

Date filed: 7 July 2020

File No.: 22-20

## **DECISION AND FINDINGS OF THE ZONING BOARD OF APPEALS**

**Re: Appeal under M.G.L. Chapter 40A Sections 8 & 15 by WJH LLC, Green Hollow LLC, the Reily Family Limited Partnership, and William Boatner Reily IV and Caroline Reily of the Building Inspector's issuance of three building permits (#19-505 for the main house, #20-166 for the pool, and #20-179 for the garage) associated with the property located at 32 Ocean View Avenue, Assessor's Parcel 29-137 in the R-60 Residential District owned by Thomas M. Sheehan, Tr. c/o Donald Sullivan  
Book: 78 Page: 299 (Registered)**

### **PROCEDURAL HISTORY:**

1. On 7 July 2020, Timothy Moriarty, attorney for the Reilys, filed an appeal of the Building Inspector's decision to issue the above-captioned building permits in the office of the Town Clerk and the Zoning Board office.
2. After consultation with and approval from Mr. Moriarty, the hearing was scheduled for 30 September 2020. Notices were placed on the town's website, in the *Vineyard Gazette*, and abutters were notified of the time and date of the hearing and given the necessary Zoom information to attend the hearing.
3. On 30 September 2020 the hearing was held remotely via Zoom. Mr. Moriarty and his clients, Mr. & Mrs. Reily, were present, as were Mr. Sullivan and his attorney, Michael Bonner. Also in attendance were Doug Hoehn, Eric Las, and Jason Brickman.
4. The board reviewed the appeal, the plans and photographs, and all other materials and information submitted prior to the close of the public hearing. The Board received and gave due consideration to the testimony given at the public hearing [See Record of Proceedings].

### **FACTS:**

1. Mr. Moriarty maintains that the three building permits in question should not have been issued because the construction of the retaining wall and driveway associated with these permits should have received a special permit from the ZBA under Section 7 of the Zoning Bylaw and approval from the Conservation Commission for work in the flood plain. Consequently, Mr. Moriarty contends that the building permits were issued in error.

2. The retaining wall and the driveway were reviewed by the Conservation Commission at a public hearing on 9 October and 23 October 2019. The Conservation Commission determined that the work in flood plain did not require a notice of intent.
3. The decision of the Conservation Commission was appealed by the Reilys to DEP, who instructed Mr. Sullivan to file a Notice of Intent.
4. Mr. Sullivan filed a notice of intent on 28 July 2020. The Conservation Commission continued the hearing for more information regarding possible run-off.
5. The ZBA has determined [See Decision 21-20] that no special permit under Section 7 – Flood Plain Zoning is required as both the driveway and the wall are incidental to construction projects that received building permits and special permits from the Planning Board.
6. The building permits in question were issued on 12 March 2019, 15 October 2019, and 17 October 2019 well beyond the 30-day appeal period established under Section 8 of Chapter 40A of the General Laws. Consequently, the appeals are time-barred and the ZBA has no jurisdiction to overturn the permits issued by the Building Inspector.

FINDINGS:

1. Based on the above, the ZBA finds that there is no basis to conclude that the building permits were issued in error.
2. The ZBA further finds that it lacks jurisdiction to consider the appeals because they were not filed in a timely manner.
3. The ZBA unanimously determines that zoning enforcement is denied, and affirms this decision by roll-call vote of 5-0.
4. As recorded in the record of proceedings, the board voted unanimously to allow the assistant to sign the decision on their behalf.

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Lisa C. Morrison  
Assistant

Note: This decision was filed in the office of the Town Clerk on 19 October 2020. Appeals, if any, should be made pursuant to Section 17 of Chapter 40A of the Massachusetts General Laws and should be filed within 20 days of the filing of this decision in the Office of the Town Clerk.

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I hereby certify that no appeal has been filed in the twenty-day period following the date of filing this decision.

