



# ZONING BOARD OF APPEALS

## Town of Chilmark

### MEETING MINUTES - APPROVED

March 28, 2024

(Via ZOOM Meeting ID: 889 1192 4876)

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, Michaelene Durst, Wendy Weldon, Willa Kuh, George Sourati, Reid Silva and Dan Elias.

Emily Josephs was not in attendance.

The meeting came to order at 9:01 AM.

#### ADMINISTRATION:

A motion was made to approve the 1/25/24 meeting minutes as written. The motion was seconded and passed unanimously.

#### AGENDA ITEM #1: 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. Murphy opened the continued public hearing at 9:05 AM. Mr. Fuller requested that Ms. Kisselgof share the floor plan that he had sent to her prior to the meeting, which she did. Mr. Fuller said that the upper level of a two car garage built in 2005 was always intended to have livable space. He mentioned that a second means of egress needed to be added, which would include a balcony over the garage doors and stairs leading off to the side. Mr. Fuller asked that Ms. Kisselgof share the pictures of the outside of the garage, which she did. He said that the front of the garage is visible from the public way.

The Board asked about how the partitioned area of the second floor would be accessed. Mr. Petkus offered that the apartment could not have direct access to the partitioned unfinished storage area but it could be accessed from the stairs or the garage. The Board asked if the septic system was large enough to handle the apartment, which Mr. Silva confirmed.

Mr. Murphy opened the hearing to public comment.

Abutter Willa Kuh asked if the entire second floor of the garage was conditioned since she was aware of an earlier plan to make the space an exercise area. Mr. Fuller answered that the space was currently unfinished. Ms. Durst added that the exercise room never materialized and therefore the area was never conditioned, even though fuel tanks had been installed to do so. Ms. Kuh also asked why a new 3-bedroom system was installed for the apartment if the house septic could have been used. Mr. Silva had no information the house's septic system since he did not install it but said that the minimum size for a septic system was 3 bedroom, which is why there is overcapacity for the apartment's septic system.

Abutter Nathaniel Wice was concerned about the distance of the apartment's septic system from his own but understood this was a question for the Board of Health and not the ZBA.

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

The Board briefly discussed the zoning enforcement process. Ms. Kisselgof read the findings for the application into the record. Since Mr. Chapman was recused from voting, Mr. Demers was appointed as a voting member. A motion was made to approve the application as presented with the standard conditions for an accessory apartment. The motion was seconded and passed by unanimous roll call vote.

**AGENDA ITEM #2: 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***

Mr. Murphy opened the continued public hearing at 9:35 AM. After a brief overview of the process so far, Ms. Malkin asked if any additional materials were received since the last meeting. Ms. Kisselgof answered that a letter had been received from Mr. Iacono and from Ms. Galvin.

Ms. Galvin said that she wanted to refocus the discussion on the original request to the Zoning Enforcement Officer (ZEO) for the landscaping business cease and desist operations. She acknowledged that Mr. Iacono has made an effort to clean up his yard and moved equipment from public view but that she had established that a business is being run on the property, which is not allowed as of right. Ms. Galvin mentioned that the business did not exist before the by-laws and therefore is not a grandfathered business and illegal. She said that, even if the ZBA determines the landscaping business does not meet the definition of a home occupation, it is still not an allowed use and suggested the by-laws be amended to explicitly allow this usage.

Mr. Murphy asked if either Wayne or Vinny Iacono would like to respond. Mr. Wayne Iacono offered that a business was not being run on the premises, only the storage of equipment.

The Board briefly talked about a discussion with town counsel. Town counsel had laid out the options for the ZBA in response to an appeal: the Board could affirm, overrule or modify the ZEO's decision.

There was further conversation as to whether the activities would be considered a business on the property. Ms. Galvin offered that the Iaconos were not denying that there is equipment stored on the premises for a business and that abutters have witnessed employees parking on the property. She offered her client was only seeking reasonable regulation.

Mr. Vinny Iacono reiterated that the property was only being used for storage. He acknowledged that an employee vehicle is parked at the house but the employees leave the premises. He also said that he was aware of many landscaping companies on the island that park equipment on their personal property. Mr. Vinny Iacono was confused as to why fumes were mentioned in the complaint since no fuel is stored on site. Mr. Wayne Iacono added that there were three landscape companies as well as trucks for several other services that serviced the area regularly whose work generates noise and is possibly being attributed to his home.

