

West Tisbury Zoning Board of Appeals (ZBA)
Minutes June 23, 2016— 5:05 PM
Second Floor, Town Hall

PRESENT: Nancy Cole (Chairman), Tony Higgins, Julius Lowe, Bob Schwier, Toni Cohen and Roger Hubbell

ABSENT: Larry Schubert

ALSO PRESENT: Richard Knabel, Rex Jarrell, Meg Bodnar, Mark Nicotera, Kathleen Young, Attorney Eric Peters, Patricia Linn and Clare Harrington (Admin.)

Hearings:

5:25 PM- A continuation of a hearing on an application from Rex Jarrell for a home occupation (yoga & bodywork business). Under section 8.5-1B and 9.2-2 of the zoning bylaws, Map 25 Lot 18.7, 82 Panhandle Road, RU district.

A site visit took place on Wednesday, June 22nd, with Tony Higgins, Toni Cohen, Julius Lowe and Tucker Hubbell. Also in attendance were George & Andrea Hartman (direct abutters) along with Meg Bodnar (realtor).

Tucker explained that Rex had mowed the area showing where the proposed driveway and future house site will be located, and the easement was discussed regarding where the solar panels were sited belonging to Deborah Mayhew. Rex submitted an updated narrative (see attached) which had significant changes from the original narrative that was submitted and reviewed at the June 16th hearing. Some of the changes requested are: an employee acting as a bookkeeper or part-time assistant/body worker, classes of up to 6 clients, and flexible hours of operation, not to exceed 5.5 days per week, including the weekends between the hours of 7 am – 9 pm. He still would like 25 sessions per week. Rex explained that the term “body work” could encompass a variety of practices, including different forms of yoga, chiropractic work and acupuncture with sessions lasting approximately an hour in half. Tony H. stated this would amount to a high volume of vehicles coming and going.

Richard Knabel (lot 18-9), was concerned about the traffic and the long hours; (7 days a week) in a residential neighbor. He was particularly concerned about the impact on the neighborhood in regarding the intensity of the number of days and hours of operation. Mr. Knabel said that when the subdivision was laid out it specified where the wells and septic systems had to be located. He suggested that an accurate site plan of the property showing the parking area and including the well and septic system be submitted. Tucker explained that at the site visit, Rex cleared a path where the proposed driveway would be, long the Hartmann’s property line. Rex stated that George Sourati (engineer) would be made aware of the original subdivision requirements. The board explained he was asking for home occupation where there is no home, which complicates matters.

Nancy stated that recently a home occupation was allowed with no home on the site (Bressitte) but the plans were very detailed (site plan, building plans) and precise; also the property was 7.0 acres. This application is vague with no specific site plans and lacking details which is problematic for the board. The screening running along the Hartmann's property line is considerable; Rex indicated that he would not remove any screening to accommodate the driveway. Nancy asked for any further comments from the audience. *Julius moved to close the public hearing and open the board meeting. Toni C. seconded. The vote was unanimous.*

There was a discussion regarding a previous special permit granted for a home occupation which Rex was co-owner. Tucker stated he had reviewed the minutes and the decision of that application and in his opinion the business (Yoga Barn) had exceed what was initially granted in the special permit; in particular limiting the practice. The two applications are different in scope and size, the Yoga Barn being located on 17 acres. The discussion returned to the number of days and hours that includes "family" classes, requested in the most updated narrative. The board pointed out that they are reluctant to grant a home occupation to operate seven days week. The board compared other home occupation applications which were reviewed on a case by case basis. Restrictions are imposed on hours, days of operation, lot size, type of business and the impact on the neighborhood regarding noise and traffic. Rex stated the classes requested will make his business more viable. Julius said the board is having difficulty with the volume of clients and the hours of operation which do not necessarily work with the neighborhood. The board was in agreement that specific hours, usage and number of days would need to be defined. The board reviewed different scenarios around the number of clients per day, the hours and days of operation.

