

West Tisbury Zoning Board of Appeals (ZBA)
Minutes February 18, 2016 – 5:10 PM
2nd Floor, Town Hall

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

ABSENT: Bob Schwier.

ALSO PRESENT: Ted Stanly, Peter Rodegast, Mary Beth Keenen, Shawn Chapps, Joe Tierney and Clare Harrington (Administrator).

Minutes:

January 14, 2016 - Julius made a motion to approve the minutes with corrections, Tucker seconded. The vote was unanimous, with Toni Cohen abstaining.

Hearings:

5:15 PM

An application from John & Marsha Gullo for an appeal of an order by the Building/Zoning Inspector under WTZBA section 8.6-2(C) lighting violation, which is filed under MGL 40A Section 8 and Section 15. Map 31 Lot 70.23, RU District.

Toni Cohen recused herself from the Gullo application. Ms. Cohen is an abutter to the applicant.

Nancy opened the hearing. *Correspondence: Email dated 2/17/2016 from Tom Wetherall (Map31 Lots 70.2 & 70.3) in support of upholding the building inspector's decision. Email dated 2/18/2016 from Richard North Patterson (Map 31 Lot 70.11) supporting the building inspectors decision (with some flexibility). Building Inspector violation notice under WTZBA 8.6-2(C) dated 12/18/2016 to Marsha & John Gullo.*

The violation notice issued from the Building Inspector results from their failure to comply with the Zoning Bylaw 8.6 Outdoor Lighting; specifically 8.6-2(C) “ No lamp shall be mounted higher than the eave line of the structure.

Marsha Gullo read a prepared narrative outlining the reasons for their appeal of the Building Inspectors violation notice. The light is located on a newly constructed horse barn located on the right side, facing towards their home on the gable wall approximately 10’ 6” above the ground. It is shielded and is on dimmer. The light location is for safety reasons relating to the operation of a hay elevator which is used in the unloading of hay and shavings for the horses. Often times (particularly in the winter months) the hay is delivered after dark.

The hay elevator can be a hazardous piece of equipment, practically when operated in the night time hours. The location of the light also facilitates the loading and unloading of horses from the trailer in the dark which, without a light, would be dangerous. Marsha explained that the light is only on when in use.

Tucker asked why the light could not be placed below the eaves on either side which would comply with the bylaw. Mrs. Gullo explained that it would not illuminate the ground where the hay elevator was located. It was also explained that there is a light in the middle of the hay loft, but this light does not illuminate the hay loft door which is where the hay elevator enters the barn. Tony H. reiterated that this is the case for most barns, and asked if riding stables would be exempt from this bylaw. Marsha told the board she does not run a riding stable. There may be barns located on the Vineyard that have lights above the eaves which pre-date zoning. Mr. Gullo stated he could put lights on either side of the eaves but this would not help the safety purpose of lighting the area where hay, shavings and horses are being loaded and unloaded in the night time hours.

The Gullo's went on to explain they have tried to be good neighbors through the project by siting the barn further away from Mr. Wetherall's property line and moving the manure wagon away from his line of sight. Nancy did believe that the safety issues raised make sense regarding the hay elevator, but the bylaw is clear regarding the placement of lights above the eaves. It was explained that the ZBA can make modifications or place conditions regarding appeals from the building inspector's orders.

Ted Stanley an abutter (Map 31 Lot 37-3) was in support of the applicant's appeal, due to the safety issues raised in the operations of the barn. Tony Higgins agreed with Mr. Stanley and explained he worked at a barn and was familiar with the operation of the hay elevator and that light is needed to safely operate the machinery. Tony explained the board could condition the decision so that the light could be used only when needed and would not be on otherwise.

Toni Cohen, as an abutter, asked if any other close neighbors had raised concerns regarding the light, the Gullo's responded that other than Mr. Wetherall, they had not heard from any direct abutter regarding the light. Julius stated the letters received were really in regards to the building inspector's decision to uphold the bylaw, not necessarily the light itself.

Larry moved to close the public hearing and open the board meeting, seconded by Julius. The vote was unanimous. Julius stated that the light is shielded downward and is not a spot light on a timer or a motion sensor light and will be used only when needed and it is not offensive in nature. Larry made a motion to uphold the building inspector's decision with the following modifications: the use of the light is to be used only when unloading and loading horses, hay and shavings. All other times the light will be off.

Julius seconded the motion. The record of vote as follows: Tony H- yes, Tucker-yes, Julius-yes, Larry-yes and Nancy-yes. Nancy stated that the purpose of the bylaw is such to protect the public from light pollution from individuals that would keep lights on all night. She also suggested the Planning Board could review the bylaw to accommodate specific situations when it involves safety issues. Nancy explained the twenty day appeal period.

5:47 PM – An application from Mary Beth Keenan for an accessory apartment under Zoning Bylaw 4.4-3A and 11.1-3, Map 11 Lot 61, 320 State Road, RU District.

Nancy Cole recused herself from the Keenan hearing as her husband, Peter Rodegast is the architect. Larry Schubert as Vice-Chairman will conduct the hearing. Ms. Keenan explained to the board that she would like to convert the upstairs in her Cape style house to an accessory apartment. She spoke with Island Affordable Housing Committee and reviewed the bylaw pertaining to accessory apartments with them. Currently upstairs is two bedrooms and a bathroom, one bedroom would remain, the remainder of the second floor would be converted to a kitchen and living room area as presented in the proposed plans. Peter Rodegast appeared with Ms. Keenan and explained the plans presented work in the existing house which is 26'x 34' will accommodate an 800 sq. ft. accessory apartment as the bylaws states. Peter explained that if needed, it would also include a vestibule downstairs. The plan shows two staircases, one inside and outside providing for two egresses. The appearance of the residence is still that of a single family home. There was a brief discussion regarding the building code as it relates to this project. These issues fall within the building department jurisdiction not the ZBA.

