

Zoning Board of Appeals
Minutes of Meeting 2/16/2017
Oak Bluffs Council on Aging Building

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

Members absent: George Warren and Joe Re

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

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

Minutes from January were approved.

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

New Business:

Re: Giniewicz Decision

21-23 East Chop Drive, **Map 3 Parcel 1**

On April 1, 2015 the ZBA filed a written decision granting William Giniewicz a special permit within zoning bylaws 3.5.5 to alter/extend a nonconforming use in a nonconforming building in the Flood Plain Overlay District and Oak Bluffs Harbor District. This decision was appealed to MA Land Court. Consequently Mr. Giniewicz has decided to no longer exercise any rights conferred to the special permit decision and an agreement for judgement has been issued.

Member A. Rogers made a motion to accept the terms of the agreement for judgment regarding the Giniewicz decision and Member Yoars seconded it. The board voted unanimously to accept the terms of the agreement for judgment.

RE: Bolling Project

Thelma Bolling

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

*On February 16th, 2017 at 6:05 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, and Llewellyn Rogers was present. Carole Hunter represented the applicant. Ms. Hunter sent a letter requesting a continuance in order to amend the plans to include a basement and other architectural revisions. .

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

RE: Smith Project

Edward and Jayna Smith

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

*On February 16th, 2017 at 6:15 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, Peter Yoars and Mike Perry was present. Mr. Smith represented himself. He presented plans for a one-bedroom guest apartment (750 sf) with no stairway access to the basement. Access to the basement will be through a bulkhead. The existing undersized lot located in R-3 is 15.799 sf. The proposed rear deck has a 13 foot setback. After discussion, the applicant changed that deck to steps and a patio. As of this month Feb.2017 the applicant will meet the five-year continuous ownership requirement and no longer needs to apply for a special permit within zoning bylaw 3.4.3. Chairman Chvatal opened the floor to public comment. An abutter Joshua Brant spoke in favor of the project. Abutters Ms. O'Neil and Ms. Kane wrote a letter in favor of the project. Mr. Smith wanted a basement in the guest house since he didn't have one under the main house for storage. Chairman Chvatal closed the floor to public comment.

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

Member L. Rogers made a motion to approve Special Permit for the proposed accessory structure (guest apartment) within Zoning Bylaws 3.5.5 with the conditions of the removal of rear deck and basement area must remain unfinished and Member A. Rogers seconded it. The board voted 5 to 0 to approve the Special Permit with conditions.

RE: Rodegast Cole Project

Peter Rodegast and Nancy Cole

211 Newton Avenue, **Map 15 Parcel 38**

*On February 16th, 2017 at 6:30 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 15 Parcels 38 seeking:

A Special Permit within Zoning Bylaws 3.5.5 and 9.1.A.6.a.i, or any action related thereto, to allow the construction of a first floor porch addition and second floor addition to a single family dwelling on a nonconforming lot located in the Coastal District

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Llewellyn Rogers, Peter Yoars and Mike Perry was present. Peter Rodegast and Nancy Cole represented themselves. Mr. Rodegast presented plans for first floor porch addition (175,2 sf) and a second floor addition (768 sf) to an existing nonconforming single family dwelling. The proposed second floor addition (22.6 ft) is conforming in height. The existing undersized lot (7841 sf) is located R-1 and the Coastal District. Chairman Chvatal opened the floor to public comment. No correspondence was received into the record. Chairman Chvatal closed the floor to public comment.

Member M. Perry made a finding that the proposed renovations and additions to the single family dwelling do not overburden the nonconforming lot, will not result in additional sewage flow and is not substantially more detrimental to the neighborhood. The board agreed unanimously.

Member M. Perry made a motion to approve the Special Permit for the proposed renovations and additions to a nonconforming single family dwelling within Zoning Bylaws 3.5.5 and Member A. Rogers seconded it. The board voted 5 to 0 to approve the Special Permit.

Member M. Perry made a motion to approve the Special Permit for the proposed renovations and additions to a nonconforming single family dwelling within Zoning Bylaws 9.1.A.6.a.i and Member P. Yoars seconded it. The board voted 5 to 0 to approve the Special Permit.

RE: Downs Project

Christopher and Mary Downs
78 Pennacook Avenue, **Map 11 Parcel 84**

*On February 16th, 2017 at 6:45 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 11 Parcels 84 seeking:

***A Special Permit within Zoning Bylaws 3.5.5, or any action related thereto,
to allow renovations and the construction of a first floor 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. Martine Boris and Marisa Higham represented the applicants. Mr. Boris and Ms. Higham presented plans for renovations and construction of a first floor screened-porch addition and a second floor dormer to a nonconforming single family dwelling. The existing undersized (2210 sf) lot is located in R-1 and the Copeland District. The proposed screened porch addition (42 sf) is nonconforming with side setbacks (2ft). Chairman Chvatal opened the floor to public comment. No correspondence was received into the record. The clerk stated that the project will be reviewed by the Copeland Review Board on Monday February 27th at 4:30 pm. The same project will be reviewed by CCHDC. Chairman Chvatal closed the floor to public comment.

