Zoning Board of Appeals
Minutes of Meeting 6/16/2016
Oak Bluffs Council on Aging Building

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

Members absent: George Warren, Peter Yoars,

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

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

Minutes from May were approved.
Next Meeting Date: July 21st, 2016 at 6 pm

RE: Reagan Project
5 Coral Avenue, **Map** *3* **Parcel** *134*

*****On June 16th, 2016 at 6:05 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 3 Parcel 134 seeking:

A special permit within Zoning Bylaw 4.4.4 and 3.5.5, or any action thereto, to allow the construction of a nonconforming accessory building (garage with detached one-bedroom) on a nonconforming lot.

A quorum consisting of Chairman Joe Re, Kris Chvatal, Andrea Rogers, Llewellyn Rogers, and Michael Perry was present. George Sourati represented the applicants. John Reagan was present. Mr. Reagan presented plans for a detached bedroom above an existing conforming garage on a pre-existing, nonconforming lot. The existing house has a six-bedroom septic approved by the BOH. The main house has four bedrooms. The garage space is 22x22 sf. The proposed second-floor detached bedroom is the same. Chairman Re reviewed the conditions that must be met under Zoning Bylaws 4.4.4 and 3.4.2. Mr. Reagan purchased the property in 2016 and has not met the owner occupancy requirement of five years. Mr. Reagan did not realize he needed to meet this requirement and requested to withdraw his application without prejudice.

Member Chvatal made a motion to allow the applicant to withdraw his application without prejudice and Member A. Rogers seconded it. The board voted 5-0 to allow the application to be withdrawn without prejudice.

RE: Cornell Appeal
24 Wayland Avenue, **Map** *8* **Parcel** *96*

*****On June 16th, 2016 at 6:15 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 8 Parcel 96 seeking:

a Special Permit within Zoning Bylaws 3.5.5, or any action related thereto, to allow the partial demolition and reconstruction of a nonconforming two-story addition on a nonconforming lot located in the Copeland District..

A quorum consisting of Chairman Joe Re, Kris Chvatal, Andrea Rogers, Llewellyn Rogers, and Michael Perry was present. Chuck Sullivan presented the applicant. Paul Cornell was present. Mr. Sullivan presented plans for a partial demolition and reconstruction of a two-story addition with rooftop deck. The existing lot (6783 sf) and dwelling are nonconforming. The proposed addition is 2147 sf and 26 feet is height. The porch addition would extend along Laurel Avenue (the park). The existing side setback (4.1 ft.) is nonconforming. The proposed side setback (4.6 ft.) is nonconforming. The project will be reviewed by the Copeland Review Committee on Monday June 27th. Chairman Re opened the floor to public comment. No correspondence was received into the record. Chairman Re closed the floor to public comment.

Member Perry made a finding the proposed addition and renovations were not substantially more detrimental to the neighborhood. The board agreed unanimously.

Member Perry made a motion to approve the special permit within Zoning Bylaws 3.5.5 to allow the demolition and reconstruction of a nonconforming addition and Member A. Rogers seconded it. The board voted 5-0 to approve the special permit.

RE: Stafford and Ellis Appeal
10 Warwick Avenue, **Map** *11* **Parcel** *205*

*****On June 16th, 2016 at 6:30 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 Joe Re, Kris Chvatal, Andrea Rogers, Llewellyn Rogers, and Michael Perry was present. George Sourati represented the applicant. Robert Stafford and Mark Ellis were present. Member Chvatal reminded members that this hearing was continued from last month and that the Mullin rule would apply to any members absent the prior month. Minutes and a digital recording is available on hand if needed. Mr. Sourati presented a letter dated November 16, 2009 from John Bradford former chairman of the planning board to Jerry Wiener former building official stating that the boundaries from B-1 to R-1 district are 100 feet back from the lot frontage line along Dukes County Avenue. Mr. Sourati presented a letter dated March 19, 2015 from CAI technologies from Franco Rossi to Dave Richardson stating that there was no intention in changing any zoning locations and listed possibilities as to why there could be any discrepancies between zone limits. Member Chvatal stated that the board referred this hearing to Town Counsel. Town Counsel spoke the Attorney General's office and reviewed the Town maps. Member Chvatal stated that he was in agreement with

