

**WEST TISBURY ZONING BOARD OF APPEALS**  
**Minutes for Thursday, November 15, 2018 meeting**  
**2<sup>nd</sup> Floor, West Tisbury Town Hall - @ 5:00 PM Approved on January 10, 2019**

**PRESENT:** Nancy Cole-Chair, Larry Schubert-Vice Chair, Toni Cohen, Julius Lowe, Tony Higgins and Bob Schwier

**Absent:** N/A

**Also Present:** Michael Fletcher, Crystal Thomas, Melissa Thomas, Leo DeSorcy, Reid Silva, Ken Bailey, Joe Tierney, Building Inspector and Pam Thors – Zoning Board Administrator

The minutes of the meeting on October 25<sup>th</sup> were approved unanimously and the minutes of the meeting on November 1<sup>st</sup> were approved unanimously with corrections.

Invoices from DaRosa Corporation (\$3.44), The MV Times (\$194.60), and Reynolds, Rappaport, Kaplan & Hackney (\$73.50) were approved.

Pam said that she would have more copies of the current bylaw for the next meeting. Julius reiterated that the original bylaw for accessory apartments had language regarding the allowed use by family members and caregivers. Pam said she would include that in the list of bylaw issues that will go to the Planning Board. Nancy asked her to have Jane Rossi put the ZBA list of change requests on the Planning Board's agenda as soon as possible and to meet with Joe beforehand to go over the list.

**5:15 pm: A hearing on an application from Crystal and Jonathan Thomas for a Special Permit to allow construction of an accessory apartment under 4.4-3 (A) of the zoning bylaws. Map 16 Lot 45, 27 Oak Knoll Rd, RU district.**

Nancy read the notice. Crystal explained that she would like to build the main house and the accessory apartment at the same time. It was noted that the main house will have 3 bedrooms and 2 ½ baths and the accessory apartment will be 799.5 square feet and have 1 bedroom and 1 bath. Michael Fletcher explained that they are using modular construction, and that shipping the houses over at the same time will be a huge savings. Nancy explained that from the ZBA's perspective, an accessory apartment must be accessory to a main house. She explained that this is why they are asking for the main house building plans as well. It was noted that no correspondence was received. Larry asked where the driveway will be, citing that ordinarily, the driveway is shown on the site plan. Michael stated that the Septic Plan and Building Permit will show the driveway which will be on Oak Knoll Rd. Nancy asked that the minutes reflect that one driveway off of Oak Knoll Rd. will serve both dwellings. It was noted that there are no setback issues for either dwelling. Larry asked Crystal if she had read the affordability restrictions outlined in the accessory apartment bylaw. Crystal said that she had and agreed to comply with all restrictions including filing a yearly affidavit stating how the accessory apartment was being used. Larry explained that the restrictions become part of the deed so that any purchaser would also have to comply. Crystal stated that she is aware of this aspect of the bylaw.

*Julius moved to close the Public Hearing and open the Board Meeting.*

*Toni seconded the motion.*

The Board outlined the following two conditions of approval

- 1) The Building Permit for the Accessory Apartment will not be issued until the Building Permit for the Main House has been issued.
- 2) Any change in the building plans for the Main House must be presented to the Zoning Board of Appeals for their review and approval.

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

Nancy explained the twenty day appeal period.

**5:35 pm: A hearing on an application from Leo DeSorcy for a Special Permit to allow the extension of a pre-existing, non-conforming use and construction of a 30'x40' structure and green house, for the sale of agricultural products and construction goods and for employee housing under Section 11.1-3 (A) of the Zoning Bylaws. Map 8 Lot 18, 4 State Road, RU district.**

