

**WEST TISBURY ZONING BOARD OF APPEALS**  
**MINUTES APRIL 25, 2007**  
**7 PM TOWN HALL**

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

**ABSENT:** No one

**ALSO PRESENT for All or Part of the Meeting:** Clark Goff, Michael Colanari, Marci Watson, Michelle Kelly, Eleanor Pearlson, Betty Haynes, Bill Haynes, Mark Weiner, Anna Edey

**HEARINGS**

**7 PM Continuation from April 4 of 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. *Previous Correspondence; 1) Letter from Ernie Mendenhall to Nancy Dole previously sent; 2) Pl. Bd. letter 3) Letter from Nancy asking to withdraw without prejudice; 4) Copy of letter from Nancy to Ernie*

Correspondence was read. The ZBA agreed that the use of “moot” in Nancy’s letter to Ernie was unrelated to the use of “moot” in Ron Rappaport’s letter to Ernie; that is, the word in Nancy’s letter had nothing to do with the ZBA as the only action they were taking was to vote on her request to withdraw. The board voted 6-0 to grant the withdrawal without prejudice, with Tucker Hubbell recused as he was not at the first hearing. The Board discussed the situation in general, and said they concurred that retail had been lost, and that Nancy could not just start a retail use: She would have to apply to ZBA again. Larry said he did not concur with this or Counsel’s opinion that the retail use had been lost. Nancy Cole reasoned that Nancy Dole had had the office use, had added retail, so it was a separate use, and one that had lapsed. Larry did not agree. He felt that (in 95) it became a whole piece, he didn’t feel that the two uses could be separated.

**7:30 PM An application by Deon and Emily Thomas for a Special Permit** to operate a restaurant called Deon’s at the former Bittersweet at 688 State Road in North Tisbury: The applicants propose to operate from 6:30 AM to 10 PM daily and as such would be a substantial change to Bittersweet’s use and Special Permit. Sects. 9.3-C2, 11.1-3 of Zoning Bylaws; Map 22 Lot 54; 688 State Rd; RU District. *No Correspondence*

Michelle Kelly of Tea Lane Associates represented the Thomases who are in Anguilla. Their statement of their intentions was read. It included upholding the conditions of the current special permit, asking that the picnic tables be included for seating customers while still only seating the allowed 44 seats, and asking to be open for breakfast at 6:30 AM, lunch, and the last serving of dinner at 10 PM. It was stated that the current permit allows the picnic tables for waiting customers only, not serving them. Michelle described that the breakfast would be light, consisting of mostly egg sandwiches. It would be sit down and take out. She was not sure if they planned to close between meals. The Thomases will be the chefs. They have run the Cornerway restaurant in Chilmark for the last few years; this summer will be their last there, if all goes well with “Deon’s”. Eleanor Pearlson of Tea Lane Associates and Pebco that owns the property said that the Thomases currently live in the house on the property (seasonally) and are hoping to buy the house and restaurant if they are successful, and live here year round.

Owner of the Glass Works, Mark Weiner, is an across the street abutter. He said he had talked to Kathy Kaempfert, owner of the Farmhouse Bed and breakfast next door to the proposed Deon’s.

He said she told him she was going to email the ZBA as she had many concerns. Julie Keefe said no email had been received. Mark said he's also been talking with Bill Haynes. Mark said he is not against the dynamic, but he and Kathy want to point out that it's a 15 ½ hour day, and the owners won't always be there to have control. Also, that deliverers come when they want...no one can control their delivery times. He feared there would be deliveries, with trucks idling, at 6:30 to 7:00 in the morning, and peace in the neighborhood in the morning would be shattered. He asked if there was adequate parking? Michelle Kelly said staff could park in the yard of the house, and no parking signs could be put up (to contain parking to the lot). Mark Weiner said signs don't work. He also said the picnic tables have to go. They weren't used last summer, but were before that while Job (Yacubian) was running the restaurant. They weren't supposed to be for restaurant seating, but "weaseled" their way back in. There is a lot of noise from people at these tables, particularly bad if a party is seated at ten and is still there at midnight.

Michelle Kelly said the picnic tables would be part of the 44, not extra. Mark Weiner said the picnic tables and the early opening hour are his main points. If they open at 6:30, someone will be opening up at 5:30. Tucker suggested a day off for the restaurant. Michelle said it would be a financial issue for the owners, so she didn't think they'd agree to that. Toni Cohen said the ventilation on the porch is bad; if that were fixed customers would sit there more happily, rather than wanting to sit outside. It was pointed out that the restaurant was conditioned to have air conditioning so the windows could be shut to keep down noise for the neighbors, but the air conditioners don't work well enough.

