

**WEST TISBURY ZONING BOARD OF APPEALS**  
**MINUTES THURSDAY, October 26, 2017**  
**Public Safety Building - @ 5:00 PM**

**PRESENT:** Nancy Cole (Chairman), Larry Schubert (Vice-Chairman), Julius Lowe, Toni Cohen, Tony Higgins, Bob Schwier and Tucker Hubbell.

**ABSENT:**

**Also Present:** See attached attendance sheet dated 10/26/2017.

**5:00 PM – A continuation of a hearing from October 12, 2017, on a hearing from John Lite, agent for Wilmar Prata, to construct two bedroom accessory apartment above a detached garage, under zoning bylaw, 4.4-3, map 37 lot 85.14, 80 Rustling Oaks Rd, RU district.**

Nancy explained the hearing was continued from October 12<sup>th</sup>. The applicant returned tonight with detailed plans. At the last meeting there was some discrepancy on the size of the apartment and where the washer and dryer were to be located. The applicant presented the corrected plan detailing a 23' x 34' two bedroom accessory apartment, which is a total of 782 sq. ft. The washer and dryer will be located next to the bathroom as shown on the submitted plan. Mr. Prata told the board that the apartment was for his mother. Larry explained if he should decide to rent the apartment it is deed restricted and could only be rented at the affordable rate to comply with WT Zoning Bylaw 4.4-3. The applicant stated he understood. Julius motioned to close the public hearing and Bob seconded. The vote was unanimous. Julius moved to approve the application as presented, Bob seconded. Julius- yes, Tony H – yes, Tucker- yes, Bob-yes, Nancy-yes and Larry abstained. Nancy explained the twenty day appeal period.

**Old Business.**

Meadowski SP -2017-11 – The board signs the revised site plan dated September 20, 2017, showing the corrected setback. Cole – SP 2017-13- A email from Joe Tierney, the Building Inspector. The applicant submitted floor plans of the pool house showing an “unconditioned kitchen”. It was agreed the change requested requires their architect to come to the next meeting of the Zoning Board for further discussion. Clare will contact Mr. Ritchie and make arrangements.

**5:15: A continuation of a hearing on an application from Attorney Sederholm, agent for Michael Stimola, to construct a structure with a total living space of 5,342 sq. ft. including a two story attached garage, under zoning bylaw 11.2-1, non-conforming lots; governed by Section 6 of the Zoning Act. Map 10 Lot 9, 19 Briarwood Lane, RU district.**

Nancy stated the hearing for this application was continued from September 28, 2017, with a site visit conducted October 24, 2017. Selected correspondence was read into the record. Attorney Sederholm presented a supplement to the application. Kevin Begley, the builder, confirmed the following figures on the plan.: first floor: 2,822 sq. ft., second floor 2,244 sq. ft., for a total of 5,066 habitable, conditioned space. The total footprint of the single family dwelling including attached garage is 3,492 sq. ft. The garage is total of 670 sq. ft. The footprint of the house and attached two car garage will occupy 8% of the lot area; over 90% of the lot is open space. The proposed application meets all applicable setback and height requirements. Attorney Sederholm reviewed the landscape plan. On the south side (facing Briarwood Lane) the plan shows a hedgerow of holly, including transplanting a large rhododendron to act as buffer. On the west property line several large hemlocks will be planted to further screen from the abutting property. Attorney Sederholm stated the Stimolas heard their neighbors' concerns and have a detailed, extensive landscaping plan to screen the house. He went on to say that esthetics regarding the proposal is very subjective. The hedgerow of holly addresses the headlights from cars. The Stimolas have no plans to install a generator on the property. Under Section 6 of the Zoning Act, the Zoning Board has to determine if the dwelling would be substantially more detrimental to the neighborhood.

Attorney Sederholm stated in respect to comments in the letters opposed to the project regarding smaller living spaces, impact on the environment/climate change, etc., should be addressed in another forum.

Regarding the higher property taxes, the factors involved in addressing property values and taxation is complex. If property values should increase, he does not see how this would be a deterrent. The house is appropriate for this family's now and future needs.

