



## 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 January 21, 2021 Meeting Virtual Meeting via Zoom

Members present: Andrea Rogers, Llewellyn Rogers, Doug Pease, Peter Yoars, Jonathan Holter, Grace Guck, and ZBA Administrator Robert Culbert

Others in Attendance:, Sharon Cooke, Ewell Hopkins, Bruce MacNelly, Maura McGroarty, and William Sullivan.

Chairman Rogers opened the meeting at 6:00 pm.

**Minutes** of the December 17, 2020 Zoom meeting were approved as presented on a motion by Lou Rogers, seconded by Jonathan Holter, and voted unanimously, 5-0, by Andrea Rogers, Lou Rogers, Peter Yoars, Grace Guck, and Jonathan Holter.

**Next Meeting Date:** Thursday, February 18, 2021 at 6:00 pm

**New Business:** Arranging for members to sign decisions. Robert Culbert scheduled for members to come by the Town Hall between 1:30 and 2:00 tomorrow (Friday January 22) to sign continuances and revised and corrected decisions (Warsofsky and Greenskies Solar).

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#### **RE: Kriegstein Project**

Henry J. Kriegstein, Joan B. Kriegstein, Kriegstein Realty Trust  
20 Hubbard Lane, **Map 22 Parcel 11.1**

On Thursday, January 21, 2021 at 6:05PM, Chairman Andrea Rogers opened a duly posted and continued public hearing on the application of Map 22 Parcel 11.1 seeking:

***A Variance and Special Permit with Zoning Bylaws 4.1.3, 9.1.A or any action related thereto, to allow the construction of a nonconforming addition to a single family dwelling located on a lot in Residential Zone 3 and Coastal District.***

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Peter Yoars, Jonathan Holter, and Alternate Member Grace Guck (non-voting) was present. Administrator Robert Culbert read an emailed note from Martin "Skip" Tomassian, representing the applicant, requesting that the hearing be continued for another month, until the ZBA holds an in-person hearing.



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Lou Rogers moved and Peter Yoars seconded a motion to continue the hearing to February 18, 2021, time to be determined. All (Andrea Rogers, Lou Rogers, Jonathan Holter, and Peter Yoars) voted in favor, so the motion passed unanimously.

### **RE: Ashley Appeal**

Glenda Manley Ashley

5 Canonicus Ave., **Map 10 Parcel 153**

On Thursday, January 21, 2021 at 6:07 pm, Chairman A. Rogers opened a duly posted and continued public hearing on the application of Map 8 Parcel 163 seeking:

***A Special Permit within Zoning By-Laws 3.5.5, or any action related thereto, to allow the demolition and replacement of existing two-story single family dwelling on an undersized lot in Residential Zone 2.***

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Peter Yoars, Jonathan Holter, and Alternate Member Grace Guck (non-voting) was present.

Bruce MacNelly reports that he has met with the Cottage City Historic District three times and will be meeting with them again on February 10, 2021. He will be meeting with the Copeland District on February 8, 2021. He asked for another continuance until our next meeting on February 18 so he can get us the decisions from those two boards.

Peter Yoars moved and Lou Rogers seconded a motion to continue the hearing to February 18, 2021, time to be determined. All (Andrea Rogers, Lou Rogers, Jonathan Holter, and Peter Yoars) voted in favor, so the motion passed unanimously.

**New Business: Updating website to include all ZBA decisions.** Administrator Robert Culbert reports that our website does not list any decisions made between 2010 and 2020! He reports that Town Clerk Colleen Morris feels that all the decisions the ZBA has made need to be posted on the website, and that all the decisions need to include their map and lot numbers as those identifiers will not change (addresses and names of owners may change). Adding all this will require going into the files, finding the decisions, noting map and lot numbers, scanning them, and finally posting them on the website. Considerable time will be needed to accomplish this, and access to the necessary files may have to wait until the new town hall is completed.

**New Business: Revising and updating application process.** Administrator Robert Culbert will be continuing to revise and update the process for applying to the ZBA; the revised forms will include the required processes and timelines for holding hearings and writing decisions, and appeals periods.



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### **RE: SAM, LLC Appeal**

Carolyn Sawyer

22 Eastville Ave., **Map 7 Parcel 124**

On Thursday, January 21, 2021 at 6:15PM, Chairman A. Rogers opened a duly posted and continued public hearing on the application of Carolyn Sawyer, Map 7 Parcel 124 seeking:

***a Special Permit within Zoning By-Laws 3.5.5, or any action related thereto, to allow the conversion of a garage into a screened porch attached to an existing one-story single family dwelling in Residential Zone 1.***

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Peter Yoars, Jonathan Holter, Doug Pease, and Alternate Member Grace Guck (non-voting) was present.

Dan Parker, representing the applicant, sent an email saying that he is still waiting for a decision from the Building Inspector.

Doug Pease moved and Peter Yoars seconded a motion to continue the hearing to February 18, 2021, time to be determined. All (Andrea Rogers, Lou Rogers, Jonathan Holter, Peter Yoars, and Doug Pease) voted in favor of the motion, so it passed unanimously.

### **RE: Sullivan Appeal**

William and Kiva Sullivan

20 Wilson Avenue, **Map 3 Parcel 83**

Jonathan Holter recuses himself from this hearing, so Associate Member Grace Guck will sit on this hearing.

