

WEST TISBURY ZONING BOARD OF APPEALS

Thursday, September 21, 2023
Meeting Minutes

Approved October 5, 2023 (5-0)

Present: Larry Schubert, Julius Lowe, Deborah Wells, Andy Zaikis

Absent: Jeffrey Kaye, Casey Decker, Pat Barrett

Also Present: Kim Leaird (*Board Administrator*), Bruce and Maria Bullen, Gustavo Batista, Courtney Sterry, Joann Frechette, Robert Nash, Philip and Wendy Forest, Gail Tipton, Nicholas Viaggio, Gabe Coogan, Robert Sullivan, Timothy Sullivan, Josh Saltmarsh

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5:00 pm – The meeting minutes of August 29 and September 7 were approved 4-0. A short discussion followed about the policy of retaining the audio post-approval of minutes and the board decided to address this when updating the Rules and Regulations.

Informal Hearing

- Bullen – Review alterations to pool equipment storage for a variance granted April 23, 2023, for plans approved with Decision #2023-16 for property located at **89 Pond Rd. (Map 30 Lot 2.68)**. Gustavo Batista (builder) explained they are eliminating a window and elevating the roof line because the pool people said there was not enough head room for the pool equipment storage. They are going from 3’10” to approximately 7 feet of height, there is no footprint change. The board reviewed the new plan and deemed it a de minimis change and voted 4-0 to approve.

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5:15 pm – A public hearing on an Application for a Special Permit from Eastville Construction on behalf of **Robert S. Nash and Joann H. Frechette**, for the construction of an 800 sq. ft., 1.5-story Accessory Apartment requiring 23’8” of right yard setback relief, under 4.4-3A and 4.2-2D4 of the Zoning Bylaw at **36 Oak Lane, Map 10 Lot 30** in the RU district.

Larry read the hearing notice and opened the hearing at 5:16pm. Presenting for the applicant were Courtney Sterry and Nick Viaggio. They propose siting the accessory apartment behind the house as indicated with 23’8” of setback relief as it is an area that falls naturally under existing trees and it feels like the best spot. It will be accessed by the same existing driveway.

Andy asked about the abutter most affected to the side and was told they had not raised objection and that the lot is currently empty. He asked later if the neighbor (Post) had been in touch and Joann Frechette said he had sent her a message that he was okay with it but board did not receive anything for the record. Andy said it looks like there is a lot of room on this lot and asked for a rationale for the incursion into the setbacks.

Courtney said they are trying to create a separate living space and they wanted it to be at the forest line at the perimeter of the yard vs. in the middle of yard. The yard space is quite small compared to all the existing trees and the desired location has pitch pines that need to come out anyways, as opposed to the other side where it is more forested.

Larry read a letter from the Planning Board. They found that the plan does not adequately display the distance to Oak Lane or to the abutting properties most affected.

The vegetation is mostly scrub oak and pine and Deborah asked if there is limited to no screening between the border. Courtney said the applicants' son is planning to live there year-round and this placement is to give privacy to both him and his parents.

Discussion followed about the incursion into the setback. Andy said there appears no effort was made to put the structure within the setbacks, noting there are several other potential areas it could be placed without needing to ask for setback relief. He has not heard a good reason and as a zoning board member is troubled that the entirety of the structure is in the setback.

Courtney said they did consider other locations but the cons included tree clearing. She said part of the siting is the familiarity with the lot by the inhabitants – how the property is upon an approach to the house. The lot is close to the start of Oak Lane and it is a noisy, busy road.

Larry said we advertised as requiring 23'8" of setback relief and he noted the structure is only 20 feet wide. Normally when the board grants setback relief, the setback line goes *through* the structure but they are asking that 100% of the structure to be in the setback and the bulkhead appears to be even further in setback and thinks the Building Inspector would consider that part of the building thus requiring even more setback relief.

Discussion about setback relief actually being requested and whether it was advertised correctly. Julius said he thought it was but then bulkhead protrudes more into the side setback.

Public comment

Philip and Wendy Forest (direct abutters to the rear of the lot). Phil questioned the relevance of ZBL 4.2-2D4 as it seems to refer to non-habitable structures. Larry said an apartment is an accessory structure and it does apply. Wendy said while she is generally in support of their neighbors' desire to build a home for their son, she wishes it could be done by right as opposed by special permit. She said she has concerns about putting living space in the setbacks. It's not coming closer to their house but feels that when everyone adheres to the 50-foot setbacks it creates a 100 ft. buffer zone where nature can be less disturbed.

Larry said he recalled when this subdivision was first created and approved, 30-foot setbacks were allowed but then they changed. Andy said this is 1.5-acre lot.

Larry said it's a big ask to have the whole structure within the setback. He told the applicant that the board only had four members present and they would need all four votes in favor. He asked if they might want to ask to continue in order to think about what was said and come back with a modified plan. He added he is very in favor of affordable apartments and does not want them to have the potential hardship of [being denied and] having to wait.

Courtney asked if there were any other comments from board. Andy said when there is an incursion into the setback he always looks for the neighbor who is most affected to weigh in with either testimony in favor or a letter to the board. Deborah agreed with Andy but she said that does not mean it will still be approved – especially because the whole structure is in the setback.

