



# ZONING BOARD OF APPEALS

Town of Chilmark

## MEETING MINUTES - FINAL

December 14, 2023

(Via ZOOM Meeting ID: 883 7243 2466)

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

Also in attendance were Adam Petkus – Building Inspector/Zoning Enforcement Officer (ZEO), Hans & Sally Solmssen, Suzy Zell, Jeff Gillway, Bruce MacNelly, Tim Rich, George Sourati, Reid Silva, Aaron Schiller, Greg Milne and Peter Bernard.

Emily Josephs and Frank Lo Russo were not in attendance.

The meeting came to order at 9:02 AM.

**ADMINISTRATION:** A motion was made to accept the minutes from the 10/26/23 meeting as presented and seconded. The motion passed by unanimous roll call vote.

A motion was made to accept the minutes from the 11/14/23 meeting as presented and seconded. The motion passed unanimously by roll call vote.

Ms. Kisselgof shared the fiscal year 2025 proposed budget and went over each line, explaining how each was different than the current year's budget. After a discussion about the possibility of having applicants pay for advertising of legal notices, a motion was made to accept the budget as presented. The motion was seconded and passed with all members in favor. The Board would like to continue discussion of having advertising costs paid by applicants at a later meeting.

### **AGENDA ITEM #5: JAY BODNAR FOR MAGIC VINEYARD LLC**

**100 Beach Plum Lane (Map 21 Lot 78)/ *Discussion of Possible Change to Originally Submitted Plans***

Ms. Kisselgof informed the members that Mr. Bodnar had emailed to cancel his request for discussion about the possibility of changing the retaining wall façade. Mr. Bodnar said that stone wall veneer would be used as originally approved.

### **AGENDA ITEM #4: SOURATI ENGINEERING GROUP LLC FOR SANTIAGO REALTY TRUST**

**9 Signal Hill Lane (Map 34 Lot 1.3)/ *Application for Special Permit under By-law 6.11***

Ms. Kisselgof said that she had received an email from Sourati Engineering Group requesting a further continuance of this public hearing until the January 25<sup>th</sup>, 2024 ZBA meeting.

There was a brief discussion about the Conservation Commission's letter in which it was questioned whether the project was within Zone C of the Squibnocket Pond District. Zone C has the same restrictions as Zone B2

but without any exemption by special permit.

A motion was made to approve the request for a continuance. The motion was seconded and passed unanimously by roll call vote.

The Board requested that a second site visit be scheduled for this project before the next meeting.

**AGENDA ITEM #1: JOEL GLICKMAN and JENNIFER LORUSSO**

***7 High Meadow (Map 7 Lot 21.5)/ Application for Special Permit under By-law 6.12***

Mr. Murphy opened the public hearing at 9:14 AM and Ms. Kisselgof read a description of the project.

Mr. Glickman started by mentioning that their intent was to provide housing for a caregiver in the short term. Mr. Silva offered to assist and shared an aerial map of the property and indicated the lot's location. He then shared the site plan, pointing out the location of the proposed structure, and then shared the floor plan of the proposed project.

The Board asked if the applicant could speak to the covenant on the property, which states guest houses are not allowed and defines guest house differently than the Town's by-law. Mr. Glickman answered that the covenant restricts the property from having a guest house which it defines as having cooking equipment. Mr. Glickman went on to say that he spoke with his legal counsel who opined that an accessory apartment would be allowed if it did not have cooking equipment, which is what is being proposed. Mr. Petkus mentioned that accessory apartments require annual check-in with the town clerk and Dukes County Regional Housing Authority. He went on to say that the plans as presented do not meet the definition of an accessory apartment but instead a detached bedroom. Mr. Petkus and the Board agreed that the applicant should consider getting the covenant revised. It was mentioned that the covenant is not enforced by the Town and therefore should not be a consideration for special permit approval. There was a discussion on whether the plans could be approved as presented since it was agreed that they do not meet the definition of an accessory apartment. Mr. Silva suggested that the applicant just needed to add kitchen equipment to the plans for the ZBA to approve the project and deal with the covenant restriction separately. Mr. Glickman offered to add a cooktop to the plans. The Board agreed this would allow the application to be approved.

The hearing was opened to public comment at 9:44 AM. With no public comment offered, a motion was made to closer the public hearing and seconded. The motion passed by unanimous roll call vote.

A motion was made to approve the application with the condition that the applicant file a revised plan that includes cooking facilities. The motion was seconded and passed by roll call vote unanimously.

**AGENDA ITEM #2: DOUG J. and MARY E. BENEFIT**

***14 Quansoo Road (Map 11 Lot 29.4)/ Application for Special Permit under By-law 4.2A1***

Mr. Murphy opened the public hearing at 9:49 AM.

Mr. Benefit recounted the history of the secondary structure which was converted to a guest house last year. Mr. Benefit said that the application is for an addition to the guest house. Ms. Kisselgof shared the site plan and then the floor plan for the project.

With no discussion offered by the ZBA members, Mr. Murphy opened the hearing to the public at 9:51 AM. Ms. Zell questioned whether the size of the guest house with the addition would be over the maximum 800 sf. Ms. Kisselgof explained that the original guest house application included an incorrect total living area due to an error in measurement – the correct total square footage of the current guest house is 646 sf. Mr. Benefit elaborated by saying the wall thickness was included by mistake in the last application. He said the total living area of the guest house with the addition would be 797 sf. Ms. Zell asked if the members received her letter which included a picture. Ms. Kisselgof shared the picture on the screen, which included a partial picture of the site plan and floor plan with an item circled. Ms. Zell inquired about what the item circled represented. Mr. Benefit said it was a bulkhead. Mr. Petkus offered that this space was not counted in total living area. Ms. Zell also requested that more screening be planted between her property and the Benefits.

