



ZONING BOARD OF APPEALS

Town of Chilmark

MEETING MINUTES -FINAL

March 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 and Alison Kisselgof Administrator. Also in attendance were George Crawford, Sig Van Raan, Ashley Murphy-Aqtash, Rise Tierney, Warren Doty, Mollie Doyle, Kris Horiuchi, Chloe Jones, Blake Middleton, Matt Flanders, George Sourati, Bryan Collins and Kara Shemeth. Wendy Weldon and Joe Chapman did not attend.

The meeting came to order at 9:02 AM. Since Ms. Weldon and Mr. Chapman were absent, Ms. Malkin was a voting member for all public hearings.

AGENDA ITEM #1: REID SILVA FOR ORCHARD HILL NORTH LLC

61 North Road (Map 3 Lot 5) / Application for a pool under by-law 4.2A3

Mr. Maloney opened the public hearing at 9:08 AM.

Mr. Silva shared the site plan for the project and pointed out the existing dwelling and the location of the pool. He also identified a proposed hot tub and a solar canopy, which would supply the energy to heat the pool. Mr. Silva then pointed out the fencing which enclosed a good portion of the yard and also uses the existing house as a barrier. Mr. Silva said that the owners plan to plant cedar trees to screen the house and pool from North Road. He mentioned that the owners plan to have an automatic pool cover and install close circuit cameras. Mr. Silva presented plans for the solar canopy and indicated that the area underneath would have open seating plus a section for the pool equipment, a service area and a bathroom.

There was a discussion about the use of the dwelling as a barrier around the pool. The Board has consistently told applicants that using the dwelling as part of the fencing is not a preferred practice due to safety concerns. Mr. Silva acknowledged this fact and offered that he cautioned the owners about this design and they still wanted to move forward. Mr. Silva added that the Board has approved designs that included a dwelling as a barrier so the possibility existed this plan could be accepted as presented. Mr. Silva and architect George Crawford offered that they were willing to ask the owners to redesign the fencing if necessary for the special permit to be issued.

The hearing was opened to public comment at 9:23 AM. Abutter Mollie Doyle offered that sound carries very well from the neighbor's yard and encouraged the owners to plant as much screening as possible to help with the noise.

With no further public comment offered, a motion was made to close the public hearing. The motion was seconded and approved by unanimous vote.

Mr. Silva suggested that the Board could grant conditional approval of the pool location, hot tub and cabana pending final review of a fencing location prior to the building permit being issued. He said that he could come back with a new fencing design for final approval.

A motion was made to approve the location of the pool, the hot tub and the cabana subject to final approval of the fencing. The motion was seconded and passed by a vote of five in favor.

AGENDA ITEM #2: 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

The public hearing was opened at 9:32 AM. Mr. Lo Russo stated that he is an abutter to The Yard but has no financial interest in the project and will not be recusing himself due to the fact that there would be no quorum otherwise.

The project at The Yard had previously been issued two special permits in June 2019 with extensions approved in June of 2021. The Yard returned to the ZBA in December of 2021 to discuss changes to their original plans and the ZBA determined the changes were too significant to amend the previous special permit. The Yard was asked by the ZBA to resubmit for the special permits. On reapplication, The Yard split the project into three applications.

Mr. Silva began his presentation by sharing the site plan for the entire project at The Yard, which showed both the previously approved and the new designs. He recounted a discussion with Building Commission Lenny Jason about how the different parcels in the project would be reviewed separately, which is why the resubmission was split into three applications. Mr. Silva mentioned that the project had been reviewed and approved previously by the Martha's Vineyard Commission.

The Board requested that each application be presented separately so Mr. Silva began with #6 The Yard in which the application requests setback relief on a pre-existing, non-conforming lot. The current plan is very similar to the original plan but the building is proposed to be shifted to the east, which would encroach on the internal lot line.

The hearing was opened to public comment at 9:44 AM. No public comment was offered. Ms. Malkin reminded the Board that the project's new design has not been approved by the MVC and therefore should not be considered by the ZBA yet. She suggested that the public hearing be continued until MVC decision is available.

Mr. Silva estimated it would take a couple of months before the MVC could make a decision and therefore requested a continuance of the public hearing until June when it was expected the MVC determination would be finished.

A motion was made to continue until the June 30th ZBA meeting and seconded. The motion was passed by unanimous vote.

AGENDA ITEM #3: 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 public hearing was opened at 9:47 AM.

Mr. Silva re-shared the site plan and pointed out the location of what is called the "Front Yard." The building located on this lot is proposed to 3131 square footage (sf) which is over the allowable total living area of 2923 sf. Mr. Silva explained that the office space in the building is omitted from the total living area calculation because it is commercial space.

The Board questioned the omission of the commercial space within a structure that also includes residential space. Mr. Silva said that the application is consistent with the prior application and suggested that the Board consult the Building Commissioner Lenny Jason about non-residential living area inclusion. Mr. Middleton offered that the total living area requested was actually 2280 square feet for the residential space and 567 square feet for the commercial space. The Board calculated the total living area for the property to be within allowed amount without a special permit and therefore the proposal did not need approval under by-law 6.11. The Board

asked if the project would be reviewed by the Site Review Committee which Mr. Silva confirmed.

Mr. Maloney opened the hearing to public comment at 9:57 AM. Mr. Doty offered that the EMS Building would be abutting The Yard but that there would be ample screening between the two projects. Mr. Doty felt that the town would not object to The Yard's application.

