



OAK BLUFFS ZONING BOARD OF APPEALS

P.O. BOX 1327, OAK BLUFFS, MA 02557-1327

508 693 – 3554 x 120

Zoning Board of Appeals Minutes of January 19, 2023 Meeting In-Person Meeting

Members present: Llewellyn Rogers (Chair), Andrea Rogers, Jonathan Holter, Grace Guck, Doug Pease, Leah Brown, and ZBA Administrators Robert Culbert and Jessica Downey.

Others in Attendance: MaryJane Aldrich-Moody, Manual and Claudia DeBettencourt, Laiana and Lucas Donato, Cleigomar Guinarades, Jennifer Held, Sandra Lippins, Patrick McCarthy, Michael Nania, Thomas D. Orr, Flavio Paula, Spenser Rhoads, Matt Rossi (Oak Bluffs Building Inspector), Christine Seidel, and Jordan Wallace

Chair Rogers opened the meeting at 6:00pm.

Minutes: Doug Pease moved to approve the minutes for the November 17, 2022 and December 15, 2022 minutes as submitted.

Next Meeting Date: The ZBA agreed that next meeting will be an in-person meeting held on February 16, 2023.

New Business: There is no new business to report.

RE: Donato Appeal

Laiana Donato
15 Old Schoolhouse Village
Map 50 Parcel 11

The Oak Bluffs Zoning Board of Appeals opened a duly posted and continued In-Person Public Hearing on **Thursday, January 19, 2023 at 6:05pm** in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of the referenced petitioners seeking:

A Special Permit or Variance within Oak Bluffs Zoning Bylaws 3.5.5 and 4.4.2 or any action related thereto, to build a new detached two car garage with a second floor accessory apartment on a non-conforming lot in Residential Zone 3.

Laiana Donato presents this appeal and said that moving the proposed garage and accessory apartment to meet the 50 foot setbacks does not work for them, as it would mean that they lose the mudroom and at least one window. They ask again that the ZBA approve the garage and accessory apartment as proposed, pointing out that many of the other garages in this subdivision do not meet the setbacks.



OAK BLUFFS ZONING BOARD OF APPEALS

P.O. BOX 1327, OAK BLUFFS, MA 02557-1327

508 693 – 3554 x 120

Lou Rogers says that the current plans would need a Variance from the ZBA because it is new construction that does not meet the setbacks. He adds that there are specific conditions that must be met for a Variance, which this proposal does not meet. He also points out that there is a way to alter this proposal so it meets zoning; if the garage is less than 500 square feet then the setbacks are reduced.

Andrea Rogers adds that the garage could be flipped 90 degrees and be a rectangle rather than a square.

To give the Donatos another chance to revise their plans, Doug Pease moves to continue the hearing to February 16, time to be determined. Jonathan Holter seconds the motion.

All (Andrea Rogers, Lou Rogers, Grace Guck, Doug Pease, and Jonathan Holter) vote in favor, so the motion passed unanimously (5-0).

RE: Paula Appeal

Flavio S. Paula and Luciana Paula

11 Jessica Lane Map 49 Parcel 1-1

The Oak Bluffs Zoning Board of Appeals opened a duly posted In-Person Public Hearing on **Thursday, January 19, 2023 at 6:20pm** in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of the referenced petitioners seeking: ***A Special Permit or Variance within Oak Bluffs Zoning Bylaws 3.5.5 and 4.4.2, or any action related thereto, to build a new detached two bedroom accessory apartment on a conforming lot in Residential Zone 3.***

Flavio Paula presents this appeal seeking to build a detached two bedroom accessory apartment. The proposed guest house meets the zoning setbacks.

Lou Rogers points out that the proposed structure is a stand-alone building and therefore creates a second residence on the property, which is not allowed on a property this size. The apartment must be an accessory use of the structure, so maybe add a garage or some other use, noting that there cannot be any indoor access between these two components.

