

WEST TISBURY ZONING BOARD OF APPEALS
Minutes for Thursday, September 30, 2021 meeting
Online meeting via ZOOM- @ 4:30 PM

APPROVED ON OCTOBER 7, 2021

Present: Larry Schubert, Julius Lowe, Deborah Wells, John Rau, Andy Zaikis, Jeffrey Kaye and Casey Decker

Absent:, N/A

Also Present: Pam Thors, Bd. Administrator, Ezra Sherman, Paul & Toni Polansky, Laurie Peter and Scott Caskey.

5:00 pm

Larry opened the meeting. The minutes of the meeting of September 16, 2021 were reviewed and approved with corrections.

Larry explained the ZBA procedure to those present. He brought up the changes to the application that Pam had proposed at the last meeting.

Pam noted that the two changes she proposed are as follows: (changes are underlined)

- 1) Changes to statement at the bottom of page one, “I have read the overview of the ZBA process attached to this application, completed all sections of the application cover page and provided all required documentation”.
- 2) Add this question, Is the main dwelling, (existing or proposed), over 3,000 sf ? ___yes or ___no
- 3) Please read the attached section 9.2-2 “Review Criteria”, and check the applicable box below.

___ This application complies with all requirements of Section 9.2-2

___ This application does not comply with all requirements of Section 9.2-2

*Please circle the section(s) of 9.2-2 (attached), that this application does not comply with, or may not completely satisfy, and file as part of the application. Any non-compliant issues will be discussed at the hearing.

The implications of bringing this section of bylaw to the attention of the applicant and bringing it to the forefront of board deliberations during hearings was discussed. Specifically the question, of whether it is even within the board’s jurisdiction to approve a project if it does not comply to 9.2-2, was raised.

Larry noted that the word “shall” refers to the board stating findings and placing conditions on approvals when a portion of Section 9.2-2 is challenged by an application.

Pam noted that at the last meeting, the question of whether the application was allowable if it did not comply with all sections of this bylaw was the focus of the discussion.

Larry stated that there have to be written findings noted in the decision and possibly conditions imposed to mitigate a non-compliant issue. He also put forth the question of whether putting this in the application would deter someone from applying. He asked if Pam would accept an application that didn’t comply.

Jeffrey reiterated that the word “shall” in legalese means “must”.

John said it would make the job of the ZBA easier if the applicant was aware of the bylaw and checked one or the other box.

Pam said that she reads the word “shall” as referring to noting findings and/or implementing conditions. She reminded the board of a Service Business operation that produced odors, noting that the board approved this application with a condition that an odor eliminating fan system would be installed.

Larry suggested that they get back to this discussion after the hearings.

5:15 pm - A Public Hearing on an Application for a Special Permit from Sherman Associates, LLC for Yndia Lorick and Damien Wilmot to construct an 18’ x 32’ pool with an 18’ x 18’ open air shade structure under Section 8.5-4C of the Zoning Bylaws and to amend Special Permit #2019-37 in order to install a half bath in an existing garage under Section 9.3-3 of the Zoning Bylaws at 192 Waldron’s Bottom Rd., Assessors Map 37, Lot 37.1 RU District.

Larry read the notice and the board reviewed the site plan.

It was noted that the original Special Permit did not include the half bath being proposed for the garage. Pam stated that in January of 2020, during construction of the garage, the applicant came before the board for an informal hearing to request that plumbing lines be allowed to accommodate a future request for a half bath. The board voted that as a di minimis change.

Ezra Sherman, agent for the owners stated that the lot falls off sharply on the South side. He said they are looking to cut the pool, patio and shade structure into the hill. He said there will be a retaining wall 4.5’ high on the South side, sloping down to 1’. He noted that this was being done to lessen the visual and noise impact, adding that the pool equipment enclosure will also be cut into the hillside. He said the bathroom proposed would not be accessible from the interior of the garage.

Jeffrey asked if this was going to become a guest house. Ezra replied that the town would not allow a guest house on this lot.

Deborah asked about the setback from the lower corner of the shade structure to the lot line. Ezra said that it looks to be well within the allowed 50’. Deborah said it would have been helpful to include that measurement on the site plan. Larry stated that it could be added if the board requires an updated plan.

John questioned whether the fence needs to be outside of the 50’ setback. Larry verified that it does not.

The plans and elevations were reviewed.

Ezra assured all concerned that the building department would require a detailed set of stamped, engineering plans for water management and drainage systems. He stated that everyone involved wants to see the project succeed. He pointed out that the cross section shows the retaining wall cutting into the hill 4’. He said that the plan was developed with lessening the impact on the neighborhood in mind. He said that all water that comes into the area will have to be controlled underground so as to avoid erosion. He also noted that the shade structure is open air and the fencing will be surrounded by plantings.

