

**WEST TISBURY ZONING BOARD OF APPEALS**  
**Minutes for Thursday, October 29th, 2020 meeting**  
**Online meeting via ZOOM- @ 5:00 PM**  
**APPROVED ON NOV. 19, 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, Linda Alley, Geoffrey Rose, Phil Silverman, Abby Rabinowitz, Constance Goodwin, Richard Salzburg - MV Times.

Nancy opened the meeting at 5:00 pm.

**Informal hearing for MV Farmer's Market** - Pam told the board that the Farmer's Market did not generate enough interest amongst their vendors to continue the market through the late fall as they had originally planned. They are therefore not looking to extend their season at the Agricultural Hall.

**Informal hearing for the Island Made Christmas Craft shop** – Linda Alley who runs the collaborative, asked for an amendment to her Special Permit which has allowed her to operate out of Back Alleys since 2017. Due to impending construction, she is unable to have her sale there this year. She would like the group to be able to sell their goods this Christmas season from Heather Gardens Nursery on State Rd. It was verified that Heather Gardens is a pre-existing business which already sells other people's goods and products. It was also determined that Heather Gardens will re-open to sell their own Christmas greenery and wreaths.

It was agreed that if Heather Gardens would like to sell the Island Made Goods there this Christmas that it is not a substantial change to the existing business operations.

The board took no action on the request to amend the Special Permit.

**Planning Board letter of 10/26/20** – The letter, (see attached), was reviewed. Pam said that she and Jane have spoken about how to best implement this policy change. She said that it should not be a problem due to the new computer system but that putting off the ZBA action on this application did not make sense considering it was filed back in January.

Larry asked if the application was referred to the Planning Board when it was filed. Pam said that because it didn't fall into the category of applications typically requiring review by the Planning Board at the time that it was not.

Julius questioned whether policy should be changed retroactively, saying it seems unfair. Larry agreed, saying that if they are working under a specific policy and that policy changes, the change should not be retroactive but should be implemented going forward.

Nancy reminded the board that the policy has been to refer houses over 3,000 sf., applications on lots in the Coastal District and sinks and bathrooms in various accessory structures. Since the Planning Board has been looking at other types of applications as well, they have decided to ask their Board Administrator to decide which applications they would like to review.

**5:25 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 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. The letter copied to the board by Joe Tierney, Building Inspector and addressed to Patient Centric MV regarding the parking plan was also read, (see attached).

Pam asked how the new plan that Geoff Rose was working on differs from what had been submitted at the last hearing. Geoff said that the new plan would show the 2 tenant parking spaces and customer parking. He said that he hoped Joe would agree with the employee parking allotted based on the ride share program they are going to implement and the calculation of required spaces necessary to accommodate 8 employees. Phil referenced the language in the bylaw and stated that using this calculation, 16 spaces are required and they have 20 spaces. Geoff said that Joe agrees conceptually but wants to see the finished plan. Nancy asked if Geoff thinks that the parking area is adequate and Geoff said that it is, adding that Joe is in agreement conceptually.

Nancy read Joe Tierney's letter dated October 22<sup>nd</sup> regarding the parking plan, (see attached).

Geoff stated that Joe had made recommendations regarding the landscaping around the parking lot and that he will do whatever needs to be done to comply. He also said that Joe had asked that the lighting be "warm" and that he will speak to the engineer about this. He said that he widened the handicap space per Joe's direction and that it is now compliant.

It was agreed that a vote should be taken on the policy change for site plan review by the Planning Board.

Larry moved to forbid a change in the policy regarding site plan review by the Planning Board in the middle of a hearing already in progress. The vote on the motion was unanimous.

Phil brought up the discussion of hours and days of operation asking for an update on where things stand.

Geoff spoke to the financial information given to undermine the need for Sunday hours. He mentioned the exorbitant startup costs and the inability to ship goods to sell and grow and manufacture products here on the island. He cited that these unusual costs coupled with hours by appointment only already had a negative influence on the bottom line for the business. Another negative factor he brought up is the New England weather as it relates to the cost of utilities for the grow facility etc.

He said that looking at the Steamship Authority's method of income projection using a 50-60% maximum capacity realistically accounts for winter months when business will decrease markedly.

He stated that having Sunday hours from 10am-5pm May 15<sup>th</sup> -/Sept. 15<sup>th</sup> would help them succeed. He noted the overwhelming support by West Tisbury voters to allow the sale of recreational marijuana in West Tisbury. He also noted that all other businesses in this district who have Sunday hours contribute to the traffic and that he believes he should be given the same accommodations.

John spoke to the concerns expressed by abutters and asked about Tea Lane Associates. Pam said that they have Sunday hours by appointment only. It was clarified that Cronig's Market did have hours on Sunday prior to the pandemic. He noted that many businesses have Sunday hours and said he would be in favor of the dispensary having hours between 12noon and 5pm from May 15 through Sept. 15. Jeffrey agreed.

Deborah suggested that moving ahead incrementally is important. She noted that the 2017 Special Permit for the medical marijuana dispensary does not allow Sunday hours. She mentioned the benefit of neighborhood support for any business.

Geoff said that he spent a lot of time with the abutters and that their main concerns for noise, safety and traffic were addressed. He said that a 6 foot fence along the rear of the property would do a lot to lessen the noise. He expressed his disappointment that the board would want to deny him 5% of his income and asked that they allow him to try conducting Sunday business hours in a responsible manner.

