Accessory Apartment from the Zoning Bylaws.

Nancy explained that the applicant is looking to be granted approval for the entire project but that he may only build the Accessory Apartment for now.

Larry said he thinks that the Building Inspector needs to render an opinion and then the applicant could go to the Planning Board and if a waiver is allowed, the application could then be taken on by the ZBA.

Nancy suggested that the applicant may Withdraw without Prejudice and go to the Planning Board. The importance of letting the abutters know when this is being discussed at the Planning Board was agreed upon.

*A motion was made to continue the hearing until 5:55pm on November 7<sup>th</sup>. The vote on the motion was unanimous.*

The board shared information regarding Affordable Accessory Apartments with the abutters in attendance.

The meeting adjourned at 7:10pm.

Respectfully Submitted,

Pam Thors, Board Administrator