

Zoning Board of Appeals
Minutes of Meeting 1/19/2017
Oak Bluffs Council on Aging Building

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

Members absent: George Warren

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

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

Minutes from December were approved.

Next Meeting Date: February 16th, 2017 at 6 pm

New Business:

Due to the volume of hearings, Chairman Chvatal proposed a second meeting date of February 9th for any continued hearings from tonight's meeting. The board agreed unanimously.

RE: White Bros.-Lynch Project

White Bros.-Lynch Corporation

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

*On January 19th, 2017 at 6:05 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 12 Parcels 94 seeking:

***A Special Permit within Zoning Bylaws 3.5.5 and 10.3, or any action related thereto,
to allow the change of use from excavation/hauling to storing equipment and material used
in a contracting business on a lot located in the Residential 1.***

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Joe Re, Llewellyn Rogers, and Mike Perry was present. Ed Kirk represented the applicant. Jerry Lynch was present.

Chairman Chvatal stated that the purpose of the hearing was to finalize the special permit application process. The floor was closed to public comment. The board reviewed the procedural history, the findings, the zoning, and the decision with conditions.

Member L. Rogers recommended that the screening process of stone on the site be prohibited because it was detrimental to the neighborhood.

Member A. Rogers asked for a description of the screening process. Mr. Lynch described the process and the materials used (gravel and stone). Mr. Kirk stated that hours for screening would be limited during the regular work day. Mr. Lynch stated that the screening process probably would not exceed thirty days. If there was any dust than it would be from the loading process and not from the actual processing. Mr. Kirk explained that the screening process was an essential component of the special permit. Mr. Kirk explained that the screening process would be limited to certain hours. Member A. Rogers suggested that if there is a complaint then the board will deal with that then and amend the special permit.

Member L. Rogers made a motion that White Bros.-Lynch shall not screen or process stone on the property and Member Perry seconded it. The Board voted 1 to 4 to not allow White Bros-Lynch to not screen or process stone on the property. The motion was not carried.

Mr. Kirk stated that the applicant had no other comments to add to the decision and thanked the Board for working out the details for the special permit.

Chairman Chvatal made a motion to approve the Special Permit within Zoning Bylaws 3.5.5 and Member A. Rogers seconded it. The Board voted 5 to 0 to approve the Special Permit.

RE: Gilliam Project

Lee Gilliam

22 Elmwood Avenue, **Map 8 Parcels 7 and 9**

*On January 19th, 2017 at 6:25 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 8 Parcels 7 and 9 seeking:

*A Special Permit within Zoning Bylaws 3.5.5, or any action related thereto,
to allow the construction of an accessory building (garage with guest apartment)
on a nonconforming lot. .*

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Joe Re, Llewellyn Rogers, and Mike Perry was present. James Bishop represented the applicant. Mr. Bishop amended the plans from a garage with guest apartment to a one-story conforming (500 sf) garage only. The existing undersized (10,000 sf) R-2 lot is nonconforming. Chairman Chvatal opened the floor to public comment. No correspondence was received into the record. Chairman Chvatal closed the floor to public comment.

Member A. Rogers made a finding that the proposed conforming accessory structure (garage) does not overburden the nonconforming lot and is not substantially more detrimental to the neighborhood. The board agreed unanimously.

Member Perry made a motion to approve the proposed accessory structure (garage) within Zoning Bylaws 3.5.5 and Member L. Rogers seconded it. The board voted 5 to 0 to approve the Special Permit.

RE: Pecararo Project

David and Kelli Pecararo

27 Upper Douglas Lane, **Map 16 Parcel 113**

*On January 19th, 2017 at 6:35 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 81 Parcels 69 seeking:

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

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Joe Re, Llewellyn Rogers, and Mike Perry was present. Mr. Pecararo was present. He amended his plans for a conforming two-story addition to a nonconforming single family dwelling. The existing undersized (10,370 sf) R-2 lot is nonconforming. Mr. Pecararo did not have floor plans with square footage available yet for the addition and asked for a continuance.

The board and applicant agreed to continue the hearing to February 9th 2017 at 6:05 p.m.

RE: Brown Project

Brent and Lisa Brown

8 Stone Pound Way, **Map 48 Parcel 87**

*On January 19th, 2017 at 6:45 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 48 Parcels 87 seeking:

A Special Permit within Zoning Bylaws 3.5.5 and 4.4.2, or any action related thereto, to allow the construction of a nonconforming accessory building (garage) on a nonconforming lot.

