

WEST TISBURY ZONING BOARD OF APPEALS
MINUTES THURSDAY, September 28, 2017
Public Safety Building - @ 5:05 PM

Minutes: Approved on January 18, 2017, at meeting of the Zoning Board of Appeals.

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.

5:15 PM – A hearing on an application from Gregory Marcella, agent for Bryan Begley, for setback relief for an addition to an existing structure, totaling 1,288 sq. ft. under zoning bylaws 4.3-3D, Map 17 lot 122, 175 Great Plains Rd, RU district.

Nancy opened the hearing. **Correspondence:** Letter from Shuva & Jim Seller (Map 17 Lot 121), direct abutter: opposed to the application. Phone calls/office review; Ms. Patia Waring, direct abutter (map 17 lot 120) came by the office to review the application; no opinion was expressed either way. Catherine Flynn (map 17-lot 124) contacted the ZBA office, information was emailed to her. Gregory explained Mr. Begley is asking for 2' 1" of setback relief from the northeast property line. This would make the proposed addition 47' 9" from the Seller's property line. The addition 46' x 28' a total of 1,288 sq. ft. will be off the kitchen of the existing dwelling. Greg stated that the siting of the addition is the optimal area on the property. Nancy asked for public comment. Catherine Flynn (map 17 lot 124), stated that the property is located in an open field area and was concerned about the size of the addition and asked if the scope of work could be changed. Pat Waring (map 17 lot 120) thought the addition would work but has not reviewed the plans. It was pointed out that when the subdivision was laid out for Great Plains the setbacks were 40 feet, zoning changed to 50 feet in 1998. Mr. Marcella believes that Mr. Begley would be agreeable to screening to help alleviate concerns raised by the neighbors. The addition is being constructed for an elderly friend who will be living with the Begley's. Larry moved to close the hearing and open the board meeting, Julius seconded. The vote was unanimous. Larry stated the plans show a reconfiguration of the existing house by removing the kitchen and relocating it in the addition. It is the practice of the board when granting setback relief for an addition; floor plans of the existing dwelling are included. The board was in agreement that floor plans showing the configuring of the existing house would be needed to assist the board in moving forward with this application. Mr. Marcella was not aware that this information would be needed by the Zoning Board; he will contact the applicant and get a floor plan of the existing dwelling. Larry moved to re-open the public hearing, Julius seconded. The vote was unanimous. The board suggested he talk with his client about reducing the plan and adding screening. If the applicant should decide to reduce the size of the house and setback relief is not required, they can withdraw the application without prejudice. The hearing was continued to October 12, 2017 at 6:15 pm.

5:45 pm – A hearing on an application from Michael Stimola, to construct a dwelling with a total living space of 5,342 sq. ft., including a two story attached garage, under zoning bylaws 11.2-1, non-conforming lots, governed by Section 6 of the Zoning Act. Map 10 Lot 9, 19 Briarwood Lane, RU District.

Nancy opened the hearing. Geoff Currier, from the MV Times, has asked to record the hearing Nancy asked if there were any objections from the audience or applicant to do so. No objections were noted. Nancy stated for the record that due to a scrivener's error the legal notice for the paper and the abutters notice was stated as 11.2-2 (accessory structures on non-conforming lots). The application is being reviewed under 11.2-1 (non-conforming lots generally). After contacting counsel, it was confirmed that the narrative in the legal notice and the abutters' notices detailed the following verbiage: "non-conforming lots shall be governed by the provisions of Section 6 of the Zoning Act", which the WT Zoning Board will be reviewing with this application. The Zoning Board offered the applicant to re-advertise the hearing as noted, Attorney Sederholm, agent for the Stimolas, stated that would not be necessary. Nancy explained because of the large turnout regarding this application, she explained the process by which the Zoning Board will conduct the hearing. A large number of correspondence received raised the general question of "large houses" in West Tisbury, specifically referring to changing or adopting a bylaw which would restrict "large houses". The Zoning Board does not write the town bylaws, the Planning Board is the appropriate board to contact regarding changes to the town bylaws.

