



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 June 21, 2023 Meeting

Members present: Llewellyn Rogers (Chair), Andrea Rogers, Doug Pease, and Grace Guck, ZBA Administrator Robert Culbert

Others in Attendance: Peter Brown, Esq., Kris Chvatal, Allan deBettencourt, Joseph deBettencourt, Bryan Collins, Leslie Fitzsimmons, David Grunden, Bruce Laurich, Carolina Loubach, Dianna Louzanno, Tiffany Mazouk, Esq., Bruce Morich, Dana Mylott, Marc Rivers, and Matthew Rossi

Chair Rogers opened the meeting at 6:00pm.

Minutes There are no minutes to vote on

Old Business Kris Chvatal has nothing to report from the Planning Board's zoning bylaws committee.

RE: EWS Support Trust Appeal

Eva W. Sullivan, Trustee

43 Farm Pond Rd.

Map 17 Parcel 115

The Oak Bluffs Zoning Board of Appeals will consider an amendment to a prior Decision (issued on April 19, 2023) due to a clerical written error regarding square footage of the proposed residence. Applicant(s) previously sought A Special Permit within Oak Bluffs Zoning Bylaws 3.5.5 and XV111.1.A.(7)(a), or any action related thereto, to demolish a pre-existing, non-conforming single family residence and to construct a new single-family residence with associated utilities located in the inland zone of the Coastal District. Applicants requested a special permit to allow the ridge of the new residence to be 27.1' above mean natural grade instead of 24' (3.1' of height relief).

The discussion to amend the April 19, 2023 decision started at 6:05, with Chair Lou Rogers pointing out that this is a discussion about amending the ZBA Special Permit issued to EWS Support Trust (Sullivan) to include the square footage of the approved house renovations.

Bryan Collins provides the updated sizes of the proposed residence: first floor living space is 2,858 square feet, with 456 square feet covered porch, and 384 square feet screened porch. The second floor has 1,878 square feet of living space and 112 square feet of open porch.



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Doug Pease made a motion to approve the revised Special Permit to include the correct dimensions of the previously proposed and approved renovations to the existing house. Andrea Rogers seconded the motion.

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

RE: Loubach Appeal

Carolina Loubach

Melonie Parker (owner)

60 Pennacook Avenue

Map 11 Parcel 73

The Oak Bluffs Zoning Board of Appeals opened a duly posted In-Person Public Hearing on Wednesday, June 21, 2023 at 6:00PM in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of the referenced petitioner(s) seeking: A Special Permit within Oak Bluffs Zoning Bylaw 3.5.5, or any action related thereto, to demolish a pre-existing non-conforming home and construct a new home in the R1 district.

Caroline Loubach is the general contractor for this project. On November 17, 2022, the ZBA issued a Special Permit approving the renovations to the house. Because the existing structure is not strong enough to support the renovations, they are now seeking to demolish the existing structure then rebuild the house according to the approved plans. Copeland has approved the demolition and they have not yet been before Cottage City. The height of the renovated house will be 24 feet seven and three-fourths inches, well below the maximum of 32 feet. The reconstruction is the same as what was approved by the existing Special Permit, but now they are asking to demolish the existing structure.

Matt Rossi points out that the consensus of both Copeland and Cottage City is that the exiting building is not historically significant.

Leslie Fitzsimmons asks whether there is asbestos in the house. Matt Rossi responds that every demolition requires the approval of the Board of Health, and that Board will address the asbestos issue.

There is no correspondence and nobody else wishes to speak.

Doug Pease makes the following findings. The existing 2,614 square foot lot located in Residential Zone 1 is non-conforming (Required 10,000 square feet), the structure is pre-existing non-conforming, the structure will be changed, setbacks to the new structure will be 14.7 feet front 3.5 feet side 2.1 feet side 3 feet rear, the roofline will be 24 feet 7.75 inches, the structure will be altered and replaced by a new building, the project has been approved by Copeland, and the change will not be substantially more



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detrimental than the existing non-conforming structure to the neighborhood because it will be brought up to code.

Doug Pease made a motion to approve the Special Permit to demolish the existing house and replace the house as presented, with the Special Condition that Cottage City approve this project. Grace Guck seconded the motion.

