

APPROVED
Meeting Minutes
Chilmark Planning Board Meeting
February 13, 2023
4:30PM
Via remote participation

Present: Ann Wallace, Hugh Weisman, Janet Weidner, Mitchell Posin, Catherine Thompson, Peter Cook

Not Present: Rich Osnoss

Public & Board/Comm. Members: Clark Goff, Clarissa Allen, Chris Murphy, Joan Malkin

Staff: Jennifer Christy, Admin. Asst.

Site: Remote Meeting/Participation on ZOOM

Interim Chairperson Hugh Weisman called the meeting to order at 4:31PM.

Continued Review of the Zoning Bylaw Amendment Proposal, section 4.2A, 3. Swimming Pool and/or Tennis Court:

- Discussion occurred regarding the sections g. & h. of the swimming pool section of the zoning bylaws. Hugh Weisman summarized the status to say that the Planning Board voted, on January 23, 2023, to eliminate any changes proposed for section g. & h. of the Zoning Bylaw section 4.2A, 3. because it seemed that those sections would be stronger as is and amendments, as proposed and voted on Dec. 12, 2022, would dilute the strength of the sections making it easier for applicants to not install covers or heat without fossil fuels.
- Joan Malkin stated she has long felt the sections g. & h., as they are currently in the bylaws, are not effective. She stated that, unless the applicants use the Cape Light Compact program, the use of “alternative” systems for complying with zoning bylaw doesn’t seem to work. Joan Malkin noted that green energy programs may have been a good alternative in the past, but they are no longer a reliable provider of green energy.
- Peter Cook described his view of where the bylaw proposal stands at this point: He stated that it appears clear that making section h., as amended on Dec. 12, 2023, mandatory would not pass through the Attorney General, making the section an encouragement seems feeble and so maintaining what is there currently seemed the most clear and strong wording.
- Joan Malkin described the issue of whether the Zoning bylaw proposal should encourage applicants to use fossil-fuel free sources for heating. Joan described how heat pumps have become more and more available and economically viable during the last few years and the ZBA felt that if they cannot make the use of non-fossil fuel sources mandatory then they may as well focus on encouraging applicants to use renewable sources to fuel the heat pumps. Hugh Weisman read the bylaw as it currently written and stated that the use of heat pumps is now the most energy efficient option. Joan Malkin clarified that the question is should the bylaw encourage applicants to use non-fossil fuel free sources of energy to heat pools or should the wording in h. stay as it is. Joan further stated that leaving the wording as it is in section h. allows the ZBA to continue to often interpret “alternative systems” to mean using a source such as Verde Green Energy, a Texas-based green energy supplier. Joan Malkin stated that an air source heat pump is not really “alternative” and she explained that is why the ZBA has moved to approve permits that utilize the green energy supplier most often. This seemed better than requiring a windmill or solar panels on their land for the heating of the pool. She characterized it as a way to focus on the origins of the energy rather than focusing on the particular type of

system. Peter Cook stated that the bylaw now reads, “Heated swimming pools (including the heating system, pool related pumps, filters and circulators) are permitted if the heat is supplied by solar or alternative systems, which are the most current energy-efficient systems, as approved by the Zoning Board of Appeals.”, and so it is stated no matter if the ZBA believes that the alternative systems that are permitted are believed to be the most current energy-efficient systems.

- Joan Malkin asked Peter Cook what he would say if an applicant came to the ZBA and said they would heat their pool “with Verde Green” Energy and explained that they would use propane to heat the pool, but plan to offset that propane use with the purchase energy from Verde Green. She stated that the ZBA has always agreed to this plan by an applicant to adhere to section h. Joan Malkin suggested that it is possible the ZBA has interpreted the bylaw incorrectly, but she stated her reluctance to change things overnight with the same wording.
- Ann Wallace summarized the explanation given by Joan Malkin and said that it appeared the changes proposed to section h. (in the Dec. 12, 2022 version) would eliminate the need for the ZBA to justify its new position on an existing law. Joan Malkin agreed with this assessment and also said it is difficult for ZBA members have no expertise in determining what the most energy efficient systems are.
- Chris Murphy stated on the whole the bylaw seems to be applied successfully, however, and thought the Verde Energy was an option that is ok.
- Joan Malkin thought that the proposed amendments to section h. (in the Dec. 12, 2022 version) are symbolic to a point and it would eliminate some of the “meaningless discretion” that the Board of Appeals members have. She disputed that a heat pump is an “alternative system”. Joan Malkin also stated she understands where the Planning Board is coming from.
- Hugh Weisman asked Joan Malkin for confirmation that whatever is currently in section g. & h. bylaws (as approved by the Attorney General) would not be looked at if those sections were not amended this spring.
- Discussion turned to pool covers. Joan Malkin separated the issues as one about automatic covers and one about covers that preserve heat and therefore are more energy-saving.
- Discussion occurred about whether the Attorney General would or would not assess parts of the bylaw that are not proposed to be amended. Some said this would occur and some thought it would not.
- Ann Wallace suggested that maybe there is a benefit to refer the bylaw to the energy committee.
- Joan Malkin reiterated that one purpose of the proposed amendments is to focus on the source of the energy rather than specific systems. She thought this would send a signal of this is where the Town wants to go.
- Peter Cook suggested that the Town be up front with the direction that the Town is going in with applicants and that it is part of a strategy to become energy efficient and fossil fuel free.
- Catherine Thompson inquired how many lawsuits has the Town sustained due to swimming pool permits. Joan Malkin responded that there is at least one.
- More review and discussion of the section g. (Covers) proposed amendments occurred. Joan Malkin stated she would like the amendments to address cover sections as proposed on Dec. 12th with minor changes. Planning Board members agreed that changes to address this would be preferred.
- Joan Malkin will return to the Board on Feb. 27, 2023 with a final amendment proposal for the Board to discuss and vote.

