



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 July 19, 2023 Meeting

Members present: Llewellyn Rogers (Chair), Doug Pease, Jonathan Holter, Leah Brown, and Grace Guck, ZBA Administrator Robert Culbert

Others in Attendance: Scott Allfonse, Chris Alley, Barbara Alleyne, Fred Collins, Gloria Collins, Matthew Cramer, Casey Decker, Larch Bliss Feen (sp?), Mary Ellen Gomes, Eric Hammarlund, Donna Joyce, Nancy Kluge, Matthew Kramer, Chris Lynch, Naiva Osse, Edward Redd, Shirley Redd, Raynel Rodriguez, T.L. Taylor, Kevin Tunale, Donna Wilmarth, and Matthew Rossi

Chair Rogers opened the meeting at 6:02pm.

Minutes Doug Pease moved to approve the minutes of the April 19, 2023, May 17, 2023, and June 21, 2023 meetings. Grace Guck seconded the motion. All (Lou Rogers, Leah Brown, Jonathan Holter, Doug Pease, and Grace Guck) vote in favor (Jonathan abstained from the May and June meeting minutes), so the motion passed unanimously.

The next meeting will be a Special Meeting on July 25 at 5:00pm. The next regularly scheduled meeting will be on August 16.

Old Business None.

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 and continued In-Person Public Hearing at 6:06PM 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

AND

Appeal of Building Inspector's Decision

RE: Osse Appeal

Neva & Frantz Osse
21 Norris Avenue
Map 16 Parcel 166

The Oak Bluffs Zoning Board of Appeals will hold a duly posted and continued In-Person Public Hearing on the application of the referenced petitioners seeking: Appeal of Building Inspector's Decision relating to: Overnight Parking of Commercial Vehicles and Home Business – As of Right, under Oak Bluffs Zoning By-Laws 3.2.3.6 and 3.2.4



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The ZBA realized that it would make more sense to consider both of these appeals together, as they are both appeals of the same decision by the Building Inspector.

Dan Larkosh is representing the Cardoza's appeal and Eric Hammarlund is representing the Osse appeal.

Dan Larkosh states that the operation of a business in a residential area needs permits from the Town. Also, the owner of the property does not give permission for the business to be there, and did not give the owner of the business a lease to live there. Matt Rossi says that she can do this as a matter of right, but zoning bylaw 3.2.3.6 (overnight parking) is to allow contractors (for example) to come back from work and park in front of where he lives, but is silent about parking as it relates to the actual running of a business; it is not a rational interpretation to think that this allows small bright blue and yellow tour buses to park there and come and go during the work day. The applicant needs a Special Permit from the ZBA to do that.

Eric Hammarlund points out the requirements for then small business are that (1) it must be solely within the dwelling – the buses come and go throughout the day, (2) the business must be a secondary use of the residential property, (3) the business is noisy with the busses coming and going and the frequent sounds of the backup beepers, (4) there can be no exterior indication of the presence of the business, but the blue and yellow vans prominently feature the business name and contact information, and (5) there are two buses and one person cannot operate both buses. He also points out that the buses are too heavy, the bylaw says they must be less than 15,000 gvw, which he claims they are heavier than that.

Matt Rossi produced a document that shows the buses are less than 15,000 gvw, and that Deloris (the owner of the business) is registered to vote in Oak Bluffs, and she has a lease from one of the owners. He contends that this business is allowed as of right, the tour business is home-based with the precedents being painters, carpenters, and contractors who live there but conduct their work on other properties. He adds that not liking something does not mean it is illegal, and Town Council agrees with that. The business owner is covered because the definition of resident/owner mentions residents. And the owner has registered her home business with the Town Clerk, and has a business certificate.

Eric Hammarlund disagrees with Matt Rossi and states that the business owner must be must be both a resident and owner of the property, and adds that this appeal would not be made if the vehicles were not parked there.

Dan Larkosh adds that there are no provisions for exemptions from the home business bylaws; allowing this business will create headaches since the commercial buses are



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parking on the street rather than on the property. He also points out that contractors do not operate their business at their homes, rather, they come home after a day's work.

