



## 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 September 15, 2022 Meeting Zoom Meeting

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

Others in Attendance: Robin Bagwell, Doug Best, Steven Cherney, Heather Falcone, Emily Ingardia, Mark and Dierdra Morris, Arthur Peabody, Darren Reubens, Chuck Sullivan, Lucy Thompson,

Chair Rogers opened the meeting at 6:07pm.

**Minutes:** There are no minutes to approve.

**Next Meeting Date:** The ZBA agreed that next meeting will be held on October 20, preferably as in in-person meeting providing the technology is sufficient for an in-person meeting.

**New Business:** There is no new business to report.

#### RE: Morris Appeal Mark and Dierdre Morris 5 Pasque Avenue, Map 9 Parcel 49

The Oak Bluffs Zoning Board of Appeals opened a duly posted Public Hearing on **Thursday, September 15, 2022 at 6:05PM** via a Zoom virtual meeting on the application of the referenced petitioners seeking:  
**a Special Permit from the Oak Bluffs Zoning Bylaws Section 3.5.5 to renovate and add onto a pre-existing and non-conforming structure on a non-conforming lot zoned R1.**

Chuck Sullivan is representing Mark and Dierdra Morris. Five Pasque Avenue is a non-conforming lot that runs from Pasque Avenue to North Bluff Avenue. There are quite a few non-conforming lots in this area. The renovated house will not encroach onto Pasque Avenue as the current house does. They propose to add onto the corners of the house along Pasque Avenue, build an addition onto the north side of the house where the existing porch is, and add a new porch with a second floor deck. The rear setback to the house will be 26 feet.

The project has been reviewed and approved by the Copeland District and the Cottage City Historic District. Cottage City approved the 10 foot deck but Copeland approved only a 6 foot deck. The Morris' do not want to do the proposal before the ZBA is for the



## OAK BLUFFS ZONING BOARD OF APPEALS

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

508 693 – 3554 x 120

10 foot wide deck. If the ZBA approves the proposed deck, the applicants will return to the Copeland District and ask them to approve the larger deck.

The property is pretty well vegetated, concealing the deck. The neighborhood already has a lot of decks, as the photographs of the neighborhood show.

The house is proposed to be lifted up with a new ground floor added. The current 1.5 floor house will become a 2.5 floor house. The roofline will be 32 feet above grade and the current house is 22 feet above grade. It is essentially a summer cottage but the Morris' would like to move here year round. Their family is growing and the current house is too small.

Andrea Rogers asks how big the current house is and how large the proposed house will be. Chuck Sullivan responds that the current house is 1,186 square feet and the proposed house will be 2,400 square feet not including the basement. The current house is by far the smallest house in the neighborhood.

Grace Guck asks whether the new taller house would block any views. Chuck Sullivan responds that the Copeland determined that it would not block any views.

Doug Pease asks about how much more non-conforming space this proposal provides. The side setbacks will not change and the front encroachment will be removed so there will be a front setback one foot. The back setback conforms to zoning. This proposal will thus reduce the non-conformity of the house.

Leah Brown asks whether all the new windows will intrude into their neighbor's houses. That has not been looked at. Dierdra Morris responds that currently the neighbor's windows look down into their house. She says that the neighbors verbally approved the plans.

Doug Pease asked about the house being lifted and whether the height will still be 32 feet. Chuck Sullivan responds that the new height includes that change.

Lou Rogers points out that if we will go with the 10 foot deck we will be going against tradition of not opposing another Town Board. Dierdra Morris says that if she had been at the Copeland meeting to explain things she believes that the deck would not have been reduced.

There is no written correspondence concerning this application, and nobody in the public wished to comment either for or against this project. Lou Rogers closed the public portion of this hearing.

Jonathan Holter likes this project because they reduced the non-conformity of the house. He also points out lack of correspondence – nobody opposes this project. The



## OAK BLUFFS ZONING BOARD OF APPEALS

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

508 693 – 3554 x 120

pictures suggest that this project is in line with other houses in the neighborhood. Doug Pease believes that this project will improve the neighborhood. Andrea Rogers agrees with what has been said, as does Lou Rogers and Grace Guck.

