



ZONING BOARD OF APPEALS

Town of Chilmark

MEETING MINUTES - FINAL

October 26, 2023

(Via ZOOM Meeting ID: 860 2620 0086)

Present for the Zoning Board of Appeals (ZBA) were Chris Murphy - Chair, Allison Burger, Joe Chapman, Frank Lo Russo, Fred Khedouri, Joan Malkin, Emily Josephs and Alison Kisselgof - Administrator.

Also in attendance were Adam Petkus – Building Inspector/Zoning Enforcement Officer (ZEO), Lenny Jason, Hans & Sally Solmssen, Bruce MacNelly, Reid Silva, Betty & Rod Farrow, Zoom attendee named Chilmark Resident, George Sourati and a person calling in from (917) 559-9858.

The meeting came to order at 9:01 AM.

ADMINISTRATION: A motion was made to approve the draft minutes from 9/28/23 as presented and seconded. The motion passed by unanimous roll call vote.

AGENDA ITEM #5: HANS SOLMSEN FOR SOLMSEN FAMILY LLC

56 North Abels Hill Road (Map 18 Lot 84)/ Appeal of Zoning Enforcement Officer Decision

Since there was time before the first public hearing started at 9:05 AM, Mr. Murphy opened the discussion regarding Mr. Solmssen's appeal of the order to remove the screen from his porch given by the Zoning Enforcement Officer Adam Petkus.

Mr. Solmssen said that he had had several conversations with former Building Commissioner & Zoning Enforcement Officer Lenny Jason about screens on the porch of his proposed guest house. He mentioned that he understood that the Town had issues with people increasing their house size by enclosing screened porches with solid walls but assured the ZBA members that he and other family members would not do so.

Mr. Murphy asked Ms. Kisselgof to read her findings on the appeal, which she did. The Board asked if Mr. Jason told Mr. Solmssen that it was permissible to add the porch screens. Mr. Solmssen said yes. Mr. Petkus offered that the by-law clearly states that screened porches are included in the 800 square foot maximum living area for a guest house (reference by-law 4.2A1). He said that, as the ZEO, he has to uphold the by-laws. Mr. Petkus also did not feel it was appropriate precedent for the ZEO to override the condition of a special permit. The Board asked Mr. Solmssen if he was aware that his special permit stated that the porch could not be screened. Mr. Solmssen answered yes. There was agreement from some Board member with Mr. Petkus' decision. Some members did not agree with the by-law that screened porches should be included in the total living area square footage but felt that the way to address this would be to revisit the by-law language. After some discussion on how to proceed, Mr. Silva offered that Mr. Solmssen should seek a variance. Since the guest house was already built and now would have to be redesigned, Mr. Silva thought it was grounds for a variance based on financial hardship. The Board members agreed that this was the best path forward. It was suggested that Mr. Solmssen withdrawn his appeal and apply for a variance, which he did. After some further discussion on other possible ways to allow Mr. Solmssen to proceed with

screening his guest house porch, a motion was made to approve the withdrawal of the appeal. The motion was seconded and passed by unanimous approval.

AGENDA ITEM #1: VINEYARD LAND SURVEYING & ENGINEERING INC. FOR KENASAOOME LLC

2 Kenasaoome Way (Map 11 Lot 55.1)/ *Application for Special Permit under By-law 6.11B2*

Mr. Murphy opened the public hearing for 2 Kenasaoome Way at 9:52 AM.

Mr. Silva said that this application was to request additional living area and shared an aerial map of the location. He indicated the main dwelling and other existing structures on the property. Mr. Silva offered that the owners would like to add a library and mud room to the main dwelling which would exceed total living area (TLA) allowed without a special permit. He then shared the site plan and again indicated where buildings were located. Mr. Silva mentioned that a garage was being constructed as well but did not include habitable space and therefore was not included in the application. He said the existing screened porch would be relocated and indicated the new proposed location. Mr. Silva went over the existing square footage of the lot and the amount of overage requested which was 177 sf over what the applicant could add without a special permit (taking into account 5% extra allowed). He then read the responses to the 13 criteria from by-law 6.11F.

The Board started by stated that the 5% extra allowed in the by-law doesn't come into play once the TLA requires a special permit – therefore the numbers presented in applications should reflect the allowable TLA without the 5% added. Ms. Kisselgof read her findings – she indicated that her numbers were based on the assessors' database and were different than what was listed on the application. Mr. Silva said that his numbers were more accurate (NOTE: Mr. Petkus confirmed later that numbers on stamped site maps are most accurate to use for TLA calculations.) The Board asked if the parking lot would be paved. Mr. Silva responded that it would be kept gravel. The Board wondered if the solar could be added to the new garage to offset the fossil fuel usage for the addition. Mr. Silva said that orientation of the garage and the roof features wouldn't make solar an easy addition to the project. It was pointed out that there is already an existing solar array on the guest house. There was brief discussion on whether the solar on the guest house was sufficient. Mr. Silva pointed out that the request for increased square footage was modest whereas the cost to change the project at this phase would be significant. The Board recognized that it has previously accepted existing solar arrays when approving request for extra TLA. Mr. Petkus offered that the new building code would require greener construction.

Mr. Murphy opened the hearing to public comment. With no public comment offered, a motion was made to close the hearing at 10:09 AM. A motion was made to approve the application as presented and seconded. With no further discussion, a roll call vote was taken and the motion pass unanimously.

