

WEST TISBURY ZONING BOARD OF APPEALS

Thursday, September 22, 2022
Meeting Minutes

Approved October 6, 2022

Present: Larry Schubert, Julius Lowe, Deborah Wells, Casey Decker

Absent: Andy Zaikis, Jeffrey Kaye

Also Present: Kim Leaird (*Board Administrator*), Thomas Humphrey, Jeffrey Cassis, David Reed (remote), Doug Hoehn, Scott Stearns, Leah Houghton

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5:00 pm – The meeting minutes of September 8, 2022 were approved.

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5:15 pm* – (*Continuation from June 23, 2022*): *A public hearing on an Application for a Special Permit from **Joseph O'Donnell** to construct an accessory structure (1,872 sf. Sport court) over 676 sf. on a non-conforming lot under Sections 3.1-1 Tennis Courts, and 11.2-2 of the Zoning Bylaws at **8 Waldrons Bottom Rd., Map 29, Lot 45.2.** (***Note that applicant has requested to withdraw this application**)*

Larry read the hearing notice.

A motion was made and seconded to approve the request to withdraw the application without prejudice.

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

L. Schubert-yes, J. Lowe-yes, D. Wells-yes, C. Decker-yes

5:15 pm – A public hearing on an Application for a Special Permit from **Jeffrey and Patricia Cassis** to allow construction of a 224 sq. ft. addition to a pre-existing, non-conforming structure requiring 23 feet of north side yard setback relief under section 11.1-3A of the Zoning Bylaws at **170 Vineyard Meadow Farms Rd., Assessor's Map 37, Lot 30** in the RU District.

Larry read the hearing notice. Jeffrey Cassis said they are looking for setback relief on a pre-existing nonconforming (PENC) lot. The 224 sq. ft. addition is rectangular and will be used as a library. It will look identical to the existing structure when seen from the road and it will include white cedar finishing with an asphalt roof – the same as the original. He has spoken with two neighbors about what he wants to do and they were okay with it. The addition is essentially an extension to the living room.

The Planning Board had no comment and referred the application back to the board. Neighbor Alyssa Halisky submitted a letter in support of their project.

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

Casey asked if based on the last time an applicant from this neighborhood appeared in front of the board, whether or not the Vineyard Meadow Farms road association had weighed in. Kim said she did notice them along with the other abutters.

It was moved and seconded to Approve the Special Permit.

A roll call vote was taken with the following resulting votes. Motion passed 4-0.
L. Schubert-yes, J. Lowe-yes, D. Wells-yes, C. Decker-yes

Larry went over the 20-day appeal period and reminded applicant that once that expires, the decision must be recorded by applicant and a receipt brought back to the Building Inspector.

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5:35 pm* – (Continuation from July 28, 2022): A public hearing on an Application for a Special Permit from **David J. Reed** to allow the operation of a Service Business (wedding venue) under section 8.5-2 of the West Tisbury Zoning Bylaws at **371 Edgartown Rd., Map 30, Lot 4, RU District.** **(*Note that the zoning official has determined this is not permissible by the town of West Tisbury)**

Larry read the hearing notice. David Reed participated remotely. Larry reviewed the history of the application from March 2022 when the board referred it to Martha's Vineyard Commission (MVC) as a Development of Regional Impact (DRI). Recently, the MVC asked the building inspector if he thought it was even a permissible use [within the bylaws]. After consultation with town counsel, the building inspector determined [a service business] would not be allowed because Mr. Reed does not currently reside on the property.

After the building inspector communicated this to the MVC, the ZBA withdrew the DRI referral because they took the advice of the zoning inspector and of town counsel.

Mr. Reed claims the Privileges and Immunities clause in the U.S. Constitution prohibit non-residents and residents from being treated differently. He cited a North Carolina case that supports his claim based on how seasonal residents were barred from their second homes on Cape Hatteras during the pandemic.

He said [based on building inspector's finding] that he might propose to be in residence, or have a proxy be in residence, whenever a wedding occurs on his property. He said he thought the island could use more wedding venues and requested that the zoning board think of his application as if he were a [full-time] resident.

Larry suggested that the ZBA continue to another date and consult with town counsel on a response to Mr. Reed. At this point the referral has been withdrawn, but if the board were to reconsider the application, it will still need to finish at the MVC.

Larry read the requirements of 8.5-2 and said he thought that several of these would be an issue.

8.5-2 Non-Residential Uses in the RU and VR Districts

Non-residential uses allowed in the RU and VR Districts and referenced to this section on the Use Table shall comply with following standards:

- A. There shall be no evidence of the use through persistent or excessive sound, vibration or odor at the boundaries of the premises.
- B. Buildings housing the use and exterior storage of materials or equipment shall be screened from off-premises view by vegetation, grade or location.
- C. Parking for the use shall be located off-street and screened as in Subsection 8.5-2(B) above, unless the Zoning Board of Appeals agrees to reasonable modifications.
- D. No more than two vehicles in excess of 10,000 pounds GVW shall be regularly parked on the premises.

- E. Traffic generated shall not be more disruptive to the neighborhood than traffic normally resulting from agricultural or residential development considering volume, type and hours, unless the Zoning Board of Appeals agrees that reasonable modifications are justified by the size and location of the lot.
- F. The use must not cause or contribute to any erosion of land or increase surface water drainage from the lot.
- G. The use shall not create hazards, unacceptable disturbances, unacceptable injury to the neighborhood, or unsightliness visible from any public way or neighboring property.

