

**Zoning Board of Appeals
Minutes of Meeting 6/20/2019
Oak Bluffs Council on Aging Building**

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

Members Absent: Doug Pease

Also present: Colleen Morris, Zoning Clerk

Chairman Rogers opened the meeting at 6:00 pm.

***Minutes** from May – Approved

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

RE: Arold Project

Kenneth L. and Donna Arold

38 School House Village, **Map 50 Parcel 28**

*On June 20th, 2019 at 6:10 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 50 Parcel 28 seeking:

***a Special Permit with Zoning Bylaws 3.5.5, 4.4.2, 9.1.B or any action related thereto,
to allow the construction of an accessory structure (two-car garage)
on a lot located in Residential Zone 3 and Island Road District.***

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Jonathan Holter was present. Luis D'Agostino represented the applicant. Mr. D'Agostino presented plans for an accessory structure- a one-story two-car garage. The existing (17,031 sf) lot located in Residential Zone 3 and Island Road District is nonconforming. The existing single family dwelling is nonconforming with side and rear setbacks. (Req.: 50 feet) The proposed garage (440 sf) is nonconforming with front setbacks (11 feet) with a ridge height of 13.5 feet. The Island Road District allows a ridge height for a pitched roof up to 24 feet. The applicant's lot fronts two streets and they are seeking a buffer from the noise and traffic from Edgartown-VH Rd. The board and applicant discussed other options and locations for the proposed garage.

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

Member Rogers made a finding that the (17031 sf) lot located in Residential Zone 3 and Island Road District is nonconforming. (Req.: 60,000 sf)The board agreed unanimously.

Member Rogers made a finding that the existing single family dwelling was nonconforming with side and rear setbacks. (Req.:50 feet) The board agreed unanimously.

Member Rogers made a finding that the proposed garage (440 sf) with a ridge height of 13.5 feet is conforming (Max.: 24 feet) and with a front setback of 11 feet is nonconforming. (Req.: 50 feet) The board agreed unanimously.

Member Rogers made a finding that the proposed garage is not substantially more detrimental to the neighborhood and did not overburden the lot. The board agreed unanimously.

Member Rogers made a motion to approve a Special Permit within Zoning Bylaws 3.5.5 to allow the construction of an accessory structure-one-story, two-car garage and Member Yoars seconded it. The board voted 4 to 0 to approve the Special Permit.

Member Rogers made a motion to approve the Special Permit within Zoning Bylaws 4.4.2 to allow the construction of an accessory structure- garage with an eleven foot setback from the street and Member Yoars seconded it. The board voted 4 to 0 to approve the Special Permit.

RE: Sullivan Project

William and Kira Sullivan

31 New York Avenue, **Map 8 Parcel 57**

*On June 20th, 2019 at 6:25 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 8 Parcel 57 seeking:

A special permit within Zoning By-Laws 3.5.5., or action related thereto, to allow the construction of a second story addition to a single family dwelling on a pre-existing, nonconforming lot located on Residential Zone 1.

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Jonathan Holter was present. William and Kira Sullivan represented the applicant. Mr. Sullivan presented plans for two dormer additions to the second floor of the single family dwelling on a nonconforming lot (7550 sf) located in Residential Zone 1. (Req.:10,000 sf) The existing single family dwelling is nonconforming with front (12 feet) side (17 feet) setbacks. The two proposed dormer additions (64.35 sf) and (60.50 sf) are within the existing footprint and ridge height.

Chairman Rogers opened the floor to public comment. No correspondence was received into the record.

An abutter, Ms. Rich spoke in favor of the project but was concerned about construction during the summer months. Mr. Sullivan stated that the bulk of the outside construction would take a week and would be limited to reasonable hours during the day (7 to 5). He wanted to complete one dormer (location of children's bedroom) before the fall when the kids go back to school. He wished to complete the second dormer in the fall after Ms. Rich had left the island. Ms. Rich voiced her concerns of other noise and traffic issues in the neighborhood. Mr. Sullivan stated he understood her problems because he shared the same issues. After discussion, the board felt the Sullivans made several concessions. *Chairman Rogers closed the floor to public comment and made the following findings and decision;*

Member Rogers made a finding that the (7550 sf) lot located in Residential Zone 1 is nonconforming. (Req.: 10,000 sf) The board agreed unanimously.

