

WEST TISBURY ZONING BOARD OF APPEALS
MINUTES JANUARY 10, 2007
TOWN HALL 6:45 PM

PRESENT: Eric Whitman (Chair), Tony Higgins, Bob Schwier, Nancy Cole, Toni Cohen

ABSENT: Tucker Hubbell, Larry Schubert

ALSO PRESENT for All or Part of the Meeting: Arthur Spengler, Jimmy Glavin, Georgia Kroehnke, Bob Andrews, Richard Andre, Ina Andre, Ernie Mendenhall (Bldg/Zoning Inspector), Craig Buttner, Carole Hunter, M. Achille, Mary Wirtz, Jen DeVivo, Dan Imbrogno, Nelia Decker, Chris Decker, Janice Haynes, Jeremiah Brown, Robert Maciel, Doug Bardwell, Cathleen Vincent, Kenny Vincent

BUSINESS

- Minutes of December 13 were approved.
- ZBA Annual Town Report was approved.

HEARINGS

7:15 An application by Jim Glavin of DECA Inc. on behalf of Arthur and Caroline Spengler for a Variance from Sect. 4.2-2D3 which states “any accessory structure with a footprint greater than 600 sq ft shall, if in front of the principal building, be set back at least twice the minimum front setback distance”, which in this case would be 100’. Due to topographical conditions unique to the lot, the applicants would like to site a proposed 26’ by 26’ single story garage to be 50’ from the front north bound. Section 10-3.2 of Zoning Bylaws and Sect. 10 of MGL Ch 40A; Map 3 Lot 52; 72 Stonebridge Road; RU District 1.39 acres. *No Correspondence. Site visit on January 8 at 4 PM attended by Jimmy Glavin, Eric Whitman, Nancy Cole, Bob Schwier, Toni Cohen, Julie Keefe*

The grade is steep to the rear of the Spengler house. The applicants submitted that to make the 100’ setback would mean building the garage in a totally impractical and not safely accessible site. The Board stated that after a site visit they could agree with this. There is a 40’ wide paved strip on their property along the northern bound serving as an easement for a neighbor. It is not Stonebridge Lane, which ends at the eastern bound of their property. Building on the submitted site will make level access possible from this north bound strip. The garage, due to topography, will have a 6’4” headroom basement below the ground level entrance accessible from the backside, due to grade. Finding that literal enforcement of the bylaw would cause hardship, (not being able to build the garage) due to the topography, and that it’s a good plan and not detrimental to the neighborhood, the ZBA granted the setback variance. Abutter Georgia Kroehnke arrived after the hearing was closed and the vote taken and the applicant’s agent had left. She looked at the plans, had a few questions answered by the Board, and ultimately had no objections to the application. She said she missed the hearing due to another meeting she had to attend, not due to insufficient notice.

7:30 An application by David and Nancy Nachbar to amend a Special Permit for an in-ground pool and associated spa, equipment pad and fence granted in November ’05: To reduce the pool from 18’ by 40’ to 18’ by 38’, and re-siting it to be 38’ from the Northern bound. Sects.

3.1-1 requires a Special Permit for a pool; 8.5-4 is about lighting regs; 4.2-D allows to apply for setback relief for an accessory structure; 9.3-3 allows for amendment; 670 Old County Rd; Map 31 Lot 114; 5 acres; RU Dist. *Letter from Bob Andrews, Justine Cihanowycz's replacement at Island Pools and Spas. No Correspondence*

The board reviewed the materials submitted by Bob Andrews of Island Pools and Spas. The 5 acre lot is long and comparatively narrow. He explained that the reason for the re-application to site the pool 38' from the north bound, needing 12' of setback relief, is because the originally approved site would actually be over a deep driveway that is going to be filled in. Island Pools and Spas now recommends to the Nachbars to not build the pool in the driveway area as they believe the fill, regardless of compacting, would not provide sufficient support. It is quite a deep drive. The garage shown on the plans has not been built yet. It's his understanding it will be built, but they are not the contractors. The garage acts as part of the required pool fencing on the plans; if it is not built, Bob said, the fencing will continue in a line. The pool is planned to be built first.

