

WEST TISBURY ZONING BOARD OF APPEALS
Minutes for Tuesday, September 19, 2019 meeting
2nd Floor, West Tisbury Town Hall - @ 5:00 PM
Approved on September 26, 2019

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

Also Present: Dan Scherlis, John Rau, Nick Puner, John Cain and Pam Thors, Board Administrator

5:15 pm: (Cont. from 6/6/19, 6/13/19, 7/25/19, and 8/22/19)-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 the parking plan submitted by the applicant was reviewed. Nancy stated that the board needs a plan drawn by an engineer, not an architect. John Cain said that he thought that an architectural plan was sufficient. Larry explained that the plan needs to have dimensions of the parking spaces and the right of way. He said it really needs to be a plot plan. He went on to say that if the parking spaces drawn on the plan are the right size, their relationship {distance} to the right of way also needs to be shown. He said that part A is what they have and part B would be what they are seeking. He said in that regard the plan is representational. Nancy stated that originally the parking plan showed 33 or 34 spots. She said that the plan before them shows a substantial increase. She said that withdrawing the application for the parking piece without prejudice and submitting a new application, (fee waived) just for parking would give John the opportunity to have an engineered site plan done and the process could go on from there. She suggested that doubling the parking would require this. John stated that he doesn't necessarily want/need the additional parking represented on this plan.

Nancy read the email from Joe Tierney, Building Inspector, which suggests that the parking plan and increase in use be presented at the Martha's Vineyard Commission (MVC) under Section 3.1(h) Parking Areas for ten or more vehicles and Section 3.1(g) Increase in Intensity of Use. She said this would be a discretionary referral. John stated that he was trying to provide the correct number that would comply with the town parking bylaw. Larry said he wanted to see an engineered plan showing that cars can maneuver the lot correctly. John said he wants the lot to be properly measured and marked as well. Larry said he wants the abutters who utilize the public way, to know that they have 20 feet so that two cars may pass one another if necessary. He said the testimony they have heard, indicates that this is not the case and that the Right of Way (ROW) has been blocked. Larry stated that the deeded ROW has a specific place on the lot and that needs to be verified. Nancy said that parking has been an issue and this is why they have brought it into the equation. She said that there may be an increase required as the older approved plan only showed 33 or 34 spaces. Julius said that perhaps the applicant can withdraw the parking aspect from the application. Pam noted that an increase in 10 additional parking spaces would be a mandatory referral to the MVC. She noted that an increase in parking and increase in intensity of use may trigger a referral. She also mentioned the increase in intensity of use. She read the definition of "Increase in Intensity of Use" taken from the MVC website. Whether anything in the application justifies a referral was discussed. Julius stated that the allowance of Special Events (other than weddings), would certainly be an increase. Larry said that it seems that the ZBA may be trying to put a remedy on the uses that have crept in and now exist at the Inn. Mandatory vs discretionary referrals were discussed. Larry asked to put the MVC info aside and go back to the numbered list discussed at the last meeting.

Tony suggested that they take up where they left off. Starting over with the parking was discussed. John Cain said that the parking plan has nothing to do with the use. An abutter suggested that having the applicant reapply for the increase in parking would enable the abutters to have input on the new plan. Julius said that the parking issue may be taken on as part of the application for Amendment/Increase of Use. John Rau, of the Manaquayak

Road Assoc. asked how the board could act on the parking if new evidence is being introduced but the public may not comment on it. Dan Scherlis mentioned a point of order that a Special Permit that exists could be amended in its own right. Nancy reminded everyone that Town Counsel had stated that the ZBA could address all the concerns as a package in one application. Nancy stated that non-conforming uses crept in to the activities at the Inn without Town Approval, so separating these out from what is known to have been happening prior to Zoning is important. Tony mentioned that the Selectmen's Event Permit for last season is a "one off" and not indicative of any ZBA permits.

Julius described the difference between Historic Uses and Pre-existing non-conforming uses as they apply to the decisions facing the board. Nancy brought up the "Powers Test", used to decide on cases of increasing Pre-existing, Non-conforming Uses. The various legal ramifications were discussed. Nancy stated that the Board always tries to reach a good compromise that both parties involved can live with. She stated that Abutters concerns are always taken into serious account. Tony mentioned that the increasing numbers of events and guests at these events have compelled abutters to register their concerns and that this is what has brought the application to the ZBA.

Julius asked the board members to define exactly what they are trying to do when the effect may be legally damaging to the Town. He said he feels that the vague nature of which direction they should be going in is troubling. Larry stated that going from the initial Event Permit issued by the Board of Selectmen which allowed 14 weddings and 14 Special Events to something that respects the abutters and the increase of a pre-existing, non-conforming use. He suggested that there has never been a Special Permit to allow Special Events and maybe they need to start with that aspect of the application. He said he wonders if each of the issued needs to be decided or not. Nancy said she feels that the process needs to go forward and that if the board is to make a decision; they need to decide on them on an individual basis. She said that the ZBA needs to be able to defend their decision in court if necessary. Pam asked if it would be helpful if the Board starts with everything they know to have been a use prior to Zoning such as lodging facility, restaurant and wedding venue and make a decision on these parts of the application first and not act on parking, which has yet to be represented on an engineered site plan and special events and outdoor dining which was, according to abutters, never a pre-existing, non-conforming use. She said that these could be addressed at a later date in separate applications to the board. Nancy suggested that they scale back in what they are considering.