Jeffrey asked if Ezra is willing to certify that there will be no impacts as those noted in section 9.2-2 Review Criteria. Ezra said that he expects that the ZBA will impose conditions and controls that apply during construction.

Andy noted that it is in essence, a pool within a pool and that all water hitting the pool deck will be encapsulated by the pool fence.

Ezra stated that all portions of the pool deck will be sloped to drain into dry wells and that the waterflow and concrete structures will be the liability of the engineer.

Pam read the two letters from abutters, (see file), that both express concerns for water drainage in this area.

Paul Polansky, the abutter most affected by the project noted that all the trees on the property were taken down by the previous owner and that the slope is very steep. He noted that the concrete pool surround will increase

runoff in an area already fraught with water drainage issues. He asked what would happen if a miscalculation occurred.

Larry stated that the Building Inspector will not issue a building permit without adequate, engineered plans, adding that the onus is on the owner and engineer to build a project that does not fail.

Paul stated that he would like to see engineered plans before the ZBA votes on the application. He also noted his concerns about lighting.

Ezra stated that he trusts the Town's process, noting that the ZBA has dealt with many more fragile situations.

Laurie Peter, another abutter expressed her concern that the plans did not include information about the degree of slope on the property. Larry said that sometimes contour lines are included in the site plan and sometimes they are not, adding that the cost of this type of engineering is often put off until a project has been approved by the ZBA.

The map showing the topography of the lot was reviewed. Laurie thanked the applicant for bringing in this information.

Ezra asked if Casey, as an engineer by trade, would weigh in on the type of engineering done for this type of project.

Casey said he had been to the site, noting that the plans were very well thought out. He said that calculations for this type of project would be very straightforward and that with the sandy soil and drywells, water would disperse quickly. He said he doesn't see drainage as a problem.

Jeffrey said he would like to see the engineered plans prior to ZBA approval.

Julius stated that there is quite a bit of design already done and that even though a stamped plan for neighbors would not be an unreasonable request, it is over and above what is usually required.

Paul asked what the downside would be considering the implications of the water issues.

Larry stated that asking for more than the professional drawings already presented would be an expense that applicants often make after receiving ZBA approval.

D. Wells moved and J. Kaye seconded a motion to close the Public Hearing and open the Board Meeting.

A rollcall vote was taken with the following resulting votes: L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes and C. Decker-yes.

Deborah said she understands the responsibility of the ZBA to vet plans submitted, but that she can't see anything in this application that would justify them doing anything but acting on the application and considering conditions that may apply to this project going forward, and not to impede it.

Andy agreed with Deborah, stating that the normal due process should take place and that he sees no reason for the board to go outside of it's normal procedure.

Jeffrey mentioned the proliferation of pools in Town, noting the concerns of the abutters present.

Casey asked if the retaining wall around the pool will be over 4'. He said that the state Building Code requires that the plans for the wall be approved by the Building Inspector and that he is confident that Sherman Associates will submit all necessary documentation.

Larry made a motion to approve with all appropriate conditions including the condition stated below.

"The applicant will submit to the Building Inspector a stamped, engineered plan for both construction and drainage prior to the issuance of a Building Permit".

A rollcall vote was taken with the following resulting votes: L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes and C. Decker-yes.

Larry went over the 20 day appeal period process.

5:35 pm A (Continuation of) Public Hearing on an Application for a Special Permit from Scott and Charlotte Caskey to construct a Guest House with attached Garage on a lot located in the Inland Zone of the Coastal District under section 6.1-5B of the Zoning Bylaws at 65 Jennie Athearn Rd., Map 38 Lot 2, RU District.

The hearing was opened at 6:15 pm. Larry read the notice. He explained that the lot was subdivided prior to 2000, so it is not subject to the 4.5 acre requirement for a Guest House and the requirement that the square footage of the road running through the property be subtracted from the square footage of the lot.

It was noted that the hearing was continued from September 16th to clarify this issue.

The board reviewed the plans and elevations.

Jeffrey noted that the lot predated the aforementioned zoning changes.

Larry called for the vote to approve the application.

A rollcall vote was taken with the following resulting votes: L. Schubert-yes, , D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes and C. Decker-yes.

J. Lowe-abstained as he was not present at the original hearing on September 16th.

Larry went over the twenty day appeal process.

All agreed that the changes to the application would be reviewed and voted on at the next meeting.

The Meeting adjourned at 6:45 pm.

Respectfully Submitted,

Pam Thors-Board Administrator