



# ZONING BOARD OF APPEALS

Town of Chilmark

## MEETING MINUTES - APPROVED

February 22, 2024

(Via ZOOM Meeting ID: 815 7328 3426)

Present for the Zoning Board of Appeals (ZBA) were Chris Murphy - Chair, Allison Burger, Joe Chapman, Fred Khedouri, Joan Malkin, John Demers and Alison Kisselgof - Administrator.

Also in attendance were Adam Petkus – Building Inspector/Zoning Enforcement Officer (ZEO), Valerie Reese, Bryan Collins, John Fuller, Lauren Galvin, Rob Young, Trina Smith, Wayne & Vinny Iacono, Tim Stewart, Sarah Turano-Flores, Michaelene Durst, Peter Cook, Willa Kuh, Warren Doty, Tim Rich, Nathaniel Wice, Lynne Daniels, Dan Elias, Wendy Weldon, Cody Coutinho, Judith Scheuer, Peter Bernard, Brie (last name unknown), Brian MV (last name unknown) and a person calling in from 508-730-2998.

Emily Josephs was not in attendance.

The meeting came to order at 9:02 AM.

### ADMINISTRATION:

John Demers was appointed by the Select Board as an alternate at the 2/20/24 meeting and sworn in 2/21/24. He attended today's meeting as an eligible voting member and received a welcome from the Board.

Fred Khedouri was appointed by the Select Board as a full ZBA member at the 2/20/24 meeting but had yet to be sworn in at the time of this meeting. Mr. Murphy appointed Mr. Khedouri as a voting member for all applications on today's agenda.

### AGENDA ITEM #1: LAUREN GALVIN OF VERRILL DANA LLP FOR TRINA SMITH

#### **16 Clambelly Road (Map 7 Lot 32)/ *Appeal of Zoning Enforcement Officer Decision under By-law 9.9***

Ms. Galvin gave a quick summation of the appeal. She mentioned a previous case involving Tea Lane Nursery in which the judge found that landscaping operations are not permitted by right in Chilmark (Skydell vs. Tobin 2010). In this case, the business was permitted because it was found to be in existence prior to the by-laws and therefore was ruled a pre-existing, non-confirming use. Ms. Galvin said that the activities at 16 Clambelly started sometime after 2007 and therefore did not qualify as pre-existing. She offered that some neighbors have reached out to her since the appeal was filed and were encouraged to submit their own letters to the ZBA, which two neighbors have done. Ms. Galvin referred to a letter submitted by a neighbor with pictures that show the scope of activity and evidence submitted with the appeal of advertising for the company found online. She said that the landscaping activity has grown over the years and is now beyond what is permissible in a residential district. Ms. Galvin asked that the ZBA issue a cease and desist order of the landscaping company to the owner of the property.

The Board asked Ms. Galvin to give further details about the business activity. Ms. Galvin referred to one of the letters received from a neighbor in which she felt the activity was detailed well and went over the business details described, which stated that 2 dump trucks, 2 bobcats, 3 heavy equipment trailers and multiple makeshift

sheds were on the property. The Board wondered about the traffic implications from these vehicles. Ms. Galvin said that the road was being damaged by the large vehicles but did not have any information on how often these trucks were traveling the road. The Board asked about seasonality of activity. Ms. Galvin didn't have any specifics related to this business but answered that landscaping businesses in general ramp up in the spring and run through the summer.

Mr. Murphy asked Ms. Smith to speak to her appeal of the ZEO's decision. Ms. Smith started by giving the history of her family on the island. She said that she had conversations directly with Mr. Iacono about cleaning up or screening his yard but no changes have come from those discussions. Ms. Smith said that last spring, when she returned to the island, the area around the entrance to her driveway was significantly altered which led her to start researching the Town's by-laws that governed home businesses. She said that she could find no special permit on file allowing Mr. Iacono to run a business on his property, although Mr. Iacono indicated that he did register his business with the town. Ms. Smith asked that the ZBA apply by-law 4.2A2 to the activity at 16 Clambelly.

Mr. Murphy opened the hearing to public comment at 9:25am.

Mr. Doty mentioned that every property in Chilmark is agricultural and residential and there are no industrial areas in town for resident landscapers to store their equipment besides on their property. He also mentioned that both Wayne and Vinny Iacono are part of the fishing community and some of the equipment in the yard is for this purpose.

Mr. Young offered that he had reviewed the town's by-laws and quoted by-law 1. He said that the amount of equipment stored at 16 Clambelly is too much. Mr. Young said that he runs an electrical contracting business that also has trucks and equipment but that he has rented a property in Vineyard Haven for storage. He expressed concern that allowing the activities at 16 Clambelly would set a precedent, which could invite further business activity into the town. Mr. Young said that he has witnessed numerous employees on the Iacono property and that there are cut-ins on the driveway to allow for employee parking. He said that he has spoken with the neighbors about their yard, even paid for trees to be planted to screen the activity. Mr. Young offered the only answer in his opinion would be to install a fence around the entire property.

