

**Zoning Board of Appeals
Minutes of Meeting 1/17/2019
Oak Bluffs Council on Aging Building**

Members present: Andrea Rogers, Peter Yoars, Llewellyn Rogers, Doug Pease, and Jonathan Holter

Members Absent: Joe Re

Also present: Colleen Morris, Zoning Clerk

Chairman Re opened the meeting at 6:05 pm.

***Minutes** from December – Approved with one abstention

***Next Meeting Date:** February 21, 2019 at 6 pm

RE: Rivers Project

Natalie Rivers.

19 Pacific Avenue, **Map 8 Parcel 204**

*On January 17th, 2019 at 6:05 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 8 Parcel 204 seeking:

***A Special Permit within Zoning By-Laws 3.5.5, 4.2.7 or any action related thereto,
to allow the construction of nonconforming additions to a single family dwelling
on a nonconforming lot.***

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, Doug Pease, and Jonathan Holter was present. Elise Elliston represented the applicant. Member Holter disclosed that he represented the applicant six years ago when she purchased the house. The existing (4900 sf) lot located in Residential Zone 1 is nonconforming. The existing SFD is a nonconforming with all setbacks. The proposed additions (56 sf), and porch addition (168 ft.) are nonconforming with front setbacks. Ms. Elliston described before and after sketches of the proposed project. She amended the project and eliminated the rear porch addition which would increase the nonconformity of the rear setback by four feet to the single family dwelling, which is not allowable. Instead she changed the style of egress doors, and installed a landing with steps and a roof.

Chairman A. Rogers opened the floor to public comment. No correspondence was received into the record. Chairman Rogers closed the floor to public comment. The board made the following findings and decision.

Member L. Rogers made a finding that the existing undersized (4900 f.) lot located in Residential Zone 1 is nonconforming. (Req.: 10,000 sq. ft.) The board agreed unanimously.

Member L. Rogers made a finding that the existing single family dwelling is nonconforming with all setbacks. (Req.: 20/20/20 ft.) The board agreed unanimously.

Member L. Rogers made a finding that the proposed the additions- first floor (56sf) and porch addition (168 sf) are nonconforming with front (3 feet) setback. (Req.: 20 ft.) The board agreed unanimously.

Member L. Rogers made a finding that the proposed renovations and construction of additions are not substantially more detrimental to the neighborhood and do not overburden the lot. The board agreed unanimously.

Member L. Rogers made a motion to approve the Special Permit within Zoning Bylaw 3.5.5 to allow the renovations and construction of additions to a single family dwelling and Member D. Pease seconded it. The board voted 4-0 with one abstention to approve the Special Permit.

Member L. Rogers made a motion to approve the Special Permit within Zoning Bylaw 4.2.7 to grant relief from the front setbacks and allow the renovations and construction of additions to a single family dwelling and Member D. Pease seconded it. The board voted 4-0 with one abstention to approve the Special Permit.

Hicks Project

Tracy L. Hicks, Kevin D. Hicks, Hilda M Stevenson Realty Trust
11 First Avenue, **Map 11 Parcels 309, 310, 312, 314**

*On January 17th, 2019 at 6:15 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 11 Parcels 309, 310, 312, 314 seeking:

A special permit within Zoning By-Laws 3.5.5, or any action related thereto, to allow a partial demolition, renovations, and construction of an addition to a pre-existing nonconforming single family dwelling.

A quorum consisting of Chairman Rogers, Peter Yoars Llewellyn Rogers, Doug Pease, and Jonathan Holter was present. George Sourati represented the applicant. Kevin Hicks was present.

He presented plans for a partial demolition and reconstruction of a two-story addition with a basement to a single family dwelling. The existing single family dwelling as built in 1900 and will require OBHC approval for a demolition delay. A Special Permit was approved for the same project in 2014 and has expired. The existing lot (19, 472) is located in Residential Zone 1. The existing two-story, single family dwelling is nonconforming with front (2 ft.) setbacks. The proposed additions 1st floor (1415 sf), 2nd floor (1415 sf) and basement (1415 sf) with a proposed height (27 feet) is conforming with side and rear setbacks and nonconforming with front setbacks 2 feet.