John Bradford that there was no intent to change the maps. There were no hearings or public meetings to this effect. He stated that most likely it was a printing mistake which could be ignored. The issue is that the map that the board must follow is stamped by the Attorney General. The bylaws state that this map supersedes all proceeding maps. If changes need to be made to the current map then a town meeting with a vote is required. Mr. Sourati stated the map is not dimensional. He stated that anyone who tries to scale the map would come up with a different number. He stated it was clear that there was no intent change the 100-foot setback to determine the B-1 Zone. He stated that the Mr. Stafford and Mr. Ellis were trying to put together a small operation with a one-bedroom apartment above. Chairman Re stated that board must follow the map. Member Chvatal stated that some portion of that lot must already be in the B-1 Zone and that it was uncertain that any portion of the lot is in the B-1 Zone. Mr. Barbadoro stated that the advice from Town Counsel was to look at the map and see if any if the B-1 Zone is on the parcel, and if no B-1 color on the parcel then there is no B-1 in the parcel. And, if the B-1 splits the property then the property should be scaled. A new map is necessary because the board has faced this problem before. Chairman Re stated the last time the board faced this issue it was clearly visible on the map that the property was partially in the B-1 zone. The board and the applicants viewed the map. Chairman RE opened the floor to public comment. Candi Nichols commented on the size of the lot, the abandonment issue after the original house was demolished, the wordage of the bylaws regarding re-establishing and extending the time limits. She stated the current owner owns the abutting lot which is also nonconforming. The house that the was torn down was not a voluntary tear down. She stated that Mr. Burgess had no intention of abandoning this property. She stated that the properties should have been merged after the two-year abandonment had expired. She stated that Mr. Burgess did not avail himself to that. She stated that lots should have been merged. She suggested that it was a residential lot. The special permit issued by the board resurrected an abandonment issue and a three-bedroom septic was approved by the BOH. She stated the decision for the special permit has not been recorded which means it is not valid. She stated that if the three-bedroom house with a three-bedroom septic is not installed, then the lot will become unbuildable. She stated if the lot had been pre-existing buildable vacant lot, the lot size would not meet the requirement of the BOH regulations for lot size. She stated that the applicants are availing themselves of the special permit if they change the use. She suggested the board look at the color on the map and read the bylaws for guidance, "..Where the boundary lines are shown on the map, and the boundary lines are indicated by dimension shown in figures, then a property or lot line shall be the boundary line." She suggested that if the board corrects the map, then there would be lots of discussion. She stated that she needed to look at the old maps and that the former bylaw stated that the property was supposed to abut Dukes County Avenue. She mentioned that Mr. Muckerheide had performed lots of research and this wordage had been inadvertently left out to the bylaws and that the B-1 Zone had to be fronting Dukes County Avenue. She does not believe the extension of time limits can be resurrected and extended. She understands that there was a three-bedroom dwelling before and that should only be allowed now. She stated that problem is that the property is not in the business B-1 Zone. Mr. Barbadoro stated that the map changed and the bylaws were recodified. The town has a map which was approved by the attorney general. He stated that the board should operate within the zoning bylaws provided. Mr. Sourati stated that when Mr. Burgess came before the board asking for an extension of time limits, at that that time he explained his intentions for the property and explained what he wanted to do. He stated that the board was pleased with his intentions at that time. It was clear that the project would come back to the board with final plans. He stated that prior map had a distance of 100 feet which would put this property in the B-1 Zone. An abutter, Mr. Packish stated he has watched the property fall apart. According to his counsel, that property was never allowed to be in the B-1 Zone. He stated that Town Counsel is saying the same thing. He spoke in favor of the applicants intent but felt the property should only allow a single family dwelling. He was aware that other property owns want the same thing. He was concerned for the rest of the neighborhood. He felt this decision would transform Winthrop Avenue and other streets. Ms. Nichols stated the original public

