

WEST TISBURY ZONING BOARD OF APPEALS
MINUTES JULY 2, 2008
TOWN HALL 6:45 PM

PRESENT: Eric Whitman, Tucker Hubbell, Toni Cohen, Bob Schwier, Larry Schubert.
Nancy Cole and Tony Higgins arrived at 7:15

ABSENT: None

ALSO PRESENT for All or Part of the Meeting: Ernie Mendenhall (Bldg & Zoning Insp), John Powers (Bd Health Agent), Jack Shea (Vineyard Gazette), Chuck Sullivan, Abby Rabinowitz, Glenn Provost, Mary Kenworth, Jackson Kenworth, Alex Alexander, Mike Colaneri, Elizabeth Haynes, Bill Haynes, Mark Weiner, Kathleen Kaempfert, Robert Mone, Eleanor Pearlson, Michelle Foster, Jan Ogilvie, David Ogilvie, Michelle Brescia, Craig Miner, Leslie Pearlson, Meg Bodnar, Jill Napior, Scott Caskey, John Hoff, Paul Garcia, Norman Hall, Gene Erez, Pam Foster, Geoff Gibson, Bruce MacNelly, Bob Wheeler, Gino Mazzaferro, George Crawford

BUSINESS

- The minutes of June 11 were approved.
- Tucker said Jessica Burt was interested in being the ZBA representative on the Affordable Housing Committee. She will get in touch with Mike Colaneri

HEARINGS

7 PM Continuation of an application by Gino Mazzaferro on behalf of Barbara and Susan Silk for a special permit to build a 32' by 36' garage with a working studio above. (Over 676 sq ft accessory structure on under 3 acre lot needs a special permit: Sec. 11.2-2 of West Tisbury Zoning Bylaws.) Map 11 Lot 10; 36 Hidden Village Rd; RU Dist. *Previous Correspondence: 1) Abutter Elkan Katz; 2) Abutters Michael and Elizabeth Ferry; 3) Abutter Pamela Miller; New Correspondence: 1)Phone call from Pamela Miller emphasizing the building is pushed right up to her lot, 50' minimum; 2) Office visit Michael Ferry, many concerns, primarily building should be pushed back approx 26 feet.*

Builder Gino Mazzaferro brought in a revised plan. After examining the changes, Eric commented that they had made the changes asked of them. Bob Schwier suggested the garage should be pulled closer to the main house in order to get further away from abutter Pamela Miller. As shown, the garage would be the minimum 50' from the Miller lot. Architect George Crawford said that the applicants wanted to keep the garage as far from the house as they could as they didn't want it right in their face. Bob said, how do you think the neighbors feel! George pointed out that there would be at least 100' and trees between the neighboring house and the garage. Plus as shown on the plan, they will provide additional vegetative screening. Tucker asked if they had considered doing 2 buildings, a studio and a garage. Gino said that would mean taking up more space, more clearing...they will keep it one spot. The building will be 768 sq ft downstairs (garage) and 564 upstairs, total of 1,332 sq ft, and 20' tall.

The ZBA were firm in asking that the garage be moved 10' further away from the southern bound; that would be the 50' setback and an additional 10' for a total of 60'. The applicants agreed to this change. The ZBA felt there's a 3,000 sq ft house on the 2 acre lot and although the garage has been made smaller, it's substantial. The ZBA ultimately voted to approve with conditions. The following are the main findings:

- 1.) *The applicants revised their site plan to move the structure back from the East bound in order to be parallel to the house, rather than in front of it. Section 4.2-2D3 requires accessory structures of over a 600 sq ft footprint to be 100' feet back from the front bound, which in this case is the East bound.*
- 2.) *The applicants revised the angle of the garage so that a more neighborly view of the structure faces the East, Hidden Village Road.*
- 3.) *The applicants have extended their existing drive to the garage rather than cutting into the Cardinal Way bank, which would have meant substantial excavation and tree loss and a substantial retaining wall on Cardinal Way **
- 4.) *The applicants have reduced the footprint from 32' by 26' to 32' by 24'. The downstairs will be 713 sq ft and the upstairs will be 564 sq ft: A total of 1,332 sq ft.*
- 5.) *The applicants agreed to move the structure back an additional 10' from the south bound.*
- 6.) *The structure meets setbacks and other dimensional requirements.*

* Amended in these minutes to read Cardinal Way, Not Hidden Village Road. In error, Hidden Village Road was used in Decision. The error is plainly corrected by looking at the plans.

7:20 An application by George Churchill for a Special Permit for setback relief: To build a detached, 24' by 24' single story storage shed/ workshop to be 25' 8" from the rear east bound. Sect. 11.2-2 of Zoning Bylaw; Map 29 Lot 51; 84 Waldron's Bottom Rd; RU Dist. *No Correspondence*

Mr. Churchill had made it known he'd be unable to attend, and his representative did not make it to the hearing. The ZBA discussed the project and the fact that the affected property was a long undeveloped lot with unclear title. The ZBA granted the setback relief with conditions that it is not a garage and not for habitation.