Flavio Paula then asks for a continuance so they can revise their plans.

Doug Pease moves to continue the hearing to February 16, time to be determined. Jonathan Holter seconds the motion.

All (Andrea Rogers, Lou Rogers, Grace Guck, Doug Pease, and Jonathan Holter) vote in favor, so the motion passed unanimously (5-0).



OAK BLUFFS ZONING BOARD OF APPEALS

P.O. BOX 1327, OAK BLUFFS, MA 02557-1327

508 693 – 3554 x 120

RE: Rhoads Appeal

Spencer Rhoads

32 County Road Map 7 Parcel 95

The Oak Bluffs Zoning Board of Appeals opened a duly posted In-Person Public Hearing on **Thursday, January 19, 2023 at 6:35pm** in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of the referenced petitioners seeking: ***A Variance within Oak Bluffs Zoning Bylaws 3.5.5 and 4.4.2, or any action related thereto, to build a 546 square foot garage utilizing part of an unimproved paper road as part of the required 20 foot setback on a conforming lot in Residential Zone 1.***

Spenser Rhoads presents his appeal. He wants to build a garage that minimizes the number of trees that need to be cut down. He wishes to put the garage on his property line and use his half of the paper road as the setback for the garage; he points out that a neighbor's house is within the paper road and that moving the garage away from the property line would increase the number of trees that need to be cut down.

Andrea Rogers points out that the Town has not relinquished the paper road, so it cannot be used as the setback.

Spenser Rhoads then requests that his appeal be withdrawn without prejudice, as he can build a garage on his property that meets all zoning requirements by right.

Doug Pease moves to approve the request to withdraw the application without prejudice. Jonathan Holter seconds the motion.

All (Andrea Rogers, Lou Rogers, Grace Guck, Doug Pease, and Jonathan Holter) vote in favor, so the motion passed unanimously (5-0).

RE: Lippins Appeal

Sandra Lippins

145 Vineyard Haven Edgartown Road Map 50 Parcel 1.1

The Oak Bluffs Zoning Board of Appeals opened a duly posted In-Person Public Hearing on **Thursday, January 19, 2023 at 6:54PM** in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of the referenced petitioners seeking: ***A Special Permit within Oak Bluffs Zoning Bylaws 3.4.2, 3.5.5, 4.4.4 and 9.1.B, or any action related thereto, to build a 3 bedroom detached bedroom or accessory apartment on a conforming lot in Residential Zone 3.***

Sandra Lippins and Michael Nania presented this appeal. Sandra Lippins wants to build a 1,079 square foot three bedroom detached bedroom, one of which would be housing for



OAK BLUFFS ZONING BOARD OF APPEALS

P.O. BOX 1327, OAK BLUFFS, MA 02557-1327

508 693 – 3554 x 120

one of her employees. The project meets all of the zoning setbacks, and the septic system has been approved by the Board of Health.

Lou Rogers points out that the lot needs an additional 20,000 square feet to be able to have a second house on the lot. Or the detached bedroom needs to be an accessory use of the proposed structure. Sandra Lippins could go to the Planning Board and ask them to combine her two adjacent lots.

Sandra Lippins requests a continuance so they can determine their next steps.

Doug Pease moves to continue the hearing to February 16, time to be determined. Jonathan Holter seconds the motion.

All (Andrea Rogers, Lou Rogers, Grace Guck, Doug Pease, and Jonathan Holter) vote in favor, so the motion passed unanimously (5-0).

RE: Hagerty Appeal

Grace Hagerty

2 Wing Road Map 17 Parcel 82

The Oak Bluffs Zoning Board of Appeals opened a duly posted In-Person Public Hearing on **Thursday, January 19, 2023 at 7:05PM** in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of the referenced petitioners seeking: ***A Special Permit within Oak Bluffs Zoning Bylaws 3.4.2, 3.5.5, and 4.4.4, or any action related thereto, to have a detached finished living space on a conforming lot in Residential Zone 2.***

Patrick McCarthy presents this appeal. The structure is already built as no building permit was needed for a shed under 200 square feet without electricity. Nobody lives in the shed, it is there for storage and a work space separate from the house.