She asked for civility during the hearing. Due to the volume of correspondence and time limitations several letters will be picked randomly from both pro and con specific to the application to be read at the meeting. All correspondence received will be part of the written record.

Attorney Sederholm presented the application: The existing house is fifty years old, the Stimola's bought the house in 2011. They discussed the option of remodeling and renovating the house, but due to age and the condition, it was determined that it would not be feasible. The property is a non-conforming, pre-existing lot; a total of one acre. The square footage of the proposed two story, four bedroom dwelling is 5,375 sq. ft. with a 600 sq. ft. attached garage. The total footprint is 3,492 sq. ft. or 8% of the area of the lot, 92% of the property will remain the same. The project was approved by the Planning Board. At that meeting the neighbors voiced concerns about the size and the visual impact of the project. Attorney Sederholm presented a detailed landscape plan which would screen the house from the neighbors and Briarwood Lane. The applicant is schedule to appear before the Board of Health Friday, September 29th. The house is being built for their daughter and family which will allow the Stimola to be close to their grandchildren. The Stimola's daughter and son-in-law both work from home, two rooms will act as their offices. One bedroom is located on the first floor, which at some point could be used for elderly parents. The house is being designed to accommodate an extended family for year-round housing. This is a single family house; concerns regarding noise and traffic will not have an impact on the neighborhood. Some correspondence raised concerns about the tax rate being affected in a negative way, Attorney Sederholm stated this was probably not the case, but if so, it may affect the values in a positive way. Attorney Sederholm explained they are in front of the Zoning Board to explain that this house will not be more substantially detrimental to the neighborhood. The "big house" question/discussion as some correspondence and social media has risen is not part of this application. Attorney Sederholm pointed out that the landscape plan shows extensive planting/screening along the Bassett property line (map 10 lot 5). The Stimolas would be agreeable to plant different types of trees, if the Board should determine that would help with the visual impact on the direct abutter including along the road. Attorney Sederholm cited several examples of special permit/variances allowed by the Zoning Board on pre-existing, non-conforming lots, Blake: Map 16 Lot 240 and Ross: Map 3 Lot 21. He explained that both of these projects encompassed a large area of the property.

Correspondence:

A letter from Polly Bassett (direct abutter map 10 lot 5), asking the board to conduct a site visit was concerned about the size and scope of the house and the effect on the neighborhood.

Letter from Planning Board to Joe Tierney (Building Inspector) – approved a site plan review of the Stimola application.

Letters randomly read selected from correspondence received.

Letters opposed: *Thomas Bena (Chilmark)*: opposed to over size house in West Tisbury; urged the town to change the bylaw. *Kristin & Brook Zern*: opposed to over size houses; keeping "McMansion" out of the rural farm community. Under no conditions should a house 6,100 sq. ft. be built on a one acre lot. *Harriet Bernstein*; house will be out of character in West Tisbury.

Letter in favor: *Cynthia Wolfson*; supporting a multigenerational home; complies with building permits. *Kenneth Macleod*; complying with building codes; replace an old houses, will improve the neighborhood.

Comments from the audience:

Victoria Phillips (map 10 lot 4): concerns about the size of the house and the plans submitted were unclear as to the dimensions. The plans which were submitted in August do not show dimensions.

Julia Humphreys (map 10 lot 3): Suggested evergreens to shield the view from the road

Ebba Hierta: read a letter into the record (on file with zoning board) addressing problems with the filing/notice of the application including her concerns about the project.

Ms. Phillips: suggested the house site be flagged on the property.

Marjorie Potts: spoke in favor of the project.

