



# ZONING BOARD OF APPEALS

## Town of Chilmark

### **MEETING MINUTES -DRAFT**

#### **June 30, 2022 (via ZOOM)**

Present for the Board of Appeals and attending the meeting on Zoom were Russell Maloney - Chair, Allison Burger, Wendy Weldon, Chris Murphy, Joan Malkin, Frank Lo Russo and Alison Kisselgof - Administrator. Also in attendance were Reid Silva, Kris Horiuchi, Glenn Provost, Paul & Jody Darrow, Jonathan Scott, Kara Shemeth, Susan Greeley, Scott Darling, Travis Lenkner, Ruby Iantosca and Susan Langmuir.

Joe Chapman and Fred Khedouri were not in attendance.

The meeting came to order at 9:02 AM.

#### **AGENDA ITEM #1: REID SILVA FOR JEROME & CAROL KENNEY**

**45 Beach Road (Map 2 Lot 3) / *Application for Special Permit under By-law 4.2A3***

Mr. Maloney opened the public hearing at 9:05 AM.

Mr. Silva began his presentation with an aerial map of the property, pointing out the location of the proposed pool. He explained the location of the pool was the most suitable place due to wetlands and safety considerations. Mr. Silva then shared the site plan and indicated the property features that contributed to the decision of the pool's placement. He indicated that the pool was partially in the wetland buffer zone so that there would be a good line of sight from the house and said that the Conservation Commission had given approval. Mr. Silva mentioned that the application had listed a winter safety cover but the owner will actually be installing an automatic safety cover. Mr. Silva pointed out the retaining wall that would be the 4-foot barrier on three sides of the pool with fencing in the area between the house and the pool.

The Board asked about maintaining the retaining wall at 4 feet. Mr. Silva & Ms. Horiuchi explained that the retaining wall would step up to maintain the 4 foot barrier and then transition into fencing so that no point would have a barrier of less than 4 feet around the pool. The Board asked if the pool would be level with the patio, to which Ms. Horiuchi answered in the affirmative. The Board questioned the area to the left of the pool where there is some elevated landscaping. Ms. Horiuchi explained that there would be some changes made to the current landscaping to ensure the barrier is always at four feet around the pool.

Mr. Maloney opened the hearing to public comment at 9:15 AM. With no public comment offered, a motion was made to close the public hearing and seconded. The vote to pass the motion was unanimous.

Ms. Kisselgof mentioned that the Site Review Committee found the project to have minimal impact on the Coastal District and that the Conservation Commission had approved the project.

A motion was made to approve the application as presented. The motion was seconded. The application was approved with all five Board members in favor.

## **AGENDA ITEM #2: REID SILVA FOR RIDGE HILL ROAD NOMINEE TRUST**

### **36 Ridge Hill Road (Map 11 Lots 14&15) / *Application for a Special Permit under By-law 4.2A3***

Mr. Maloney opened the public hearing at 9:16am.

Mr. Silva shared an aerial map of Ridge Hill Road and indicated the location of the property for the application. He pointed out a red dot on the site plan at the location of the proposed tennis court. Mr. Silva had been asked at the site visit how close neighboring houses were to the tennis court location. He indicated houses within the area on the map and said that the closest would be 300 feet from the court. Mr. Silva then shared the site plan. He said that the tennis court will be the standard size of 120' x 60' and indicated a ridge on the east side. Mr. Silva mentioned the tennis court location was chosen due to the elevation challenges of the property as well as the distance from neighboring houses.

After a brief discussion regarding the number of trees that would be removed for the tennis court, Mr. Maloney opened the hearing to public comment at 9:22 AM. With no public comment offered, a motion was made to close the public hearing. The motion was seconded and passed by unanimous vote.

With no further discussion offered by the Board, a motion was made to approve the application as shown. The motion was seconded and approved by unanimous vote.

## **AGENDA ITEM #3: REID SILVA FOR HACKET-McLEOD NOMINEE TRUST**

### **8 Sams Way (Map 24 Lot 29.2) / *Application for a Special Permit under By-law 4.2A3***

Mr. Maloney opened the public hearing at 9:23 AM.

Mr. Silva shared an aerial map of 8 Sams Way and indicated the location of the house and proposed pool. Mr. Silva then shared the site plan and pointed out the location of pool, the sound-insulated equipment vault and the fencing. He said that the pool would have retaining wall on the south and east sides which would transition in to fencing on the other sides. Mr. Silva mentioned the barrier would be 4 feet at all points around the pool. Mr. Silva shared the landscape plan for the project which included elevations. He mentioned that the Board has asked about the distance of the house to the pool at the site visit and said the proposed pool would be ~120 feet from the house.

