

Zoning Board of Appeals
Minutes of Meeting 3/12/2009
Oak Bluffs Town Council on Aging Building

Members present: Kris Chvatal, Chairman, Gail Barmakian, George Warren

Also present: Associate Members Joseph Re & Peter Palches. Adam Wilson, Zoning Administrator & ZBA Clerk.

The meeting began at 6:05 pm. The minutes from January 15th were discussed for the approval.

A motion was made and seconded to approve the minutes.

The Board voted 5 – 0 to approve the minutes from 1/15/09

The Board discussed different times to meet in April. It was determined that they would meet Tuesday, April 7th for Bradley Square and then again on the 14th for any other cases to be heard in April.

-The next order of business was to hear a modification for Robert Graham's property at 255 East Chop Drive. Pam Scott represented the applicant and said that the current construction has found a lot of rot and that the porch has to be completely rebuilt. The proposal is to extend the porch 2 more feet cantilevered out from the original 7 foot porch that exists.

The Board and Pam looked at plans and for the cantilevered addition. It was pointed out that part of the new deck couldn't go into the 20' setback.

Pam showed correspondence from neighbors who were satisfied with the change of plans.

-Gail made a motion was made to refer as the change as diminimus with final sign off to be done by the Zoning Administrator with the condition that the cantilevered porch not reduce the setback by less than 20 feet and the proposed length stays the same size as presented to be not more than 2 feet. Peter seconded.

The Board voted 5 – 0 to approve the modified porch for Robert Graham at 255 East Chop Drive.

A public hearing was opened for Edgar and Judith Howells of 16 Calves Pasture Lane. Tom Carberry of Sam Sherman Associates represented the applicants. He explained that the house has one nonconforming setback issue but that the lot is conforming. The proposal calls for enclosing an existing porch and a single floor addition of 162 square feet. Tom showed that the house is nonconforming on one side but the lot is conforming in the R3 District. He said they wanted to enclose an existing porch and using it as an interior stairway and creating a 9 X 18 foot single story addition to the existing gable roof end of the house. Tom said the renovation scheme is to make the house more watertight.

-Kris pointed out that the changes do not occur where the house has a setback issue of 37' 9" instead of 50.

-Tom showed photographs of what the current house looks like.

-Gail said it appears to be small improvements to the not affecting the one side that is in the setback and on a lot that has the necessary square footage for an R3 property.

Kris asked if there was any correspondence. There was only one letter the Hidden Cove Homeowner's Association approving the changes.

-Kris opened the floor for public comment.

Linda Ardleigh, who lives at 10 Calves Pasture Lane, spoke in favor of the proposed changes.

The floor was closed for public comment.

-Kris said the changes are minor and being done on the opposite side of the house where there is the one and only nonconformity. Joe said there isn't much they're doing to the residence externally. Peter said the improvements to the residence will enhance the neighborhood.

-The Board, by consensus, agreed that the zoning by-law 3.5.5 does apply.

-The Board, by consensus agreed that the proposed changes were not substantially more detrimental to the neighborhood than what currently existed.

Gail made a motion to approve the plans as presented. George seconded.

The Board voted 5 – 0 to grant the special permit to Edgar & Judith Howells of 16 Calves Pasture Lane.

-The next public hearing was for Louis Wilson of 15 Vanessa Way. Tristram Metcalf represented the applicant. The applicant was coming before the board to ask for an 18" over height allowance for the roof in the Coastal District. He stated that the 1 ½ story cottage approved by the CCHDC also had to be raised up another 12" at ConCom's request to meet flood plain restrictions. The result was a flatter roof that the historical commission preferred maintain the pitch they had already approved. Tristram also said the change from stick built to modular also creates a further height difference. He said the proposed additional height is to maintain the aesthetic that the CCHDC wanted for the overall exterior look of the residence.

There was discussion on what special permits need to be modified and what needed to be newly granted. It was determined that the Board only needed to consider the new special permit for overheight.

-The Board discussed the lot being 800 square feet short of conforming for R2 and not having front or rear setbacks. Tristram pointed out that the new house would be further back than the existing front setback by 6 feet.

-Gail asked why the change from stick to modular. Tristram said it was a cost consideration. There was discussion on allowing the special permit to be for each construction style. Members said if it is exactly the same it doesn't matter if it's a modular or frame construction.