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Joe Re, Llewellyn Rogers, and Mike Perry was present. Brent Brown was present. He amended plans to an attached nonconforming one-story (300 sf) garage addition to the nonconforming single family dwelling. The existing undersized (10,056 sf) R-3 lot is nonconforming. The proposed garage connects to the dwelling with a breezeway. Member Re asked if there was any plumbing in the garage. Mr. Brown stated that there is no plumbing. Chairman Chvatal opened the floor to public comment. An abutter, Mr. Urban wrote a letter in favor of the project. Chairman Chvatal closed the floor to public comment.

Member Re made a finding that the proposed nonconforming garage addition does not overburden the nonconforming lot. The board agreed unanimously.

Member A. Rogers made a finding that the proposed nonconforming garage addition is 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 and Member Re seconded it. The board voted 5 to 0 to approve the Special Permit.

Member Perry made a motion to approve the Special Permit with Zoning Bylaws 4.4.2 and Member Re seconded it. The Board voted 5 to 0 to approve the Special Permit.

RE: Zarba Appeal

John Zarba and Susan Lemoie-Zarba

14R South Street, **Map 8 Parcel 199.1**

*On January 19th, 2017 at 6:55 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 8 Parcels 199.17 seeking:

an appeal to the Building Inspector's enforcement action within MGL 10.2.3, C. 40A ss 8, 15 and Zoning Bylaws 3.4.2.6 or any action related thereto, to allow the construction of one additional parking space constructed of materials consistent with existing driveway to serve a guest house and to request a final certificate of occupancy for guest house.

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Joe Re, Peter Yoars, Llewellyn Rogers, and Mike Perry was present. Dan Perry represented the applicants. Susan and John Zarba were present. Mr. Perry explained that the Zarbas purchased the property in 2005 with a site plan designed by Sourati Engineering. The previous owners the Reagans engaged Sourati Engineering to create the sit plans prior to the Zarbas purchase. In 2015 the Zarbas applied for a permit to build a guest house and the application was approved. The location of the proposed guest house was based on this site plan. The neighbors, the Murphys were aware of the application and soon thereafter they filed an appeal with the ZBA and with the Superior Court. The Superior Court denied the injunction. The ZBA determined that the evidence provided did not conclude that the Zarbas were in violation of the zoning bylaws. Mr. Perry stated that by