With no further public comment offered, a motion was made at 9:56 AM to close the public hearing and seconded. The motion passed by unanimous roll call vote.

The Board briefly discussed the screening request. It was offered that the screening appeared adequate at the site visit and therefore the Board did not feel the special permit needed to be conditioned with additional screening required.

A motion was made to accept the application as presented. The motion was seconded and passed unanimously by roll call vote.

### **AGENDA ITEM #3: HANS and SALLY SOLMSEN**

#### ***56 N Abels Hill Road (Map 18 Lot 84)/ Application for a Variance from By-law 4.2A1***

Mr. Murphy opened the public hearing at 9:59 AM.

Mr. Solmssen recounted the events that led to his application for a variance. He said that the guest house porch screens were installed after getting verbal approval from the previous Building Commissioner & Zoning Enforcement Officer Lenny Jason. He said that there were no intention to close in the screened porch with walls. Mr. Solmssen mentioned that the carpenter had stopped work when new Building Inspector & Zoning Enforcement Office Adam Petkus requested that the screens be removed, which was the result of an anonymous complaint from an abutter. Mr. MacNelly reiterated that the screens were added only after Mr. Jason gave verbal approval.

The hearing was opened to public comment at 10:07 AM. It was mentioned that several letters of support and one letter of objection were received and distributed to members prior to the meeting.

Mr. Petkus offered that he does not believe the Building Inspector has the authority to override the ZBA on special permit conditions.

Mr. Murphy said that he felt the variance should be granted because the Building Inspector was at fault, not the applicant. He did not believe this would set a precedent but he also mentioned that the application doesn't exactly meet the conditions of a variance.

A motion was made to close the public hearing and seconded. The motion was passed by unanimous roll call vote.

Ms. Burger did not feel that the variance should be granted. She said that the special permit clearly stated that the screens were not permitted and if the applicant wanted to change the condition, they should have returned to the ZBA for approval.

Ms. Malkin went through the guidelines for granting a variance. She did not find that any of the circumstances for granting a variance had been met and she was not prepared to approve this application.

Mr. Khedouri agreed with Ms. Malkin's assessment of the variance standards. He said that the applicant was aware of the limitation in the special permit issued – a new plan was even submitted to comply. He felt it was reasonable for the applicant to act on information given by the Building Inspector but was concerned about setting a precedent. Mr. Khedouri offered that, if this could be treated as a unique circumstance, he would support the variance.

Mr. Murphy said that approval of this variance would not create a precedent. He mentioned that the Building Inspector's judgement was a large part of the zoning process and he felt the Board should support the previous Building Inspector's decision. He offered that Mr. Jason himself said that applicant was not at fault.

Mr. Chapman agreed with Mr. Murphy that the applicant should not be punished for a mistake made by the Building Inspector and supported the approval of the variance.

A motion to approve the variance was made and seconded. A roll call vote was taken: Burger – nay, Khedouri – aye, Murphy – aye, Chapman – aye, Malkin - nay. The application was denied.

Mr. Murphy informed the applicant that the decision could be appealed at the state court level.

**AGENDA ITEM #6: SCHILLER PROJECTS FOR SCHILLER PARTNERS, INC.**

**281 South Road (Map 24 Lot 163.3)/ *Determination of De Minimus Change to Site Plan***

A special permit was issued for a guest house in May 2023. When the applicant went to apply for a building permit, the Building Inspector requested that the internal door to the mechanical room be removed. Mr. Schiller returned today to the ZBA to request a substitution of the previous floor plans with a new one complying with the Building Inspector's request.

Mr. Schiller shared a revised plan and explained that the internal door to the mechanical room was removed and an exterior door added. He also said that some exterior closets were added to store beach items.

After a brief discussion, the Board found that the changes were inconsequential and a motion was made to that effect. The motion was seconded and passed by unanimous roll call vote. Another motion was made to approve the change as presented and seconded. The motion passed with unanimous approval by roll call vote.

**AGENDA ITEM #7: GREG MILNE FOR MAKENA B. HERGET 1983 TRUST**

**7 Quenames Road (Map 17 Lot 51)/ *Determination of De Minimus Change to Site Plan***

A special permit was issued for a pool, pergola and spa in May 2022. Mr. Milne came before the Board in April 2023 with an updated site plan that was determined to have de minimus changes and was approved.

Mr. Milne returns again to the Board with further changes to ask for a determination of whether the new changes are inconsequential or a new special permit application is required.

Mr. Milne shared the new site plan and explained that there were two changes – reduction in size of the pool pavilion and an adjustment to the location of the equipment shed. Mr. Milne explained the shed was moved because there was plumbing and tree roots in the way at the original location.

A motion was made to determine the changes were immaterial. The motion was seconded and passed by unanimous roll call vote. Another motion was made to approve the change as presented and seconded. The motion passed by unanimous roll call vote approval.

**FURTHER ADMINISTRATION:** In the interest of time, it was decided to move the pool by-law discussion to the next meeting.

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

**DOCUMENTS:**

Draft minutes from 10/26/23 & 11/14/23 Meetings

Findings for 12/14/23 ZBA Meeting

7 High Meadow Site Plan

7 High Meadow Floor Plan

14 Quansoo Site Plan

14 Quansoo Floor Plan

14 Quansoo Abutter Letter – Zell

56 N Abels Hill Road Letters of Support and Objection

281 South Road Updated Floor Plans

73 Quenames Updated Floor Plans

Next Hearing: January 25, 2024 @ 9:00 AM.

With no further business to conduct, the meeting adjourned at 10:36 AM.

Respectfully submitted by Alison Kisselgof, Board Administrator.