

Zoning Board of Appeals  
Minutes of Meeting 1/21/2016  
Oak Bluffs Council on Aging Building

Members present: Andrea Rogers, Joe Re, Kris Chvatal, Peter Yoars, Mike Perry, Llewellyn Rogers

Members absent: George Warren

Also present: Mark Barbadoro, Zoning Administrator, Colleen Morris, Zoning Clerk

Chairman Joe Re opened the meeting at 6:00 pm.

**Minutes** from December were approved.

**Next Meeting Date:** February 18<sup>th</sup>, 2016 6 pm

**New Business**

**RE: Getty Project**

10 Pequot Avenue, **Map 10 Parcel 88**

\*On January 21, 2016 at 6:05 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 10 Parcel 88 seeking:

***A Special Permit within Zoning Bylaws 3.5.5, or any action related thereto,  
to allow the construction of a nonconforming first floor addition  
on a nonconforming single family dwelling on a nonconforming lot.***

A quorum consisting of Chairman Joe Re, Andrea Rogers, Peter Yoars, Mike Perry, and Llewellyn Rogers was present. Gene Erez represented the applicant. Mr. Erez presented plans for a first floor addition for a nonconforming dwelling on a nonconforming lot. The proposed addition is 71 sq. ft. and does not exceed the current side setbacks. The proposed addition is an expansion of the laundry room, bathroom and deck areas. Chairman Re opened the floor to public comment. No written correspondence was received into the record. Chairman Re closed the floor to public comment.

*Member Perry made a finding that the existing dwelling and lot are nonconforming. The board agreed unanimously.*

*Member Perry made a finding the proposed nonconforming addition was not substantially more detrimental to the neighborhood. The board agreed unanimously.*

*Member Perry made a motion to approve the special permit within Zoning Bylaw 3.5.5 to grant relief from side and rear setbacks and Member Rogers seconded it. The board voted 5-0 to approve the special permit.*

**RE: Russo Project**

14 School House Village, **Map 50 Parcel 7**

\*On January 21, 2016 at 6:15 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map50 Parcel 7 seeking:

*A Special Permit within Zoning Bylaws 3.5.5, or any action related thereto,  
to allow the construction of a nonconforming addition  
on a nonconforming single family dwelling on a conforming lot.*

A quorum consisting of Chairman Re, Andrea Rogers, Peter Yoars, Mike Perry, and Llewellyn Rogers was present. Gene Erez represented the applicant. Mr. Erez presented plans for a two-story addition for a nonconforming dwelling on a nonconforming lot. Member Rogers stated that the addition made the dwelling more nonconforming with side and rear setbacks. Member Chvatal asked when a deck could be considered in the setbacks. The building inspector replied when it is just used for an egress component. A deck would be required to be counted in the setbacks. Member Chvatal stated that the proposed deck was extremely close to the rear setback (less than ten feet). He stated that R-3 lots have 50-foot envelopes when the lot is conforming and that the board considers undersized lots with potentially 20-foot setbacks. Chairman Re opened the floor to public comment. An abutter, Mr. McClure spoke in opposition to the project. He spoke against increasing the nonconformity in the direction towards his property and stated that the property was a rental property. Mr. Erez stated that the proposal was a conceptual design and he was willing to make the addition 20 feet from the rear property line. An abutter, Mr. Currelli spoke in opposition to the project. Mr. Erez described the project floor by floor. Member Rogers stated the project appeared to exceed the three-bedroom septic system allowance. Mr. Erez stated that the existing house is centered on the lot and that any addition would increase the nonconformity on either side. He stated that most of the houses in the neighborhood have nonconforming additions. Member Rogers stated that the board was in favor of additions and home improvements, and that the applicant should consider an addition on the front of the house (70 feet) where there was plenty of space. The board asked Mr. Erez to consider revising the plans. He agreed and asked for a continuation. Chairman Re left the floor open to public comment.