Jonathan Holter provided the following findings. The lot is pre-existing and non-conforming as it is only 3,920 sq. ft. and has only 50ft road frontage. Current setbacks are encroaching in front with 5.4s/11.2s/>26r, The proposal removes the front encroachment into the Pasque Avenue right-of-way, with the other setbacks not being reduced.

Jonathan Holter makes a motion to approve the Special Permit under Zoning Bylaw 3.5.5, to renovate and add onto the existing non-conforming structure on a pre-existing and non-conforming lot in R1 after finding that the proposed structure is not more detrimental to the neighborhood and that it fits in line with the neighborhood in terms of height and massing and setbacks. A **Special Condition** is that the Copeland District must approve the 10 foot deck. Doug Pease seconds the motion.

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

**RE: Falcone/Cherney Appeal  
Heather Falcone and Steven Cherney  
113 Circuit Avenue, Map 11 Parcel178**

The Oak Bluffs Zoning Board of Appeals opened a duly posted Public Hearing on **Thursday, September 15, 2022 at 6:45PM** via a Zoom virtual meeting on the application of the referenced petitioners seeking:  
**a Special Permit from the Oak Bluffs Zoning Bylaws Section 4.4.2, 3.4.2, and 3.4.3 to build a garage and upstairs accessory apartment on a conforming lot zoned R1.**

Doug Best of D. Best Construction is representing Heather Falcone and Steven Cherney. They are requesting a Special Permit for the construction of a guest house and garage with a five foot side setback. The existing outbuilding is about 20-25 feet from the side boundary; they want to move the existing building closer to the side boundary and approximately double its size, with access from the rear on Grant Court. The new structure will be 20x22 feet. Pictures presented show the vegetation on the lot that will not be disturbed. The structure will be architecturally consistent with the main house and will be approximately 22 feet tall.

Andrea Rogers comments that the ZBA cannot vote based on the hand-drawn plans presented.



## OAK BLUFFS ZONING BOARD OF APPEALS

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

508 693 – 3554 x 120

Lou Rogers points out that the site plan calls for a Special Permit to go from a 20+ foot setback to a 5 foot setback. That change would require a Variance, which can only be issued for topographic, soils, or hardship reasons. None of those conditions apply to this property. The project needs to be redesigned to stay outside of the 20 foot setback, and if that is done there is no reason to come before the ZBA.

Doug Best requests to withdraw this application without prejudice.

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

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

**RE: Thomson Appeal  
Lucy Thomson and Arthur Peabody Jr.  
17 School Street, Map 11 Parcel 335**

The Oak Bluffs Zoning Board of Appeals opened a duly posted Public Hearing on **Thursday, September 15, 2022 at 7:00PM** via a Zoom virtual meeting on the application of the referenced petitioners seeking:

**a Special Permit from the Oak Bluffs Zoning Bylaws Section 8.1.5 to demolish the existing dwelling and to build a new dwelling that complies with all zoning setbacks on a conforming lot zoned R1.**

Jonathan Holter recuses himself from this hearing, so sitting for the Board will be Andrea Rogers, Lou Rogers, Doug Pease, Leah Brown, and Grace Guck)

Darren Reubens of Breeze Architects is representing the applicants.

The project has been approved by the Martha's Vineyard Commission and the Historic Commission because the house is more than 100 years old. The existing house is non-conforming and the proposed structure will be conforming with 20 foot setbacks on three sides and a much larger setback on the fourth side.

Because it is in a flood hazard area, a French drain system is planned to move roof runoff into the ground. The entire house will be raised up 6 feet to meet the requirements of the flood zone. Part of this area will be a carport. It is a four bedroom house. An existing cesspool will be filled in and the house will be connected to the Town sewer, and there is a letter stating that from the Wastewater Department.

