



ZONING BOARD OF APPEALS

Town of Chilmark

MEETING MINUTES - DRAFT

May 27, 2021 (via ZOOM)

Present for the Board of Appeals and attending the zoom meeting via a roll call attendance were Russell Maloney, Chairman, Frank Lo Russo, Vice Chairman, Wendy Weldon, Chris Murphy, Joan Malkin and Alison Kisselgof Administrator. Also in attendance were Kara Shemeth, Rich Osnoss, Reid Silva, Moira Fitzgerald, Jim Baker, Ken Hurd, Allison Simon, Max Simon, Margaret Curtin, Ellen Biskis, Christina Graham, Jessica Mitchell and Cody Coutinho. Allison Burger did not attend.

The meeting came to order at 9:04 AM.

AGENDA ITEM #1: REID SILVA FOR 22 AUSTIN PASTURE RE TRUST

22 Austin Pasture (Map 33 Lot 47) / Application under by-law 4.2A3

Mr. Maloney opened the public hearing at 9:05am and appointed Ms. Malkin as a voting member for this application. Ms. Weldon recused herself due to being an abutter and Mr. Chapman recused himself due to being a contractor on the site. Mr. Maloney asked Mr. Silva whether he would like to proceed with 4 voting members, which would require a unanimous vote to pass, or to ask for a continuance until 5 voting members were available. Mr. Silva indicated he wanted to proceed and presented the VLSE site plan dated 3/17/21 to construct a 30' x 60' pickleball court.

The siting of the proposed pickleball court would require 10 feet of grade change to make a level surface. The court would require a retaining wall around the court and fence along the pond side for safety reasons. Mr. Silva indicated that abutting houses were at a distance far enough away that noise should not be an issue.

There is a covenant currently in effect on the property that explicitly prohibits tennis courts. Mr. Silva recounted discussing the project with Building Inspector Lenny Jason to determine if a pickleball court would be considered a tennis court. Mr. Jason did not consider a pickleball court the same as a tennis court and directed Mr. Silva to file a special permit application with the Zoning Board of Appeals. Mr. Silva mentioned that the bylaws are unclear about regulation of other courts besides a tennis courts even though they share similar traits and he would like town counsel's advice on how courts will be regulated by the town in the future and if the covenant is applicable.

The board discussed the site visit on the prior day and how the fog did not allow for a clear view of Squibnocket Pond. Mr. Murphy said that he returned to the site before today's meeting because the weather was clear and felt the placement of the pickleball court is concerning as it would be visible from the pond. Mr. Murphy offered that the court could be constructed towards the bottom of the hill and would not be visible from the pond. He agreed that town counsel should be consulted about whether the covenant is applicable. Mr. Murphy also mentioned that bylaw 12.6A3 regulates pavement usage in Squibnocket Pond District and that this project appears to have more pavement than some parking lots.

Ms. Malkin felt that the main question to answer is whether a pickleball court is considered a tennis court. If not, then a pickleball court was not permitted at all because bylaw 4.2A does not list pickleball court as an

accepted accessory use. Ms. Malkin stated that the Zoning Board of Appeals cannot enforce the covenant restrictions.

Mr. Lo Russo felt that a pickleball court should be viewed as a tennis court, but he did not consider it a structure.

Mr. Chapman offered that he also felt that it was up to town counsel to make a determination of whether the pickleball court would be considered a tennis court.

Mr. Maloney opened the hearing to public comment at 9:23am.

Mr. Osness commented that, as a member of the Planning Board, he would like to see the covenant upheld. From what he could see on the plans presented, the pickleball court would be considered a structure because its construction appears basically like a house foundation and would be prohibited by section F of the covenant. Mr. Osness asked Mr. Silva whether a more detailed design was available. Mr. Silva explained that without knowing if the pickleball court was permissible, detailed plans were not going to be created. Mr. Silva continued to say that he felt the pickleball court was a structure. He also offered that there is nothing in the covenant that states a pool is allowed yet pools have been constructed in the subdivision.

With no further public comment offered, a motion was made to continue the public hearing until after the Planning Board discusses the project with the Building Inspector to determine if a pickleball court constitutes a structure and, if not, that town counsel make a determination on whether a pickleball court is a tennis court. The motion was seconded and the vote approved with all four voting members in favor.

AGENDA ITEM #2: REID SILVA FOR KEVIN AND ELIZABETH OLIVER
508 North Road (Map 27.1 Lot 52) / Application under By-law 8.3B

Mr. Maloney appointed Mr. Chapman as a voting member for this application and opened the public hearing at 9:37am. Mr. Silva presented VLSE site plan dated 12/14/20 to reconstruct a pre-existing, non-conforming dwelling that will not change the current size but will increase the ridge height from 21.5' to 24' above natural grade. This project is in the North Road Roadside District. The project was reviewed by Conservation Committee on 2/16/21 and the Site Review Committee on 5/3/21. Mr. Silva mentioned that the owners were still considering just raising and renovating the current building instead of a full replacement but in both cases that the shape and size would remain the same except with the addition of some dormers. Mr. Silva presented models that the owner created to show what the dormers would look like on the house.

After a discussion of the project and its consistency with the character of the neighborhood, the board determined that the project would not be more objectionable or detrimental than the original structure.