*Member Yoars made a motion to continue the hearing to February 18<sup>th</sup> at 6:05 p.m. in order for the applicant to present revised plans and Member Perry seconded it. The board voted 5-0 to continue the hearing.*

**RE: Lehr Project**

35 Narragansett Avenue, **Map 10 Parcel 39**

\*On January 21, 2016 at 6:30 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 10 Parcel 39 seeking:

*A special permit within Zoning Bylaw 3.5.5 and 4.2.5, or any action thereto,  
to allow the demolition and reconstruction of a nonconforming single family dwelling  
on a nonconforming lot .*

A quorum consisting of Chairman Joe Re, Andrea Rogers, Peter Yoars, Mike Perry, and Llewellyn Rogers was present. Chuck Sullivan represented the applicant. Mr. Sullivan presented plans for the demolition and reconstruction of a four-bedroom single family dwelling with a garage. The project has been approved by OBHC and Copeland Planning Review Committee. The new construction is more conforming with side setbacks. The existing structure covers more than 30% of the lot. The proposed structure also covers more than 30% of the lot. Mr. Sullivan stated that several of the abutting houses

cover more than 30%. The roof line is 27 feet above grade and the cupola is 34 feet. This Victorian element would exceed the maximum height of 32 feet and is not habitable. Chairman Re opened the floor to public comment. One letter was received in opposition of the project with concerns about the driveway, height and parking. Mr. Sullivan stated that most houses in that neighborhood do not have parking and this lot has three parking spots. An abutter, Ms. Balter stated the design of the project was an improvement. She was concerned about the existing fencing and the grinder pump. Mr. Sullivan stated that the owner would replace the fence and the design would have to be approved by CCHDC. The building official recommended that the deck be included in the special permit since it had features ( a bench and an outdoor shower). Chairman Re closed the floor to public comment.

*Member Rogers made a finding that existing lot and dwelling are both nonconforming. The board agreed unanimously.*

*Member Rogers made a finding that the existing dwelling covered more than a third of the lot. The board agreed unanimously.*

*Member Rogers made a finding that the proposed dwelling which covered more than a third of the lot area was not substantially more detrimental to the neighborhood.*

*Member Rogers made a motion to approve the special permit within Zoning Bylaw 4.2.5 to allow proposed dwelling to cover more than a third of the lot area and Member Perry seconded it. The board voted 5-0 to approve the special permit.*

*Member Rogers made a motion to approve the special permit within Zoning Bylaw 3.5.5 to grant relief from front, side, and rear setbacks and to grant relief from height restriction (34 feet) for cupola and with the condition to include the side deck and Member Perry seconded it. The board voted 5-0 to approve the special permit.*

## **RE: Oak Bluffs Water District Project**

**4 Alwardt Way, Map 54 Parcel 1**

\*On January 21, 2016 at 6:45 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 54 Parcel 1 seeking:

***A special permit within Zoning Bylaw 12.0, or any action thereto,  
to allow the construction of a 2.0 megawatts ac solar array installation  
including utilities, roadways, and fencing .***

A quorum consisting of Chairman Joe Re, Andrea Rogers, Peter Yoars, Mike Perry, and Kris Chvatal was present. George Sourati represented the applicant. The building official stated since meeting had not been properly posted and all the abutters properly notified that the hearing would have to be continued or could be withdrawn without prejudice. In addition the project had been referred to the MV Commission and the board could not render a decision until the Commission rendered their decision. Also, the project required a site plan review as well. The applicant asked for a continuance.