The existing house was not maintained and has many problems, so it will be removed. The proposed house brings in the character of the existing house. The door to the



## OAK BLUFFS ZONING BOARD OF APPEALS

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

508 693 – 3554 x 120

carport will be breakaway as required by the flood zone. A sunroom is on one side of the house.

The proposed building is 28 feet nine inches high.

Lou Rogers asks if there is a letter from an engineer stating that the design will not interfere with the coming and going storm waters, as required by Section 8.1.5.2 of the zoning bylaws. Darren Reubens will submit such a letter to the ZBA.

There is no written correspondence. Emily Ingardia, the neighbor across School Street asks if there is any graphic that overlays and compares the new and existing structures, but she thinks everything looks great. Darren does not have such a comparison other than by comparing the site plans of the existing and proposed structures. She also asks if the shed in the back is going to be removed and the answer is yes.

Nobody else wishes to speak so Lou Rogers closes the public comment section of this hearing.

Doug Pease feels it is a very nice plan, a wonderful addition. All agree with that.

Grace Guck made the following findings. The applicant is seeking a Special Permit under Zoning Bylaw 8.1.5, the 26,136 sq. ft. lot located in Zone R1 is conforming. (10,000 square feet required), the entire property is within the 100 year flood AE Zone and the Floodplain Overlay District, the property is not within the Coastal District, the existing house is non-conforming with front and rear setbacks < less than 20ft, the existing house is to be demolished, the proposed house is conforming with all setbacks (20 ft required), three members visited the site, no written correspondence was received and the one person to speak at the meeting supported the project, the project has been approved by the Martha's Vineyard Commission, a site plan review meeting was held and this project was supported by the Cottage City Historic District, and the Wastewater Department, and this alteration is beneficial to the neighborhood since it makes the property conforming and aesthetically it is a drastic improvement.

Doug Pease moves that we approve the Special Permit under Section 8.1.5 with two Special Conditions: (1) the applicants must submit a letter signed by the Engineer stating that the design will not interfere with the coming and going storm waters, as required by Section 8.1.5.2 of the zoning bylaws, and (2) the project must be reviewed and approved by the Conservation Commission. Andrea Rogers seconds the motion.

All (Andrea Rogers, Lou Rogers, Doug Pease, Leah Brown, and Grace Guck) voted 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: Bagwell Appeal  
Robin Bagwell  
11 Lawrence Avenue,  
Map 8, Parcel 213**

The Oak Bluffs Zoning Board of Appeals opened a duly posted Public Hearing on **Thursday, September 15, 2022 at 7:45PM** via a Zoom virtual meeting on the application of the referenced petitioners seeking:  
**a Special Permit from the Oak Bluffs Zoning Bylaws Section 4.4.4 to convert an existing detached structure into a detached bedroom on a non-conforming lot zoned R1.**

Jonathan Holter recuses himself from this hearing, so sitting for the Board will be Andrea Rogers, Lou Rogers, Doug Pease, Leah Brown, and Grace Guck.

Robin Bagwell purchased the property in 2021. The main structure is not part of this project, and only the inside of the small structure will be changing. Robin Bagwell is only seeking to add a bathroom to the inside of what the Building Department now considers to be a detached structure.

The detached structure already has electricity and its own propane heat. They will need to dig a trench from the structure to the street to pipe in city water. The septic was updated in 2018, and the system is designed for three bedrooms; there are two bedrooms in the main house so this will become the third bedroom. The new bedroom will allow her mother to move in (she currently lives out-of-state).

Lou Rogers talked to the Building Inspector, who said that he could not find any documentation that this was ever permitted to be a detached bedroom and the structure is pre-existing non-conforming. He also comments that the structure must meet building codes for windows, doors, walls, etc., to make sure it is habitable, which may entail extra work for the builder.

