



# ZONING BOARD OF APPEALS

## Town of Chilmark

### MEETING MINUTES -FINAL

**February 24, 2022 (via ZOOM)**

Present for the Board of Appeals and attending the meeting on Zoom were Russell Maloney Chairman, Allison Burger, Chris Murphy, Joan Malkin, Frank Lo Russo, Joe Chapman and Alison Kisselgof Administrator. Also in attendance were Reid Silva, Kara Shemeth, Patrick Ruel, Chris Alley, Andrew Kahl, Bruce MacNelly, Jerome & Mary Vascellaro, Ann Grande, David Silver & Geoffrey Kontje. Wendy Weldon did not attend.

The meeting came to order at 9:02 AM.

#### **AGENDA ITEM #1: GEORGE SOURATI FOR JOAN & JAMES HARTLEY**

***72 Cobbs Hill Road (Map 11 Lot 25.1) / Application for a pool under by-law 4.2A3***

Since Wendy Weldon could not be present for this meeting and she is a voting member on this application, Mr. Sourati requested this application be continued to the next meeting. A motion was made and seconded to accept the request. Vote to approve was unanimous.

#### **AGENDA ITEM #2: GEORGE SOURATI FOR JOAN & JAMES HARTLEY**

***72 Cobbs Hill Road (Map 11 Lot 25.1) / Application under by-law 6.11***

This application was also requested be continued due to the absence of Ms. Weldon. A motion was made and seconded to accept the request. Vote to approve was unanimous.

#### **AGENDA ITEM #3: GEORGE SOURATI FOR MAKENA B. HERGET 1983 TRUST**

***73 Quenames Road (Map 17 Lot 51) / Application for a pool under by-law 4.2A3***

This application was also requested be continued due to the absence of Ms. Weldon. A motion was made and seconded to accept the request. Vote to approve was unanimous.

#### **AGENDA ITEM #4: REID SILVA FOR 57 WEQUOBSQUE RD REALTY TRUST**

***57 Wequobsque Road (Map 30 Lot 116.2) / Application for setback relief under by-law 6.6***

Mr. Maloney opened the public hearing at 9:35am and appointed Ms. Malkin as a voting member.

Mr. Silva began the hearing by sharing the GIS aerial map of the property and pointing out the location of the tennis court which is proposed to move. He explained that the court is already over the lot line and the owners would like to rebuild it with an increase to 5 feet further over the lot line. Mr. Silva then shared the site plan showing the existing and proposed location of the tennis court. He said that both the owner and abutting neighbor agree to the move. Mr. Silva also offered that the neighbor has right of use.

The Board discussed briefly the applicable by-law for this project. Mr. Silva said that he felt that the application could have been filed under either by-law 8.3 or 6.6 but ultimately chose 6.6 because the tennis court involved an agreement between the neighbors. The Board asked if the agreement between the neighbors would preclude a need for a written easement. Mr. Silva replied not necessarily but the agreement is stated in the deed. The Board questioned why the court couldn't be rebuilt in the same location. Mr. Silva said that the owners wanted to get

more separation between the garage and the tennis court. The letters of consent from the abutters were read into the record by Ms. Kisselgof.

Mr. Maloney opened the hearing to public comment at 9:45am. With no public comment offered, a motion was made to close the public hearing. The motion was seconded and passed by unanimous vote.

A motion was made to approve the application as presented. The motion was seconded and passed by a vote of five in favor and none opposing.

**AGENDA ITEM #5: ANDREW KAHL FOR PAUL AND ANNE GRAND**

***77 Old Farm Road (Map 7 Lot 20) / Application for setback relief under by-law 6.6***

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

Mr. Kahl shared a sketch of the proposed deck and stairs and indicated the portion of each that crosses into the 50 foot setback line. He mentioned that the abutting neighbor has given written consent to the encroachment.

Ms. Kisselgof read the letter of consent from the abutting neighbor (who is also the applicant) into the record. Mr. Maloney opened the hearing to public comment at 9:48am. No public comment was offered and a motion to close the hearing was made. The motion was seconded and passed by unanimous vote.

A motion was made to approve the application as presented. The motion was seconded and passed by a vote of five in favor and none opposing.

**AGENDA ITEM #6: BRUCE MACNELLY FOR 239 STATE ROAD LLC**

***57 Wequobsque Road (Map 30 Lot 116.2) / Application for alteration of pre-existing, non-conforming structure under by-law 8.3***

Mr. Maloney opened the public hearing at 9:55am and appointed Ms. Malkin as a voting member.