Nancy asked for public comments but reiterated limiting comments to this particular application. If you are opposed to "big houses" in West Tisbury, please contact the Planning Board. *Julie Humphreys*, (direct abutter Map 10 Lot 11) appreciated the work the Stimolas did regarding the landscape plan and working with the neighborhood and voiced her approval of the plan. *Jenny Allen*, (Lambert's Cove Rd) opposed the plan. She felt a house that has to be hidden by such extensive landscaping won't be living in the community with its neighbors. *Diana Gilmore*, (Machipscat Trail) felt the house is too large for the neighborhood and was concerned about the amount of water used for the landscaping. *Nick Stimola*, (landscape plan designer) explained that once the plantings are established, the water use decreases. *Gail Tipton*, (Oak Lane) inquired as to the amount of water used for this house irrigation system and hoped it would not become a precedent in West Tisbury. She also hopes the Town will review Chilmark bylaws regarding over-sized houses. Attorney Sederholm stated there will be no permanent irrigation system on the property. *Bob Lane*, spoke in support of the Stimolas application, thanked the board in having a civil conversation. He also spoke against the attack on the Stimolas character on social media.

A conversation ensued as to the research Attorney Sederholm has done regarding special permits allowed by the Zoning Board on pre-existing non-conforming lots. Examples are: *Ames Lane*; a long/narrow lot approximately 100 feet wide, which the structures took up 6.5 % of the lot. Setback relief was granted on both sides of the lot. *Makoniky*; the structures take up 9.5% of the lot. *Otis Bassett Rd*; multiple structures take up 8% of the lot. The example of the house on Otis Bassett Rd in which the total acreage is 0.850 which was built by right in the mid-seventies. The lot contains a dwelling, garage, several out-buildings and a pool, which totals 10.5% of the lot. The Stimolas application is not necessarily such a large footprint or precedent setting compared to similar neighborhoods in the area. Tucker did not disagree that West Tisbury may want to look at some kind of percentage (house size vs size of lot), but there are examples of structure or masses of similar percentage as this application. Larry verified the following the two offices in the proposed dwelling are private therefore do not fall under zoning bylaw 8.5 (home occupation). He clarified the applicant could propose to build three separate structures (house, garage and an accessory apartment) on this one acre lot. Nancy asked if there were any additional comments from the audience. With no further comments, Toni C. moved to close the public hearing. Julius seconded, the vote was unanimous to close.

Attorney Sederholm verified that the Board of Health approved a plan for a four bedroom house. Nancy spoke to some concerns raised about the correspondence regarding the increase in property taxes in the neighborhood. The Assessors Department has a complex formula in determining the assessed fair market values regarding property rates. There is a process available to the public to file for an abatement regarding your property taxes. Nancy suggested contacting the Assessor's Office for the details.

Nancy read from documentation received from Town Council (specifically the first paragraph of Section 6 in Chapter 40A of the Zoning Act). There is a two-prong question the Zoning Board, acting as the permanent granting authority, needs to determine: 1) Will the applicant's proposal "increase the nonconforming nature of the (existing) structure"? If the board determines it **does not** increase the nonconforming nature of the structure, the applicant can move forward with just a building permit. If the Zoning Board concludes the proposal **does** increase the nonconforming nature of the structure, then the second element of the two prong question shall apply (see legal opinion on file at the ZBA). 2) Is the proposed extension/alteration not substantially more detrimental to the neighborhood than the existing nonconforming structure? The Board should move forward on whether they will grant a special permit for the project. A brief discussion ensued regarding two legal cases pertaining to Chapter 40 Section 6 of the Zoning Act (Branford vs Edgartown Zoning Board of Appeals & Bjorklund vs Norwell Zoning Board of Appeals). The board pursued in discussion the first element in the two prong question under the "except" clause; Is the application before the WT Zoning Board for a 5,066 square foot structure based on the Section 6 of the Zoning Act, substantially different than the structure which they will be removing?

Attorney Sederholm said, in his opinion, the board could review (under the first element "except" clause) this application is "different in kind or effect" on the neighborhood. An example cited residential to commercial use. A brief discussion ensued regarding the legal language and examples cited in the legal cases referenced above.

Julius asked what would be the advantage for the board to move to the next second element. Nancy stated if they were to issue a special permit the Board could condition the permit.

The board agreed that the proposed structure is substantially different than the existing house. Larry moved that this application, as proposed, **does** increase the nonconforming nature of the existing structure; Julius seconded. Roll call vote was taken; Larry –yes, Julius-yes, Toni C. –yes, Tony H. –yes and Nancy – yes. (Alternate members abstained: Tucker and Bob)

The board moved to the second element “except” clause in Chapter 40A Section 6 of the Zoning Act, also under WT Zoning Bylaw 11.2-1. Is the proposed (the expansion) “not substantially more detrimental to the neighborhood than the existing nonconforming structure”? The following discussion continued around the question; does this structure have a substantial negative impact on the neighborhood?

