

Zoning Board of Appeals
Minutes of Meeting 4/21/2016
Oak Bluffs Council on Aging Building

Members present: George Warren, Llewellyn Rogers, Kris Chvatal, Mike Perry

Members absent: Joe Re, Andrea Rogers, Peter Yoars,

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

Chairman Kris Chvatal opened the meeting at 6:00 pm.

Minutes from April were approved.

Next Meeting Date: July 21st, 2016 at 6 pm

RE: Pine Valley Trust Project

5 Dudley Avenue, **Map 3 Parcel 75**

*On May 19th, 2016 at 6:05 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 3 Parcel 75 seeking:

*A special permit within Zoning Bylaw 3.5.5, or any action thereto,
to allow the demolition of a conforming garage and construction of a nonconforming accessory
building (garage with one-bedroom guest apartment) on a nonconforming lot.*

A quorum consisting of Chairman Kris Chvatal, George Warren, Llewellyn Rogers, and Michael Perry was present. Maurice O'Connor and George Sourati represented the applicants. Al Van Ranst and Marta Bennett were present. Mr. O'Conner presented plans an accessory building- 32x24 garage and a second floor one-bedroom apartment 713 sf of living space with a ridge height is 26.9 feet. The existing lot is 15,865 sf and applicant asked for relief from the required lot size. (Re.: 20,000 sf). The existing garage is conforming with setbacks. The proposed garage with a guest apartment is nonconforming. The applicant asked for relief from the required 20-foot rear setback (18.6 feet). Chairman Chvatal opened the floor to public comment. No correspondence was received into the record. Chairman Chvatal closed the floor to public comment.

Member Rogers made a finding that the existing lot is nonconforming. The board agreed unanimously.

Member Rogers made a finding that the proposed garage with guest apartment was nonconforming with rear setbacks. The board agreed unanimously.

Member Rogers made a finding that the proposed accessory structure -garage with guest house was not substantially more detrimental to the neighborhood. The board agreed unanimously.

Member Rogers made a motion to approve the special permit under Zoning Bylaw 3.5.5 to allow the construction of a nonconforming guest house on a nonconforming lot and Member Perry seconded it. The board voted 4-0 to approve the special permit.

RE: Serusa and Smith Appeal

9 Pond View Circle, Map 28 Parcel 2.36

*On May 19, 2016 at 6:15 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 28 Parcel 2.36 seeking:

a Special Permit within Zoning Bylaws 3.4.3 and 3.5.5, or any action related thereto, to allow the construction of a nonconforming accessory building (garage with one-bedroom guest apartment) prior to the five-year requirement on a nonconforming lot.

A quorum consisting of Chairman Kris Chvatal, George Warren, Llewellyn Rogers, and Michael Perry was present. Chris Alley represented the applicant. Stephen Serusa and Emily Smith were present. Mr. Alley presented plans for an accessory building—a garage 35x32 and a one-bedroom guest apartment (744.45 sf). The existing lot (25,039 sf) is nonconforming in size (Req.: 60,000). The existing SFD is nonconforming with setbacks (Req.: 50 feet). The proposed accessory building is nonconforming with side and rear (21 feet) setbacks (Req.: 50 feet). Chairman Chvatal opened the floor to public comment. The building official commented that the footprint was large (1100 sf). Mr. Alley explained the square footage for the living space by room. Member Rogers reminded the applicant that he must submit an affidavit stating that he would continue to live in the house after the accessory building was built. The building official will confirm that the lot is pre-existing, nonconforming. Chairman Chvatal closed the floor to public comment.

Chairman Chvatal made a finding the existing lot and SFD are both nonconforming. The board agreed unanimously.

Chairman Chvatal made a finding that the existing SFD had not been owner-occupied for five continuous years. The board agreed unanimously.

Chairman Chvatal made a finding that the proposed accessory building is nonconforming with setbacks. The board agreed unanimously.

Chairman Chvatal made a finding that the proposed accessory building was not substantially more detrimental to the neighborhood. The board agreed unanimously.

Chairman Perry made a motion to approve the special permit within Zoning Bylaw 3.4.3 to grant relief from 3.4.2.2 criteria of the five-year required owner occupation and Member Rogers seconded it. The board voted 4-0 to approve the special permit.

Chairman Rogers made a motion to approve the special permit within Zoning Bylaw 3.5.5 to grant relief from the lot size and required setbacks and Member Perry seconded it. The board voted 4-0 to approve the special permit.

RE: Stafford and Ellis Appeal

10 Warwick Avenue, **Map 11 Parcel 205**

*On May 19, 2016 at 6:45 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 11 Parcel 205 seeking:

a Special Permit within Zoning Bylaws 2.3.1.5, or any action related thereto, to extend the B-1 Zoning District seventeen feet into R-1 Zoning District.