Julius said it's pretty unusual to be considering a service business in a residential district where the business is not conducted elsewhere. Home businesses tend to be craftspeople, artisans, etc. Neighbor concerns are not taken lightly by this board. He summarized discussions around "incidental use" and what number of weddings might be considered "incidental" to the residential use. In a similar instance in Truro, the town determined that this number is five (5).

Mr. Reed said he had lowered his request from 15 weddings a year to 10 per year.

Larry said he'd like to afford Mr. Reed every opportunity [to make his case] and that he'd like discuss with town counsel.

Both parties agreed to extend the Time to Act on this application to December 15, 2022. If counsel believes we can continue with the review, the application would be re-referred back to the Commission. Kim will draft the extension agreement and send for his signature. Mr. Reed thanked them and said he understands the neighbors' concerns around sound and traffic. He added that if they ultimately approve his application, he'd be open to operating on a trial basis.

A motion was made and seconded to continue the hearing to November 3 at 5:15 pm.

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

L. Schubert-yes, J. Lowe-yes, D. Wells-yes, C. Decker-yes

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5:55 pm – A public hearing on an Application for a Special Permit **from Douglas R. Hoehn** of Schofield, Barbini and Hoehn, Inc., agent for **Lot 3A West Tisbury Realty Trust**, to allow construction of a 660 sq. ft. studio with a 32 sq. ft. half bath and 265 sq. ft. of storage space, located in the Inland Zone of the Coastal District under section 6.1-5B of the Zoning Bylaws at **111 Little Homer's Pond Rd.**, Assessor's **Map 43, Lot 9** in the RU District.

Larry opened the hearing at 6:09 pm and read the hearing notice. Doug Hoehn and Scott Stearns from John G. Early Construction were present. They are in front of the board looking for a special permit to construct a studio with half bath and storage space. The applicant was in front of the board earlier this year for a pool, garage and subordinate dwelling.

This is a 12-acre lot with a lot of bedroom potential. Larry asked if it was considered a bedroom by the Board of Health? Doug said they haven't said that as of yet but if they do they have plenty of space for it. There is room for 8 solar panels [on studio/shed] and it will bring them close to net zero for the whole property when added to the solar panels on the other structures.

*A motion was made and seconded to close the hearing and open the board meeting.
The board had no questions.*

It was moved and seconded to Approve the Special Permit.

*A roll call vote was taken with the following resulting votes. Motion passed 4-0.
L. Schubert-yes, J. Lowe-yes, D. Wells-yes, C. Decker*

Larry went over the 20-day appeal period and reminded applicant that once that expires, the decision must be recorded by applicant and a receipt brought back to the Building Inspector.

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6:15 pm – A public hearing on an Application for a Special Permit from **Leah Houghton** for a Special Permit for an Accessory Apartment under Section 4.4-3A of the Zoning Bylaws, at **20 Hopps Farm Rd., Map 16, Lot 247**, RU District.

Larry read the hearing notice and opened the hearing at 6:17pm. Leah applied for and was granted a special permit in 2019 but nothing was built due to Covid and so her permit lapsed. She is ready to move forward building her accessory apartment

Larry said that since this was approved, the bylaw was changed to *Affordable* accessory apartments. Leah said it was always meant to be an affordable apartment.

There was correspondence from the planning board encouraging adequate fire exits from the top floor of the structure. In reviewing the plans, the board noted there were two egresses. There was also a letter from neighbor Cynthia Bloomquist that was read into the record. She requested that they preserve the existing taller trees behind her garage as well as the smaller evergreens she agreed to them planting close to their shared property line. Leah agreed she would.

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

Larry said that if the board agrees to approve the special permit, she must abide by the affordable rules in bylaw 4.4-3 which will be incorporated.

It was moved and seconded to Approve the Special Permit.

*A roll call vote was taken with the following resulting votes. Motion passed 4-0.
L. Schubert-yes, J. Lowe-yes, D. Wells-yes, C. Decker-yes*

Larry went over the 20-day appeal period and reminded applicant that once that expires, the decision must be recorded by applicant and a receipt brought back to the Building Inspector.

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6:15 pm* – (Continuation from August 11, 2022): A public hearing on an application for a Special Permit from **Michael and Heather Crowley** for setback relief on the proposed construction of a 7-Bedroom dwelling requiring 4' of NW and SE side yard setback relief to accommodate a rinsing area, a bulkhead and window wells under section 4.3-3D of the Zoning Bylaws at **213 Vineyard Meadows Farm Rd. Assessor's Map 37, Lot 10** in the RU District. **(*Note that applicant has requested to withdraw this application)**

Larry read the hearing notice.

A motion was made and seconded to approve the request to withdraw the application without prejudice.

*A roll call vote was taken with the following resulting votes. Motion passed 4-0.
L. Schubert-yes, J. Lowe-yes, D. Wells-yes, C. Decker-yes*

Old Business

- *Discussion and possible vote to file the August 4, 2022, Vineyard Preservation Trust decision upholding the building inspector's decision to require a special permit.*
Larry read a Sept. 20 letter sent by Nevette Previd stating they would not appeal the ZBA's decision requiring they apply for a special permit. They request that they be allowed to still operate all of the remaining events this year, as well as the events they are booking for next year, without a special permit. The board voted to file its decision on Friday Sept. 23, but determined that it is beyond the ability of the board to grant permission for them to operate without the special permit. This is the purview of the zoning official. Kim will let them know via email once the decision is filed and will work on a letter response with Larry.
- Aug. 31, 2022, legal invoice from Reynolds Rappaport Kaplan & Hackney was reviewed and signed.
- Extension of Time to Act to Nov. 17, 2022 for TerraSearch application was approved and signed.

The Meeting adjourned at 6:35 pm.

Respectfully Submitted,
Kim Leaird, Board Administrator