Mr. Murphy asked Ms. Smith what specifically was her issue with the activities at 16 Clambelly Road. Ms. Smith answered that the activities at the property have grown over time with no regulation. She also said that there is no screening of this activity from the street. Lastly, Ms. Smith felt that the Iaconos did not respond to requests from neighbors to clean up the area. She expressed regret that the issue had become a legal matter.

Mr. Vinny Iacono responded by saying that he really wanted to appease the neighbors and offered to add screening if it would help. He mentioned that Ms. Smith did not reside year-round on the road and it's been difficult to discuss matters with her.

Mr. Murphy asked if Ms. Galvin could mediate a civic solution, rather than a legal one. Ms. Galvin offered that the best solution would be for the Iaconos to get a special permit which would regulate their activities. Mr. Murphy responded that the ZBA could not issue a special permit since it's already been ruled one is not required. Mr. Petkus repeated his assertion that the activities did not reach the definition of home occupation in the by-laws and that storage of equipment on one's property is not prohibited by the Town.

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

With no further discussion by the Board, a motion was made to deny the appeal and affirm the ZEO decision. The motion was seconded. The Board went over their findings for the record and then a vote was taken. The motion passed by unanimous roll call vote.

After voting, the Board briefly discussed remedies for future issues of this kind. Some members encouraged Ms. Smith and neighbors to contact the Planning Board to amend the by-law, citing valid points brought up during the appeal conversation.

**AGENDA ITEM #3a, 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***

The Board received an email from Bryan Collins of the Sourati Engineering Group prior to the meeting requesting a further continuance until the April 25<sup>th</sup> ZBA meeting. A motion was made to accept the request for continuance and seconded. The motion passed unanimously.

**AGENDA ITEM #4: JAY BODNAR FOR MAGIC VINEYARD LLC:**  
***100 Menemsha Inn Road (Map 21 Lot 78)/ Discussion of Pool Fencing Removal & Pool House TLA***

Two special permits were issued for this property in June 2024: one for a pool and one for extra living area. Mr. Bodnar requested a discussion on two matters: a request to remove the pool fencing and to install a mini-split in the pool house.

Mr. Bodnar first asked the Board to allow the removal of the pool fencing. He mentioned discussing the change in by-law 4.2A3 with Mr. Petkus and that the pool would have a locking automatic cover installed.

The Board acknowledged Mr. Bodnar's right to request the fence removal and a motion was made to modify the special permit to remove the fencing. The motion was seconded and passed by unanimous approval. It was mentioned that the automatic cover would have to be kept operable.

Mr. Bodnar said that a 216 sf pool house was approved with the special permit and he would like to install some humidification control by insulating the roof and walls of ~100 sf of the interior, which includes a changing room and bathroom. The rest of the pool house would be open air.

Mr. Petkus said that Mr. Bodnar had inquired with him about the installation of a mini-split in the pool house,

which Mr. Petkus explained would require the pool house meet certain energy & building codes. Mr. Petkus offered that this would make this area of the pool house habitable space which was not allowed as a condition of the currently issued special permit.

The Board did not feel they could grant additional habitable space without the applicant returning for a new special permit. The Board asked the Building Inspector whether the use of a humidifier instead of a mini-split would change his determination of the space. Mr. Petkus said that a humidifier would be allowable since it would not be permanent conditioning. The Board decided that Mr. Bodnar and Mr. Petkus could work together within the parameters of the original special permit and therefore did not take action on this request.

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

**DOCUMENTS:**

Findings for 3/28/24 ZBA Applications

48 Menemsha Inn Road ~ Site & Floor Plans

48 Menemsha Inn Road ~ Pictures of Garage Exterior

16 Clambelly Road ~ 3/24/24 Email from Wayne Iacono RE: Clambelly Hearing Next Week

16 Clambelly Road ~ 3/25/24 Email from Lauren Galvin RE: Summary of Legal Issues

9 Signal Hill ~ 3/15/24 Email from Bryan Collins RE: Request for Continuance

Draft minutes from 1/25/24 Meeting

Next Hearing: March 29, 2024 @ 9:00 AM.

With no further business to conduct, the meeting adjourned at 10:29 AM.

Respectfully submitted by Alison Kisselgof, Board Administrator.