

**Zoning Board of Appeals
Minutes of Meeting 5/21/2020
Virtual Meeting via Zoom**

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

Chairman Rogers opened the meeting at 6:00 pm.

***Minutes** from February – Approved unanimously

***Next Meeting Date:** Friday, June 19, 2020 at 6 pm (*due to 6/18 Town Election Day*)

RE: Bitoun Project

Pascal and Kimberly Bitoun
47 Lagoon Road, **Map 12 Parcel 94.0**

*On Thursday, May 21, 2020 at 6:05 p.m. Chairman A. Rogers opened a duly posted public hearing on the application of Map 12 Parcels 94.0, 94.1 seeking:

a Special Permit within Zoning By-Laws 3.5.5, or any action related thereto, to allow the construction of a 215 sq. ft. addition to a pre-existing nonconforming single family dwelling in place of an existing deck on a conforming lot located in Residential Zone 1, the Lagoon Pond District and partially in the Floodplain Overlay District.

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, Doug Pease and Jonathan Holter was present. Applicants Pascal and Kimberly Bitoun were present. The existing (20,540 sf) lots located in Residential Zone 1 are conforming. The existing single-family dwelling is nonconforming with side (9.6 ft.) and rear (11 ft.) setbacks. (Req.: 20 ft)

The proposal is to construct an addition on to a pre-existing nonconforming single family dwelling in place of an existing deck. The proposed addition (215 sf) is nonconforming with existing side setback of 7.1 ft. (Req.: 20 ft.)

Member L. Rogers made the above findings and the board agreed that the proposed addition is not substantially more detrimental to the neighborhood and does not overburden the lot. The board agreed unanimously.

Member Holter made a motion to approve a Special Permit within Zoning Bylaws 3.5.5 to allow the construction of a 215 sq. ft. addition to a pre-existing nonconforming single family dwelling in place of an existing deck on a conforming lot located in Residential Zone 1, the Lagoon District and partially in the Floodplain Overlay District and Member L. Rogers seconded it. The board voted 5 to 0 to approve the Special Permit without conditions.

RE: Staudt Project

Thomas P. and Susan W. Staudt
239 East Chop Drive, **Map 2 Parcel 1**

*On Thursday, May 21, 2020 at 6:15 p.m., Chairman A. Rogers opened a duly posted public hearing on the application of Map 48 Parcel 25 seeking:

*a Special Permit within Zoning By-Laws 3.5.5, or any action related thereto,
to allow the construction of an addition – a two-story guest apartment
to an existing garage located on a lot Residential Zone 2.*

Applicant withdrew the application without prejudice, May 21, 2020.

RE: Kriegstein Project

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

*On Thursday, May 21 2020 at 6:45 pm, Chairman A. Rogers opened a duly posted 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, Peter Yoars, Llewellyn Rogers, Doug Pease and Jonathan Holter was present. Letter received from applicant’s attorney requesting the hearing be continued to the June meeting date.

The board and applicant agreed to continue the hearing to June 19, 2020 at 6:15 pm.

RE: Masciotra Project

Richard J. Masciotra
26 Firehouse Lane, **Map 16 Parcel 191**

*On Thursday, May 21, 2020 at 6:45 p.m., Chairman A. Rogers opened a duly posted public hearing on the application of Map 16 Parcel 191 seeking:

*a Special Permit within Zoning By-Laws 3.5.5, or any action related thereto,
to allow the construction of a nonconforming accessory structure –
garage/guest apartment on a lot located Residential Zone 1.*

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Doug Pease was present. Member Jonathan Holter recused himself. Applicant could not attend but the Masciotra’s real estate attorney Greg Coogan was present. The new owner, David Burgess, was also present. The

existing 11700 sq. ft. conforming lot is located in Residential Zone 1 (10,000 sq. ft.). The existing single-family dwelling is nonconforming with side and rear setbacks (Req.: 20/20/20). The already existing accessory structure is a garage with guest apartment and is nonconforming with side (4 ft.) and rear (9.3 ft.) setbacks. (Req.: 20 ft.)

History: Per applicant, in September or October of 1988 applicants purchased property on 26 Firehouse Lane. Garage was present, outline of apartment and a shower was there. Sellers (the Peters) were supposed to give paperwork with sign-offs. There was a 4+1 septic. Everything was signed and they thought it was okay. The bank and appraisers came and signed off. They finished the apartment. Now it seems the only thing missing was approval from the ZBA which they say they only recently discovered.

According to Greg Coogan, the Peters (the applicant in 1988), did not show for their hearing and as a consequence, the special permit was denied. The Masciotras finished the apartment not realizing it had not been permitted. The Masciotras sold their property on January 30, 2020 to David Burgess.

Hearing was continued from February because they wanted the Building Inspector to weigh in.

