

**Zoning Board of Appeals
Minutes of Meeting 8/20/2020
Virtual Meeting via Zoom**

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

Members absent: Jonathan Holter

Chairman Rogers opened the meeting at 6:00 pm.

***Minutes** from July 16 – Approved unanimously

***Next Meeting Date:** Thursday, September 17, 2020 at 6 pm

RE: Kriegstein Project

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

*On Thursday, August 20, 2020 at 6:05 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, and Doug Pease was present. Applicant requested the hearing be continued to the September meeting date. However, if the ZBA is still meeting virtually, they request that it be continued to such time the ZBA holds an in-person hearing.

The board and applicant agreed to continue the hearing to September 17, 2020, time to be determined.

RE: Masciotra Project

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

*On Thursday, August 20, 2020 at 6:05 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. Present for the applicant was Lisa Lucier and Geoghan Coogan. Also present was current owner David Burgess.

The board reviewed the new plot plan received July 29, 2020. The guest apartment has been in use for 30 years without being permitted. The ZBA denied it in 1988 and now the property is on its third or fourth generation of owners and they are looking for a special permit to allow the apartment to legally exist.

Member L. Rogers said the new plot plan gives more detail, but it's not 100% right. It's missing a few setbacks that were on previous iterations but it does have new ones they requested. The 5.1ft setback gives dimension from shed to side plus steps (approx. 40 inches). If you add that, side is approx. 9 ft. The second story deck has no dimensions. He said he would not approve this in any way with a deck on second story. He finds it to be detrimental to the neighborhood (as evidenced by neighbors complaining of noise). He said he understood the building inspector got involved and they talked about a second egress being needed, but that is not in the ZBA's purview.

David Burgess, current owner, said on the previous plot plans it did show the garage met the 10ft setback. The new plan shows that the upper deck setback is 3.7ft, but the actual garage meets the setback except for the back corner that is 9.7ft. He also wanted to clarify that the original permit was denied in 1988 because the applicant did not show up for his hearing. He said he's not sure how to rectify the situation, but he's willing to reduce the upper deck to be more code-compliant (it's a 5'x12' deck). He purchased the property assuming it was a permitted apartment and then after some due diligence, found out that was not the case. He referenced two similar cases approved by the ZBA in May and July of 2018.

Lisa Lucier gave more history. The Masciotras bought the property on Sept 30, 1988. Previous owner (Kevin Peters) applied to go in front of ZBA on Sept. 11, 1988 (2 weeks before he sold house). The Masciotras bought the property and they assumed the garage apartment was permitted. There were no neighbors around then. This was all done 32 years ago. They didn't have any knowledge of it not being permitted and they've been assessed as a multifamily property. In addition, Board of Health papers show 4 bedrooms with a 1BR guest apartment.

Geoghan Coogan said to be clear – there's a 2001 plot plan that has in its references that the setbacks adhered to zoning bylaws at the time. He said it's really the use that's in front of the ZBA vs, the dimensions, and whether the use is detrimental to the neighborhood or not.

Member D. Pease said one of the biggest problems with this property is the noise that the neighbors experience. This is an important consideration whether or not this guest apartment is detrimental to the neighborhood. He said looking at the plot plan and seeing how close the second story deck is to the side — if he were the neighbor he'd be upset with all the noise.

Member L. Rogers said he agreed. He is going with the new plot plan because it has a setback of 9.3ft. The concern is the deck: if it were just a small landing, it would not be a part of the structure. He said he would like to see the deck removed and replaced with a standard landing. The rest of the ZBA agreed — then it becomes a building inspector issue.

Member L. Rogers made the following findings:

- The existing 11,700 sq. ft. lot located in Residential Zone 1 is conforming. (Req.: 10,000 sq. ft.)
- The existing SFD is nonconforming with side and rear setbacks. (Req.: 20/20/20).
- The house is nonconforming with side setbacks of 3.4 ft. (to deck) and 10.1 ft.
- The existing accessory structure: garage/with guest apartment is nonconforming with side (9.3 ft.) and rear (3.8 ft. with deck) setbacks. (Req.: 20 ft.)

Member L. Rogers made a motion to approve a Special Permit within Zoning Bylaws 3.5.5 to allow the current use of the accessory garage apartment, reading:

“No pre-existing non-conforming uses and structures shall be changed, moved or extended and no pre-existing non-conforming uses and structures or buildings shall be altered or enlarged or replaced by a new building except as permitted in Section 3.5.4, 3.5.6 and G.L. c. 40A, s.6 unless, upon application to the Board of Appeals for a Special Permit, the Board of Appeals has made a finding that such change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use or structure to the neighborhood.”

He moved that it is not more detrimental to the neighborhood on the condition that no second story deck will be allowed anywhere around the garage and the deck currently there will be removed and changed to a standard landing that will be approved by the building inspector.

Member D. Pease seconded. A roll call vote was taken and the board voted 4 to 0 to approve the Special Permit with the condition as stated.

RE: Schawbel Project

Josh Schawbel, Eulalie M. Lee
52 Eastville Avenue, **Map 7 Parcel 119**

*On Thursday, August 20, 2020 at 6:30 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 7 Parcel 119 seeking:

a Special Permit within Zoning By-Laws 3.5.5, 9.1.A and 8.1, or any action related thereto, to allow the demolition of an existing single family dwelling and detached garage, and reconstruct a two-story single family dwelling on the property located Residential Zone 1, Flood Plain Overlay District, and Coastal District -Inland Zone.

