

WEST TISBURY ZONING BOARD OF APEALS
MINUTES APRIL 4, 2007
TOWN HALL AT 6:15

PRESENT: Eric Whitman, Nancy Cole, Toni Cohen, Bob Schwier, Larry Schubert, Tony Higgins
ABSENT: Tucker Hubbell

ALSO PRESENT for All or Part of the Meeting: David Gibby, Cynthia Gibby, William Stewart, Mark Mazer, Ernie Mendenhall, Scotty Young, Matt Merry, Marcia Winsryg, Ginny Jones, Allison McKinley, Jane Hawkes, Nancy Dole, Judy Hart, Mark Yale, Glenn Hearn, Pat Jenkinson, Hasty Runner, Joan Jenkinson, Gay Nelson, Patrick Jenkinson, Linda Hearn, Sandra Polleys

BUSINESS

- The written decision for Skydell was read and approved
- The minutes of March 21 were read and approved.

HEARINGS

6:30 Continuation from March 7 and 21 of an application by Mark Mazer on behalf of Barbara Smith for a 1) Special Permit to alter, extend, reconstruct a pre-existing, non-conforming 2 bedroom, single story cottage built in 1940's: To demolish it and rebuild 28' to the north; 2) Variance for setback relief; 3) Special Permit to build in the Inland Pond District; Sects. 11.1-3, 10.3-2, 6.3-5A of Zoning Bylaws; Map 7, Lot 170; 13 Scotty's Lane; RU and Inland Pond Districts. *Previous Correspondence: Mark Mazer; Barbara (Sundy) Smith. New Correspondence: Mark Mazer*

Toni Cohen and Bob Schwier recused themselves. Mark Mazer came to the table. He submitted a revised plot plan, building plans and new letter detailing the revisions to the plans for this 1,212 sq ft house to be built in essentially the same footprint as the demolished house. The length was shortened, putting greater distance between it and William Stewart to the east, and a 2nd story was added to part of the house. The top height will be approximately 23 feet. Mark reported that ConCom indicated they were OK with the concept. The .74 acre, 76' wide lot necessitates a variance for putting a house on the lot; that is, it's not possible to set it within setbacks. The new plan will put the house 3' back from the Pfeiffer's easement to Seth's Pond, and 36' from the Stewart property. William Stewart said overall he was happy with the plan; that the added height was the least egregious solution. The hearing was closed and the ZBA voted unanimously to approve the variance and 2 special permits, citing that the site and plans were the best solution for the lot and not more detrimental.

7:00 Continuation from January 24 and 31 of an application by Pyramid Construction on behalf of Charles Crovo for a Special Permit for a 42' by 28' two-story garage, the 2nd story to be used as home office space. Sect. 11.2-2 of Zoning Bylaws; 201 Pond Rd, Map 30 Lot 2.56; RU Dist.; 2.75 acres. *Before they left for a long trip, Jeannie Hay Sternbach and Pascal Albanese wrote to ask for a continuation as they will not be in the country on April 4. A continuation to April 25 was approved. The toll period was previously agreed to be suspended.*

7:05 Continuation from February 7 and March 7 of an application by Cynthia and David Gibby for a Special Permit to extend a pre-existing, non-conforming (by setbacks) house: The Gibbys have amended their application. *Previous correspondence: 1) Abutters Tom Reynolds and 2) Lisa Fisher. New correspondence: 1) Tom Reynolds; 2) Lisa Fisher (2 letters each); 3) David and Cynthia Gibby. All correspondence on file in ZBA office and available to be read.*

Bob Schwier and Toni Cohen recused themselves. David and Cynthia Gibby who came up from PA, joined the Board at the table. Tom Reynolds and Lisa Fishers correspondence was read; they are in their winter home in Colorado and were unable to come to the hearing. They wrote strongly about how they

felt their farm would be encroached upon; loss of use of their land for farming, and other issues. Cynthia Gibby read her letter to the Board, detailing their revised plans, the new land survey, and responses to their neighbors' letters. The Board of Health regulation was read regarding keeping swine 25' back from a lot line or way, and 100' back from a house not the swine keepers own. Eric drew a crescent on the Gibby plot plan to approximate square footage swine can't be kept on due to the Gibby addition and found the 150' by 25' loss to be not significant or detrimental. The Board agreed that this was not a sufficient loss of agricultural use to deny the Gibbys the right to add on to their house, particularly as the pigs are seasonal and the Gibby addition will make the 50' setbacks. The Gibbys have asked the surveyors to set the corners of the addition. Scotty Young, a friend of Lisa and Tom who attending the hearings on their behalf, said that Lisa and Tom have not kept pigs in this particular area, but rather there are some outbuildings, clotheslines and equipment there. After further discussion, the hearing was closed; the ZBA voted unanimously to grant the special permit as they did not deem that the addition would cause an unnecessary decrease in agricultural use or potential productivity of land, and that the construction would not be detrimental to the neighborhood.