With those ideas in mind, Doug Pease has no objections to adding water to the structure and its becoming a detached bedroom. The ZBA may need a continuance here until it hears from the Building Inspector that the building is structurally habitable. Lou Rogers suggests that the ZBA may issue a Special Permit before the habitability is determined by the Building Inspector. Robin Bagwell states that the structure was built in 2000, apparently before a permit was necessary.

Leah Brown suggests that the previous owner built a shed that did not need a building permit. She is asking whether a sitting space is part of a detached bedroom. She also comments that there cannot be a small refrigerator put on the shelves next to the door (or anywhere else), as that is more than a detached bedroom can have. Robin Bagwell responds that there are French doors and the window will be the second egress. The



## OAK BLUFFS ZONING BOARD OF APPEALS

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

508 693 – 3554 x 120

larger open area next to the proposed bathroom will be where the bed or pull-out sofa will be placed.

Leah Brown also is concerned about the requirement that there must be 7,500 square feet of open space on the property. The lot is only 5,227 square feet, so such area does not exist; the ZBA can adjust that requirement (and others) if they so wish. Robin Bagwell states that the structure is only 165 square feet, smaller than the maximum allowed 400 square feet.

Robin Bagwell also points out that the area between the proposed bathroom and the shelving is only three feet wide, not large enough to be a sitting area. That alcove is the walk-in closet.

Doug Pease suggests that we should issue the permit and let the process continue.

There is nobody in the waiting room and there has been no public comment, so Lou Rogers closes the public comment section of this hearing.

Leah Brown submits the following findings. The applicant is seeking a Special Permit under Zoning Bylaw 4.4.4 to convert shed into detached bedroom by adding plumbing and a bathroom, the pre-existing non-conforming lot is 5,227sq. ft. located in Zone R1 is. (10,000 required), the lot has 70ft road frontage (80ft required), the existing house is not changing, the proposed detached bedroom has 1-2 foot side setback, the proposed detached bedroom is on piers and has no water, three members visited the site, there is no correspondence from the public, and this alteration shall not be substantially more detrimental than the existing non-conforming use or structure to the neighborhood because it will be updated to code.

Andrea Rogers makes a motion to approve the Special Permit under Section 4.4.4. Leah Brown seconds the motion.

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

**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 Public Hearing on **Thursday, September 15, 2022 at 8:05PM** via a Zoom virtual meeting on the application of the referenced petitioners seeking:



## OAK BLUFFS ZONING BOARD OF APPEALS

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

508 693 – 3554 x 120

**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.**

The deck has already been built and now they are seeking the required permits. The permitting process is complicated because the deck is located over the leaching field and the entire property is located in the Floodplain Overlay District and is subject to review by the Conservation Commission. Because of these complications, the applicant has requested that the hearing be continued.

Doug Pease makes a motion to continue the hearing until October 20, time to be determined. Leah Brown seconds the motion.

All (Andrea Rogers, Lou Rogers, Doug Pease, Leah Brown, 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, March 17, 2022 at 8:07 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.**

This Martha's Vineyard Commission has approved this Development of Regional Impact with one of the conditions being that the applicant redesign the entire structure for the MVC to review. The applicant has appealed that condition, so the MVC has not yet given final approval for the project.

Doug Pease moves that we continue the hearing to October 20, time to be determined. Andrea Rogers seconds the motion.

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

### **RE: Chun & Kim Appeal**

Eunu Chun and Lisa H. Kim

7 Arlington Avenue





## OAK BLUFFS ZONING BOARD OF APPEALS

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

508 693 – 3554 x 120

### Map 3 Parcel 15

The Oak Bluffs Zoning Board of Appeals will open a duly posted and continued Public Hearing on Thursday, June 23, 2022 at 8:09pm via a Zoom 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.***

This project has been referred to the Martha's Vineyard Commission as a Development of Regional Impact, and we cannot make a decision until their written decision has been received by the Town Clerk. The MVC is deliberating on this as we speak.

