

West Tisbury Zoning Board of Appeals (ZBA)  
Minutes March 3, 2016 – 5:00 PM  
2<sup>nd</sup> Floor, Town Hall

**PRESENT:** Nancy Cole (Chairman), Larry Schubert, Tucker Hubbell, Toni Cohen, Tony Higgins, Bob Schwier and Julius Lowe.

**ABSENT:**

**ALSO PRESENT:** Pamela Speir, Shawn Chapps, Stephen Hart, Kevin Carr, Laura Bernard-Maciel, Joe Tierney (Building Inspector) and Clare Harrington (Administrator).

**Minutes:**

February 18, 2016 – Tucker made a motion to approve the minutes. Larry seconded. The vote was unanimous, with Bob Schwier abstaining.

**Hearings:**

**5:10 PM – A continuation of a hearing from February 18, 2016, on an application from Shawn Chapps, agent for Kevin Chavers, for a 10' by 50' in- ground swimming pool and a 12' by 24' pool house. Under Zoning Bylaw section 8.5-4, Map 30 Lot 2.82, 15 Pond Rd, RU District.**

Nancy explained that the hearing was continued from February 18<sup>th</sup> to allow Shawn Chapps to consult with his client Mr. Chavers. All pool equipment is housed as shown on the submitted pool house plan. The pool house is an accessory structure 12' x 24' with the changes shown on the plan. The pool house is 288 sq. ft., being less than 677 sq. ft. No special permit under 11.2-2 is required. With no further input from the public, *Julius moved to close the public hearing and open the board meeting. Tucker seconded, the vote was unanimous.* Larry explained to Shawn that if this application is approved the applicant must comply with all state and local pool requirements which will be part of the conditions of the special permit. Shawn stated he understood. *Larry moved to approve the application for a 10' by 50' in ground swimming pool with a 12' by 24' pool house and associated fencing with self-closing gates, as show on the plan submitted. The conditions will be that all state and local pool requirements must be adhered to. Julius seconded, the vote was unanimous, with one abstention (Bob Schwier).* Nancy explained the twenty day appeal period.

**5:20 PM - An application from Stephen Hart for a 36' x 36' garage with a 12' x 36' shed overhang and a home business (woodworking shop). Under Zoning Bylaw sections 11.2-2, 8.5-1B and 9.2-2, Map 10 Lot 53, 6 Pine Lane, RU District.**

Nancy opened the hearing and read the following correspondence. *Letter dated February 23, 2016, from the WT Planning Board to the Building/Zoning Inspector regarding approval of a craft workshop for Stephen Hart. Letter dated March 3, 2016, from Judith Fisher, abutter (Map 10 Lot 267) opposed to the application with suggested restrictions. Letter dated March 23, 2016, from Robert J.C. Murphy, with suggested specific restrictions.*

Stephen Hart presented a letter to the board withdrawing his request for a home business/occupation. On February 22, 2016, the WT Planning Board approved through site plan review, a craft workshop. Approval was given contingent upon review and approval from the ZBA, BOH and the Building/Zoning Inspector (see letter on file). The craft workshop would be housed in the proposed garage for which Mr. Hart is seeking approval from the Zoning Board under section 11.1-2 of the bylaws.

Mr. Hart explained to the board he would like to build a post and beam garage where the craft workshop will be located. He is an experienced woodworker by trade and takes great pride in keeping his property maintained. He explained his previous property in West Tisbury was approved for a home occupation and he kept the grounds in beautiful shape and planted more trees on this property than he removed. Nancy opened the discussion to public comments. Ms. Pamela Speir asked about any toxic chemical. Mr. Hart explained he does not use any toxic material in his business and if he did he would dispose of them properly. Ms. Speir also was concerned about the potential traffic and noise to the neighborhood. Mr. Hart said there would be no commercial traffic. He brings the finished products to his clients home or business.

