

Case # 20-2021
Application Filed: 27 August 2021

DECISION AND FINDINGS OF THE ZONING BOARD OF APPEALS

Re: Request for a special permit under section 10.2.A of the Edgartown Zoning Bylaw

Applicant: Paul C. Brewer d.b.a. Brewer Tree and Land Company, Inc.

Owners: Gordon W. & Patricia A. Tyra, Trustees of Tyra Realty Trust

Assessor's Parcel: Map 28 Lot 6

Book: 555 Page: 316

PROCEDURAL HISTORY:

1. Application is for a special permit under sections 10.2.A of the bylaw to permit a small-scale business on a lot located at 269 West Tisbury Road in the R-20 Residential District.
2. A public hearing - after proper notice was given to abutters, town departments, and placed in the *Vineyard Gazette* – was held on 16 September 2020, 6 January 2021, 3 February 2021, 7 April 2021, 20 April 2021, and 5 May 2021.
3. A site visit was conducted on 21 April 2021.
4. The Board reviewed the application, the submitted materials, and all other materials and information submitted prior to the close of the public hearing. The Board received and gave due consideration to the testimony given at the public hearing [See Record of Proceedings].

FACTS:

1. The property consists of approximately 10-acres owned by Gordon & Patricia Tyra, as Trustees of Tyra Realty Trust.
2. There is an existing commercial and residential building known as the 'locker plant' at the south side of the property on the West Tisbury Road.
3. The applicant leases a portion of the property located just beyond the horse paddock. The applicant also rents office space in the locker plant. The landscaping business has been operating on the Tyra property since 2015.
4. Building permits were issued by the former building inspector in 2015 for an 8-foot x 20-foot shed, and a 10-foot x 16-foot shed.

5. Additional storage units are present on the property, which do not require building permits as they are less than 120 sq. ft.
6. Letters were received from several abutters - some of whom support the proposal, and some whom were opposed. No objections to the proposal were received from town boards or departments.
7. A special permit is required because the applicant is operating a business in a residential district.
8. As stated in a letter of support from long-term resident Steve Ewing, the town has lost approximately 78-acres of land that was previously used by small businesses: Grant's Pit was sold for residential and private club use and Dickie Brown's property to possible subdivision. The board recognizes the importance of small businesses and the essential services they provide to islanders and visitors alike. The board is aware of the lack of available space in existing business districts and at the airport business park, and believes that small businesses can coexist with their neighbors in a residential district as envisioned in Section 10.2 A of the zoning bylaw.

FINDINGS AND CONDITIONS:

The board finds that the applicant's use of the property is appropriate and will not adversely affect the neighborhood within the meaning of Section 10.2.A.1 of the bylaw if the following conditions, which the board finds to be adequate and appropriate, are met:

- a. No individuals shall do any work on the premises except for parking vehicles and loading and unloading bobcats, lawn mowers, leaf blowers, tools, and equipment. More specifically, there shall be no operation of any wood chipper, loam/dirt screening devices or the like. There will not be more than four employees at the premises at any one time.
- b. The applicant has agreed to split and chop wood on a limited basis: no more than one day per week and using only electric tools. An area to the west and rear of the locker plant shall be designated for these purposes.
- c. Traffic volume shall be limited to no more than twelve vehicles arriving and departing no more than twice a day each. As an example, a personal pickup truck can arrive in the morning and be swapped for a larger truck, which can return at lunchtime and return again at the end of the work day when the larger truck can be swapped for the personal pickup truck. At no time shall there be more than six vehicles (cars, trucks and vans) and two bobcats parked on the premises, except as necessary for swapping out vehicles. No vehicles will be in motion at the premises on Sundays or on New Year's Day, Memorial Day, the Fourth of July, Labor Day or Christmas Day. Employees shall be encouraged to carpool to the property or, alternatively, to be picked up and dropped off to and from job sites.
- d. There shall be no on-street parking and no backing out onto the public right-of-way.
- e. All parking, storage, loading, and service areas will be fenced in such a way to screen all vehicles and equipment from the public road and from adjacent residences. More specifically, a fence will be installed between the existing wooden shed and the green storage tent. All vehicles and equipment will be parked abutting the fence and not be visible from private properties to the east. In addition, a row of thick evergreen shrubbery will be planted and maintained by the applicant along the eastern boundary of the property to help mitigate noise and provide visual screening.
- f. There will be no odors, dust, fumes, glare, or flashing light that are perceptible without instruments more than 200-feet from the boundaries of the property, except for special circumstances. There

