



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 February 17, 2022 Meeting Hybrid at the Oak Bluffs School and via Zoom

Members present: Llewellyn Rogers (Chair), Andrea Rogers, Jonathan Holter (via Zoom for one hearing), Doug Pease, Grace Guck, and ZBA Administrator Robert Culbert.

Others in Attendance: Lucas Donato, Jerry Goodale, Peter Goodale, Catherine and Halcott Grant, Lynn Irons, Carl Kenney, Bob Lounsbury, Bruce Merrill, Howard Miller, Dana Mylott, Peter Palches, Ben Scott, Jonathan Sweet, Christopher Thurber, and Jude Villa

Chair Rogers opened the meeting at 6:00pm. He pointed out that we had originally planned on this meeting being in-person only because of the difficulties the Zoom audience had understanding the conversations during past meetings. However, we switched back to a hybrid meeting format because we have a better setup and we want to make sure that everyone has a chance to participate in these hearings.

Minutes: Doug Pease moved and Andrea Rogers seconded a motion to approve the minutes of the December 16, 2021 meeting as written. All (Andrea Rogers, Lou Rogers, Grace Guck, and Doug Pease) voted in favor, so the motion passed unanimously (4-0). Doug Pease moved and Grace Guck seconded a motion to approve the minutes of the January 20, 2022 meeting as written. All (Andrea Rogers, Lou Rogers, Grace Guck, and Doug Pease) voted in favor, so the motion passed unanimously (4-0).

Next Meeting Date: The next meeting will be held on Thursday, March 17, 2022 and will be an hybrid in-person and Zoom meeting in the Meeting Room in the new Town Hall.

New Business: There is no new business to report.

RE: Donato Appeal

**Laiana Donato
15 Schoolhouse Village
Map 150 Parcel 11**

The Oak Bluffs Zoning Board of Appeals held a duly posted Public Hearing on **Thursday, February 17, 2022 at 6:05pm** via an hybrid In-Person/Zoom meeting in the Culinary Room at the Oak Bluffs School, 50 Tradewinds Road, on the application of the referenced petitioners seeking:

a Special Permit within Zoning By-Laws Section 3.5.5 or any action related thereto, to allow the enlarging of an existing deck on a non-conforming residence on a non-conforming lot in Residential Zone 3.



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The Board reports that two board members (Lou Rogers, Andrea Rogers) have visited the site.

Lucas Donato reports that when a new septic system was installed they dropped a tree onto the deck, and when he went to fix it he discovered it was rotten and needed to be replaced. The side setback for the existing deck is 50 feet so it meets the requirements of R3 zoning, but the proposed deck has a side setback of only 44 feet.

Lou Rogers points out that the Board does not allow encroachments into the setback; it cannot be reduced below the required 50 feet. However, in the site inspection he measured the height of the existing deck, which is only 25 inches above grade. Thus, it is not considered a structure, and would not reduce the setbacks if the deck were built at that height. There would need to be conditions included in the Special Permit that would prevent the building of any structure (roof, screening, etc.) on that deck, as any increased height would mean the proposed deck encroaches into the setback.

There was no correspondence for this appeal, and nobody wished to speak either in favor or opposing the proposed deck. There was no further discussion from the Board either.

Andrea Rogers made the following findings: The lot is zoned R-3, the lot is non-conforming because it is too small (16,130 sq. ft., 50,000 required) and does not have the required frontage (approximately 121 ft./ 150 required) The side setback will not be reduced from the required 50 feet because the deck height is only 25 inches above grade, and by Zoning Bylaw 3.5.5, this small low deck expansion will not be more detrimental to the neighborhood.

Andrea Rogers moved that the ZBA issue a Special Permit under Zoning bylaw 3.5.5 to allow the construction of the deck with two Special Conditions: (1) the proposed deck will not be more than 25 inches above grade, and (2) the proposed deck will remain a flat, open-air deck, unenclosed and uncovered (no roof, screening, etc.). Doug Pease seconded the motion.

All (Andrea Rogers, Lou Rogers, Grace Guck and Doug Pease) voted in favor, so the motion passed unanimously (4-0).

RE: Seklecki Appeal

Dan Seklecki
16R Old Schoolhouse Village Road
Map 50 Parcel 9



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The Oak Bluffs Zoning Board of Appeals opened a duly posted and continued Public Hearing on **Thursday, February 17, 2022 at 6:20pm** via an hybrid In-Person/Zoom meeting in the Oak Bluffs School on the application of petitioners abutting the referenced property seeking:

A Special Permit under Zoning Bylaws 3.5.5, or any action related thereto, to allow additional living space to a non-conforming structure on a pre-existing and non-conforming lot in Residential Zone R3.