Nancy stated when an application is filed plans can change throughout the process. Attorney Sederholm told the board the Board of Health will be reviewing the project at their next meeting. The board agreed to schedule a site visit, and asked the applicant to flag the location of the house, setbacks including where the septic and well will be located. Larry moved to continue the hearing to October 26, 2017, at 5:15 pm, Toni C. seconded. The vote was unanimous. A site visit will be conducted on October 24th, Tuesday at 4:00 pm.

7:00 pm

A hearing on an application from Geoffrey Rose, from Patient Centric of Martha's Vineyard, LTD., to operate a Registered Marijuana Dispensary, under the WTZBL 3.1-1 (use table) Map 16 Lot 101, 510 State Road, MB District.

Nancy opened the hearing: Correspondence Letter from John & Lois Gorman, 8 Island Farms Road (M 16 L 39), opposed to the application (see letter on file). Mr. Rose stated that his original license was for 505 State Road, has filed with the Dept. of Public Health (DPH) to transfer the license to this address, if the application is approved.

A brief background: On August 17, 2017, special permit 2017-03 was granted to Patient Centric of MV to operate a Registered Medical Marijuana Cultivation operation/business at 90 Dr. Fisher Road, located in the Light Industrial District. Mr. Rose is seeking a special permit to open a Registered Marijuana Dispensary (RMD) at 510 State Road, (owned by Victoria Thurber & Scott McArthur), located in the Mixed Business District. Geoff presented a plan including a narrative (on file with the ZBA) explaining the operation of the business. The following is a synopsis:

- Patient Centric of MV is licensed and regulated by the Department of Public Health (DPH) and must adhere to all standards and conditions as imposed under DPH which regulates Medical Marijuana Dispensaries and Cultivation establishments in the Commonwealth of Massachusetts.
- The dispensary will lease a total of 705 sq. ft. of an existing retail space, a RMD is allowed in the MB district by special permit.
- All patients will hold a medical marijuana card and proper identification; home delivery will be available to patients for the purpose of convenience or need. The transportation of medical marijuana will comply with all DPH regulations.
- The dispensary will operate on an appointment only basis, with a maximum of seven patients per hour.
- Hours: Monday thru Friday 9:00 am to 6:00 pm. Saturday 10:00 am to 5:00 pm. Closed Sunday.
- Parking: A total of seven parking spaces; 4 for the patients (including 1 handicapped space) and 3 for employees.
- Total of 2.5 employees by the end of the first year.
- Once daily delivery of products from the cultivation center to the dispensary will take place, including the removal of products back to the cultivation center. All products will be secured in a locked, designed area as shown on the plan.
- Security system will meet all requirement of the DPH.
- Landscaping of the property will meet all of the DPH.
- The applicant will comply with all lighting requirement under WTZBL 8.6-2.

Nancy opened the hearing for public comment.

Richard Cascarino: (Map 16 Lot 37) a direct abutter asked about the following concerns; lighting, security (weapons), temporary lease. Geoff explained that the outside lighting (on either end of the building will remain the same, no weapons will be allowed on the premises of the dispensary. The lease is subject to Patient Centric holding a license from the DPH. Mr. Cascarino suggested a limited trial lease; as an abutter, he is concerned with security issues that could arise. Geoff stated he has been transparent throughout the process when applying for the Medical Marijuana Cultivation business and remains so with the dispensary application. If the neighbors should have issues or concerns he would work with them. A brief discussion ensued as to safety and security issues as it relates to the direct abutters. The dispensary will have a security system connected to the Police Department as outlined in the DPH regulations. Mr. Rose stated to the best of his knowledge the eleven dispensaries currently operating in the State have had no problems security-wise. Geoff stated for the record the dispensary is not a cash-business only. Mr. Rose is the chief executive officer of a non-profit business: Patient Centric of MV, and serves at the discretion of the board. Mr. Rose went on to state that the lease he signed is for Medical Marijuana Dispensary only. Nancy stated that the application in front of the ZBA is for a Medical Marijuana Dispensary only.

