



# ZONING BOARD OF APPEALS

## Town of Chilmark

### MEETING MINUTES - FINAL **June 24, 2021 (via ZOOM and in-person)**

Present for the Board of Appeals and attending the meeting on Zoom via a roll call attendance were Russell Maloney, Chairman, Frank Lo Russo, Vice Chairman, Wendy Weldon, Chris Murphy, Joan Malkin, Joe Chapman and Alison Kisselgof Administrator. Also in attendance were Kara Shemeth, Reid Silva, Ellen Biskis, Barry Willner, Sybil Wailand, Kristen Reimann, Vanessa McGarry, William Sullivan, Susan Eddy, Margaret Wheeler, Sandra Schpoont, Chris Alley and Chloe Jones. Allison Burger did not attend.

The meeting came to order at 9:04 AM.

#### **AGENDA ITEM #1: REID SILVA FOR 34 HIGH MARK LLC** ***34 High Mark (Map 26 Lot 80) / Application for a pool under by-law 4.2A3***

Mr. Maloney opened the public hearing at 9:05 am and appointed Joe Chapman as a voting member.

Mr. Silva presented the VSLE site plan dated 4/20/21 and KRLA site plan hand dated 6/24/21 to construct an 18' x 50' built-in swimming pool with the associated 4-foot high safety enclosure that meets the 50-foot setback requirements from the lot lines. The pool will have a winter safety cover. The pool water will be heated and the energy used by the pool equipment will be offset by enrollment in the Verde Energy program. The pool equipment will be stored in a sound-insulated shed. Mr. Silva started by introducing Kristen Reimann as the landscape architect who designed this project.

Mr. Silva indicated the fencing enclosure on both plans as well as the retaining wall that will serve as a southern barrier. He mentioned that the neighbors to the south (Schpoont) did contact him with concerns over sound and screening. Ms. Reimann described the screening plan that would address some of the concerns of the neighbors.

The board questioned how the pool enclosure would protect against falling off the retaining wall, which Mr. Silva mentioned had a 29 inch drop to the natural grade. Ms. Reimann explained that there was a fence topper at the retaining wall transition so that the plans would always be complying with building safety codes.

The board asked if the applicant would be willing to install an automatic pool cover and a general discussion about the benefits of this type of cover ensued.

The hearing was open to public comment at 9:19 am.

Abutter Sandra Schpoont expressed concern about pool water overflow coming down the hill to her property. Mr. Silva explained that water level would have to increase over adjacent grade to cause an overflow, which is not likely except in the case of rain water, and that the volume would be small and of little concern. Ms. Schpoont also wanted to know when the pool would be installed and Ms. Reimann answered that construction would begin in September.

Abutter Margaret Wheeler raised concerns about construction vehicle parking and wanted to make sure that no abutters' driveways and road ways were blocked while the pool was under construction. Six parking spaces were identified by Ms. Reimann which she believes would be adequate parking for the work crew. Ms. Wheeler also wanted to know where pool water would be drained when emptied. Mr. Silva explained that the pool

chemicals would need to be evaporated before the water was drained and then the clean water would be released into a pit or the woods. He further explained the entire pool volume would not be disposed of when draining occurred.

Mr. Maloney asked about what would be done with a pile of boulders, brush and trees at the western side of the pool location that would be climbable. Mr. Reimann explained that the boulders would be repurposed to use at the southeast corner of the pool as additional retainage and that trees and vegetation would be cleared when the pool was constructed.

Mr. Maloney closed the public hearing at 9:29 am.

After a discussion, a motion was made to approve the application with the standard pool regulations and the removal of boulders and vegetation at the western side of the pool. The motion was seconded and passed by unanimous roll call vote.

### **AGENDA ITEM #2: REID SILVA FOR 22 AUSTIN PASTURE RE TRUST**

***22 Austin Pasture (Map 33 Lot 47) / Application for a pickleball court under by-law 4.2A3***

This was a continued hearing on this application. Eligible voting members are Mr. Maloney, Ms. Malkin, Mr. Murphy and Mr. Lo Russo. Ms. Wheldon & Mr. Chapman had previously recused themselves due to conflict of interest.

Since town counsel had not yet offered an opinion on whether the pickleball court would be considered a tennis court, Mr. Silva requested a continuation.

Ms. Kisselgof was asked to follow up with obtaining a legal opinion on the issue.

Ms. Weldon mentioned that the Planning Board discussed the matter at their June 14<sup>th</sup> meeting and voted in agreement with the Squibnocket Pond District Advisory Committee's findings and recommendations that the project would have significant impact on the Squibnocket Pond District and is not keeping with the Covenant and District regulations.

A motion to continue was made and seconded. The motion was passed unanimously.