A quorum consisting of Chairman Kris Chvatal, George Warren, Llewellyn Rogers, and Michael Perry was present. George Sourati represented the applicant. Robert Stafford and Mark Ellis were present. Mr. Sourati explained that the former owner, Mr. Burgess came before the board a few years ago and asked for an extension of time limits to rebuild on his property. The board granted a two-year extension of time limits. He explained that Mr. Burgess's property was divided into two zones B-1 and R-1. The existing house was torn down by the Town. Mr. Stafford and Mr. Ellis were interested in developing the land. The lot faces Warwick Avenue. He stated that the B-1 district is 100 feet from Dukes County Avenue. He showed the map which shows where the B-1 property begins and the R-1 property ends. He stated that a three-bedroom septic system had been approved by the board of health. The proposed building (20x32) would have side setbacks of 3.9 and 11.8. The proposed structure is one-bedroom apartment on the second floor and an office space on the first floor. The construction business is currently located on Dukes County Avenue. Chairman Chvatal opened the floor to public comment. No written correspondence was received into the record. An abutter, Candi Nichols stated that the septic plan stated it was a three-bedroom house. Mr. Sourati stated that it would only be a one-bedroom house with office space below. Ms. Nichols explained that she understood that the extension for time limits to rebuild was for a three-bedroom house. She stated that it was not clear that a B-1 project could be substituted for a R-1 property. She stated that the extension of time limits was based on an existing three-bedroom house that was torn down. She questioned the zoning map which represented the zoning boundary stopping at 80 feet to the boundary of M 11 P 205. She felt this potential decision was risky based on the current zoning map. An abutter, Mr. Muckerheide showed photos of abutting lots on Dukes County Ave which were located in the B-1 District and were 100 feet or less. He felt the board was "spot-zoning" and stated that it was illegal. He was concerned about these types of decisions by the board and their consequences. Mr. Sourati stated that when Mr. Burgess came before the board requesting an extension of time limits, he and Mr. Ellis were also present at that hearing and made their intentions at the hearing. Chairman Chvatal asked what Town Counsel advice was for properties abutting the B-1 District. Mr. Barbadoro stated that the board determined that the old map which showed a dimension/figure of 100 from the side lines. The new map does show a line that varies. Within Zoning Bylaw 2.3.1.5 the board can issue a special permit to extend the B-1 up to thirty feet into the R-1 District when the district boundary divides a lot. Based on Mr. Muckerheide's statement, the bylaw used to require frontage as well and not just the division of the lot. Subsequent bylaw changes have excluded that a property must front Dukes County Avenue. The distance of 100 feet was determined by the board in a subsequent hearing. The pictures Mr. Muckerheide provided show that too many vehicles are parked in an area that is beyond the B-1 District. Those particular properties must either apply for a special permit or remove the vehicles. Ms. Nichols stated the board approved a three-bedroom house with a three-bedroom septic system. Chairman Chvatal stated that the board can not approve any septic systems and only the BOH can. Ms. Nichols asked if Town Counsel had advised the board. Mr. Barbadoro stated that the board made that decision. Ms. Nichols was concerned that the line on the map was not consistent. Chairman Chvatal stated that the old maps were 100 feet and the new maps vacillate between 80 and 100 feet. Based on minutes from Planning Board there was no evidence that these lines were to be moved. It was concluded from the Zoning Board that there was no intent to move the lines from where they were and that there was an error while making the map. Mr.

Muckerheide stated in 1979 and 1988 when the bylaws were codified, the wordage “abutting Dukes County Avenue” was left out. He stated that the intent was always for properties to abut Dukes County Avenue. He stated that in order to make that change it would require a two-thirds majority vote. Chairman Chvatal stated that the board needed to be reaffirmed from Town Counsel regarding the B-1 District boundary lines. The board and the applicants agreed that Town Counsel should advise them and asked for a continuance. Chairman Chvatal closed the meeting to public comment.

Chairman Chvatal made a motion to continue the hearing to June 16th at 6:30 pm in order speak to Town Counsel regarding B-1 boundary lines and Member Warren seconded it. The board voted 4-0 to continue the hearing.

RE: Reagan Project

28 Beach Road, **Map 6 Parcel 37**

*On May 19, 2016 at 7:26 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 6 Parcel 37 seeking:

a Special Permit within Zoning Bylaws 8.1.5.2.1 and 9.XVIII.1.7.a.i, or any action related thereto, to allow the demolition and reconstruction pf a nonconforming single family dwelling with a height of 32 feet located in the Flood Plain Overlay District and AE zone.

A quorum consisting of Chairman Kris Chvatal, George Warren, Llewellyn Rogers, and Mike Perry was present. George Sourati represented the applicant. Jack and Lisa Reagan were present. Mr. Sourati explained that the property was in the Flood Plain and they had been to the Conservation Commission. Based on the new FEMA maps, the ConCom requires the applicant to elevate the dwelling by 8 feet. The lot is conforming by size and the proposed SFD is conforming with the setbacks. The existing 100 year old two-story dwelling would be demolished and the proposed two-story dwelling would have a height of 31.9. The maximum elevation allowed in the Coastal area is 24 feet. The existing footprint is 1306 and the proposed footprint is 1420 feet. Chairman Chvatal opened the floor to public comment. The clerk mentioned that since the house was 100 years old the demolition delay application had been filed with the OB Historic Commission. An abutter, Mr. Toole asked whether anyone’s views would be impacted by the new height. An abutter, Mr. Linn submitted a letter in opposition to the project. Member Rogers asked if the project would be connected to Town Sewer. Mr. Sourati replied yes. Chairman Chvatal closed the floor to public comment.

