

Zoning Board of Appeals
Town of Oak Bluffs

Kris Chvatal, Chairman

Members:

Derek Tipton

Joe Re

George Warren

Peter Palches

Associate Members:

Andrea Rogers

Peter Yoars

NOTICE OF DECISION

December 17th, 2009

Re: Application of Laurie Brooks, 343 & 345 Barnes Road, Oak Bluffs, MA.
Map 27, Lot 9 & 10

Applicant is seeking **Special Permits** to add a covered entry porch and trellis to a pre-existing, nonconforming residence and a pool within the 50 foot side setback of the property.

A. Background

1. By application received November 30, 2009 from the Town Clerk's office, a hearing was requested from the applicant on the request before the Board of Appeals.

B. Summary of Meeting

2. On December 17th Zoning Board Chairman Kris Chvatal opened a duly posted public hearing. A quorum consisting of Kris Chvatal, George Warren, Peter Palches, Derek Tipton and Andrea Rogers were present. Representing the applicant was architect Caleb Nicholson and engineer George Sourati. George first showed on a site plan where the applicant wants to add an entry porch to the house and to put a trellis on the side of the house. Kris asked for a definition of trellis and porch. George 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. The proposal showed a reduction in the side setback from 42 feet down to 39 feet. Board members did note that the lot is unusually narrow and could be a factor in allowing the setback reduction. Zoning Administrator Adam Wilson stated that the proposed additions are in the Shore Zone of the Coastal District and can be specially permitted because neither alteration nor addition to the structure increases plumbing or septic facilities. Kris wanted the proposed porch and trellis to be considered under the nonconforming uses and structures by-law rather than coastal overlay regulations since it seemed more appropriate. Derek thought the new setback shouldn't be an issue since a trellis is just 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 residence.

3. No one spoke either for or against the project during public comment. There was no correspondence to be read either.

4. Derek made a motion to approve the plans as presented. The motion carried 5 – 0.

C. Decision

5. A majority (4 votes) of the 5 member Zoning Appeals Board is required to approve the application. Accordingly, the motion to approve carried and the application is granted.

D. Reasons/Findings

6. As articulated during the course of the meeting, the Appeals Board Members who vote in favor of the motion to approve the application make the following findings;

- a. The applicant has the right to apply for a special permit under zoning by-law 3.5.5;
- b. The project appeared to be not substantially more detrimental to the neighborhood than what currently existed.

E. Summary of Meeting Pt. II

7. The Board took up the issue of the pool. Adam stated that the proposed pool is also in the Shore Zone of the Coastal District but can be allowed because its use is recreational, which along with agricultural and educational purposes are the only three uses allowed in that zone. Kris read the dimensional by-law regulations for pools. He said the application seeks an exception from the 50 foot guidelines for R-3 residences. Kris said he has concerns about the size of the overall facility and how a pool is defined in the by-law. He said the application is a significant structure that contains a pool. He has a concern that the proposed retaining wall leaves only a 6 foot side setback. Caleb talked about what the pool's structure and landscaping will do to correct the current run off to the pond. He also said there will be significant screening so that privacy will be kept for both the Brooks family and Price, the direct abutting neighbor. Peter Palches said the sunning area could be reduced so that the retaining wall is 10 feet from the property line leaving 8 feet of patio area. There was discussion how the pool will be sound proofed.

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

8. In 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.

9. 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. The motion carried 5 – 0.

F. Decision

10. A majority (4 votes) of the 5 member Zoning Appeals Board is required to approve the application. Accordingly, the motion to approve carried and the application is granted.

G. Reasons/Findings

11. As articulated during the course of the meeting, the Appeals Board Members who vote in favor of the motion to approve the application make the following findings;

- a. The applicant has the right to apply for a special permit under zoning by-law 4.4.5.2;
- b. Keeping the pool 20 feet and its retaining wall and patio area 10 feet from the property line and incorporating landscaping to act as a sound barrier between neighboring properties adequately reduces the detrimental impact the structure will have on the neighborhood.

As the law provides, appeals, if any, shall be made pursuant to Section Seventeen (17) of Chapter 40 – A, The Zoning Act, and shall be filed within twenty (20) days after the filing of this decision in the Office of the Oak Bluffs Town Clerk.

Said Board of Appeals is a legally constructed Appeals Board, exercising the powers granted to it under Section Fourteen (14) of Chapter 40 – A, and under Chapter 831, a 1977 Act further regulating the protection of lands and the waters of the island of Martha's Vineyard.

As required by law, The Board of Appeals certifies that copies of this decision and documents referred to in it, have been filed with the Oak Bluffs Building Inspector, Planning Board and Town Clerk. This decision does not relieve the applicant from obtaining all other necessary permits.

After expiration of the twenty (20) day appeal period, the applicant will receive the original copy of this decision. It will include the original signature page, signed by the members of the Board of Appeals presiding at the hearing. This copy will verify, by the Town Clerk, that no appeals have been filed, and if there were appeals filed those said appeals were dismissed or denied against this decision. At that time, the decision, along with the original signature page must be filed at the Dukes County Registry of Deeds before it is legally recognized.

Recorded Vote

The following members of the Zoning Board of Appeals voted to grant a **special permit** to Laurie Brooks of 343/5 Barnes Road to add a covered entry porch and trellis to a pre-existing, nonconforming residence and to grant a **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.

(Kris Chvatal)

(Andrea Rogers)

(Derek Tipton)

(Peter Palches)

(George Warren)

Received and filed in the Office of the Town Clerk:

Date:_____