7:35 An application by Marsha Winsryg for a Special Permit to sell her artwork and crafts on occasion from her home as a home occupation. Section 8.5-1 of Zoning Bylaws; Map 31, Lot 69.4; 20 Road to Great Neck; RU District. *Correspondence: 1) Abutter Peter Rodegast*

Nancy Cole recused herself. Peter Rodegast wrote in support of Marsha's application. Marsha joined the Board at the table. For now she plans to have art sales on occasion or by appointment. She has adequate parking for up to about 26 cars, but doesn't expect that amount at any one time by a long stretch; more like 5 or 6 cars at one time for a sale, and less than that if she had regular hours. It was differentiated that this special permit is for Marsha to sell her own artwork for personal gain, not for the occasional non-profit sales she has from time to time to help support an orphanage in Africa. The Planning Board is the reviewer for non-profit ventures. It was established that Road to Great Neck is a private road owned by Allen Look. If the road becomes in bad shape, Eric told Marsha, she would have to be in charge of seeing it's fixed for her customers. She would like to put a 6" by 9" sign for "Crow Hollow Gallery" on the tree at the intersection of Tiah's Cove and Great Neck roads, technically an off-premises sign. Marsha reported there were already about 8 signs on this spot. She was not requesting to have a sign at the end of New Lane.

Ginny Jones spoke, saying she was speaking as a resident of New Lane not as a Planning Board Member. She finds temporary signs and balloons tacked up at the end of New Lane offensive. She said it's often she who ends up taking them down. She doesn't care for the proliferation of signs at the head of Great Neck Rd, and also finds that signs and balloons often end up littering the roads. The ZBA made conditions for the gallery, closed the hearing, then voted unanimously to grant the special permit with conditions which are:

- 1.) The sign at the head of Great Neck Road must be of the placement, design and size as submitted to the ZBA.
- 2.) Only on-site parking allowed.

7:55 An application by Jane Hawkes for a Special Permit to put an addition on her conforming house by adding 459 sq ft to an existing 331 sq ft wet studio and connecting to the house through a covered breezeway. The existing studio is 22' from the northern lot line. Map 37, Lot 26; 188 Vineyard Meadows Farm Rd; RU District 1.4 acre. *Correspondence: 1) Abutter Mark Funari*

Mark Funari, abutter to the rear, wrote to say he was concerned about the overall size and aesthetics, whether it would fit into the neighborhood, and construction noise during the summer. Jane Hawkes and Allison McKinley, applicants, outlined their proposal. Jane's parents are elderly and seek to live with her and she is trying to provide comfortable living quarters for them. There is an existing wet studio on the lot, 22' from the north bound and it makes economic sense to utilize this as part of an addition to her house. The Board and Ernie decided the studio was built when setbacks for an under 600 sq ft accessory building was the height of the building or 10', whichever was the larger number.

The plans show some kitchen facilities, but not a full cooking stove. The ZBA felt they were looking basically at plans for an attached apartment, backed up by Ernie who said any cooking facilities would qualify it as an apartment. Jane said her parents would need the ability to prepare food although the main kitchen could be used by them when they wanted. She did not want to call the addition an apartment as Ernie, the Zoning Inspector had told her, if her parents were no longer there and the apartment was empty, she could not rent out the main house at a market rate if she wanted to leave the island for any reason or any length of time. Ernie, a member of the AHC told the meeting: if people get apartments and don't rent them, but do rent their main house, it has to be the affordable unit. Jane said she felt the laws were "screwy", but accepted that the addition would have to be termed an apartment and have the affordable housing conditions of Sections 4.4-3 and 4.4-4 attached to the special permit. Regarding that the whole house would now be 22' from the lot line, the ZBA concluded the studio was there already and incorporating it into the design would not be more detrimental to the neighborhood. However, they cautioned that henceforth it would be a non-conforming house as to setbacks and would need to return to the ZBA for any future building applications.

