

**WEST TISBURY ZONING BOARD OF APPEALS**  
**Minutes for Thursday, November 19th, 2020 meeting**  
**Online meeting via ZOOM- @ 5:00 PM**  
**APPROVED ON DECEMBER 3, 2020**

**Present:** Larry Schubert, Julius Lowe, Deborah Wells, John Rau, Andy Zaikis and Jeffrey Kaye

**Absent:** Julius Lowe (from 5:15pm on)

**Also Present:** Pam Thors-Board Administrator, Chuck Sullivan, Phil Regan, Tracey Smith, Kris Horiuchi, George Sourati, Suzanne Hammond

Larry opened the meeting at 5:00 pm. The invoices were reviewed and approved.

*A. Zaikis moved and J. Kaye seconded a motion to approve the minutes of November 5<sup>th</sup> and October 29<sup>th</sup> as submitted.*

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

Larry read the letter from the Building Inspector Joe Tierney to Christian and Jared MacDonald-8 Vineyard Meadow Farms Rd-unpermitted construction.

He also noted that Pam had written a letter to the Building Inspector advising him that the changes proposed by AT&T at the November 5<sup>th</sup> hearing were voted by the ZBA to be de minimus and therefore not requiring a new application and public hearing. Larry said the letter is fine and asked Pam to send it to Joe Tierney.

The upcoming ZBA schedule was reviewed. The December and January meetings will be held on December 3<sup>rd</sup> and 17<sup>th</sup> and January 14<sup>th</sup> and 28<sup>th</sup>.

Julius left the meeting to attend another one taking place on Zoom, (since his presence was not necessary to make up the quorum).

**5:15 pm -** A Public Hearing on an Application for a Special Permit from Shampoo Beach LLC to construct a 20'x 40' in-ground swimming pool with a cabana and a single story garage in the Inland Zone of the Coastal District under Sections 8.5-4(C) and 6.1-5(A) of the Zoning Bylaws on Map 39, Lot 14, 350 Big Homer's Pond Rd., RU District.

Phil Regan from Hutker Associates presented the project. He explained that the original Building Permit for the main house was issued without his awareness that the project needed site plan approval by the Planning Board since the lot is located in the Coastal District. He said that when he went to the Building Department to pull the permit for the pool, he was told that the project needed to go before the Planning Board. He said he is here to speak about the pool and associated buildings and the garage.

The site plan was reviewed. Phil said that the house and guest house are now under construction. He verified that the lot is 18.5 acres. He said the garage will be used for vehicles and outdoor use tools etc.

Phil explained that the structures sit amongst oaks and native understory so they attempted to build modest, classical style structures. He said they are hoping to keep all trees and landscape the property naturally.

Larry asked about the height of the structures. Phil said that all are less than 18' and comply with the restrictions of the Inland Zone bylaw.

John asked if there was any correspondence. Pam said that the only correspondence was a letter from the Planning Board okaying the project and referring it back to the ZBA.

The landscape plan drawn by Kris Horiuchi was also reviewed. Kris said that the state requirements will be met by the fence and retaining wall and the automatic pool cover. The fence is split rail with mesh lining. She noted that all setbacks are compliant.

Larry asked about the plumbing and other features of the pool cabana. It was verified that it is 126 sf. and has a ½ bath, a refrigerator and sink and a grilling area. It also has an outdoor shower.

It was verified that the Planning Board had reviewed everything and was mostly interested in the terminology used in describing the garage/guest house.

The floor plan for the cabana was reviewed.

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

Larry went over the boiler plate conditions associated with the pool bylaw which would be included in the decision, if the project was approved.

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

Larry went over the 20 day appeal period process.

**5:30 pm** - A Public Hearing on an Application for a Special Permit from Mark A. Beaudoin-Trustee of the Paul's Point Area Realty Trust to construct a 64 sf. spa with automatic cover and surrounding deck in the Coastal District under Section 8.5-4(C) of the Zoning Bylaws on Map 6, Lot 6, 271 John Cottle Rd., RU District.

Larry asked Pam to recount the fact finding process that ensued after receiving emails from George Sourati about the town of West Tisbury's pool bylaw in relation to the State regulations regarding pool fences and automatic pool covers. She said after receiving the information from George, she looked at the documentation from the Attorney's General Office relating to the requested pool bylaw changes. She said that despite the information she had received from the Planning Board on the approval by the Attorney's General Office, the related documents revealed ambiguities. She suggested that the ZBA continue the hearing until such time as Town Counsel got back to them with an opinion on whether the changes had been approved or not.

George Sourati asked, if it turns out that the bylaw can require a fence, would the ZBA have the authority to waive that requirement. Larry answered that the ZBA must adhere to the bylaw.

*The board voted to continue the hearing "without testimony", until December 3, 2020 at 6:15pm.*

Pam said she will email the documentation on the West Tisbury request to the Attorneys General Office to Town Counsel on Friday. She also said she would send the emails sent to her by George Sourati, to the board members for their review.

Jeffrey Kaye asked what the rationale is behind requiring a fence as well as an automatic pool cover if the state requires only the cover. Larry said that he has seen many cases of malfunctioning automatic pool covers, noting the often lengthy time period involved in their repair. Jeffrey suggested that there be both.

Larry stated that the Town may need a new Town Meeting vote on this issue. Andy said that the process of substantiating a rule to allow a more restrictive town bylaw may be arduous.

**5:35 pm** - A Public Hearing on an Application for a Special Permit from David and Andrea Attisani to construct a 20'x40' in-ground swimming pool and barn with a kitchen, half bath and pool cabana requiring 40' of front yard setback relief under Sections 8.5-4(C) and 4.2-2(D) 4 of the Zoning Bylaws on Map 32, Lot 110.1, 30 Carl's Way, RU District.