Larry said he prefers affordable accessory apartment be placed behind the primary residence house vs. the side or the front. The board agreed they should also submit a revised site plan that includes Oak Lane and the abutters on it. Courtney requested to continue the hearing.

*It was moved and seconded to continue to **Oct. 19, at 5:35pm.***

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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5:35 pm – A public hearing on an Application from **Joshua Saltmarsh** to Amend Special Permit #2019-55 for his Service Business to allow the storage of up to 25 boats on the property, an increase from the 12 boats now allowed, under 9.3-3, 8.5-2 and 3.1-1 of the Zoning Bylaw at **143 Old Holmes Hole Rd. (Special Way), Map 16 Lot 146** in the RU district.

Larry read the hearing notice and opened the hearing at 5:46pm. In 2019, the board allowed the applicant a service business for the storage of 12 boats on his property. Josh Saltmarsh was present and said when he first came to the board in 2019 he was asking for a different storage area and 50 boats. They settled on another area at the back edge and allowed just 12 boats with the caveat that he could come back in a couple of years to see how it's worked.

Larry asked if the statements he had made about sanding work and bottom washing is still in keeping with the issuance of his special permit and was told yes.

Josh said now he is asking to store [up to] 25 boats because that is how many can fit inside the area already approved for the 12 boats – they have 4.2 acres of land.

Larry read a letter from the Planning Board that stated *...while the increase seems extensive for a home occupation, the applicant appears to have managed his operation well and with no complaints.* They recommended this be the extent of the increase.

Another letter was read into the record from Robert Sullivan, a direct abutter at 145 Old Holmes Hole Rd., with a number of concerns related to the narrowness of the Special Way, wear and tear on the road, how the boats are stored, hazardous materials leaching into the groundwater, oversight and enforcement, potential fire risk, term of the special permit – and general objections to the commercial storage of 25 boats in the RU district, etc. (*Letter on file*)

Larry said the term of a special permit is permanent. Sometimes the board will issue a service business to a lessee or tenant [if not the owner] but if that tenant leaves the property, the special permit leaves with them. It is not tied to the property.

Larry asked how the boats are stored. Josh said they are all on trailers and get covered with heavy grade tarps. Most of them are small sailboats without motors, but he would like them to allow for small power boats and said the external fuel tanks get emptied at the end of the season.

Public comment

Gabe Coogan said his mother owns 147 Old Holmes Hole Rd. and that there has been a snowball effect with the area changing so much. His 81-year-old father has to listen to chainsaws in the morning, sees

stacked up dumpsters at first bend in road, and a marijuana growing facility emptying their septic weekly nearby at opposite end of Dr. Fisher Rd. While it may increase property values it decreases serenity and quality of life when [now] you have a shipyard in your backyard, adding that he has nothing bad to say about Josh Saltmarsh or his business. Gabe said that if a road association were formed, dividing the maintenance equally would not be fair to the Sullivans or Coogans with so many boats [traveling the road]. He was also concerned about potential leaks with the storage of gasoline, and does not want to see this neighborhood continue as Light Industrial.

Larry said that the Light Industrial area around the dump was created at town meeting and when included as part of the Bylaw, other uses are allowed in that district. He said he's heard their concerns about vehicles [boats] traveling past the Coogan and Sullivan houses and about how they store boats.

Discussion followed about maintenance of Old Holmes Hole Rd. and the business model. Josh said Ken Child has maintained the road, free of charge, and it is in fairly good condition with no potholes. In general, the whole stretch of Old Holmes Hole is better than Dr. Fisher Rd. Josh puts boats on their moorings in May and June and pulls them out in September and October unless there is a hurricane and they must come out sooner. Usually there is no activity in summer, just trailers sitting in his yard. Josh reminded board that at the initial 2019 meeting, they had compared his business to Keith Maciel's property and were being very cautious at that time. His services now: 12 trips in and 12 trips out – it would be the same with a larger operation. Multiple boat owners do not visit the property.

Julius asked if the area would fit another 13 boats and was told yes.

Larry asked if he uses Clean Harbors or somebody similar to haul way wastewater and what does he do with gasoline. Josh said they just use a septic company and the gasoline they burn off in their work truck.

Timothy Sullivan, part owner of 145 Old Holmes Hole Rd., asked about ownership of the property. Josh said he owns with his wife and he also lives there. They only purchased 4 acres out of a total 10 acres. Chuck Wiley helped them do so in 2019. Sullivan said that there is no road association here but there is one on Dr. Fisher and he would think they'd be impacted by the transport of twenty-five 10,000+ lb. boats over the road and would have something to say about it. Josh said one of Dr. Fisher road association members was at his hearing in 2019 and he offered them money and was told they'd reach out to him but no one has. He also offered to even out the dump extension road out Dr. Fisher and was told no, because they like the speed bumps.

The applicant is asking for 13 more boats and for some to be powerboats. Larry asked if he had researched to find storage for boats on another piece of land in West Tisbury. Josh said yes, but it's very expensive and the rates he could charge wouldn't cover that expense; he can't double them because there is competition. Josh said only place available is behind the dump but he'd have to have up to 50 boats to cover the cost of doing that.