7:35 An application by Chuck Sullivan on behalf of prospective owners John and Mary Kenworth for a Special Permit to reconstruct, alter and extend the pre-existing, non-conforming fire damaged restaurant at 688 State Road in North Tisbury: Sects. 9.3-C2, 11.1-3, 11.1-5 of Zoning Bylaws; Map 22 Lot 54; 688 State Rd; RU Dist. *Correspondence: 1) Pascal Albanese and Jeanie Hay Sternbach; 2) Laura and Alex Alexander; 3) Dale Julier; 4) Joyce and Robert Siberling; 5) Deb Colitti; 6) Scott and Charlotte Caskey; 7) Dee Rotondi; 8) Robert and Tracey Smith; 9) James and Susan Holmes; 10) Tim Boland; 11) Minor Knight and family; 12) Larry and Mimi Cannon; 13) Richard Rooney; 14) **Abutters** Kristen Kusama and Jeffrey Levy-Hinte; 15) Eben Armer and Elizabeth Cecil; 16) Deborah Pigeon; 17) Lynne Whiting; 18) Jeremy and Annie Bradshaw; 19) Allen Whiting; 20) Hallie Armer; 21) Owner Eleanor Pearlson*

The only letter submitted by abutters, Kristen Kusam and Jeffrey Levy-Hinte, was read aloud. They were strongly in favor, regretted the loss of Humphreys Bakery and Sandwich shop to the Town (they had purchased the property) and lauded the Kenworth's efforts to fit into the neighborhood and to commit to local products. They said they support the fine work the ZBA has done to preserve the character of the community and felt the approval of the restaurant would extend this legacy. In the interest of saving time, the other letter writers names were read aloud, briefly summarized as all in favor of the approval for the permit, praising the Kenworths management and other restaurant skills and hoping the restaurant could be allowed to expand as it would be needed to make needed improvements. The Kenworths had submitted a 2 page letter to the ZBA outlining their intentions. They had acquainted themselves with the neighbors to tell them of their hopes and plans.

Glenn Provost, Chuck Sullivan and Mary and Jackson Kenworth represented their application. Glenn began by passing out color-coded site and other development plans. 22 parking spots were shown, one per four seats in the restaurant. The lot is 62,000 sq ft. The southern entrance would be eliminated, and the northern one would start off the drive adjoining the property, making it more obvious there is to be no parking (or blocking) of that drive. This reconfiguration would stop people from parking on the front or along State Road. The building has been moved back and centered and would meet required setbacks.

Mary and Jackson Kenworth spoke, telling of how they have had restaurants on the Island for 12 years, The Sweet Life and Slice of Life. They recently sold Sweet Life. They have a Purchase and Sale agreement pending getting the Special Permit. They plan to keep the restaurant owner operated and open year round, maybe closing for 2 months. Architect Chuck Sullivan explained the building plans before the ZBA. He said there were 3 rooms in the basement used for other than storage. He said that the “numbers” in the Kenworth letter to the Board were not the correct ones. The new building would also have a main dining area, a porch and a kitchen, similar to the existing restaurant. In the slow season, a room could be shut down. The porch and dining room would be similar in footage to that existing. They would have a waiting area inside the restaurant. The coolers currently outside would also be enclosed. Extra footage would be needed to update for codes, handicap bathrooms, aiseways. The current kitchen is too small and not a safe place. The café area would be for waiting at night, and seating during the off season, when say the porch was shut, and seating during the day. The first floor would be 2,462 sq ft, a small second floor would be 106 sq ft, a total of 2,568. The basement would be only storage and would not count as floor area. They would like to increase the number of seats by 16, from 44 to 60. The existing first floor is 1,583 sq ft. If you count the used basement area that adds on 571 sq ft for a total of 2,154.

The restaurant had previously been ok'd for up to 66 seats. The 22 parking spaces plan is preliminary. They will try to create smaller pods, and avoid clearing larger trees. There would be five or 6 employees. Board Members pointed out that no permits or special permits had sanctioned the use of the basement for anything but storage and a small office. The basement is reached through a bulkhead. Chuck said he went by the bylaw to ascertain the square footage. Based on what you see there is an office, a lounge, an ice maker and other kitchen equipment. Legal or not, the restaurant has been run with the use of the basement for years and years. The coolers and other equipment standing outside hasn't been up to code either.

