



**WINOKUR, SERKEY & ROSENBERG, PC**  
COUNSELLORS AT LAW

October 13, 2016

RECEIVED  
OCT 14 2016

Mark Barbadoro  
Building Inspector/Zoning Enforcement Officer  
P. O. Box 1327  
Oak Bluffs, MA 02557

O. B. BUILDING DEPT.

Re: Guest house at 14 South Street, Map 8, Parcel 199.1

Dear Mr. Barbadoro:

I represent Keith D. Murphy and Lori N. Murphy, Trustees of the Murphy Family Trust, owners of the single family dwelling located at 10 Davis Avenue, Map 8, Parcel 199. This letter is sent, pursuant to G. L. c. 40A, § 7, to demand that the provisions of the Oak Bluffs Zoning Bylaw be enforced with respect to the guest house at 14 South Street, Map 8, Parcel 199.1, owned by John J. Zarba and Susan L. Lemoie-Zarba.

1. According to the plan entitled: "Plan of Land in Oak Bluffs, Mass. Prepared for The Town of Oak Bluffs Scale 1" = 20" September 26, 2016 Vineyard Land Surveying & Engineering, Inc." (Exhibit A), the guest house is 17.9 feet from property of the Town of Oak Bluffs.

The minimum yard requirement in the R1 Zoning District is 20 feet.

2. The building permit that was issued for the guest house on October 13, 2015 was contrary to the provisions of Section 3.4 of the Oak Bluffs Zoning Bylaw (Accessory or Guest Apartments) (Exhibit B):

- a. Section 3.4.1 (Purpose) provides as follows:

"For the purpose of (a) providing small additional dwelling units to rent without adding to the number of buildings in the Town, or substantially altering the appearance of the Town, (b) providing alternative housing options for elder residents, and (c) enabling owners of single family dwellings larger than required for their present needs, particularly elderly homeowners, to share space and the burdens of home ownership, an accessory or guest apartment is a permitted use in the R1, R2 and R3 Districts, Subject to [seven listed] conditions" (Emphasis added)

The Zarbas' guest house added to the number of buildings in the Town; it was not an existing building. (See also Section 2 (c) below.)

81 SAMOSET ST., PLYMOUTH, MA 02360 | TEL: (508) 746-1023 | FAX: (508) 747-6967  
RSERKEY@WINOKURLAW.COM

---

RICHARD M. SERKEY, LLOYD C. ROSENBERG, BRIAN K. BOWEN, HOWARD M. KELMAN, MARTHA J. AWISZUS  
RYAN J. MATTHEWS, ASSOCIATE; OF COUNSEL: LAWRENCE I. WINOKUR, FREDERICK KUHN  
REUBIN M. WINOKUR, FOUNDER (1908-2004)

b. Condition 2 provides as follows:

"The house must have been owner occupied by the applicant for the five previous years and must continue to be owner occupied after the conversion is allowed. An affidavit shall be provided stating that one of the two dwelling units shall be occupied by the owner of the property, except for bona fide temporary absence; seasonal occupation by the owner shall not disqualify the applicant."

The affidavit submitted by the Zarbas failed to disclose the fact that they own property at 111 Oak Lane, West Tisbury (Exhibit C) which contains a single family dwelling with a detached accessory apartment, as defined in Section 4.4-3 of the West Tisbury Zoning Bylaw (Exhibit D), a use which is allowed by special permit in West Tisbury subject to 8 listed conditions, the first of which is the following:

"1. The lot, dwelling and apartment shall be in single ownership and the owner must occupy either the principal or accessory unit. The owner must be domiciled year-round in West Tisbury. At no time are both the principal and accessory units to be rented." (Emphasis added)

The Zarbas received a special permit for their West Tisbury property following a hearing on September 22, 2011, the minutes of which contain the following statement:

"John Zarba said he is aware of the conditions placed on an accessory apartment" (Exhibit E).

The Zarbas' claim that their Oak Bluffs property was owner occupied for the required five year period, and remains owner occupied, is directly at variance with their representations and obligations regarding their West Tisbury property. It is also at variance with Mr. Zarba's voting record at the Oak Bluffs Town Clerk's office (Exhibit F).

c. Condition 3 provides as follows:

"Not more than one accessory apartment may be established on a lot. The accessory apartment shall not exceed 750 sq.ft. in floor space and shall be located in the principal residential structure on the premises or in an accessory structure." (Emphasis added).

This condition, when read in conjunction with Section 3.4.1 above, demonstrates that an accessory apartment can be located in a detached building – provided, however, that that building was already in existence when Section 3.4 was adopted. That was obviously not the case with the Zarbas' guest house.

d. Condition No. 4 provides as follows:

"There must be at least 7500 square feet of open space on the lot which is unpaved and unoccupied by any structure."

It is unclear whether this condition has been met based on the September 26, 2016 survey.

e. Condition No. 6 provides as follows:

"Sufficient and appropriate space for at least one (1) additional parking space shall be constructed by the owner to serve the accessory apartment. Said parking space shall be constructed of materials consistent with the existing driveway and shall have vehicular access to the driveway. (Emphasis added).

The driveway to the Zarbas' guest house comes from Davis Avenue. The driveway to their main house comes from South Street. The driveway materials are not consistent with each other.

3. Section 3.4.3 (Special Permit) provides as follows:

"If the applicant is unable to satisfy one or more of the conditions set forth above, the Board of Appeals may, by special permit authorized such dwelling unit. Such special permit may be granted by the Board of Appeals only upon a finding that the construction and occupancy of the apartment will not be detrimental to the neighborhood in which the lot is located and after consideration of the factors specified in Section 10.3 of this Zoning Bylaw, governing special permits." (Emphasis added).

The Zarbas should be required to apply for a special permit, in order that the Board of Appeals can determine whether or not the construction and occupancy of the guest house was detrimental to the neighborhood in which

their lot is located and after consideration of the factors specified in Section 10.3 of this Zoning Bylaw, governing special permits.

In the meantime, the Zarbas' temporary occupancy permit should be revoked - thereby enabling them to finally honor their obligation to the Town of West Tisbury by occupying as their domicile one of their dwelling units at 111 Oak Lane, West Tisbury.

I assume you will forward a copy of this letter to the Zarbas on or before the time you respond thereto.

Very truly yours,



Richard M. Serkey