Leah Brown mentions that now the ZBA is asking for clarifications of the presentations, and are not overlooking the requirements.

Grace Guck asks if the business owner lives there. Yes, she has a lease from one of the owners who has a life estate use of the property, but Dan Larkosh points out that lease is not from the Trustee of the property, who is the sole person to issue leases for the property.

Eric Hammarlund's client Neva Osse lives two door down from this property. She complains that (1) the noise is atrocious, including the beepers for backing up the vans, (2) They work on the buses while parked there, (3) Norris Avenue is a very busy road raising questions about the safety of pedestrians and bicycles, and (4) that the exhaust and fumes from the buses are horrendous. She adds that the directions for applying for a home business clearly states that the business must be operated solely by the owner. Matt Rossi responds that there are no restrictions on home businesses, that the directions on the website are outdated; we must go by the zoning bylaws.

Vivian Beard says that a document submitted is a state application for creating a LLC and is not relevant to this discussion. In September 2022 a third bus arrived, and her complaint was not responded to, although he later stated that the 3rd bus needs a permit. At the time the business owner was registered to vote in Edgartown and the vehicles were also registered in Edgartown. The owner went to the Select Board for a hearing in February but the application was incomplete.

Lou Rogers points out that the ZBA members have all read the correspondence for this case.

Donna Joyce speaks for her daughter, who is a neighbor. She bought her house before the busses appeared, and that in 2018 the buses were not parked on the property but the next year started showing up along Norris Avenue.

Edward Redd says that the only decision the ZBA can make is to overturn the Building Inspector's ruling.

T.L. Taylor is representing an abutter, points out that the Trustee (Cardoza) is the only person that can issue a lease for this property; he did not sign the lease and he wants the buses gone.

Letters opposing the home business were received from Barbara Alleyne, former Police Chief Joe Carter, Michael Culpepper, Jane Edmonds, Theresa and Robert Hasan, Kelly Joyce, Michelle Stent, Gretchen Tucker Underwood, and William and POatricia



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McAfee. All the letters have been read by the ZBA, and several of them were read aloud if the writers had already spoken and agreed that their letter did not add anything new to the discussion.

Matt Rossi apologized to Vivian Beard for not getting back to her – he responded to the complaint with the result that the third bus was not allowed to be there. The business owner submitted an application with the Select Board for a February 14 meeting but it was continued. In the meantime, he met with Town Council Michael Goldsmith and they agreed that the business owner has a lease and that the vehicles meet the less than 15,000 gvw limits from zoning, so he approved the application. The two did not feel that a cease and desist order was necessary.

Dan Larkosh points out that the legal opinion is second hand, that there is no written letter stating his opinions. The presence of livery tour buses does not eliminate the requirement of obtaining a Special Permit.

Eric Hammarlund adds that the zoning bylaws require 100% compliance.

Lou Rogers then closed the meeting for public comments. The following ZBA deliberations followed. He would like to talk to Town Council to clarify his opinions. Doug Pease and Leah Brown agree that Town Council's opinion is needed.

Grace Guck comments that this is a seasonal business.

Jonathan Holter comments that he is focused on the nuisance and noise of the buses rather than what contractors do, as contractors do not have 2-3 busses with back-up beepers.

Leah Brown adds that bylaw 3.2.5 states that Special Permits expire when a property is transferred, that ownership is required but the business operator does not own the property but has a lease. Also, the business certificate has some lines that are not filled in.

Doug Pease points out that we would not like it if this happened on our street, and adds that the operator is not here at this hearing.

Grace Guck questions why this is dragging on.

Lou Rogers suggests that some white noise could be used to cover up the back-up beepers.

Doug Pease makes a motion to overturn the Building Inspectors decision allowing the home business. Jonathan Holter seconds the motion.