notice did not mention transforming an area to B-1. She agrees with Mr. Packish and with Mr. Barbadoro that the board must work with what they have. Member Chvatal stated that when the decision for Mr. Burgess was rendered in December 2015, the findings in fact state that "…the existing single lot was located in the Residential Zone 1." Member L. Rogers asked to see a map that was shown at the last meeting which showed a distance of 80 feet where the B-1 and R-1 Zones were located. An abutter, Mr. Viaggio stated that he owned that lot and it was contiguous and fronted Dukes County Avenue. He stated the lots abutted Warwick and Masonic Avenues. Mr. Barbadoro reminded the board that the Town map was available on the table. Also, that in Residential Zone 1 the applicant could apply for a home-based business license. The clerk mentioned that Mr. Muckerheide sent a letter in opposition of the special permit. Chairman Re closed the floor to public comment. Member Chvatal was concerned that there was no evidence at any time that the bylaws and map lines were supposed to be changed.

Member Chvatal made a finding that the property as not located in the B-1 Zone and Member Perry seconded it. Discussion.

Based to the hearing, the applicant asked to withdraw the application without prejudice and asked for more time to review the application. The applicant asked if the two-year window apply to this type of permitting. Member Chvatal explained that they are restricted. Within the two-year window the applicant could apply to the planning board with a substantially different plan.

Member Chvatal withdrew the finding and made a motion to allow the applicant to withdraw the application without prejudice and Member L Rogers seconded it. The voted 3-2 to withdraw the finding and to allow the applicant to withdraw the application without prejudice.

RE: King Project
0 Windemere Road, **Map** *6* **Parcel** *46.2*

*****On June 16, 2016 at 7:10 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 6 Parcel 46.2 seeking:

A Special Permit within Zoning By-Laws 9.XVIII.1.A.6.a.i and 9.XVIII.1.A.7.i, or action related thereto, to allow the conversion of an existing shed (dwelling) into a two-story, two-bedroom nonconforming single family dwelling located in the Shore Zone of the Coastal District.

A quorum consisting of Chairman Joe Re, Kris Chvatal, Andrea Rogers, Llewellyn Rogers, and Michael Perry was present. Chris Alley-SBH and Steve Kelleher represented the applicant. Mr. Alley presented plans for a two-bedroom single family dwelling on a lot located in the Coastal and Shore Zones. The project has been reviewed by Con Com and an order of conditions has been issued. The applicant is asking for a special permit for the relief of height restrictions. Based on the new flood plain maps the elevation of the structure is above 24 feet. The existing shed/dwelling has been in existence for many years. The applicant presented eight letters from abutters in favor or and attesting to the owner's usage of the shed as a dwelling.

