

**WEST TISBURY ZONING BOARD OF APPEALS**  
**Minutes for Thursday, September 24th, 2020 meeting**  
**Online meeting via ZOOM- @ 5:00 PM**  
**APPROVED ON OCTOBER 22, 2020**

**Present:** Nancy Cole, Larry Schubert, Julius Lowe, Deborah Wells, John Rau, Andy Zaikis and Jeffrey Kaye  
**Absent:** N/A

**Also Present:** Pam Thors, Board Administrator, Elizabeth Cecil, Eben Armer, Reid Silva, James Moffat, Geoffrey Rose, Phil Silverman, Abby Rabinowitz, Chris Egan

**5:15 pm:** A Public Hearing on an Application for a Special Permit from Eben Armer and Elizabeth Cecil to renovate and add 52 sf. to a pre-existing, non-conforming dwelling increasing the setback non-conformity by 1 foot on a pre-existing, non-conforming lot in the Inland Zone of the Coastal District under Sections 11.1-3 (A) and 6.1-5 (B) of the Zoning Bylaws, Map 32, Lot 85, 14 Factory Brook Rd., RU District.

The Notice was read and the Site Plan was reviewed. Eben Armer the applicant/owner explained the project. He said that the foundation and walls would be bumped out to become lined up with the eaves which currently extend out 5 feet from the exterior walls. This allows for the two very small bedrooms to be enlarged and for a mudroom to be added.

Nancy pointed out that the house is only 9 feet from the lot line at one corner. The new construction will increase the non-conformity, (setback) by 1 foot, leaving that corner of the new construction at 8 feet from the lot line.

Eben stated that he had reached out to his neighbors, James Cooper and Paddy Moore, who have no objections to the project. Pam said that she had given information about the project to Hasty Runner, an immediate abutter to the south, who also has no objections to the project.

Pam explained that the Planning Board would be reviewing the application on Monday the 28<sup>th</sup> of September. She said that the Planning Board has been very clear that they want to weigh in on projects requiring Site Plan Review prior to the ZBA taking action on them so suggested a continuance.

John Rau asked what the Planning Board's jurisdiction is over the ZBA process. Nancy said that the Use Table, as well as other areas of the bylaw refer to the Site Plan Review process as being necessary for certain projects being reviewed by the ZBA.

It was agreed that the conversation about the process should be held off for tonight but should be revisited at a later date. Pam said that she hoped the letter to the Planning Board from the ZBA will open up the conversation on this issue.

*Larry Schubert moved and Julius Lowe seconded a motion to continue the hearing until Tuesday, September 29<sup>th</sup> at 5pm.*

*A rollcall vote was taken resulting in the following votes; Nancy Cole-yes, Larry Schubert-yes, Julius Lowe-yes, Deborah Wells-yes, John Rau-yes, Andy Zaikis-yes, Jeffrey Kaye-yes.*

Andy asked if the board could approve the application with the contingency that it be approved at a future meeting of the Planning Board. Nancy said that she understands that the Planning Board wants their review to come before a ZBA decision but she would like to talk about streamlining the process.

Deborah asked if Jane will be able to have the Planning Board decision ready for review on Tuesday. Pam said that she will confirm that with Jane.

**5:35 pm:** A Public Hearing on an Application for a Special Permit from Michael K. Walsdorf to construct a 476 sf. screened porch, a 923 sf. detached garage and a 1,425 sf. pool pavilion with half bath and cooking facilities in the Inland Zone of the Coastal District under Section 6.1-5 (B) of the Zoning Bylaws, Map 38, Lot 7.7 & 7.8, Sarita Walker Rd., RU District.

The Notice was read and Reid Silva said that he and James Moffat, the architect, would be presenting the plans for the project. Reid noted that the pool was reviewed and approved by the ZBA in the spring of last year. He said that at the time he did not think that the other accessory structures planned would need Special Permits so they were not included in that application.

