

West Tisbury Zoning Board of Appeals (ZBA)  
Minutes June 16, 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:** Joan Chaput, George Hartman, Andrea Hartman, Meg Bodnar, John Brannen, Terry Kriedman, Peter Rodegast, Mark Nicotera, Kathleen Young, Attorney Eric Peters, Patricia Linn and Clare Harrington (Admin.)

**Hearings:**

**5:25 PM-** 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.

Nancy opened the hearing at 5:25 pm when the applicant arrived late. *Correspondence:* Richard Knabel reviewed the application and received copies of the application. Deborah Mayhew emailed requesting copies of the application. Andrea Hartman came to the office to inquire about the application and received copies of the application. Rex told the board that he would like to open a yoga & bodywork home occupation/business in a first floor room in a house on the above referenced parcel which is now under agreement. Currently there are no structures on the lot. The business will have no employees; the hours of operation would be 7:00 am to 9:00 pm, seven days a week with twenty-five clients per week. Andrea Hartmann, a direct abutter (map 25 Lot 18.8), stated she had no issue with the hours or the nature of the business, but was concerned regarding potential noise where clients would leave dogs in their cars and the barking would be a disturbance. She asked about the siting of the house on the lot in relationship to her property line. Rex presented a sketch plan showing where the proposed house will be sited and the proposed driveway. Tucker stated it was somewhat of a nebulous plan, particularly in regards to parking and potential screening and the impact it could have on the neighbors. Tony Higgins expressed concern regarding intensive use with the hours requested. Rex reiterated he would be working a total of twenty-five hours a week. Meg Bogner, a realtor on behalf of Deborah Mayhew, stated that there is a natural buffer between the Hartmann's and the back of the lot which is a meadow. She also inquired if the board would approve the application contingent upon a completed surveyed plot plan being done. Mr. Jarrell told the board a discussion had taken place between the Planning Board and Meg Bogner the realtor, regarding an easement on the property and a temporary curb cut.

At this time Toni C. moved to close the public hearing and open the board meeting. Bob seconded, the vote was unanimous. Tucker expressed misgiving about approving the application without some conditions: no employees and a restriction on subletting to other yoga teachers. Rex stated he would be the only instructor for the business.

Tucker stated that several years ago the board approved a home occupation for a yoga studio (Yoga Barn on South Road) and it has since morphed beyond what was allowed in the special permit. The discussion continued regarding the hours. Nancy said that the schedule presented was not clear. The board stated they have always put conditions on hours and days of operations for home occupations. A discussion ensued on how the board would document the requested 25 visits per week, including regulating and any enforcement issues. Nancy explained that it would fall within the purview of the neighbors. Toni C. inquired of Andrea Hartman (direct abutter) what is her opinion was regarding the application. Ms. Hartman responded that she was not sure how to answer the question; it is a narrow lot and they value their privacy. She was more concerned about seeing a site plan; there was no objection to the type of business. The width of the lot is approximately 150. ft. A discussion ensued regarding an easement that was established when Deborah Mayhew subdivided the property into six lots, apparently there was a single curb cut that the three lots shared. The discussion returned to the hours of operation; it was pointed out that the board, when granting home occupations, has put restrictions as to number of days the business operates, which is usually Sunday as an off day, particularly when located in a residential district. Julius asked if they could condition it to five days a week with one set day the business is closed. Rex stated he would like to operate on the weekends. It was unclear what days he would want to be closed. Tony H. suggested that the applicant be more specific. Toni C. stated that in the past the board has always considered the neighbors opinions. Julius inquired of Rex if the last clients would be out by 9:00 pm, Rex applied in the affirmative. The board agreed the business would not necessary generate noise.

The question returned to the parking and the potential impact on the neighbors. The conversation returned to the suggestion of five days a week, limiting visit to 25 per week with the hour's seven to nine. The board may not designate the business be limited to weekends, but would leave it up to the neighbors to inform the Town if there was any problems. The board may require more screening between the neighbor's properties. Rex stated that George Sourati could have the site plan by June 30. It was explained to Rex that if the board decided to approve the plan tonight, they could make it contingent on a certified plot plan being produced for the board to sign off on prior to building permit being issued. Nancy reiterated the zoning board can condition this special permit include screening. The board told the applicant that there is no dwelling on the lot including no driveway which raises legitimate questions. Nancy suggested a site visit and asked if Rex would stake where driveway will be located. The board agreed to hold a site visit on June 22<sup>nd</sup> at 4:30. Toni. C. moved to continue this hearing to June 23<sup>rd</sup> at 5:10 pm. Julius seconded, the vote was unanimous.

**6:10 PM** – A hearing on an application from Peter Rodegast, agent for John & Catherine Brannen, for setback relief for a detached bedroom under section 4.2-2E and 9.2-2, map 11 lot 30, 18 Dolphine Merry Road, RU district.

