

WEST TISBURY ZONING BOARD OF APPEALS

Minutes for Thursday, October 11, 2018 meeting

2nd Floor, West Tisbury Town Hall - @ 5:00 PM

Approved on November 1, 2018

PRESENT: Nancy Cole-Chair, Toni Cohen, Julius Lowe, Larry Schubert

Absent: Tony Higgins, Bob Schweir

Also Present: Kristen Kinser, Kendra Mills, Rachael Fox, Max Celeste, Chris McIsaac, Tracey Brun, Faith Runner, Mark Nicoterra and Martin Rodriguez from Trademark Services, Reid Silva from Vineyard Land Surveying and Pam Thors – Zoning Board Administrator

Minutes: The minutes of the meeting on September 20, 2018 were approved with two abstentions, (Larry Schubert and Julius Lowe).

Invoices: The following invoices were approved and signed.

- Invoices:** Martha's Vineyard Times-\$240.80
- Reynolds, Rappaport, Kaplan & Hackney, LLC-\$122.50
- DaRosa Corporation-\$21.98

5:15 pm – A hearing on an application from Trademark Services, LLC., agent for 49 Runner Rd., LLC., for a Special Permit to construct a 36'x36' barn on a non-conforming lot, under 11.2-2 of the zoning bylaws, Map 32, Lot 76, 49 Runner Rd., West Tisbury, RU district.

Nancy read the notice. Max Celeste, the property owner described the project which is a 36'x36' (1,296sq.ft.) barn/workshop.

Faith Runner, an abutter, asked about the use of the proposed structure. Max explained that it would house a car, boating/beach/yardwork machinery and supplies, a woodworking area, sink and storage. He stated that he would like to plant trees as a visual buffer to screen the barn from his neighbors.

Chris McIsaac, an abutter to the property, said that Max has been very neighborly throughout the initial planning process and that he has no opposition to the project. Larry asked if the neighbors are okay with the siting. Chris stated that Max has been very open about what is planned and that he is happy with the siting, stating that the request for setback relief is for his benefit as an immediate abutter. It was noted that a number of mature trees would be saved by siting the barn as proposed on the plan. It was confirmed that the setback relief being requested is 11 feet.

Toni asked if he had spoken with the Feinbergs. Max said he has spoken with their tenant but not with them. Pam stated that the hearing notice would have been mailed to the Feinbergs.

Nancy asked about the sink, which does not show on the plan. Faith asked what it would be used for. Max stated that it would be used to wash dogs, kids, boating/beach and other equipment and greasy hands. He mentioned that being able to store all of these things inside and in one place would be ideal. In discussing the size of the building, Max stated that part of the barn is a covered porch.

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

Julius asked where the sink would be located. Larry stated that it needs to be shown on the plan because it will eventually be a reference for the Building Inspector. Nancy agreed that it would need to be represented on the plan in order for the board to vote on the application. Mark drew the sink in with the applicable measurements on the plans.

Larry said that one of the conditions should be that buildings represented on the site plan as, "to be removed", must be removed prior to the issuance of an Occupancy Permit". It was decided that the applicants agreement to screen the project with plantings would be listed as a finding. Larry said that another conditions should be that the structure is non-habitable.

Nancy noted a discrepancy between the narrative, which asks for 11.3 feet of setback relief and the plan, which shows setback relief requested as 11 feet. Mark Nicoterra, agent for the applicant confirmed that they are looking for 11 feet of setback relief.

A motion was made to approve the application. The vote on the motion was unanimous.

Nancy went over the 20 day appeal period.

5:35 pm - A hearing on an application from Kristen Kinser for a Variance under Section 10.3-2, a Special Permit for setback relief under Sections 4.2-1, 4.3-3 (D) and 11.2-2 and an amendment to a Special Permit under Section 9.3-3 of the Zoning Bylaws, Assessors Map 22 Lots 47 and 47.1, 632 and 642 State Rd, West Tisbury, RU district.

