

West Tisbury Zoning Board of Appeals (ZBA)
Minutes April 7, 2016— 5:05 PM
Second Floor, Town Hall

PRESENT: Nancy Cole (Chairman), Larry Schubert, Tucker Hubbell, Toni Cohen, Tony Higgins and Julius Lowe. **ABSENT:** Bob Schwier
ALSO PRESENT: Scott Bermudes, Joe Tierney (Building Inspector), Clare Harrington (Administrator). **PLEASE NOTE:** See attached attendance sheet

Minutes:

March 10, 2016 – Larry made a motion to approve the minutes as amended. Tucker seconded, the vote was unanimous.

Correspondence:

- Email from Natural Heritage Program- regarding: MV Agricultural Society. No action needed.
- Letter from Katy Upson regarding Minter's Path no action needed.
- Notice of Violation Letters: Monte Bizzarro & Eben Armer no action needed.

New Business:

Certificate of Grantee Form - Attorney Burke from Reynolds, Rappaport and Kaplan inquired if this is a practice of the board. This is not a document that is supplied when a special permit decision is recorded. After review of an example of a Certificate of Grantee Form, it was determined that it is redundant to the language already outlined in the decision. It will be removed from the boiler plate language in all future decisions filed by the board. Nancy asked Clare to confirm this with council.

Hearings:

5:15 PM - A hearing on an application from Scott Bermudes on an appeal of a Notice of Violation Order from the Building Inspector under WTZBA, section 6.2-4(D) and 6.2-2, Special Way Zone. The appeal is filed und MGL 40A section 8 and section 15. Map 15 Lot 31.4, 22 Flint Hill, RU District.

Nancy opened the hearing. The following correspondence was read into the record: *Ebba Hierta, Sue Hruby, Gabrielle Redner, MV Land Bank Commission, Susan Catling, Samuel Hart, Sam Feldman, Esther Brandon, Laura Wainwright, Michelle Jasny, Ed Merck, Harriet Bernstein, Ivory Littlefield, Cynthia Aguilar, Mary Wolverton, Judith Birsh, Terri Kominers, Robert & Tracey Smith and Susan & Ronald Silva.*

Scott Bermudes stated that he was replacing old fencing and has installed fence posts along Rogers Path which transverses his property. Scott stated he owns the property which runs along both sides of Rogers's Path. Currently he has installed fence posts running approximately 350 feet along the Rogers's Path. He's replacing a fence he put up twenty years ago which has rotted out. Scott explained there are issues with people and their dogs using the path and coming on to his property threatening his dogs and bothering his livestock. He received a Notice of Violation letter dated January 30, 2016, from the Building/Zoning Inspector (on file with the ZBA) stating he was in violation of 6.2-4D(5) and 6.2-2 of the Zoning Bylaws regarding obstructions in a Special Way Zone. The letter from Mr. Tierney, dated January 30, 2016, to Scott and Cynthia Bermudes was read into the record.

Mr. Bermudes stated; why the ZBA asked him to come before them. Tucker explained for the record that the Zoning Board did not ask Mr. Bermudes to come before them. That, as stated in Mr. Tierney's' letter to Mr. Bermudes, he had 30 days to appeal the building/zoning inspectors decision that there was a violation of the zoning bylaws. Mr. Bermudes applied to the ZBA to appeal Mr. Tierney's letter of January 30, 2016. The only issue in front of the board is to either uphold or not uphold the decision of the Building/Zoning Inspector. There was a brief discussion verifying that Rogers Path is designated a special way, not an "ancient way". The board confirmed that the survey stakes which run along the path designate his property line, but Mr. Bermudes reiterated that he owns along both sides of the path. A general discussion ensued about the survey stakes placed along Roger's Path. Larry asked about "red flags" which were also located along the path. Scott stated that they were just to designate where the posts would be placed and had no other relevance. They were pulled up as the fence posts were installed.

Tony H. asked Mr. Bermudes why he believed he could put up a fence obstructing Rogers Path when the bylaw clearly states that no obstruction within twenty feet of the centerline could be installed and he placed it right in the path. Scott stated the bylaw is ambiguous regarding this point and that he believed this was not the intent of the bylaw and that the fence does not cross the path.

