



# ZONING BOARD OF APPEALS

## Town of Chilmark

### MEETING NOTES - FINAL

**March 25, 2021 (via ZOOM)**

Present for the Board of Appeals and attending the zoom meeting via a roll call attendance were Russell Maloney, Chairman, Frank LoRusso, Vice Chairman, Wendy Weldon, Chris Murphy, Joan Malkin, Joe Chapman and Alison Kisselgof. Also in attendance were Reid Silva, James Moffatt, Hans Solmssen, Joan Safford, Margaret Robinson, Heather Norton, Patrick & Sharon Hennessy, Matthew Kaplan, Ted Rosbeck, Elisa Cohen, Richard Gilbert, William Sullivan, Kathy Coe and Katie Donahue. Allison Burger did not attend.

The meeting came to order at 9:00 AM.

#### **AGENDA ITEM #1: REID SILVA FOR NAN ROTHSCILD COOPER**

***21 Ridge Hill Rd. (Map 11 Lot 16.1) / Application under by-law 4.2A3***

This was a continued public hearing from 2/25/21. Eligible voters were Chris, Frank, Wendy, Russell & Joan. Mr. Maloney opened the public hearing at 9:05 am.

Mr. Silva reviewed the issues with visibility from the house at the original pool location proposed in site plan dated 11/10/20. Mr. Silva presented the new site plan revised on 2/23/21 in which the pool was rotated 90 degrees which offered better visibility from the house. He added that visibility would improve if the deck baluster was replaced by cabling and some shrubs and low lying tree branches were removed.

After brief discussion and with no public comment a motion was made to close the public hearing at 9:12 am. The motion was seconded and passed unanimously via a roll call vote with five in favor. A subsequent motion was made to approve the plan as presented with the following special conditions:

1. The deck baluster where pool is visible from house shall be replaced by cabling.
2. Trees and shrubs between the deck and pool shall be removed indefinitely.
3. The stand pipe location shall be approved by the Fire Chief before obtaining a Building Permit.
4. A dedicated power meter shall be installed for all of the pool-related equipment.
5. Each November after the pool is installed the owner shall provide documented proof to the Zoning Enforcement Officer that the renewable energy needs as contracted through a green energy program has been purchased.
6. If the ZBA determines the owner has not complied with these conditions the ZBA shall take appropriate actions to satisfy the renewable energy needs and source of power.
7. If at a future date the owner wishes to revise this arrangement, a petition for a new Special Permit with the proposed renewable energy plan must be filed for due processing.

The motion was seconded and with no further discussion passed unanimously with five in favor via a roll call vote.

**AGENDA ITEM #2: JAMES MOFFATT FOR CSO, LLC (PATRICK & SHARON HENNESSY)**  
***15 Dr. 's Creek Path (Map 24 Lot 135) / Application under By-law 8.3***

This was a continued public hearing from 2/25/21. Eligible voters were Chris, Frank, Wendy, Russell & Joan. Mr. Maloney opened the public hearing at 9:15 am.

Mr. Silva recounted discussions with the Board of Health regarding the 3 bedroom septic system and how no increase in flow would be allowed on the lot. Mr. Silva explained that the property currently has an existing, non-conforming structure with a building envelope that would allow for what Mr. Silva termed an “as of right build” provided setbacks were met. Mr. Silva described the upgrade to the septic system as “above and beyond certainly what is required” and will include an enhanced treatment component approved by the Board of Health. Mr. Silva indicated that all drainage and surface and roof runoff on the property will be captured in subsurface dry wells.

Mr. Moffatt presented a new site plan dated 3/22/21. The new plan shows a reduction in square feet, the removal of the second story on the north side of the house, and a rotation of the structure to the northwest. Mr. Moffatt explained that the current deck on the existing house is 1 foot and  $\frac{3}{4}$  inches off the lot line and that the new proposed structure will be 9 feet 6  $\frac{1}{4}$  inches from the property line. The new plan shows a flat roof on the north side that now meets the 13 foot height restriction and a pitched roof on the south side that meets the height restriction. Mr. Moffatt explained that the lot is allowed 24 feet in height and indicated the new roof is lower than 24 feet and is 28  $\frac{3}{4}$  inches above the existing house ridge. Mr. Moffatt said he has addressed the neighbor's concerns with the character of the neighborhood by removing the second story, replacing the proposed metal roof with asphalt shingles, the siding would be a grey, weathered, cedar board and all trim and windows will be natural and will weather. Other changes to the proposal included the addition of a 9.8 KW solar array on the southern side. Mr. Moffatt concluded his presentation.

Mr. Maloney asked Mr. Moffatt to put the old and new elevation plans on the screen simultaneously so that the board and the audience could compare the two designs and have a better visual sense of how much the design has changed. Mr. Moffatt showed both the old and new plans simultaneously.

Mr. Maloney asked the board for questions and discussion. Mr. Murphy asked about the 9 ft 6  $\frac{1}{4}$  inches on the western side and asked Mr. Moffatt to move the structure to 10 feet. Mr. Moffatt agreed to consider moving the house within 10 feet of the lot line.

