



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 March 15, 2023 Meeting In-Person Meeting

Members present: Llewellyn Rogers (Chair), Andrea Rogers, Doug Pease, Leah Brown, and ZBA Administrator Robert Culbert, Joe Pessola (advisor/consultant to ZBA), with Jonathan Holter recused from this hearing pending Select Board approval of his petition to ...

Others in Attendance: Deborah Alves (citizen), Paul Attemann (Union Studio Architects), Adam T. Hayes (Adam T. Inc & OB Citizen ?), Elizabeth Hayes (Abutter), Ewell Hopkins (OB Planning Board), Philippe Jordi (Island Housing Trust), Michael Laham (Horsley Witten Group), Bill McClary, Craig Nicholson (Applicant, Affirmative Investments), Matthew Rossi (OB Building Dept. Ben Whars (?affiliation indecipherable?)),

Chair Rogers opened the meeting at 5:09pm.

RE: Southern Tier LLC

40B Application

Craig Nicholson/Affirmative Investments

85 Edgartown-Vineyard Haven Road Map 50 Parcel 31

The Oak Bluffs Zoning Board of Appeals will hold an In-Person Public Hearing on Wednesday, March 15, 2023 at 5:00 pm in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of the referenced petitioners seeking:

A Comprehensive Permit under Chapter 40B of the General Laws of the Commonwealth of Massachusetts

Lou Rogers points out that the Southern Tier project lies within the R3 Zoning District, the Island Roads District, and Zone II. The applicant is seeking a Comprehensive Permit under Chapter 40B; they are seeking relief from sign dimensions (Section 5.3.5), materials used, Island Road District (Height, Section 9.1-B), Multifamily Buildings (Appendix A), Commercial Buildings (Appendix A), Structures per lot (Section 4.1.1), Setbacks (Section 4.1.3 and Appendix B), Units per lot (Section 4.1.3 and Appendix B), and Height in R3 Zoning District (Section 4.1.3 and Appendix B).

Phillippe Jordi notes that the following people are here representing this important 100% affordable housing project: Craig Nicholson (Affirmative Investments), Paul Attemann (Union Studio Architects), Michael Laham (Horsley Witten Group). The project is a culmination of years of work on behalf of the Town of Oak Bluffs starting in 2017. A feasibility study was completed by Mass Housing in 2020. The OB Affordable Housing Committee put together a Request for Proposals for this project in 2021, where Affordable Investments and IHT were selected. This team brings years of experience to this project,



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and they are very proud of the work they have done on this project. The project has been reviewed and approved by the Martha's Vineyard Commission as a Development of Regional Importance.

Craig Nicholson how this project has been developed and reviewed, including review during nine public meetings, including by Town Boards from April to November, 2022, at a community meeting in December 2022, and a detailed review by the Martha's Vineyard Commission from December 2021 to February 2023. Now they are seeking relief from Oak Bluffs Zoning, which this project mostly complies with.

A lot of the comments at the community meeting concerned construction types and whether it will fit in, landscaping and maintenance, noise, connectivity, and permeability, all of which were considered in detail during the MVC review and approval.

Mr. Nicholson points out the ZBA review is to determine whether this project is a detriment or a health risk to this neighborhood, and whether it is too far out of whack from Town Zoning. He points out that multifamily units are not really addressed by Town Zoning, the commercial building is really a community building that is for a management office and the residents and will not be rented, that only one building falls within the required 50 foot setbacks (14.5 foot encroachment next to the skating rink), that the Massachusetts Natural Heritage and Endangered Species Program requires that all impacts from this 60 unit development must be limited to 5 acres of the property, that only one building is within the Island Roads District and they are requesting a height of 36 feet similar to the height of the adjacent ice rink, and that they are required to have a 15 square foot sign at the entrance, while zoning only allows for a 6 square foot sign.

Paul Atteman walks us through the design of this project as proposed, which has been through considerable review and improvements to the plan. The site plan shows the ingress/egress will be a two-lane road that loops around the project from the Edgartown-Vineyard Haven Road. There will be restricted access for the Fire Department (a locked gate) through the ice rink parking lot. The design is intended to create a sense of community and neighborhood by providing: parking spots close to residences, preserving the village green which buildings will front on, providing pedestrian access throughout and from the main road, and has a community building for residents at the center of the project. There will be a common room for residents and a management office in that building. There will also be pedestrian access directly to the small shelter at the bus stop by the skateboard park and to the trail network behind the project.