It was explained that the bylaw allows a main dwelling and only minor, non-habitable structures by right. Any other structures are only allowed by Special Permit. Reid explained that Joe deemed the screen porch and the pool pavilion to be “habitable”, thereby requiring a Special Permit. He said that the garage was deemed by Joe to be “non-habitable” but not “minor” because it is over 676 sf. It was noted that there is no definition of the word “minor” in the bylaw definitions and that it, and the definition for the word “habitable” should be reviewed.

Larry clarified that it is not within the purview of the ZBA to decide if the Building Inspector’s determination regarding a structure is correct or not; that they are only authorized to decide on whether the Special Permit shall be granted or denied.

The following findings were noted regarding the proposed structures;

- 1) The 1,425 sf. pool pavilion consists of a half bath and a kitchen area, which are enclosed but not conditioned. All other areas are open air with no side walls.
- 2) The 923 sf. garage will be built to look like a barn with 2 barn doors on the front. It will be used for automobile and generator storage.
- 3) The 476 sf. detached screened porch has screens on two walls and is not conditioned. The structure is 15’ away from the main dwelling.
- 4) The guest house previously planned to be conjoined with the pool pavilion is not part of this application.

Pam stated that this application has already been reviewed and approved by the Planning Board, (see letter on file).

Nancy asked if there was correspondence from abutters. Pam said that there was none received.

*Larry moved and Andy seconded a motion to close the public hearing and open the board meeting.*

Larry commented that in looking at Bylaw Section 9.2-2 Review Criteria, he feels that the application complies with part B2 which requires that the proposed use “Is compatible with surrounding uses”. He noted that the lot is over 7 acres and is still a one family use even though there are many proposed structures. He said that many large lots in this area are being utilized in a similar manner.

John agreed that this area is made up of very large lots with large houses and multiple structures.

Pam mentioned that the lot was originally divided into two separate building lots but the owner combined them via a “No New Lines Plan”, which is now part of the file.

Reid Silva suggested that the definition of the word minor be added to the bylaw.

*A motion was made and seconded to approve the application.*

*A rollcall vote was taken resulting in the following votes; Nancy Cole-yes, Larry Schubert-yes, Deborah Wells-yes, John Rau-yes, Andy Zaikis-yes, Jeffrey Kaye-yes. Julius Lowe-abstained.*

Nancy went over the 20 day appeal process.

**5:55 pm:** A Public Hearing on an application for a Special Permit from Patient Centric of Martha's Vineyard, Ltd. to amend Special Permit #2017-19 to allow the operation of an Adult/Recreational Use Registered Marijuana Dispensary, along with the Registered Medical Marijuana Dispensary previously approved at this location under sections and 9.3-3 and 3.1-1 (Use Table) of the Zoning Bylaws, Map 16, Lot 101, 510 State Rd., MB District.

The Notice was read and Geoff Rose, the applicant, stated that Atty. Phil Silverman would present the application. Phil said that his law firm Vicente Sederberg has represented over 100 companies in Massachusetts helping businesses comply with state and local regulations. He noted that they work closely to provide clarity and assurance to communities looking at allowing dispensaries. He said they have tried to work with the neighbors abutting the proposed 510 State Rd facility.

The parking plan was reviewed. Phil said that the total number of spaces they are proposing is 20. He stated that the average time allotted per customer is 7-10 minutes but for the purposes of this application, he is figuring for 15 minutes per customer. He noted that traffic concerns were addressed at the Martha's Vineyard Commission, (MVC) meetings in the Opening Day Plan which continues through the first three months or longer. He said that Patient Centric had agreed to the sales on a "by appointment only" basis for the first six months or longer depending on if the summer season, (July and August) is included in that six month period. He said that during that time there would be no walk in sales allowed. He said that there will be two parking attendants in the lot at all times during the first three months and after that, there would be one parking attendant. He said, "They will always maintain one parking attendant so neighbors won't have to worry about customers parking in their spaces". He said that they had worked on a lighting plan as well.

Geoff said that they had agreed to a stockade fence along the rear lot line and a wire fence, that would allow the existing foliage to remain, on the Tea Lane side of the lot.