Member Rogers asked if there was a septic system on the property. Mr. Alley replied that there was no septic system. They had contacted Wastewater and the dwelling would be hooked to Town Sewer. Member Rogers stated that according to the tax record there was no tax on the structure because it was a shed. Mr. Alley stated that it wasn't his problem. Mr. Kelleher presented the order of conditions from ConCom. He had a copy of the building permit application prior to the change on the flood plain maps. The original plan had no access to the road. The original design was 24 feet in height at grade and the new FEMA increase the height. The footprint of the proposed dwelling is 750 sf. The lot size is conforming and the proposed dwelling is conforming with all setbacks. Mr. Kelleher described the layout of the dwelling on both floors. The architectural drawings described the elevations. Member Rogers asked about the height. Mr. Kelleher replied 29.2 feet based on the recommendation for aesthetic reasons. The original plan was 23.7 feet. Due to the wetlands and zoning setbacks, the dwelling could not be any wider. Member Rogers stated that it was a shed. If you look at the Town record, it was considered a shed and not a building. She asked how can a shed be converted into living space. Mr. Barbadoro described the uses allowed in the Shore Zone including outdoor recreational, conservation, and agricultural purposes. The question is do you consider the structure to be a house or are you allowing a change of use by special permit. The only special permits allowed are listed is the Coastal Regulations in the Zoning Bylaws. (Sect 9.XIII.1.A…) Mr. Alley stated that letters attest that he structure was used residentially. Member Rogers stated that there are not permits for a dwelling or certificate of occupancy. Chairman Re opened the floor to public comment. Mr. Barbadoro reviewed the uses that need a special permit in the shore zone.
(6.) Uses Requiring Special Permit from the Board of Appeals
(a.) Within the Shore Zone, the Board of Appeals may grant a Special Permit for any of the following: (i.) Alterations to buildings and additions to existing residential structures, provided that such additions or alterations shall not result in additional sewage flow or sewage capacity if said building or structure is served by onsite sewage disposal facilities.
He stated that the bylaws do not have provisions to change use from a shed to a house in the shore zone. An abutter, Ms. Leslie Look appealed to the board to allow the project for rehab purposes. Mr. Barbadoro stated that residential housing for disabled and rehab purposes can be done outside of DCPC regulations. Those type of projects need to start that way. Member Chvatal stated that the buyer or nonprofit foundation would have to be in place and then the project would not need to go before the zoning board. An abutter, Brian Packish stated there was a path to convert the property for rehab purposes if that was the case. He stated that one could not be grandfathered for breaking the law. Living in a shed illegally does not constitute a qualification. He felt the situation was unfortunate. The owner, Patrick King stated he owner a house and three parcels next to Land Bank property. He plans on donating the land to Wounded Warriors in perpetuity. He stated that the bunk house/ play house has been built since 1911 and 1930 where he shed is currently located. It was used then as a residence. He stated it was pre-existing as a home. He used a marine toilet. Ms. Candi Nichols stated there was a doll house and two-bedroom bunkhouse on the property with the big house. It was one big property. The letters establish that these houses were used as living quarters long before the zoning bylaws were established. She stated that it sounds like the structure was never use as a shed but always as living quarters. She does know if the ever has been a building permit. Mr, King stated that the lot has been taxed as a residential lot since 2010. Mr. Alley clarified that the bunkhouses had been there since the 1930s. Chairman Re closed the floor to public comment. Member Rogers stated that the structure had two barn doors on one side. Mr. King stated that he used it as a

temporary residence, an office, and workshop to fix the older house. Member Rogers stated that he did not see an electric meter on the structure. He asked if there was a hot water heater, sewage system or gray water. Mr. King stated no and that he had an outside shower. Chairman Re stated that the board needed to determine if the structure was a single family dwelling. Member A. Rogers stated that there were no permits, and no taxes on it. Member Chvatal stated that the project was great but was not sure if it could be located there. Member L. Rogers stated that according to the Town records the abutting parcel has the shed picture on the field card. Member A. Rogers asked how is it possible to build that home there. Mr. Barbadoro stated if the lot was vacant it was not an allowed use in the shore zone. Mr. King stated that only a piece of the property is in the shore zone. Mr. Alley stated that a variance was denied last time. Chairman Re stated he was not prepared to make finding that the shed is a dwelling. He stated that if the board can't do that, then they can't do anything else.

Member Chvatal made a motion that the shed is a residential structure and Member Perry seconded it.

Mr. Alley requested to withdraw the application. Member Rogers confirmed that Mr. Alley wanted to withdraw the application before the board votes.

Chairman Re made a motion to allow the applicant to withdraw the application without prejudice and Member L. Rogers seconded it. The board voted 2-3 to allow the withdrawal of the application.

The first motion still stands.

Member Chvatal made a motion that the shed is a residential structure and Member Perry seconded it. The board voted 0-5 that the shed is a residential structure. The motion was denied.

