

## WEST TISBURY ZONING BOARD OF APPEALS

Thursday, September 8, 2022

Meeting Minutes

Approved September 22, 2022

**Present:** Larry Schubert, Julius Lowe, Deborah Wells, Andy Zaikis (arrived late), Jeffrey Kaye (remote), Casey Decker

**Absent:** N/A

**Also Present:** Kim Leaird (*Board Administrator*), Eunki Seonwoo, Bridget Sampson, Jon Saunders, Joseph O'Donnell, Thomas Humphrey, Kate Scherlis, Dan Scherlis, John Scherlis, Jonah Kaplan-Woolner, J.C. Murphy. *Via Zoom:* Joe Tierney, Larry Hawkins, Sandy Burt, Andrew Kaye, Tucker Hubbell, Nancy Caraboolad, Sean Dougherty (Hutker Architects), Phil Regan, Kris Horiuchi

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*This meeting provided hybrid access via Zoom*

**5:00 pm – New Business:** Discuss if the **Reed** application (wedding venue) at 371 Edgartown Rd. is permissible by the ZBA.

The Martha's Vineyard Commission (MVC) came back to the town to ask if Mr. Reed's application for a wedding venue is even permissible by the town and ZBA. Building inspector Joe Tierney spoke with town counsel and found there is a case in Truro where a wedding venue was allowed, but only five per year as an incidental use. In his opinion, the board would need to decide what [number] the incidental use would be – 2? 4? 8? Mr. Reed was looking for in the neighborhood of 15 weddings per year.

Joe said in his opinion, if Mr. Reed was a year-round resident and lived here he could then apply and the board could determine what constitutes an incidental use. However, as he is not a resident, he does not believe the ZBA can approve his application.

Joe said in his opinion, once Mr. Reed becomes a year-round resident he could apply for a special permit for an incidental use. It would then be up to the board to decide what constitutes incidental use. However, he is not a year-round resident and at this time, the board cannot approve his application.

Jeffrey thought this application was way beyond what our board can determine. It's not an incidental use if it's 15 weddings.

It was determined that Joe would respond to the MVC.

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**5:15 pm** – A public hearing on an Application for a Special Permit from **Joseph and Janice O'Donnell** to construct an accessory structure (1,664 sf. basketball court) on a non-conforming lot under Sections 3.3 and 11.2-2 of the Zoning Bylaws, at 8 Waldron's Bottom Rd., **Map 29, Lot 45.2**.

Larry read the hearing notice. This is a new application from the O'Donnell's. They asked to withdraw their application for a pickleball court ("sport court") and submit a new application for a basketball court instead. Their original plan was for 52x36 (1,872 sq. ft.) but they have downsized to a smaller court (1560 sq. ft.).

It was noted that the hearing notice contained a dimensional error: square footage is not 1,664 sf. The correct size of the accessory structure is a 1,560 sf. basketball court.

The board reviewed the new site plan. Larry read a letter of support from Anthony and Maria Marchigiano. The Planning Board did not submit any comment.

Jeffrey asked if was a different use or if was allowed by-right. Larry said the building official determined it was a non-habitable accessory structure over 676 sq. ft. which is allowable by special permit.

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

Jeffrey asked about material used for the court. Mr. O'Donnell said he's been working with White Lynch the material won't buckle but they do professional courts.

*It was moved and seconded to Grant the Special Permit.*

*A roll call vote was taken with the following resulting votes. Motion passed 5-0.*

*L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Kaye-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** – A public hearing on an Application for a Special Permit from **LCI Hospitality, LLC**, to AMEND Special Permit #2019-33 to allow limited outdoor dining from 5pm to 9pm with no amplified music, for a maximum of 25-30 guests, under Sections 9.3-3 and 11.1-3A of the Zoning Bylaws, at 90 Manaquayak Rd., **Map 7, Lot 99.**

Larry opened the hearing at 5:35 pm and read the hearing notice. Present were Bridget Sampson, resident innkeeper / restaurant general manager, and Jon Saunders, owner.

Bridget lives on the property and manages the inn along with her husband, Galen. Jon Saunders bought the property with his wife in January 2022. He said that they own four other inns in Massachusetts and all are located in residential areas.

Jon said they are in front of the board requesting a special permit that would allow outdoor dining in the English garden. He said they feel that that outdoor dining would add significant value to their guest experience and would not in any way disturb their valued neighbors. It has been their focus since purchasing the property in January to build a strong relationship with the community.