Wendy Weldon wanted to know if the permission of the neighbor on the western side was needed to grant permission for setback relief. Mr. Murphy explained that 6.1A allows the placement of the structure closer to the setback and referred Wendy to article 8.

Frank LoRusso said his only concern was the setback being less than 10 feet and otherwise he thought “the change in plan was very good.”

Joan Malkin did not have any comment pending the public comment.

Joseph Chapman didn't have any concerns or questions and considered the plan “an improvement.”

Mr. Maloney then opened the hearing to public comment at 9:32 am.

Abutter Joan Safford mentioned that she had written another letter that expressed her concerns about not seeing the revised architectural plans prior to the meeting. She was pleased with the removal of the second story and questioned what the current living area is.

Mr. Maloney asked Mr. Moffatt to go over the proposed size of the house and explain how it meets the requirements of Chilmark zoning. Mr. Moffatt calculated the allowable living space as 2802 sq. ft. for the lot of 0.22 acres. The current proposed square footage for the main floor is 1,820 square feet with the overall gross square feet at 3,147. Mr. Moffatt explained that the square footage in the walkout portion of the house is excluded from the calculation as prescribed by the Chilmark Building Inspector. Ms. Safford asked Mr. Moffatt to confirm the allowable square footage and wanted to know if it included the two bedrooms on the lower floor. Mr. Moffatt explained that the below grade living space is not included in the living space calculation.

Ms. Safford expressed concern with the zoning regulations exempting living space below grade. Mr. Silva described how this matter was discussed at length during Chilmark's "Big House" bylaw drafting and that the town approved the exemption of lower level living space.

Joe Chapman remarked that the matter of lower level living space was discussed at length with the Planning Board.

Joan Malkin explained that the Big House bylaw was designed to prevent overwhelming size of structures and the thought was that if the house is built into the ground the lower story doesn't contribute to the overwhelming size of the structure.

Frank LoRusso asked what the square footage in the lower level that is exempt. Mr. Moffatt said 1,327 square feet and explained to Mr. LoRusso that the 1,327 would not be exempt from the calculation if it were on the second story but it is not and is exempt.

Ms. Safford asked about the pivot of the house to the northwest and stated that the pivot made the focus on the Norton bathroom. Mr. Moffatt explained that he wanted to move the house to the furthest northern point to address neighbor's concerns.

Margaret Robinson asked Mr. Moffett to put the plan back on the screen so that she can view the pivot of the house.

Mr. Hans Solmssen noted that Joan Safford was "doing the heavy lifting" for the neighbors and also thanked the Hennessy's for considering the neighbors issues and welcomed them to the neighborhood. Mr. Solmssen hoped that the impact on Heather and Joan's houses would be less than what is visible on the plans

Kathy Coe asked about the drainage and infiltration of water and asked Reid to explain the distance of the little ponds to the property. Reid Silva explained that the property is 400 feet away from the little pond and 650 feet away from Chilmark Pond. Ms. Coe asked about the wetlands present, Mr. Silva indicated the wetlands were greater than 100 feet from the property.

Matt Kaplan explained that Heather Norton was having internet connection issues. Alison indicated that Heather was hearing the meeting and sending text messages to Alison. Heather emailed a letter to Alison which Alison read into the record. In the letter Heather expressed support for many of the proposed changes that the Hennessy's had made to their plans. She described the unique characteristics of the neighborhood, the ponds, wetlands and ocean frontage and their fragility. She expressed her thanks to the board for helping to protect the neighborhood's resources. She expressed concern about overburdening the water table and other resources.

Heather indicated that she believed the lot at 15 Dr. Creek was the smallest lot in town and “at capacity for the shared resources” with the existing house. She described the original house with one bathroom and two bedrooms and wanted confirmation on the number of proposed bathrooms. Heather described how the initial buildings on Dr. Creek were sited to be as private and sustainable as possible. Heather hoped that the ZBA would recommend that the new house be sited further back north and west to maintain privacy and ecology. Heather expressed concern about erosion and water runoff. She stated that she had not yet seen a plan from James and Patrick Hennessy regarding runoff and erosion. She asked the board and the Hennessys to consider a “green roof” to lessen the environmental impact. Heather condones the solar panels and applauds the shingle design and color. She thanked her neighbors for their efforts and the due diligence and service of the ZBA. She was also grateful to the Hennessys for changing their plans to address her concerns.

Patrick Hennessy indicated that he is in contact with Heather.

Heather sent a text message to Alison asking for more detail about the dry wells and their possible effect on the water table. Reid Silva has described the dry wells as typical concrete ring with perforations and that the water would end up in the water table.

Hans Solmssen wanted confirmation on the number of bathrooms. Mr. Moffett indicated 4.5 bathrooms or 5 toilets. Mr. Maloney asked Mr. Silva to describe septic size and the use of bathrooms and occupancy of bedrooms. Mr. Silva reiterated that the enhanced system is not required and is being offered.