The board returned to the discussion regarding the increase in number of clients per classes including individual clients, and the number of cars which would increase traffic. *One option discussed; five and half days a week, 7:00 am to 9:00 pm, no Sundays, an optional second day, no classes after 7:00 pm and six clients a day (which includes classes).* Rex voiced his concern about the how these limitations would impact his business model. The board was sensitive to the time restrictions he was under regarding the purchase and sales agreement. They are trying to work with him but are concerned as to how this impacts the neighborhood. The process of withdrawing an application without prejudice but allowing reapplication within two years was explained. The board asked Rex if the limitations discussed would negatively impact his business. It was explained that if ZBA denies the application, he could go to Planning Board and ask to re-apply within six month to the ZBA.

Rex voiced his hesitation on the restrictions outlined, and asked the board to vote on the proposal (see attached) submitted dated 6/22/2016. Julius moved to vote on the application with the narrative presented dated 6/22/2016. Bob seconded. The roll call vote; Nancy –no due to the impact on the neighborhood, Bob –no: the application is not clear enough in terms of the neighborhood. Toni C. – no; concurring with the reasons stated. Julius no- the impasses the board is addressed, including the time limitations with regard to the purchase and sales agreement that the applicant is working under. Tucker abstained as the associate

member. Tony H. – no, but would be open to revisiting at a future date. The board concurred that they tried to work with the applicant with respect to the concerns raised with the neighborhood and the limited time restriction regarding the purchase and sales agreement. Rex thanked the board for their consideration.

6:10 PM- A continuation of a hearing for an application from Trademark Services, agent for Luiz Oliveira for the construction of a 30' x 40' storage building, setback relief and a home occupation; service business. Under section 11.2-2, 9.5-1(B) and 4.2-2D of the zoning bylaws, Map 16 Lot 6, 560 State Rd, RU district.

Nancy re-opened the hearing which was continued from June 16, 2016. Clare told the board she had contacted Joe Tierney (building inspector) and West Tisbury Fire Chief Manny Estrella requesting their written comments, and expert opinions in regards to the email from the State Fire Marshall, particularly regarding the chemical component B. This email (see attached) was discussed at the previous meeting and the board all agreed that this was beyond their expertise and required feedback from the Fire Chief and the building inspector. Clare reported to the board she had not received a response. Joe Tierney had suggested to Mark Nicotera that he request a continuance so they could meet to discuss the issues further. Nancy was concerned that these questions raised in the email have not been adequately answered, and because this property is located in a residential neighborhood, that this application might be beyond the scope of what the bylaw intended. The setback relief would also need to be addressed; the proposed structure is a large building (30' by 40'). A discussion ensued concerning whether the applicant amend the application to eliminate the storage of the chemicals so the board could act upon the size of the building and setback relief requested. Nancy stated that Manny and Joe should be addressing concerns to the Fire Marshalls office directly and thought it was inappropriate that they were going through the applicant. Nancy felt that adequate time was given to Joe and Manny to contact the State Fire Marshalls office and report back to the ZBA.

Tony H. stated the board did not have the expertise to determine the toxicity of the chemicals stored and used in a residential neighborhood. This issue would be setting a precedent in a RU district. Mark stated that Mr. Oliveira would consider not storing chemicals and just his trailers and trucks in a heated space. The discussion returned to continuing the hearing. Attorney Peters stated he was not available next week. Nancy stated if it was continued they would accommodate all parties. Mr. Peters also stated that public officials were asked to report to the board not the applicant. The board was in agreement that it was inappropriate for Manny and Joe to discuss this with the applicant. The public hearing is the appropriate venue for these discussions. The board wondered what other information the fire chief was looking for from the Fire Marshall to comment on the application. The board was looking for an expert's opinion not the manufactures opinion. A discussion ensued if the board should wait for the Town's public officials to comment on the application. They all agreed they were not comfortable with the scope of the application, particularly in regards to chemicals storage on the property.

Nancy did not know why Joe and Manny have not commented on the application as requested. Mark Nicotera, agent for the applicant, asked to withdraw the application without prejudice. Julius moved to allow the applicant to withdraw the application without prejudice. Bob seconded. The vote was unanimous. Mark stated he would speak to the client regarding applying with a modified application.

Meeting adjourned 6:35 pm

Respectfully submitted,
Clare Harrington, Administrator

