

WEST TISBURY ZONING BOARD OF APPEALS
Minutes for Thursday, August 12, 2021 meeting
Online meeting via ZOOM- @ 5:00 PM

Approved on August 19, 2021

Present: Deborah Wells, John Rau, Jeffrey Kaye, Andy Zaikis and Casey Decker

Absent: N/A Larry Schubert, Julius Lowe

Also Present: Pam Thors, Bd. Administrator, Chris Alley, Tom Tate

The Board voted unanimously to appoint Deborah Wells as temporary chair in the absence of both Larry, Chair and Julius, Co-chair.

Deborah opened the meeting at 5:08 pm. The minutes of the July 29, 2021 meeting were reviewed and approved unanimously as written.

Pam advised the board that Cell Tower Equipment inspections would be taking place on August 26th. She said that David Maxson would be coming across for the day and that she would be using one of the Town's cars to drive him to the various sites. She said she is looking forward to becoming familiar with the sites and learning a little about the types of equipment. She said each carrier will be charged \$1,800.

5:15 pm: A Public Hearing on an Application for a Special Permit from Tom Tate, Tate Builders Inc., agent for Minawetu, LLC to construct a double detached bedroom requiring 49' of front yard setback relief in order to comply with Section 4.2-2D3 of the Zoning Bylaws and to bring into compliance, a 720 sf. garage, both located in the Inland Zone of the Coastal District under Sections 6.1-5B, 4.3-3D and 4.2-2D3 of the Zoning Bylaws at 60 Bartimus Luce Rd., Map 3, Lot 9.1 RU District.

Deborah introduced the members of the board and read the Hearing Notice.

Chris Alley, the engineer on the project shared the site plan. He described the location of the project, stating that the majority of the lot lies in the Coastal District. He noted that the main house is under construction and that the septic has been upgraded to include the proposed double detached bedroom. He stated that the proposed flat roof building is under 13' high and will at some point support solar panels on the roof. He noted that the property is already at nearly, "net zero" as far as energy consumption goes. He added that the structure is designed to be minimalist with the most prominent detail being the roof overhangs on each side providing sun and weather protection. He also pointed out that the house fronts on Bartimus Luce Rd.

John asked about the bylaw requiring 100' of front setback for accessory structures located in front of the main dwelling. Chris stated that this issue is referenced in the third section of bylaw included in the application.

Chris went on to say that the garage should have had a Special Permit for a detached structure in the Coastal District that is not, "minor", as allowed in bylaw section 6.1-5A (Permitted Uses in the Inland Zone of the Coastal District).

Tom Tate, owner of the property stated that on the original plan, the garage was attached to the main dwelling but when they went for a permit, they requested that it be detached. He said that this is mostly a housekeeping measure to correct the record even though it was permitted by the Building Inspector.

Chris said that the last section of bylaw that needed to be addressed in this application is setback relief for an accessory structure located in front of the main dwelling, (section 4.2-2D3). The bylaw requires twice the minimum setback. He explained that they applied under this section and section 4.3-3D to allow 51' of front setback relief.

Chris stated that the house fronts on Bartimus Luce Rd. which would indicate that the accessory structure is located in front of the main dwelling. He said they were happy to apply under this bylaw as well for 51' of front setback relief. He said that the hardship is that if the structure were to be located 100' from the lot line, it would encroach on the septic reserve area which has its own separation requirements.

Deborah asked how the front setback was determined. Pam said that since the driveway was off Bartimus Luce Rd, the setback relief should be from the side of the lot running alongside the road. Deborah expressed her concern that the bylaw talks about the front of the lot but the access runs along the side of the lot.

Tom stated that driving down Bartimus Luce Rd. you will not even see the structure and that it is not even visible from the main dwelling. He noted that the two immediate abutters who he has spoken to about the project, will not be able to see it from their properties.

John noted the confusing language in the bylaw.

Deborah questioned whether the structure would be located in front of the dwelling. Pam asked Chris if he could measure, (using his site plan) the distances of the two structures from the lot. She said that it appears to her that that the proposed structure is slightly in front of the main dwelling as it relates to the road.

Pam read an email from David Fleischner, an immediate abutter in support of the application. She also read the letter from the Planning Board, which rendered no opinion except to say that, "all relevant boards and departments should be consulted".

John questioned the hardship in this case and asked about the number of bedrooms that would ultimately exist on the parcel.

Pam stated that the detached bedrooms are allowed by right, and that the only issue before the board is the setback relief.

Chris said that the septic design is for 7 bedrooms and that the main house has 5.

Casey mentioned the part of bylaw section 4.3-3D which speaks to the, "established and future character of the neighborhood", suggesting that the decision on this application could set a precedent for future development. John said that the character of the neighborhood is in flux at this point. Pam stated that perhaps the precedent for larger houses and structures on these expensive waterfront lots has already been set, noting that if this is not a 1 acre lot on County Rd.

Deborah asked if all the Special Permit requests in this application have to be voted on as one. Pam said that they do but if the board indicated to the applicant that they would deny the application based on one part of the request, that request could be withdrawn by the applicant so as not to jeopardize the entire application.

Chris said that originally the house had a septic capacity for 12 bedrooms but when Tom Tate took ownership, they scaled it back to 7 bedrooms.

Deborah verified that the 2 bedrooms being proposed would bring the bedroom count to full septic capacity.

John suggested that for this and future applications, section 9.2-2 (Review Criteria), become more a part of the discussion of each application. He said that requiring that an engineer come in with the applicant to testify that the application complies with all of the criteria might be considered.

Pam pointed out that the Board of Health had approved the 7 bedroom septic system on this lot.

Jeffrey said he agrees with the benefit of utilizing 9.2-2 during hearings.

John brought up the concept of leaving the burden of proof on the applicant, as far as complying with section 9.2-2.

Pam stated that the applicant would have had to get approval from Natural Heritage under the Endangered Species Act, (NHESPA) and that the Town maps would indicate if issues of this kind were present.

Deborah asked if the board was ready to vote, stating she would entertain a motion at this time.

J. Kaye and C. Decker made and seconded a motion to close the Public Hearing and open the Board Meeting.

A rollcall vote was taken to grant the Special Permit with the following resulting votes; D. Wells-yes, J. Rau-yes, A. Zaikis-yes, J. Kaye-yes and C. Decker-yes.

Deborah went over the 20-day appeal process. She also noted that applicants should be aware of concerns regarding size and bedroom count.

Chris Alley said that in regards to John's comments on utilizing Section 9.2-2 (Review Criteria), during hearings, that Chilmark has a similar bylaw that has 13 points that are reviewed one by one at their ZBA hearings.

Pam said that John's comments regarding how this procedure could benefit future hearings were well taken.

All agreed that further discussion of this issue, at a meeting where all members are present, is in order.

The Meeting adjourned at 6:50 pm.

Respectfully Submitted,

Pam Thors-Board Administrator