Lou Rogers asked Matt Rossi to clarify the zoning. He points out that a small shed does not need a building permit, but the interior of the structure is finished and heated so it is treated as living space and must meet zoning requirements. It has been determined that the existing location of the shed must be moved to meet the required rear setback of **20 feet (from existing 11 foot rear setback).**

Patrick McCarthy requests a continuance so he can consider his options and come back to the ZBA next month.

Doug Pease moves to continue the hearing to February 16, time to be determined. Jonathan Holter seconds the motion.



OAK BLUFFS ZONING BOARD OF APPEALS

P.O. BOX 1327, OAK BLUFFS, MA 02557-1327

508 693 – 3554 x 120

All (Andrea Rogers, Lou Rogers, Grace Guck, Doug Pease, and Jonathan Holter) vote in favor, so the motion passed unanimously (5-0).

Appeal of Building Inspector's Decision

RE: Held Appeal

4 Morgan Ave

Map 3 Parcel 132

The Oak Bluffs Zoning Board of Appeals opened a duly posted in-person Public Hearing on **Thursday, January 19, 2023 at 7:20** via an In-Person meeting in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of petitioners abutting the referenced property seeking:

to reverse the Building Inspector's ruling, or any action related thereto, of issuing a Building Permit #BPC-22-11 to construct the foundation for the renovations to the Shearer Cottage because the plans show incorrect lot lines between 4 Morgan Avenue and 8 Morgan Avenue.

Jonathan Holter recuses himself from this hearing, so Leah Brown will be sitting on this appeal.

Jennifer Held explains why she is asking the ZBA to overturn the Building Inspector's decision to issue a Building permit for the foundation of the Shearer Cottage expansion. She did not file an appeal of the ZBA Special Permit approving the expansion because she was not notified about the hearing due to an incorrect mailing address. One of the ZBA conditions on the Special Permit was that there should be an agreement about where the property lines are separating her property from the VanAllen property where the Shearer Cottage is located.

She has a text log of Eric VanAllen saying there will be an agreement, but there is no agreement. VanAllen has disregarded her evidence of where the property line actually is. She has talked to Mr. VanAllen several times and has texted him about 30 times.

This case is in the Land Court, and the judge did not issue a preliminary judgement because construction is not scheduled to start until March 2023.

She is not here to stop the Shearer Cottage expansion; rather, she wants to have the property line moved further from her house, and she has evidence showing that the property line is not where Eric VanAllen says it is, and he has not shared the results of George Sourati's surveys with her. Vineyard Land Surveying and Engineering surveyed the property last week and the results should be ready by the end of January.

Jennifer Held believes that construction of the foundation should not start until an agreement between her and Van Allen is reached.



OAK BLUFFS ZONING BOARD OF APPEALS

P.O. BOX 1327, OAK BLUFFS, MA 02557-1327

508 693 – 3554 x 120

Andrea Rogers points out that the ZBA needs all the information before the Building Inspector's decision can be reversed. Matt Rossi says that the ZBA condition about the agreement has been met, and points out that the building permit he issued for the foundation is an at risk permit, meaning that the applicant starts construction at his own risk.

Lou Rogers adds that only a permit for the foundation has been issued; there is no building permit for construction of the additions to the Shearer Cottage. If the Board of Health approved septic system is built and the property lines change, the septic system may need to be moved.

Matt Rossi also points out that a survey is needed for the Land Court to resolve this issue. He also points out that the ZBA decision is vague and does not define what a legal agreement means. He talked to Chair Lou Rogers and they agreed that the conditions in the Special Permit were all met. The site plan was certified by George Sourati after the ZBA permit was issued, so he issued the foundation permit. The Land Court will determine where the property boundary is, and that determination may mean that the Van Allen plans need to change.

