



ZONING BOARD OF APPEALS

Town of Chilmark

MEETING MINUTES - FINAL

August 26, 2021 (via ZOOM)

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, Joe Chapman, Joan Malkin and Alison Kisselgof Administrator. Also in attendance were Kristen Reimann, Reid Silva, Fran Demers, George Sourati, Kara Shemeth, Jonathan Lipnick, Susan Scheuer, Emily Gadd, Joan Safford, David Wolff, Doug & Margot Rothman, Alex & Amy Finklestein, Tim Rich, Bill Rossi, Kathy Coe, Hans Solmssen, Heather Norton, Travis Ritchie, Richard DeWitt, Topher Solmssen, Greg Ehrman, Ernest Belisle, David Lundgren, Lenny Jason, Paul Hornblower and Kris Horiuchi. Allison Burger did not attend.

The meeting came to order at 9:01 AM.

AGENDA ITEM #1: REID SILVA FOR 4 SOUTH ABELS HILL ROAD NOMINEE TRUST ***4 South Abels Hill Road (Map 24 Lot 219) / Application for a pool under by-law 4.2A3***

Mr. Maloney opened the public hearing at 9:05am. Joan Malkin was appointed as a voting member.

Mr. Silva presented an aerial map of the property and then site plan for the project. Mr. Murphy mentioned that the bylaw 4.2A3 says that the pool cannot be within 50 feet of the lot line (not 25 feet setbacks as stated in bylaw 6.0C for structures and dwellings). Mr. Silva measured the distance of the pool from the lot lines and showed that it was greater than 50 feet from lot lines and therefore met the bylaw guidelines. It was discussed whether the fencing and pool equipment also needed 50 foot setbacks and the consensus was the bylaw only states the pool should meet 50-foot setback and that the equipment placement is at the discretion of the ZBA (reference bylaw 4.2A3d).

The chair opened the meeting to public comment at 9:18am. Ms. Kisselgof read letters from abutters Emily Gadd, Fran Demers & Phillip Demers as well as a letter from neighbor Jonathan Lipnick.

Neighbor Joan Safford spoke in opposition of the application. She recounted a previous special permit application for Douglas & Patricia Sacks at 15 Chappaquoit Road – this application, although originally approved with conditions in 2008, was denied in a subsequent court ordered review. Joan stated that there are currently no pools in the South Abels Hill neighborhood on non-conforming lots and that the addition of a pool would be detrimental the character of the neighborhood. She also felt that lighting and noise will be an issue to neighboring homes, especially because the Finkelstein's house is on a hill.

Neighbor Heather Norton also spoke in opposition to the application citing the amplification of sound in the neighborhood due to the topography as well as how close the houses are to each other. She also wondered what lighting would be used since the plans did not show lighting and was concerned about pool chemicals. Lastly, Heather mentioned that this would set a precedent in the neighborhood that will have a great impact and is irreversible.

Neighbor Kathy Coe also spoke in opposition to the application. Kathy is concerned about off-gassing of chemicals from the pool, drainage of pool water and the amplification of sound, specifically from the cabana. Kathy also wondered what the planting plan will be since it was not presented and is part of the bylaw specifications (reference bylaw 4.2A3k).

Mr. Silva explained that the pool is salt-water filtration system that would normally be pumped into a woodsy area and would have minimal impact on the natural surroundings. Even so, if neighbors are concerned, he said that a dry well could be used instead and explained how drywells work. Mr. Silva addressed the lighting concerns by saying that a pool is at ground level with downward shielded lighting and could not create more lighting pollution than the house itself. Mr. Silva does not believe that the pool would change the character of the neighborhood because the pool would not be visible from the road or any surrounding properties except perhaps the immediate neighbors, the Gadds, in the winter.

Richard DeWitt is a resident of North Abels Hill and offered how there are several pools in his neighborhood with no complaints about noise. Richard does not understand the issue with noise – he questioned whether noise pollution included socializing in back yards.

Applicant Alex Finklestein introduced himself and offered that the planting plan would shield the pool from view from any neighbors including the Gadds and help as a barrier for sound.

