

# TOWN OF STOCKBRIDGE, MASSACHUSETTS

## NOTICE OF DECISION

### ZONING BOARD OF APPEALS

(To be mailed forthwith to the petitioner, abutters and owners of land within 300 feet of the property line, the Planning Board, Building Inspector, Board of Health, and the Planning Boards of every abutting municipality and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent.)

**APPLICANT:** Attorney Dennis Egan  
Cohen Kinne Valicenti & Cook LLP  
28 North Street 3rd Floor  
Pittsfield, MA 01201

**PREMISES AFFECTED:** 2 Field Road

**REFERRING:** The Applicant, David Rosenthal, 2 Field Road, pursuant to Stockbridge Zoning Bylaws §7.5 and MGL Ch 40A §11 and 15 in response to a "Notice of Violation" dated December 18, 2023 issued by the Stockbridge Building Commissioner.

Hearing date of February 27, 2024 continued to March 6, 2024.

**DATE OF DECISION:** March 6, 2024

#### **Findings:**


A public hearing on the Appeal by David Rosenthal of 2 Field Road, pursuant to Stockbridge Zoning Bylaws Section 7.5 and M.G.L. Ch. 40a Sections 11 and 15 in response to a "Notice of Violation" dated December 18, 2023, issued by the Stockbridge Building Commission, was held on February 27, 2024, and March 6, 2024. A special permit was granted to David Rosenthal and Martha Sauer of 2 Field Road to alter the existing structure and reconfigure the driveway. This special permit allowed Mr. Rosenthal to add an additional 12 feet of height to an existing structure, creating a visual impact. The Select Board granted the special permit with the "addition that there will be appropriate plantings to mitigate the visual impact from 5 Old Meeting House Road." The Building Commissioner in a 'Notice of Violation' letter dated December 18, 2023, concluded that Mr. Rosenthal did not comply with the screening requirement outlined in the special permit issued by the Select Board. The Applicant at the February 27 hearing presented a video as well as photographs which he claimed supported his contention that the screening provided was adequate. Dr. Plakun, the abutter at 5 Old Meeting House Road, supplied photographs which he claimed documented the lack of adequate screening of the new addition and driveway located on the west side of the Rosenthal's house. The ZBA conducted a site inspection on March 6 prior to the hearing. The ZBA voted 4-0 to deny the Appeal advanced by the Appellant, David Rosenthal. Jim Murray noted that when the special permit was issued in 2019 by the Select Board, Mr. Rosenthal agreed to the condition that there would be "appropriate plantings to mitigate the visual impact from 5 OLD Meeting House

Road." Murray noted that based upon his inspection of the property this condition had not been satisfied. Mark Mills also voted to deny Mr. Rosenthal's Appeal and affirm the finding of the Stockbridge Building Commissioner, Matt Kollmer. Mills noted Rosenthal had not complied with the condition in the special permit issued by the Select Board that there be appropriate plantings to mitigate the visual impact of the raised structure from 5 Old Meeting House Road. Miles Moffatt also agreed and adopted the statements made by Jim Murray. Moffatt also voted to deny the Appeal by Mr. Rosenthal. Tom Schuler also voted to deny the Appeal, noting that the burden of proof was on the Applicant. In Schuler's eyes, the Applicant did not meet his burden of proving that the plantings made by Rosenthal mitigated the visual impact from 5 Old Meeting House Road, as required by the special permit. Schuler also noted that under the doctrine of municipal estoppel, the fact that the special permit was issued 2019 and the 'Notice of Violation' letter was not issued until four years later was not a defense or argument that supports Mr. Rosenthal's Appeal.


**VOTED:**

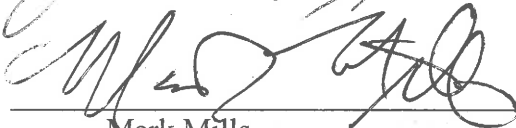
The ZBA voted 4-0 to deny the Appeal advanced by the Appellant, David Rosenthal.

Zoning Board of Appeals:

  
Thomas Schuler

  
Miles Moffatt

  
James Murray

  
Mark Mills


**IMPORTANT:**

Any appeal from the decision of the Board of Appeals must be made in a manner prescribed in Section 17, Chapter 40A (G.L.) as amended and must be filed within twenty (20) days after the date of filing of the decision with the Town Clerk.

  
Thomas Schuler, ZBA Chair

**CERTIFICATE BY THE TOWN CLERK FOR FILING OF THE DECISION IN THE REGISTRY**

This is to certify that twenty (20) days have elapsed since filing of the above decision with this office and no appeal has been filed, or appeal has been filed and denied in the case.

  
Terri Iemolini, Town Clerk