

11 Crescent Road
Oak Bluffs, MA 02557

Oak Bluffs Zoning Board of Appeals
Attn: Robert Culbert
PO Box 1327
Oak Bluffs, MA 02557

December 13, 2021

Dear Mr. Culbert,

This letter is regarding the Halcott Grant application for a special permit for the proposed use of the structure located at 16 Atlantic Avenue.

We write in opposition to the appeal for the following reasons. First, the applicant applied for the special permit to Zoning Bylaw 4.4.4 pertaining to “construction of an accessory structure-detached bedroom/workshop on a lot located in Residential Zone 2” in May of 2019. At that time, the applicant was made fully aware of the requirements surrounding Bylaw 4.4.4 (see below). Specifically, the requirement that the structure may not contain a stove or refrigerator, bathroom plumbing only and living space being no larger than 400 ft².

In any residential district, a detached bedroom is allowed by Special Permit issued by the Board of Appeals. A detached bedroom is defined as either a free-standing structure or a bedroom over a non-habitable accessory structure with all of the conditions set forth in Section 3.4.2 and the following:

- 1. Bedroom and bathroom only*
- 2. No sitting room(s), no entrance alcove(s), no hallways*
- 3. Living space to be no larger than four hundred (400) square feet, including but not limited to bathroom, closet(s) and enclosed porches*
- 4. Bathroom plumbing only. Only one (1) each hand sink, toilet and tub/shower*
- 5. No stove or refrigerator*
- 6. There must be at least seven thousand five hundred (7,500) square feet of open space on the lot which is unpaved and unoccupied by any structure*
- 7. Building Official is allowed right of entry for compliance inspection*

There appear to be several concerns where the applicant understood the zoning bylaws, but chose to not to follow them. For example:

- a. Including a designed kitchen in the structure violate rule # 1 above.
- b. The original plans indicate that the footprint of the structure is over 700 ft². The zoning bylaws limit the “living space” of a detached bedroom to 400 ft² or less. Based on the photos, the entire 1st floor is living space in excess of the 400 ft² maximum required in rule # 3 above.
- c. The attached photos show a dishwasher which would require plumbing above and beyond that of a bathroom violating rule #4 above.
- d. Based on the attached photos (from Zillow), this was not simply a case where kitchen appliances were added to the space after the fact. It is clear the applicant designed plans for a full kitchen in a “detached bedroom/workshop” violating rule #5 above.

Secondly, we are aware that the property in question (16 Atlantic Avenue) is currently for sale. We understand and support that exceptions should be considered if special circumstances exist or by not granting a waiver creates an undue hardship for the applicant. In this case, the only extenuating circumstance is that the current owner is trying to sell the property and requires final Certificate of Occupancy for the detached bedroom. In its current configuration the detached bedroom does not meet zoning ordinances and should not be marketed as such. It is apparent that the owner created the hardship by not adhering to the zoning bylaw in the first place.

Unfortunately, this is a clear case of ask for forgiveness rather than permission. Granting this appeal will have a negative impact because allowing this variance will perpetuate the perception that zoning bylaws are not followed or enforced consistently, that builders can violate the rules without penalty, and will also impact future compliance by other builders. Simply, it erodes trust in the town and its governance.

We appreciate the difficult decision that you need to make. We thank you for your vigorous defense of the bylaws and for your service to the town.

William and Lisa MacArthur



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