



# ZONING BOARD OF APPEALS

## Town of Chilmark

### MEETING MINUTES -DRAFT

October 27, 2022

(Via ZOOM Meeting ID: 859 2882 3664)

Present for the Zoning Board of Appeals (ZBA) were Frank Lo Russo - Chair, Allison Burger, Wendy Weldon, Chris Murphy, Russell Maloney, Fred Khedouri, Joan Malkin and Alison Kisselgof - Administrator. Also in attendance were Jaqueline Meyer, Martin Gold, Travis Ritchie, Gregory Milne, Reid Silva, Cody Coutinho, Glenn Provost, Bruce MacNelly, Kara Shemeth, Paul & Jody Darrow, Scott Darling, Susan Greeley, Thomas Humphrey and Michael (last name not given).

Joe Chapman was not present. The meeting came to order at 9:05 AM.

#### **AGENDA ITEM #1: TRAVIS RITCHIE FOR JACQUELINE MEYER**

**12 Valley Lane (Map 3 Lot 48)/ *Application for Special Permit under By-law 4.2A3***

Mr. Lo Russo opened the public hearing at 9:05 AM. Ms. Kisselgof read the description of the application.

Mr. Ritchie shared the site plan and pointed out the line of sight from the house to the pool. He mentioned that the hillside has a slope and that the pool would be elevated so it is at the same level as the house. The fencing would include the house as a barrier with alarms on all doors and windows facing the pool. A small pool house with an outdoor shower is also proposed.

The Board was concerned about the use of the house as a barrier and asked if the owners would consider moving the fencing to just around the pool. The owners said that there is little room between the back deck and the edge of the pool. They felt that placing the fence between the deck and the pool would interfere with the usage of the small backyard. There was a brief discussion about the distance from the house to the pool. Mr. Ritchie mentioned that an automatic pool cover would be installed and that a fence isn't required at all in this case to comply with state codes. The Board's main concern is safety and that the alarms would be disarmed due to the annoyance of the continuous ringing when a door or window is open. Rather than try to reconfigure the pool fencing during the meeting, the Board suggested that the applicant continue the public hearing and return to the following meeting after considering where else the fencing could be placed. The owners asked if any pools have been approved with the house as part of the barrier around the pool. The Board answered that there have been application approved in the past with the house as a barrier.

Mr. Ritchie asked for a continuance of this application until the next meeting. A motion was made to approve the continuance until the November ZBA meeting. The motion was seconded and passed by unanimous vote.

#### **AGENDA ITEM #2: GREGORY MILNE FOR BOOK END LLC**

**22 Loon Lane (Map 20 Lot 26)/ *Application for Special Permit under By-law 4.2A1***

Mr. Lo Russo opened the public hearing at 9:29 AM. Ms. Kisselgof read the description of the project.

Mr. Milne shared the site plan and pointed out the location of the proposed garage. He then shared the floor plan

for the garage on the first floor of the building, which was comprised of open space except for an enclosed mechanical room. Mr. Milne shared the floor plan for the guesthouse on the second floor, which contained 2 bedrooms, a bathroom and an open living space.

The Board offered that, if a special permit were approved for these plans, it would include a condition that the first floor never contain living space.

The meeting was opened to public comment at 9:33am.

With no public comment offered, a motion was made to approve the application as presented with the condition there is an appropriately recorded restriction that the first floor shall not contain living space. The motion was seconded and passed by unanimous roll call vote.

**AGENDA ITEM #3: REID SILVA FOR CATHY HOFFMAN and DAVID GERSH**  
**16 Harding Hill (Map 18 Lot 59.4) / *Application for a Special Permit under By-law 4.2A3***

Mr. Lo Russo opened the continued public hearing at 9:34 AM. Ms. Kisselgof read the description of the project. It was established the voting members were Ms. Burger, Mr. Chapman, Mr. Lo Russo, Mr. Murphy & Ms. Weldon. Since Mr. Chapman was not present at the meeting, Mr. Silva was asked if he wanted to proceed with the hearing with only four voting members. Mr. Silva confirmed that he would like to proceed.

Mr. Coutinho shared a revised site plan. Mr. Silva explained that, in the previous site plan, the pool fencing had a corner that was within the 50-foot setback from the lot line. Both the previous and current site plans show the fencing terminating on both the left and right side of the house. Mr. Silva said that there were some large trees that were being preserved and a fence just around the pool wasn't practical due to the location of the pool. He said that the doors and windows would be alarmed and offered to add an automatic pool cover if needed.