Member A. Rogers made a finding that the proposed renovations and additions to the single family dwelling do not overburden the nonconforming lot, and is not substantially more detrimental to the neighborhood. The board agreed unanimously.

Member A. Rogers made a motion to approve the Special Permit for the proposed renovations and additions to a nonconforming single family dwelling within Zoning Bylaws 3.5.5 and Member P. Yoars seconded it. The board voted 5 to 0 to approve the Special Permit.

RE: Baker Project

William Baker Trust
7 Canoncius Avenue, **Map 10 Parcel 154**

*On February 16th, 2017 at 7:00 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 10 Parcels 154 seeking:

***A Special Permit within Zoning Bylaws 3.5.5, or any action related thereto,
to allow renovations and the construction of a first floor addition connecting***

*the existing nonconforming single family dwelling to the guest house
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. Martine Boris and Marisa Higham represented the applicants. Mr. Boris and Ms. Higham presented plans for a first floor addition which connects a nonconforming single family dwelling to a nonconforming guest apartment. The existing undersized (6570 sf) lot is located in R-1 and the Copeland District. The proposed first floor addition (39 ft) will enlarge the first floor bedroom to make it handicap accessible. There will be no access between the buildings. Chairman Chvatal opened the floor to public comment. The clerk stated that the project had been reviewed and approved by the Copeland Review Board On January 9, 2017. The same project will be reviewed by CCHDC. An abutter Ken Paillor spoke in favor of the project. Chairman Chvatal closed the floor to public comment.

Member A. Rogers made a finding that the proposed renovations and addition to the single family dwelling does not overburden the nonconforming lot, and is not substantially more detrimental to the neighborhood. The board agreed unanimously.

Member A. Rogers made a motion to approve the Special Permit for the proposed renovations and addition to a nonconforming single family dwelling within Zoning Bylaws 3.5.5 and Member M. Perry seconded it. The board voted 5 to 0 to approve the Special Permit.

RE: Mekuria Project

Salem Mekuria

23 Mae Avenue, **Map 7 Parcel 55**

*On February 16th, 2017 at 7:15 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 7 Parcels 55 seeking:

A Special Permit within Zoning Bylaws 3.5.5 and 9.1.A.6.a.i., or any action related thereto, to allow the construction of a first floor addition to a nonconforming single family dwelling on a nonconforming lot located in the Coastal District.

A quorum consisting of Chairman Kris Chvatal, Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Mike Perry was present. Chris Alley and Peter Rodegast represented the applicant. Mr. Alley and Mr. Rodegast presented plans for renovations, first floor addition (53.24 sf) and second floor addition (444 sf) to a nonconforming three-bedroom single family dwelling. The proposed addition is nonconforming with side (9ft) setbacks and conforming with height (19.10 ft). The existing undersized (5244 sf) lot is located in R-1 and the Coastal District. Chairman Chvatal opened the floor to public comment. An abutter, Mr. Alley wrote a letter in favor of the project. Chairman Chvatal closed the floor to public comment.

Member L. Rogers made a finding that the proposed renovations and additions to the single family dwelling do not overburden the nonconforming lot, 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 for the proposed renovations and additions to a nonconforming single family dwelling within Zoning Bylaws 3.5.5 and Member M. Perry seconded it. The board voted 5 to 0 to approve the Special Permit.

Member A. Rogers made a motion to approve the Special Permit for the proposed renovations and additions to a nonconforming single family dwelling 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: Pecararo Project

David and Kelli Pecararo

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

*On February 16th, 2017 at 7:30:35 pm, Zoning Chairman Chvatal opened a duly posted public hearing on the application of Map 81 Parcels 113 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, Peter Yoars, 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 presented floor plans with square footage and elevations. 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 renovations and addition to the single family dwelling do not overburden the nonconforming lot and is not substantially more detrimental to the neighborhood. The board agreed unanimously.

Member A. Rogers made a motion to approve the Special Permit for the proposed renovations and addition to a nonconforming single family dwelling within Zoning Bylaws 3.5.5 and Member L. Rogers 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 February 16th, 2017 at 7:45 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, Peter Yoars, Llewellyn Rogers, and Mike Perry was present. Susan and John Zarba were present. Ms. Zarba presented several documents: a list of certified abutters, letter from the Register of Deeds regarding the rules and regulations for registering a map survey, Land Court Case resolution between the Murphys, the Essexes and the Zarbas, a letter from the Trust regarding that resolution, a two-page outline showing the actions of Murphys regarding the guest apartment which includes suits, police reports, complaints, and ZBA complaints, and map survey (1920) showing the plan of land showing the lots and roads. On the map, Davis Avenue, "the Way" is a private unpaved road which has never extended to Pacific Avenue. This same plan shows all four properties which has been acquired by Jack Reagan. All four properties share an easement on Davis Avenue.