will be no sounds except for the loading and unloading of bobcats, lawn mowers, leaf blowers, tools, equipment, and the coming and going of vehicles, as more specifically described above [See also section 'n' below].

- g. The use of the property by the applicant will not cause erosion of the land or increased surface drainage from the property.
- h. No pollution of the water or the air will result from the use by the applicant which is greater than would be caused by the residential use of the property which is allowed without a special permit. Any storage of fertilizers, herbicides, or pesticides shall comply with 527 CMR, 780 CMR, and M.G.L. c. 132B.
- i. All trees, shrubs, and other natural features will be preserved, and intrusion into the character of existing development will be minimized. More specifically, no berms will be created.
- j. In order to mitigate disturbance to neighbors from the lights and sounds of vehicles entering and exiting the property, the driveway providing access to the premises will be moved by the applicant to the west side of the property. The applicant will remove as few trees, shrubs and other natural features as possible and connect the new road to the existing entrance from the West Tisbury Road.
- k. All business and industrial activities not specifically permitted in these Findings and Conditions will take place off the property or in the existing locker plant adjacent to the West Tisbury Road. There shall be no enlargement of the outdoor space used by the applicant as documented in a survey to be submitted by the applicant in a timely manner and reviewed by the board.
- l. All activity at the premises will be between 8:00 a.m. and 6:30 p.m. from May 1 through September 30 and between 8:00 a.m. and 6:00 p.m. October 1 through April 30, except for parking trucks and swapping them for personal vehicles no later than 8:00 p.m. after mowing at the Edgartown Yacht Club tennis courts one evening per week from Memorial Day to Labor Day.
- m. Applicant will comply with all noise regulations promulgated by the Town of Edgartown as if the activity at the premises were categorized as construction activity.
- n. Applicant will keep the premises reasonably clean and neat and will promptly dispose of unused tools, equipment, vehicles, trailers, etc. A timeline for the clean-up of the site will be submitted by the applicant prior to the issuance of the special permit for review and approval. All existing stump dumps, compost piles, berms, tractor trailers, junk vehicles, and piles of debris and shall be removed from the premises within *one year* of the date of issuance of this special permit. The board understands that these remediation activities will generate noise. The applicant is encouraged to share the clean-up timeline with his neighbors and accomplish these activities when they are least likely to adversely impact the neighbors.
- o. Applicant will endeavor to keep the premises in a manner consistent with a residential district. Existing structures will be maintained in good repair and any future storage structures will be wood-sided or shingled to more closely resemble those found on residential properties.
- p. Operation will be reviewed in the summer of 2022 for compliance with these conditions - or earlier if complaints are received.
- q. The special permit is not transferable without prior approval from the Zoning Board of Appeals.

DECISION:

Based on the above findings and reasons, the Board voted 5-0 to grant the special permit.

This decision of the Board of Appeals and a record of proceedings are on file in the Zoning Board office and in the office of the Town Clerk, Town Hall under Case No: 20-2021.

Board of Appeals,

Lisa C. Morrison, Assistant

Note: This decision was filed in the office of the Town Clerk on 17 May 2021. Appeals, if any, should be made pursuant to Section 17 of Chapter 40A of the Massachusetts General Laws and should be filed within 20 days of the filing of this decision in the office of the Town Clerk.

_____2021

I hereby certify that no appeal has been filed in the twenty-day period following the date of filing this decision.

Attest: _____