

Zoning Board of Appeals
Minutes of Meeting 12/17/2009
Oak Bluffs Town Council on Aging Building

Members present: Kris Chvatal, Chairman, Peter Palches, Derek Tipton, George Warren,
Also present: Associate Members Andrea Rogers & Peter Yoars. Adam Wilson, Zoning Administrator & ZBA Clerk.

The meeting began at 6:00 pm. The minutes from November 19th were discussed for approval.
A motion was made and seconded to accept the minutes from November 19th.

The Board voted 6– 0 to approve the minutes from 11/19/2009

-The Board agreed to meet again in December on the 21st.

-Adam showed the board members revised building plans for the Felton project on 16 Samoset Ave.
Members signed off on the plans for the specially permitted addition given to Felton back in November.

-There was discussion on the proposed new by-law for wind energy generating systems and the meeting that occurred with the Planning Board. The Planning Board is going to take a month to look over the new regulations and will then meet again with ZBA members to review and then pass along to the Selectmen with an endorsement to put it on the spring warrant. Peter said he hoped that there would be as much public input into the hearings planned. Kris mentioned to Adam to look into getting the news media involved when the public hearing(s) are scheduled to occur.

-The 1st hearing on the agenda was the application for Bill & Sheila Harley at 14 Ploughshare Lane in the Hidden Cove subdivision. Andrea sat in for the absent Joe Re. Representing Harley was Architect Chuck Sullivan. The proposal is to add a garage and living room addition to the residence. He pointed out that the subdivision was created before recent zoning but and has open space so the lots could conform to R-2 setbacks and lot size. He showed that the current lot was nonconforming because it was less than 60,000 sq. feet and the structure was nonconforming because it's in the 50 foot setbacks. The proposal is to add a 16 X 24 garage on the ground floor and living room space in the addition on the 1st floor. He showed that the current house is 19.9 feet from Ploughshare and the addition will make it 24.1 from the road. The addition to the side setback will be 22.6 feet. Chuck said the Harley's do have approval from the Hidden Cove Association and gave the approval letter to Adam. Kris read the letter. Chuck said the lot has a steep slope so the garage has to be located inside the house's footprint.

-Kris reviewed the nonconforming aspects of the property and the subdivision's lack of conformity as it relates to today's zoning. Board members talked about a prior application they approved two months ago in Hidden Cove and agreed the same standards for setbacks should apply here. There was discussion on established setbacks in zoning that was established in the late 40's. Kris said if the board wants to look at the application through the lens of R2 zoning instead of R3, then the proposed addition meets 20 foot setback requirements.

-Kris opened the floor for public comment. There was none and Adam stated there was no correspondence, other than what Kris read into the record from the homeowner's association, to be read. Kris closed the period for public comment.

-Kris stated that it's a large lot and the addition does not overburden it. The new living room is not a significant amount of additional living space.

-Andrea made a motion to approve the plans as presented. Derek seconded

In the discussion it was by consensus that the proposed alteration & addition was not substantially more detrimental to the neighborhood than what currently existed.

The Board voted 5 - 0 to grant the special permit.

-Before the next hearing, Andrea was replaced by Peter Yoars.

-The 2nd hearing was for Robert & Kathleen Laskowski at 25 Tuckernuck Avenue. Architect Chuck Sullivan once again represented the clients. The proposal is to renovate the house completely so they can spend more time there in the true off season. Because the back of the residence wasn't built as well as the front they wish to tear off 15 feet of the back end and put in a new foundation and reconfigure the rooms inside. Chuck said the residence will continue to be a two story structure but that the roof will be raised high enough and dormers added so there can be a tv/rec room in the attic area. The height will go from 30'4" to 31'8". Chuck said they have approval from the Cottage City Historic District and the OB Historical Commission. Adam added that the Laskowski's also have constructive approval from the Copeland Plan Review Committee.

-Chuck said the house has the same number of bedrooms and will reconfigure the back end so that there will be a laundry room on the 1st floor + a kitchen and add a bedroom to the 2nd floor. Chuck said the only change in footprint is to add a bay view window and to switch an entrance way. He showed there will be a new bulkhead door and uncovered steps that doesn't need zoning approval.

-Chuck said there's 430 sq. feet for the attic area that will be finished space but because of a height restriction, it won't be considered another bedroom.

-There was a brief discussion on the different community review boards involved in getting a building permit. Kris asked about the increase in living space from old to new. He said there's 535 square feet of new living space.