law if someone is unhappy with a building permit, then they have thirty days to appeal it with the ZBA. And, if someone is unhappy with that decision then you go to Superior Court. Mr. Perry cited other complaints filed by the Murphys. He stated the remaining issues are the driveway and the setback issues. He stated the zoning bylaw requires that a parking space be available for the accessory apartment. The parking space is required to be made out of the same materials and must have vehicular access to the driveway. Based on the site plan, Mr. Perry stated that there was plenty of room on the lot. Mr. Perry argued that the second space was indicated on the proposed site plan. Since Mr. Zarba's vision is poor, he parks his car next to the house. Mr Perry stated that the building inspector was regulating the use and asked the board to vacate that order. The Zarbas had a dispute with the O'Neils regarding the private way. This issue went to land court and a settlement is forthcoming. Mr. Perry stated the Town decided to have the way surveyed and a new rendering of that road has been created. The new site plan showed a three-foot difference. He stated that the new site plan had not been recorded at the registry of deeds. This new survey does not match the site plans the Zarba's used to building their guest house. Mr. Perry insisted that the Town has to prove that their survey was correct before asking the Zarbas to tear down their house. He stated their Vineyard Land Surveyors has not contacted or consulted Sourati Engineering. Mr. Perry asserted that Sourati Engineering used the landmark of a metal fence that had been there for 80 years. Mr. Perry stated that the board should not adjudicate this matter. If the plan designed by Vineyard Land Surveyors is correct then the O'Neils gain some land and the Town loses some land. Member Re asked if the stone boundary was the only marking used to survey the land. Mr. Perry stated the original plans was determined by a metal fence. Mr. Perry stated that the board should not use unrecorded maps to make a determination. Chairman Chvatal stated that the board would consider their argument and speak with Town Counsel. Chairman Chvatal opened the floor to public comment. Member A. Rogers mentioned that Town Counsel was also involved with the land court lawsuit. Chairman Chvatal clarified that if necessary the board would have a referral to someone else. Member Re asked when the building was considered being torn down. Mr. Perry stated after the construction was complete and the Zarbas applied for a certificate of occupancy and they received a temporary certificate of occupancy. Member Re asked where the stone markers come from. Mr. Perry stated that it was from the 18th century. Member L. Rogers asked if the building could be moved a few feet. Mr. Perry stated that he was not sure. Member Perry asked about the issue of the parking space. The board will deal with that issue separately. Mr. Barbadoro stated that the Zarbas spent a lot of time building this guest apartment. After the house was built and after the an as-built site plan was submitted, Town Counsel notified him that the property was possibly in dispute. After this, Mr. Barbadoro requested further information about the property. After this, a new site plan was presented to him from Vineyard Surveyors plan based on the monuments from the subdivision plan called The Plan of the Highlands. This plan was based on three lots made from one property based on the found monuments. Based on this plan the guest house is too close to the property line. The temporary certificate of occupancy was issued on July 14, 2017. Mr. Perry submitted letters from abutters into the record. Richard Serkey represented the Murphys. Chairman Chvatal cautioned Mr. Serkey to speak only about the setbacks or driveway issues. Mr. Serkey reviewed site plans, pictures, documents related to the Zarba property. He stated that the house and driveway were in the setback. He stated that the Zarbas need a variance in order for their house to remain in that location. He stated that the Zarbas tried to prevent the O'Neils from accessing their property from Davis Avenue. He stated that the Zarbas recorded a notice of intention to prevent acquisition of easement against the O'Neils. A no trespassing notice was served to both the Murphys and O'Neils. Applications have been filed for criminal complaints as well. He stated that the street sign has been removed, which does not make sense because the other two properties have addresses based on Davis Avenue. He was also concerned that emergency vehicles might not be able to find the street or have access to the road. He submitted a petition from 36 abutters to uphold the building official's decision to deny a certificate of occupancy and order the building official to apply all required zoning bylaws. Susan Lemoie-Zarba showed a copy of the Highlands. The map from 1920 shows that Davis Avenue does not run into Pacific Avenue. Davis Avenue ends at the Murphy house. Davis Avenue is referred to as The Way. She stated that she is accepting the map presented by Sourati Engineering and not Vineyard Land Surveyors. She explained the process she went through to receive a temporary certificate of occupancy only to find out seven months later that they possibly have a zoning issue. She stated that she

would sue the Town. She stated that the Planning Board would have to sign off on the new proposed map in order to register it. Member Re asked what happened during the process. Mr. Barbadoro stated that Town Counsel contacted him stating that there was a possible zoning issue and then he issued a temporary certificate of occupancy. An abutter, John O'Neil stated that Zarbas prevented his family from accessing their home via Davis Avenue. He stated that the Murphys and Town are no longer involved in that lawsuit. He stated the Essex and the O'Neils are the only persons involved. He stated that anyone coming to his house was stopped by the Zarbas. The judge issued a permanent injunction which stands until today. He stated that the Zarbas park their vehicles in the way which makes it difficult going up and down the road. He stated that the driveway should be accessed through their property. He tried to settle the situation with an easement but to no avail. The judge in the case cited that it appeared that there were other owners of the property/road. He stated that a variance would be the proper way. An abutter, Keith Murphy stated that the plantings and separate driveway on lot make the appearance of two separate lots. He stated that the neighborhood did not have any problems until the guest house was built. An abutter, Andy Farrissey stated the Davis Avenue has existed a long time and the other houses located there have addresses connected to it. He has been stopped several times by the Zarbas and no consideration has been given to anyone. He stated that the houses being built have been for profit as rentals. Mr. Barbadoro reviewed the bylaw (3.4.2.6) regarding a driveway and vehicular access to the driveway. During construction the Zarbas parked next to the house and he received complaints by the road being blocked. He decided not to take any action until the project was complete. After completion, they continued to park there. A concerned citizen, Doug Pease stated he was concerned when zoning regulations aren't enforced. He stated rules are rules. Chairman Chvatal closed the hearing for public comment. Chairman Chvatal stated that the board needed clarification regarding the two surveys and Davis Avenue and its status.

The board and the applicant agreed to continue the hearing to February 9th at 6:15 pm.