Ms. Safford asked Reid if the house could be pulled back to the north and if the leaching fields could be installed on Dr. Creek’s common lands. Mr. Silva indicated that the system was designed to maintain adequate setbacks and that a variance would be required to move further to the north. Mr. Silva indicated that health code does not support reduction in setbacks due to building separations.

Mr. Maloney asked for any further public comment, there was none and asked the board for a motion to close the public hearing. Mr. Murphy moved to close the public hearing, Mr. LoRusso seconded the motion. The vote to close the public hearing was unanimous. Mr. Maloney asked for discussion among the board members.

Joan Malkin indicated that the board’s primary concern was the change and the non-conformity and if those changes alter the character of the neighborhood. Joan indicated that present proposal was quite in keeping with the character of the one story neighborhood, and that she had walked the neighborhood as many as three times, most recently the previous day with Mr. Maloney and notes there are several houses in the neighborhood with upper decks and walk out basements. Ms. Malkin noted she believed that the roof shingles and siding were in keeping with the character of the neighborhood. She noted that the poles put up to indicate height were just barely visible. Joan believed the house would impact the privacy of the Nortons but added that this was an extremely small lot and “doesn’t start out providing a whole lot of privacy.” Joan added that she thought that the “exacerbation to the extent that it is, is probably not material in terms of the overall aspects of the character of this house in the neighborhood.” Joan added that adding an enhanced septic system was a remarkable offering that has the potential to improve the pond. Joan commented that a green roof may require a variance and not a special permit and thought the pitched roof and solar panels were important to the neighborhood.

Wendy Weldon indicated that she was conflicted. She stated that the larger house would have a huge impact on the small lot more so than the small summer camp that is there now. Wendy was uncomfortable with the change and wished the house were on a bigger lot. Wendy expressed empathy with the neighbors.

Mr. Maloney asked for any further comments or questions from the board. There were none. Mr. Maloney asked for a motion. Mr. Murphy made a motion to approve the revised plan with the condition that the building does not encroach on the northwest corner closer than 10 feet. Mr. LoRusso seconded the motion. Mr. Maloney called for a vote, Chris Murphy, yes, Wendy Weldon, yes, Frank LoRusso, yes, Joan Malkin, yes and Mr. Maloney, yes.

Mr. Maloney thanked the Hennessy's for attending and thanked the abutters and interested people from Abel's Hill "you've done a great job."

### **AGENDA ITEM #3: TED ROSBECK FOR RICHARD GILBERT & ELISA COHEN**

#### ***19 Wososket Ln (Map 11 Lot 76)/ Discussion of changes to plans previously approved***

A special permit was issued to Richard Gilbert & Elisa Cohen on 8/27/20 under By-law 4.2A3 to construct a pool and shed as presented in site plan dated 7/29/20.

Ted Rosbeck presented a new site plan dated 3/22/21 which included changes to size and location of equipment shed as well as new placement of fence enclosure. New plans called for shed to move to end of pool and increase in size from 6'x8' to 8'x12'. Fencing around pool was increased to allow an area within to include a garden and open grassy area. The new fence would traverse an abandoned driveway to the property and include a gate on the far side by abandoned driveway.

The Board expressed concern about safety due to the fencing changes and would like a site visit. The shed changes were considered minimal.

Mr. Maloney appointed Joe Chapman as voting member. A motion was made to deem the changes to the shed as inconsequential. The motion was seconded and passed unanimously with five in favor. A second motion was made to approve changes to shed as presented in site plan dated 3/22/21. This motion was seconded and passed unanimously.

The Board decided to continue discussion regarding fencing at their next meeting after a site visit.

### **ITEM NOT ON AGENDA: CHUCK SULLIVAN FOR SARAH & JOSHUA MANGERSON**

#### ***47 Blueberry Ridge Ln (Map 8 Lot 67)/ Discussion of changes to plans previously approved***

Chuck Sullivan presented differences to the site plan dated 11/10/20 originally approved with special permit application on 11/12/20 under By-law 4.2A3 and the site plans dated 3/1/21 which were submitted with the building permit application. Minor changes to garage and interior space were discussed.

The board agreed changes presented were minimal and did not impact the pool area for which the special permit was issued. Mr. Maloney appointed Joe Chapman as a voting member. A motion was made that changes were inconsequential. The motion was seconded and passed unanimously. A second motion was made to approve the site plan dated 3/1/21 as presented. This motion was seconded and passed unanimously.

**ADMINISTRATION:** The draft February 25, 2021 meeting minutes were reviewed. A motion was made and seconded to approve the minutes as presented. With no discussion the motion passed by roll call majority consensus.

Next ZOOM Hearing: April 22, 2021 @ 9:00am. Site visits April 21, 2021 @ 9:00 am.

With no further business to conduct the meeting adjourned at 10:51 AM by a unanimous roll call vote.

Respectfully submitted by Alison Kisselgof.