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

Appeal of Building Inspector's Decision

RE: MV Landscaper LLC Appeal

0 Beth Way

Map 56 Parcel 11-1

The Oak Bluffs Zoning Board of Appeals opened a duly posted In-Person Public Hearing on Wednesday, June 21, 2023 at 6:00PM in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of the referenced petitioners seeking: Appeal of Building Inspector's Decision relating to: Storage or Parking of Commercial Landscape Equipment; Erosion Control; Site Plan zbaadmin@oakbluffsma.gov Review; and Temporary Structures under Oak Bluffs Zoning By-Laws 3.2.3.5; 5.4.5; 10.4.1; and 11.0

Attorney Peter Brown opens the presentation by stating that Dana Mylott has been working on plans for this property since 2022, and will be finalizing them and then presenting them to the ZBA soon. The idea uses the edible footprint concept - how to be self-sufficient in small spaces using native plants.

They have gathered 70 signatures on a petition supporting their plans, the property will be open to the public, they will work with the high school horticultural program, and will sell and give away the produce grown on the property. The project will be commercial and sustainable all at the same time. There will also be a housing component: one house with a guest house and one unit of affordable housing.

They received a Notice of Violation from Building Inspector Matt Rossi citing Zoning Bylaws 3.2.3.5 Storage or Parking of Commercial Landscaping Equipment, 5.4.5 Erosion Control Item 1, 10.4 Site Plan Review Item 3, and 11.0 Definitions – Temporary Structures. They say that the current useage of the property is not a zoning violation because everything they have done there is for agricultural purposes and is therefore exempt from zoning. Mr. Mylott is currently planting, cultivating, and growing various plants, trees, and bushes on the property.

The applicant points out that this 60,000 square foot lot is zoned R3, and that his use of the property is covered under Zoning Bylaw Section 11.0, Non-exempt Agricultural Use, which allows small scale agriculture on the property. The permitting process (to



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be initiated soon) for the edible footprint concept will provide for these and other plans, and so they do not need to rectify any of the issues identified by Matt Rossi.

Matt Rossi points out that the first photos of this property are from December 2021, and the previous Building Inspector took a hands-off approach and did not do anything. Matt Rossi says that the zoning violations are clearcut; machinery on the property included a hydro-seeder, bobcats, and equipment storage; thus the property is used as a landscaping yard which can be an *accessory* use of the property, so a Special Permit is needed. It does not make sense for this to be a non-exempt agricultural use. There is no precedent for this in the Town. They have already started to clear significant portions of the lot and it looks to be a commercial use of a residential property.

Bruce Morich points out that right now the work on this property is not in compliance with zoning.

David Grunden says that the property is much improved and looking nicer now than the boats and fishing gear that was previously stored on the property have been removed.

The next speaker's comment was too soft to be recorded properly.

Allan deBettencourt is a neighbor to the east and knows Dana Mylott. However, he points out that the lot is smaller than 2 acres and he wonders who has approved anything that has happened on this property. Matt Rossi responds that he has had preliminary discussions with Dana Mylott but has received no official notification about this project. Matt also points out that there is nothing in zoning about boat storage.

Doug Pease asks whether this should first go to the Planning Board, and he will follow up with Matt Rossi, who will determine which board reviews the project first. He points out that a Special Permit would be needed for the housing.

Allan deBettencourt adds that permits are needed for what is there now and that a cease and desist order should be issued. He mentions other issues with the property - part of the property is in the Island Roads District and another portion of the lot includes an easement from Eversource.

Dianna Louzanna says that these issues need to be addressed now, and that what happens here will affect the whole island. She then asks when everything started on the property. Attorney Brown says that the planting started in 2021, that there are no violations there now, and that it is best to do the permitting rather than enforcement.

Dana Mylott points out that the property was purchased on May 14, 2021, and that he does a lot for the community. He has done lots of networking for this project, including with two members of the Planning Board that have visited the site. He told Eversource that he will be planting \$70,000 worth of plants that will not grow into the wires. He



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showed Kyle Crossland (MV Regional High School Horticulture teacher) what he is doing with the property. The excavators are needed there to turn over the compost. He wants to have employee housing on the property and he has given away \$50,000 worth of firewood this year. He is asking the ZBA to allow him to continue doing this project, but he has not presented his plans to any board because they are not complete yet. He feels that it is okay to do what he is doing on the property now.

Kris Chvatal mentions that he appreciates the vision for the property, but adds that there is a violation notice from Matt Rossi. He asks if the ZBA is okay with the violations that are ongoing on the property; and whether the ZBA is going to back up Matt or not?

Marc Rivers says that everyone should keep an open mind and work together.

Dianna Louzanno asks how many employees Mylott has (10), and whether they all have children. What are the consequences of the violations?