Mr. MacNelly started his presentation with an aerial map of the property at 239 State Road, pointing out the entrance on State Road that will be discontinued and the location of the entrance that would be used to access the property. Mr. MacNelly then shared the site plan for the project which showed both the current house on the property as well as an overlay of the proposed dwelling. He pointed out the setbacks of the new structure and said that the western side setback would improve and the eastern side setback would remain the same. Mr. MacNelly pointed out that the structure is outside of the 100 foot setback from the wetlands and said that the project was reviewed by the Conservation Commission (project was heard at 2/15/22 meeting with negative determination and therefore no need to file a Notice of Intent). Mr. MacNelly went on to share the floor plans and elevations. He said the lower level was carved into the hillside and that the ridge line was 1 foot above the existing house. Mr. MacNelly showed some pictures of the property and mentioned the location of the septic system, which he said conforms to setback requirements.

The Board expressed safety concerns for entry to the property. Mr. MacNelly and the owners stated that the current entrance would not be used with the new house. The Board asked about the total square footage of the proposed house. Mr. MacNelly said that the new house would be around 2400 square feet. Mr. MacNelly also mentioned that there would be thick plantings along State Road so the structure will be well shielded from the public way. A brief discussion about character of the neighborhood occurred in which it was discussed that the house materials would be similar to the neighboring houses.

Mr. Maloney opened the hearing to public comment at 10:06am. With no public comment offered, a motion was made to close the public hearing. The motion was seconded and passed by unanimous vote.

A motion was made to accept the application as proposed provided the entrance to the property is moved to a

different location. The motion was seconded. The motion passed with 5 in favor and none objecting.

**AGENDA ITEM #7: CHRIS ALLEY FOR MAGNOLIA RE TRUST**

***17 Howell Lane (Map 27 Lot 3) / Request for Amendment to Special Permit***

Mr. Alley presented changes to the project at 17 Howell Lane which was previously approved for a special permit. Mr. Alley said that the owners no longer want to build a pool house or a storage area and instead would like to refurbish the existing bunk house. The special permit is specific to the square footage of the project and therefore Mr. Alley wanted to know if an amendment could be made to the current special permit or if the owners would have to re-apply for a new special permit. The Board felt that the changes were too many to amend the current permit and asked Mr. Alley to have the owners re-apply.

**TOPICS NOT ANTICIPATED BY THE CHAIR:** The Board discussed the scheduling of public hearings on the agenda. It was decided that future agendas would space items five minutes apart.

It was also decided that continued hearings would be placed at the bottom of the agenda.

**DOCUMENTS:**

Draft minutes from 1/27/22 Zoning Board of Appeals meeting

57 Wequobsque Road site plan dated 11/10/21

77 Old Farm Road sketch of proposed construction

239 State Road site plan revision date 12/30/21

239 State Road floor plans

239 State Road elevations

239 State Road pictures

Edited Zoning Board of Appeals application

**ADMINISTRATION:**

**MINUTES:** A motion was made to accept the January 27, 2022 minutes as written and seconded. The motion passed by unanimous roll call vote.

**POOL BY-LAW CHANGE DISCUSSION:** Ms. Malkin said that the next step with the pool by-law change is for the Planning Board to discuss it. The Planning Board would also hold a public hearing on the revision. Ms. Malkin expected that the by-law change would be ready for the fall town meeting.

**ADVERTISING FEES DISCUSSION:** Ms. Kisselgof presented an edited version of the ZBA application in which the following line was added: "Applicants will be responsible for advertising costs and permits will not be valid until expenses have been paid in full." Ms. Kisselgof recounted a conversation with town counsel about having applicants pay other costs resulting from their applications. Town counsel advised against charging applicants for consultant fees without further discussion on the topic with him. The Board asked who would be responsible for enforcement of payments. Ms. Kisselgof said that she would have to make sure applicants are paid in full since she releases the special permits. Mr. Silva asked if it would be simpler to just raise the fee. The Board asked what the average cost of the legal fees would be. Ms. Kisselgof did not have this information readily available. It was decided that the conversation would continue at the next meeting so that Ms. Kisselgof could research the costs.

Next Hearing: March 24, 2022 @ 9:00am. Site visits March 23, 2022 @ 9:00 am.

With no further business to conduct the meeting adjourned at 10:09 AM.

Respectfully submitted by Alison Kisselgof, board administrator.