On Thursday, January 21, 2021 at 6:30PM, Chairman A. Rogers continued and duly posted public hearing on the application of William and Kiva Sullivan, Map 3 Parcel 83 seeking:

***a Variance or Special Permit within Zoning By-Laws 3.4.2 and 3.5.5, or any action related thereto, to allow the construction of a garage and one bedroom guest apartment with 15-foot side and rear setbacks on an undersized lot located in Residential Zone 2, with the owner having***



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*occupied the residence for less than five years.*

Andrea Rogers read two letters from abutters that oppose to this project.

Helen Skeen lives approximately 100 feet away from this project, across Arlington Avenue. She opposes this Special Permit because of the 5-year residency requirement before being allowed a guest house. She says that other residents of East Chop have waited those five years and so should the Sullivans. She also points out that rental unit is not within the character of the primarily residential East Chop Community.

Marta and Al Van Ranst wrote a lengthy letter opposing this project because they feel that too many accessory apartments are being built before the 5-year residency requirement has been met. They feel that approving this request after the structure has already been built will show that the zoning bylaws are not enforced consistently, thereby eroding trust in the town and its governance. They recognize that affordable housing is an important issue, but they do not feel that the ZBA is supposed to be the arbiter of affordable housing issues. They suggest that the guest apartment might be designated as permanent affordable housing and be administered by the appropriate island authority.

Mr. Sullivan responds to these two letters by pointing out that the building was built legally, and he is now seeking the permits needed to convert the upstairs into a guest apartment, and he has added a doorway to the exterior shell on the ground floor. This application meets all the bylaw requirements except the five year residency, and the bylaw allows Special Permits to be issued if any of the required criteria are not met. Such Special Permits have been granted numerous times to allow a guest apartment within the first five years of occupancy. Given the scarcity of affordable year-round rentals, the ZBA could restrict the rent to affordable rates for the next five years.

Andrea Rogers points out that issuing this special permit sets precedents, and she feels that the bylaws passed in Town Meeting need to be enforced. She also points out that two abutters are opposed to granting this Special Permit.

Mr. Sullivan points out that the direct abutter testified in favor at the December hearing, while the two letters opposing this project are from abutters that live further away, and there is open space and a street between them and this project.

Doug Pease points out that there is a standard of five years where the primary property needs to be inhabited before the accessory building can include a guest apartment.

Andrea Rogers opened the meeting to public comment. Ewell Hopkins, the Chair of the Planning Board, points out that the ZBA has the authority to waive the five-year waiting period. The Planning Board is concerned about the occupancy requirement, and is considering asking Town Meeting to remove that waiting period. He and the Planning Board agree that the ZBA should not deny any applicant solely on the five year period.



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Mr. Sullivan reiterates that he is willing to have the Board add conditions that says that for the next five years the guest apartment will be a year-round rental, the rent will not exceed the affordable rate that the Dukes County Housing Authority establishes, and the tenant will meet the income requirements for affordable housing. The Building Inspector is responsible for enforcing these special conditions.

Mr. Sullivan points out that the guest apartment is fairly small, under 600 square feet, so it is less than the maximum of 750 square feet. A second door has been added to the first floor so the Building Code has been met according to the Building Inspector. Currently the upstairs has no interior partitions.

Lou Rogers points out that as described, the egress meets zoning requirements, but the stairway is really the only entrance/exit to the living area, which could be dangerous. Mr. Sullivan responds that one of the bedroom windows is a legal egress out onto the roof over the first floor porch, and it could be used in an emergency.

Lou Rogers presented the findings for this project. The existing 11,326 square foot lot located in Residential Zone 2 is non-conforming because 15,000 square feet is required. The road frontage of 75 feet is non-conforming since 115 feet is needed. The proposed carport and guest apartment is non-conforming because the side setback is 15 feet and the rear setback is 16 feet, while the required setbacks are 25/20/20 feet (front/side/rear). And the owner has not occupied the house for the required five years.

Lou Rogers moved to approve the Special Permit under Zoning Bylaws 3.4.2 and 3.5.5, allowing the construction of a one bedroom guest apartment with 15 and 16 foot side and rear setbacks on an undersized lot in Residential Zone 2, with the owner having occupied the residence for less than five years. This project is not substantially more detrimental to the neighborhood because this guest apartment will be restricted to affordable housing for five years.

After a discussion, Lou Rogers added the following three conditions to his motion: for five years the guest apartment will be (1) a year-round rental, (2) the rent will not exceed the affordable rate that the Dukes County Housing Authority establishes, and (3) no-one will move into the guest apartment until the owner has fully moved in to the main house.

Doug Pease seconded the motion. All (Andrea Rogers, Lou Rogers, Grace Guck, Peter Yoars, and Doug Pease) voted in favor of the motion, so it passed unanimously (5-0).



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**New Business:** Cooperation between the Planning Board and the Zoning Board of Appeals. Planning Board Chair Ewell Hopkins emphasized that he hopes that the Planning Board and the ZBA will work together to update the Zoning bylaws. The Planning Board is seeking a \$40,000 grant to hire an expert to advise the Town about changes and updates to the zoning bylaws. A subcommittee will be reconstituted, including the ZBA, to bring recommendations back to the Planning Board, and to have consensus between the two boards.

Peter Yoars moved to adjourn the meeting, and the motion was seconded by Doug Pease. All voted in favor, so the meeting was adjourned at 7:30PM.

*Respectfully Submitted,  
Robert Culbert  
ZBA Administrator*

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Approved February 18, 2021