Robert Sullivan asked about the scope of his proposal and if this amendment is approved does it cover the size of the boats he can bring in. Can he bring in larger boats, for example? There is considerable vehicular traffic on Old Holmes Hole which is designated a special way. He is concerned about the expansion of business in what is a quiet neighborhood. He asked Josh if there are other tenants because there seems to be a lot of people there. Josh said they have a main house, tenants in a guest house, and a detached bedroom was approved. Sullivan said the neighborhood has changed dramatically. You can't drive down this road without have to pull over at least twice in summer. He expressed concerns about the expansion of business and traffic in this area with a tattoo parlor (studio) recently approved.

Larry said the town of West Tisbury encourages members of our community to live and work in town so the home business and service business bylaws were written in part so young people could live and operate in our community. We try to balance the Bylaw with maintaining a viable community so it's not a major detriment to our community. He told those present that in his opinion, as direct abutters, their testimony has a lot of weight.

Gabe Coogan said he's seen a lot of Vineyard Gardens dump trucks there and asked about landscaping and soil being stored. Josh said they were told to screen with landscaping and have been doing that. They also took [a large quantity of] soil from Jeff Gibson when his business closed down but within month realized it had Japanese knotwood in it and will take five years being covered to kill the rhizomes.

Discussion followed about size of boats. Josh said his original request was for a maximum of 25 feet but it never made it into the decision. His largest boats now are 22 feet and the smaller ones are closer to 16 feet – he will not have anything over 22 feet and would be fine with that being added to his permit.

Julius said he hears Josh's business need and also feels for the abutters on this particular swath of the road. Josh said he does understand the concern about traffic on the road but said if you look at the percentage of traffic added by his boats it has to be less than 1-2% total usage of road. Gabe said there are still lots of dump trucks in and out of that property, but this is not part of this application.

Larry said so if he were allowed to store 25 boats and there is a hurricane mid-August necessitating pulling them off and then three days later they all request to be put back how would he handle that. Josh said that this has happened but they try to be reasonable, they time their trips and pay attention to rhythms of community (school, contractors, etc.) and transport when there is the least amount of traffic.

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

Larry said he has heard the concerns of the Coogans and Sullivans and he [also] likes to help young people and give them places to live and work because as we age out we're selling our property to people who don't work. While he'd like to see him not increase his storage of boats due to the neighbors' concerns, there have been no complaints since he was granted his permit in 2019 – he is doing a good job.

Julius said this is the crux and he does not want to limit his contemporary's ability to live here successfully. He asked if we were to approve does the question of powered vs. not powered boats matters. It does not.

Deborah asked if the numbers really matter. Is there a level of expansion that would be acceptable to the abutters? The boat type is not an issue. The sanding and washing work have not caused complaints. Julius asked if the doubling of storage would double the maintenance. Josh said yes, but people are not bringing up maintenance, it's the number of trips on the road. Robert Sullivan said some have brought up the environmental impact.

Discussion followed about the option of withdrawing his application to 1) look for an alternate location and 2) work with his neighbors to allay their concerns. Larry recognized that if he did find an alternate location he would still do the work on them before storage on his property, increasing the number of trips up and down the road and changing his special permit from what was originally approved. Deborah thought if he withdrew it might be possible for him to spend time working with his neighbors to come up with a solution and Larry agreed that the board likes neighbors to get along.

Julius said 25 is total the number he can store in this particular area but that does not mean it's the number he necessarily would store.

Andy said he thought Josh's business model is pretty simple, he takes them off mooring brings them back to yard, stores them through winter and puts them back on moorings. He does some work on them too, maybe. But [right now] we are talking about just 20 trips. While he hears that there is excessive use of the roadway, he thinks neighbors are complaining more about other entities rolling in trucks and heavy equipment day after day. However, the applicant's numbers are small and it's hard to see why he can't reach some accommodations from his neighbors – like he will only transport on the weekends, or only during certain times of day, etc. While there is some level of aggravation, his numbers are relatively small. Andy said he would be in favor solely because of Josh's business model – but he does agree that work should be done with neighbors.

Julius asked if some expansion would be useful to the applicant vs. doubling it now. Josh said no, he does not see splitting hairs between a slight expansion and another 13 boats. His road usage is a tiny fraction of what is happening on the road and he does not think they will come to an agreement on that making the difference. He said he'd rather the board take the vote and offered to take care of the road as best as he can, but thinks the actual problems are tenants living on his property, new house construction down the road, a business across the street, and another one down the road. Twenty-five boats in and out every year is a tiny piece.

Julius said if he votes in favor it would have to be limited to 22 feet and increase of 13 boats.

It was moved and seconded to GRANT the Special Permit. Larry went over the 20-day appeal period. Larry said he feels that Josh, more than anyone else who has appeared in front of this board, has been living up to his statements to this board. He's hoping that he will address the concerns of his neighbors outside of this room.

*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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The Meeting adjourned at 7:20 p.m.

Respectfully submitted,
Kim Leaird, Board Administrator