The small scale multifamily dwellings are designed to match other buildings in the area (cedar shakes, cedar trim, double hung windows, asphalt shingled rooves, etc). One large building would be cheaper to build but would not fit in with the rest of Oak Bluffs. There will be 45 units in phase I (10 small multifamily buildings and a community building) and 15 units in two additional buildings in phase II. The buildings are almost all optimally situated for maximum solar gain.



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The three unit buildings are two story with an open attic above, with multiple accesses to each unit. The six unit building will be 2.5 stories with an occupied dormer/attic. There will be washers/dryers in each building in the basement. There will not be any elevators, but all the ground floor apartments will be accessible. The ridgelines will be 32 feet eight inches for most buildings but 39 feet for the 12 unit building.

The community building will have mailboxes for the residents, package delivery, management offices, free wifi, and covered (rooved) bike racks on the back side.

The sign must include a lot of information and so will likely be larger than the six square feet allowed by zoning.

The lighting plan calls for LED lights that meet the night sky safe requirements. Outdoor lights will be minimal - three foot tall solar bollard lighting shining downward, and limited pole lighting. Wall-mounted lighting will also point downward so the lighting escape to the side. All lighting will be between warm and neutral coloration (3,000 degrees Kelvin).

These buildings will all be energy efficient. All units will have high thermal insulation, an electric stove, electric heat pumps, solar panels, and there will be fuel-powered generators.

Walking paths will be crushed stone on flat ground and concrete/asphalt on the slopes. A wooded trail will connect to Old Holmes Hole Road.

Michael Laham (Horsley Whitten Group) walks us through the site design elements of this proposal. Most of the property is within the Wellhead Protection area (Zone II) except for the southeast corner. The Natural Heritage and Endangered Species Program (NHESP) Priority Habitat area for the Imperial Moth includes most of the property, as their life cycle depends on pitch pine. The 1.9 acre open space on the northeast corner of the property abuts the Southern Woodlands to maximize connectivity with that important habitat; it will be permanently protected. The knoll is within the open space and they concluded to preserve that feature. There are also small areas of protected open space scattered throughout the project. The Island Roads District extends 200 feet off the Vineyard Haven – Edgartown Road and includes the westernmost two buildings. The northern property line basically runs along the Old Holmes Hole Road.

The northern two buildings are part of phase II and will be built once the wastewater plant is expanded and there will be increased capacity. They will build an on-site highly efficient septic treatment system for the first phase of this project (Mass Department of Environmental Protection limits the size of these treatment plants which determined the size of the first phase of this project), which will be used until it is past its useful life.



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A traffic island will separate the incoming and outgoing traffic island from the Vineyard Haven Edgartown Road. There will be 90 parking places within this project, seven of which will be ADA compliant. Gated emergency access will be through the YMCA Ice Rink parking areas. A cross walk is proposed to connect to the shared use path on the opposite side of the Edgartown Vineyard Haven Road. A woodlands trail will connect to the Southern Woodlands trail network.

The impervious pavement areas will be located on the higher-traffic areas to reduce dust and erosion. The parking areas will be gravel but the ADA compliant parking will be paved. The walking paths will be constructed with stabilized stone dust with the bollard lighting.

Municipal water will be used throughout the project. The electric and communication wires will be underground. The leaching field of the onsite wastewater treatment system (Nitro Advanced Treatment) will be in the southeast corner of the project and a reserve area is designated. The reserve area is intended to remain as a buffer to neighboring properties.

An extension of the roadway to the Town's property behind this one was included in the plans at the request of NHESP although it will not be built as part of this project. That road layout will be available to the Town should they wish to design and use it for human and utility access to their property in the future.

Storm water bioretention areas are designed to meet the standards for stormwater runoff from the roads and other impervious surfaces to gather and infiltrate into the ground. If the capacity of the retention areas is exceeded, the excess water will overflow into several underground recharge areas. These areas are designed to be able to store and infiltrate up to a 25 year storm. Roof runoff will flow into the underground system.