Chairman Rogers opened the floor to public comment. No correspondence was received into the record. Chairman Rogers closed the floor to public comment. The board made the following findings and decision.

Member L. Rogers made a finding that the existing undersized (19, 472) lot located in Residential Zone 1 is conforming. (Req.: 10,000 sq. ft.)The board agreed unanimously.

Member L. Rogers made a finding that the existing single family dwelling is nonconforming with front (2 feet) setbacks. (Req.: 20 feet) The board agreed unanimously.

Member L. Rogers made a finding that the proposed the additions- first floor (1415 sf) and second story addition (1415 sf) and basement (1415 sf) with a proposed height of 27 feet are conforming with side and rear setbacks and nonconforming with front (2 feet) setbacks. (Req.: 20/20/20 ft.) (Max.:32 ft.)The board agreed unanimously.

Member L. Rogers made a finding that the proposed renovations and reconstruction of a two-story addition with a basement are not substantially more detrimental to the neighborhood. The board agreed unanimously.

Member L. Rogers made a motion to approve the Special Permit within Zoning Bylaw 3.5.5 to allow the

demolition, renovations, and reconstruction of a two-story addition with a basement to a single family dwelling and Member P. Yoars seconded it. The board voted 5-0 to approve the Special Permit with the condition the properties must be legally joined.

RE: Ford Project

Monte and Ingrid Ford

90 Munroe Avenue, **Map 3 Parcel 194**

*On January 17th, 2019 at 6:30 pm, Chairman A. Rogers opened a duly posted public hearing to conduct deliberations only on agreed remand from the Dukes Superior Court for further findings on the application of the referenced petitioners seeking:

a Special Permit within Zoning Bylaws 3.4.3, or any action related thereto, to allow the construction of an accessory structure – garage/guest apartment and single family dwelling prior to five continuous years of owner occupation on a conforming lot.

A quorum consisting of Chairman Rogers, Peter Yoars, and Llewellyn Rogers was present.

On October 23, 2017 the Board received an application from William Potter and Harold Mitchell/Squash Meadow representing the applicant and owner of 90 Munroe Avenue, Map 3 Parcel 194, seeking a Special Permit to allow the construction of an accessory structure – garage/guest apartment and single family dwelling prior to five continuous years of owner occupation to a single family dwelling on a conforming lot. On November 16th, 2017, the Board opened a public hearing and continued the hearing to December 21st, 2017. On December 21st, 2017 the Board opened a public hearing and voted to close the public hearing. A motion was made to approve the requested Special Permit, which did not carry by a 1 in favor, 4 against vote. The members who voted against granting the Special Permit were Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Michael Perry. The Board filed a decision with the Town Clerk on December 27, 2017. The Fords filed an appeal to the Dukes Superior Court under G. L. c. 40A, s. 17, which was assigned docket number 1874CV00002.

The Board agreed to a remand to issue further findings/reasons and, on December 21, 2018, the Court issued an order remanding the matter to this Board for further findings/reasons.

The Board reopened the deliberation portion of the public hearing on January 17, 2019, after providing notice to all statutory abutters under the provisions of G. L. c. 40A, s. 11, and adopted the reasons set out below, without taking additional evidence or hearing from additional witnesses.

Michael Perry is no longer a member of the Board, but three of the four members who voted not to approve the Special Permit continue to be members of the Board.

Findings of Fact:

The existing conforming (20,133 sf) lot was vacant at the time of the application.

The lot is located in Residential R-2 district (Req.: 20,000 sf).

The current owners purchased the property in 2017.

The proposed single family dwelling and accessory structure – garage with guest apartment are conforming with all setbacks (Req.: 25/20/20 feet).

Reasons:

1. Section 3.4.2(1) of the Zoning By-law provides, in part, that one condition for obtaining a permit to build a proposed accessory unit is the submission of a “plot plan [showing] the existing dwelling unit” (Emphasis provided.)

