Zoning Board of Appeals
Minutes of Meeting 2/18/2016
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 January were approved.
Next Meeting Date: March 17th, 2016 at 6 pm

Old Business

RE: Russo Project
14 School House Village, **Map** *50* **Parcel** *7*

*****On February 18, 2016 at 6:05 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 50 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. The applicant and was unable to be present and asked the board for a continuance in order to present revised plans at the next meeting.

Member Rogers made a motion to continue the hearing to March 17th, 2016 at 6:30 p.m. in order for the applicant to present revised plans and be able to attend the next meeting and Member Perry seconded it. The board voted 5-0 to continue the hearing.

RE: Oak Bluffs Water District Project
4 Alwardt Way, **Map** *54* **Parcel** *1*

*****On February 18th, 2016 at 6:15 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 Llewellyn Rogers was present. The applicant has been referred to the MV Commission as a DRI and a decision has not been received to date. The applicant will appear before the MV Commission on March 3rd, 2016. The applicant's representative, Sean Murphy asked for a continuance.

Member Rogers made a motion to continue the hearing to March 17th, 2016 at 6:45 p.m. and Member Yoars seconded it. The board voted 5-0 to continue the hearing.

RE: Nussbaum Project
22 Sengekontacket Road, **Map** *48* **Parcel** *51*

*****On February 18th, 2016 at 6:30 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 Llewellen Rogers was present. Bruce MacNelly and Read Milne represented the applicant. Mr. MacNelly presented plans for renovations to a single family dwelling. The entire lot is located in the Coastal District. The first floor addition on the westerly side of the dwelling is conforming with height and setbacks. The first floor addition of the easterly side is nonconforming (38 feet) with setbacks and conforming with height. The second floor additions are an expansion of room over garage including a covered porch. These additions are conforming in height. Chairman Re opened the floor to public comment. No correspondence was received into the record. The project has been reviewed by and approved by the Plan Review Committee on January 14, 2016. Chairman Re closed the floor to public comment.

Member Rogers made a finding that the existing dwelling and lot located in the Coastal District are nonconforming. The board agreed unanimously.

Member Rogers made a finding that the renovations and additions are not substantially more detrimental to the neighborhood. The board agreed unanimously.

Member Rogers made a motion to approve the special permit within Zoning Bylaw 3.5.5 to allow the renovations and construction of additions and Member Perry seconded it. The board voted 5-0 to approve the special permit.

RE: Lally Project
26 Lagoon Road, **Map** *12* **Parcel** *110*

*****On February 18th, 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 3.4.3 and 3.5.5, or any action thereto,
to allow the conversion of a conforming garage to a nonconforming guest house
on a nonconforming lot..

A quorum consisting of Chairman Joe Re, Andrea Rogers, Peter Yoars, Mike Perry, and Llewellen Rogers was present. Mark McGlynn represented the applicant. The applicant was present. Mr. McGlynn presented plans to convert an existing conforming garage to a nonconforming guest house. Mrs. Lally explained that she has lived on the island since 1991 and had owned another home from 2004 to 2013. At that time her husband passed away and she sold that house in Meadow View Farms. She purchased this house last year. Member Rogers stated she had not owned the house for five years and asked why she was not willing to wait the five years according to the bylaw. Mrs. Lally stated that her age was a reason. Also the cottage she purchased was only one bedroom and she has children and grandchildren that want to come in the summer. She needs extra living for her family. She does not intend on using the space as a rental. Chairman Re asked for a more recent copy of the plot plan with the setbacks. Mr. McGlynn stated the Reid Silva from Vineyard Land Surveyors was preparing an updated version of the current site plan with setbacks. Mr. McGlynn stated that the footprint was not changing. The renovations included new windows and finishing the interior with two bedrooms, bathroom and kitchenette. The footprint of the

existing garage is 374 sf. Mrs. Lally state that the rear setback was less than 20 feet. Chairman Re opened the floor to public comment. No correspondence has been received into the record. The building official reminded the board that when granting a special permit he benefits should outweigh the detriment as outlined in the bylaws under section 10.3. Member Chvatal asked if there was a site plan with the setbacks clearly marked. The applicant stated no. Member Chvatal stated the board required a site plan stamped by an engineer in order to proceed. Mrs. Lally stated that she works at Farm Neck and will continue to live in the house. Member Rogers suggested a condition that the applicant would not be able to rent out the guest house for next four years. Mrs. Lally stated that engineer is almost done with the site plan and asked for a continuance.