Ms. Horiuchi offered that the power for the pool would be offset by an existing solar array and not a green energy supplier as the application indicated. She also mentioned that the pool meets all setbacks and that there is clear line of sight from the kitchen and living room in the house.

The Board asked about the distance of a neighboring house to the pool. Mr. Silva measured the distance as ~130 feet. The Board brought up safety concerns due to the distance of the pool from the house.

Mr. Maloney opened the hearing to public comment at 9:31 AM. No public comment was offered.

Ms. Kisselgof read letters from two abutters in favor of the application into the record.

Mr. Silva asked for a continuance of this public hearing so the owners can address the Board's concern. A motion was made to continue the public hearing until the July 28<sup>th</sup> meeting. The motion was seconded and passed by unanimous vote.

**AGENDA ITEM #4: JONATHAN SCOTT FOR LUBORSKY FAMILY LTD PARTNERSHIP**

***1 Quitsa Lane (Map 33 Lot 75) / Application for a Special Permit under By-law 8.3***

Mr. Maloney opened the public hearing at 9:33 AM.

Mr. Scott offered some history of the house. He mentioned that the owners would like to add 2 bedrooms and renovate a bathroom. Mr. Scott also said that Reid Silva is working on the septic plan for the addition.

The Board asked for verification that the height is below 24 feet and that the setback requirements would be met. Mr. Scott answered that the height is 23'10" and that the setbacks would be met. There was some conversation about whether this application needed to be filed under by-law 8.2 or 8.3 and a question over whether a special permit was even necessary. Mr. Silva offered his understanding that the application falls under by-law 8.3 because it is a pre-existing, non-conforming secondary dwelling.

Mr. Maloney opened the hearing to public comment at 9:36 AM. With no public comment offered, a motion was made to close the public hearing. The motion was seconded and passed by unanimous vote.

The Board discussed the character of the neighborhood and made the following observations: the privacy would not change or impact others, the lot coverage is comparable to the 2 of the 4 immediate neighbors, the height and number of stories would not change, the appearance in terms of shingles and roof finish would not change, decking and lighting isn't applicable, the roof pitch appears to be an improvement, open space is marginally decreased but without impact on the neighborhood or neighbors, there is negligible impact on visibility, distance from the road is also non-applicable, stone walls will be mostly preserved. With these findings, the Board found the addition would not be more objectionable or detrimental to the character of the neighborhood than the current structure.

Ms. Kisselgof mentioned that the Site Review Committee found this project would have minimal impact on the Roadside District. She also read a letter of support from one abutter into the record.

A motion was made to close the public hearing at 9:40 AM. The motion was seconded and passed by unanimous vote.

With no further discussion offered by the Board, a motion was made to approve the application as shown with the condition that Board of Health approval is received. The motion was seconded and passed with all members in favor.

**AGENDA ITEM #5: GLENN PROVOST FOR PAUL & JODY DARROW**

***18 Greenhouse Lane (Map 33 Lot 32) / Application for a Special Permit under By-law 8.3***

Mr. Maloney opened the public hearing at 9:41 AM.

Mr. Provost started by saying that the Darrows are following through with a request from the Conservation Commission to the lot's previous owners for a retreat plan should the current dwelling become uninhabitable. The retreat plan would include rebuilding of the house further back from the bank. The existing structure is a little over 2000 sf and the proposed new dwelling is a little over 1000 sf. The new dwelling would be 45 feet from the top of the bank, have 2 bedrooms (1 less than current structure) and be built on pilings. Mr. Provost said that the owners still need Board of Health approval. He mentioned that the new structure would not be built until the current house is no longer viable but the owners would like the special permit in place to act quickly when this happens. Mr. Provost said that he discussed with the Darrows what conditions would be used to determine when the new dwelling would need to be built. Mr. Darrow proposed that the exposure of the foundation would be the trigger.

There was a discussion amongst the Board about the applicability of by-law 8.3 and the omission of by-law 6.6.

Mr. Provost offered that the property is non-confirming in several respects to Chilmark zoning including lot size, current & proposed structure setbacks and therefore by-law 8.3 would be the most appropriate for issuance of a special permit. The Board mentioned that 6.6 references a new dwelling and by-law 8.3 is for alternation of an existing dwelling. Mr. Provost felt that the application does represent an alteration of existing dwelling on a pre-existing, non-conforming lot. The Board asked for verification that the existing structure would be removed before the new structure would be built. Mr. Provost said that was correct.