Mr. Murphy asked Mr. Petkus to speak to his decision. Mr. Petkus started by saying his job is to uphold the by-laws as written. He felt that the activities at 16 Clambelly did not meet the definition of a home occupation since there were no customers coming to the property to exchange currency for services (reference by-law 4.2A2). Mr. Petkus mentioned the by-laws allow for storage of boats and items related to fishing activities so Mr. Iacono had a right to store these items on his property. He acknowledged that Mr. Iacono could have listened and responded to his neighbors' concerns but that the town did not have a blight law for him to enforce unsightly storage. Mr. Petkus offered that he has not presented with any evidence that would compel him to change his determination.

Mr. Murphy invited Mr. Wayne Iacono to speak as this time. Mr. Iacono went over the history of his property and the current equipment and structures being used for storage. He mentioned that some of the clearing that occurred was to build a house but the pandemic had halted that effort. Mr. Iacono also said that a neighbor had closed off a shared driveway last year and, as a result, the fire chief asked him to create a new way for a vehicle to turn around. This request resulted in removal of more brush along the property line. Mr. Iacono said that the house is currently being occupied by his son and wife. His son, Mr. Vinny Iacono, reiterated that the neighbor's

actions caused the change in the road that Ms. Smith is referring to and also that the pictures submitted were not recent.

A motion was made to close the public hearing but not seconded. The Board asked about the area by the dump, which was proposed as a possible site for storage of materials. Mr. Doty said that there was a proposal to do this but it was not acted on. Mr. Petkus reminded the Board that the issue is whether the landscaping business constitutes a home occupation, not what equipment is stored in the premises. The Board thought that it would be necessary to discuss this with legal counsel before making a decision. Mr. Petkus said that he has consulted with town counsel but the Board felt it would still be warranted. There was also a suggestion that Mr. Iacono could make an effort to resolve the issue with his neighbors outside of the ZBA and the court system. A motion was made to continue the public hearing until the March meeting so that counsel could be consulted. The motion was seconded and, with no further discussion offered, passed by unanimous vote.

**AGENDA ITEM #2a, b & c: SOURATI ENGINEERING GROUP LLC FOR SANTIAGO REALTY TRUST**  
**9 Signal Hill Lane (Map 34 Lot 1.3)/ *Appeal of Zoning Enforcement Officer Decision under By-law 9.9, Variance from By-law 12.4C1 and Special Permit under By-law 6.11***

Mr. Murphy mentioned that there were several items on the agenda for the property at 9 Signal Hill. He suggested that the Board start with the appeal of the ZEO decision. Mr. Murphy asked Mr. Petkus to go over his decision, in which he determined that the project did not meet the exception in 12.4E. Mr. Petkus went over by-law 12.4C1 which limits additions to dwellings in Zone B2 of the Squibnocket Pond District to 25% increase or less in floor area and no bedrooms. He offered that the prohibition of bedrooms applies to all dwellings, whether established before 10/16/90 or not. Mr. Petkus said that the appeal also mentioned a violation of chapter 40A of the Commonwealth's zoning law and that he disagrees with this statement.

Ms. Turano-Flores, who is the lawyer representing the owners, gave some background on herself. She mentioned that this appeal was purely a matter of disagreement in interpretation of the by-law. Ms. Turano-Flores offered some background of the property and the project. She said that the project has received approval from the Board of Health and referred to the dense vegetation between the house and the pond, which the wetlands ecologist Mark Manganello had determined in his submitted report would prevent run-off from approaching the wetlands and pond. Ms. Turano-Flores offered that the owners had bought the property with the intention of expanding, after consulting with professionals who assured them the bedrooms would be allowed. She said that the increase being requested was modest. Ms. Turano-Flores said that there are two reasons why she believes that her client should be allowed to build their addition as planned. The first reason was that the by-law 12.4E exemption language refers to lots, not dwellings, so she interpreted this to mean that the entire lot was exempt from the by-law restriction in 12.4C1. Ms. Turano-Flores added that the restrictions, in her opinion, were meant to restrict buildings that existed when the by-law was written and the dwelling at 9 Signal Hill did not exist at that time. The second reason given was that the Dover Amendment prohibits regulation of interior area of a single family residential dwelling.

Mr. Petkus offered that the exemption in 12.4E is for use and setbacks. He said that the exemption was used to get permission to build the dwelling originally on the empty lot. Mr. Petkus also mentioned that all by-laws are vetted by the Attorney General, who did not find that by-law 12 violated the Dover Amendment.

The Board questioned whether the exemption applied in this case, mentioning that its application here would defeat the purpose of the overlay district, which is meant to protect Squibnocket Pond. It was mentioned that if the exemption were allowed, the owner could keep adding bedrooms provided the Board

of Health approved a septic system for the capacity. Ms. Turano-Flores offered that there were other provisions in the by-laws that would prevent this scenario. The Board felt that legal counsel should be consulted regarding the Dover Amendment applicability.