The landscaping is designed to enhance the built environment and will utilize native plants that blend in with the surrounding areas and will require lower maintenance. The plants have been chosen from the guidelines provided by the Polly Hill Arboretum. There are tree-lined pathways connecting the various buildings, recreation areas, and parking areas. A low maintenance seed mix will be used over the leaching field areas to create a natural-looking meadow rather than a lawn area, and a different low maintenance mix will be used for the lawns and recreational areas. No fertilizers will be used and temporary irrigation systems will be used only to get the plantings established.

Craig Nicholson then explains that the development is designed so the residents will be part of a community and get to know their neighbors. The design of the units, recreation areas, picnic areas and the existence of the community house will help to accomplish this.

The affordable units are priced to include all utilities (including solar electricity and heat but not including interior lighting and cooking) and are income restricted, with the highest level between 30% and 110% of AMI. Most of the units will be less than 60% AMI, which



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corresponds to income under 80,000 per year (teachers, firemen, etc.). For the initial assignment of the units, 75% of the units will have local preference for those who live or work in Oak Bluffs.

In response to a question from the Doug Pease, there will be 85 bedrooms in the first phase of the development, with an expected population of 170 people if every bedroom has two people living in them (which is unlikely because some bedrooms will have a child in it). Including phase 2 there will be a maximum of 200 people living there.

The same company that manages Morgan Woods will be the professional property managers for this development.

That concluded the presentation by the applicants.

Joe Peznola, the consultant helping the Town with this application, was then asked to present his initial review of the project. He finds it to be very thorough and very complete. Under Chapter 40B, there must be site control, which was granted by the Select Board of December 8, 2021, an eligibility letter, which was issued by Mass Housing dated March 10, and an agreement that the co-applicants -Affordable Investments and Island Housing Trust - will have to create a separate entity which by agreement will be a limited dividend organization.

The applicants are required to present preliminary plans for the development, and then plans they submitted are at a higher level because they have been vetted by the MVC. They have presented all the required information.

They have submitted a list of waivers of any local requirements, as required. These requested waivers will be addressed when the ZBA issues the comprehensive permit for this project. The ZBA is not issuing Special Permits or Variances. Additional materials may be requested that were not submitted, notably preliminary stormwater and predicted water demand, and projected sewer flow, which may or may not have been part of the MVC review.

Joe has some questions about the wastewater plans, but he notes that the applicants are abiding by the state Title 5 limitations of not receiving more than 10,000 gallons per day by phasing the project, with the second phase not coming until the Town wastewater treatment plant has the added capacity.

He also reminds the ZBA in his letter that they can ask for procuring peer review consultants from civil engineers for such items as traffic engineers and architects. These consultants would work for the Board but paid by the applicants in accord with the provisions that allow that. He would be able to work with the Board to get such help. He points out that a lot of questions may have been addressed by the MVC, with answers in their materials.



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He also notes that the ZBA has sent materials to other Town Boards and staff and will help with their responses. He suggests that the applicants respond to the questions raised by the Board in writing, addressed to the Board, for completion of the record.

With regard to the project's impacts on the Town's housing goals, Oak Bluffs has a Housing Production Plan that was approved by Mass Housing on July 18, 2019 that is good until July 2024. This project's 60 units will increase the subsidized housing by 2%, from 5.5% to 7.5%, which provides the Town with Safe Harbor status for two years. This allows the Town to be more restrictive in other Chapter 40B projects for two years.

He will be able to guide the Board through its review of this project, and in his letter he suggests possible timeline for this review.

Chair Lou Rogers then states that the next phase of this hearing is to hear from other Town Boards. The 5 written responses are read into the record.

The Affordable Housing Committee fully supports this proposal and states that this project will provide much needed mixed income housing units based on the Housing Production Plan. They review the development of this project and how it fits with the Town's needs. They ask the Board to support this proposal of utmost importance to the community.

The Martha's Vineyard Land Bank Commission sends the letter they wrote to the MVC during their review. They write that this development was considered during their process of purchasing and protecting the Southern Woodlands. They believe that all Town residents deserve access to open space; the 234 acre Southern Woodlands will provide such access to the residents of this subdivision.