*Member Re made a motion to continue the hearing to February 18<sup>th</sup> at 6:15 p.m. and Member Chvatal seconded it. The board voted 5-0 to continue the hearing.*

**RE: Massey Project**

24 Harrison Avenue, **Map 2 Parcel 45**

\*On January 21, 2016 at 7:00 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 54 Parcel 1 seeking:

*A special permit within Zoning Bylaw 3.5.5, or any action thereto, to allow the demolition of a garage and reconstruction of a nonconforming single family dwelling on a nonconforming lot. .*

A quorum consisting of Chairman Joe Re, Andrea Rogers, Peter Yoars, Mike Perry, and Kris Chvatal was present. George Sourati and Matt Kramer represented the applicant. Mr. Sourati presented plans for a two-story two-bedroom nonconforming single family dwelling. The existing single story garage with a living space will be demolished. Mr. Kramer described the plans with a garage and living space on the first floor. The applicant has spoken with abutters and has promised to strengthen screening between the properties with trees. Chairman Re opened the floor to public comment. Member Rogers asked if the applicant owned the road. Mr. Sourati stated that the road was a part of the property. Moira Fitzgerald presented a letter from an abutter, Mr. Chapman concerning the privacy trees. An abutter, Mr. Flanagan submitted a letter in support of the project. The building official asked how old the building was. Mr. Kramer was not sure. The building official was concerned that if the building was 100 years old then the project would have to be referred to the OB Historic Commission and the MV Commission. Mr. Motuzas, a contractor spoke in favor of the project. An abutter, Mr. Patterson wrote a letter in favor of the project. Chairman Re closed the floor to public comment.

*Member Chvatal made a finding that the existing lot and dwelling were nonconforming. The board agreed unanimously.*

*Member Chvatal made a finding that the proposed nonconforming dwelling was not substantially more detrimental to the neighborhood. The board agreed unanimously.*

*Member Chvatal made a motion to approve the special permit within Zoning Bylaw 3.5.5 with the conditions of the screening privacy trees and Member Rogers seconded it. The board voted 5-0 to approve the special permit.*

**RE: White Bros.-Lynch Appeal**

Pennsylvania Avenue, **Map 21 Parcels 78, 79, 86, 87**

\*On January 21, 2016 at 7:30 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 54 Parcel 1 seeking:

*An appeal to the Building Inspector's enforcement action regarding a commercial use violation within Zoning Bylaw 3.1, any action thereto.*

A quorum consisting of Chairman Joe Re, Andrea Rogers, Peter Yoars, Mike Perry, and Kris Chvatal was present. Edward Kirk represented the applicant. Mr. Lynch was present. Mr. Kirk appealed the order issued by the building official on November 16, 2015 regarding a commercial use violation in reference to several loads of sand, gravel, stone and fill. Mr. Kirk explained that the activity on the site looked greater based upon the project at the drawbridge. That project is still going on and the shutdown order would be harmful to the project. The site plays an important part in the ongoing drawbridge project. The asphalt plant is located at the Goodale pit. A garage is located on Vineyard Avenue where trucks are stored and some office space. The site on Pennsylvania Avenue is place for storing excess materials from a job. The order would be harmful to business operation. The appeal is under the provisions of MGL Chapter 40 Section 14. Mr. Kirk read this section into the record. Mr. Kirk referred to the Town Bylaws of 1948 Section 1-2 regarding continuous nonconforming uses. Mr. Kirk referred to an article from the Martha's Vineyard Report. Mr. Kirk referred to signed affidavits from Albert White, Walter Eglinas, and Gerald Lynch. Mr. Kirk did not have photos going back before 1948. Mr. Kirk