Phil explained that there will be security screening to avoid selling to customers who are under the age of 21.

Other security measures were discussed including;

- 1) A 360 degree view of the property from outdoor cameras.
- 2) Cameras installed in every room, door and window.
- 3) All product would be tracked from "seed to sale".
- 4) Internal diversion of product by an employee will result in their immediate dismissal.
- 5) All product is kept in a vault overnight.
- 6) The facility is monitored 24/7.
- 7) Employees must undergo a background check.
- 8) No consumption is allowed on the premises.
- 9) Customer warning and education provided.
- 10) The West Tisbury police chief will be consulted prior to opening.

Pam asked if parking included those spots needed for medical marijuana customers. Phil said that the 20 spaces include 4 for medical customers, 3 for employees, 1 handicap space and 1 for express orders. Pam suggested that medical spaces be designated on the plan. Nancy asked if the spaces would be left empty if there are no medical customers. Phil said that they would.

Jeffrey Kaye asked if drop in customers are allowed. Phil said that if there is an opening, arrivals without an appointment can ask and be scheduled on an iPad by the parking attendant if there is space available. He pointed out that customers usually go online and order for an express pick up or an appointment. He went on to say that they would be discouraging walk-ins.

John asked why they would want to designate parking. He suggested that all spaces be available to medical or recreational customers. Phil said that they want to encourage and accommodate the medical marijuana customers by providing parking specifically for them.

Deborah asked if in working with the Police Department they would be able to prohibit customers who were caught consuming product on the premises from returning to the facility. Phil said that this was a possibility.

Larry asked if they had consulted Joe about the parking space size. He said that the plan shows 9' but he thinks that the requirement is 10' per space. Geoff said that Joe had seen the parking plan. Larry asked if it was possible to have Joe review and sign off on the plan. He added that Reid Silva who drew the plan may be aware of the requirements.

Nancy asked about hours, quoting those of the neighboring businesses. She asked if it is necessary to be open 7 days per week, noting that liquor stores don't open until after noontime and that many businesses in the area are closed on Sundays.

Phil said that they had agreed to operate "by appointment only", and that is not the most lucrative way to run a business. He stated that taking away a whole day will really start to impact the bottom line. Nancy clarified that "by appointment only" sales is only for the first six months. Phil said they will have to apply to the Martha's Vineyard Commission if they want to change that after the trial period. Nancy asked what arrangement they might propose after the trial period. Phil said they would propose increasing the number of appointments they could make from 6 to 7 every 15 minutes but still operate "by appointment only". He said that once things open up, you won't see the crowding.

Nancy noted that people here don't have the option to drive to one town or another to buy product and that her concerns are specifically centered on traffic and crowdedness. Phil mentioned that Geoff Rose has also applied in Vineyard Haven and that other dispensaries may open up. Nancy noted that for now, there is only this one application.

Nancy asked about correspondence. Pam said that the only correspondence is a letter submitted by Abby Rabinowitz, owner of Tea Lane Associates, that represents a number of abutters, (see file). Abby said that she appreciates the questions being asked by the board. Pam read the letter. Nancy noted that some of the requests were already incorporated into the Patient Centric Plan. Abby said that they are still concerned about parking and would like to see a reduction. She also stated that if the board were to ask abutters, most would want to see a reduction in hours as well, adding that Sunday hours are not appropriate in the Mixed Business District. She also noted that hours on Friday and Saturday would be one hour later than it is right now and now it is already dark. She said she would like the ZBA to seriously consider these issues.

Chris Egan, another abutter, said that he does not want to see the dispensary in this location at all. He stated that Patient Centric has "lawyered up", and they are using terms that only serve their purpose. He said that the

Vineyard Haven location is a much better choice. He said that he would like to see this “flagship” store in another town.

Jeffrey Kaye noted that Geoff Rose and Patient Centric have been determined and he commended them for their efforts. Nancy noted that even though they have been approved by the Martha’s Vineyard Commission, (MVC), the ZBA can modify specific details via conditions of approval.