She pointed out problems with the survey done by Vineyard Land Surveyors including lot lines and road ways. She claimed the partial unregistered survey is no good. She described the portions of the land that were gained and lost with the survey. She showed a timeline for construction which demonstrated when the property was purchased, when permits were applied for, when construction commenced, and the problems they encountered, including Dig Safe and water issues. She acquired a new water easement which took three months. She cited that the building inspector required her to finish three more items including an as-built before receiving a certificate of occupancy. She completed those items. Afterwards she was informed that there might be a zoning issue with Town Counsel. After eighteen days a letter is sent from Town Counsel to the land court stating that the Town owns part of the way and that Town joins plaintiff and requests that the court grant them the right of way. She claimed that on three different occasions the building inspector approved the parking space next to the house. She went to the Secretary of State and request public records. A survey was conducted and the surveyors looked around. A surveyor Bill Austin stated that there was nothing wrong with the survey and they had the same results as Sourati. Another survey was done by Vineyard Land Surveyors and the result showed a map different from Sourati's plan. This map shows their guest house to be nonconforming with setbacks. She stated that the Murphys sent a letter complaining how they were parking on the land. She cited other examples in the neighborhood where other guest houses had parking spaces adjacent to the dwellings made of different materials. She cited a letter from the building inspector stating the dwelling is in violation and a fine will be imposed. (At this point Chairman Chvatal asked for a small break.)

Ms. Zarba stated that they were being fined for parking on the property, and that they were being fined every day after Feb 1st. Mr. Zarba writes to the Town requesting for the property line to be staked out. The Zarbas sent three emails. They both have suffered from stress-related health issues and have done everything they are supposed to do. She stated that the Town had harmed them in home, health and livelihood. She stated Town Counsel had a conflict of interest. She stated that they were going to land court. She asked if Town Counsel had reviewed the letter from Dan Perry. Chairman Chvatal stated that the letter had nothing to do with the current hearing. She gave questions to the board for the building inspector to answer.

Chairman Chvatal opened the floor to public comment. He stated that the hearing was only concerned about upholding the building inspector's decision regarding the driveway, the setbacks and certificate of occupancy.

Mr. Richard Serkey spoke on behalf of the Murphys. He stated that the structure was less than 20 feet from the setback line based on the Town's survey. He stated that the plan is not a partial survey but a sealed plan. He stated the plan need not be endorsed by the planning board and it only requires a recitation from the surveyor referring to the existing lines and ways. He stated the only reason the plan has not been recorded is because it is owned by the Town and Mr Rappaport has chosen not to record it. He stated the plan is a full instrument survey and not a partial survey. He stated that they needed to apply for a variance. He cited the building official's letter which states that they needed to apply for a variance or modify the existing dwelling. He stated that the Zarbas were not being fined because the building inspector was waiting for the outcome of the ZBA hearing. An abutter, Mr. Murphy stated that the driveway does not have vehicular access and the dwellings appear to be separate based on the plantings.

Chairman Chvatal closed the floor to public comment. He stated that the process was stressful for everyone, and that everyone acted in good faith but there is a problem with the survey. He stated that the Town never changed the property lines and that the problem is in the Sourati plan. According to his survey the building was built too close to the boundary line, which was an honest mistake. The building has been built over the setback lines and now, the applicant will need a variance. He stated this process will be a path to find a resolution. All the other issues regarding the driveway and use can be handled the next hearing. The board agreed.

Member A. Rogers made a motion to uphold the Building Inspector's enforcement action within MGL 10.2.3, C. 40A ss 8, 15 and Zoning Bylaws 3.4.2.6 and Member L. Rogers seconded it. The board voted 5 to 0 to uphold the building inspector's enforcement action within MGL 10.2.3, C. 40A ss 8, 15 and Zoning Bylaws 3.4.2.6.

RE: Murphy Appeal

Keith and Lori Murphy TR

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

*On February 16th, 2017 at 8:15 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, Peter Yoars, Llewellyn Rogers, and Mike Perry was present. Mr. Serkey represented the applicants. The Murphys were present. Chairman Chvatal stated through Town Counsel's advice that the board did not have jurisdiction over the appeal. The issues could be heard at the next hearing date for the variance hearing. Mr. Serkey wanted to speak to the use of the property. Chairman Chvatal stated that the information could be presented to the variance hearing. Mr. Serkey stated the affidavit of 2015 provided by the Zarbas stated that they had owner-occupied the existing dwelling. He stated that the building permit for the guest apartment was fraudulent because they had rented out the house in the past five years. He stated that they needed to apply for a special permit.

Chairman Chvatal stated that based on Town Counsel's advice the board did not have jurisdiction to hear this appeal to review lack of enforcement of the building inspector. The appeal is not within the jurisdiction of the board because the request for zoning enforcement was made more than thirty days after the Building Official issued a building permit to the property owners of 14R South Street.

Member A. Rogers made a motion based on lack of jurisdiction to not hear the appeal to the Building Inspector's lack of enforcement action within MGL 10.2.2.3, C. 40A ss 8, 15 regarding the 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 and Member Yoars seconded it. The board voted 5 to 0 to not hear the appeal to the building inspector based on lack of jurisdiction.

Meeting adjourned at 8:30 p.m.

Respectfully Submitted, Colleen Morris, Clerk/ZBA