2. Section 3.4.2(2) of the Zoning By-law provides, in part, that another condition for obtaining a permit to build a proposed accessory unit, “[t]he house must have been owner occupied by the applicant for the five previous years” (Emphasis provided.)

3. Section 3.4.3. provides, in part, that, “[i]f the applicant is unable to satisfy one or more of the conditions . . . the Board of Appeals may, by special permit authorize such dwelling unit”

4. Section 3.4.3 further provides that “[s]uch special permit may be granted by the Board of Appeals only upon a finding that the construction and occupancy of the apartment will not be detrimental to the neighborhood in which the lot is located and after consideration of the factors specified in Section 10.3”

5. Given that Section 3.4.2(1) refers to an “existing dwelling” at the time of the special permit application – and given that Section 3.4.2(2) states that the “*house* must have been owner occupied by the applicant” – this Board interprets Section 3.4.3 to preclude it from granting a Special Permit to build an accessory apartment before the principal dwelling or house is constructed and established. While the Board may shorten the five year occupancy period required by Section 3.4.2(1) for the construction of an accessory apartment, Section 3.4.3 does not authorize it to grant a special permit for an accessory apartment on a vacant lot simultaneously with the issuance of a building permit for the principal dwelling or house.

6. Even if the Section 3.4.3 does allow the Board to issue a Special Permit for an accessory apartment on a vacant lot contemporaneously with the issuance of a building permit for the principal dwelling or house, the members of the Board who declined to vote in favor of the original motion to approve the Special Permit did so because the applicant did not persuade them that the construction and occupancy of the apartment will not be more detrimental to the neighborhood in which it is located, at this time.

7. The applicants advanced two reasons why they thought Board should grant a Special Permit: a.) the applicants’ mothers’ caretaker is required by contract to have a ‘separate’ dwelling unit; and b.) other accessory apartments existed nearby. The applicants did not, however, offer evidence on any of the other considerations listed in Section 10.3.2 so that the Board could make a “written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood” In particular, the applicants did not provide evidence to show that the social, economic, or community needs which are to be served by the proposal under Section 10.3.2 outweigh the Town Meeting’s decision to impose a waiting period on the developer or new owner of lot, after the principal use or house has been established and occupied, before permitting the construction of an accessory apartment.

Chairman A. Rogers made a motion to approve the reasons contained in this decision by those members who voted to deny the Special Permit under Section 3.4.3 of the Zoning By-Law on December 21, 2017 and Member L. Rogers seconded it. The board voted 3 to 0 to approve the reasons by those members who voted to deny the Special Permit under section 3.4.3 of the Zoning By-Law on December 21, 2017.

Old Business:

Discussion: Stop work order

RE: Biggers Project

Martha and Kelsey Biggers

229 Sea View Avenue

Map 19 Parcel 33

Special Permit granted on Thursday, June 21st, 2018

A Special Permit within Zoning Bylaws 3.5.5, 8.1.5, 9.1.7, or any action related thereto, to allow the partial demolition and reconstruction of a nonconforming two-story single family dwelling located in the Shore Zone/Inland Zone of the Coastal District, and AE Zone of the Flood Plain Overlay District.

A quorum consisting of Chairman Rogers, Peter Yoars Llewellyn Rogers, Doug Pease, and Jonathan Holter was present. George Sourati Chuck Sullivan, and William Reagan represented the applicant. Kelsey Biggers was present.

Mr. Sullivan explained that the building official issued a stop work order on December 28, 2018 for the Bigger's project at 229 Sea View Avenue. The building official received a complaint from an abutter regarding the demolition of the whole existing single family dwelling. The Special Permit allowed a partial demolition of the structure. The contractor explained why the structure was taken down and how the structure would be repurposed. The board referred the applicant back to the building official. The applicant is able to file an appeal to the stop work order by January 28th, 2019.

Meeting adjourned at 7:00 p.m.

Respectfully Submitted,

Colleen Morris, Clerk/ZBA