The Board asked about the elevation of the pool – it was recalled from the site visit that the backyard dropped off. Mr. Silva answered there was a slight drop of ~1.5 feet and indicated on the site plan where there was a retaining wall on the southeast side to bring up the grade. The Board questioned how many windows and doors were facing the pool. Mr. Coutinho wasn't sure the exact number but indicated on the site plan locations of windows and doors that would be within the fencing. He mentioned that every window facing the pool had a clear line of sight. The Board said that an automatic pool cover would make the pool safer considering that the fencing used the house as a barrier. Mr. Silva indicated that the owners would agree to an automatic pool cover if the Board felt it was a condition of approval; however, he mentioned that it was a significant expense to the owners and suggested automatic pool covers be included in the by-law if the Board was going to continually ask for its addition. The Board said that it was not a requirement to have an automatic pool cover but a strong suggestion in cases where extra safety is warranted. Mr. Silva stated that, in this case, he would add an automatic cover to the application at the Board's suggestion.

Mr. Lo Russo opened the hearing to public comment at 9:55 AM.

Mr. Maloney offered that the Meyer application that was previously presented and continued had the same issues at the current application. He suggested that the Board clarify its position on pool safety and the requirements deemed necessary for approval.

Ms. Kisselgof read into the record an abutter letter received in support of the application from Randy Milch & Amanda Salzman.

A motion was made to approve the application as presented with the addition of an automatic pool cover. The

motion was seconded and passed with all four members in favor.

**AGENDA ITEM #4: GLENN PROVOST FOR PAUL & JODY DARROW**

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

Mr. Lo Russo opened the continued public hearing at 9:54 AM. Ms. Kisselgof read the description of the project. Eligible voting members were Ms. Burger, Mr. Maloney, Mr. Lo Russo, Mr. Murphy & Ms. Weldon.

Mr. Provost started by stating that this application is a result of a 2016 Conservation Commission order for a retreat plan from the property owners, to be implemented when the current house is deemed uninhabitable. The current plan revised the dwelling to 578 square feet with one bedroom. Mr. Provost mentioned that the proposal would require Board of Health approval for a tight tank septic system because the proposed house will be located overlapping the current leaching field.

Mr. MacNelly shared a 3D rendering of the proposed dwelling which included elevations and then he shared a site plan. He indicated on the site plan the location of the house and said the setbacks would be 10 feet from the northwest lot line (the same as the setback of the current house). Mr. MacNelly reshared the 3D rendering and pointed out the sonotubes that the house would be placed on due to the uneven elevation of the property. The location of the leaching field was also indicated.

Mr. Provost stated the new dwelling would not be built until the current house was removed due to coastal erosion. He said that he understood that the special permit was only good for two years and, if the current dwelling was still habitable at the time of expiration, the owners would reapply for a new special permit. In reference to a question asked at the previous day's site visit, Mr. Provost said that the exposed sonotube on southwest side would be no higher than 5 feet. He also offered the southeast corner of the house would be resting on existing grade and the northeast corner would require cutting into the landscape and installing a retaining wall. Mr. MacNelly went over the materials and some landscaping details that would be incorporated. There was a discussion about the location of the property line in relation to the road.

The Board asked about the size of the current lot. Mr. Provost offered that it was roughly 1400 square feet, which equates to about 1/3 of an acre. Setback for a lot of this size is 25 feet. The Board mentioned that typically a request for setback relief would require consent from abutters. Ms. Kisselgof was asked if any letters were received from abutters in opposition to or support of the application. She replied that four letters of opposition and no letters of support were received.

There were several issues that the Board felt made it difficult to approve this application. The Board discussed whether the proposal would be more detrimental to the neighborhood, a consideration for a special permit under by-law 8.3. In particular, the construction of the proposed house was brought up and it was questioned how this process could not further damage the bluff. In response, Mr. MacNelly mentioned that there are currently a number of unanswered questions surrounding the removal of the current dwelling, which may also damage the bluff. The Board felt that this dwelling would be less conforming than the original dwelling. Also, the question of the applicability of by-law 6.6 was brought up since this project does not meet the 25-foot setback for a property of this size. The applicant was asked if the abutters were consulted.

The owner Mr. Darrow offered that he did speak with the neighbors and took their comments into consideration. The size of the house was reduced in response. He mentioned that he has been working with the Conservation Commission to preserve the bluff. Lastly, Mr. Darrow said that the proposed house is no closer to the lot lines than the current dwelling and doesn't believe this project is more detrimental to the neighborhood.