Larry stated that after reviewing Scott's letter dated 4/6/2016, several points were overlooked; in section 6.2-4D5 a fence cannot run parallel to Rogers Path. When Scott bought the property there was essentially a "no-build" zone along Rogers Path because of the special way status. After thoroughly researching the zoning bylaw it was found to be very specific; "no obstructions shall be made, erected, placed or constructed within a Special Way....except for gates, bars, stiles, designed to allow passage for non-vehicular travel or for vehicular travel where vehicular rights-of-way exist".

Mr. Bermudes stated that in his letter he states under 6.2-4C that he considers this a hardship and that it deprives the landowner of reasonable use of his property. Larry explained that, as a member of the zoning board, he would not make that determination. Special permits are required from the Planning Board in a special way zone under section 6.2-4C of the Zoning Bylaws.

Nancy asked to open the hearing to the public, specifically from anyone who has not submitted correspondence which was previously read into the record. Ms. Lisa Bassett urged the board to uphold the building inspector's decision. She explained to the board that Scott Bermudes knew that Rogers Path was designated a special way when he purchased the property. She cited a lawsuit filed in 2002 against the town where the Bermudes's were the plaintiffs claiming they were exclusive owners of that portion of Rogers Path and neither the Town or the public have any rights to its use (in Dukes County Superior Court Case 2002-0007 denied the plaintiff request for relief). Ms. Bassett told the board of an incident involving her dogs and the Bermudes' dogs. While walking the path they were met with hostile intimidation by Mrs. Bermudes. Herb Moody stated he could verify this incident and went on to say the path was there when the Bermudes bought the property and the public should have access to the path. Rez Williams presented several photos showing clear cutting of the special way zone and new plantings. Among the photos there were pictures of cut logs and brush piled on the side of the path including the fence posts set along the path. Nancy Dole, an abutter, stated she was disappointed that this issue has divided the neighborhood. She does not understand the purpose of the fence and how it would protect their livestock or property, it just narrows Rogers Path.

The discussion returned to the scope of the bylaw. Tucker and Tony H. both referred to the bylaw which defines a "special way zone" consisting of the area lying within twenty feet on either side of the centerline of the designated special way (Rogers Path). The discussion returned to 6.2-4C requiring a special permit from the Planning Board in a special way zone. Nancy asked if there was any further input from the public and if there were any comments in favor of the Bermudes position.

Scott asked if the posts could be considered a fence. In the board's opinion it would be considered an obstruction. Scott asked what the ZBA would be voting on; the new section or the old section of the fence. Nancy explained that the only vote the ZBA would be taking is an up or down vote to either uphold the building inspectors decision or not as outlined in the violation letter.

The process was explained again to Scott; when an appeal is filed by an applicant, the ZBA is the designated board charged with hearing the appeal. Upon the decision of the ZBA, the applicant can appeal that decision to the Superior Court. Toni C. moved to close the public hearing and open the board meeting. Seconded by Julius, the vote was unanimous. The board was in agreement the bylaw is clear under 6.2-4D5no obstructions shall be made within the **Special Ways Zone**.

With no further discussion, Tucker moved to uphold the Building/Zoning Inspector's decision as outlined in the "Notice of Violation" letter dated January 30, 2016. Tony H. seconded the motion. Nancy called for the vote. Tony H. –yes, Tucker –yes, Julius –yes, Toni C. –yes, Larry – yes and Nancy –yes. It was pointed out that the many people in the audience appreciate West Tisbury's rural character and its farming community. Nancy explained the twenty day appeal process to Mr. Bermudes.

New Business

Email from John Abrams regarding Brissette's SP 2015-17. Mr. Brissette would like to amend the special permit to allow an 800 sq. ft. detached accessory apartment. The board determined that Mr. Abrams would have to apply for Mr. Brissette to amend his special permit with the new modifications outlined.

Meeting adjourned at 6:45 PM

Respectfully submitted,

Clare A. Harrington/Administrator