Dan Seklecki notified the ZBA that he is in the process of revising the proposed addition to his house, but they are not quite finished. He requests that the hearing be continued to the next meeting.

Doug Pease moves to continue the hearing to March 17, and Andrea Rogers seconds the motion.

All (Andrea Rogers, Grace Guck, Lou Rogers, and Doug Pease) voted in favor, so the motion passed unanimously (4-0).

RE: Grant Appeal

Halcott Grant, Trustee

16 Atlantic Avenue Realty Trust

16 Atlantic Avenue Map 2 Parcel 61.2

The Oak Bluffs Zoning Board of Appeals opened a duly posted and continued Public Hearing on **Thursday, February 17, 2022 at 6:35pm** via an hybrid In-Person/Zoom meeting in the Oak Bluffs School on the application of the referenced petitioners seeking:

a Special Permit within Zoning Section 3.4.2, or any action related thereto, to construct an accessory apartment on a conforming lot in Residential Zone R2.

Halcott Grant submitted revised plans for his accessory apartment with a wall at the living room end creating a 4 foot 4 inch by 18 foot workshop, reducing the size of the accessory apartment by about 90 square feet. There is no inside access between the accessory apartment and the workshop.

Doug Pease points out that these changes meet the zoning requirements for an accessory apartment.

Chair Lou Rogers opened the meeting to for public comment.

David Clark expressed his concern that he was not notified about this hearing (the date was announced when we continued the hearing at the January meeting). This proposed building is very close to his property and impacts it greatly. He objects that the accessory apartment was built while the permits only called for a detached bedroom, and that the proposed workshop is more of a closet rather than a workshop; it is only 11% of the



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building, much smaller than the original approved workshop. He feels that the non-resident taxpayers are being swept under the rug in this process. He also points out that he believes that the accessory apartment was occupied all last summer even though the required Certificate of Occupancy was issued by the Building Inspector.

Lou Rogers understands his comments but points out that the revised plans meet all the requirements of the zoning bylaws for an accessory apartment.

Josh MacArthur agrees with everything that David Clark has said.

Doug Pease responds by pointing out that he believes this was an end run by Mr. Grant. But the revised plans presented at this hearing for a Special Permit for the accessory apartment legally brings the project into compliance with all the zoning requirements.

There are no other public comments, so the public section of the meeting was closed.

Andrea Rogers makes the following findings. The existing 21,657 sq. ft. lot is conforming, (Req.: 20,000 sq. ft.), the existing single family dwelling is conforming on all setbacks (Req.: 25/20/20 feet), the accessory structure comprised of a workshop, detached bedroom and bathroom is conforming, and the proposed accessory apartment and workshop is not be substantially more detrimental to the neighborhood.

Andrea Rogers moved that the ZBA issue a Special Permit under Zoning bylaw 3.4.2 to allow the construction of the accessory apartment and workshop with two Special Conditions: (1) the workshop remains a workshop, and (2) the workshop never has a door connecting to the accessory apartment. Doug Pease seconds the motion.

All (Andrea Rogers, Lou Rogers, Grace Guck and Doug Pease) voted in favor, so the motion passed unanimously (4-0).

Appeal of Building Inspector's Decision

RE: Goodale Construction Co.

194 Edgartown Road

Map 40 Parcel 10

The Oak Bluffs Zoning Board of Appeals opened a duly posted and continued Public Hearing on **Thursday, February 17, 2022 at 6:54pm** via an hybrid In-Person/Zoom meeting in the Oak Bluffs School on the application of petitioners abutting the referenced property seeking:

to reverse the Building Inspector's ruling, or any action related thereto, that a landscaping business should be allowed to continue to park on the above referenced property because their business is agricultural and therefore is exempt from zoning.



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Grace Guck recused herself from this hearing, and Jonathan Holter is participating via Zoom.

Jonathan Sweet, representing Ben Scott and the 22 abutters, [pints pout that there was conflicting testimony at the previous hearing about whether or not Working Earth was an agricultural business. The abutters have submitted a letter with drone photos from before and after the last hearing that shows the claims of agriculture are erroneous. Photos on December 9 shows it to be a landscapers storage facility, with no signs of agriculture or horticulture. The photos taken on January 6 show some trees planted on part of the leased area, plants that were not present during the Building Inspector's inspection or anytime before the hearing. Thae applicants claim that the claim of agriculture or horticulture on the site is a gross misrepresentation of what is happening on the property. Rather, it is a last-minute scramble to make it look like there was agriculture on the property. H says that Goodale's and Working Earth should be applying for a Special Permit that would regulate what is happening on the property; to grow trees there is no need for the bluestone, firewood, or mulch or the other supplies that are present. The applicants therefore urge the ZBA to reverse the Building Inspector's decision.