Thomas Orr, a lawyer for Eric VanAllen. Submitted a letter to the ZBA today stating that the Land Court is the appropriate place for this dispute. And there is a 20 day appeals period after the decision is filed with the Oak Bluffs Town Clerk. He requests that the ZBA uphold the Building Inspector's decision because the Land Court will be addressing where the property lines are.

Jennifer Held countered that no appeal of the ZBA Special Permit was filed because the condition included the word "agreement," which she says has not happened.

There was no additional public comment and no written correspondence, so Lou Rogers closed the public comment section of this hearing. A discussion between Board members followed. Doug Pease suggests that the ZBA really has no jurisdiction because the case is inland Court. Leah Brown adds that the ZBA does not need to define what a legal agreement means. Lou Rogers adds that the Land Court will resolve this issue, and he suggests that concrete corner bounds might be installed after the decision is made.

Andrea Rogers than made a motion to uphold the Building Inspector's decision to issue the building permit to allow the construction of the foundation for the Shearer Cottage expansion. Leah Brown seconds the motion.

All (Andrea Rogers, Lou Rogers, Grace Guck, Doug Pease, and Leah Brown) vote in favor, so the motion passed unanimously (5-0).

RE: Bradley Appeal
Melissa Bradley



OAK BLUFFS ZONING BOARD OF APPEALS

P.O. BOX 1327, OAK BLUFFS, MA 02557-1327

508 693 – 3554 x 120

Black Joy MVY 125 Seaview Avenue, Map 10, Parcel 162

The Oak Bluffs Zoning Board of Appeals opened a duly posted and continued Public Hearing on **Thursday, January 19, 2023 at 8:10** via an in-person meeting on the application of the referenced petitioners seeking: **a Special Permit from the Oak Bluffs Zoning Bylaws Sections 3.5.5 and 8.1.5 to build a free-standing deck platform in the backyard of a non-conforming lot zoned R2.**

No revised plans have been submitted, so Doug Pease makes a motion to continue the hearing to January 19, time to be determined. Jonathan Holter seconds the motion.

All (Andrea Rogers, Lou Rogers, Grace Guck, Doug Pease, and Jonathan Holter) vote in favor, so the motion passed unanimously (5-0).

RE: Chun & Kim Appeal

Eunu Chun and Lisa H. Kim 7 Arlington Avenue Map 3 Parcel 15

The Oak Bluffs Zoning Board of Appeals will open a duly posted and continued Public Hearing on **Thursday, January 19, 2023 at 8:12** via an in-person meeting on the application of the referenced petitioners seeking:

a Special Permit within Zoning Sections 3.5.5 and 4.4.4, or any action related thereto, to renovate a pre-existing and non-conforming dwelling and to convert a pre-existing and non-conforming garage into a detached bedroom on a pre-existing and non-conforming lot in Residential Zone 2.

Doug Pease makes a motion to continue the hearing to January 19, time to be determined. Jonathan Holter seconds the motion.

All (Andrea Rogers, Lou Rogers, Grace Guck, Doug Pease, and Jonathan Holter) vote in favor, so the motion passed unanimously (5-0).

New Business

Leah Brown would still like to see a searchable PDF version of the town's zoning bylaws. And Jonathan Holter reminds us of the need to clarify and revise the bylaws.

Adjournment.

At 8:15PM, Jonathan Holter made a motion to adjourn the meeting, seconded by Doug Pease. All (Andrea Rogers, Lou Rogers, Grace Guck, Doug Pease, and Jonathan Holter) vote in favor, so the motion passed unanimously (5-0).

*Respectfully Submitted,
Robert Culbert*



OAK BLUFFS ZONING BOARD OF APPEALS

P.O. BOX 1327, OAK BLUFFS, MA 02557-1327

508 693 – 3554 x 120

ZBA Administrator

Approved with changes February 16, 2023