Dining will be limited to 5pm to 9pm and a maximum of 25 to 30 guests will be seated at any one time. In addition, there will be no amplified music. Their long-term goal is to limit their outdoor wedding disturbances (all weddings this year were contracted by the previous owners), and to build a top-notch, fine dining experience for their guests and neighbors, which per recent reviews they believe they are succeeding. They plan to remain open through most of the calendar year. He also said that without the ability to offer outdoor dining that their business would be devastated and their long-term plans would need to be rethought.

He said they are [already] zoned for 70 seats and they are not asking for any *more* seats just asking that a portion of the 70 being allocated to the English garden.

Larry said they have been operating in the garden due to the pandemic and asked how this past summer had gone. Jon said it is their first summer and they stop seating at 8pm. While outdoor seating began during the pandemic, there are customers who still won't sit inside to dine. He said the outdoor dining ability is important to their business. They are not licensed to serve wine and beer in the pool area. Without the outdoor dining, their business would be down 25-30%.

Casey asked if there would be a tent in the garden or open air. Jon said it would be open air and only a small limited area of the English garden [nearest the inn]. He noted that there are 100-foot trees surrounding the area.

Julius asked if he could expand on the "reduction in number of events" and if this exists somewhere in writing or if it is just a stated goal. Jon said that he would be happy to put something in writing. While they are zoned for 150 people, they want to keep the maximum to 75 people. The only weddings they want to host are high-end, small, intimate weddings -- none in July and August but instead in the shoulder months. They respect the community and understand the one-lane road is narrow. They are also concerned about the traffic.

Larry read the conditions that are stated in the current special permit currently on property and said that if the board were to approve, they may re-write some of these to be clearer.

**Conditions from Special Permit #2019-33:**

- 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.

In particular, condition #6 implies that as long as there is a stop in between the three hours, that three additional hours are allowed. Jon said they are only planning three hours total. Larry said if amended, they would re-write this condition to better clarify it's a total of three hours (not six or nine).

Deborah asked if they had served lunch this past year and during which months they would like to have outdoor dining. Bridget said they have served a few brunches for special events but that they do not serve lunch. The months they are asking for are June 1-October 1.

Deborah asked if they have any plans to buffer or dampen the sound on the open end of the garden. Jon said he's open to putting screening at the end of the garden but does not want to cut the garden in half by putting something in the middle. He was asked what the maximum group size would be and he said they would allow groups as large as 10 to be seated together. Deborah said the larger the group, the louder and more festive it conceivably might be (and the louder for the neighbors). Bridget said they could limit that to eight.

Deborah asked if they are open to revisiting the conditions and Jon said yes.

Public comment: Several letters were read into the record. Letters of support were received from Jesse Liotta and Jonah Kaplan-Woolner; Katherine Gagnon and Brian Leistman; and Susan Cahill. Letters of opposition were received from Andrew Kaye and Tucker and Martha Hubbell which included Select Board meeting minutes from March 24, 2021.

Jon responded to say that he and his wife own four businesses in residential communities and they are very sensitive to the concerns of the neighbors.

Meeting attendee Dan Scherlis said he agrees with much of the supportive comments read but as a direct abutter, he said the English garden is open on all sides and while there is some shrubbery and a short stone wall, lights and noise do travel. The noise resulting from outdoor dining has been proven over the last three years even if this year it has been dramatically better. While there is now responsible ownership, historically there has been a lack of enforcement by the town forcing neighbors to police each other. Past alcohol violations, for example, were not addressed or enforced by the town. In addition, he is concerned about granting an eternal permission should ownership change. He also noted that the [Inn's] website advertises events that are not currently permitted, that only weddings are allowed right now. He said that outdoor dining was always meant to be temporary and that he does not believe it is legally permissible for the Select Board or the ZBA to grant a one-year extension due to pandemic reasons. He asked that the board decline their request [for outdoor dining].

Meeting attendee Jonah Kaplan-Woolner said he supports the application. He is a neighbor and lives within walking distance of the Inn, they love having a place in the neighborhood where they can dine. He said he would hate to see the Inn stop operating if they are unable to offer outdoor dining. He pointed out that the amount that the inn contributes to the road association is not insignificant and dues far surpass any of those paid by the residents. He said he can't imagine that knives and forks scraping on plates would create a disturbance.

Meeting attendee John Scherlis, a direct abutter, said he has been there since 1969. He agrees that there has been a steady increase of the nonconforming use of the inn. He is opposed to increasing the detriment. He applauds the current owner and manager for their stance [on type and size of events] but does not think it's possible to mitigate the sound. He said he is also aware of food being sent out to the garden well after 9pm. While it's better than it has been in the past, he would ask to find a legal way to extend [the pandemic relief] for a year and not put the neighbors in the position of policing it.