-Kris opened the floor for public comment. There was none and no correspondence to be read by Adam. Kris then closed the floor for any further public comment.

Kris said the increase in the footprint is very small and that the increase in the living area has been accomplished within the structure so it doesn't overburden the lot.

He said there's no increase in the existing nonconforming aspects of the structure in relation to setbacks.

Peter Yoars motioned to approve the plans as presented, Peter Palches seconded.

In the discussion Kris stated that the applicant does qualify for special permit consideration under 3.5.5 and that the proposed alteration & addition was not substantially more detrimental to the neighborhood than what currently existed.

The Board voted 5 - 0 to grant the special permit.

-Before the next hearing Andrea once again sat for the Board and Peter Yoars sat out.

-The 3rd hearing was for Laurie Brooks at 343/5 Barnes Road. Representing the applicant was Engineer George Sourati and Architect Caleb Nicholson. The owners are asking to build an addition onto the residence that is both nonconforming and in the Coastal District and to build a pool that does not meet R-3 fifty foot setbacks. He showed on a site plan where the work was going to be done where the Lagoon Pond shoreline was to the property. He said the Brooks' want to add an entry porch to the house which will be a covered deck and to put a trellis on the side of the house. They also want to put in a new swimming pool. George showed that on three sides of the pool there will be patio area + retaining walls. He also explained there will be a new driveway installed. George said the property significantly slopes down to the water from Barnes Road so the only place to put the pool in relation to the septic system and new driveway is 20' from

the side property line. Kris asked how far the retaining wall from the side property line is. Caleb said it would be 6 feet.

-Kris opened the floor for public comment. There was none and no correspondence to be read. Kris closed the floor for public comment.

-Peter asked if the pool changes the character of the neighborhood. Caleb said the new landscaping that will go with the pool is a huge improvement for the lot and the problems it has had with runoff going into the Lagoon. Adam stated that the Conservation Commission looks very favorably towards the proposed changes because it reconfigures the land to prevent runoff and provides catch basins to disperse the water underground.

-Kris said the applicants will be looking for two special permits - one for the work being done to the home and another for the pool. He asked for a definition of trellis and porch. George Sourati said the porch is really a deck that is covered so that people can be sheltered when they come in and out of the residence. The trellis is a decorative feature that has posts and open rafters up top.

-Kris said the trellis should be considered as structure and the proposal will reduce the setback from 42' down to 39 feet. He did note that the lot is unusually narrow and could be a factor in allowing the setback reduction.

-There was discussion on the proposal being two separate projects instead of one. Adam stated that both projects are in the Shore Zone of the Coastal District but in the case of the porch and trellis addition they can be specially permitted because neither alteration nor addition to the structure increases plumbing or septic facilities. The pool can also be allowed because its use is recreational, which along with agricultural and educational purposes are the only three uses allowed in the Shore Zone.

Kris said the application should be considered separately. Kris asked Board Members if it's ok to allow the trellis and its further encroachment into the side setback. Derek said it didn't seem to be a problem where the design is nothing more than two posts and a couple of open rafters. George didn't have a problem with any aspect of the home needing 2 additional feet for what really is a decorative addition to the house.

Kris stated the lot is undersized and the residence encroaches the side and rear setbacks for an R-3 property. Derek made a motion to approve the plans as presented for the porch and trellis additions to the residence at 343 Barnes Rd. George seconded.

In the discussion board members agreed that the alteration is not substantially more detrimental in its existing nonconforming use to the neighborhood.

-The Board voted 5 - 0 to grant the special permit for the trellis and porch addition for Brooks at 345 Barnes Road.

The Board took up the issue of the pool. Kris read the dimensional regulations for pools. He said the application seeks an exception from the 50' guidelines for R-3 residences.

-Kris opened the floor for public comment. Mark DePucchio from 31 Old Barnes Rd said pools are a personal choice and a good thing because it enhances the neighborhood. John Tiernan, an Oak Bluffs resident who works for Island Pools and Spa said there are at least 3 other pools at residences on Barnes Road. Steve McNamara of 333 Barnes Rd also approves the use of a pool at the property location, especially if it reduces run off to the pond. There was discussion about the Lagoon Pond Association would only get involved with this application if construction affected the water. Adam stated there was no correspondence to be read. Kris closed the floor to public comment.