Michelle was asked how long the restaurant would be open? Memorial Day to the end of October, maybe year round in the future was the answer. Across the street abutter Bill Haynes spoke. He said he knew the Thomases and liked them, but the restaurant has been noisy...Bittersweet was noisy. He said the porch was converted into seating space illegally after he sold it...it had been put in as an entryway when he owned it, but that is in the past. As for the outside picnic tables, there are people screaming and laughing late at night; it's like listening to constant outdoor parties. He'd like to see shorter hours, too. And, he owns the drive between (former) Gadowski's and the restaurant and customers don't have the right to park there. His son is an EMT and people park there and block the drive sometimes. He said these are his concerns but he doesn't want to stop the Thomases from earning a living.

Michael Colanari said he knows the Thomases: They are very good people and will be good tenants there, they'll keep their word and be good neighbors. He pointed out that Bill Haynes used to serve breakfast there, and asked all to give the Thomases a break. North Tisbury needs it; Humphrey's is no longer, and Ruth Adams gallery has been devastated by that. He said he understands Kathy Kaempfert's concerns, but there was no one more angry at Bill Haynes this time last year than she was. He said the Thomases are not Ben DeForest (referring to a previous lessee). Mark Weiner said he would agree to disagree...they are good people but there are some things they will have no control over. He suggested signs explaining to customers that this is a residential district and to respect the neighbors peace and quiet. Tucker and Toni suggested the same message on the menus. Toni suggested not using the tables at night, or putting a cap on the time of nighttime outside seating, and opening later in the AM. Tucker doubted that would work, being too hard to police in the pressures of a busy restaurant setting. It was established there are benches on the deck.

Mike Colaneri said Ben and Job had set bad examples. He asked if there had been complaints. Not to the ZBA, was the answer. Bill Haynes and Mark Weiner said they had complained to the Board of Health about the not permitted nighttime picnic table use, and as a result, the use was

stopped. Tony Higgins suggested, get rid of the picnic tables and serve from 7 to 9. Michelle Kelly said a 9 o'clock closing would be a hardship. Mark Weiner asked for a 7 AM start, rather than 6:30 and remove the picnic tables. There was no more testimony, so Eric closed the hearing. The Board added 2 new conditions to the existing ones on the current Special Permit: Hours are to be from 7 AM to 10 PM and the picnic tables are to be removed. He asked Michelle Kelly if she was comfortable in accepting these conditions for the Thomases. She said she was. Eleanor Pearlson said she wanted the restaurant to open at 6:30. The Board made it plain that the opening time would be 7 AM. The Board voted to grant the Special Permit with conditions on the grounds it would not be more detrimental to the neighborhood as conditioned.

**8 PM An application by Anna Edey for a Special Permit** to build a 7' by 14' endless pool and a 20' by 19' solar-heated building to house the pool. Sect 3.3-1 of Zoning Bylaws; Map 8 Lot 2; 18 Solviva Rd. RU District. *Correspondence: Robin Hyde, in favor*

Correspondence was read. Anna Edey joined the Board at the table. The ZBA questioned why an indoor exercise pool of this size needed a special permit. Anna and Julie explained that it had been referred to the Board by the Zoning Inspector as it was a pool, nonetheless. Ernie Mendenhall, ZI, had told Anna that a lock on the door was needed, but not a fence. The latch must be 5' off the ground. The Board asked Anna if the solar gain for the pool would be enough to heat it in the winter? That was the goal, she said. She explained some of the technicalities of the pool and the building, as submitted in her application. The lot is 10.5 acres and the pool building is centrally located and not really to be seen by any abutters. There was no one there for the hearing, the hearing was closed, and the ZBA voted to grant with the usual condition regarding drainage.

**8:15 Continuation from January 24 and 31 and April 4 of an application by Pyramid Construction on behalf of Charles Crovo for a Special Permit** for a 42' by 28' two-story garage, the 2<sup>nd</sup> 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. This application has been continued while the applicants develop a new plan. The agents have been off the island for some time. The toll period has been suspended. Continued to May 9 at 7:25 PM.

## **BUSINESS**

- The minutes of April 4 were approved.
- Volunteer to serve on Energy DCPC Commission: Larry Schubert
- The Board recollected a Site Plan Committee review of Vineyard Gardens, but not whether or not there had been a Special Permit hearing. There is no file or listing in the annual reports of a Special Permit. The Board of Health and Building Inspector had asked the ZBA for their memory of any hearing originally granting the use. The Board assumed that the use, agricultural, was granted to the Wileys in the '90's by the Zoning Inspector, with Site Plan review.
- The Board discussed possible upcoming cases.

The meeting was adjourned at 9 PM.  
Respectfully submitted, Julie Keefe, Bd. Admin.

Approved on May 9, 2007