Bob said he'd hoped to have already gone before the Historic District Commission by now, but they meet on the first Monday, and in this case, that had been New Year's Day. He is scheduled to have a hearing with them. He is getting approvals from the Board of Health. It was established that the pool equipment would meet the setbacks, that lighting will conform with the bylaw and that there is adequate natural vegetation and landscaping on the lot. Mr. Mazza, the abutter to the north did not correspond to the ZBA or attend the hearing. After further discussion, the ZBA voted to approve the pool with the usual pool conditions on the grounds that it would be unwise to build the pool over fill, that the site is practical in regard to what is on the lot and will not be detrimental, and there was no abutter objection. Eric said this application had not been controversial, but in future applications, an engineer's report as to the instability of the filled in site would be asked for.

7:50 An application by Jon and Melissa Hirschtick for a Special Permit for an 18' by 36' in-ground pool with associated patio, equipment pad and fence. Sect. 3.1-1 requires a Special Permit for a pool; 8.5-4 is about lighting regs; 165 Pond Rd; Map 30 Lot 2.61; 2.75 ac.; RU Dist. *Letter from Bob Andrews. Correspondence: 1) Tom Wetherall called on abutter Roithmayr's behalf to say she had no problem with application.*

The Board looked at the plans and read Bob Andrews statement re the application. Tom Weatherall's comment was conveyed. Eric noted that the pool equipment was shown to be outside of the 50' setback. Bob Andrews said that is an oversight on his part, as since it is part of the pool it should make the setback. He said he would re-draw and re-submit the site plan (with their client's permission) showing the re-sited equipment pad. He also gave the Board a copy of Deep Bottom Pond Owners ARC written approval which stated that the fence on the north property line must be a minimum of 4 feet from the neighboring property. The ZBA plan shows it to be "2'-4'" from that line: Bob will make that change on the plan as well. The pool will have a light within it, for safety reasons. No overhead lights are planned. A new septic system is being put in and Board of Health permits are being sought for this and pool approval. The site plan shows adequate screening vegetation on the lot. Citing that the pool met the regulations and

would not be detrimental to the Deep Bottom Pond neighborhood, the ZBA granted the Special Permit with the usual conditions and upon receipt of the revised plan.

8:10 An application by Daniel Imbrogno for Special Permits: 1) Extend and Alter a pre-existing non-conforming (by setbacks) house: A 1070 sq ft addition to be 32' from Crow Hollow Rd setback (Section 11.1-3); 2) To have a landscaping service business (Section 8.5 of Zoning Bylaws); Map 31, Lot 102.22; 10 Crow Hollow Rd; RU District; 1.38 acres.
Correspondence: Abutters: 1) Irene and James Price (2 letters); 2) Chris and Nelia Decker; 3) Judith Schubert; 4) Patricia Duffy; 5) Elaine and Neal Price; 6) David and Adrian Maslin; 7) Barbara and Robert Maciel; 8) Crow Hollow Rd residents and neighbors: Veronica and Richard Conover; West Tisbury residents: 9) Wendy and Patrick Jenkinson; 10) Ken and Cathleen Vincent
Copy of Janury 4, 2007 letter from the applicants to their neighbors was submitted to ZBA by Irene and James Price.

All correspondence is on file in ZBA office and available to be read or copied.

(Carole Hunter was hired to design the additions for the Imbrogno couple, and noting that the house is 47' from the Crow Hollow Rd bound, realized they'd need a Special Permit to alter and extend a pre-existing, non-conforming house. At the nearest corner the vestibule and porch addition would come as close as 34' to this bound. She also noted a substantial landscaping business operating without a (required) Special Permit from the ZBA. As the hearing for the addition could not go forward while there was an un-permitted business on the lot, Carole advised the applicants to apply for the landscaping business special permit. Service businesses like landscaping, carpentry, plumbing etc are defined as providing services to the public on or off the premises and are allowable through a Special Permit from the ZBA in the RU District. Both applications are being heard simultaneously.)

The applicants submitted: they plan to work 6 days a week from 7:30 AM to 6:00 PM. Work is done off site; loading and leaving at 7:30, returning and unloading at 6. They submit that trucks and equipment are housed in a shed(s) on the property and they do not store or sell products like stone, gravel, fertilizer, etc. No signs; employees park in 2 spaces off the driveway. Screening from personal residences, neighbors and roads are provided by fencing and various plantings; that sheds and equipment are accessed by an existing second gravel drive they put in off Crow Hollow Road.