Member Yoars made a motion to continue to March 17th, 2016 at 6:05 pm and Member Rogers seconded it. The board voted 5-0 to continue the hearing.

RE: White Bros.-Lynch Appeal
Pennsylvania Avenue, **Map** *21* **Parcels** *78, 79, 86, 87*

*****On January 21, 2016 at 7:15 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 lots in question were a series of smaller lots. These lots were never used for residential purposes. He stated that the lots were located across from the dump, transfer station, and John Leite commercial operation. Mr. Kirk referred to the affidavits which stated that the owners recall that the lots were used for commercial use. He described the area as an industrial area. Mr. Kirk stated that the building department did not have a record of written complaints. Mr. Kirk referred to the incident witnessed by the building official, which was a time when the bridge was under construction. Mr. Kirk presented a site plan showing the location of the neighboring complainants in reference to the WBL properties. Mr. Kirk explained the all traffic from WBL is directed towards County Road. On February 17, 2016 a random survey of traffic was conducted. According to the survey it was recorded that the majority of the traffic was coming in and out of the transfer station. He also attributed the noise levels to the transfer station. He stated that the total days of activity last year was 50 days. Mr. Kirk explained that no other additional evidence was available other than the affidavits and photos. Member Rogers asked if he had copies of titles or deeds for the registry. Mr. Kirk stated that he had copies of titles. He stated the White Bros. Lynch acquired the parcels in 1968, 1972, 1978 and 1982. From 1935 forward the parcels were scattered in ownership. From 1939 they were in tax title. The Town owned the parcels for a substantial period of time. Mr Kirk stated that White Bros started acquiring the parcels and the use had already been established. Chairman Re asked if any complaints had been filed prior to the construction of the bridge. The building official stated that he could not find complaints but had received a written complaint with pictures recently. Chairman Re opened the floor to public comment. One letter, Mr. Motuzas was received in favor of the appeal. An abutter, Peter Bradford presented the original plan of Lagoon Heights area and the four deeds belonging to White Bros. Lynch. On a color coded map, Mr Bradford demonstrated the areas of land acquisition from the dates of 1968, 1972, 1978, and 1982. He presented photos from 1972 of the area including the parcels in question, the Leonardo junkyard, the dump, and all surrounding parcels. The photo was acquired from the website Friends of Farm Pond. In 1973 the Town created zoning bylaws which required 100000 sf lots. Prior to 1973 5000 sf lots were individual buildable lots. Based on the photo he demonstrated where the pit would have been located in 1972. Before 1972 the other areas were covered with trees and not being used as a pit. Mr. Bradford stated that all photos and paperwork was available at the