Lou Rogers points out that the January 6 photos are dated January 26, 2021. Jonathan Sweet responds that the dates on them should be January 26, 2022. The applicants will resubmit their photographs with the correct dates on them.

Andrea Rogers, who grows plants, points out that these other materials (mulch, rocks, etc.) are necessary for weed control where the plants are growing.

Doug Pease points out that neighbors were complaining about many different companies using the area, with their trucks coming in and out frequently. He asks whether abutters have noticed any changes in the traffic and noise (Back-up beeping, heavy machinery, ...) in the area.

Jonathan Holter points out that there is a matter of degree about how much of the lot is used for growing plants and how much is used for storage of materials.

Lou Rogers opens the meeting for public comment.

Joanna Hynes has some questions. When was the Zoning changed to residential. She wonders because this is not the first time neighbors have complained, that it was assumed that the use of this property was grandfathered in as a gravel and mining company without any evidence. The company is going beyond what was allowed. She also was wondering about whether the planting of trees that was required to replace those that were cut down was ever enforced. Doug Pease responds that that was a different ussue on a different property, and was not part of this appeal.



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Pat Ingalls responds that the beeping and noise is ongoing on a very regular basis; trucks are still going in and out on a regular basis. Three Working Earth vehicles were seen departing at the same time on a recent day. She also wonders if the ZBA heard from Town Council about this issue. She also points out that this activity means that Working Earth is definitely a year-round business; that this is a construction site and not agricultural.

Tom Juster seconds Pat Ingalls' comments. The noise continues regularly throughout the day. If anything, the activity has increased.

Bruce Merrill asks how a business is allowed to run in a residential area. Jonathan Holter points out that by State Law there is a big exemption for agriculture. Bruce Merrill also asks about the disturbing practice of working early in the morning and late at night, including sand-blasting.

Jonathan Sweet points out that the large piles of bluestone, gravel, and such are clearly not for use on this property, but are stored there to be used on the clients property. Such storage is not suitable in a residential neighborhood.

Andrea Rogers points out that it is not fair to judge the agricultural aspects on this property from photos taken in the winter, when the annual and perennial plants are not visible.

Pat Ingalls responds that her observations are that no plants were being grown there during the past summer season.

Bruce Merrill also asks whether there is water available on this property, and Lou Rogers responds that yes, both water and electricity are available. He then asks when and why they were allowed to block access to an ancient way.

Lynn Irons has been leasing part of this property of 15 or 20 years, and she goes there almost every day, and she does not see or hear anything noisy happening on this property. And she points out that many of the people living in that area utilize and depend on landscaping companies to maintain their yards. She points out that the Electric Company has a lot of trucks coming and going all the time from their nearby property.

Peter Palches is concerned about what it now means to utilize a residential property; could these same practices take place on any residential property in town?

Lou Rogers points out that any lot can apply for such agricultural uses by state law. He also points out that Town Council is still working to answer the questions posed by the ZBA and the public during the last hearing. Jonathan Holter adds that any lot in Town can apply for an agricultural exemption using the State law.



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Dana Mylot points out that landscapers have a difficult time getting a foothold in the Town, and finding a place to store their equipment and supplies. He has an agricultural exemption so he can utilize his own property for his business. He says that people want to utilize landscapers but do not want to see them and their work areas.

An unidentified general contractor is here to support Working Earth and the work they do. We all need to work together.

Another unidentified speaker lives across the road from where the Goodale's Christmas Tree Farm operated. It operated with maybe only a lawn mower. The other people who used the property were using the property as a storage facility, not for agricultural. He asks if the decision is allowed to stand, who will police the property if the uses are upheld.

Howard Miller, the attorney for Working Earth, thinks that much of the testimony is out of line. He points out that the state has taken control by stating that locals cannot challenge the state law that includes both agriculture and horticulture, including everything incidental to horticulture. He also points out that much of the information the abutters have talked about they could not gather without trespassing on the property, and that Goodale's has been using this property for a really long time.

Jude Villa points out that she has been using the property for ten years, and that the businesses that were generating the noise were removed from the property by the Building Inspector. There is nothing that she is doing on the property that she has not been doing for ten years. There also is a security camera and an electronic gate that keeps other people off the property. She thinks that her business is getting blamed for noise generated by other properties in the area. The photos of the property that the applicants submitted conveniently left out the areas where her plants were. She wants to expand her business and organically grow the plants that her customers want. She is in and out of there maybe three times per week.