Zoom attendee Andy Kaye said that people love outdoor dining, he loves outdoor dining. The Saunders and Galen and Bridget have done a great job running the inn, there have been much less headaches. But as it pertains to zoning, what [should] matter is: Does it have a significant detrimental impact on the

neighborhood? If it does, it should not be allowed. He said you've heard from all of the abutters who live around the perimeter and [we are saying] it's been a problem the last three years. While it's been less this year, it continues to be a problem. We do need to deal with noise every night if we want to be in our yard.

Zoom attendee Tucker Hubbell said he would like to ask the owner if he'd consider *not* doing [outdoor] events. Jon replied that it would not be a viable business without the wedding business, it's too short of a season. Tucker thought indoor weddings would be allowed by right; it's only outdoor weddings that are part of this special permit. Jon said he does not see doing many, if any, indoor weddings at this point in time.

*Board member Andy Zaikis arrived at the meeting at 6:06pm*

At the end of public comment, Larry asked the board if they needed to gather any additional information. He entertained a motion to close the public hearing and open the board meeting.

Julius said that before they did that, he thought they should expand on what Tucker asked. Would the applicant consider changing what is currently permitted. The concerns expressed tonight speak to the nonconformity and the intensity of use. Currently they are allowed 10 outdoor weddings with three of those up to 150 attendees, etc. His opinion was that in order to move forward they would need to give up something to help allay neighbor concerns. For example, would they be willing to cut down the number of events by half?

Jon said they want to reduce the number of outside amplified weddings and focus on fine dining in July August. Their strategic plan is not to take over 75 guests right now. He said he feels confident that this will work with outdoor dining. However, if they can't have outdoor dining for the foreseeable future they would need to reassess. They are already not doing as many events that are permitted and would be open to cutting some.

Larry said that this *maybe-less-is-more* conversation and saying '*yes, you can have outdoor dining in exchange for something else*' could be an uphill battle when the concern and comments from the four property owners closest to English garden are "Please don't give them outdoor dining." He said the concern of neighbors has added weight when we're talking about an expanded use.

John Scherlis said his assumption was that they could not grant a one-year extension to the outdoor dining. Larry said the board could condition that we review the special permit after a year. It could be revoked for non-compliance but not for '*It's louder than I thought it would be*'. However, what usually happens is the year passes and it becomes a special permit.

Deborah wondered if the special permit could be tied to the current owner vs. the facility -- could the ZBA condition the special permit to just this owner subject to review upon selling. Jon said he would be in favor of that.

Jeffrey said he thought the board was well within their authority to grant a one-year permit.

Zoom attendee Andy Kaye said Governor Baker's emergency order expired June 15, 2021 with 60 days to comply. Outdoor dining was supposed to end August 15, 2021. However, the Mass. Budget Bill released in March of this year included a one-year provision to extend outdoor dining. He felt it was more appropriate to extend it vs. going to a special permit. He said he believed the Select Board should have done so and it and they did not. While [outdoor dining] may be a nuisance to him, from a public health standpoint it's the right decision.

Jon said that he likes the idea of the special permit attached to an ownership change because it would mean it is not permanent. While it would hurt their resale value, he said he would prefer to go this route if possible.

Zoom attendee Tucker Hubbell said he supported what Andy said about the one-year extension but requested they get legal counsel to find out if they can do a special permit that is reviewable in one year.

Larry said that he thinks that legal counsel should be consulted and that the board should continue this hearing to get more information.

John Scherlis told Jon that there is no animosity towards him and he hopes there is a way to solve this so it works for everybody. He said he had brought up earlier whether or not something could be done to mitigate the sound.

Larry said that if the board votes to continue, it would not be to the Applicant's detriment.

Tucker said that he believes under the law, because they applied for a special permit, the clock stops for Lambert's Cove Inn, meaning they would be able to continue what they're doing as long as it's still under review by the ZBA. Larry offered to write a letter to the building inspector stating such. He suggested all parties continue their dialogue, that ultimately a solution might be reached between them [before they return].

*It was moved and seconded to continue the hearing to **October 13, 2022 at 5pm.***

*A roll call vote was taken with the following resulting votes. Motion passed 6-0.*

*L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Kaye-yes, C. Decker-yes, A. Zaikis-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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**5:55 pm** – A public hearing on an Application for a Special Permit from **Jason Blandini**, to construct a 15'x30' pool with a 6'x14' mechanical shed, 12'x14' lounge area and a 12'x14' open-walled cooking area, under Section 8.5-4C of the Zoning Bylaws, at 32 Pine Lane, **Map 10, Lot 59**.

Larry opened the hearing at 6:58 pm and read the hearing notice.

Jason Blandini said they are seeking approval to install a pool with a future mechanical shed, lounge area and open-walled cooking area which he expects to install after a year. They meet all required setbacks.