Nancy read the notice. She noted that the application may need to be referred to the Martha's Vineyard Commission (MVC). Reid stated that changes they have made may resolve the issues. It was noted that there was no correspondence. Nancy stated that they would ordinarily continue the hearing until the MVC had rendered a finding. Reid reviewed the plan, citing that the 30x40' building would have retail on the first floor and employee housing on the second floor. He said that they would be taking 875 square feet (of buildings) down and replacing it with 1,200 sf which would be a net gain of 325 square feet. He stated that the residential part would not be a part of the commercial development. He said he thought that they would not be hitting any thresholds for expansion of the commercial use but that the MVC does have a different definition of new construction than the town zoning bylaws. He said that the MVC looks at replacement as all new rather than crediting the square footage calculation for buildings being removed. So, he said that they wouldn't build the new structure with a 1,200 square footprint but will add 995 square feet of commercial space and utilize the rest to accommodate stairwells to the second floor residential part of the building. Pam stated that in a conversation with Paul Foley at the MVC, she was told that the square footage of the greenhouse would be counted towards the commercial square footage as well.

Reid said he had never heard that. Pam said she just wanted to mention it because the Board may want get more information on it prior to a possible ZBA referral. Nancy said that they may count that square footage because it is part of the whole package. Nancy went over Joe's referral to the MVC. Reid explained 3.1-g Intensity of Use. He stated that the new use is under 1,000 sf. He also stated that the housing component does not count because in a residential neighborhood, it is allowed by right. Joe asked about the basement. Reid said that the basement will be for storage.

Nancy suggested a continuance because of the plan change and because of the questions regarding the MVC referral. She suggested they talk about the use. She mentioned the 1981 Special Permit decision that states that no wholesale or retail activity can take place at the site but would instead be handled at the DeSorcy's downtown Tisbury office. Leo described the site and uses. He stated that customers have started asking him to make furniture, which he would like to do as well as having a showroom for the pieces. Nancy asked about traffic, referencing the fact that the property is in a residential zone. Leo stated that he does not foresee much additional traffic or activity, adding that he wants to continue to respect neighbors and the rural flavor of the town as they always have.

Larry asked about 3.1g on the MVC DRI checklist, and whether the applicants are asking for a new use or an expansion of the existing use. Melissa described her hope to grow and sell rare specialty plants and maybe have workshops for clients to teach floral arrangement. She said she would like to be able to showcase her plantings and accessories. Leo brought up the impact. He said that the traffic would be people already coming to his shop. He stated that they have done their best to screen the buildings and lessen impact as much as possible. Melissa stated that she would not be mass producing plants as you would see in a nursery, but just growing rare and specialty plants. Leo stated that it would not include huge deliveries of stock or supplies. Nancy mentioned Middletown Nursery and the fact that they have often pressed to include more and more types of inventory to sell.

Melissa said it would be nothing like that. She stated that hours of operation would likely be 9-6 or so from May until Fall and by appointment after that. She said she would have one or two employees.

Larry asked about 3.2a - Mixed use 3500 sf on the checklist-. He asked if they are they talking about single buildings or all new buildings on the site. Reid said they are talking about new construction of residential and commercial. Larry asked if they are making an effort to keep the building under the thresholds of MVC triggers.

Pam stated that in talking to Paul Foley at the MVC, he mentioned that the 3,500 sf. issue may no longer apply due to the change in the plan, but that checklist item 3.2b – Mixed Use- 4+units (use), may be a reason to refer to them. She said that Paul mentioned this after hearing her description of the application and that she was only bringing it up because if the board was unsure as to which checklist items, if any, are relevant, that perhaps they should continue the hearing. Nancy said they need to decide if adding agriculture, retail and residential aspects are new uses. Leo stated that the commercial use is the same as it has been.

Larry cited the following uses; Commercial/business, Residential, Retail and agricultural. He cited that agricultural uses are allowed by right in West Tisbury. Leo said he does not want to see the whole property developed. He said he just wants to do something that fits in and only has a positive impact on the town.