RE: Murphy Appeal

Keith and Lori Murphy TR

10 Davis Street, **Map 8 Parcel 199**

*On January 19th, 2017 at 8:23 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 8 Parcels 199 seeking:

an appeal to the Building Inspector's lack of enforcement action within MGL 10.2.2.3, C. 40A ss 8, 15 or any action related thereto, regarding a complaint filed on October 13, 2016 against John J. Zarba and Susan Lemoie-Zarba, property owners of 14R South Street, M 8 P 199.1 with regards to an accessory guest apartment.

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Joe Re, Peter Yoars, Llewellyn Rogers, and Mike Perry was present. Mr. Serkey represented the applicants. The Murphys were present. He referred to documents from a binder of information regarding the Zarba property and dwelling. He referred to the bylaws from 1992 and 2003 regarding guest apartments. He questioned the Zarbas use of the main a house and guest apartment as rentals. He referred to the zoning bylaws for guest apartments. He questioned the affidavit provided by the Zarbas stating that they have lived there for five continuous years. His interpretation of the bylaw is that one of the buildings must remain owner-occupied and only one building may be rented. He questioned the intent of this bylaw regarding adding to the number of buildings in the Town. He stated that the Zarbas have done the same exact thing in West Tisbury. Chairman Chvatal opened the floor to public comment. Dan Perry stated that the board should seek Town Counsel regarding the arguments. He stated that the board already denied this case previously and they should not be able to come back. An abutter, Sam Lowe stated that it was essential that the board pay attention to allowing two rental houses on the same property. This practice could destroy a neighborhood. An abutter, Kathy Anderson stated that Davis Avenue should remain open road. An abutter, Andy Farrissey stated that the Town needed the housing and as neighbors we should give moderate consideration to each other. Mr.

Zarba stated that they bought the lot because they were told they could build a guest house. He stated he had always planned to live in the guest house and rent to the main house. He cited his health issues. He tried to reach an agreement with the O'Neils. He stated he protected his land because his lawyer advised them to do so. He stated that many of the statements are untrue. A concerned citizen, Doug Pease recommended that the board pay attention what has happened in WT. Chairman Chvatal closed the floor to public comment.

The board and the applicant agreed to continue the hearing to February 9th at 6:15 pm.

RE: DePucchio Project

Mark and Sharon DePucchio
31 Old Barnes Road, **Map 23 Parcel 1**

*On January 19th, 2017 at 8:55 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 8 Parcels 199.17 seeking:

***A Special Permit within Zoning Bylaws 3.5.5 , and 9.1.B.(c)(i) or any action related thereto,
to allow the construction of a nonconforming addition (two-car garage)
to an existing accessory building (garage with guest apartment)
on a nonconforming lot located in the Coastal District..***

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Joe Re, Peter Yoars, Llewellyn Rogers, and Mike Perry was present. Mr. DePucchio was present. He presented plans for a proposed conforming two-story garage addition to an accessory structure- guest house. He amended the site plan. The existing undersized (54,000 sf) R-3 lot is nonconforming and is located in the Coastal District. Portions of the lot are located in the Shore Zone and Island Roads District. The existing guest house/garage is conforming with setbacks. The proposed addition to the guest house /garage is a first floor garage (963 sf) and the proposed second floor includes a storage space (360 sf), a living space (160 sf) connected to the existing conforming guest house (550 sf). The guest house can not exceed 750 sf. The storage space will not be accessible from the guest house and this space will remain unfinished with no plumbing overall in the addition. Mr. DePucchio stated the average ridge height is 22.5 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 L Rogers made a finding that the proposed conforming garage addition to the guest house does not overburden the nonconforming lot. The board agreed unanimously.

Member L. Rogers made a finding that the proposed conforming garage addition to the guest house will not result in additional sewage flow and is 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 and Member A. Rogers seconded it. The Board voted 5 to 0 to approve the Special Permit.

Member A. Rogers made a motion to approve the Special Permit within Zoning Bylaws 9.1.A.6.a.i and Member L. Rogers seconded it. The board voted 5 to 0 to approve the Special Permit.

RE: Combra Project

Richard and Dawn Combra
22 Fitchburg Avenue, **Map 15 Parcel 35**

*On January 19th, 2017 at 9:10 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 15 Parcels 35 seeking:

a Special Permit within Zoning Bylaws 3.4.3, or any action related thereto, to allow the construction of accessory structure (guest apartment) prior to five continuous years of owner occupation on a conforming lot.