Mr. Murphy opened the hearing to public comment at 10:37 AM.

Tim Rich said that this project has been reviewed and approved by The Trustees of the Reservation, Sheriff's Meadow Foundation, the Squibnocket Pond District Advisory Board and the homeowners' association. He also mentioned there were no objections from any of the abutters. He said that he was unclear who was objecting to the project. Mr. Murphy answered that the ZEO is denying the project as proposed due to his interpretation of the by-law, which he verified with legal counsel. Mr. Rich offered that he felt the ZEO was interpreting the by-law correctly.

There was a conversation about whether the public hearing should be closed. Ms. Turano-Flores requested that the public hearing be left open for the appeal and that the public hearing be opened for the variance application at this time. The Board briefly discussed procedure and then decided that the request could be granted.

Mr. Murphy asked if the Board had seen the wetlands delineation report stating that the property was not in Zone C of the Squibnocket Pond District.

Mr. Murphy opened the public hearing for the variance application at 10:46 AM.

Ms. Turano-Flores said that it would be easiest to group the discussion about the variance and special permit applications. She offered that the increase of livable area was 326 sf and would require a special permit under by-law 6.11. In addition, she said that the owners are seeking a variance from by-law 12.C41 which would allow them to add two bedrooms. Ms. Turano-Flores added that the owners have agreed to install an enhanced denitrification system, which would reduce the nitrogen released more than the current septic, even with the additional bedrooms. She understood that this would require Board of Health approval and suggested conditioning the variance. She mentioned the primary focus of the overlay district was to limit nitrogen released into the pond so this proposal would be in line the by-law's objective.

Ms. Turano-Flores went over the report prepared by wetland ecologist Mark Manganello. She offered that the addition is over 230 ft. from the pond and 189 ft. from the nearest wetland. The report stated that there was no evidence to suggest any water from the house was reaching the pond due to the dense vegetation, which would not be disturbed by the construction. Ms. Turano-Flores mentioned the addition would not increase the footprint of the house and that this proposal would enhance pond protection.

Ms. Turano-Flores went over the three areas of consideration for a variance. First, she said that the topography of the lot is wider than it is deep, resulting in no location to build on the property that wasn't in Zone B2 of the district. She offered that this creates a substantial hardship for the owners. Second, Ms. Turano-Flores said that the owners had purchased the lot for a substantial amount of money with the understanding that they could build the addition with bedrooms. Lastly, she mentioned that there would be no impact on the public good since the enhanced septic system being proposed would improve existing conditions.

Mr. Murphy opened the hearing to public comment. None was offered.

After a brief discussion, a motion was made to grant the variance with the conditions that an enhanced denitrification system be installed and usage of fertilizers and pesticides is limited. The motion was seconded.

The Board discussed whether the application met the standards of a variance. Some members felt the standard of financial burden had not been met. The topography standard was also questioned. It was offered that nitrogen was not the only issue affecting the pond and that intensity of use should also be considered.

Mr. Murphy asked Ms. Turano-Flores how she would like to proceed. She answered that she needed to review all that was said with her team. Ms. Turano-Flores also clarified that she meant the financial hardship was due to zoning restrictions.

The previous motion was withdrawn and a new motion to continue the hearings for the appeal, the variance and the special permit until the March 28<sup>th</sup> meeting was made. The motion was seconded and passed by unanimous roll call vote.

**AGENDA ITEM #3: VINEYARD LAND SURVEYING & ENGINEERING INC. FOR HENNYS VIEW LLC:**  
**48 Menemsha Inn Road (Map 21 Lot 18)/ *Application for Special Permit under By-law 6.12***

Mr. Chapman recused himself from this application due to his involvement with the project. Ms. Malkin had to leave at this time and Mr. Murphy asked the applicant if they wanted to continue with only 4 voting members, which would require a unanimous vote in order to receive a special permit. The applicant wished to proceed.

Mr. Fuller summarized the project as a 400 sf accessory apartment in an existing structure. He mentioned that a portion of the floor would need to be partitioned off since the space is larger than 400 sf but the apartment is limited to this size due to the lot being under 3 acres. The owner Ms. Durst added that the apartment will be used for affordable housing and that a tenant has already been vetted.

There was some discussion about whether the applicant should come back with a request for a variance from by-law 6.12. A motion was made to continue the public hearing until the March 28<sup>th</sup> meeting and seconded. The motion passed by roll call vote with all four members in favor.

**TOPICS NOT ANTICIPATED BY THE CHAIR:** None.

**DOCUMENTS:**

Findings for 2/22/24 ZBA Applications

Draft minutes from 1/25/24 Meeting

Wetland Delineation Report for 9 Signal Hill by Mark Manganello

Next Hearing: March 28, 2024 @ 9:00 AM.

With no further business to conduct, the meeting adjourned at 11:27 AM.

Respectfully submitted by Alison Kisselgof, Board Administrator.