In response to Richard DeWitt, Joan Safford offered that the topography is different on the South side of Abels Hill vs the North and therefore noise travels differently. She also wondered if there would be night lighting and evening use of the pool.

In response to applicant Alex Finklestein, Heather Norton added that the decision of opposing the pool is not personal. Heather is still concerned about the disposal of salt water and doubts the dry well will mediate the issues she feels will result.

Mr. Silva addressed Heather Norton's concern about salt water by saying that he has a lot of references about the effects of salt water on ground water if needed. He added that salt water is affecting our natural habitats constantly due to the surrounding ocean. Mr. Silva also said that planting on this property are already quite extensive but more can be added on the Gadd's side. He offered that the planting plan was not finalized because he planned to incorporate comments from this meeting.

Ms. Malkin felt that she needed information regarding the Sacks decision and also would like to revisit the site to address how the pool would affect the character of the neighborhood, specifically the neighboring Gadd residence.

Ms. Murphy offered that if the neighborhood wants to be involved with decisions in their area that they should work with the town in the zoning process. He suggested that neighbors form an advisory board for the Abels Hill area.

Mr. Lo Russo added that the applicants have met all requirement for their pool and doesn't understand how the neighbors think that a pool is just about noise. He felt that this application had different issues than the Sacks decision.

A motion was made to close the public hearing and seconded. Vote: Mr Murphy - yes, Ms Weldon - yes, Ms Malkin - no, Mr Lo Russo - yes, Mr Maloney - yes. Motioned passed and public hearing was closed at 9:58am.

Mr. Chapman offered that the noise of a pool is normally associated with equipment which he felt this application addressed and should not be an issue.

Mr. Lo Russo asked about whether there would be an automatic cover. Applicant Alex Finklestein said that they would install an automatic cover.

A motion was made to accept the proposal as presented and seconded. Vote: Mr. Murphy - yes, Ms. Weldon - abstained, Ms. Malkin - abstained, Mr. Lo Russo – yes, Mr. Maloney – yes. The motion did not pass.

Mr. Silva asked if the motion could be withdrawn. After a brief discussion, Mr. Lo Russo withdrew his motion and Mr. Silva requested a continuance. A motion to continue the hearing was made and seconded. The vote to continue was unanimous.

It was requested that Ms. Kisselgof distribute information regarding the Sacks application to board members to review for the next meeting.

AGENDA ITEM #2: TRAVIS RITCHIE FOR DAVID WOLFF

61 Cobbs Hill Road (Map 11 Lot 24.2) / Application under by-law 6.11B2

Mr. Maloney opened the public hearing at 10:08 am. Joe Chapman was appointed as a voting member.

Travis Ritchie presented plans for the proposed studio which includes a half bath. Since this application was applied for under bylaw 6.11, Mr. Ritchie also presented answers to the 13 criteria associated as follows:

- 1) The proposed studio will be visible during winter from Cobbs Hill Road. The character of the site and the current presentation of a large existing roof is mitigated through siting of the studio—the proposal has a low hip roof to break down the scale on the rear of the existing garage, as currently seen from Cobbs Hill Road. Additionally, the project retains a natural woodland buffer of approx. 140'. There will be minimal exterior lighting at the doors for safety/egress, and glare from windows is minimized by overhangs.
- 2) The proposed studio is sited to protect the natural landscape. There will be one Beech tree and several small Oak trees removed from the site. A Certified Arborist will examine the health of a mature Oak tree approx. 20' from the proposed studio if the project is approved.
- 3) Several smaller trees and a Beech tree will be removed. No additional lawn is proposed.
- 4) The project is designed as a concrete slab on a shallow, Frost-Protected (insulated) footing. It will be executed with minimal excavation impact on the landscape.
- 5) Not applicable. No additional roads are being proposed.
- 6) Not applicable. The proposal is approx. 16' above Average Grade.
- 7) Not applicable. The proposal is on a wooded lot.
- 8) See #2 above. The project is sited to preserve mature trees. One large Oak will be reviewed by a Certified Arborist.
- 9) Silt fence will be used during construction to prevent any runoff. Post occupancy, the project adds one ½ bath to the existing 7-BR septic system.
- 10) The proposal is small (540 SF), efficient, designed to use daylight, and low-voltage LED lighting as needed. The foundation design uses minimal materials, and the shell is designed to exceed current energy code requirements.
- 11) See #10
- 12) The project does not impact NHESP Core or Priority Habitat.
- 13) Not applicable. No known historical or archaeological resources are present. The proposed site has been previously disturbed during construction of the existing garage and a buried propane tank.

