

WEST TISBURY ZONING BOARD OF APPEALS
MINUTES NOVEMBER 28, 2007
6:30 PM HOWES HOUSE

PRESENT: Eric Whitman (Chair), Tucker Hubbell, Tony Higgins, Nancy Cole, Larry Schubert

ABSENT: Toni Cohen, Bob Schwier

ALSO PRESENT for All or Part of the Meeting: Carole Fonesca (stenographer), Robert Rohrer, Mitch Pennington, John Powers, Ernie Mendenhall, Glenn Hearn, Jack Shea, Kathy Harris, Robert Harris, Atty John Amabile, Robert Potts, Katherine Long, Tom Vogel, David Steere, Bonnie Steere, Dawn Nelson, Cynthia Aguilar

BUSINESS:

- The minutes of October 17 were approved with corrections.
- ZBA voted to approve a revised plan for Mr. Blackman's addition at Map 29, Lot 53. The original plans were approved on 06/27/07. Finding this to not be a substantive change in need of a new hearing, the Board found that the project is somewhat diminished, not more detrimental, and less visible due to being shifted to a lower elevation.

HEARINGS

6:35 An application by Robert and Marilyn Rohrer for a Special Permit for setback relief to add on to an existing garage that is 27' from the West bound: A 19' by 18' one story addition for car storage that will be 11' from the West bound at its nearest point. Sec. 4.2-D4 of West Tisbury Zoning Bylaws. Map 12 Lot 7.4 391 Indian Hill Rd; RU District. *No Correspondence*

Robert Rohrer and the Board established the following: The existing approx 560 sq ft garage met the side and front yard setback requirements at the time it was built. The applicant proposed the site of the addition due to considerations for the topography and existing development on the lot: The existing building is bounded on one side by Indian Hill Road, a well and stone wall are to the front and a stone wall and steep hill are to the back. The use for the garage is for storage of antique cars. The applicant does not propose to put in electricity, plumbing or heat. The existing driveway will be lengthened; there will be no new curb cut. There was no abutter objection from the affected neighboring parcel, which is a large parcel under a conservation restriction. There was no objection from that Conservation Restriction overseer. The Board voted unanimously to grant the Special Permit as the construction applied for and the setback relief granted will not be substantially more detrimental to the neighborhood and Town, and the construction is in harmony with similar development in the neighborhood and town in scope, size, and design.

6:50 An application by Mitch Pennington for a Special Permit for a 20' by 50' in-ground pool with associated and fencing Sects. 3.1-1, 8.5-4 of Zoning Bylaw; 125 Pond Rd; Map 30 Lot 2.63, property owned by Ed and Sheila Schwartz; RU Dist. *No correspondence*

Mitch Pennington presented a revised plan for the pool, showing the pool to still be at the back of the house, but perpendicular to it, rather than horizontal. The revised plan included the removal of a pool shed previously proposed. The Board and Mitch Pennington established the following: The lighting proposed for the pool will meet the requirements of the West Tisbury Zoning Bylaws. The pool area will have a code approved safety fence, with self-latching gates. The fence will be higher than 4' for further safety for children. The fencing has been approved by the development's ARC.

The pool meets setbacks as shown on the plans. The pool will be maintained professionally in such a way as to not cause damage to the environment. The equipment will be housed on a pad, in a wooden enclosure or in the existing garage. The applicant will receive the necessary Board of Health approvals for their project. The Board voted to approve the Special Permit with the usual pool conditions as the application fulfilled the requirements of the Bylaws. An added condition was that the pool and equipment must meet the 50' setbacks.