Meeting attendee J.C. Murphy said there are covenants. He sold him the lot and asked if he could just see the pool. Larry read two letters of concern into the record from Pamela Speir and Kevin Carr and one letter of support from Jonathan and Pamela Belain. A question was asked about how many gallons would be used: 12,000 gallons and whether the water could be used in case of fire. Jason said absolutely if the fire was at his house. But it would be available in an emergency.

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

Larry went over the boilerplate conditions part of every pool permit.

*It was moved and seconded to Grant the Special Permit.*

*A roll call vote was taken with the following resulting votes. Motion passed 6-0.*

*L. Schubert-yes, J. Lowe-yes, D. Wells-yes, A. Zaikis-yes, J. Kaye-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** – A public hearing on an application for a Special Permit from **Watcha Club LLC**, to construct a 20’x40’ pool and a 1000 sq. ft. guest house within the Inland Zone and Coastal District, under Sections 8.5-4C and 6.1-5B of the Zoning Bylaws, at 100 Watcha Club Rd., **Map 43, Lot 1.**

Larry read the hearing notice and opened the hearing at 7:14 pm. Reid Silva went over the site plan and location in the Inland Coastal Zone. The lot is 6.6 acres. They’ve gone through Conservation and Natural Heritage. At Conservation there was a lengthy discussion of the flood and buffer zones but it was ultimately approved.

They are asking for a special permit for a proposed pool and 1000 sq. ft. guest house. There is an equipment shed vault on the revised plan. It will be below ground. He pointed out the fence and retaining wall on the plan and said it will act as a barrier. The coastal district permits in the inland zone a single-family dwelling and a non-habitable structure. As the guest house is a one-bedroom habitable structure they have applied for a special permit.

Larry asked about the reasons for choosing the pool location. Phil Regan from Hutker Architects explained that they were attempting to cut down as few trees as possible and place it where there is relatively thin vegetation. The idea was to keep things close together and maintain a view of the pond.

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

Larry went over the pool conditions that are a standard part of every pool permit.

*It was moved and seconded to Grant the Special Permit.*

*A roll call vote was taken with the following resulting votes. Motion passed 6-0.*

*L. Schubert-yes, J. Lowe-yes, D. Wells-yes, A. Zaikis-yes, J. Kaye-yes, A. Zaikis-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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## **Old Business**

- Discuss filing the August 4, 2022, Vineyard Preservation Trust decision: The board discussed the merits of filing or not filing the decision after agreeing to extend the date by which it must do so to December 2, 2022. The decision was to uphold the building inspector’s decision requiring the Trust to apply for a special permit. Town counsel and the town administrator believe the board should file its decision now because there is no longer an advantage to hold off on filing it as negotiations thus far have not gotten anywhere. The Trust has not made the effort to file for a special permit.

There is nothing in the extension agreement that prevents the board from filing before December. Jeffrey

said they should just get their decision out because it's going to end up in litigation anyways.

Zoom attendee Nancy Carabalad, an executive board member of the Trust, said you can't assume that.

Larry said we do not need to decide this tonight. He recalled Rob McCarron said that nothing in their proposal prevents them from filing our decision sooner. While his discussion with the town administrator and zoning inspector recommended they not hold off any longer, he told them he would put it on the agenda for discussion and now we're discussing it. We also spoke about notifying the Trust so they didn't feel blindsided. Kim notified them it was being discussed tonight.

Julius said his understanding is that the board could file at any time. The question is does the board think there is anything left to be gained from this delay. Is there any amount of negotiation or discussion that could happen between now and December 2<sup>nd</sup>. But if in reality what they must do is file for a special permit and they will not, then [filing the decision] should not be delayed.

Nancy said she was not present at the meeting Nevette had with Joe Tierney. She said that everything is still up in the air, they are still trying to figure out what to do.

Larry made a proposal to the board that we draft a letter to the Trust to let them know that the town administrator and zoning inspector have asked us to go ahead and file our decision. They can be invited to provide comment and we will take it up at our next meeting. The board agreed. Kim will draft the letter in the next week.

- Wilson/Decker *de minimis* plans were signed (setback relief for awning)
- Gothard revised plans were signed (showing re-drawn fence)
- Kim researched special permit granted to Steve Bernier for the solar canopies and the board briefly discussed whether adding the re-charging stations would be a new application vs. amending the current special permit. Consensus was this would be a new application as there was no mention or condition about re-charging stations made in the current special permit.
- The meeting minutes of August 25, 2022 were approved

The Meeting adjourned at 7:50 pm.

Respectfully Submitted,  
Kim Leaird, Board Administrator