The Superintendent of the Water District emails to say they have spoken with Craig Nicholson about this project. They are currently using their hydraulic model to review this proposal, and will let us know the results when they have them.

The Police Chief emails to say that he has spoken to Craig Nicholson about this 40B development and he says he has no public safety concerns about this project.

The Fire Chief emails to say he met with the applicants and reviewed the most recent plans with Craig Nicholson and all his questions were answered and he has no current reservations about the project.

Lou Rogers then opens the meeting for verbal comments from Town Boards.

Ewell Hopkins, Chair of the Oak Bluffs Planning Board, states some of their areas of concern about this project, with details to follow in writing. They are:

1. Access to the Town Land obtained in the doughnut hole swap,



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2. Buffering and dimensional impacts of the access road, and

3. The crosswalk across the Vineyard Haven Edgartown Road to the shared use path.

The Planning Board has studied the stretch of road between County Road and the roundabout at Barnes Road; they are pleased with how this plan has integrated their findings. But their access road apparently will become the entrance to the land to the north of this project; they wish to make certain that the Town land does not become landlocked. They are wondering whether the connecting road is separate from this proposal's open space. And they wonder about the access to Old Holmes Hole Road – what will be the restrictions to access by the units in phase 2 of this project, and to make sure that there is clear delineation between the backyards and Old Holmes Hole Road. Other subdivisions in this stretch have provided privacy both to their subdivision and to the users of the wooded path. Their final area of concern is the crosswalk: what will it look like, will the crosswalk have any raised roadway, and will there be any lighting or signage? What are the plans for this crosswalk? How do they relate to the other nearby crosswalks? The Planning Board will provide a letter with these details. The Planning Board enthusiastically supports this project once their questions have been addressed.

There were no other comments from Town Boards, but it was noted that there were a number of letters supporting this project that were written to the MVC; these letters were from our state representative and state senator, the YMCA, abutters, and others. They have been forwarded to the Board and are posted on our website.

The ZBA had the following questions.

Lou Rogers reviewed the 49 letters to the MVC, and all supported this proposal except for one from three immediate abutters that are also facing another 40B application just south of their property. They have concerns about the road – it is close to them and they wonder about the lighting, whether the community building could be moved further away. Rogers is hoping more can be done to address their concerns in this hearing process, as the ZBA always considers the abutters and he hopes that more will be done to address their concerns. There will need to be fencing and additional screening needed to protect the abutters.

Rogers also asks whether the 20 foot wide roadway will be able to handle all the trucks – even a 52 foot box trailer - and traffic that this subdivision and the subdivision that will be just to the north of them will generate. Will big trucks be able to use the road?

Craig Nicholson points out that the road is not part of this application. However, as part of the MVC review, they agreed to remove the pole lighting along that stretch of road. They also offered to install a bigger vegetative buffer between their project and those three abutters.

Lou Rogers would like a clarification of how they will mitigate the overage from the septic system (page 9 of the MVC decision). The applicants preferred option is to restrict



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development on other parcels, which would involve working with the Town Administrator and the Select Board. For a timeline they point out that this needs to be completed before they can get an occupancy permit from the Town. They will resort to the other option (installing more efficient septic systems on other properties) if no agreements are arranged with the Town.

Lou notes that there may be 48 units in phase 1, but that was not mentioned tonight. Craig Nicholson responds that the MVC talked about that but it would only be possible if Mass Housing agrees to it. But for now it is not part of this 40B application. The limit for both phase 1 and phase 2 is still 60 units.

Lou Rogers asks about the 68 parking spaces for phase 1 (there will be 90 spaces overall). Are the ev parking spaces sufficient? How will they deal with somebody who parks in that spot overnight? Applicant responds that they are not public charging stations, but are for residents only, and signage will reflect that. The charging stations will not be free to the residents. And the parking places will not be assigned to particular units.

Lou also asks what are the time limits for the free wifi in the community house. How will this area be prevented from becoming a hangout area? Applicant responds there will be hours that the community house is open.

How will noise issues be addressed? The community house will be for residents only and will close to everyone at 11; the applicants expect the residents will disperse quietly to their homes at that time. Some grills will be provided and no private grills will be allowed.