Larry explained to Ms. Keenan that if the special permit was granted it would stipulate that she would have to comply with 4.4-4 (Occupancy Restrictions on Apartment). Ms. Keenan will be given a copy of the Bylaws for her records. Peter explained the project may have to be expanded beyond what Ms. Keenan is comfortable with and may cause her to change her mind and eliminate the kitchen and just rent a room, which falls within the bylaws. It was explained that the special permits expires after two years, but she could file for an extension. *Toni C. made a motion to close the public hearing and open the board meeting. Seconded by Julius the vote was unanimous.*

With no further discussion Toni H. moved to approve the plan as presented with conditions. Tucker seconded, the vote was unanimous. Larry explained the twenty day appeal.

6:10 – An application from Shawn Chapps, agent for Kevin Chavers, for a 12’ by 60’ in- ground swimming pool and related pool equipment. Under Zoning Bylaw section 8.5-4 ,Map 30 Lot 2.82, 15 Pond Rd, RU District.

Nancy resumed the Chair for the remainder of the meeting. The hearing was opened at this time, Shawn Chapps, agent for Kevin Chavers told the board the pool dimensions have changed to 10’ x 50’. Shawn explained that in 2008, a special permit for a 10’ by 50.5’ pool was allowed (SP #2008-20) at that time but due to the economic climate the project was put on hold. A plan was presented which shows 4’ high fencing around the pool with self-closing gates. Larry summarized conditions which apply to all pool permitting applications as they related to the bylaws and State Building Codes. The plan also shows a 12’ x 24’ proposed pool house. It was explained to Shawn the pool equipment must be housed in a sound proof structure as the bylaw requires. Shawn was asked if the pool equipment was to be housed in the pool house or in a separate sound proof enclosure. He explained he would have to check with his client. Joe Tierney suggested that the hearing be continued to allow Shawn to submit floor plans of the pool house including where the pool equipment would be housed. He also suggested that the board require an “as built” plan be submitted after the project is complete, which would require a new survey. The board was in agreement that the ZBA would not put that as a condition for the special permit. This may be the purview of the Board of Health when obtaining the pool permit. *Larry moved to continue the hearing to March 3rd at 5:10 pm. Seconded by Tucker, the vote was unanimous.*

Correspondence:

The following correspondence was reviewed by the board:

- MV Agricultural Society – Violation of conditions from the Building Inspector and the Natural Heritage special permit was reviewed.
- Violation Notice to Scott Bermudes - Joe explained to the Board that Mr. Bermudes is not in compliance with bylaw regarding 6.2-4D (5) special ways, the letter explained that he may appeal the decision to the Zoning Board of Appeals.
- Violation Notice to Middletown Mowers – Joe explained to the board that Mr. Hoff, applied for a wall sign, but put the sign on the roof. Since the letter was sent the roof sign has been removed.
- Letter to Stephen Hart from the Building Inspector – Joe told the board he had rejected Mr. Hart’s building permit application on multiple issues.

In the letter detailed information was given to Mr. Hart on how to come in to compliance with the building permit application. In the letter it told Mr. Hart how he may appeal the violation notice.

- A letter from Dale Julier, a realtor, regarding accessory apartments. The board read the letter and a brief discussion ensued regarding the bylaw and the original intent of the bylaw. It was suggested that the Planning Board could review the bylaws and address some of the questions which were raised about accessory apartments on properties that change ownership. Ms. Julier appeared before the Planning Board at the February 1st meeting, and agreed that the bylaws need some work and they welcome any and all ideas, comments and suggestions. Larry told the board that several weeks ago Susan Puciul came before the Affordable Housing Committee to discuss the same questions.
- Planning Board Notes- Virginia Jones/Chairman of the Planning Board asked Clare to share these handouts which she compiled from the “housing zoning bylaws” and requested any feedback from the ZBA members.

Discussion

Imbrogno Landscape Plan (Map 16 Lot 82) – Manny Estrella had inquired of the Administrator to ask the Board if the Landscape Plan, which was approved by the Zoning Board is required to be sent back to the MVC because changes were made from the original “Hart plan”. Nancy asked Clare to contact Paul Foley regarding this question. An email dated 2/10/16, from Paul Foley, was read into the record. In Mr. Foley’s email it stated the following “slight changes to the landscape plan which are being augmented by additional plantings to ameliorate the neighbors do not rise to the level if needing review as a Development of Regional Impact”. The board was in agreement with Mr. Foley’s view and they stand by their decision that the landscape plan meets the spirit of the original plan approved by the board. A letter will be drafted to respond to Mr. Estrella indicating the board reviewed this with Mr. Foley at the MV Commission and that the Zoning Board upholds its decision as outlined in the letter dated October 16, 2015. The ZBA is in agreement that the applicant has fulfilled the intent of the landscape plan by the additional viburnums that were planted between the newly planted evergreens.

Meeting adjourned at 7:00 PM

Respectfully submitted,

Clare A. Harrington