Peter Goodale said he stopped his approved composting business there and has turned the remainder of that over to Working Earth to use. He did make the mistake of allowing other contractors to use the area, but they are gone now and Goodale's paid the fines for allowing them to be there. He asks how abutters can know the noise there is from his property rather than other properties in the area.

Since nobody else wished to speak, Chair Lou Rogers closed the public comment section of the meeting.

Lou Rogers asked Jude Miller whether she cuts firewood on the property, and the answer was yes. He also asks

- how many acres of the property Working Earth uses,



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- how much of that are is used to grow plants,
- how much of that do you plan to use to grow plants,
- how long has Goodale’s leased land to Working Earth,
- did Goodale’s have a permit for their composting operation, and is that business still active,
- what else has Working Earth been doing on the property,
- what native plants do you want to grow on the property,
- how much firewood do you cut, and
- what materials are stored there and what are they used for?

Doug Pease moved to continue the hearing to March 17, 2022, time to be determined, so the Board can determine the facts of this case, hear from Town Council, and go to a site visit of the property. Andrea Rogers seconded the motion. All (Andrea Rogers, Lou Rogers, Doug Pease and Jonathan Holter) voted in favor, so the motion passed unanimously (4-0, Grace Guck recused).

RE: Van Allen Appeal

Eric Van Allen

4 & 5 Morgan Avenue and 7 Highland Avenue,

Map 3 Parcels 119, 120 & 132

The Oak Bluffs Zoning Board of Appeals opened a duly posted and continued Public Hearing on **Thursday, February 17, 2022 at 8:37pm** via an hybrid In-Person/Zoom meeting in the Oak Bluffs School on the application of the referenced petitioners seeking: **a Special Permit or Variance within Zoning By-Laws Section 3.5.5 or any action related thereto, to allow the renovation of and additions to the preexisting and non-conforming structure, with a preexisting non-conforming use on pre-existing and non-conforming lot, and the expansion of said structure onto an adjacent vacant and non-conforming lot in Residential Zone 2.**

Doug Pease moved to continue the hearing to March 17, 2022, time to be determined, because this project will now be reviewed by the Planning Board. Andrea Rogers seconded the motion. All (Andrea Rogers, Lou Rogers, Doug Pease, and Grace Guck) voted in favor, so the motion passed unanimously (4-0) with Jonathan Holter recused.

RE: Chun & Kim Appeal

Eunu Chun and Lisa H. Kim

7 Arlington Avenue

Map 3 Parcel 15



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The Oak Bluffs Zoning Board of Appeals opened a duly posted and continued Public Hearing on **Thursday, February 17, 2022 at 8:40pm** via an hybrid In-Person/Zoom meeting in the Oak Bluffs School; 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.

This project has been referred to the Martha's Vineyard Commission as a Development of Regional Impact, we cannot make a decision until their written decision has been received. Doug Pease moves to continue the hearing to March 17, 2022, time to be determined. Andrea Rogers seconded the motion. All (Andrea Rogers, Lou Rogers, Jonathan Holter, Doug Pease, and Grace Guck) voted in favor, so the motion passed unanimously (5-0).

RE: Island Elderly Housing, Inc. Appeal

Island Elderly Housing, Inc.
38 Wing Road
Map 17 Parcel 105

The Oak Bluffs Zoning Board of Appeals opened a duly posted and continued Public Hearing on **Thursday, February 17, 2022 at 8:42 pm** via an hybrid In-Person/Zoom meeting in the Oak Bluffs School on the application of the referenced petitioners seeking:
a Comprehensive Permit within MGL Chapter 40B, or any action related thereto, to allow the demolition of the existing structures and to construct a building containing five units of affordable housing on a conforming lot in Residential Zone 2.

Doug Pease makes a motion to continue the hearing to March 17, 2022, time to be determined. Grace Guck seconded the motion. All (Andrea Rogers, Lou Rogers, Doug Pease, and Grace Guck) voted in favor, so the motion passed unanimously (4-0).

Adjournment.

At 8:45, Doug Pease made a motion to adjourn the meeting, seconded by Andrea Rogers. All (Andrea Rogers, Lou Rogers, Doug Pease, and Grace Guck) voted in favor, so the meeting adjourned (4-0).

Respectfully Submitted,
Robert Culbert
ZBA Administrator
Approved March 17, 2022