Will fertilizers be allowed? There will be no fertilizers or irrigation used after the plantings become established.

Will salt be used for Ice and snow? The applicant will hire a contractor to remove the snow. Lou Rogers notes that the area is pristine and that they should consider using only sand and not use salt.

With a question about the 70% local occupancy, Joe Peznola notes that it is up to the Town to provide data supporting the need for that much local occupancy. Without that local support, the State may overrule and reduce the local occupancy rate. The remaining 30% will be an open lottery and anyone can apply, including town residents.

Lou Rogers points out that the sign bylaw regulates materials that the signs are made out of. The applicants will comply with the recommended materials.

The roofline for the 12 unit building will be structurally 36 feet 8 inches, so they are requesting a waiver of the height requirement for that building. They point out that is approximately the height of the rink and the YMCA.



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There will be a vegetative buffer along the Ice Rink/YMCA property line for noise control.

Leah Brown asks whether it is a woman-owned company. Since this is a Town project, if it is a woman controlled company she suggests they get State certification of that.

Lou Rogers then asks for any public comments.

Bill McClary, 17 Elmwood Avenue, starts by asking about the size of the units. A one bedroom apartment will be about 650 square feet, a two bedroom will be close to 900 square feet, and a three bedroom will be approximately 1,150 square feet. These sizes are larger than the minimum sizes suggested by the State, but smaller than the maximum.

To close the meeting, Craig Nicholson points out that the future roadway is not part of their project, is not part of their required 1.9 acres of open space. Their open space is contiguous with the Southern Woodlands (and not the doughnut hole swap land) to maximize its biological (Imperial moth) habitat values, per requirement of the NHESP. Putting the road in that location along the property line is the only way to maintain that connectivity. The closest house is over 200 feet from the development; the community house is designed so the sound is directed toward the knoll and away from the property line. Lou Rogers points out that the nearest neighbor's backyard is only about 30 feet from the property line and the road. If the road is moved it would reduce the value of the habitat because it would reduce the connectedness of the open space to the southern woodlands. And because the community house is located at a low point in the topography, sounds will be reduced because they would have to go up out of the swale.

As we went over the unofficial two hour time limit, it will be necessary to continue the hearing to another day. The Board would like to do a site visit before the next meeting, and the applicant says that the road is staked. It was agreed that the site visit would be on March 22 at 3:30, and the hearing will be continued to April 12 at 5:00PM.

Andrea Rogers makes a motion to continue the hearing to April 12 at 5:00PM, and Doug Pease seconds the motion. All (Lou Rogers, Andrea Rogers, Grace Gusk, and Doug Pease) vote in favor, so the vote is unanimous (4-0).

The other hearings scheduled for today will be continued to next Wednesday, March 22, at a time to be determined. The four hearings are:

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 **Wednesday, March 22, 2023 at 6:20pm** in the Oak Bluffs Town Hall



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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.

RE: Cogliano Appeal

Rose Cogliano

6 Pitch Pine Lane

Map 28 Parcel 2-62

The Oak Bluffs Zoning Board of Appeals will hold a duly posted and continued in-person Public Hearing on **Wednesday, March 22, 2023 at 6:26 pm** 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, or any action related thereto, to construct an 896 square foot garage and accessory apartment on a non-conforming lot in Residential Zone 3.***

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.***

RE: Bradley Appeal

Melissa Bradley

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.***

RE: Island Elderly Housing, Inc.

Appeal Island Elderly Housing, Inc.

38 Wing Road

Map 17 Parcel 105



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The Oak Bluffs Zoning Board of Appeals will hold a duly posted and continued in-person Public Hearing on **Wednesday, March 22, 2023 at 6:32 pm** in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, 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 five hearings to March 22, time to be determined. Andrea Rogers seconds the motion.

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

Adjournment.

At 7:12PM, Andrea Rogers made a motion to adjourn the meeting, seconded by Doug Pease. All (Andrea Rogers, Lou Rogers, Grace Guck, Doug Pease) vote in favor, so the motion passed unanimously (4-0).

Respectfully Submitted,
Robert Culbert
ZBA Administrator
Approved April 12, 2023