Joe asked about signage. The applicant said they hadn't gotten to that point yet. Larry said he would like to know what Joe's thoughts are on the agricultural piece. He said that he doesn't know if the use requires permission. Joe stated that hoop greenhouses don't even require a building permit. Reid asked what DRI checklist items the project would be referred for. Nancy stated that the 4 units of use would be a possibility. She stated that she sees the following issues.

- 1) Whether or not the project should be referred to the MVC and if so, under which items on the DRI checklist.
- 2) Whether, according to Town Counsel, the ZBA has the authority to grant the Special Permit for retail and or wholesale activity in light of the determination of the 1981 Special Permit. She said clarification from him is necessary to go forward.
- 3) Her concern because the property is in a Residential neighborhood, not zoned for retail sales.

She said that if they are applying for a retail use, the ZBA may not be authorized to grant the Special Permit. She stated that even if they are only selling agricultural products, they will need to be very specific about what those things are.

Larry stated that he would rather see specific questions to the MVC, rather than a general question as to whether the application needs to be reviewed by them. Nancy mentioned that one of her questions would be why the square feet of the greenhouse may count towards the total square footage of the project. Larry stated that he would like to know why, if West Tisbury deems the greenhouse an agricultural use, it would need to be counted and be a trigger for a referral.

Nancy said her other concerns are the commercial aspect of the request and whether the board has the authority to override the 1981 Application which denied wholesale and/or retail on the property. Reid stated that he sees the application as merely a continuance of the original use allowing their construction customers to see examples of their products displayed in a showroom.

Julius asked about the details of retail sales stating that he sees the predominant use as commercial and the showroom as just an extension of that use, rather than it being designated as retail.

Nancy said that maybe they need to revise their application, taking out the word retail. She said she will call M. Goldsmith and ask about the old special permit and how it may or may not influence the action on the current application.

Toni said that if the space that Melissa is asking for is anything like her “Black Sheep” store at the airport, that it really is a retail use. She went on to say that if it is botanically driven gifts it is really more retail than putting a piece of furniture out in a showroom for construction clients to buy. Tony Higgins mentioned the business that another resident wanted to do which was selling things out of her house. Her request was denied and she later moved it to a retail space. Melissa stated that part of her service of interior decoration includes items that are not plants.

The board voted to continue the hearing until December 6<sup>th</sup> at 6:15pm in order to clarify some issues relating to the application.

#### **5:55 pm – Ken Bailey, Informal Hearing**

Ken Bailey described changes he would like to make to the plans approved for his accessory apartment. He stated that he would like to change the plan in order to reduce the footprint, but keep the height the same and build the structure in the same location. He explained that there is a lot of wasted space in the original plan so he would like to include a full second story with an addition of a second story dormer. The bedroom count, (2) would remain the same. He hoped the board would see the changes as di minimis, thereby not requiring a second application.

Nancy said that she did not see the changes as being di minimis in nature. Julius said that despite the scope of the changes, the purpose of the Special Permit is the same. He stated his opinion that the impact is the same and that they could very possibly have approved the new plan originally. Joe asked if there was originally a dormer. He said that he thought it should be reviewed by the ZBA due to that change in the visual impact. All the changes which occur on the north side were reviewed. Nancy asked if the side that is being changed is facing the neighbor (Robin Canha) who was opposed to the original application. Ken said that there are no changes that would affect the visual impact to Ms. Canha except that the length from that side (southeast) will be less. Larry stated that the second floor plan must be submitted as part of the change being reviewed. Ken gave a copy of the second story floor-plan to the board members for their review.

Larry asked if the square footage is still 800 sf. or under. Joe confirmed that the apartment shown in the new plan is still within the 800 sf. limit. Julius stated that the changes in the structure are definitely not di minimis but that what they permitted, ie: the use and the ability to build the structure has not changed.

The board deemed the changes to the building plans, (see file), as di minimis in nature, voting to allow the changes presented.

The meeting adjourned at 7:05pm  
Respectfully Submitted,  
Pam Thors, Board Administrator