Chairman Chvatal made a finding that the proposed new construction of a single family dwelling was located on a in the Coastal District, FPOD and AE Zone. The board agreed unanimously.

Chairman Chvatal made a finding that the height (31.9 feet) of the new construction exceeds the maximum height (24 feet) allowed. The board agreed unanimously.

Chairman Chvatal made a finding that the special permit would not result in creased flood heights, additional threats to public safety, extraordinary public expense, or conflict with existing local by-laws, and it was the minimum necessary to afford relief, considering the flood hazard. The board agreed unanimously.

Chairman Chvatal made a finding that the proposed construction is not substantially more detrimental to the neighborhood. The board agreed unanimously.

Chairman Chvatal made a motion to approve a special permit within Zoning Bylaws 8.1.8 and 8.1.5.2.1 to allow the construction of a single family dwelling in the FPOD and AE Zones and Member Perry seconded it. The board voted 4-0 to approve the special permit.

Chairman Chvatal made a motion to approve the special permit within Zoning Bylaws 9.XVIII.1.7.a.i to grant relief (31.9) from the maximum height allowed (24 feet) and Member Rogers seconded it. The board voted 4-0 to approve the special permit.

RE: Bayes Norton Farm Project

223 Edgartown-Vineyard Haven Road, **Map 40 Parcel 37**

*On May 19, 2016 at 7:45 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 40 Parcel 37 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 located in the Lagoon Pond DCPC and Islands Roads District.

A quorum consisting of Chairman Kris Chvatal, George Warren, Llewellyn Rogers, and Mike Perry was present. William Bennett represented the applicant. Jamie Norton was present. Mr. Bennett described the ground-mounted solar array to be larger than 50,000 sf. The existing property is a farm which is completely fenced in due to the sheep grazing. The location of the panels is 300 feet from the road. The MV Commission referred the project back to the zoning board. The pasture use would continue. The energy from the solar array energy credits would go to Island nonprofits such as IEH, MV Charter School. The lease for the project would be twenty years. Chairman Chvatal reviewed the criteria within Zoning Bylaw 12.4.1: effects on special habitats or endangered species, impact on character if the surrounding neighborhood, efficacy of existing natural screening, erosion, drainage and water run-off, solar access and clearing. Mr. Bennett explained that the location of the solar array is not within the area specific to the National Heritage and Endangered Species areas. Chairman Chvatal opened the floor to public comment. The building official gave remarks from the Plan Review Committee. An abutter, Peter Goodale spoke in favor of the project. Mr. Toole, Energy Committee member spoke in favor of the project. Chairman Chvatal closed the floor to public comment.

Chairman Chvatal made a finding that the proposed project has no apparent or detrimental effects on any natural habitats or endangered species. The board agreed unanimously.

Chairman Chvatal made a finding that the proposed project has no apparent or detrimental effects on the character of the surrounding neighborhood. The board agreed unanimously.

Chairman Chvatal made a finding that the solar access and clearing were not detrimental to the neighborhood. The board agreed unanimously.

Chairman Chvatal made a finding that the existing cleared lot had no apparent or detrimental effect on the screening, erosion, drainage, and water run-off. The board agreed unanimously.

Chairman Chvatal made a finding that the proposed project was outside of the Islands Roads District and had no apparent or detrimental effect on the visual character or landscape. The board agreed unanimously.

Member Perry made a motion to approve the Special Permit within Zoning Bylaws 12.4.1 to allow the construction of a ground-mounted solar array installation and Member Rogers seconded it. The board voted 4-0 to approve the special permit.

RE: Oak Bluffs Water District Project

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

*On May 19th, 2016 at 8:15 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 Kris Chvatal, George Warren, Llewellyn Rogers, and Mike Perry was present. George Sourati represented the applicant. The applicant has been referred to the MV Commission as a DRI and a decision has not been received to date. The applicant's representative, Sean Murphy sent a letter and asked for a continuance.

Member Rogers made a motion to continue the hearing to July 21st, 2016 at 7:00 p.m. and Member Perry seconded it. The board voted 4-0 to continue the hearing.

RE: White Bros.-Lynch Appeal

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

*On May 19, 2016 at 8:25 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 Kris Chvatal, George Warren, Llewellyn Rogers, and Mike Perry was present. Edward Kirk sent a letter on behalf of the applicant, and was unable to be present and asked for a continuance. The board agreed and requested that the next hearing would be the last hearing.

Member Perry made a motion to continue the hearing to June 16th, 2016 at 7 p.m. and Member Rogers seconded it. The board voted 4-0 to continue the hearing.

Meeting adjourned at 8:35 p.m.

Respectfully Submitted, Colleen Morris, Clerk/ZBA