No questions from the board were posed and Mr. Maloney opened the hearing at 10:13am. With no public comment offered, a motion was made to close the public hearing and seconded. Vote was unanimous.

After a brief discussion about the proposed additional square footage of livable area and the total allowed on a lot of ~4 acres, it was agreed that the application was within the limits of the bylaw.

A motion was made to accept the application as presented with the approval of the Board of Health. The motion was seconded and the roll call vote was unanimous.

AGENDA ITEM #3: REID SILVA FOR TOWN OF CHILMARK
401 Middle Road (Map 26 Lot 99) / Application under by-law 8.3

Mr. Maloney opened the public hearing at 10:16am. Ms. Malkin was appointed a voting member for this application.

Mr. Maloney asked Ms. Kisselgof what the Site Review Committee's findings were on this project. Ms. Kisselgof answered that the Site Review Committee did not see any issues with the proposal as presented.

Mr. Silva presented the site plan for the proposed Fire House building indicating that the parking area was not accurate due to changes requested by the Conservation Commission but the building was correctly represented. He indicated that the building would be 21 feet from the lot line at its closest point. Mr. Silva then shared the architectural drawings with the floor plan and noted that there will be a slight change made due to the Conservation Commission conditions of approval. He indicated the height of the building would be 25' 2" (not 26' as originally discussed) and that the footprint would be 4,560 sf.

The board briefly discussed the height of the building. The proposed height of 25' 2" is above the limit and it was suggested that building be designated as a "barn," which would not allow for human habitation (reference bylaw 6.2).

Mr. Maloney opened the hearing to public comment at 10:24am.

Select person and Fire House-EMS Committee chair Bill Rossi recounted a conversation with the Building Inspector about the height of the building - Lenny did not have any issue with the height because this was a pre-existing, non-conforming structure (reference bylaw 8.3). He offered that the height proposed is to allow a person to stand on top of the fire truck within the building.

With no further public comment offered, a motion was made to close the public hearing and seconded. The vote was passed unanimously. The public hearing was closed at 10:26am.

A motion was made to approve the application as presented with the limitation that there be no human habitation in the building. The motion was seconded and approved unanimously by the board.

AGENDA ITEM #4: REID SILVA FOR DOUGLAS AND MARGOT ROTHMANN
69 Cape Higgon Way (Map 4 Lot 23.2) / Application for a pool under by-law 4.2A3

Mr. Maloney opened the public hearing at 10:27am. This is a continued public hearing and Ms. Malkin is the voting member assigned.

Mr. Silva presented a revised site plan for the pool in which a terraced retaining wall has been added and plantings between house and pool have been revised to improve sight lines from the house. He also presented some artist renderings of the sight lines to demonstrate improvement over the previous site plan.

The board felt the sight lines were much improved but there was still an issue with plantings between the pool and house. Ms. Reimann offered that the plantings are not meant to get taller than 30 inches. The board responded that 30 inches is too high and asked if the planting could be kept below 18 inches, which was agreed upon as a condition for the special permit.

Mr. Maloney opened the hearing to public comment at 10:33am.

The applicant Douglas Rothmann offered that plants do not grow well in their area and does not feel that it should be difficult to keep plantings at the proposed maximum. With no further public comments offered, a motion was made to close the public hearing at 10:34am. The motion was seconded and passed unanimously.

A motion was made to approve the revised plan and seconded. The motion passed with five in favor.