Mr. Maloney asked if Mr. Silva would like a continuance for this application until the MVC decision was available and Mr. Silva confirmed. A motion was made to continue the public hearing until the June 30th ZBA meeting. The motion was seconded and passed with all in favor.

AGENDA ITEM #4: 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

Mr. Maloney opened the public hearing at 9:58 AM.

A brief discussion about the total living area occurred. It was unclear whether the application needed to be filed under by-law 6.11. The total living area of the proposed residential dwelling is 2276 square feet and alone it would not require a special permit. The theater would be 4107 square feet and Mr. Silva was unsure if any portion of the theater would be included in the calculation since it is for commercial use.

The Board reminded that there is a maximum sf of 6000 for a 3 acre lot and this lot is only 1.4 acres. If both buildings were included in the total living area, then the project would be considered too large.

Mr. Maloney opened the hearing to public comment at 10:07 AM. Mr. Doty mentioned that The Yard had considered leaving Chilmark. He felt that The Yard is an asset to the town and would like to see the organization stay at its current location. Mr. Doty said that The Yard's plan was well thought and he would like to encourage support but within the guidelines of applicable by-laws.

A motion was made to continue this hearing until June 30th and it was seconded. The motion passed by unanimous vote.

AGENDA ITEM #5: GEORGE SOURATI FOR MAKENA B. HERGET 1983 TRUST

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

Mr. Maloney opened the public hearing at 10:10 AM. Since Ms. Weldon is absent and she is a voting member on this application, Mr. Maloney asked Mr. Sourati if he still wanted to present the project today, which would require all 4 voting members to approve. Mr. Sourati indicated that he wanted to proceed.

Sourati Engineering Associate Bryan Collins shared an aerial map of the property and indicated the distance to each neighboring dwelling, which was a question from the previous meeting. Mr. Collins then shared the revised site plan and pointed out the changes to the fencing around the pool. A 4 foot fence is proposed to be inside the screened porch and the fencing now ends at the corner of the house closest to the pool, instead of the farthest corner in the previously presented site plan.

The Board questioned the fence proposed inside of the screened porch. Mr. Sourati explained that this fencing was added in response comments at the last meeting. It is proposed that the first 4 feet of the screened porch be fence and then screen for the remainder. The Board asked if this inside fencing was in lieu of an alarmed doors. Mr. Sourati said no that the doors would still be alarmed. The Board still had concerns about safety due to doors opening into the pool area from the house and urged Mr. Sourati to consider moving the fencing to around the pool.

Mr. Maloney opened the hearing to public comment at 10:23 AM. With no public comment offered, Mr. Maloney asked if there was a motion to close the public hearing. Mr. Sourati instead requested the public hearing

be continued. A motion was made for a continuance and seconded. The motion passed with all in favor.

AGENDA ITEM #6: GEORGE SOURATI FOR JOAN & JAMES HARTLEY
72 Cobbs Hill Road (Map 11 Lot 25.1) / Application for a pool under by-law 4.2A3

This application was requested be continued since Mr. Sourati has not been able to talk to the owner and the architect since the last meeting. A motion was made and seconded to accept the request to continue at the next meeting. Vote to approve was unanimous.

AGENDA ITEM #7: 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. A motion was made and seconded to accept the request. Vote to approve was unanimous.

TOPICS NOT ANTICIPATED BY THE CHAIR: Ms. Malkin suggested the Board write to town counsel regarding whether commercial space is excluded from total living area to clarify the issues raised during The Yard public hearings. Mr. Maloney suggested that Lenny Jason should be consulted instead. Ms. Kisselgof recounted a conversation with Lenny Jason in which he clearly stated the theater should not be included in the livable space calculation. Mr. Murphy agreed with Ms. Malkin about writing to town counsel. Ms. Malkin said what concerns her is that a space considered commercial space today, may not be commercial space in the future depending on who owns it. Ms. Malkin offered to write the letter to town counsel so the Board could be clear on this issue in the future. Ms. Malkin also suggested Ms. Kisselgof review prior decisions to see if commercial space was previously excluded in applications filed under by-law 6.11.

DOCUMENTS:

Orchard Hill North LLC Site Plan
Orchard Hill North LLC Solar Canopy Plans
The Yard Site Plan
Herget property and neighboring houses Aerial Map
Herget Site Plan
Summary of ZBA Advertising Costs in Chilmark for last six months and other island towns

ADMINISTRATION:

MINUTES: A motion was made to accept the February 24, 2022 minutes as written and seconded. The motion passed by unanimous roll call vote.

ADVERTISING FEES DISCUSSION: Ms. Kisselgof presented a summary of advertising costs for the last six months in which actual, average, minimum and maximum costs were represented. The summary also included the cost for Zoning Board of Appeals application in other towns on island. Ms. Kisselgof offered that \$275 an application should cover the costs of legal notices plus about an hour of her time, which she estimated each application required. She recounted Reid Silva's comment from the last meeting that the former administrator wrote long legal notices and said that she could narrow down the wording on future legal notices as well to keep costs to a minimum. The Board approved of this idea but cautioned Ms. Kisselgof to be careful to make sure that all relevant information was still included in legal notices. A motion was made to raise the application fee to \$275 and seconded. The motion passed by unanimous approval.

Next Hearing: April 28, 2022 @ 9:00 AM. Site visits April 27, 2022 @ 9:00 AM.

With no further business to conduct the meeting adjourned at 10:33 AM.

Respectfully submitted by Alison Kisselgof, board administrator.