Mr. Maloney opened the hearing to public comment at 9:46 am. With no public comment offered, a motion was made to close the public hearing. The motion was seconded and passed unanimously via a roll call vote with five in favor.

A motion to approve the application as presented was made and seconded. The vote passed unanimously via roll call vote with five in favor.

AGENDA ITEM #3: MOIRA FITZGERALD FOR MILES AND JULIE JAFFE

61 Stonewall Road (Map 32 Lot 60) / Application under By-law 8.3

Mr. Maloney appointed Ms. Malkin as a voting member for this application and opened the public hearing at 9:47 am. Ms. Fitzgerald presented a VLSE plan dated 4/26/21 to construct an addition to a pre-existing, non-conforming dwelling that will increase the gross living space by 1257 square feet. The additional living space will meet 50-foot setback distance from the lot lines. The outdoor shower is 43 feet and the deck is 40 feet from the North West lot line.

Ms. Kisselgof read a letter from the abutter on the North West lot line, Dick Couch, giving his consent to the project. After a brief discussion about the setbacks, the board found that it was allowable for the outdoor shower and deck to fall within the 50-foot setback since the abutter on the lot line had submitted his approval. The board also determined that the proposed changes would not be visible from any abutting properties and therefore not more objectionable or detrimental to the character of the neighborhood than the structure that currently exists.

Mr. Maloney opened the hearing to public comment at 9:57am. Abutter Christina Graham offered her support of the project. Abutter Jessica Mitchell asked a question about the addition being connected to the main house and Ms. Fitzgerald confirmed that it was.

A motion to close the public hearing was made at 9:58 am. The motion was seconded and approved unanimously.

A second motion to approve the plan as proposed was made and seconded. The vote passed unanimously via roll call vote with five in favor.

AGENDA ITEM #4: REID SILVA FOR SJ GRAHAM TRUST 2017

4 Old North Road (Map 26 Lot 121) / Discussion of Special Permit Issued 12/17/15

Mr. Silva recounted a conversation that he had with former ZBA administrator Chuck Hodgkinson regarding whether changes to the plans approved with the special permit issued on 12/17/15 would require a new application. Mr. Hodgkinson recommended going before the board to ask if an amendment could be made. Mr. Silva presented the changes which include an additional bedroom and bathroom, adding an additional 257 square feet to the guest house. There is an existing loft bedroom that will be decommissioned and an open-walled covered porch being added that are excluded in the total square footage.

After a brief discussion, the board concluded that a modification to the original special permit could be made with the condition that the open-walled covered porch never be enclosed. The board will schedule a hearing for the modification of the original special permit at a future meeting.

AGENDA ITEM #5: WILLIAM SULLIVAN FOR JOHN AND VANESSA McGARRY

108 Hammond Road (Map 4 Lot 7) / Application under by-law 4.2A3

Mr. Maloney opened the continued public hearing at 10:06 am. Eligible voting members were Mr. Maloney, Ms. Malkin, Ms. Weldon, Mr. Lo Russo and Mr. Murphy.

Mr. Sullivan informed the board that the Spring Point Architectural Review Committee (ARC) has conditionally approved a modified plan but there had not been enough time before today's meeting to redraw the site plan, re-stake the property and get official approval from the Spring Point ARC. Mr. Sullivan asked that the public hearing be continued.

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

AGENDA ITEM #6: CHRIS ALLEY FOR MAGNOLIA REALTY TRUST

17 Howell Lane (Map 27 Lot 3) / Discussion of Special Permit Issued 8/28/19

Neither Mr. Alley nor an eligible representative from Scofield, Barbini & Hoehn was present at the meeting so this item will be moved to the next meeting agenda.

AGENDA ITEM #7: CODY COUTINHO FOR ERICA AND MARC RECHT

54 Post Oak Road (Map 11 Lot 28.1) / Discussion of Special Permit Issued 2/25/21

Mr. Coutinho presented a change to the fencing from the site plan approved with the special permit issued on 2/25/21. The proposed change would increase the area within the fencing and include the house as a barrier, with several doors and windows opening into the pool area, requiring an alarm for each. There are no changes proposed to the pool size and location.

The board expressed disapproval of the changes and the desire to revisit the location to see the new fence siting in person. Various suggestions were offered to Mr. Coutinho that would make the change more acceptable.

Mr. Silva joined the conversation to say that he anticipated the board's comments and will relay the concerns to the owners.

ADMINISTRATION: The draft April 22, 2021 meeting minutes were reviewed. Prior to the meeting, Mr. Maloney had offered a corrected spelling to the Spring Point Architectural Review Committee. In addition, the board suggested a rewording of the phrase "no public comment" to "no public comment offered." A motion was made and seconded to approve the minutes with the rewording. The motion passed by unanimous roll call vote.

Ms. Kisselgof informed the board that there needed to be a discussion of the Accessory Apartment Bylaw which has a biennial review due this year. Ms. Kisselgof relayed comments made by the Housing Committee. Board members had no additional comments to add to the discussion.

Next Hearing: June 24, 2021 @ 9:00am. Site visits June 23, 2021 @ 9:00 am.

With no further business to conduct the meeting adjourned at 10:16 AM by a unanimous roll call vote.

Respectfully submitted by Alison Kisselgof, board administrator.