AGENDA ITEM #5: GEORGE SOURATI FOR PAUL HORNBLOWER

51 Squibnocket Farm Road (Map 35 Lot 1.3) / Discussion of minor changes & Extension Request

The Zoning Board had previously issued two special permits for this property – one for a pool that expires 1/23/22 and one for an addition to the house that expires 9/26/21. Mr. Sourati is requesting a 1-year extension for both special permits.

Mr. Maloney asked if any of the site plans have been changed. Mr. Sourati replied that the owner had an archeological evaluation done of the property by Wampanoag tribe and found the pool location would disturb an area found to be of archeological significance. The plans for the pool haven been changed to avoid disturbing the area identified. Mr. Sourati presented the new location proposed on a revised site plan dated 5/19/20 in which the pool size is reduced to 15' x 40' and rotated to be parallel with the lot line but still meeting the 50-foot setback.

After a brief board discussion, it was decided that the changes to the pool were inconsequential. Mr. Chapman was appointed as the alternate voting member.

A motion was made to approve the extension of the special permit for the house addition. The motion was seconded and passed with all members in favor.

A second motion was made to approve the extension of the pool special permit and the motion was seconded. The vote passed unanimously.

A third motion was made to find the changes to the pool as inconsequential. The motion was seconded and passed by unanimous vote.

A last motion was made and seconded to approve the changes to the pool. The motion passed unanimously.

AGENDA ITEM #6: KRIS HORIUCHI FOR BEETLEBUNG ROAD LLC

33 Beetlebung Road (Map 20 Lot 34 &35) / Application under by-law 6.6

Mr. Maloney opened the public hearing at 10:45am. Joan Malkin was assigned as voting member.

Ms. Horiuchi presented the site plan in which the pool equipment is located within the 50 foot setback and recounted the previous meeting in which it was decided that this change required a new public hearing. She also mentioned the letters of approval from abutters submitted with the application.

Mr. Maloney opened the hearing to public comment at 10:48am. Abutter David Lundgren was concerned about the location of the equipment and how the noise & height of equipment would affect his property. Mr. Lundgren expressed his support of the project but would like to have his issues addressed.

The board questioned why the equipment needs to be placed within the 50 foot setback. Ms. Horiuchi explained that the owners wanted the equipment hidden from their view. The board asked if there was anywhere else on the property within the 50-foot setbacks that would also put the equipment outside the owner's view shed and Ms. Horiuchi confirmed there are other locations.

A motion was made to close the public hearing at 10:54am, seconded and passed by unanimous vote.

The board discussed that allowing this setback relief would set a precedent and was reticent to do so since Ms. Horiuchi indicated other locations could be considered.

A motion was made to approve the location of the pool equipment shed but there was no second so the motion did not pass.

The board suggested Ms. Horiuchi continue the hearing and come back with explanations as to why no other location within the 50-foot setbacks would work for this project. Ms. Horiuchi asked for a continuance.

A motion was made to accept the continuance of the public hearing. The motion was seconded and passed by a vote of unanimous consent.

AGENDA ITEM #7: DISCUSSION WITH BUILDING INSPECTOR ABOUT POOL SAFETY

17 Howell Lane (Map 27 Lot 3) / Discussion of possible pool safety violation

Mr. Murphy recalled the special permit for the Howells had required that the mesh fencing not be larger than 1 by 2 and wondered why the building inspector Lenny Jason approved the current fencing, which did not meet this specification. Mr. Jason asked to refer to the wording of the special permit issued but he did not have a copy to reference - he believed that the mesh fencing read that it would be 1.5 inches, not 1 by 2. Ms. Kisselgof did not have a copy of the decision available for the meeting but located and read the meeting minutes from the hearing. It was decided that the conversation would be continued at the next meeting after the special permit had been reviewed.

ADMINISTRATION: The draft July 22, 2021 meeting minutes were reviewed. A motion was made to accept the minutes as written and seconded. The motion passed by unanimous roll call vote.

Next Hearing: September 23, 2021 @ 9:00am. Site visits September 22, 2021 @ 9:00 am.

With no further business to conduct the meeting adjourned at 11:06 AM by a unanimous roll call vote.

Respectfully submitted by Alison Kisselgof, board administrator.