



# ZONING BOARD OF APPEALS

## Town of Chilmark

### MEETING MINUTES -DRAFT

**January 27, 2022 (via ZOOM)**

Present for the Board of Appeals and attending the meeting on Zoom were Russell Maloney Chairman, Allison Burger, Wendy Weldon, Chris Murphy, Joan Malkin, Frank Lo Russo, Joe Chapman and Alison Kisselgof Administrator. Also in attendance were Pamela & Rodney Bunker, Reid Silva, Vida Poole Epstein, Deb McCormick, Chris Alley, George Sourati, Bryan Collins, Ted Rosbeck & a person calling in from 646-250-1592.

The meeting came to order at 9:01 AM.

#### **AGENDA ITEM #1: REID SILVA FOR PAMELA & RODNEY BUNKER**

***2 Shalers Way (Map 1 Lot 3) / Application for a pool under by-law 4.2A3***

The public hearing was opened at 9:05 am. All Zoning Board of Appeals members were present to vote.

Mr. Silva started the hearing by sharing the GIS map of 2 Shalers Way and mentioned that the house is probably not visible from North Road due to a row of evergreens in the front yard. He then shared the site plan dated 10/29/21 and pointed out the location of the pool in front of the house, the fencing and the pool shed. Mr. Silva said that the Bunkers are determining if they could install a solar array to the house to supply the energy for the pool but in the meantime would enroll in the Verde Green Energy Program.

The Board asked whether the pool cover would be automatic and Reid answered that the Bunkers were installing a winter pool cover but it will not be automatic. Pamela added that an automatic cover is cost prohibitive but would be willing to research its benefits.

Mr. Maloney opened the hearing to public comment at 9:09am. None was offered. Mr. Maloney asked if there were any abutters letters received for this application to which Ms. Kisselgof replied there were not. Ms. Kisselgof added that this project was reviewed by the Site Review Committee which determined that this project would not have a detrimental effect to the North Road Roadside District.

A motion was made to close the public hearing at 9:10am. The motion was seconded and was passed by unanimous vote by the Board.

A motion was made to approve the application as presented with standard pool conditions. The motion was seconded. The vote passed with all five members in favor.

#### **AGENDA ITEM #2: REID SILVA FOR 34 BRICKYARD ROAD LLC**

***34 Brickyard Road (Map 9 Lot 2.11) / Application for setback relief under by-law 6.6***

The public hearing for this application was opened at 9:11 am.

Mr. Silva shared the GIS map for the area and identified the lot named in the special permit and the adjacent lots all owned by the same person. He explained that the owner wanted to build a studio close to the southern edge of the northern lot and plans to request the lot line be moved to accommodate setbacks for this structure. In moving

the lot line, an existing garage would then be located within the setback of the southern lot. Mr. Silva mentioned that the lot lines had previously been changed to allow for a septic system on the southern lot (Note: the GIS map does not show the current lot lines correctly). Mr. Silva then shared the Site Plan and indicated the new proposed lot lines. He said that, if the ZBA approved the setback relief, the applicant would then need to get approval from the Planning Board to move the lot lines. Mr. Silva shared the studio architectural plans and mentioned that the livable space for the lot is below the maximum. He added that the location of the studio would be less visible in the proposed southern area of the lot than in the middle, which is where it would need to be sited if the lot lines were not adjusted.

Mr. Maloney opened the hearing to public comment 9:20am and asked if there were any abutters' letters received. Ms. Kisselgof said that she only received the required consent letter from the abutting owner, who is the same owner of the lot in the application.

The Board asked about the small abutting lot to the west of 34 Brickyard Road that Mr. Silva had indicated was owned by Vida Poole Epstein. The question was about how this owner accesses their property. Mr. Silva explained that there is an unofficial easement and Ms. Epstein drives through 34 Brickyard Road to get to her house.

With no public comment offered, a motion was made to close the public hearing at 9:22am. The motion was seconded and passed by unanimous vote.

A motion was made to approve the application for setback relief, subject to the Planning Board's approval of the lot line change. The motion was seconded. The motion passed with all 5 members in favor.

**AGENDA ITEM #3: GEORGE SOURATI FOR MAKENA B. HERGET 1983 TRUST**  
***73 Quenames Road (Map 17 Lot 51) / Application for a pool under by-law 4.2A3***

Mr. Maloney opened the public hearing at 9:25am.

Ms. McCormick shared the site plan for the application but said that Bryan Collins or George Sourati would be presenting the application. Mr. Sourati joined the meeting a few minutes later and recounted some information about the property. He indicated the distance the pool was from the lot lines which more than met setbacks and mentioned that the house was being used as part of the pool enclosure, necessitating alarms on the doors opening to the area.

The Board questioned the placement of the pool enclosure. Mr. Sourati said that he discussed the pool enclosure with the owners and they did not want to see the fence from the house which is why they are proposing the current placement. The house has sliding glass doors that lead to a screened porch – the screened porch has a door leading to the pool. There was a concern that the sliding doors would be left open during the summer, therefore rendering the alarm on that door useless. The Board did not feel that the current plan relying on alarming several doors and windows would be safe. Mr. Sourati requested a continuance of this hearing to give him time to talk to his client about the Board's safety concerns.

A motion was made to accept the continuance. The motion was seconded and passed by unanimous vote.