7:15 A continuation of a hearing will be held at the Howes House on Wednesday, November 28, 2007 at 7:15 PM to consider an Appeal by Robert and Kathy Harris of an August 15, 2007 decision of the West Tisbury Zoning Inspector. It was the Inspector's decision that according to the Zoning Bylaws he could not restrict the Harris's abutting neighbors' (the Friends) right to have roosters and other fowl on their property. The Harris's maintain that the roosters and other fowl are in violation of the Zoning Bylaws by creating unacceptable noise and disturbance and ask for enforcement. The Freund's property is Map 7 Lot 143, 31 Millstone Lane; RU Dist. The right to appeal is under Sects 8 and 15 of MGL Ch. 40A. *Previous Correspondence:* 1) *Abutters Bradford Voigt and William Burton*; 2) *Dale McClure, Pres. MV Ag. Society*; 3) *Copy of fax to Ernie from Reddick*; 4) *Jim and Vicki Nelson*; 5) *James and Debra Hendrickson*; 6) *Scott Jones and Kell Hicklin*. *New Correspondence:* 1) *Kathy Harris (sent to you)*; 2) *Phone conversation with Kurt Freund at 5:45 PM Nov 28.*

Kathy Harris's letter was read aloud, regarding a conversation she had with a Kevin Kiernan in the General Counsel's office of MA DEP. In short, he told her that the rooster noises would fall under noise regulations; that the law makes no distinction between the source of noise, and that this is not an agricultural issue, but a noise issue. Julie Keefe conveyed to the room a conversation she had just had with Kurt Freund, who had left a message at the office in the afternoon. She returned the call at 5:45 PM. It was the first conversation she had had with him. Essentially he said he and the Harris's had agreed to mediation and he was sure they would reach an agreement; he had spoken to the mediator, Paddy Moore; he had had a good conversation with Bob Harris; he asked if he had to attend this night's meeting; he would like to ask for the ZBA to grant another continuance in order for the mediation to happen, but didn't think he could make the meeting; Julie had told him it was up to him, he didn't have to attend if he didn't want to or couldn't; she would relay his conversation.

Eric asked Atty Amabile to speak of what had happened since they all last met. He said a lot of efforts have been made by the Harris's to mediate with Kurt Freund and Dyan Redick and it was only a couple of days ago that they indicated to the Harris's that they'd mediate. He and the Harris's would concur that they will need more time. He reminded the Board and the room they were not trying to change the world, but to resolve a problem. After the last hearing, they spoke with Selectman Glenn Hearn saying they'd take him up on the offer of mediation. They made calls to Kurt. By November 9, he still hadn't returned their calls. Bob Harris called again on November 11 and they talked, wherein Bob said they were interested in mediation, are you? He replied yes I am. He said Kurt talked with Glenn Hearn, too. In the meantime, the mediator who first proposed his services backed out. Paddy Moore agreed to mediate, then she was in a car accident. She is all right, but shaken enough to have to put off starting the mediation. Telephone meetings will need to be arranged. His clients have the resolve to mediate.

The Board expressed disappointment that the situation had still not been resolved, but agreed to continue the hearing. Atty Amabile asked for the date of January 30 (at 7 PM), which was granted. The Harris's signed a waiver of the toll period, as MGL 40A sets time limits under which the ZBA

must act or else the application could become a constructive grant. The hearing was closed. Tom Vogel asked what the letter about noise regulations Kathy Harris had written had anything to do with the ZBA proceedings. Nancy Cole explained that the appeal was basically about enforcement of a noise issue, and read Mr. Vogel Section 3.2-1 of the zoning bylaw: Any building, or structure or any use of any building, structure or premises which is injurious, obnoxious, offensive, dangerous to the community or to the neighborhood through noise, vibration, odors, fumes, smoke, gases, dust harmful fluids or substances, danger of fire or explosion or other objectionable feature detrimental to the community or neighborhood health, safety, convenience or welfare. Atty Amabile wanted it clarified whether or not the hearing had been adjourned before Mr. Vogel spoke. Yes, it had.

OTHER CORRESPONDENCE

- Letter from Stony Hill Association showing a deed that would restrict Jampel from using their subdivision as an access to his property he wants to develop.
- Planning Board...Notice of Hearing
- Town Accountant...FY 09 budget materials
- MVC...Copy of letter re Expedited Permitting
- MVC...Handout from a workshop on Vested Rights, etc.
- Pl Bd...New copy of Bylaw with changes to some affordable sections
- WTHDC...Notice of hearing

The meeting was adjourned at 8:10 PM.

Respectfully submitted, Julie Keefe, Board Admin.