### **AGENDA ITEM #3: WILLIAM SULLIVAN FOR JOHN & VANESSA McGARRY**

***108 Hammett Road (Map 4 Lot 7) / Application for a pool under by-law 4.2A3***

This was a continued hearing on this application. Eligible voting members are Mr. Maloney, Ms. Malkin, Ms. Weldon, Mr. Murphy and Mr. Lo Russo and all were confirmed as present.

Mr. Maloney opened the hearing at 9:30am.

Mr. Sullivan said that he and the owners have been working with the Sprint Point Architectural Review Committee to address issues with the original plans. He presented a revised site plan dated 6/11/21 and described changes to the plans including that the pool had been rotated and moved 14 feet further from the road to a total distance of 85 feet, the roof of the pool house was reduced two feet to the height of the existing garage and screening was added between the pool and the road. The stockade fence was also replaced by a cedar fence. Mr. Sullivan mentioned that a tree was identified by the Board as blocking the sight line from the house to the pool and it would be removed.

Mr. Maloney opened the hearing to public comment at 9:43am. No public comment was offered and a motion to close the public hearing was made at 9:44am. The motion was seconded and passed by unanimous vote.

After a brief discussion, a motion was made to approve the application as shown with stand pool conditions. The motion was seconded and passed by unanimous roll call vote.

#### **AGENDA ITEM #4: SUSAN EDDY**

##### ***12 Welles Way (Map 25 Lot 7.6) / Application for a pool under by-law 4.2A3***

Mr. Maloney opened the public hearing at 9:45am and appointed Joe Chapman as a voting member.

Ms. Eddy would like to construct a round 18' above-ground pool that would have a 4-foot enclosure with self-locking gate and meet the 50-foot setback requirements from lot lines. The pool would not be heated and it would be disassembled and stored in the house in the off-season.

Ms. Eddy mentioned that she emailed Ms. Kisselgof the proposed fencing and gate that she would be installing as a barrier. The pool's initial filling was also discussed. Ms. Eddy was reminded that the pool water would have to come from an off-site source and a recommendation on who could do the fill was given.

Mr. Murphy recounted a discussion with Ms. Kisselgof at the site visit about differences in safety requirements for above-ground versus in-ground pools and requested more information. Ms. Kisselgof related the Massachusetts building code which states that an above-ground pool may not require a fence if the pool itself is a sufficient barrier but that Ms. Eddy's aboveground pool wall, although 48 inches in height, would not suffice as a safety enclosure and would still need a fence to meet the Bylaw requirement.

Mr. Maloney opened the hearing to public comment at 9:50am and, with no public comment offered, a motion was made to close the public hearing. The motion was seconded and passed by unanimous vote.

After a brief review of the Bylaw requirements for a safety barrier and other pool guidelines, a motion was made to approve the application with the required, applicable standard pool requirements of the town Bylaw. The motion was seconded and passed by unanimous roll call vote.

#### **AGENDA ITEM #5: CHRIS ALLEY FOR MAGNOLIA REALTY TRUST**

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

A special permit was issued on 8/28/19 to construct an 800 sq. ft. guesthouse under Article 4 Sec. 4.2A1; tear down and build a new single-family residence and build a pool house for the existing pool. Under Article 6 Section 6.11 the total living area for the new house is 4,443 sf; the guesthouse has 835 sf of living space and the pool house has 266 sf of living space for a total of 5,544 sf. The amount of living space requiring a special permit for 10 acres is 5,250 sf. The total maximum living area allowed with a Special Permit is 7,750 sf. Under Article 11 Section 11.6B, the project is replacing structures within 100 feet of a wetland draining into a coastal pond.

Mr. Alley presented a revised site plan dated 5/18/21 which includes an additional 48 sf of living space, bringing the living area to a total of 5,592 sf. The changes also include addition of 40 sf to the screened porch.

It was confirmed that this change would require a new public hearing with legal notice and abutter notifications. Ms. Kisselgof will schedule a special permit amendment hearing for the next ZBA meeting on July 22<sup>nd</sup>.

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

##### ***#7 The Yard (Map 26 Lot 91) / Request for Extension of Special Permit Issued 6/5/19***

Mr. Silva explained that The Yard has been unable to start the project and the special permit is about to expire. There are no changes to the plans.

Mr. Maloney appointed Joan as a voting member and a motion was made to extend the special permit for one year. The motion was seconded and passed by unanimous roll call vote.

**ADMINISTRATION:** The draft May 27, 2021 meeting minutes were reviewed. A motion was made to accept the minutes as written and. The motion passed by unanimous roll call vote.

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

With no further business to conduct the meeting adjourned at 10:17 AM by a unanimous roll call vote.

Respectfully submitted by Alison Kisselgof, board administrator.