Accessory Apartment Zoning Bylaw Amendment Proposal Discussion:

- The Board members reviewed the draft bylaw changes for Guest Houses and Accessory Apartments drafted and proposed by Hugh Weisman on January 31, 2023. Ann Wallace inquired if a person has built an Accessory Apartment could they, if amendments are made, add to it up to the new square footage allowed. This appeared to be acceptable. Ann Wallace wondered about noting that the total living area (TLA) limits govern what can ultimately be built.
- It was requested that the discussion on this topic be placed on the Feb. 27th agenda.

Discussion Zoning Bylaw Amendment to section 6.10, 2. and impact on Peaked Hill Pastures affordable housing project:

- Peter Cook discussed the issue with how this bylaw intersects with a proposal for the Peaked Hill Pastures affordable housing project. The key question is that this bylaw prevents an affordable housing project of the nature currently proposed and if the Town does want the project then it must propose a bylaw change. Peter Cook said that the ownership portion of the plan can move forward, but the affordable housing portion will not be able to move forward without a change to the zoning bylaw section. Peter Cook stated he has spoken with members of the public who are concerned that investment is being made in the project without addressing the possible need to change the zoning bylaw.
- Ann Wallace inquired whether there are other areas of the zoning bylaws that present inconsistency and should be amended.
- Peter Cook suggested that a public hearing process be started to hear what the arguments may be against eliminating the restriction from the zoning bylaw.
- Hugh Weisman asked if a person from the Commission or something like that entity could come to a meeting to clearly describe the pros and cons of 40B. Peter Cook stated that it is his understanding that the Town is not keen to go in the direction of a 40B project. Ann Wallace stated she did not think that it was the Town that understands the 40B type of project, but rather it is the Peaked Hill Pastures committee that has some reservations about a 40B project.
- Ann Wallace also wondered if Town Counsel should be consulted to see if there are areas of the zoning bylaws that may impact the Peaked Hill Pastures project that have not yet been identified.
- More discussion occurred about the benefits and possible detriments of 40B projects. Ann Wallace clarified that a 40B process is a tool used by towns to allow affordable housing when zoning restricts that housing. She noted that this tool can be used by developers, but that the island has the MV Commission which hampers the use of this tool by developers.
- Hugh Weisman suggested that we have a person or entity come discuss the 40B process. Peter Cook cautioned that there is an issue with conflict of interest if the Town asks potential future developers to weigh in on the topic. Ann Wallace suggested contacting the Commission or a State representative.
- Cathy Thompson wondered what the issue may be with worry about 40B if this is the last large parcel that the Town has for affordable housing. She did not see that it would be a threat to the future. Cathy Thompson said that she also wanted to know what the plans are for the electrical issues that abutters have identified.
- Peter Cook stated his support of the plan of the Peaked Hill Pastures RFP committee to fund a plan created by Vineyard Land Surveying & Engineering.
- Peter Cook suggested that the proposal be the elimination of the bylaw section 6.10, 2. and then that would be the beginning of the public hearing process.
- Hugh Weisman wondered if a zoning district could be added just for the area where the affordable housing is planned to be in Peaked Hill Pastures. Peter Cook thought that this would be called spot zoning.

- Peter Cook said he would be prepared to propose the elimination of the 6.10 bylaw and then have the public hearing and hear all of the issues.
- Ann Wallace noted that if the section of the zoning bylaws was eliminated then a developer could come in to develop large developments on smaller lots. She would be interested to inquire with Town Counsel what our vulnerability is. Peter Cook was not sure that the elimination of this 6.10 bylaw would result in drastic development.
- Janet Weidner asked about the context within which this bylaw section was voted. Peter Cook thought it was 2005. Jennifer Christy noted she would look at the minutes from that time period to see why this bylaw was voted in.
- Peter Cook stated he would be amenable to putting off the topic until Rich Osnoss is back.

Master Plan:

- Jennifer Christy did not yet contact the MVC to ask who is the point person there for Master Plan assistance to the Town. She will do so this week. Ann Wallace suggested again that a consultant be obtained to walk the Town through the process.

Correspondence:

- The correspondence from Laura Silber re fractional ownership was acknowledged as received.

Minutes:

- Minutes from December 12th and January 9th were reviewed. Dec. 12th was approved as amended. January 9th was approved as written.

Topics Not Reasonably Anticipated by the Chair at the Time of Posting:

A motion was made to adjourn the meeting. The motion was seconded and passed unanimously by roll call vote.

Next Meeting(s):

- Monday, February 27 , 2023, 4:30PM

Documents:

- Proposal for amendments to the swimming pool section of the Chilmark Zoning Bylaws.

Meeting adjourned at 6:16PM. Minutes respectfully submitted by Jennifer L. Christy