**AGENDA ITEM #4: GEORGE SOURATI FOR JOAN & JAMES HARTLEY**  
***72 Cobbs Hill Road (Map 11 Lot 25.1) / Application for a pool under by-law 4.2A3***

Mr. Sourati sent a letter requesting that the two applications for this property be continued until the next hearing date. A motion was made to accept the request of continuance. The motion was seconded and was passed by unanimous vote by the Board.

## **AGENDA ITEM #5: GEORGE SOURATI FOR JOAN & JAMES HARTLEY**

*72 Cobbs Hill Road (Map 11 Lot 25.1) / Application under by-law 6.11*

This application is continued until the next meeting.

### **TOPICS NOT ANTICIPATED BY THE CHAIR:**

Chris Alley joined the meeting to ask about an issue with a special permit for the Merkel residence at 17 Howell Lane. He explained that there was a bunk house on the property, which all the approved site plans submitted indicated would be removed, but the owners now would like to keep until the other structures are built. Mr. Alley said that the square footage of the bunk house and the proposed main house would be under the maximum livable space and these two structures alone would not need a special permit to exist on the property. He asked if the site plan on file with the issued special permit could be updated to indicate the bunk house would remain until the guesthouse and pool house began construction. His concern is that the owners could not get a certificate of occupancy for the main house if the bunk house remains due to the plans on file.

After a discussion among Board members, it was decided that Mr. Alley should return at the next meeting where the Board will formally hear his request to update the site plan and vote on the change.

### **DOCUMENTS:**

2 Shalers Way Site Plan dated 10/29/21  
34 Brickyard Road GIS Map with correct lot lines indicated  
34 Brickyard Road Site Plan dated 11/30/21  
34 Brickyard Road Studio Architectural Design Plan  
73 Quenames Site Plan dated 12/22/21  
17 Howell Lane Site Plan revised 5/18/21  
17 Howell Lane Site Plan revised 1/17/22

### **ADMINISTRATION:**

MINUTES: A motion was made to accept the December 30, 2021 minutes as written and seconded. The motion passed by unanimous roll call vote.

POOL BY-LAW CHANGE DISCUSSION: A discussion about the pool by-law changes that were initiated in 2018 occurred. Ms. Malkin recounted the history of the changes and where the process stalled due to the pandemic. The Attorney General's office originally did not approve the changes due to inconsistencies with the town by-law and the state regulations, specifically related to access, enclosure and cover requirements. The by-law revisions were changed, reviewed by town counsel and sent back to the Attorney General, who informally responded that the by-law changes were acceptable. Ms. Malkin is concerned that the by-law requirement of on-site energy generation would not be allowed - she cited recent case law in Brookline.

Ted Rosbeck joined the meeting to give his opinion on the proposed by-law changes. Mr. Rosbeck felt that the current by-law addresses energy usage very strongly, more so than any town he is aware of. He said that the cost of the on-site energy generation would be prohibitive and, in some cases, not possible. Mr. Rosbeck expects that residents and pool installers will fight the by-law changes if passed. He also feels the cover and fencing aspects of the by-law and the guidance the Board gives during meetings are too strict and goes beyond what the state requires.

Mr. Murphy disagrees with the notion that the town cannot have a more restrictive by-law than the state and wants to move ahead with the updated by-law. Ms. Malkin wonders if the Board of Building Regulation and Standards will approve the changes and, if not, then the by-law update will be delayed further. Ms. Burger does not feel that on-site energy generation is necessary. She went on to say that solar isn't viable in all situations and also could require cutting down a lot of trees. Ms. Burger supports the usage of the Cape Light Compact green

energy as the source for heating pools. Ms. Malkin suggested editing the by-law to read “on-site renewable energy source or other source of renewable energy” and that the Board would be responsible for making sure green energy programs used are suitable. Mr. Maloney is okay with the current by-law and does not want the Board to have to regulate energy usage. He went on to say that he agrees with Mr. Rosbeck that there will be appeals if the by-law changes are instituted. Mr. Chapman also agreed with Mr. Rosbeck and doesn’t feel the by-law needs to be changed. There is a concern among the Board members that the changes will lead to more legal challenges.

Ms. Malkin offered new wording for the pool by-law as follows: “Heated swimming pools are permitted if the heat is supplied by solar or alternative systems.” Mr. Murphy suggested the inclusion of the word “renewable.” The Board supported this language and it was decided that Ms. Malkin would finalize the changes and present the by-law edits at the next ZBA meeting.

**ADVERTISING FEES DISCUSSION:** Ms. Kisselgof recounted a discussion with town counsel about having the advertising fees paid by the applicant. Town counsel said this was okay and that currently this was how the Conservation Commission handled these fees. Ms. Kisselgof spoke with Conservation Commission administrator Kara Shemeth about their procedure and found that the Vineyard Gazette does the billing directly with applicants. She suggested the ZBA use the same procedure. The Board agreed these costs should be paid by the applicant and that the application should be updated to reflect this change. Mr. Lo Russo suggested that any additional costs should be covered by the applicant, such as consultant costs. It was decided that town counsel would be consulted to see if all extra fees could be passed onto the applicant. Ms. Kisselgof will update the application, have town counsel look at it and bring it to the next ZBA meeting.

Next Hearing: February 24, 2022 @ 9:00am. Site visits February 23, 2022 @ 9:00 am.

With no further business to conduct the meeting adjourned at 10:45 AM.

Respectfully submitted by Alison Kisselgof, board administrator.