Registry of Deeds. Member Chvatal asked for an explanation of the process when the lots were combined. The building official did not know. Mr. Bradford explained that in 1973 when zoning changed 5000 sf lots were converted to 10,000 sf lots. He explained that lots are combined for taxation purposes. Chairman Re asked if anyone could recall if there was a time when the pit was not being used. An abutter, Mr. Hart recalls when the pit area was expanded in the direction toward his property. He recalled when the pond was created in order to prevent his yard from being flooded. He stated that an abutter Mr. Leite also uses the parcels in question as a staging ground for his commercial purposes daily. Mr. Hart was concerned about the toxic materials that were going into ground. Mrs. Hart stated that the level of activity has expanded over the years. An abutter, Ms. Sylvia stated she has direct views of the parcels. She has owned her property for four years and has noticed an increase on activity. She was concerned about the possibility of creating a one-way street of Penn Ave. An abutter, Mr. Jendrick stated that even if the parcels were treated differently, who would police them. The building official reminded the board of MGL Chapter 40A section 6 which states "…a zoning ordinance or bylaw shall not apply to structures or uses lawfully in existence or lawfully begun or to a building or special permit before the publication or notice of the first public hearing on such ordinance or bylaw required by section 5." He stated that the rules of the bylaw apply to this project unless the falls under that exception previously stated. Further, he stated "…a zoning bylaw or ordinance may define and regulate nonconforming uses or structures abandoned or not used for two or more years." He stated that even if the commercial use was harmonious with the neighborhood, did it exist prior to the notice of the first bylaw publication which applies to the property and did it exist continuously for two or more years. He stated it was not continuous then it could not be restarted. Mr. Bradford referred back to the photo of 1972, which demonstrated at that time what to the property was being used for. Member Chvatal referred to the photo from the MV Commission from 1938 which demonstrated no activity on the parcels. Chairman Re closed the floor to public comment. Mr. Kirk stated that the uses of the areas in question were incremental. He stated that he was unaware of any permissions or arrangements for John Leite or anyone else to use the property for commercial purposes. Mr. Kirk stated that the affidavits explained what took place and when. Mr. Kirk stated that he was happy to work with the neighborhood and building department to address concerns. Member Rogers asked if Town Counsel should become involved at this point. Member Chvatal stated that the burden of proof regarding a continuous commercial operation since 1948 is on the applicant. Member Chvatal stated that the affidavits were ambiguous because there were no specific dates. Based on the photos from 1972, he stated that the pit appears to be located on maps 78 and 79 and part of 86 but it is uncertain when the expansion took place. Based on the photos, it appears parcel 87 was not in service. Member Chvatal suggested to the board to consider separate motions for the lots. The board reviewed he photos from 1972 and 1986. The areas in use in 1972 are the areas opposite of Leonardos, which are parcels 78 and 79. Chairman Re stated that the only issue in front of the board is whether or not the commercial operation is pre-existing before 1948. Member Chvatal stated that after the first issue is resolved then the board could consider a special permit with conditions regarding noise, traffic pattern, hours of operation. The board agreed that some portions of the parcels might be preexisting and others are not. Member Yoars stated that the best solution would be a compromise on all sides. Mr. Kirk stated a compromise sounded like the best result with some parcels legitimized with special permits.

Member Chvatal made a finding that parcels 78, 79, 86, and 87 are located in Residential Zone 1. The board agreed unanimously.

Member Chvatal made a finding that all the parcels are in different stages of commercial usage by White Bros.-Lynch. The board agreed unanimously.

Member Chvatal stated that any further findings in fact will impact any motions the board can make. As an example, he suggested a finding that the parcels 78 and 79 are preexisting nonconforming and not parcels 86 and 87. Mr. Lynch asked to look at the site plan and view the parcels. Member Chvatal stated part of parcel 86 looks like it might be included in the area of the pit. He suggested that parcel 86 is nonconforming and that parcel 87 is not preexisting nonconforming. If the board agreed with these findings, then the building inspector could proceed with the special permit process for parcel 86. In addition, the cease and desist order would stand for parcel 87 and no special permit would be allowed. Member Yoars asked if restrictions could be placed on the

special permit. Chairman Re stated yes. Member Chvatal stated that the board could grant the appeal for parcels 78 and 79 only and not grant the appeal for parcels 86 and 87. Member Rogers mentioned that all the parcels were located in Zone 2. Member Yoars asked the building official for any comment. Mr. Barbadoro stated that he stood by his letter from November of 2015. Member Rogers asked Mr. Kirk how these proposals would change the nature of the business at White Bros.-Lynch. Mr. Kirk stated if the board votes accordingly, then the cease in desist order would be lifted with the exception of parcel 87 and the special permit process could begin for parcel 86. The board agreed that Town Counsel become involved at this point and asked to continue the hearing until March. Mr. Kirk agreed. Member Rogers asked that the public comment be opened at the next meeting.

Member Chvatal made a motion to continue the hearing to March 17th 2015 at 7 p.m. in order to refer the appeal and decision to Town Counsel and Member Rogers seconded it. The board voted 5-0 to continue the hearing to March 17, 2016 at 7 p.m.

Meeting adjourned at 8:30 p.m.
Respectfully Submitted, Colleen Morris, Clerk/ZBA