8:30 An application by Nancy Dole to amend, modify and clarify previously issued special permits regarding the use of her property at Map 32 Lot 78, 1076 State Rd. The application is submitted to be without prejudice to any existing rights the applicant may have under any applicable special permits or rights of use of the property. Section 9.3-3 of Zoning Bylaw; Village Residential District. *Correspondence; 1) Letter from Ernie Mendenhall to Nancy Dole previously sent; 2) Pl. Bd. letter*

A brief history: Recently Nancy Dole had appeared before the Historic District Commission to get approval for a potential tenant's sign, that of the gallery cum clothing store called Yes We Have No Bananas. Hearing of this, Zoning Inspector Ernie Mendenhall told Nancy he believed she no longer had the ability to have a retail store at the premises. He did not write a cease and desist order at this time. He did write the ZBA on March 5 that in his opinion the retail use was no longer viable and that the place to resolve this is at the ZBA level. Nancy in the interim, after Ernie's verbal denial to her and his March 5 note to the ZBA, talked with a lawyer and Julie in the ZBA office to figure out under what section she should make this application to the ZBA. Nancy chose to have her former special permits clarified by the ZBA as she felt she had not lost the right to have retail as a use; she filed under Section 9.3-3, the right to amend. On March 23, Ernie wrote a letter to Nancy, on the advice of Town Counsel, in which he told her to cease and desist any retail use, and point by point outlined his decision. The letter is detailed in arriving at the decision that a clothing retail use had not been allowed previously, and the retail use previously granted by special permit had lapsed. He told Nancy she could appeal his decision, and if the ZBA authorized retail at the hearings, the letter would become moot. However, she is not appealing the ZI's decision contained in the March 23 letter, but rather is applying to amend, or in her words clarify, the previous Special Permits granted to the property by the ZBA. Her application was received March 21. It was Town Counsel's verbal opinion that the application could be heard as an appeal or an amendment. (If the retail use had been a grandfathered use, then not used for 3 years, it would be an abandonment of use. But, it was actually granted by special permit, post-zoning; not using it for 2 years would mean a lapsed special permit, not an abandonment of a pre-existing, non-conforming use.)

The hearing was opened. Correspondence was read, and Nancy joined the ZBA at the table. She said the Grapevine newspaper began in the building in April 1971. Zoning in Town was adopted in April 1972. In addition they processed printing jobs such as fliers and a shopper. When the paper folded, they began to rent the building out to other businesses. In 1982, Jack Koontz and she applied to the ZBA to have a fishing tackle store there, and it was granted (under a change of use) as a retail use for that particular business, (even though Jack Koontz also lived in the building.) In 1986, a special permit was granted to Jackie Clason, massage therapist. In 1988, a Special Permit was granted to change the designation as professional offices rather than having to come before the Board each time there was a

new tenant or business type on the premises. In 1995 a Special Permit was granted, adding retail, changing the uses to office/retail, as a new tenant wanted to sell antique furniture. In 2003, the special permit was modified regarding the sign and parking and to clarify that the building wasn't limited to just 2 businesses.

At the hearing she emphasized she was not appealing the contents of Ernie's letter but rather seeking to have her earlier permits clarified and modified if necessary to retain the retail use she felt she hadn't lost. Nancy noted that in 2003 when she came to modify her permit, one of the things she had wanted cleared up was whether or not she was limited to two offices as the language of the decision when she changed from specific occupations was to two offices. Ernie had told her she couldn't rent to Amanda Cohen to do massage in one of the spaces while Langer (chiropractor) and Wallace real estate were in the building. In 03, she said, the ZBA agreed she was not limited to just 2, and did not say to her that her retail use had lapsed.

Her tenant Wallace & Co did not renew this year. She signed a lease with Bananas assuming she had the retail use. She said Ernie said to her that the retail use of 95 was only for an antiques store. Nancy said to the Board, you know that you granted me the combined use of commercial office/retail use; that the intent was to make the uses (generic) so that each tenant wouldn't have to go get a new special permit. Her concern at this point is for her '95 special permit, not whether or not Bananas would be permitted. In 35 years of running businesses there she said she has had no complaints.

Ernie said retail hasn't been there for 3 years, so it's a lapsed use. Nancy said her attorney had discussed whole permits vs. part permits. Can just part of the special permit expire? Is it a combined use? ZBA referred to the Zoning Inspector's letter wherein it said that at the time of the '95 permit, selling clothing was not listed under "Miscellaneous Retail or Wholesale"; the retail use was limited to the category of uses defined in this section, so selling dry goods had not been allowed under that permit. The letter concludes that the 95 decision added retail, which authorized 2 separate uses and the retail use has lapsed. Nancy said she was not there to appeal the letter, she was here to clarify that the combined uses she has had for a long time should not be lost; to amend the permit. This is not about Bananas; she was afraid the neighbors were here to complain; she doesn't want her permits taken away; she's not had any complaints in the past. Eric said, we are trying to be accommodating, but it shouldn't be that you have carte blanche to have any business there without some review; according to counsel you have lost the retail use, but you still have the professional use; over 35 years, the only retail has been the Koontz fishing tackle and one year of antique furniture in '95. Nancy asked again why, in 2003, the ZBA didn't tell her she no longer could do retail. Eric said it had not occurred to the ZBA that it was an issue; it wasn't part of the hearing or discussion. ZBA did not even think about it at the time. It was Ernie and the Planning Board this year who sought the legal opinion, and he, Eric, agrees with the conclusions in the letter from Ernie to her. Nancy read the part of the letter that said if the ZBA grants relief, the letter becomes moot.