Larry suggested that they start slowly for the first six months and if all goes well, they can come back to the ZBA to request Sunday hours. The many different possibilities were discussed. Nancy noted that if they come back after a year or so there will be reliable data as to sales and traffic and input by the abutters based on fact rather than a projection of what the traffic will be like. She said that at that point everyone in town would know what affects the business will have on that district and be able to weigh in on an amendment to the Special Permit relative to the hours and days of operation.

Abby Rabinowitz of Tea Lane Associates expressed her appreciation for the efforts of the board. She spoke in favor or no Sunday hours to start, saying that there will be plenty of data acquired observing the operation and its effect on the area Monday through Saturday. She said that they are all hoping for no traffic problems but this is a small lot with traffic in and out of a major thoroughfare. She made a plea for no hours on Sunday.

John asked if the board is able to act in the absence of an approved parking plan. Nancy said that parking can be addressed in the conditions of approval.

A proposal was made to allow the business to operate from 9am to 6pm Monday through Saturday with those hours extended to 9am to 7pm in June, July and August.

Geoff proposed Sunday hours as well from 12noon to 5pm from May 15<sup>th</sup> through Sept. 15<sup>th</sup>.

*Julius moved and Deborah seconded a motion to close the public hearing and open the board meeting.*

Larry asked about the Martha's Vineyard Commission hours of operation. Nancy said that the hours and days of operation being proposed by the ZBA are actually more restrictive.

Larry proposed that the 9am to 7pm hours of operation also include the month of May.

John stated his support for Geoff's proposal for the aforementioned hours on Sundays, noting that some islanders work 6 days per week and this would allow everyone access.

Deborah stated her opinion that there is not a compelling argument for Sunday hours.

Julius stated that it appears that Patient Centric may be getting approved for more hours and that the abutters are inclined towards no Sunday hours.

Larry said he would like them to come back in a year or so and perhaps even eliminate the by appointment only restriction and add Sunday hours if all was going well.

#### Findings:

- 4) Sales will be "by appointment only".
- 5) Applicant agrees that all promotional material will clearly state that sales are "by appointment only".
- 6) Applicant has agreed to submit a parking/landscape plan which complies with Sections 8.2-1 and 8.2-2 of the Zoning Bylaws.
- 7) "The premises", includes the building and the parking lot.
- 8) The leased property is a pre-existing, non-conforming lot in the Mixed Business District with retail space and a private residence which will be utilized by an employee of Patient Centric of Martha's Vineyard or for other year round workforce housing.
- 9) Stockade fencing 6' high and running the length of the rear property line will be constructed.
- 10) Farm fencing will be constructed along the boundary of the lot and the abutting 504 State Rd. lot.

- 11) Screening Trees will be planted along the boundary with 504 State Rd. and shall be maintained by both parties.
- 12) The applicant will comply with all lighting requirements under Section 8.6-2 of the Zoning Bylaws.
- 13) The application was considered under the review criteria of Section 9.2-2 of the Zoning Bylaws and the use found to be in harmony with the intent of this bylaw and to be consistent with other uses in the Mixed Business District.

Conditions:

- 1) This special permit for the business use as a medical marijuana and adult use marijuana dispensary is for the applicant's use only. Any transfer of state licensing for the dispensary or the lease of the commercial space to another entity for use as a marijuana dispensary must return to the ZBA with a new application.
- 2) Hours and days of operation are allowed as follows; September 1<sup>st</sup> through April 30<sup>th</sup> Monday through Saturday 9:00 am to 6:00 pm. and May 1<sup>st</sup> through August 31<sup>st</sup> 9:00 am to 7:00 pm. No Sunday hours allowed.
- 3) Sales are to be "by appointment only", no walk in sales allowed.
- 4) No vehicles are permitted on the premises without a previously scheduled appointment.
- 5) A sign at the entrance to the parking lot and all promotional material will clearly state the "by appointment only" restriction.
- 6) Prior to the issuance of a use permit, the applicant will submit a parking plan, which has been approved by the Building Inspector, to the Zoning Board of Appeals.
- 7) This special permit is restricted by all conditions of the Martha's Vineyard Commission decision on DRI 696 dated August 13, 2020 and recorded on September 17, 2020 in Book 1543, Page 133, to the extent that they do not specifically conflict with the conditions set forth in this special permit.
- 8) No more than five (5) appointments allowed per fifteen (15) minute period, with an additional sixth (6) appointment reserved for express orders.
- 9) No request for modification shall be filed until at least six (6) months after commencement of operations, and this six (6) month period shall include July and August.

*A motion was made and seconded to approve the Special Permit with Conditions.*

*A rollcall vote was taken resulting in the following votes; N. Cole-yes, L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes,*

Nancy thanked everyone who participated and wished Patient Centric much success.

Nancy told the board that she will be retiring after 30 years of service, saying that it has been a pleasure to serve the town and thanked everyone for serving on the board.

*Deborah moved and John seconded a motion to nominate Larry Schubert to serve as Chairman of the Board and to nominate Julius Lowe to serve as Vice Chairman of the Board.*

*A rollcall vote was taken resulting in the following votes; L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, Andy Zaikis-yes, Jeffrey Kaye-yes.*

The meeting adjourned at 7:20 pm.

Respectfully Submitted, Pam Thors-Board Administrator