Eric Whitman said let's see if we can get the math to work. In the dimensional table in the Zoning Bylaw, a non-residential accessory structure is limited to be 2,000 sq ft; that is, structures not normally associated with a residence such as a garage, pool, etc are. If you don't include the basement you're at 1,583 sq ft. Tucker felt the bylaw limited a pre-existing, non-conforming tear-down to rebuild at 2,000 sq ft. Chuck said by moving the building to make the required setbacks, they will have made the building less non-conforming, less detrimental to the neighborhood. Chuck felt that if the Board agreed the basement is part of the footage, they have the authority to grant it (under Sect 11.1-3: The Zoning Board may grant a special permit to allow a non-conforming structure or use to be extended or altered, provided that the ZBA finds that the extension or alteration is not substantially more detrimental to the neighborhood than the existing non-conforming structure or use.) He stated the applicants are trying to do everything on the up and up; they do not want to illegally use the basement space, so have come to the Board with their plan to expand.

Those attending were asked for any comments:

Gene Erez spoke of the awful drive to the down-towns and that up-Island choices were limited. The re-opened restaurant would be a tremendous addition to the neighborhood and Town.

Across the street abutter Mark Weiner (Glassworks co-owner) said he'd love to see the Kenworth's restaurant across the street, but the noise factor has always been a problem. A bigger restaurant might be OK, but the porch area is noisy. Definite lines need to be drawn. Chuck Sullivan said it would be a new building, real windows shut, air conditioning...it won't be a porch per se. Tucker asked if the air conditioner would be at the back. Yes. How many tables on the porch? About 12.

Don Ogilvie(?) said, we need a restaurant, the Kenworth's are famous on the island for running restaurants. To hold up a plan because they did the right thing is insane. This restaurant has been open for years and years. To turn it down would be wrong. The restaurant is too small as it is. I urge you to find a way.

Abutter to the south, Kathleen Kaempfert, described her property as being on the porch side. She's been there 27 years. She runs a bed and breakfast. They've always had issues with noise. This is not the Business District. If it's in the same footprint, fine. The noise affects her B & B business.

Bill Haynes said, he built the restaurant, he can't be totally against. The cellar (when he had it) was always used for storage, an office. He knows an illegal bedroom was down there. The parking at best is limited. He owns the drive on the north side of the property. That drive has been blocked by customers. If (as shown) you move the building back and change the front, that will eliminate parking spaces. Increase the parking if you increase the restaurant. Those of us that live there have to listen to the noise and traffic. Parking and noise must be taken care of. 60 seats may be what they need to succeed, but that many seats and a 4 bedroom house on the lot is a lot of use for 1.4 acres.

Ernie Mendenhall agreed with Bill that basement uses beyond storage and the office space had not been legal uses. Illegal space shouldn't be counted to make the existing restaurant amount to over 2000 sq ft.

Abutter Betty Haynes asked if there could be parking in front of the house on the lot. Chuck said yes, and that the parking is not yet finally mapped out. More cars could fit there. Bill Haynes said there are 26 legal spaces out back...there'll be 6 or 8 employees, leaving twenty spots. There is not adequate parking on the lot now, let alone for increased seats. Kathy Kaempfert said people had parked all around the restaurant.

Eric Whitman said, these 2 applicants will be working there; they're aware of previous problems, and aware they're not in the Mixed Business District. Chuck felt the parking spaces weren't used properly. They could delineate spaces with stone or brick.

Abutter Mike Colaneri said he was in favor. There was not enough in West Tisbury...we should have the ability to have a restaurant. He suggested tearing down the burnt restaurant and renovating the home into a nice restaurant. The Kenworths indicated this was not what they would want. Tucker suggested giving the house away for affordable and getting a tax break.

Eric noted people seemed in favor of the restaurant and the applicants have a good track record. 60 seats is a tough sell and it's probably the break even number, but the parking is a problem, is it getting too big?

Mary Kenworth said they had talked with the neighbors and others...noise and parking were the issues highlighted. But everyone said, but I really want a restaurant here. All of their decisions had been made with the idea of containing noise and parking. The cellar space was used for the past years because the restaurant couldn't have been run without it. To buy the property, to rebuild, they couldn't make a go with less than 60. They came up with a careful, thoughtful business plan. They don't know of anybody who would attempt to buy or run the place without the added space and seats. Jackson added that due to the high rent and small space, there has been a lot of turnover in management. Tucker said the high rent and large cost of the real estate has had a negative effect. Mary said, we need to enlarge for firewalls, building and health codes, handicap bathrooms. They were backed up to the campground and across from an Inn in Oak Bluffs and they did not cause

problems for these neighbors. Eric pointed out that parking for the OB restaurant wasn't in a lot out back, but rather scattered around town.

Jill Napier said, she'd love to see the restaurant happen; she'd be disappointed as a West Tisbury taxpayer to not have this opportunity seized. She worked at the restaurant for years. The space doesn't work for 3 meals, there isn't enough space to prep for dinner and also serve breakfast and lunch food; the emphasis can only be on dinner; the Kenworths want to offer 3 meals. We will miss a huge opportunity as a Town if the Town can't figure out a way (to grant the restaurant expansion).