The hearing was opened to public comment at 10:40am.

Abutter Scott Darling said that his family is in total opposition to this project. He is concerned that the conditions of the bluff will be unknown at the time of construction and that construction vehicles will further damage the area. Mr. Darling mentioned that the existing parking would be affected by the project. His main concern is the stability of the lane, marsh and cliff.

Abutter Susan Greeley said that she reiterated everything that Mr. Darling mentioned. She wanted to make sure that the lane would be repaired if the application is approved – she mentioned that it was common to find tire tracks in the bluff when returning in the spring. She had questions about the timeline of construction, the location of the septic system and how many parking spaces the house would have. Ms. Greeley said that the reduction of the size of the house was an improvement but that she is still strongly opposed to the project.

Ms. Malkin spoke as a member of the public. Her opinion is that this project is definitely an increase in non-conformity. She did not feel that the ZBA should decide at this time to approve a special permit since the situation is unstable and the plans are not definitive. Ms. Malkin offered that the Conservation Commission request for a retreat plan was to determine when the current house would be removed and if there were plans to relocate the existing dwelling on the property, not to secure ZBA approval for new construction. She felt that this application should be dismissed because there were too many unknown factors.

Mr. Darrow offered that he was trying to get ahead of the situation but understands Ms. Malkin's comments. He was agreeable to waiting until the current dwelling was uninhabitable to seek a special permit to build another house. He requested to withdraw the application without prejudice.

A motion was made to approve the application withdrawal without prejudice and seconded. There was a brief discussion before the motion passed with all five ZBA members in favor.

**AGENDA ITEM #5: 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. Coutinho recounted the history of the project at The Yard. He mentioned that revisions were made since the March meeting when the public hearings were opened and the revised plans have been approved by the Martha's Vineyard Commission.

The original plan for this lot was to tear down the existing building and build a new structure. The new plans are very similar with a slight change in size for the building (2208 square feet down to 2020 square feet). The new structure is still proposed to be in the setback from the interior lot line.

The Board asked what distance the structure would be from the lot line. Mr. Coutinho said that it was 23 feet from the interior lot line. The Board asked about the possibility of the neighboring lot being sold. Mr. Coutinho answered that the lots are technically separate but that the buildings share a septic tank and well. It would be difficult if not impossible to sell the adjacent lot.

**AGENDA ITEM #6: 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***

The revisions of the project reduced the size of the building located on this lot. The previous plan was for a building with 3031 square feet and would have required approval of a special permit under by-law 6.11. The new plans are for a building that is 2127 square feet which is under the allowable total living area (TLA). This application was withdrawn since a special permit is no longer needed.

**AGENDA ITEM #7: 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**

The original plans for this lot were to remove the existing dwelling attached to the theater and rebuild it as a standalone structure as well as some renovations to the theater. The dwelling would have required a special permit under 6.11 because it was proposed at 3739 square feet and the maximum TLA allowed is 3098 square feet.

The new plan reduced the size of the standalone dwelling to 2127 square feet, which is within allowable TLA; therefore, by-law 6.11 would not apply to the revised application. Since the theater is still a pre-existing, non-conforming structure, by-law 8.3 is still applicable. Mr. Coutinho mentioned that a fire pump needed to be added to the plans due to fire codes and would be located in a 10' x 13' building in the parking lot.

The hearing was opened to public comment at 11:28am. Since no public comment was offered, a motion was made to close the public hearing. The motion was seconded and passed unanimously.

A motion was made to approve both applications from The Yard as presented and seconded. The motion passed with unanimous approval.

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

**DOCUMENTS:**

Draft minutes from ZBA 9/22/22 meeting

12 Valley Lane site plan

22 Loon Lane site plan

22 Loon Lane floor plans

16 Harding Hill revised site plan

16 Harding Hill abutter letter – Randy Milch & Amanda Salzman

18 Greenhouse Lane Site Plan and 3D Elevations

18 Greenhouse Lane abutters' letters – Darling Family, Mick Walsdorf, Natalie Conroy, Barbara & Edward Law

The Yard Site Plan revised 10/26/22

**ADMINISTRATION:** In the interest of time, it was decided that approval of the draft minutes from the 9/22/22 meeting would take place at the next meeting.

Next Hearing: November 29, 2022 @ 9:00 AM. No site visits.

With no further business to conduct the meeting adjourned at 11:29 AM.

Respectfully submitted by Alison Kisselgof, Board Administrator.