All correspondence, and statements from the applicants, was read aloud into the record, which took some time, including letters from Robert Maciel and Cathleen and Ken Vincent submitted at the hearing. On the official application form filed by designer Carole Hunter, Dan Imbrogno is listed as the applicant. His wife Jenny DeVivo it became apparent, also is an applicant. The correspondence reflected mixed positions from the abutters, neighbors and W.T. residents. In general, the applicants were described as being good people and neighbors, respected for their hard-work ethic and contributions to the Crow Hollow neighborhood, and some recognized that they were trying to run the business as to not to disturb their neighbors.

Some letter writers said they did not want to see the applicants lose their livelihood, but were disturbed at the impact the business was having on their quiet neighborhood and hoped that

conditions put on the business would help. Some wrote that it wasn't personal, but they regretfully found the business to be too large and noisy, and with considerable truck traffic that they found to be negatively impacting their road and community. Safety issues and odor from compost or manure pile were cited. Some wrote of being visually impacted due to a second drive cut into Crow Hollow Road, and some clear-cutting on the lot to make room for the equipment and storage of logs and compost. It was described in some of the letters that "The Lawnmower Man" had started out small, and then within the last year had gotten busier with more equipment.

One direct abutter whose house faces the business area is opposed completely to the business being there. Another abutter was ultimately opposed to the business being there.

Some letters were wholly in support of the business, one from a direct abutter, one from a neighbor living on Crow Hollow Road, and two from West Tisbury people who had lived in the neighborhood previously, but no longer lived there.

Eric Whitman told the assembly that, in view of all the correspondence, the ZBA would not be voting that night, but would continue the hearing to another night and would make a site visit in between. He hoped to review the addition plans that night, as little had been written about this aspect. Dan Imbrogno then spoke of the area cleared on his lot as a storage and meeting space for his workers. He moved to the property 6 years ago; his business has grown to a level that he's definitely happy with; he doesn't want to expand or take on more clients. He'd never had any complaints from anyone nor any word from the Town; they'd only heard compliments when they fixed up their house. Carole came, told them to apply, so they applied.

Eric said we are hearing that there is concern that it (the business) has grown. Bob Schwier asked if the business had radically grown? Dan answered, not radically, but progressively. Bob Maciel said he'd lived at his house (next door) for 34 years, and he himself had brought equipment on to his lot back then to clear trees. He has no smells from compost or manure on his lot. It could be smell from Crow Hollow Farm, on certain days, and don't get him wrong he said, he strongly supports Crow Hollow. He also felt some of the noise experienced by some of the neighbors was due to the Imbrognos clearing, maintenance and putting up fences on their own lot, not from the business. Dan agreed, describing that he works all day, so then he works on his own property at nights, Saturdays, Sundays.

Ernie Mendenhall said he's never had a word of complaint so it couldn't be that egregious, adding it's unfortunate they didn't apply for the permit 6 years ago. Eric said they were hearing now from neighbors who had concerns, and hopefully we'll be able to come to some terms. Jenny deVivo felt the letters were 50-50. She said they had nothing to hide, that they weren't bigger than they were; that she is hurt that her friends never complained to her before.

Jenny said, they want to be honest and above board and graciously invite the Board to visit their property and to inspect their home. Eric added a light moment, saying they wouldn't go so far as that, but would take a look at their yard. Landscaper Mary Wirtz said she is in partnership with Dan. She assured the Board of Dan's integrity and emphasized they are at a capacity they can handle and have no interest in growing or having more equipment. She added that they both are

good communicators. Bob Schwier asked what equipment they did have on the site. The reply from Dan was: a Bobcat, a sizable tractor with implements, trailers for loading the equipment, mowers, brush cutters, 2 dump trucks, and one other truck. There is a pile of logs and one of compost.

Carole Hunter then presented the house addition plans. The house is currently 1,144 sq ft, including an unfinished attic, and the plan is to add 1070 sq ft. The vestibule and mudroom will encroach on the 50' setback. Nancy said that 37' has little meaning on paper; when you actually are on a site, you realize how small a distance 37' is; that the addition might be very close to the road. She felt plantings might mitigate this. There had been clearing on the lot, and the second created drive was quite wide and unscreened from the road. Jen and Dan said they would put screening in for the Maslins (across the way) either on their property or theirs, whichever they preferred. Chris Decker suggested a landscaping plan be submitted. Eric agreed; put it on the plot plan. As to the house, Carol will stake out the additions for the ZBA site visit, which the Board set for Monday Jan 22 at 4 PM. There was no further comment. The hearing was continued to Jan 24 at 7:40 PM.

The meeting was adjourned at 9:15
Respectfully submitted, Julie Keefe, Board Admin.

Approved on January 24, 07