showed a current site plan of the referenced parcels and the surrounding areas from 1986. Mr. Gerald Lynch purchased the business (White Bros.) and property in 1995 and formed White Bros.-Lynch Corporation. Mr. Kirk affirmed that Mr. Lynch has continued the property in the same way as White Bros. did. Member Rogers asked if the parcels were used during the construction of job sites such as the library, high school, hospital, etc. Mr. Kirk stated yes. Mr. Kirk asserted the parcels had never been residentially and had been there a long time. Mr. Kirk asked the board to annul the building official's decision to cease and desist operations. Chairman Re asked if the operations had ceased upon receiving the order. Mr. Kirk stated that Mr. Lynch is still using the premises with a job. Chairman Re asked for an explanation of the current situation. Mr. Kirk explained that materials from off island are brought there to be stored for current jobs. Trucks go to the job site and drop off materials. Once the job is completed all excess materials are brought back to the site. Mr Kirk stated that the operation is not round the clock. This year had been busier than previous years. Chairman Re opened the floor to public comment. An abutter, Mr. Rebello wrote a letter in opposition of the commercial use. An abutter, Mr. Lyons wrote a letter in opposition to the commercial use. An abutter, Ms. Cacchiotti wrote a letter in opposition to the commercial use. Mr. Lynch spoke in favor the commercial use and described the current activity on the parcels. He described the activity on the parcels in reference to the draw bridge project. He stated that the piles are smaller. He stated that the traffic in the neighborhood also includes the other surrounding businesses. He stated that only one load daily is taken in and off the parcels. An abutter, Mr. Jendrick was concerned about traffic flow and the appearance of the site. The building official asked when the corporation bought the parcels. Mr. Kirk stated that White Bros. purchased the property originally in 1968 and White Bros.-Lynch purchased the property in 1995. Mr. Kirk asserted that the commercial use of excavation and storage area was in place prior to the purchase. Mr. Kirk understood that one time the parcels were in tax title. The lots were considered low value. The owners did not pay the taxes and the lots were consolidated. An abutter, Ms. Hart noticed few months that surveyors had come out to some undeveloped land and asked the operation was expanding. Mr. Kirk stated that there were discussions and site plans were prepared with the Planning Board regarding possible layout and zoning changes. Ms. Hart questioned how the area was subdivided for Lagoon Height in 1928. An abutter, Mr Bradford stated the real issue is whether the use of lots is grandfathered or not. He stated that the Planning Board should determine whether the site is eligible for rezoning and a change in use. An abutter, Mr. Motuzas stated that the area is an industrial area with Brunos trucks, septic haulers trucks, Town trucks, Leite trucks, etc. He stated that the area is Residential Zone 2. He recommended that the street be a one way with trucks going towards County Road. Ms. Melrose questioned what type of use was grandfathered to which lot. Member Chvatal stated that the only question was whether or not the use pre-existing, nonconforming prior before 1948. An abutter, Mr. Giordano stated he was concerned for the amount of traffic and safety of the children in the neighborhood. An abutter, Ms. Taylor was concerned about the level of noise and safety. An abutter, Mr. Packish stated the situation reminded him of the BFI scenario on School Street where a previous rights/use of Mr. Rogers was not transferable to Mr. Fenner. After a long battle, the use was changed to a church. He cited other examples where pre-existing, nonconforming uses had been transferred in residential neighborhoods through the process of amending a special permit. An abutter, Mr. Combra spoke in opposition of the commercial use. He stated that zoning was only as good the enforcement of the zoning bylaws. He stated that the commercial use is too much for the neighborhood. An Abutter, Ms. Jendrick spoke in opposition of the commercial use due to the increased excessive use over the past four years. Mr. Kirk stated that he respectfully is considering all the commentary regarding traffic and noise. Member Rogers asked if there were in deeds or records going back to 1948. Mr. Kirk replied that there were records dated from the 1960s related to White Bros. Mr. Kirk stated that he only had the recorded testimony of the Albert White and Terry Eglinas prior to the Corporation taking over. Member Chvatal asked the applicant to redouble his efforts to provide more proof of the nonconforming use. Member Chvatal asked the building department to contact the MV Commission. The board advised the applicant to continue the hearing in order to gather more evidence and proof. Mr. Kirk agreed.

*The board made a motion to continue the hearing based on the lack of information to February 18<sup>th</sup>, 2016 at 7:15 p.m. and Member Chvatal seconded it. The board agreed unanimously to continue the hearing.*

*Meeting adjourned at 7:45 pm.*

*Respectfully Submitted, Colleen Morris, Clerk/ZBA*