-Kris said he has concerns about the overall structure and how a pool is defined in the by-law. He said it is a

significant structure that contains a pool. He has a concern that the retaining wall is only 6 feet from the property line. Kris and Caleb talked about the other pool approved for Olmstead also on Barnes Road. Caleb Nicholson talked about what the pool's structure will do to correct the current ravine that exists causing significant run off. He also said there will be significant screening so that privacy will be kept for both the Brooks family and Price, the neighbor next door. Andrea pointed out that the neighbor Price has been notified and has not stated any objection. George doesn't object to the plans proposed. Derek said it's ok but 20' from the property line would be better.

-Kris asked if the sunning area could be reduced. It's 12 feet, 14 with the retaining wall. Peter said it could be reduced so that the retaining wall is 10 feet from the property line leaving 8 feet of sunning room. There was discussion how the pool will be soundproofed.

-Kris said a structure that has 500 sq. feet of use needs to be at least 10' from the property line. He's opposed to anything structural being less.

-Derek made a motion to grant the special permit for a pool to be in the R-3 setback with the condition that the structure, including retaining wall, be 10 feet from the side setback of the property and suitable sound barriers be installed between the pool and the adjoining property. Andrea seconded.

-The Board voted 5 - 0 to grant the special permit for a pool to Laurie Brooks at 343 Barnes Road.

-Before the next hearing, George left for the night and Peter Yoars replaced him.

-The last hearing was for Dave Richardson at 43 Sengekontacket Road. He is seeking a special permit to demolish an existing residence and replace it with a new building in the Coastal District.

-Kris pointed out that the application is unusual because part of the property is in the Shore Zone so the Board will be looking at the guidelines under 9.6 instead of the nonconforming issues that usually fall under 3.5.5.

-Representing the applicant was engineer George Sourati, Architect Jamie Weissman and the owner Richardson. George 1st showed two site plans with the existing house and detached garage in gray. He said there's a 3rd structure on the property that they are not doing any work to. He said both the garage and the house will be torn down. He said the property has 2.9 acres and R-3 requires 1.4. He stated that the issue is the 1st 100' from the edge of the salt marsh is considered a Shore Zone. He said that this zone has additional regulations for residences than the rest of the Coastal District. He showed a green line in the site plan where the Shore Zone was on three sides of the property. He said a little bit of the garage and part of the current residence is in the Shore Zone. George stated that they were not seeking approval for the rest of the proposed new residence because it is in the Coastal District's "Inland Zone."

-Kris asked George to verify that the existing structure is in the Shore Zone and the new structure will be in it as well. George said "yes, part of it."

-Kris read the by law for alterations to buildings and additions to existing residential structures in the Shore Zone. George said the new house will be partly in the Shore Zone and partly out.

-Kris asked about the septic system. George said it is outside the Shore Zone. There was discussion about what part of the new residences' plumbing would be in which zone. Peter asked why the new structure was being placed where it was. George said because the new septic system had to be placed as far from the shore as possible.

-Kris stated the by-law says "alteration to buildings and additions" to existing structures but this application is a demolition. The applicant is creating a new residential structure. He read the by-law again. George said when the project began it was going to be an addition to the existing house but was then thought it would be better to start from scratch. Kris said from a building perspective yes but not from a zoning

perspective. George asked if it could be an alteration. Board members said it was not, it's a demolition. Kris questioned whether or not the board had the power to grant a special permit for a demolition under 9.6. Kris thought it would be prudent to seek Town Counsel's opinion on the matter. He also thought the Board should seek counsel's advice on whether a building partially in the Shore Zone is considered to be completely in the Shore Zone or not; can the portions of the house outside of the zone have additional plumbing or does the condition of additional plumbing apply to the whole residence.

Adam also asked for a consideration of the increase in sanitary disposal facilities being allowed if the facility is not located in the Shore Zone area of the property.

George asked if he could write a letter explaining his interpretation of the language of the by-law. Kris said he could give it to Adam to hand in when he sends in the questions the Board wants counsel's opinion on.

George asked the Board to continue the hearing. By consensus the Board agreed to continue the application for Richardson at 43 Sengekontacket Rd.

George said he could not meet the third Thursday in January. The Board agreed to meet again on the application for Richardson the third Thursday in February, February 18th at 6:05 pm. George signed the extension agreement.

Peter Palches asked if it was possible to conduct a site visit. Dave Richardson agreed to have the Board come out and visit. Adam said he'd arrange to post a meeting of the Board the day they want to go out and visit. Dave said he designed the original house when he had a much smaller family and hopes that what will be designed will accommodate his family and someday a future family as well.

-The meeting adjourned @ 8:00pm