

WEST TISBURY ZONING BOARD OF APPEALS
MINUTES FOR THURSDAY JULY 17, 2008
TOWN HALL AT 6 PM

PRESENT: Eric Whitman (Chair), Tucker Hubbell, Toni Cohen, Larry Schubert, Tony Higgins, Toni Cohen

ABSENT: Nancy Cole

ALSO PRESENT FOR ALL OR PART OF THE MEETING: John Powers (Bd of Health), Robert Potts (Broadside), Joanne Breuer, Glenn Provost, Mary Kenworth, Jackson Kenworth, Enid McEvoy, Don Mills, Bill Haynes, Elizabeth Haynes, Mark Weiner, Kathleen Kaempfert, Volder Kaempfert, Alan Brigish, Leslie Pearlson, Michelle Foster, Del Rene Goldsmith, Linda Levy, Jack Shea (Gazette), Laura Alexander, Alex Alexander, Richard Knabel, Eleanor Pearlson

BUSINESS

- Minutes of July 2, 2008 were approved with corrections.
- The Board approved that the Blackman garage, granted by Special Permit due to being over 676 on a just under 3 acre lot, may be re-sited as approximately shown on an amended plot plan as long as the applicant submits a surveyed new plot plan.

6 PM CONTINUATION from July 2, 2008: 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*. **New Correspondence since July 2 meeting:** 1) *Owner Eleanor Pearlson*; 2) *Nancy Dole*; 3) *abutter Kathleen Kaempfert*; 4) *abutters Bill and Betty Haynes*; 5) *Leslie Pearlson, Associate of Tea Lane*. All correspondence on file in ZBA office.

New correspondence was read aloud. Kathleen Kaempfert and the Haynes voiced many objections and concerns. Chairman Whitman read aloud excerpts from a legal opinion to the Board signed by Adam Costa of Blatman, Brobinski, and Mead. He summarized the opinion: There is no provision in the Zoning Bylaws to apply for a Special Permit to build a commercial structure of over 2,000 sq ft in the Rural District. You may apply to extend and alter a pre-existing, non-conforming structure or use, but only up to 2,000. It is up to the Board to deem whether or not the basement space will be counted toward the total pre-existing, non-conforming square footage. Only through a variance could one apply to go above the 2,000 or 2153.96 sq ft. (the 2153.96 will be considered 2154) (A Variance may only be granted upon specific findings that the claimed hardship is due to circumstances relating to soil conditions, shape, or topography especially affecting the land or structures which do not generally affect the zoning district in which the land or structures are located.) The Board told the applicants they could not allow the restaurant to be 2,568 sq ft.

Glenn Provost said, so it's up to 2,000 or 2,154, whether the used basement footage will be counted or not. Board members cited the space could not have been used legally and had not been permitted: There's a bulkhead entrance only, no windows; the ZBA has no record of any mention

or permitting of use in the basement. Glenn replied that, whether discussed or not, part of the basement has long been used to run the restaurant. It couldn't have functioned without the corner office and employee "lounge". Tucker could see an argument for counting the space, if it had legal egresses, etc, but the space doesn't come close to code. Recent applicants had not included basement use in their applications or plans. Mary Kenworth said they had wanted to put it up front to the Board that part of the basement was used; that the square footage was needed to successfully run the restaurant. Eric asked the Board if they were in agreement that the basement space couldn't be counted. Board members agreed.

Glenn asked for guidance regarding number of seats. They do not yet have approval from the Board of Health for their septic design???? Bob and Tucker explained that the seating had been limited due to parking and noise complaints from the closest neighbors. John Powers said the standards for flow have changed since '88 (last approved septic plan). He said in 2000 Patricia Crane Harrison reconfigured the interior to have 44 seats. At successive ZBA hearings, the ZBA kept the number at 44, so the Board of Health took that lead and approved 44. Toni Cohen said the restaurant has not been successful at 44 seats. Tucker said the cost of the real estate is what makes more seats necessary.. A few audience members said how important numbers of seats are to the business.

Mark Weiner, across the street Glassworks owner, repeatedly said that the parking plan submitted was a first graders sketch; that he hasn't seen a good parking plan. Mary defended the Chuck Sullivan plan, saying they'd already spent extensive sums on developing and were waiting to see if they would get the Special Permit before making more developed plans. Mark Weiner repeated there is no parking plan; this is Fantasy Island. Tucker felt the plan could be worked out; the problem is obnoxious behavior of some diners when leaving. Mary said they were bringing their good intentions to the table. Audience member Alex Alexander mentioned that shared parking with Middletown Nursery might help (that is, if both parties were willing.)

Larry Schubert said he'd support more seats if noise and parking are adequately addressed. The place may be rented by someone not as scrupulous as the Kenworths if their application is not approved. Michelle Foster, representing the owners, said other people are interested in the property, including a high end restaurant to be open solely for the summer season. Toni Cohen said there is room on the property for parking for 60 people. Tucker said it was a hard sell for him to vote for over 44. The parking lot might be orderly, but not the people. The Kenworths pointed out their good record of management; that at Sweet Life they had 80 people eating outside, they were on Circuit Ave and backed up to the Campground. They incorporated policies to be good neighbors with the Campground residents. Board members asked that Glenn Provost, whose daughter managed the restaurant for a few years, find out how many seats the restaurant actually had in its various incarnations. Julie recited the different ZBA hearings for construction expansion in the past. Bill Haynes said he was surprised as he hadn't been notified of them. Julie thought he had been. (The Haynes appear on all the abutter lists for notification over the years).

The applicants asked for a continuation to decide if they wanted to proceed with a building smaller than 2,568 sq ft and to return with new plans if they do. The meeting was set for July 23, at 6 PM at the Town Hall.

The meeting adjourned at 8 PM.

Respectfully submitted, Julie Keefe, Board Admin.