Member Rogers made a finding that the existing single family dwelling was nonconforming with side (12 ft.) and rear (17 ft.) setbacks. (Req.:20 feet) The board agreed unanimously.

Member Rogers made a finding that the proposed second floor dormer additions (64.35 sf) and (60.50 sf) to the single family dwelling are within the existing footprint and ridge height. The board agreed unanimously.

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

Member Yoars made a motion to approve a Special Permit within Zoning Bylaws 3.5.5 to allow the construction of second floor dormer additions to a single family dwelling and Member Holter seconded it. The board voted 4 to 0 to approve the Special Permit.

RE: Manning Project

Anne Manning

21 Siloam Avenue, **Map 81 Parcel 113**

*On June 20th, 2019 at 6:40 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 81 Parcel 13 seeking:

*A special permit within Zoning By-Laws 3.5.5., or action related thereto,
to allow the renovations and construction of additions
to a single family dwelling on a nonconforming lot located on Residential Zone 1.*

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Jonathan Holter was present. Chuck Sullivan representing the applicant, needed more time to meet with the MVCMA and ConCom and sent a letter requesting a continuance.

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

RE: Snyder Project

Michael and Cathleen Snyder

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

*On June 20th, 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 representing the applicant, needed more time to meet with CONCom and amend the plans. He sent a letter requesting a continuance.

The board and applicant agreed to continue the hearing to Thursday, July 18th, 2019 at 6:45 p.m.

RE: Ford Project

Monte and Ingrid Ford

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

*On June 20th, 2019 at 6:50 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 3 Parcel 194 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
prior to five continuous years of owner occupation on a conforming lot.*

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Jonathan Holter, and Doug Pease was present. Catherine Sullivan represented the applicants. She stated that the proposed application constituted a specific and material change from the conditions of original application which was denied in December 2017. The plans now

show an existing single family dwelling. She stated that the applicant needed to appear before the Planning Board as well. Today the applicant was seeking a vote that there had been a specific and material change from the original application. Chairman Rogers stated that before the board heard the application seeking relief from the five-year requirement of continuous owner occupation, they must address the two-year wait period. The board must consider if the new application substantiates a significant change to allow the applicant to come back prior to the two-year waiting period. Chairman Rogers read into the record from MGL Chapter 40A Section 16 (Final Unfavorable Decisions by Permit Granting Authorities; Reconsiderations; Withdrawal of Petitions for Variance or Applications for Special Permit) Chairman Rogers stated that any decision rendered would still require the Planning Board.

Chairman Rogers reiterated that the board granted permission at the May 16, 2019 meeting for the applicant to reappear before the board prior to the two-year waiting period, which ends December 21, 2019. The board must still consider whether the proposed application constituted a specific and material change from the conditions of original application which was denied in December 2017. Member Holter asked if Town Counsel had been consulted. Chairman Rogers stated yes. Member Yoars asked if the board had acted on the application since the denial in December of 2017. Chairman Rogers answered no. The matter at hand is not the five-year owner occupation but the two-year waiting period since the initial denial. If the board accepts the application as a specific and material change then the application must be referred to the Planning Board. Member Yoars stated that after the Planning Board hears the application then the Zoning board would then consider the five-year owner occupation. Ms. Sullivan stated that the original findings in fact stated that the lot was vacant and that now a single family dwelling exists.

Chairman Rogers opened the floor to public comment. No correspondence was received into the record. The Clerk referred the board members the original decision and findings rendered in December 2017 and clarified that the change from the findings in fact is that the lot is no longer vacant and now a single family dwelling exists. *Chairman Rogers closed the floor to public comment.*

Chairman Rogers reiterated that he board could either vote that the proposed application constituted a specific and material change or not. She reminded the board that the applicant was free to come back in December of 2019 to reapply for relief from the five-year owner occupation requirement. Chairman Rogers stated that the members must decide based on fact that the lot is no longer vacant whether or not that a specific and material change has happened and made a difference to circumvent waiting the year waiting period. Member Yoars asked Ms. Sullivan if the intent was to speed the process up versus waiting until December. Ms. Sullivan stated yes, the applicant wanted to move forward with the process in order to assist applicant's elderly mother who needed a health aide to live with them. Ms. Sullivan stated this was part of the stipulation in order to dismiss the lawsuit. One of the primary reasons for the denial was the fact that the lot was vacant. Now, there is a dwelling which constitutes a significant and material change.