- The application is for a single family residence on a non-conforming lot with a total of four bedrooms (the existing house is four bedrooms). The board felt that there will not be substantial increase of water use. The fourth bedroom will be used for the Stimola’s parents. The board felt an addition of another vehicle will not have a greater impact on traffic in neighborhood. The property has extensive tree coverage. Because of the submitted landscape plan the Board felt the dwelling will have a minimal visual impact.
- Review 9.2-2 section C; and 3.1-1 (plan review houses over 3000 sq.)...”the ZBA makes written findings that the use cannot be practically accommodated in smaller buildings. Where practical, the ZBA may require a group of smaller buildings as an alternative to a single large building.” The applicant could have applied for an application to construct three separate buildings; main dwelling, garage and an accessory apartment, which could have had the same amount of massing in terms of this property. When reviewing the west elevation plan, the design of the residence shows several different roof lines which give the building a sense of three smaller structures and reducing the massing on the property.
- The board answered the question that the structure (first “except” clause) can be built as it conforms to all current bylaws, setbacks and height limitation. The board does not consider aesthetics or personal judgement when reviewing an application for a special permit. Prior to the application being presented and plans being reviewed, the board had some concerns about the size of the house upon the neighborhood. After reviewing the house plans, including the extensive landscaping plan, the Board feels the applicant has accomplished minimizing the impact on the neighborhood and has taken the responsibility regarding the concerns raised by the neighbors.
- Briarwood Lane, in comparison with other surrounding neighborhoods, has a ratio of ground cover lots which is not substantially different than in other neighborhoods.

Julius moved to vote to approve the application, Larry seconded. Roll call vote was taken. Tony H- yes, Toni C. –yes, Julius – yes, Larry- yes and Nancy-yes. Nancy explained the twenty day appeal period.

**7:00 PM - A hearing on an application from Trademark Services, agent for Eastern Wall, LLC, for the installation of solar arrays consisting of 300 ground-mounted solar panels, under 8.10-4(A) of the zoning bylaws, Map 43 Lot 16, 58 Oyster Watcha Road, RU District.**

Nancy opened the hearing. Clare reported that no correspondence was received regarding the application. Mark Nicotera, agent for the applicant, presented a plan to install a 300kW ground mounted photovoltaic array on the southwestern corner of the property as shown on the submitted plan. The property is a total of 14 acres that straddles the West Tisbury-Edgartown boundaries on the southern end of Oyster Watcha Road. The location of the solar field will be sited on the 3.5 acres located in West Tisbury. The footprint of the system will be approximately 13,450 square feet (1/3 of an acre). The overall height of the proposed array is approximately 10’ above existing grade. The applicant presented a letter from the Natural Heritage & Endangered Species Program (File No 17-371) that the project must be conditioned in order to avoid a prohibited “Take” of a state-listed species (Northern Harrier). Julius moved to close the public hearing and open the board meeting. Larry seconded. The board was in agreement that the applicant must comply with 8.10-4(A) and 8.10-5 of the zoning bylaws. As detailed on the proposed plan the arrays will not be visible from the Edgartown Great Pond. With no further discussion, Julius moved to vote the application as presented, Larry seconded. The vote was unanimous. Nancy explained the twenty day appeal period.

**7:10 PM – A hearing on an application from South Mountain Co., agents for Charles Wiley, for setback relief to erect an accessory structure (parking lot canopy), under section 4.2-2D4 of the zoning bylaws, Map 16 Lot 235.2, 32 Old Stage Road, RU District.**

Nancy opened the hearing. No correspondence was received regarding this application. John Guadagno from South Mountain, agent for Charles Wiley, presented a plan requesting setback relief to erect an accessory structure, a 17'-6" parking lot canopy. The canopy will be 18 feet from the west property line; the applicant is seeking 32 feet of setback relief. The relief is being sought from Lot 235.1, owned by Christine Wiley (wife of Charles Wiley). Julius moved to close the public hearing and open the board meeting. Larry seconded, the vote was unanimous. The board was in agreement that the accessory structure would not be detrimental to the neighborhood and met the review criteria of 9.2-2 of the zoning bylaws. There was no objection from the abutters. Julius moved to approve the application as presented. Larry seconded. The vote was unanimous. Nancy explained the twenty day appeal period.

With no further business, the meeting adjourned at 8:15 pm.

Respectfully submitted,

Clare Harrington  
Administrator/ZBA