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Mike Perry was present. Maurice O'Connor represented the applicant. He presented plans for a conforming accessory structure, one-story guest house with a basement. The existing (15,000 sf) R-1 lot is conforming. The proposed (736 sf) guest house is conforming with all setbacks and has a proposed ridge height of 16 feet and a proposed porch (128 sf). The applicant purchased the property in 2012 and built the current single family dwelling in 2014. Member Rogers asked about the location of the driveway. Chairman Chvatal opened the floor to public comment. No correspondence was received into the record. Mr. Barbadoro requested that the board require a special permit for the basement if there are interior stairs giving access to the basement. The applicant asked for the stairway access to be deleted from the application and the only access will be through the bulkhead. The proposed driveway access is not connected to the existing driveway. The applicant will change the vehicular access for the proposed driveway to have access to the main driveway. Chairman Chvatal closed the floor to public comment.

Member A. Rogers made a finding that the proposed accessory structure was not substantially more detrimental to the neighborhood.

Member A. Rogers made a motion to approve the Special Permit within Zoning Bylaw 3.4.3 to grant relief from 3.4.2.2 the five-year ownership requirement and Member L. Rogers seconded it. The board voted 5 to 0 to approve the Special Permit with conditions: no interior stairway access to the basement, bulkhead only and change proposed vehicular access to be connected with existing driveway..

RE: Fraser Project

James and Denise Fraser

7 Quail Run, **Map 48 Parcel 17.4**

*On January 19th, 2017 at 9:25 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 15 Parcels 35 seeking:

The Oak Bluffs Zoning Board of Appeals will hold a Public Hearing on Thursday, January 19th, 2017 at 7:15 p.m. in the Council on Aging Building located at 21 Wamsutta Avenue on the application of the referenced petitioners seeking:

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

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Mike Perry was present. Edward Motuzas represented the applicant. He presented plans for a proposed nonconforming deck addition (240 sf) on a single family dwelling. The existing (40,000 sf) R-3 lot is nonconforming. The deck addition is nonconforming with side setbacks. The deck addition includes a roof pavilion with no screening or walls. Chairman Chvatal opened the floor to public comment. No correspondence was received into the record. Chairman Chvatal closed the floor to public comment. Chairman Chvatal recommended that the pavilion roof to remain open and not enclosed.

Member Perry made a finding that the proposed deck addition with pavilion roof was not substantially more detrimental to the neighborhood.

Member Perry made a motion to approve the Special Permit within Zoning Bylaws 3.5.5 to allow the construction of a porch addition with pavilion roof and Member A. Rogers seconded it. The Board voted 5 to 0 to approve the Special Permit with conditions: roof pavilion structure must remain open, no walls, no screening.

RE: Bolling Project

Thelma Bolling
6 Narragansett Avenue, **Map 10 Parcel 79**

*On January 19th, 2017 at 9:40 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 10 Parcels 79 seeking:

*a Special Permit within Zoning Bylaws 3.5.5, or any action related thereto,
to allow the demolition and reconstruction of a nonconforming porch addition
to a nonconforming single family dwelling
on a nonconforming lot located in the Copeland District.*

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Mike Perry was present. Carole Hunter presented the applicant. Ms. Hunter presented plans for a demolition and reconstruction of a front porch. The proposed roof line would be changed and the addition would be 18 inches in the front. The project has been reviewed and approved the Copeland Review Board. The applicant would like to amend the application to maximize the foundation space and include a basement. The applicant requested a continuance in order to amend the plans to include a basement.

The board and the applicant agreed to continue the hearing to February 16th at 6:05 pm.

RE: Smith Project

Edward and Jayna Smith
5 School House Village, **Map 50 Parcel 14**

*On December 15th, 2016 at 9:50 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 50 Parcels 14 seeking:

*A Special Permit within Zoning Bylaws 3.5.5 and 3.4.3, or any action related thereto,
to allow the construction of an accessory building(guest apartment)
prior to five continuous years of owner occupation on a nonconforming lot..*

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Llewellyn Rogers, and Mike Perry was present. Due to weather conditions, Mr. Smith was unable to come to the meeting. He asked Joshua Gerard to act on his behalf and request a continuance to January 19th, 2017. The board requested that the applicant send a letter stating that Mr. Gerard may act on his behalf.

The board agreed to continue the hearing to February 16th 2017 at 6:15 p.m.

Meeting adjourned at 9:55 p.m.

Respectfully Submitted, Colleen Morris, Clerk/ZBA