Member Chvatal made a motion to approve a Special Permit within the Shore Zone Bylaws as presented and Chairman Re seconded it. The board voted 0-5 to approve the Special Permit within the Shore Zone.

RE: Brown Project
8 Stone Pound Way, **Map** *48* **Parcel** *87*

*****On Juen 16, 2016 at 8:00 pm, Zoning Chairman Re opened a duly posted public hearing on the application of Map 48 Parcel 87 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 lot..

A quorum consisting of Chairman Joe Re, Kris Chvatal, Andrea Rogers, Llewellyn Rogers, and Mike Perry was present. Brent Brown represented the applicant. Mr. Brown described the Residential Zone 3 lot as nonconforming in size and the existing single family dwelling was nonconforming with setbacks.

His family is growing and he needs more room. The proposed two-story addition on the south side of the property is nonconforming with the setbacks (23feet). The proposed height is the same height as the existing structure (22 feet.) The homeowners association has approved the plans as presented. The existing shed will be removed. 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 Chvatal made a finding that the proposed construction was not substantially more detrimental to the neighborhood. The board agreed unanimously.

Member L. Rogers made a motion to approve the Special Permit within Zoning Bylaws 3.5.5 to allow the construction of a nonconforming addition and Member A. 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 June 16, 2016 at 8:15 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, Kris Chvatal, Andrea Rogers, Llewellyn Rogers, and Mike Perry was present. Edward Kirk represented the applicant. Mr. Jerry Lynch was present. Member Chvatal spoke with Town Counsel and the board has been advised to not render a decision until the information received recently can be thoroughly reviewed. Mr. Kirk stated that he had to miss the May hearing date due to personal reasons. He referred to the bylaw of 1928 and made an interpretation. He reviewed the documents regarding the ownership and uses the properties. He referred specifically to Pennsylvania Avenue and all intersecting streets. He stated that the character of an area could be pre-existing with boundaries. He reviewed the historical ownership of the lots going back to 1903. Owners include Ackerman, Mary Bernard. Her land was transferred to the Town of Oak Bluffs. The adjacent land was also owner by the Town. Ackerman's land was taken by the Town for non-payment of taxes. Mr. Kirk described all the attached exhibits with dates, ownerships, affidavits, and uses. Under the 1948 bylaws the board of selectmen could issue permits under their direction or authorization. At that time the selectmen conveyed land to Mr. Smith because he had trouble getting access to land. Afterward the Town sold the land to White- Bros. Lynch. He stated the Town created a de facto district by their actions and by the property that had already been used. The Town sold the land to asphalt contractors twice. From 1928 forward there was a continued approach by the Town with respect to this area and the intersecting streets. Now the building inspector is trying to do his job but the results are not fair. The board of appeals must address this unfairness. He referred to an affidavit signed by Al B. White stating that the area had been used an asphalt and excavation area since 1958. The history and the facts are such …Member Chvatal asked if the 1928 bylaw states if one side of the street is commercially zoned then the other side has the same use. The building inspector replied yes. Member Rogers asked had the zoning on that property ever been changed to commercial at any time. The inspector replied maybe with the first bylaw and then with the second map it was change back. The end result is that the area is residential. Chairman Re stated that the hearing is continued to next month and that the board would not

take any action tonight. Chairman Re opened the floor to public comment. An abutter, Mr. Rebello spoke out against the appeal and described the usage as not continuous. He explained that the commercial operation was not home-based business. An abutter, Ms. Jendrick wrote a letter in opposition of the appeal. An abutter, Mr. Graves spoke in favor of the appeal. Chairman Re closed the floor to public comment. Member Chvatal recommended to the board that the agreement to extend time limits be amended and to allow public comment at the next hearing date. The board agreed.

Member Chvatal made a motion to approve the agreement to extend time limits and to continue the hearing to July 21st, 2016 at 6:05 and Member L. Rogers seconded it. The board voted 5-0 to continue the hearing.

Meeting adjourned at 8:45 p.m.
Respectfully Submitted, Colleen Morris, Clerk/ZBA