The board reviewed statute MGL Chapter 40A Section 16. The board made the following findings and decision;

Chairman Rogers moved that the Board make a finding that the proposed reapplication is not on a vacant lot and that a single family dwelling exists. The Board agreed unanimously.

Chairman Rogers made motion within M.G.L. Chapter 40 Section 16 to make a finding that specific and material changes in the conditions upon which the previous unfavorable action was based were significant and to allow the applicant relief from the two-year waiting period. The Board voted 2 to 2 to endorse the proposed finding that specific and material changes in the conditions upon which the unfavorable action was based and to allow the applicant relief from the two-year waiting period. The motion did not carry.

The board referred the application to the Planning Board.

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

RE: Brooks Project

Laurie H. Brooks

343 Barnes Road, **Map 27 Parcel 9**

*On June 20, 2019 at 7:15 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 27 Parcel 9 seeking:

a Special Permit with Zoning Bylaws 3.5.5, 9.1.A, or any action related thereto, to allow renovations and construction of additions to a pre-existing nonconforming single family dwelling located in Residential Zone 3, Flood Plain Overlay District -VE Zone and the Shore Zone of the Coastal District.

A quorum consisting of Chairman Andrea Rogers, Llewellyn Rogers, Jonathan Holter, and Peter Yoars was present. George Sourati represented the applicant. Mr. and Mrs. Brooks were present. Mr. Sourati presented plans for a partial demolition of an existing mudroom, porch and deck and for the reconstruction of a mudroom, screened porch and deck addition to a single family dwelling located in the Residential Zone 3, the Flood Plain and Coastal District. The proposed project as approved for a Special Permit May 16, 2019 with conditions.

The existing (41500 sf) lot is nonconforming and is partially located in the Shore Zone of the Coastal District and partially located in the VE Zone of the Flood Plain Overlay District. The entire dwelling is in the Shore Zone and is nonconforming with side setbacks (14 and 42 ft.). The amended project includes the construction of a mudroom (104 sf)/screened porch addition (389 sf) and deck (59 sf). The condition that the deck elevation could not exceed 30 inches in height would be difficult to achieve based on the slope of the topography. The amended plan has a side setback on 15 feet. The roof overlaps the screened porch and not the deck.

Chairman Rogers opened the floor to public comment. An abutter, Mr. Williams sent a letter and spoke in favor of the project. Chairman Rogers closed the floor to public comment and the board made the following findings and decisions;

- Chairman Rogers made a finding that the existing (41500 sf) lot located in Residential Zone 3, partially within the Shore Zone of the Coastal District and VE Zone of the Flood Plain was nonconforming. (Req.: 60,000 sf)*
- Chairman Rogers made a finding that the existing single family dwelling was nonconforming with side setbacks (14, 42 feet). (Req.: 50 feet)*
- Chairman Rogers made a finding that the proposed addition-mudroom (104 sf) with screened porch (389 sf) and deck (59) was nonconforming with side (15 feet) setbacks. (Req.: 50 ft.)*
- Member Rogers made a finding that the proposed addition was not substantially more detrimental to the neighborhood and did not overburden the lot.*

Vote:

Member Rogers made a motion to amend the Special Permit within Zoning Bylaws 3.5.5 to allow the construction of a mudroom (104 sf), screened porch (389 sf) and deck addition (59 sf) and Member Holter seconded it. The board voted 4 to 0 to amend the Special Permit issued May 2019.

Member Rogers made a motion to amend the Special Permit within Zoning Bylaws 9.1.A.6.a.i to allow the construction of a mudroom (104 sf), screened porch (389 sf) and deck addition (59 sf) and Member Holter seconded it. The board voted 4 to 0 to amend the Special Permit issued May 2019.

Meeting adjourned at 7:45 p.m.

Respectfully Submitted,

Colleen Morris, Clerk/ZBA