A discussion ensued regarding the conditions the WT Planning Board referred to in their letter under which a house must be permitted and under construction before any other accessory building are permitted or begun. The board agreed that the application applied for is an accessory structure. The definition of an accessory structure as stated in the bylaws is: *a structure detached from and subordinate to a principal building on the same lot and used for purposes customarily incidental to those of the principal building or use.* The board cited a previous special permit granted where the applicant built a garage with an apartment above which was considered his residence. Stephen asked about storage containers; they are considered a temporary structure and a permit is required through the building department.

Kevin Carr, an abutter at Map 10 Lot 57, was concerned about the noise from the tools used which could emit high piercing noise. Also of concern are the hours allowed by the Planning Board, 8:00 am to 5:00 pm Monday thru Saturday. This could become a problem in this residential neighborhood. Julius explained that the band of time is just the potential hours the business could operate. This is not necessarily the hours he will be working.

Nancy explained to Mr. Carr that what is before the ZBA is the accessory structure (which is over 676 sq. ft.), not the craft workshop which the Planning Board approved. The Board was concerned and in agreement that the bylaw should be changed to require a public hearing under site plan review by the Planning Board when applications for craftwork shops are being reviewed to seek the neighbors input. Nancy went on to explain that if the ZBA was considering a home occupation these issues would be considered in permitting the application. Mr. Hart reiterated that mainly his work takes place at the job sites.

There are several factors related to this application involving several bylaws which need to be addressed. The property is located on a corner lot (section 4.2-2B) and it borders State Rd and Pine Lane which, according to the bylaw this lot is considered to have two front yards. Also (section 4.2-2D3), any accessory structure with a footprint greater than 600 sq. ft. in front of the principal building must be set back at least twice the minimum front setback distance. In this case it would be 100 ft., setback relief would be needed. Tucker pointed out that according to 4.2-1D4, the board has the ability to grant a special permit. Again the issue of an accessory structure was addressed. The principal dwelling unit is required to be built prior to the accessory structure. Mr. Hart explained he's scheduled to close on the property on March 15<sup>th</sup> and he seeking approval to build the garage through the bylaw reviewed. The lot is located off Old County Road which is designated a Major Road. The height of the garage can only be 24 feet, the maximum height allowed in the Roads District.

Stephen explained because the size of the lot (1.6 acres) and the requirements of the five bedrooms septic design, the house is sited in the only location it could be on the lot. If access to the garage was off State Road, a permit for a curb cut would need to be obtained from the Planning Board. Joe felt that the intent of the bylaw (11.1-2) is to not allow an accessory structure over 676 sq. ft. to be in front of the main structure on a major road. Tucker suggested that the garage could be smaller in size, since it is a large building, 1728 sq. ft. including the 12' x 36' overhang. Mr. Hart said he would prefer not to because the size works for the craftwork shop. A discussion ensued on building the garage with an apartment upstairs. Several things would have to take place for this option. He would need to return to the Planning Board because they conditioned it as non-habitable when they allowed the craft workshop.

If he was to build the garage with an apartment above, it would be his primary residence and could not be larger than 800 sq. ft. Upon building a second dwelling he could rent the apartment under the affordable guideline or deactivate the apartment. The discussion returned to setback relief. Tucker would like to see the size reduced because the intent of the bylaw is not to have large structures in the Roads District.

The discussion turned to the proposed five bedroom house which is shown on the plot plan. Joe explained he sent a letter to Mr. Hart rejecting the house plans attached to his building permit (letter on file with the ZBA) due to several reasons which he has discussed with Mr. Hart. Julius suggested not to move the garage closer to any neighbors and grant some relief closer to the road.

There was a brief discussion regarding a barn built on Old County Road which does not comply with the frontage requirement. It was explained that this was an error from the building department. During this time there was a transitional period between building inspector personnel and it was an oversight in applying the zoning bylaw. The craftwork shop was allowed by the Planning Board through site plan review and not in the purview of the ZBA. The board was in agreement that a change in the bylaws should be reviewed to change the permit granting authority for craftwork shops to be either the Planning Board or the ZBA. Now applicants come to two different boards, the ZBA for setback relief, and the Planning Board for a craftwork shop. The board will ask to be placed on the Planning Boards agenda to discuss this issue further.