Nancy recused herself regarding this application. Tucker conducted the hearing.  
*Correspondence: Cynthia Gibby (11-26) requested copies of the application. Joan Merry (11-29) had no objections to the application.*

The hearing was opened. Peter Rodegast, agent for the Brennen's explained the application. There is an existing building (currently in disrepair) which has been on the property since 1985 and used by the current and previous owners as a bunkhouse and storage shed. It sits approximately 20 feet from the east property line and 36 feet from the north property line. The property is a non-conforming pre-existing lot totaling 1.37 acres. The applicant is requesting setback relief for replacement of the shed/bunkhouse with a detached bedroom totaling approx. 368 sq. ft. The foundation will be a crawl space, not a full basement. The proposed detached bedroom will be less non-conforming; 22 feet from the east property line and 38 feet from the north property line and the upstairs will be a non-habitable space the bedroom is located on the first floor. The septic system will need to be upgraded. Joan Chaput, an abutter (map 11 lot 33), asked for clarification regarding the requested setback relief. Tucker explained that the building existed "pre-zoning" the structure is grandfathered and is approximately 20 feet from the lot line. Because it does not meet current zoning a special permit is required. They are proposing a new structure which will be less non-conforming and further away from Ms. Chaput's property.

The height of the new structure will be 2 feet taller than the existing building. Tucker explained the detached bedroom bylaw to Ms. Chaput. A bedroom with a bathroom and no kitchen facilities and no larger than 400 sq. ft., the project needs to conform to the Board of Health regulations. The porch is not included in the total square feet. The square footage of the existing structure is approximately the same as the proposed dwelling. Ms. Terry Kriedman (Map 11 Lot 31) told the board that her children asked her to attend the hearing and they would like to review the plans. Ms. Kriedman spoke with Mr. Rodegast and the plan presented tonight was different then what was discussed. Tucker explained that the hearing is being conducted now the application was advertised and hearing notices were mailed to abutters. Tucker stated that in his experience this was a very benign application. The structure was used before as living space, this said, it falls within the Zoning Bylaw status for a detached bedroom as long as it meets board of health requirements. Ms. Kriedman stated that her daughter tried to contact the owner for more details. Mr. Brannen indicated he did not receive a phone call.

Tucker asked for any further comments from the public. Julius moved to close the public hearing and open the board meeting. Bob seconded, the vote was unanimous. Julius asked the applicant if there is water in the building now; Mr. Brennan told the board that there is electricity and phone to the building, no bathroom. Ms. Terry Kriedman (map 11 lot 32), stated she was here to gather information and have questions answered. The board was in agreement that it was a minor change and the existing building has been used for a bunkhouse in the past. It is a non-conforming pre-existing lot; the setback for the proposed dwelling is 38 feet from the north bound and 22 feet from the east property line.

With no further discussion; *Bob moved to approve the application with the following conditions. 1) The second floor does not meet the criteria for a bedroom; it is not a sleeping loft. 2) The existing vegetation should remain and there will be no clearing along the northeast property line. 3) The detached bedroom shall be no larger than 400 sq. ft. Julius seconded, the vote was unanimous.* Tucker explained the twenty day appeal period.

**6:35 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 service business. Under section 11.2-2, 9.5-1(B) and 4.4-2D of the zoning bylaws map 16 lot 61, 560 State Road, RU district.**

Nancy re-opened the hearing which was continued from June 16, 2016. An email from Joe Tierney, which was forwarded to the Zoning Board, dated June 15, 2016, was read into the record. The email from H. Jacob Nunnemacher at the State Fire Marshall's office was in response to Chief Estrella at the West Tisbury Fire Dept. (see attached). An email from the MVRD (see attached) states they accept clean containers (barrels). The barrels are then crushed and disposed of. Mark Nicotera, agent for the applicant explained that the two elements are combined at the job site by two pumps that mix the components together. They are never combined in the storage area on the property. A month supply's are delivered by Cape Cod Express. Mark explained that he was contacted via email from Mr. Tierney regarding component "B" and the concerns of how flammable the product is. Mark has forwarded this to the manufacture for more information. Mark stated that component "B" is only flammable upon combining the two elements, and carefully applying the mixture. The material in the barrels is "sucked out" completely. When the material comes in contact with the air it immediately hardens, no residue remains. Tony H. stated that the Fire Chief would regulate how to store the components including the disposal of them. Nancy stated she would like to have all the information and have building inspector as well as the fire chief to comment on this application with any suggestions or concerns there departments could have.

Nancy was concerned that the industrial aspect of the application creeping out in a residential area. The application for the special permit is multi-faceted; requesting to construct a building over 676 sq. ft., setback relief and a home occupation/service business in a residential area. Mark stated that the building would be designed specifically to store the materials. The board raised concerns that this was a complicated application in a residential area. It was verified that there are three employees.

Attorney Peters asked if Mr. Oliveria is the sole proprietor of the business and is a state licensed is required to conduct the business and does he have one. Mark stated that Mr. Oliveria is the sole proprietor of the business but will verify this information. Mark stated that certification is given by the company as a qualified installer. Clare was asked to review these questions with the building inspector. Normally Mr. Oliveira works as a sub-contractor. Ms. Kathleen Young, stated that she was a former administer to the WT Planning Board.

She emphasized the Planning Board was very precise when writing the home occupation bylaw and potential impact and restrictions in a residential district, taking great pains in keeping them limited in scope and size. The light industrial district was created to accommodate this type of business. The board agreed to continue the hearing to June 23, 2016, at 5:30 pm.

Meeting adjourned 7:10 pm

Respectfully Submitted, Clare Harrington/Administrator