Nancy read the notice and went over the bylaws listed. It was determined that Section 9.3-3 (Amendment to a Special Permit), does not apply to this application. She then read the narrative. Julius asked about the new lot lines. Reid stated that the road frontage and structures did not change. He went over all the changes from the original plan and then reviewed the new plan which was recorded on April 19, 2018. He said that in 1988 the owners divided the lots around the pre-existing structures as was allowed by the existing Subdivision Control Laws, (SCL). Reid stated that therefore, the lots as they exist now are legal. Over the years however, it was determined that even though they allowed this type of division, the zoning concerns were not addressed. Also, in 1988 the SCL stated that one could modify the frontage and the area of lots. Subsequently, the bylaw was changed so that only the lot frontage can be modified. He said that at the time of the original lot division in 1988, the agricultural use of the lots was probably not taken into account by the owners and had they known that the bylaw would change, may have included more acreage in the agricultural lot. He said that the purpose of the current plan is to preserve as much of the agricultural use as possible.

Nancy read the letter dated May 21, 2018 from the Planning Board, (see file). Larry stated that the letter just addresses the buildings and the legal right under the SCL to divide around them due to the fact that they predate zoning. He went over Section 10.3-2 (Variances) of the Zoning Bylaws and the specific criteria for granting a Variance. Reid said the shape of the lot does not encapsulate the fields that are currently used for farming. He said the size of the lot being so small is a hardship substantiating the need for a Variance. Kristen brought up the lot's topography and a hill that gives privacy to the residential lot and creates a natural buffer from the rear abutting property. She also noted that they had done some planting in the area that was slated to become part of the agricultural lot.

Nancy read a letter in support of the project from abutter Nancy Dole. She asked what Town Counsel said about the issuing of a Variance in this case. Pam said that Michael Goldsmith reiterated the ZBA's opinion that the laws surrounding Variances are very specific but that the ZBA should hold the hearing, see what is presented and contact them if there are questions. Reid read from the state laws regarding Variances, (see file). He stated that the bylaws uphold the issuance of a Variance based on their goal, which is a year round agricultural business that benefits the area and the community. Nancy said that she doesn't have a problem with the application per se but in theory sees it as a stretch to prove that there is a hardship involved. Justifications for Variances were discussed. Julius read from Article V, (Open Space Development), of the bylaws, which stress the importance of open space in the town's Master Plan and the interest in supporting that. Larry said that Open Space and Agriculture weigh heavily on this application. Toni confirmed with the owner that they will be growing produce to stock the farm stand. Nancy asked about conditioning the approval to disallow additional buildings on the agricultural lot, since the premise for issuing the Variance would be to support the setting aside of land for agricultural use while allowing the owner of the property to sell the residential lot.

Larry stated that the application also addresses the setback relief for the existing garage on lot 47.1. He then asked about the house on lot 47, (the agricultural lot) and suggested a restriction on what could be built on it. Reid suggested restricting structures only on the area being added to lot 47. Larry read from Section 10.3 -2 Variances, of the Zoning bylaws protecting farmland. Julius mentioned that the lot sizes in the area are comparable to the lot sizes

created by the new plan. Larry stated that his interpretation of the bylaw is that short of making an egregious change, if the hardship can be addressed through a Variance without, “substantial detriment to the public good”, that the application before them appears to be allowable.

Larry moved and Julius seconded the motion to close the hearing and open the board meeting.

Nancy stated that the “Vision” of the town as described in the town’s “Master Plan can be used to substantiate the issuing of this Variance. She reiterated her suggestion that the area added to the agricultural lot (Lot 47), be designated as a “No building Area”, as a condition to the approval of the application.

Larry suggested that Reid provide a new plan showing the property being restricted. Nancy stated that it be designated as an area where no buildings would be allowed.

Larry suggested the following findings

- 1) In order to maintain the agricultural use of this land as per the goals of the West Tisbury bylaws the Variance was determined to be allowable.
- 2) It was determined that since the Special Permits being requested are not amendments to the original Special Permit that Section 9.3-3 is not necessary.
- 3) It was determined that the Special Permit for setback relief for the garage on lot 47.1, is not an amendment of the prior Special Permit but is a new request.
- 4) Side setback relief of 45 feet is being requested for the existing garage on lot 47.1.
- 5) It was determined that the Variance is supported by the Subdivision Control Laws which allow dividing lots around pre-existing buildings.