Julius said he would consider allowing a special permit to allow the structure closer to the road than the 100 feet required and encroaching further upon the neighbor, Tony Higgins agreed. The location of the septic system is the only site that will work on the property without redesigning the system which could be a potential financial hardship. Kevin Carr asked about the noise generated from the machinery. Stephen explained that a planer is usually run about 20 minutes at a time, not all day. The major of the time the work is gluing and sanding. The potential noise issue would have been addressed by the Planning Board during the site plan review process

A no-cut zone was discussed with Larry suggesting that it be staked out and drawn on the plan by the surveyor so it would also show where the driveway would be located. A condition of the board would be for the applicant to return to the ZBA with the no cut zone shown, including the driveway which will not be any closer than 50 feet from the neighbors. Any curb cuts would need to be approved by the Planning Board. There is no bounds set on the property as of this date, they are required prior to a building permit being issued. Stephen also said that his realtor is requiring this from the owners.

With no further input from the audience, *Larry moved to close the public hearing and open the board meeting. Julius second, the vote was unanimous.*

The discussion continued regarding specific findings and conditions as to the bylaws relating to this application.

- A 40 foot no-cut zone from the northeast bound running along the Mass. State Highway and Old County Road including a no-cut zone heading south along lot 53 and lot 54.
- A total of 39 feet of relief was granted from the 100 foot setbacks that are required in the Road District.
- The no-cut zone applies only if the building the craft workshop as sited on the plan is built.
- An additional 100 foot screening along the Northeast lot line, 10 evergreen trees at least 6 feet tall and no more than 15 feet apart will need to be planted.
- The structure can be no taller than 24 feet high at mean natural grade within the Road District.
- Prior to a building permit being issued an updated plot plan showing the conditions set forth will be submitted to the ZBA for their review and signature.

With no further discussion, Tony moved to approve the application with the conditions as outlined. Toni C. seconded, the vote was unanimous. The twenty day appeal period was explained to the applicant.

Nancy reiterated to the audience that if noise becomes an issue with respect to the craft workshop, they should file a complaint with the building inspector.

A brief discussion ensued regarding the procedure the Planning Board follows when reviewing craft workshops. The board was in agreement that a change to the bylaw should be addressed to allow an applicant to go to one board only in applying for craftwork shop and setback relief. Clare will arrange with Jane to get on the Planning Board's agenda to discuss this issue.

#### **New Business: Building Inspector Reports**

**Cell Tower – 66 Old Courthouse Rd.** Joe Tierney told the board he was contacted by the contractor for the project, to ask to close out the 2013 building permit. Upon reviewing the site Joe Tierney updated the board on the conditions of the property. He presented pictures of the site which shows the property overgrown and the fence surrounding the property is in disrepair.

Also the shrouds were off the tower, on the ground, and the road has not been maintained. After numerous phone calls to T-Mobile, Sprint, ATT (all three companies share the tower) and Julie Flanders, he was able to reach the appropriate person. Joe suggested the board review the 2012 arborist report and schedule a site visit.

The Board did review the report back in 2012. Apparently the problems presented in the report have not been addressed. The special permit calls for the ZBA to review the site and instruct the building inspector on how to proceed based on the conditions of the special permit. The board agreed to arrange a site visit in the early summer. This will allow a better view of the tree canopy. Joe will keep the board apprised as to the progress in working with the contractors.

**Dan Imbrogno (Map 16 Lot 82).** Joe told the board he had been asked by Dan Imbrogno that would like to open the business before the apartments are completed which also includes specific conditions which are required by the special permit. The parking area, including the landscaping needs to be completed prior to an occupancy permit being issued. He also needs to comply with the fire code requirements. Joe stated that before he will issue an occupancy permit he will require the special permit conditions be adhered to and request the ZBA conduct a site visit assuring he has complied with the conditions of the special permit. The board will review the special permit again. Mr. Imbrogno does need to come back to the board to modify his special permit relating to the underground tanks for the sprinkler system. Joe told the board he would keep Clare apprised as to the progress of the site. This will be on the agenda for next week for further discussion and to review the special permit conditions.

Meeting adjourned at 7:45 PM

Respectfully submitted

Clare Harrington/Board Administrator