The notice was read and Chuck Sullivan, architect for the owners, presented the application. He verified that the lot is a little over 3 acres. He said his clients would like to build a barn with a detached bedroom above and a pool with an adjacent cabana at the southern end of the lot. He said he was told by the Building Inspector, Joe Tierney that the front setback is an issue because the proposed construction is "in front of", the main dwelling. This, according to the bylaw, requires there to be 100' of setback from the road rather than the 50' normally required. Chuck said that he does not see the proposed construction as being "in front of" the main dwelling

because it is about 150' to the side of it, but has come before the board looking for 40' of setback relief regardless.

The site plan and elevation were reviewed. Chuck said that they tried to keep the barn looking as utilitarian as possible from the road. He said that the second floor is a one bedroom, (detached), with no access to the rest of the barn or the pool cabana. He noted that the proposed cabana has a half bath, laundry area and wet bar with refrigerator. He also noted that the barn would have solar panels which would service the needs of the pool/cabana/barn and the main house.

Larry asked about the height of the structure and it was confirmed that it is compliant.

Chuck verified that the pool fence would be split rail with mesh lining and the saltwater chlorinated pool will have an automatic pool cover as well.

Additional screening from Carl's Way was discussed. Chuck circled four areas on the site plan where he would plant a mix of evergreen and hardwood native plantings. He said that the pool fence will run through the existing stand of trees bordering the property, noting that the owners will want as much privacy and dust protection as possible.

A discussion of the wording and intent of the bylaw ensued. Screening from Carl's Way, especially from Map 32, Lot 125 was also reviewed. It was noted that the stand of trees in front of this house, which sits very close to the road, is substantial.

Larry asked about correspondence. Pam said that the only letter was from the Planning Board who had reviewed and approved the application.

Andy asked Chuck what would prevent him from moving the construction back 100' from the lot line or at least moving the barn to the other side of the pool. Chuck stated that the owner would like to preserve the natural low lying grade which exists in the proposed location. He said that moving it back would necessitate a longer driveway and an increase of the overall elevation. He noted that this would make everything more visible from Carl's Way and abutting lots and would cut down on the separation between the pool and the closest abutter who shares the rear property line. He said that the barn is not "in front of" the main house and that the intent of the bylaw is not to protect the view from Carl's Way.

Larry suggested that the owner stake off the proposed location and the ZBA members visit the site individually to see the impact of the project firsthand. He stated that 40' does not make a huge difference as far as views from the road are concerned.

Pam noted that the siting of the main house which is very far back on the lot presents a hardship in locating the proposed construction behind it.

Deborah expressed concern for the ambiguity of the term "in front of" the main dwelling in this case. She said it doesn't have the clarity of "further from the lot line than the main house" would have. She asked Larry what the rationale is behind the bylaw restriction. Larry said that it keeps garages and barns that lie along a common driveway from being the first structure seen from the road. He again suggested a site visit.

Andy said that if the proposed construction complied with the 100' setback requirement, they would not need to be having this discussion. He also mentioned that he would like to have heard from the Feders who live across from the project on Carl's Way. Chuck said that if the issue were not important to his clients, they would not be requesting setback relief.

Andy asked if the orientation could be changed. Chuck said that they had numerous discussions about the location and did not want to change the natural topography and vegetation on the lot and also wanted to be considerate of the closest abutter who would be most affected by the pool. He said that they came to conclude that this is the best location for the neighborhood as a whole.

Max Celeste, the abutter to the rear lot line of the property spoke in favor of the design elements of the barn and the choice of location. He noted that he is happy that the existing vegetation will not be affected.

When asked about the existing vegetation on Carl's Way, Chuck said it is a mix of Scrub Oak, Cedar and White Pine.

The following possible conditions of approval were suggested:

1) Those noted in the Pool bylaw and 2) Appropriate, naturalized screening.

John stated that screening from Carl's Way would alleviate concerns regarding the setback relief.

When asked about the two curb cuts, Chuck said that he wanted to avoid having a driveway across from that of the Feder property.

Pam verified that the condition for screening would read, "A landscape plan indicating appropriate, naturalized evergreen screening will be submitted and approved by the ZBA prior to the issuance of an occupancy permit".

Larry reminded the attendees that when a Special Permit is issued by the board, precedence is not being set for future similar applications.

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

*A rollcall vote was taken with the following resulting votes; L. Schubert-yes, D. Wells-yes, J. Rau-yes, A. Zaikis-no, J. Kaye-yes. 4 Votes to approve, 1 vote to deny.*

*The following comments were made during the vote:*

*J. Rau stated that the unusual placement of the main house makes the intent of the bylaw irrelevant in this case.*

*D. Wells stated that the ambiguity of the wording in the bylaw makes her question the relevancy of the intent.*

*A. Zaikis stated that on 3 acres of land, there is more than sufficient space to relocate the project so that it complies with the setback requirements.*

*J. Kaye stated that he was impressed by the comments of the abutter, (Max Celeste), in favor of the design and location.*

*L. Schubert said that he sees Andy's point but feels that Chuck Sullivan's decision to locate the construction in the hollow rather than changing the grade is best.*

Larry went over the twenty day appeal process.

The board discussed the bylaw and whether the wording should be amended. Larry said it can be discussed with the Planning Board. Pam said she would put together a list of potential bylaw changes that have come up to be reviewed after the holidays.

The meeting adjourned at 7:10 pm.

Respectfully Submitted, Pam Thors-Board Administrator