

**Zoning Board of Appeals
Minutes of Meeting 3/21/2019
Oak Bluffs Council on Aging Building**

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

Members Absent: Peter Yoars

Also present: Colleen Morris, Zoning Clerk

Chairman Rogers opened the meeting at 6:05 pm.

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

***Next Meeting Date:** April 18, 2019 at 6 pm

RE: Stanley Brown Appeal

Dhaniany Almeida

138 Edgartown-Vineyard Haven Road, **Map 50 Parcel 34**

*On March 21st, 2019 at 6:05 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 50 Parcel 34 seeking:

an Appeal to review the Building Inspector's lack of enforcement within Zoning Bylaws 3.2.4, 3.2.5, 10.2.2.3, M.G.L. C. 40A ss 8, 15 or any action related thereto, mandating the Building Inspector to issue a cease and desist order regarding the operation of a home-based business-light industrial construction and hardscape business on a property located in Residential Zone 3 and the Island Roads District without a permit.

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Jonathan Holter, and Doug Pease was present. Dan Larkosh represented the applicant. Mr. Larkosh stated that the applicant has appointment next week with the Board of Selectmen, who will make any determination regarding a special permit for a home based business is required. He asserted that Mr. Almeida was operating a home-based business-light industrial construction and hardscape business on a property located in Residential Zone 3 and the Island Roads District without a permit. Chairman Rogers stated that the board wanted a determination from the BOS in order to proceed with the appeal.

The board and applicant agreed to continue to hearing to Thursday, April 18th, 2019 at 6:05 p.m.

RE: Fallon Project

Joseph P. and Pamela P. Fallon

9 Farm Pond Road, **Map 19 Parcel 29**

*On March 21st, 2019 at 6:15 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 50 Parcel 34 seeking:

a Special Permit with Zoning Bylaws 3.5.5, 8.1.5.2, 9.1.A or any action related thereto, to allow the construction of a swimming pool on a lot located in the Coastal District, Flood Plain Overlay District, and Residential Zone 3.

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Jonathan Holter and Doug Pease was present. Tracy Smith of SBH, Inc., Caleb Nicholson and Ted Rosbeck represented the applicant. Ms. Smith presented plans for a swimming pool (15x30 sf) and deck additions (450 sf) to a pre-existing, nonconforming single family dwelling located in a Residential Zone 3, Flood Plain Overlay District and Coastal District. The house is nonconforming with side (41, 47 feet) setbacks. Ms. Smith stated that the project was not in the FPOD because of the elevation. Mr. described the property and the location of the pool and deck additions. The level of the pool is the same as the deck elevations. Fencing will surround the property and the pool. The fence will be made out of black mesh metal squares. Vegetation will be planted up to the edge of the deck. Ted Rosbeck stated that the pool will have a salt water system. A dry well will be installed for pumping out the pool. The proposed time line for installation would start in the fall of 2019 and completed in the spring 2020. Chairman Rogers opened the floor to public comment. An abutter, Mr. Moore asked about the deck locations and fencing. Mr. Moore (ARC of Harthaven) stated the board frowns upon fencing between the property lines. Mr. Nicholson stated that safety fence was required but also they were planting trees for screening as well. Chairman Rogers was concerned that the existing nonconformity was increasing with the deck additions. Ms. Smith stated that the deck could be redesigned. Chairman Rogers closed the floor to public comment. The board suggested that the project should be seen by ConCom first and then the amended project should come back. The applicant agreed.

The board and applicant agreed to continue to hearing to Thursday, April 18th, 2019 at 6:15 p.m.

RE: Maciel Project

Mark D. and Laura Lee Maciel

27 Hitchings Circle, **Map 16 Parcel 162.11**

*On March 21st, 2019 at 6:30 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 16 Parcel 162.11 seeking:

a Special Permit with Zoning Bylaws 3.5.5, or any action related thereto, to allow the construction of a nonconforming accessory structure – a two-story garage located in Residential Zone 1.