AGENDA ITEM #2: JOAN HUGHES FOR TALIA N HERMAN TRUST

91 Gosnold Way (Map 14 Lot 31)/ *Application for Special Permit under By-law 4.2A3*

This applicant has received a special permit in April 2021 but was unable to start the project due to issues with the pool installers. The special permit lapsed and the applicant was returning get a new special permit with no changes from the original application. The owner had a personal issue come up prior to the meeting and requested to withdraw the application without prejudice.

A motion was made to accept the request for withdrawal without prejudice. The motion was seconded and passed unanimously.

AGENDA ITEM #3: SOURATI ENGINEERING GROUP FOR STEVEN LOFCHIE and SARAH FOX

1 Old North Road (Map 26 Lot 119)/ *Application for Special Permit under By-laws 4.2A1 and 8.3*

The public hearing for 1 Old North Road opened at 10:11 AM.

Mr. Sourati started by sharing an aerial map of the lot and surrounding areas. He said that the property consisted of 3 acres and indicated on the map two dwellings which were on the lot when purchased by the current owners in March 2023. The larger dwelling was described as measuring approximately 1400 sf. Mr. Sourati said the smaller secondary structure is 533 sf and the owners would like to add an additional 120 sf for a total of 653 sf. He mentioned that no work was being proposed on the larger house which the owners use as the main dwelling. Mr. Sourati described the smaller structure as a pre-existing, non-conforming guest house built in the 1950s (NOTE: assessors' database lists the house as being built in 1941). He indicated a small wetland on the site plan and said that the project had received approval from the Conservation Commission. The pre-existing guest house is 11 feet from the western lot line which abuts Old North Road and 23 feet from the southeast lot line. The addition would not create greater non-conformity. Mr. Sourati said that no clearing would be done for the addition.

The Board discussed the order in which dwellings were built – it was said that when the main structure was built, the pre-existing secondary structure became a guest house even though a special permit did not designate it as such. The Board felt that a condition of the special permit should be no other guest house could be constructed on the property.

The hearing was opened to public comment at 10:20 AM. No public comment was offered.

A motion was made and seconded to close the public hearing. The motion passed by unanimous roll call vote.

A motion was made to approve the application with a condition that no other guest house be constructed. The motion was seconded and passed unanimously by roll call vote.

AGENDA ITEM #4: WILLIAM ROSSI

23 North Slope Lane (Map 20 Lot 45.1)/ *Application for Special Permit under By-law 6.12*

Mr. Murphy opened the public hearing at 10:23 AM. Ms. Malkin said that she needed to leave the meeting shortly after this hearing opened. Mr. Murphy assigned Ms. Josephs as a voting member for the remainder of the meeting.

Ms. Kisselgof shared an aerial map with the existing structure indicated. Mr. Rossi said that he was applying for an accessory apartment. The apartment would be on the first floor of an existing structure that was currently being used as a garage. Mr. Rossi offered that the second floor of the building is a guest house that has been in existence for ~40 years. He mentioned that the TLA for the property is 3900 sf without a special permit and that this project would not exceed this amount. The elevations for the project were shared on screen. Mr. Rossi said that the footprint of the building would not change and that the apartment is meant for his son. He mentioned that the utility room was increased to keep the apartment at 800 sf. Mr. Rossi mentioned that there is a 2-bedroom septic system that would be sufficient for both the one bedroom in the guest house on the second floor and the one bedroom apartment on the first floor.

With no questions from the Board, Mr. Murphy opened up the hearing to public comment at 10:32 AM. No

public comment was offered so a motion was made to close the public hearing. The motion was seconded and passed by unanimous roll call vote.

A motion was made to accept the application as presented and seconded. The motion passed unanimously by roll call vote.

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

239 State Road (Map 33 Lot 49)/ *Approval of Landscape Plan (Condition of Special Permit Issued)*

Mr. MacNelly shared some visual representations to remind the Board of the project. He said that a cedar or spruce tree 10-12' high would be planted on the corner of the tennis court which should hide the visible portion from the road.

The Board recommended to use a native plant like Eastern red cedar instead of spruce. It was suggested that the applicant consult the Polly Hill Arboretum database to see a list of native trees. It was mentioned that the viburnum included in the landscape plan was also not native. Mr. MacNelly said that he would convey the suggestions to the owner.

A motion was made to accept the landscape plan and seconded. The motion passed by unanimous roll call vote.

ADMINISTRATION: The agenda had included a discussion about the Master Plan questions that were distributed by the Planning Board. In the interest of time, Ms. Kisselgof requested that members email their answers individually to her and she would compile a summary to submit to the Planning Board.

TOPICS NOT ANTICIPATED BY THE CHAIR: None.

DOCUMENTS:

Draft minutes from 9/28/23 Meeting

Findings for 10/26/23 ZBA Meeting

2 Kenasaoome Way Site Plan

2 Kenasaoome Way Answers to 13 Criteria in By-law 6.11 Section F

10/17/23 Email from Joan Hughes RE: Request for Withdrawal without Prejudice

1 Old North Road Site Plan

23 North Slope Lane Site Plan

23 North Slope Lane Elevations

239 State Road Landscape Plan

Next Hearing: November 14, 2023 @ 9:00 AM.

With no further business to conduct, the meeting adjourned at 10:42 AM.

Respectfully submitted by Alison Kisselgof, Board Administrator.