Abutter to the north John Hoff said he was the new owner of Middletown Nursery. He extended his support to the Kenworths; it's brave of them to take on this venture. He said he didn't sleep next door, so wasn't affected by the issues. He can vouch that in 1993, the basement was in full use. He'd let people park at his place if he could.

ZBA member Toni Cohen felt parking could be provided in front of the house. The porch will be enclosed and reduce dining noise. Pam Foster pointed out there have been and are business uses in the area.

Norman Hall said, there's no place to go in West Tisbury to eat. Deon left because the rent was too high. The fire may be the opportunity to build a good restaurant that will stay, and year round too. If it's noisy, people should be asked to be quieter. If the Kenworth's aren't permitted to do this, who else is going to come there?

Bob Mone said, the alternative is someone will rent it as is and you'll have the same problems with noise. The Board has before them someone who's made thoughtful plans to address the abutters issues. Abutter Kathleen Kaempfert said, by re-siting the building (so it becomes conforming by setbacks), it and the parking are moved closer to her Bed and Breakfast. Chuck Sullivan explained that on the existing footprint, the kitchen is too close to a lot line and can't be expanded without encroaching more. They felt it would be desirable to the Board if the building was made conforming by setback. The Board could consider letting it stay on it's site to make concessions to the B&B.

Ernie Mendenhall said, if it's a new building, use the basement as prep room, office, etc. Nancy Cole said it was a legal question of whether that could be granted as it would be over 2,000 sq ft. Tucker Hubbell said he thought the 1,583 sq ft building could be altered and extended beyond 2000 sq ft, but once torn down, would it lose the pre-existing status.

Bill Haynes asked what the Board of Health thought of a lot that size having a restaurant and house on it? Board of Health agent John Powers said the Board had reviewed the plan and has not come to any decision. They have gone along with the last eight years.

The ZBA decided to seek opinion from ZBA Counsel on whether or not they can grant the pre-existing non-conforming building and use to expand over 2,000 sq ft. The hearing was continued until Thursday July 17 at 6 PM.

PRE-APPLICATION DISCUSSION for Lot 16, Map 99 on State Rd in North Tisbury
Architect Bruce McNelly, Martha's Vineyard Savings Bank board member Glenn Provost and Bank official Bob Wheeler came to see what the ZBA thought about a proposal regarding their forthcoming application to the Board to build an over 3,000 sq ft commercial building on the lot adjacent to the existing bank that they have purchased. Both lots are in the Mixed Business District. The limit for a new building in this district is 3,500 sq ft. Size may be increased under Section 4.4-2 by adding one or two 2nd floor apartments, one of which has to be affordable. 900 extra square feet may be added

for each apartment and the apartment size is not counted in the total. The Bank would like to add 900 sq ft to the 3,500, but they do not want an apartment on the 2nd floor of the bank.

There is a 1,400 sq ft ranch house on the property that they would move to the back of the lot and turn into 2 apartments, both affordable, but would only take 900 sq ft extra for the bank. The 40 ft rear setback would be made. There is a Section 4.4-3B, Multi Family Housing by Special Permit that allows greater density in housing through affordable restrictions. If 2 apartments are proposed, both must be restricted as affordable. The Planning Board is listed as the Permit Granting Authority. Would or could the ZBA grant the extra 900 sq ft using this section rather than Section 4.4-2?

The applicants showed the Board aerial maps and plot plans. The use will be for bank offices, not for regular customer banking which would remain next door. They are planning a “campus feel” and will avoid “seas of asphalt”. They plan to keep the lots separate, but will be making a light land swap to meet dimensional requirements. They currently rent office space and would rather be in their own building, plus with the 2 banks merged, they need more space. 3,500 sq ft would be cramped for their plans. 4,400 would suit them. They need to be referred to the MV Commission as a DRI as it is over 2,000 sq ft of new commercial space. They would like to have had a hearing with ZBA before they are referred to the MVC as they would want the abutters, Boards and Town’s input to their project before they go there. Glenn Provost discussed the septic flow.

Tucker Hubbell pointed out that one of the four goals at the beginning of the Bylaws is “Providing a supply of year round housing that is affordable to residents of West Tisbury. That is the intent of the zoning bylaw. Members agreed in principle that the Bank’s proposal was a good one, good for adding affordable inventory. They decided to seek ZBA Counsel’s advice as to their ability to use the Bylaw in this way and whether or not the ZBA could be the Permitting authority for the multi-family-housing part of a hearing.

OTHER CORRESPONDENCE

Shirley Dimatteo re her neighbor’s property
Planning Bd...notice Jim Hart hearing

The meeting was adjourned at 9:55.
Respectfully submitted, Julie Keefe, Admin.