Toni asked about the disrepair of the garage and whether they were planning on rebuilding it or replacing it. Pam asked about the restriction on removing/altering buildings on lots that were divided around pre-existing buildings. Nancy stated that this is not part of the application before them.

The following conditions to the Variance were agreed upon as part of the approval of the application.

- 1) A new plan would be submitted prior to the drafting of the decision, designating the portion of Map 22 Lot 47.1 that is transferred to Map 22 Lot 47 via the Plan of Land in West Tisbury Surveyed for Kristen E. Kinser & The Donald R. Mills 2010 Trust dated April 19, 2018 as being a, “No new structures area”, into perpetuity.

A motion was made to approve the application with conditions. The vote on the motion was unanimous.

Nancy went over the twenty day appeal period.

Reid confirmed that he would bring in the plan showing the area designated as “No new structures” prior to Pam’s drafting of the decision.

5:55 pm - A hearing on an application from Ken and Abigail Bailey for a Special Permit to construct an accessory apartment under Section 4.4-3 (A) and Section 9.3-3 of the Zoning Bylaws, Map 21 Lot 14.3, 60 Halcyon Way, West Tisbury, RU District.

Nancy read the notice and then the following correspondence:

- 1) Letter from Robin Canha (abutter), in opposition to the application
- 2) Letter from Porter Thompson (abutter), to the Planning Board-copied to ZBA, concerning the Bailey’s use of Pine Hill Rd as an access road and Planning Board response to him confirming that the legal access to the Bailey property is Halcyon Way.

Mr. Bailey described the project which consists of the construction of an accessory apartment for use by their daughter. He explained that the new plan is further away from the Canha property, also confirming that there is no setback relief necessary. The claim by Robin Canha that her survey stakes are missing was addressed. Larry stated that the neighbor would not have to have her lot resurveyed to have new stakes put in. Mr. Bailey also addressed Robin Canha's concerns about the dirt pile on the lot, explaining that they needed a new septic and the dirt pile was taken care of.

Mr. Bailey went over the differences in the present plan from the plan for which he was granted a Special permit in 2015. He said that the original plan had a den and the new plan has a second bedroom instead. Nancy asked about the access issue and confirmed with Mr. Bailey that while building the house, they used Pine Hill Rd. because Halcyon Way was not yet developed. He explained that if it is an issue that they would not continue to use Pine Hill Rd. Nancy explained that the Planning Board, in the process of approving the subdivision, would have granted them only the curb cut on Halcyon Way. The board went over the site plan.

Larry went over the restrictions on accessory apartments, asking if the Baileys had read it. They stated that they are aware of the limits imposed by the bylaw.

Julius moved and Toni seconded the motion to close the hearing and open the board meeting.

Nancy went over the following conditions:

- 1) The accessory apartment will be used according to the restrictions of Section 4.4-3(A) and 4.4-4 of the Zoning bylaw into perpetuity.
- 2) The accessory apartment will be accessed only by Halcyon Way.

Nancy went over the twenty day appeal process.

6:20 pm- Informal discussion on change to Special Permit-Geoffrey Rose-Patient Centric

Geoffrey explained the following changes they would like to make to the interior plan of the Marijuana Cultivation Facility:

- 1) Addition of "wing" walls at entry to Flower Room-necessary to house electrical controls for Flower room lighting.
- 2) Addition of a closet under the ventilation intake duct in the south corridor to eliminate bump hazard (duct was too close to the floor).

The board discussed the ability of the Building Inspector to allow at his own discretion, changes to plans for which a Special Permit was previously granted. Nancy stated that minor changes should be able to be addressed independently of any ZBA review. She asked Pam to draft a letter to Joe explaining the board's stance on the matter.

The board deemed the changes in this case to be di minimis, thereby not requiring another formal ZBA hearing.

The meeting adjourned at 7:00pm

Respectfully Submitted, Pam Thors, Board Administrator

The meeting adjourned at 7:00pm.

Respectfully Submitted,

Pam Thors, Administrator/ZBA