Attorney Brown reminds that the activities are legal because of the definitions in zoning bylaw 11.0, and asks all to proceed cooperatively.

Chair Lou Rogers points out that there are no precedents for this situation.

Grace Guck has two comments: she hears Dana Mylott's vision, but wonders if anything has been removed from the property since the enforcement order. Attorney Brown refers us to pages 2 to 3 of his brief.

Joe deBettencourt, an abutter, says that things have been done on the property without permits, and that there is a lot of equipment still on the property. That means that Dana Mylott is trying to run a business on the property without permission, and that the property has restrictions due to the Island Roads District and an easement from Eversource. He concludes by pointing out that Dana Mylott was told to stop but he has not. Lou Rogers asks Matt Rossi if a cease and desist order was issued.

Matt Rossi responds that no cease and desist was issued, but that what is going on should stop; there should be no more clearing and no more planting. Agriculture use should stop as there are a lot of background issued that need to be dealt with.

There are no other public comments so Lou Rogers closes the public comments section of the meeting.

Lou Rogers says that some correspondence from Eversource is needed to clarify the concerns about agriculture and plantings under the power lines. Andrea Rogers adds that Town Council also needs to review and address these issues, especially as they relate to the definitions in Zoning Bylaw 11.0. Doug Pease adds that it is difficult to



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make a decision without input from Town Council. It is suggested that the ZBA continue this hearing for one month to answer these questions and concerns, and that the applicants really need to come back to the town with their plans for the property.

Doug Pease adds that this property is zoned R3 and is not commercial; the applicant should not be doing what he is doing; further activities should be prohibited until a decision has been reached.

Lou Rogers adds that the activities can not continue on the property for now. Dana Mylott responds that the equipment on the property (rototillers, composters, etc.) are used on the property; the hydroseeder was removed as soon as Matt Rossi's notification was received. He wants to do what is right, and he has not cut down any more trees after receiving the notification.

With a strong suggestion that Attorney Brown's legal briefs are quickly sent to the ZBA, Doug Pease made a motion to continue this hearing to July 19. Andrea Rogers seconded the motion.

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

Appeal of Building Inspector's Decision

RE: Cardoza Appeal

Steven A. Cardoza, Trustee

21 Norris Avenue

Map 16 Parcel 166-0

The Oak Bluffs Zoning Board of Appeals opened a duly posted In-Person Public Hearing on Wednesday, June 21, 2023 at 6:00PM in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of the referenced petitioners seeking: Appeal of Building Inspector's Decision relating to: a Home Business – As of Right under Oak Bluffs Zoning By-Law 3.2.4

The applicant's requested this hearing be continued to next month, so Doug Pease made a motion to continue this hearing to July 19. Grace Guck seconded the motion.

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

Appeal of Building Inspector's Decision

RE: Osse Appeal

Neva & Frantz Osse

21 Norris Avenue

Map 16 Parcel 166



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The applicant's requested this hearing be continued to next month, so Doug Pease made a motion to continue this hearing to July 19. Grace Guck seconded the motion.

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

One motion was made to continue each of the following hearings:

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 in-person Public Hearing on Wednesday, June 21, 2023 at 6:00 pm in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, 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: 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, June 21, 2023 at 6:00 pm 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, 4.4.2 and 3.4.3, or any action related thereto, to build a new detached two car garage with a second floor accessory apartment on a nonconforming 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 opened a duly posted and continued in-person Public Hearing on Wednesday, June 21, 2023 at 6:00 pm in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of the



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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 opened a duly posted and continued in-person Public Hearing on Wednesday, June 21, 2023 at 6:00 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 Zoning Sections 3.5.5 and 4.4.4, or any action related thereto, to renovate a preexisting 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: 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 in-person Public Hearing on Wednesday, June 21, 2023 at 6:00 pm in the Oak Bluffs Town Hall Downstairs Meeting Room, 56 School Street, on the application of the referenced petitioners seeking: A Comprehensive Permit 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 made a motion to continue the above five hearings (Bradley, Cogliano, Donato, Chun and Kim, and Island Elderly Housing) hearing to July 19. Grace Guck seconded the motion.

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

Adjournment.

At 7:55PM, Andrea Rogers made a motion to adjourn the meeting, seconded by Grace Guck. All (Andrea Rogers, Lou Rogers, Grace Guck, and Doug Pease) vote in favor, so the motion passed unanimously (4-0).

Respectfully Submitted,

Robert Culbert

ZBA Administrator

Approved July 19, 2023