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Jonathan Holter, and Doug Pease was present. Member Holter disclosed that he had represented the applicant in the past. Mark and Laura Maciel were present. The existing (10,000 sf) lot located in Residential Zone 1 is conforming. The existing single family dwelling is conforming. Mr. Maciel presented plans for an accessory structure – a two-story (480 sf) garage with storage (480 sf) above. He has no plans for using the structure as a habitable space. He asked for electricity and no plumbing. Member L. Rogers stated that a one-story garage with 500 sf would be conforming and would not require a special permit. The applicant stated that if he moved the garage further back then he would lose his yard space. Member A. Rogers stated that it was not possible to build a nonconforming structure with a special permit. The applicant requested to withdraw the application without prejudice.

The board agreed to allow the applicant to withdraw the application without prejudice.

RE: Snyder Project

Michael and Cathleen Snyder

38 Temahigan Avenue, **Map 4 Parcel 156**

*On March 21st, 2019 at 6:45 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 4 Parcel 156 seeking:

*a Special Permit with Zoning Bylaws 3.5.5, or any action related thereto,
to allow the construction of a three-season porch and addition
to a nonconforming single family dwelling located in Residential Zone 1.*

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Jonathan Holter, and Doug Pease was present. Michael Nania represented the applicant. Mr. Nania presented plans to convert a screened porch to a three-season porch and bathroom. The existing (27551 sf) lot is located in Residential Zone 1, Coastal district and the VE Zone of the Flood Plain Overlay District. The existing single family dwelling is nonconforming with side (1ft., 14 feet) setbacks. A special permit was granted in 2002 to allow renovations and a screened porch. Member A. Rogers stated that the project looked like an increase in habitable space which was not allowed in that Zone. Mr. Nania stated he was not creating more habitable space. Member L. Rogers referred to the original decision of 2002, which states the screened porch cannot be enclosed. Member A. Rogers stated that the proposal looks like a bedroom and bathroom, which is not allowed. Mr. Nania stated the septic was designed for three bedrooms. The board advised the applicant to go the BOH and ConCom first. The board asked the applicant to provide floor plans of the house with dimensions and photographs of the existing screened porch.

The board and applicant agreed to continue the hearing to Thursday, April 18th, 2019 at 6:30 p.m.

RE: B&B Family LLC Project

Alan Bell and Elisa Barnes

71 Ocean Avenue, **Map 10 Parcel 7**

*On March 21st, 2019 at 7:00 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 10 Parcel 7 seeking:

***a Special Permit with Zoning Bylaws 3.5.5, or any action related thereto,
to allow renovations and construction of additions to a nonconforming single family dwelling
located in Residential Zone 1 and Copeland District.***

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Jonathan Holter, and Doug Pease was present. Peter Gearhart (Sullivan and Associates) represented the applicant. Mr. Gearhart presented plans for renovations and small additions to single family dwelling. The existing structure was considered two dwellings and the applicant is converting them into a seven-bedroom single family dwelling. The existing (4555 sf) lot located in the Copeland District and Residential Zone 1 is undersized and nonconforming. (Req.: 10, 000 sf) The existing single family dwelling is nonconforming with front (0.3 ft.) and side (4.5 ft.) setbacks. (Req.: 20 feet) The existing nonconforming shed will be relocated to the other side with a (5.7 ft.) side setback. The proposal includes renovations to first and second floors, fencing, a bike rack in the rear, a garbage can shed enclosure, a chimney, steps with landing/outdoor rinsing station and a rear addition (70 sf)- a covered porch connected to a mudroom. The board was concerned about the close proximity of the side landing/steps with a 1.5 foot setback.

Chairman Rogers opened the floor to public comment. No correspondence was received into the record. Mr. Gearhart mentioned that the project had been approved by Copeland and CCHDC. Chairman Rogers closed the floor to public comment. The board made the following findings and decision.