Doug Pease moves to continue the hearing to October 20, 2022, time to be determined. Andra 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: Seklecki Appeal

Dan Seklecki

16R Old Schoolhouse Village Road

Map 50 Parcel 9

The Oak Bluffs Zoning Board of Appeals will open a duly posted and continued Public Hearing on Thursday, September 15, 2022 at 8:11pm via a Zoom meeting on the application of the referenced petitioners 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.***

The ZBA has not received the requested revised plans for this project.

Doug Pease moves that we continue the hearing to August 4 at 6:00pm. Leah Brown seconds the motion.

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

### New Business: Certification of Vote 8:13PM

This proposed certification accomplishes two things:



## OAK BLUFFS ZONING BOARD OF APPEALS

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

508 693 – 3554 x 120

1. one person to sign all decisions approved by the Board; currently we need at least four signatures, and
2. the board to sign via electronic signatures; currently only wet ink signatures are permitted.

Jonathan Holter found a document showing that the Edgartown Planning Board has already adopted this. Town Council concurred that this can be done with a vote by the ZBA. It can also be changed at any time with another vote. The process is that the Administrator takes this document to the Town Clerk for her records, and then it gets filed with the Registry of Deeds.

Doug Pease suggests that the Chair be the designated person to sign all the ZBA decisions.

Jonathan Holter make the following motion.

*Effective September 15, 2022, the Zoning Board of Appeals of the Town of Oak Bluffs ("Board") recognizes and accepts the provisions of Chapter 110G of the General Laws regarding electronic signatures, that the Board will henceforth execute documents either with electronic signatures or with wet ink signatures, and that both will carry the same legal weight and effect; and further Effective September 15, 2022, the Zoning Board of Appeals of the Town of Oak Bluffs voted to authorize and permit Llewellyn Rogers to act as sole signatory on behalf of the Board for all forms, plans, and other documents relative to Section 81K through 81GG of Chapter 41 of the General Laws. This authorization supersedes and replaces any previous authorization, and is effective until otherwise revoked.*

Leah Brown seconds the motion.

All (Andrea Rogers, Lou Rogers, Doug Pease, Jonathan Holter, Leah Brown and Grace Guck) voted in favor, so the motion passed unanimously (6-0).

### **New Business: Unanticipated Items 8:20PM**

Leah Brown brings up the fact that our files from the old Town Hall are not documented; we currently do not know what our files include and what the past ZBA decisions are. Robert Culbert had suggested that we create a spreadsheet to summarize the cases and results of these past paper files.

Leah suggests that there must be a better way of learning and summarizing what is in these files. Such a spreadsheet will become outdated if it is not continually updated. There must be some software to capture and analyze all this information.



## OAK BLUFFS ZONING BOARD OF APPEALS

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

508 693 – 3554 x 120

Doug Pease asks how long all this would take. What do other departments do? Can these files be digitized? He suggests that someone should ask Colleen to advise us on how to do this. It is not just the ZBA that needs to do this.

Leah Brown points out that such work needs to be outsourced, that it is not for the ZBA members to do.

We need to find out what to do and then take it to the Select Board to get this done.

### **New Business: Unanticipated Items 8:35PM**

Doug Pease also asks what is going on with updating the Zoning Bylaws (if anything). Lou Rogers points out that it is going nowhere; meetings are held, some meetings are cancelled, and nothing is getting done. Andrea Rogers points out that meanwhile the bylaws are like Swiss cheese which high powered attorneys wheel their way through. Lou Rogers says that things are moving at a snails pace.

We have documented what needs to be done and taken it to the Planning Board, but nothing ever happens. Do we need to take this to the Select Board? Town Council has suggested these updates because it will prevent lawsuits and so save the Town money.

### **Adjournment.**

At 8:45PM, Doug Pease made a motion to adjourn the meeting, seconded by Leah Brown. All (Andrea Rogers, Lou Rogers, Doug Pease, Jonathan Holter, and Grace Guck) voted in favor, so the meeting adjourned (6-0).

*Respectfully Submitted,*

*Robert Culbert*

*ZBA Administrator*

Approved November 17, 2022