Nancy referred again to the list agreed upon at the last meeting. Special Events were specifically removed from the list. John asked about Speaker Series, citing that the abutters were relatively happy with having them at the Inn. Nancy said that if the Speaker events do not bother abutters that they should be reconsidered. She suggested that they should be allowed. All the numbers on the list, such as numbers of weddings and numbers of guests were discussed.

Larry verified that the Building Inspector had told John that he is in violation of the parking bylaw. He said that not talking about the parking seems to be missing a piece. Nancy suggested that the parking plan come back as another Special Permit. She said that the old parking plan for 33 spaces is working. Larry said that whatever came in under that new application could be reviewed at that time. Nancy said that if John came back with another application the fee would be waived. Larry said he would like to look at the parking right now. Nancy said that they can't act on a plan that is not an engineered site plan for the parking. Nancy requested that the applicant come back to the ZBA with a new application to amend the parking and include an engineered site plan.

Larry asked if the decision should say that it limits what the Board of Selectmen may allow in the annual Event Permit. He asked if that adds a layer of oversight because the Selectmen will be reviewing the uses every year. John said he is not happy about needing to come before the Selectmen each season, citing that he needs to book weddings and events sometimes 24 months in advance. Larry stated that abutters may weigh in with the

Selectmen's decision on the seasonal event permit. Nancy asked if decibel level limits should be part of the decision. Larry said that the requirements and specifics are so variable that setting those limits in the decision seems impractical. The outdoor barbecues by the pool were discussed. Nancy said that they already don't allow amplified music and that the restaurant has to be closed. Julius verified that the dining by the pool would be allowed under these circumstances. John said that he had spoken with a pool company owner who told him that eating in the pool refers to having food while in the pool itself. Pam asked if the dining by the pool needs to be an amendment of the pool Special Permit. Julius stated that since dining by the pool was never an allowed use; the owner should come before the ZBA for permission for that. Larry questioned whether the issue needs to be addressed if there has been no violation cited. It was agreed that to act on dining by the pool may be ill advised since it was not a pre-existing, non-conforming use. Pam stated that it was brought up as a new use. Larry read the Hearing Notice which covers allowed uses and their effect on the Event Permit issued by the Board of Selectmen. He said that referring to the patio dining, which now only occurs on barbecue nights, in the decision may open up the possibility of dining there at other times as well, into the future. Julius mentioned that the issues of wedding numbers and numbers of guests, is much more important to clarify for John Cain than some of these other issues. It was agreed that if he wants outdoor dining, John will have to come before the board again with a separate application.

The following list of conditions was agreed upon;

- 1) 10 outdoor Speaking Events/Weddings allowed per year.
- 2) 3 outdoor Speaking Events/Weddings with up to 150 guests allowed per year but not from July 1 to Labor Day.
- 3) The 7 remaining outdoor Speaking Events/Weddings may not have more than 100 guests.
- 4) 2 outdoor Speaking Events/Weddings allowed from July 1 to Labor Day with no more than 75 guests.
- 5) No outdoor amplified music allowed from July 1 to Labor Day.
- 6) Outdoor amplified music shall have duration of no more than 3 consecutive hours up to 9:45pm on Fridays and Saturdays and up to 8:30pm from Sunday through Thursday.
- 7) Outdoor amplified Speaking Events shall be allowed provided that the noise generated is not plainly audible to neighboring properties. This allowance will be reviewed one year from the date of Decision.
- 8) During any outdoor Speaking Event/Wedding, the restaurant will be closed.
- 9) For any outdoor Speaking Event/Wedding with over 70 guests, owner will employ the use of an offsite shuttle service to limit traffic on Manaquayak Rd.
- 10) These conditions limit the number of outdoor Speaking Events/Weddings allowed on the property for the purpose of Event Permits issued by the Board of Selectmen.

It was agreed that one of the Findings should be;

- 1) Parking and outdoor dining will be reviewed during a separate application for Special Permit.

A motion was made to approve the Application as Conditioned. The vote on the motion was unanimous.

John Rau apologized for interruptions but noted the abutters' frustration at not being able to comment on the parking plan. Nancy stated that this is why the parking plan was not acted upon, and that anyone who has

comments on the parking will be able to take up the issue when the owner files a new application for a Special Permit on the parking which will include an engineered parking plan.

The meeting adjourned at 7:10pm.

Respectfully Submitted,

Pam Thors, Board Administrator