Abby Rabinovitz, co-owner of Tea Lane Associates (Map 16 Lot 100) direct abutter was concerned that this facility could morph from a RMD (medical marijuana) to include a recreational marijuana retail store. She went on to say the Town currently has no regulations regarding the recreational uses/operation of recreational marijuana; the state law could trump local bylaws. Julius stated that the applicant would have to apply to the ZBA for a separate application to sell recreational marijuana; the application is specific to Medical Marijuana Dispensary only.

The discussion continued as to where recreational marijuana could be sold; the board stated this area of town is mixed business where retail business is allowed. Nancy stated that the questions raised by Ms. Rabinovitz are legitimate and are probably shared by many in the town. A suggestion was to reach out to the Planning Board who would be responsible for changes in the Zoning bylaws, as well as the Selectman. Ms. Rabinovitz, asked Geoff if he would sign a lease stating he would not operate a recreational/retail marijuana establishment at these premises? Vickie Thurber, owner of the property told the board the lease signed for the retail space is for medical marijuana only. Geoff Rose stated that his license is for Medical Marijuana Dispensary only. Mr. Ruskin, speaking as a board member on Patient Centric of MV, the question was unreasonable and would have to be reviewed by the Board of Directors. Nancy gave a brief synopsis of the process regarding the granting of SP 2017-03, to Patient Centric of MV allowing a Registered Marijuana Cultivation facility on Dr. Fisher Road including Big Sky (owner of the property) amending SP 2011-04, for a change of use.

Geoff reiterated that the dispensary operates by appointment only with a maximum of seven patients per hour. This eliminates any back up of patients in the designed waiting room. With only four dedicated parking spaces for patients, this will eliminate potential loitering of patients in the parking area. If the board should approve the application a condition of the special permit would be signage stating “no loitering in the parking area as this is a mixed business and no smoking in the parking lot.” This language would be posted on the website including written material given to the patient upon their arrival.

With no further public comments, Julius moved to close the public hearing and open the board meeting. Larry seconded, the vote was unanimous. The board reviewed the specifics as stated in the narrative presented, regarding the operation of the dispensary. Additionally, the applicant estimates approximately four hundred patients at the end of a three year period, with a total of 2.5 employees at the end of that period. The conditions discussed regarding the application are: 1) The special permit is for a business use as a RMD for the applicant’s use only. Any transfer of state licensing or lease of the commercial space to another entity must return to the ZBA with a new application. 2) The hours are Monday – Friday, 9:00 am to 6:00 pm and Saturday 10:00 am to 5:00 pm, closed Sunday. The dispensary will operate on a appoint only basis: with a maximum of seven patients per hour. 3) The applicant will post signage stating no loitering in the parking area, and comply with all local and state “no smoking requirements” within the parking area and the perimeter of the dispensary. The applicant will inform his patients as to this policy through the website and written notification in the waiting area.

Larry moved to approve the application with the findings and conditions as discussed. Julius seconded. Roll call vote: Nancy –yes; Julius – yes; the Town voted to approve medical marijuana and this application a well-crafted proposal to serve the patients on the Island. Tony H – yes, Toni Cohen – yes, and Larry –yes, with two alternate members abstained: Tucker and Bob. Nancy explained the twenty day appeal period.

Discussion:

Beach Plum Realty Trust- Tom Tate appeared before the board to discuss some changes regarding a special permit 2015-22. The new owners would like the following changes to the project.

- 1) Garage with a half basement to store the pool equipment which would eliminate excess noise from the equipment and exterior stairs would be added to allow access to the pool equipment
- 2) Shift the pool fence 10 to 12 feet north, to allow the owners children to play within the pool fence area.

Tom told the board the WT Conservation Commission reviewed this revision of the proposed landscape plan. After a brief discussion the board was in agreement these were minor changes and would not require a public hearing. The board signed the submitted plan. A letter will be sent to Joe Tierney, the Zoning/Building Inspector.

Meeting adjourned at 8:30 pm.

Respectfully submitted,

Clare Harrington
Administrator/ZBA