Chair A. Rogers said:

- **The ZBA does not have a plot plan with setbacks on it, which they must have.**
- **They need to see pictures of the inside of the garage but they have not been provided.**
- **Because total square footage = 960 sf, the upstairs has to be accessed some other way other than through the downstairs garage, so that you aren't connected because 750 square feet is the limit. And if someday they decide to use the bottom, they cannot. So somehow, the accessory apartment has to be closed off to the bottom.**

Member D. Pease said his understanding is that this project was initially never approved. It is and was completely out of compliance and the board had some sympathy for the buyer because they inherited the problem of the former owners not seeking a permit — but they built anyways. He said he wanted to ask the question that they asked in February: *“Why would we approve something that was illegally built out 30+ years ago. Why would we as a board what was illegally done at that time?”*

Member L. Rogers said he had spoken with the Building Inspector (Tom Perry) who said the ZBA should treat it as a ‘new application’ and that after the ZBA renders a decision that he would go in and do his inspections. Member L. Rogers said this is one of the toughest applications he’s seen. Neighbors had turned out in opposition to them approving it [at last in person hearing in February] — complaining of noise which he had comments on. In addition, the plot plan has no setbacks whatsoever.

- **Noise:** One of the neighbors’ complaints is the noise when on the deck.
- **No setbacks.** The board has no setbacks to view. He guessed that there might be 10-foot setback for the garage and it really should be a 20 foot setback. Further, this makes it over 500 square feet, and therefore nonconforming, even the garage.
- **Deck:** They went to view the property and deck looks like it’s hanging over the [property] line and this is a definite problem. He said that if they were to approve, they should consider a condition of removing completely that deck. The deck is definitely illegal.
- **Access / Egress:** Questions about inside and outside access / egress. stop the access inside, he's going to have to put another outside egress.

- **Additional structures?** When they went to see the property, they found that owner is putting a carport on one side and wanted to know if they had pulled a permit for that carport. In addition there's also a [new] shed with a deck not represented in pictures sent but there is on the plot plan. Did they pull a permit for that? While not relevant to board's findings it would be helpful to know.

Chairman A. Rogers said they're under construction right now with a carport and wondered if the building inspector needed another egress.

Member D. Pease said this is compounding an already illegal building. Based on what he just heard about carport etc. he asked the chair and the board if town counsel has been consulted beyond the building inspector. He said his personal opinion is that this has elevated what was a really crappy situation and thought it would be helpful moving forward that they have updated photographs of the property, including the deck addition and the shed. It appears they are potentially out of compliance, in addition to the 30+ year-ago problem [in front of them].

Member L. Rogers said everybody needs to go visit the site and the applicant can come back to them next month. Get all the setbacks and find out if they've pulled any permits as far as that extra roof on that garage that they're putting on to it and then go from there.

Member D. Pease asked Lou if he was able to discern whether or not permits were pulled for any of the additional things that happened (carport, shed). Lou said he had not and it was not offered.

David Burgess (new property owner) said only thing he had added was the lean-to roof off the side of the garage. He spoke with Tom Perry and said he was under the impression that without walls or floor that a lean-to is not a structure that [must be] permitted. The shed and the deck were here for 30+ years as far as he knew. He said re: the deck with outdoor stairs, there is no other access to or from the first floor besides the garage with a side door. It is an unfinished garage and about three feet off of the property line. He noted the neighbor's studio is against the property line right below the deck.

Chair A. Rogers said the difference is that a shed can be within so many feet; a garage has so many feet. But now it's becoming an apartment and that changes it too. So what was and what is now are different things and it was unapproved as living space, but yet it is now living space so that upper deck is completely illegal. The stairs are okay, needed to get upstairs — those almost don't even count but that deck does.

Member L. Rogers asked where the second egress from the apartment was.

David Burgess said a window. There is no second door, only a slider.

Member L. Rogers said Mr. Burgess would run into problems because you have to pull a permit and you're going to have to think this thing way ahead of the game. It is not going to be as easy as just leaving one egress.

Member D. Pease said the second egress is important but he did not think it appropriate for Dave to be making any modifications until he gets clear guidance from the board and/or the town and/or the building inspector. He wanted to also say, for Dave Burgess' benefit, that he hope he understands that they would do anything they could to help him with the situation, but until things were clarified from a

legal standpoint and a building inspector standpoint, he thought they need to have a continuance until they get more data and information.

Chair A. Rogers agreed, saying again the Board absolutely needs to see the setbacks.

Member P. Yoars said they also need current pictures.

Chair A. Rogers said she thought the building inspector needs to see the lean-to and give them a little more direction. Telling them just to approve or not approve and then he'll do inspections afterwards is kind of putting the cart before the horse. She said she'd really like some more direction from him and thought it would be better to consult Tom than the town attorney, because it's really a building inspector thing, because this kind of thing does happen. People do go 30 years without permits and all of the sudden they want to do something and find out they don't have one. It's not that unusual. She said that she'd like to meet again with the building inspector and let him share it. Let him go there, take another look at the property and then shed some more light on it. Meanwhile, the board will continue the hearing until next meeting in June.

Attorney Greg Coogan said he was looking at the current plot plan and that it does not match the one submitted with the application. He said he would forward it. He also said he thought the photos submitted don't match up with what's there and agreed new pictures were important. He also said he wanted to state just for the record that it was not the prior owner (Masciotras), it was two owners ago (Peters) that was denied. He said they did not [purposely] build this out of compliance. They got stuck with it when they went to sell. The new owner has been gracious enough to go through the purchase and we're here to try to work this out together.

The board and applicant agreed to continue the hearing to June 19, 2020 at 6:30 pm.

Meeting adjourned at 7:20 p.m.

*Respectfully Submitted,
Kim Leaird, Clerk/ZBA*

Approved June 19, 2020