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

RE: L+R Realty Trust Appeal

L+R Realty Trust
20 Vineyard Avenue
Map 11 Parcel 232

The Oak Bluffs Zoning Board of Appeals opened an In-Person Public Hearing on the application of the referenced petitioner(s) at 7:43, seeking a Special Permit within Oak Bluffs Zoning Bylaws 3.4.3; 3.5.5 and 7.1.1, or any action related thereto, to: waive the five year occupancy requirement for an accessory apartment; replace a pre-existing non-conforming structure; and convert a single family home to a duplex in the R1 district. R

Chris Alley is representing the L+R Realty Trust, who are seeking to renovate their property to provide three units of staff housing. The setbacks will not conform to the zoning. The single family home on the property is proposed to be divided into a duplex (a 1 bedroom and a two bedroom unit), the setbacks will be improved but still will not be conforming, and they are asking that the ZBA waive the five year owner occupancy requirement for the proposed guest apartment. The duplex will be 17.7 feet from Shawmut and Vineyard Avenues. Engineer John Lolley determined that the house to be divided is not more than 100 years old, and the Martha's Vineyard Commission agreed. The outside of the house will not change, the duplex will only involve the inside of the house.

The Board of Health has determined that there are four bedrooms in the house, and they have approved a replacement septic system for the four bedrooms.

The property lies within 100 feet of the 100 year flood at the 10 foot contour, and the Conservation Commission has approved the project.

Lou Rogers points out that a guest apartment cannot be free standing, and Chris Alley responds that it will be alongside the garage. Lou Rogers responds that it would be best to have the garage underneath the apartment. He also points out that the 5-year requirement can be waved; L-R Realty Trust bought the property over three years – on August 30, 2020 - ago and that previous owners lived there for 20 years.

Doug Pease asks how large the accessory apartment will be. As calculated during the hearing, it is proposed to be 742 square feet, less than the required 750 square feet.

Chris Alley adds that the one bedroom unit in the duplex will be for Oak Bluffs residents.

Jonathan Holter adds that the accessory apartment could be alongside the garage, but the accessory apartment must be an accessory use of the structure.



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Matt Rossi adds that the buildings must resemble the house.

Matthew Kramer lives across the street from this property. His concern is the character of the neighborhood, three dwellings is just too much. He asks if it matters that the proposal is to tear down the house and rebuild as proposed. He asks the applicants to make the architecture consistent with the neighboring architecture.

Doug Pease notes the circular driveway for the duplex and points out that the accessory apartment parking should be similar.

Nancy Cluge adds that the four bedrooms suggest that eight people will live on the property.

Scott Allfinse agrees with neighbor Kramer that three units changes the character of the neighborhood, and asks how the workforce housing can be conditioned to remain workforce housing, and how does one verify that the occupant is qualified for workforce housing. The neighborhood is concerned about housing for transient rather than year-round residents.

Kevin Tunale points out that the area is extremely busy and wonders why it could not be renovated into a four bedroom house as it now is. He is concerned that a neighbor will also divide their house into duplexes, changing the neighborhood. Lou Rogers points out that a Special permit is needed to create a duplex.

The applicant points out that renovating the existing house was not feasible, so they were allowed to demolish the existing house.

Matthew Kramer then points out that a duplex and accessory apartment is very different from a single family four bedroom house.

Lou Rogers hopes that some of the extra rooms do not turn into additional bedrooms, but Matt Rossi responds that the Board of Health can add restrictions to prevent that.

There was no correspondence and nobody else wished to speak, so Lou Rogers closed the public comments section of the hearing.

Doug Pease then asks the applicants whether they would consider changing the design so the housing faces the street and better matches the neighborhood. Owners said they would consider that option.

With that, Doug Pease moved to continue the hearing to August 16, time to be announced. Jonathan Holter seconds the motion.



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

The full slate of remaining hearings on the agenda will be continued, and are as follows:

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 will hold a duly posted and continued In-Person Public Hearing 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 Review; and Temporary Structures under Oak Bluffs Zoning By-Laws 3.2.3.5; 5.4.5; 10.4.1; and 11.0

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.

Jonathan Holter made a motion to continue the above six hearings to August 16, 2023.. Doug Pease seconded the motion.

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

Adjournment.

At 8:30PM, Jonathan Holter made a motion to adjourn the meeting, seconded by Doug Pease. All (Lou Rogers, Leah Brown, Jonathan Holter, Doug Pease, and Grace Guck) vote in favor, so the motion carries unanimously (5-0).

Respectfully Submitted,

Robert Culbert

ZBA Administrator

Approved July 25, 2023