Member Pease made a finding that the existing undersized (4555s f.) lot located in Residential Zone 1 is undersized and nonconforming. (Req.: 10,000 sq. ft.)The board agreed unanimously.

Member Pease made a finding that the existing single family dwelling is nonconforming with front (0.s ft.) and side (4.5 ft.) setbacks. (Req.: 20/20/20 ft.) The board agreed unanimously.

Member Pease made a finding that the proposed renovations and additions to the existing single family dwelling were nonconforming. The board agreed unanimously.

Member Pease made a finding that the proposed renovations and construction of additions to the single family dwelling including the fencing, relocation of existing shed, a bike rack in the rear, a garbage can shed enclosure, a chimney, side steps with landing/outdoor rinsing station and a rear (70 sf) covered porch are not substantially more detrimental to the neighborhood and do not overburden the lot. The board agreed unanimously.

Member Pease made a motion to approve a Special Permit with Zoning Bylaws 3.5.5 to allow the renovations and construction of additions to a nonconforming single family dwelling including the fencing, a bike rack in the rear, relocation of existing shed, a garbage can shed enclosure, a chimney, side steps with landing/outdoor rinsing station and a covered porch and Member L. Rogers seconded it. The board voted 4 to 0 to approve a Special Permit with the conditions: The side steps with landing/outdoor rinsing station must be approved by the fire chief. The chimney must be built within the existing footprint.

The board approved the Special Permit unanimously with conditions.

RE: Martecchini Project

Mark Frances Martecchini and Laurie Lee Martecchini
20 Old Harbor Lane, **Map 34 Parcel 34**

*On March 21st, 2019 at 7:40 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 34 Parcel 34 seeking:

A Special Permit within Zoning By-Laws 3.5.5, or any action related thereto, to allow the demolition and reconstruction of nonconforming two-story single family dwelling and a conforming one-story accessory building- garage on a nonconforming lot.

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Jonathan Holter, and Doug Pease was present. Stephanie Mashek represented the applicant. This project was approved by Special Permit in May 2018. Ms. Mashek presented amended plans for a complete demolition, renovations and additions to a nonconforming single family dwelling and for the construction of a conforming one-story garage. The existing (20,781 sf) undersized lot is located in Residential Zone 3. The proposed first floor (659 sf) addition is nonconforming with side (17, 44 ft.) and rear (12 ft.) setbacks. The proposed second floor (460 sf) addition has a ridge height of 22.7 feet. The proposed one-story accessory structure – garage (498 sf) is conforming in size and side (22ft.) and rear (13 ft.) setbacks. Ms. Mashek agreed to lower the height of the deck and porch not to exceed 20 inches in height.

Chairman Rogers opened the floor to public comment. A letter from Mr. Forns, Waterview Association was read into the record in favor the project. Mr. Forns spoke in favor of the project. An abutter, Ms. Cooke spoke in favor of the project. Chairman Rogers closed the floor to public comment. The board made the following findings and decision.

Member Holter made a finding that the existing (20,781 sf) undersized lot located in Residential Zone 3 and existing single family dwelling were nonconforming. The board agreed unanimously.

Member Holter made a finding that the proposed one-story garage (500 sf) and the demolition, reconstruction, and additions to the single family dwelling did not overburden the lot and were not substantially more detrimental to the neighborhood. The board agreed unanimously.

Member Holter made a motion to approve the Special Permit within Zoning Bylaws 3.5.5 to allow the demolition, reconstruction, and additions to a single family dwelling and Member L. Rogers seconded it. The board voted 4 to 0 to approve the Special Permit with conditions. Conditions: The deck and porch must not exceed twenty inches from the ground.

Member Holter made a motion to approve the Special Permit within Zoning Bylaws 3.5.5 to allow the construction of a one-story conforming garage and Member L. Rogers seconded it. The board voted 4 to 0 to approve the Special Permit.

Meeting adjourned at 8.00 p.m.

Respectfully Submitted,

Colleen Morris, Clerk/ZBA