The board discussed the parts of the plan approved in the MVC decision. Nancy noted section A5 which states that there may be a significant increase in traffic.

Phil told the board that the Host Community Impact Fee is 3% and the tax is 3% of proceeds. Nancy said that she is not thinking about the financial benefit to the town but focusing on the impact to the neighborhood.

Nancy questioned the use of the word “contravene”, in section A8. Larry said that getting a read out on this possible error in the language is important. All members were in agreement. Larry also asked about employee parking. Geoff said there will be parking and an employee ride share program. Larry noted that employees might be encouraged to bike or take the bus. Geoff said there will be incentives to employees for using the ride share system.

Larry voiced his concern for the Sunday hours being proposed. He said he is not in favor of impacting the Mixed Business neighborhood on Sundays. Geoff said that he is willing to look at that.

Deborah asked if they have a sense of there being a difference between the weekend/evening customers and the daytime/after work customers. Phil said that he doesn’t know the answer to this question but could check with their offices in Colorado on this. Deborah suggested the answer may help to address abutters’ concerns. Julius asked what the proposed hours are. It was verified that they are as follows:

- 10:00 am – 6:00 pm Sunday through Thursday (EST)
- 10:00 am – 7:00 pm Sunday through Thursday (DST)
- 10:00 am – 7:00 pm Friday and Saturday (EST)
- 10:00 am – 8:00 pm Friday and Saturday (DST)

Hours of operation for neighboring businesses were discussed. It was noted that Cronigs is open 9-6 Monday through Saturday and closed on Sundays. It was also noted that liquor stores on-island are only open in the afternoons on Sundays.

Pam read the hours of operation conditioned in the approval for the Medical Marijuana Dispensary approved in 2017. Condition #2 states: “The dispensary will operate by appointment only, with no more than seven patients per hour. Hours: Monday thru Friday 9:00 am to 6:00 pm and Saturday 10:00 am to 5:00 pm, closed Sunday.”

It was noted that this hearing may have to be continued to the October 22<sup>nd</sup> meeting. Geoff was asked to submit a final parking plan to Joe Tierney, Building Inspector in time to be reviewed and approved by him prior to the meeting.

Julius suggested that this hearing be continued to a night when no other hearings will be held so that the board can finalize its decision then. All agreed.

Larry asked about the sidewalk, verifying that it runs from Island Farms to Cronigs Market. He suggested that some people may be able to walk to their appointment.

The pros and cons of the lighting, security and alarm systems were discussed. Phil said that the cameras are infrared so there are no lights on inside the facility after hours. Larry asked if the alarms set off exterior lights. Phil said he doesn't know but would develop a more detailed plan to address this issue. A question asked was whether or not the lighting for security is inside. Phil said that there are outside security lights as well but that all are down facing. Deborah asked if someone is looking at security videos in real time. Phil said that this would be the case during working hours and that if an alarm is tripped, the video will go directly to a security monitoring company. Deborah stated that this could be disruptive to abutters if alarms are tripped erroneously. Geoff said that there will be a central monitoring service which will alert him and he would notify the police department if an alarm goes off. He explained that the noise from alarms occurs inside the building.

*Julius moved and Deborah seconded a motion to continue the hearing to October 22, 2020 at 5:15 pm.*

*A rollcall vote was taken resulting in the following votes; Nancy Cole-yes, Larry Schubert-yes, Julius Lowe-yes, Deborah Wells-yes, John Rau-yes, Andy Zaikis-yes, Jeffrey Kaye-yes.*

The Planning Board's wish to review all ZBA applications requiring Site Plan Review prior to a ZBA decision was discussed. It was noted that this influences the effectiveness of ZBA scheduling. Pam suggested that the letter to the Planning Board will open up this conversation. Nancy said she will sign and send the letter to her. Pam said she will talk to the Planning Board Administrator and include the Building Inspector in the discussion about reviewing the Site Plan Review bylaw.

The meeting adjourned at 7:30 pm.

Respectfully Submitted, Pam Thors-Board Administrator