Although it was discussed that the new dwelling was potentially more detrimental to the neighborhood, the Board felt that more data was needed for this determination and suggested a second site visit.

The Board did not agree that the foundation exposure would be a good trigger for the retreat plan to go into effect, especially because the foundation is already partially visible. Mr. Provost explained that, although the foundation is already exposed, it is not visible at the top of the coastal bank. The Board asked for clarification of the distance from the bank and requested to see the plan. Ms. Kisselgof shared the site plan. There was some concern from the Board that the coastal bank may be imperiled if the current structure wasn't removed until the coastal bank reached the foundation. Mr. Silva offered that the coastal bank is currently about 4-5 feet from the dwelling and is relatively stable at the moment. He added that the coastal bank would be impacted even if the house is removed today. Mr. Silva said that the removal plan would include restoration of the coastal bank and mentioned that the project will go before the Conservation Commission for guidelines on this issue.

Architectural drawings showing the elevation of the proposed dwelling were shared as well as second site plan indicating elevations. Mr. Silva also shared the site plan presented to the Conservation Commission which indicates proposed shoreline protection to be installed in September. Mr. Silva gave a brief description of how the shoreline protection will be secured. The Board asked the distance of the current dwelling from the western lot line. Mr. Silva replied that the existing dwelling has a 13-15 foot setback on that side. Mr. Provost mentioned that the current dwelling is closer on the eastern side of the lot.

Ms. Shemeth mentioned that she had the retreat plan from the previous owners of 18 Greenhouse Land and she would sent a copy to Ms. Kisselgof for the ZBA records.

The hearing was opened to public comment at 10:08 AM.

Abutter Susan Greeley said that she sent a letter to the ZBA regarding her family's objection to the application. She was concerned about how close the proposed house will be to the lane and expected that construction vehicles would have a negative effect on the roadway. She also mentioned that there was very little parking already. Ms. Greeley is worried about the condition of the bluff when the existing house is removed. She wondered if the foundation would be removed as well.

At this time in the meeting, Mr. & Mrs. Darrow had to leave the meeting due to a family emergency.

Ms. Kisselgof read abutters' letters from Mick Walsdorf and Barbara & Edward Law into the record. Both letters were in opposition to the application.

Abutter Scott Darling asked Ms. Kisselgof to forward a copy of the Mick Walsdorf's letter of opposition. He felt the proposed dwelling would be detrimental to the neighborhood. He said that the proposed house in unsightly. Mr. Darling mentioned that the current dwelling is very close to the lane and that parking for the house is basically extends the width of the lane. Mr. Darling does not believe the correct by-law was used on the application since there is new construction proposed and not an alteration of an existing structure. He also questioned why by-law 6.6 was omitted in the resubmitted application.

Abutter Susan Langmuir is concerned about construction and feels the road is too delicate for the trucks involved. She mentioned that construction trucks were using her driveway last summer during renovations at the Darrow property, including destroying a chain that was placed to prevent usage.

Ms. Kisselgof read the letter in opposition to the application received from the Darling family into the record.

The Board wants to get clarification from town counsel on the applicable by-laws for this application.

Mr. Silva offered that the town has issued special permits under by-law 8.3 in the past for reconstruction of existing dwellings on non-conforming lots, even when the new structure was not within the original structure's footprint. He gave 15 Dr's Creek Path as the most recent example. Mr. Silva would also like to hear from town counsel regarding which by-laws apply. Additionally, he pointed out several houses on the lane are also very close to the road already. Lastly, Mr. Silva offered that construction trucks on the lane are unavoidable since the current dwelling will need to be removed, which will involve many vehicles.

Mr. Provost requested a continuance to discuss the comments from this meeting with the owners. A motion was made to continue the hearing and was seconded. The motion passed by unanimous vote.

**AGENDA ITEM #6: REID SILVA FOR THE YARD, INC.**

***#6 The Yard (Map 26 Lot 95) / Application for Special Permit under By-laws Article 6 Section 6.6, Article 8 Section 8.3***

Mr. Silva requested a further continuance of this application since it is still under review by the Martha's Vineyard Commission. A motion was made and seconded to accept the request. Vote to approve with all Board members in favor.

**AGENDA ITEM #7: REID SILVA FOR THE YARD, INC.**

***#1 The Yard (Map 26 Lot 92) / Application for Special Permit under By-law Article 6 Section 6.11***

Mr. Silva requested a further continuance of this application since it is still under review by the Martha's Vineyard Commission. A motion was made and seconded to accept the request. Vote to approve with all Board members in favor.