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Doug Pease was present. Present for the applicant was George Sourati.

Per Zoning Bylaw 8.1.7, a site plan review was held on August 19, 2020. Those minutes are attached.

Zoning Clerk summarized their findings. Member D. Pease said he read the minutes from the SPR but it seemed like what it boiled down to is that Liz Durkee is citing the pilings vs. the flood vents. He asked George Sourati to explain from an engineering point of view.

G. Sourati said that the lot in question is a 28,000sf. over-sized lot in the R-1 district. The current house and one car garage is uninhabitable. Contour 10 or Elevation 10, goes through the middle of the property — so a portion of property is below elevation 10, the other is above elevation 10.

There are two types of flood zones, one is a velocity zone (VE with waves that can reach 3 ft high) and the other is the A zone (waves are 1 ft or lower). This property is in an A zone.

While FEMA and state building code require that buildings in the V zone be built on pilings and be 2 feet above flood zone, the A zone is a still water zone. Waves do not reach more than 1 feet. FEMA and state building code allow a crawl space basement (4ft deep) in the A zone. In addition flood vents are required to be incorporated in the foundation. Should we get a huge hurricane, the flood vents allow water under the structure. In the A zone, the preference is to make a standard crawl space with flood vents because it is easier to winterize the house. You can't put any mechanicals in crawl space. This is why owner wanted to go with a standard foundation and it is allowed by FEMA and the state building code.

Member D. Pease asked him to comment on why Liz still wants it on pilings.

G. Sourati said that the Conservation Commission just has a preference for pilings, they believe water should be able to recede.

Member D. Pease said that from an erosion standpoint in this zone the plans if they're complied to would satisfy Conservation. George said he could not comment on that, but the foundation they designed is in compliance with state building code and FEMA regulations. They made the same argument at the ConCom's hearing and they approved the foundation plan.

Member L. Rogers made mention that the Planning Board chair had expressed concern about erosion control under 5.4.5. The board unanimously felt the Conservation Commission had addressed erosion in their order of conditions / approval.

Member L. Rogers asked if George had written an engineering letter as required under Bylaw 8.1.5.2 stating that there won't be an increase in velocity. George Sourati said they would send a letter the next morning.

Member L. Rogers made the following findings:

- The proposed construction is conforming with front, side (21) and part of rear (31) setbacks (Req.: 20 ft.)
- The portion of the existing lot is located in the 100 Year Flood Zone (AE) in the Floodplain Overlay District
- Per Bylaw 8.1.7, a site plan review committee reviewed this plan on August 19, 2020 and all issues brought up were addressed.

Member L. Rogers made a motion to approve a Special Permit within Zoning Bylaws under 3.5.5, 8.1 and 9.1A, finding that the proposed plans are not detrimental to the neighborhood. In doing so, he asked George Sourati to provide a letter confirming there would not be an increase in velocity.

Member D. Pease seconded. A roll call vote was taken and the board voted 4 to 0 to approve the Special Permit with the condition as stated.

Abutter Pam Bunker asked if she could make a comment about the application. She wondered if there was a screen plan or a fence because they are close to each other. Chair A. Rogers said the Conservation Commission had reviewed and applied extensive conditions. Member D. Pease said the building plans are built within setbacks. He said the ZBA only looks at height and setbacks – they have no purview on screening and fencing.

RE: Nania Project

Michael Nania
28 New York Avenue, **Map 8 Parcel 163**

*On Thursday, August 20, 2020 at 7:00 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 8 Parcel 163 seeking:

a Special Permit within Zoning By-Laws 3.4, or any action related thereto, to allow the demolition of an existing accessory structure - a nonconforming one-bedroom guest apartment, and reconstruct a nonconforming two-story 597 sq. ft. guest apartment on a nonconforming lot located in Residential Zone 1.

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Doug Pease was present. Applicant Michael Nania was present with legal counsel Andy Zaikis.

There was no correspondence.

Member L. Rogers said regarding the plot plan submitted should have a red overlay with the proposed construction clearly indicated — a before and after in one drawing so they can see what exists and what is proposed. There are two decks and a set of stairs and he thought applicant needed to do more homework.

Michael Nania said it's 18'x20' and he is planning to remove the rear deck. He asked to read a personal statement on his desire to construct a two-story guest apartment as a senior citizen. He also said that he had spoken to his neighbor (Bill McGrath) who is supportive of his plans.

Member L. Rogers said that being built in 1901, he believes it needs to go through the Historic Commission to get their comments.

Member D. Pease said it would be helpful to see a letter from neighbor Bill McGrath.

Member L. Rogers asked for clarification of the height and to include it on plan, saying that the more dimensions he could include the better.

The board and applicant agreed to continue the hearing to September 17, 2020, time to be determined.

The board had received an invite from Alex Elvin at the Martha's Vineyard Commission to participate in their climate action plan meetings. Lou Rogers said he would give him a call.

Member P. Yoars made a motion to adjourn. All were in favor.

Meeting adjourned at 7:20 p.m.

*Respectfully Submitted,
Kim Leaird, Clerk/ZBA*

Approved September 17, 2020