Larry asked to clarify the '95 permit to change from professional space to professional/retail. ZBA members, all of whom were on the Board in '95 (but Larry), agreed their intent was to grant an "and/or" situation; they thought it could be both, a mix. But they pointed out, we now have a Town Counsel opinion (the letter from Ernie, who had contacted Counsel.), saying it wasn't that; that they are two separate uses. Nancy Dole said she already had the professional use, and in '95 retail was added. The ZBA had not listed what the retail businesses could be. (There is a general condition on the '95 permit that regulates the use) She went on to say she did not want to go to court or be a cause celebre. Nancy Cole asked her to describe a retail business that would be good there. Nancy said, small, for example Carlos selling his hand made furniture pieces; Bananas selling their dresses and art as long as it didn't disturb the neighborhood. She'd like a list of things that are OK. If Bananas were there they'd have about 800 sq ft, with the Chiropractor in back. The interior walls would stay the same.

Parking. Nancy said there are 13 spaces; 2 are for the upstairs tenants; 3 for Curtis Langer. It was established he was open one morning and 2 late afternoons. Joan Jenkinson felt it was more likely 8-11 spaces. Selectman and abutter Glenn Hearn said Donny's place (in North Tisbury, where Bananas used to be) was appropriate for clothing, for retail, had been the perfect place for Bananas. (although the Planning Board had disagreed strongly with that last summer at ZBA hearings for Bananas at Donny's.) Glenn said having Bananas at Nancy's place would burden the neighborhood and the gas station and garage, and those businesses were there first. He said the Planning Board was considering her request to have two drives, but he thinks that's crazy. Linda Hearn said zoning was put in for a purpose.

A short history of the property was again discussed. Before 1971, the place was a residence; An office and the Grapevine newspaper started in 1971, zoning adopted in 1972. Pat and Joan Jenkinson sold them the building in '77; they'd been renting before. Pat said there would have been no sale without an easement agreement for the gas station. Planning Board member Ginny Jones said she was speaking as a citizen; retail business is not allowed in the VR district; how did retail come to be here. Julie looked up the old special permits; they were granted under change of use. She used the present Back Alleys as another example in the VR district: Laundromat/car wash to retail sales to deli. Also, what is now the Red Barn Gallery used to be a clothing store and is now antiques/art, and was changed with change of use special permit. Ginny Jones said that was different, both are practically the same.

Nancy said she'd gone to the Planning Board to apply for a 2nd drive to ease traffic problems for the site and neighboring property. Glenn asked Judy Hartford how many employees she would have. The answer is normally one, sometimes two. Glenn said even now he can't get in to see Rooney (a tenant). Nancy said the Planning Board were encouraging about putting in a second drive. Ginny Jones said that wasn't the case and asked Nancy to tell the truth. Nancy said that David Douglas, Mark Yale and Sue Silva had told her she could proceed with an application, that she had a hardship. Ginny said she had not been in favor of a loop around drive. Nancy said, when Judy Hartford, one of Banana's proprietors, doesn't get permission, she can go elsewhere, but Nancy loses the ability to have any retail there, for example Carlo having a furniture store. Eric said she could still have the commercial property use. It's his take that the '95 permit envisioned retail to be part of the mix, but that use has lapsed. He said having Bananas (a popular store) or using the place solely for retail is different than what was in 1982 when Jack Koontz sold fishing tackle in the back or when the antiques was added. Eric suggested the hearing could be continued; he cautioned Nancy he didn't think she had the votes right now for retail use. He sensed from the neighbors that Bananas would not be a good fit. She could continue or withdraw without prejudice.

Nancy said it seemed as if ZBA wouldn't be happy upholding her retail use. She didn't know if she should withdraw without prejudice. Eric agreed it was hard; everybody knows everybody. He pointed out she had 1/3 of an acre, the business in back, 2 apartments and the spaces in front. Nancy said she really didn't think it would be too much, sincerely thought it would work, she asked for the Town's trust. Eric said he believes retail has lapsed. Also, that it was late at night for everyone; she could continue, talk to her lawyer. Nancy decided to ask for a continuance, which was unanimously approved, and set for April 25 at 7 PM.

OTHER CORRESPONDENCE

- From Edward J. O'Connell (MVC)
- From Paul Foley...Changes to MVC DRI Standards and Criteria.

The meeting was adjourned at 10:30.

Respectfully submitted, Julie Keefe, Admin.