**AGENDA ITEM #8: REID SILVA FOR THE YARD, INC.**

***#7 The Yard (Map 26 Lot 91) / Application for Special Permit under By-laws Article 6 Section 6.11, Article 8 Section 8.3***

Mr. Silva requested a further continuance of this application since it is still under review by the Martha's Vineyard Commission. A motion was made and seconded to accept the request. Vote to approve with all Board members in favor.

**AGENDA ITEM #9: GEORGE SOURATI FOR JOAN & JAMES HARTLEY**

***72 Cobbs Hill Road (Map 11 Lot 25.1) / Application for a Special Permit under By-law 4.2A3***

This application was requested be continued. A motion was made and seconded to accept the request. Vote to approve was unanimous.

**AGENDA ITEM #10: GEORGE SOURATI FOR JOAN & JAMES HARTLEY**

***72 Cobbs Hill Road (Map 11 Lot 25.1) / Application for a Special Permit under By-law 6.11***

This application was also requested be continued. A motion was made and seconded to accept the request. Vote to approve was unanimous.

**AGENDA ITEM #11: REID SILVA FOR SHEPHERD’S PATH NOMINEE TRUST**

***16 Shepherd’s Path (Map 24 Lot 1) / Extension Request for Previously Issued Special Permit under By-laws Articles 4 & 6 Sections 4.2A3 and 6.6***

Mr. Silva presented an aerial of the property and gave a brief history of the project that was previously approved. There has been a delay in construction due to the pandemic. The owner are requesting a year extension on the special permit.

A motion was made to approve the extension. The motion was seconded and passed by unanimous vote.

**AGENDA ITEM #12: BRUCE GOLDEN**

***30 Wintergreen Way (Map 18 Lot 22) / Request to Replace Site Plan for Previously Issued Special Permit under By-law Article 4 Section 4.2A3***

Mr. Golden was unable to attend the meeting and asked Ms. Kisselgof to present the updated site plan. Ms. Kisselgof shared the site plan and explained that the original plans included a new equipment shed for the pool equipment. The Golden’s would like to use an existing garage to house the pool equipment instead.

The Board made a motion to declare the change as inconsequential. The motion was seconded and passed by unanimous consent.

A second motion was made to approve the new site plan without the need for the Golden’s to reapply for a new special permit. The motion was seconded and passed by unanimous consent.

**TOPICS NOT ANTICIPATED BY THE CHAIR:** The Board discussed the next meeting and whether it would have to be in person. Ms. Kisselgof shared that she has received no information about an extension of remote meeting legislation and would have to send out legal notices stating the next meeting was in person. The Board suggested that the meeting be held at the library and asked Ms. Kisselgof to inquire about usage. Ms. Kisselgof asked the Board if would like to change the day or time of the meeting. The consensus was that the time and day of the week should stay the same.

**DOCUMENTS:**

Draft minutes from ZBA 5/26/22 meeting

45 Beach Road Aerial Map

45 Beach Road Site Plan

36 Ridge Hill Road Aerial Map

36 Ridge Hill Road Site Plan

8 Sams Way Aerial Map

8 Sams Way Site Plan

8 Sams Way Landscape Plan

8 Sams Way Abutters’ Letters – Paul & Ruby Iantosca, Sharif Nada

1 Quitsa Lane Abutter Letter –Thomas McAlister

18 Greenhouse Lane Vineyard Land Surveying & Engineering Inc. Site Plan

18 Greenhouse Lane Architectural Drawings

18 Greenhouse Lane MacNelly-Cohen Site Plan

18 Greenhouse Lane Abutters’ Letters – Mick Walsdorf, Barbara & Edward Law, Darling Family

16 Shepherd’s Path Aerial Map

**ADMINISTRATION:** A motion was made to approve the minutes from the 5/26/22 meeting as presented. The motion was seconded and passed by unanimous vote.

Mr. Maloney mentioned that this would be his last meeting as Chair. The other Board members thanked him for his work as Chair for the last few years. Mr. Lo Russo will be the Chair starting in July.

There was a brief conversation about the Menemsha Comfort Station Committee. Ms. Burger & Mr. Chapman had both volunteered to be the ZBA representative on the Committee but Mr. Chapman is currently too busy. The Board voted unanimously to approve Ms. Burger as the ZBA representative.

Next Hearing: July 28, 2022 @ 9:00 AM. Site visits July 27, 2022 @ 9:00 AM.

With no further business to conduct the meeting adjourned at 10:53 AM.

Respectfully submitted by Alison Kisselgof, Board Administrator.