There was discussion on how a modular home can be custom built to look like one stick built. The Board also discussed how to accommodate the ConCom flood zone regulation above the flood plain 10'.

-Kris opened the floor for public comment.

-Shelley Christianson of 42 Canonicus and Maura McGroarty of 38 Katama Ave asked how the job site will be worked and if any views will be compromised. They also expressed a small concern of how a modular will end up being exactly the same as a frame construction. Ray de Atkins of 8 Canonicus said he favors the new home. Engineer George Sourati joined the meeting at stated the views and that the footprint remains the same.

-The Board and George discussed the reason behind the 24 foot rule. He said it's an island wide regulation probably to prevent monster sized homes being built on the water.

-Peter asked about the issue of having to go higher because of the modular design. There was discussion of whether that can be justification for granting a special permit. Tristram stated the extra height is to make the house look better, stick or modular. The modular design needs 6 additional inches. The other 12 comes from ConCom's requirement.

Gail said the greatest justification for additional roof height is because of the flood plain regulations.

-There was discussion on how much weight should be given to the various reasons for making the roof higher.

-Joe said the end product is a very nice looking house. Kris said it's tough to shoe horn a 2 story building into and structure with only 24' of vertical space to work with. He also said that the other review boards have determined that it fits into the neighborhood. George stated there are many other homes in the neighborhood that are substantially higher.

-Peter said he's comfortable with the design. Joe said there is no neighborhood resistance and that the pitched roof is a better design for the owners as well as the neighborhood.

-Kris closed the public hearing. Gail said there shouldn't be departure from zoning regulation unless there's a good reason. Being in the flood zone is a good reason and no neighbors oppose the project and one came tonight in support. Height and obstructed views don't seem to be a factor.

-Kris said if the community review deems that it should look a certain way and that the proposal provides for that then unless a neighbor had come in to object, he sees no reason not to grant the special permit.

-The Board, by consensus, agreed that the zoning by-law 9.1.7.a does apply.

Gail made a motion to approve 18" above the 24 feet with a condition that the change from stick to modular construction does not change either the footprint or dimensional measurements of the proposed new residence. George seconded.

The Board voted 5 – 0 to grant the special permit to Louis Wilson of 15 Vanessa Way.

The next public hearing was for Tom Clancy of 8 & 12 Naushon Ave. George Sourati represented the applicant. He showed the board a locus and explained that the applicant owned 3 homes on Naushon. He said the 1st home was constructed 2 -3 years ago and the other two homes purchased recently. He said the proposal is to tear down the two homes, merge the two lots into one and build a new that will be used as a guest house.

-There was determination that the two homes were bought in 2005. George showed a site plan that showed the two house locations and the property line they plan on eliminating. He said the new footprint will maintain the current 11 foot setback to Naushon Ave that the current house has but reduce the side setback to Katama Avenue 35 feet down to 26 feet.

Gail pointed out that combining the square footage of the two lots will still make it undersized for an R2 property and 12 Naushon, where the new residence will go, is in the front setback.

Gail said the proposal is to reconstruct a nonconforming structure on a nonconforming lot.

There was discussion about the ownership of three lots under one family name. Joe asked about the nonconforming sides. George said there will be 3 sides that will conform to setbacks. Peter said there will be more open land space as a result of the lot only having one home.

The Board discussed the differences in sq. footage, both gross and living, between the old house and what is proposed. It was pointed out the new home will have more living square footage than the two old homes combined but less gross square footage.

-Kris asked if there was any correspondence for the proposed demolition and replacement. Adam said there was none.

Gail stated if the two lots were nonconforming and vacant, and in common ownership, you couldn't build two separate houses on them. She said that in theory, when you have two lots in nonconforming size, and they are in common ownership, zoning requires getting rid of nonconformity so if there is combination and it creates conformity, you have to proceed in that manner. She said because the applicants owned three contiguous lots, they had the ability to make one conforming lot with only one house, not two.

There was discussion between George and the Board as to when the lots were purchased.

-Kris opened the floor for public comment. Shelley Christianson of Canonicus Ave commented on the separation of the two homes and privacy issues.

Gail had a concern about the bulk size of the new house being so close to the corner of the lot and the two streets that intersects there. She thought it may take away neighborhood waterviews.

-George showed elevations of what the house would look like. Kris questioned if merging the lots doesn't significantly help the applicant in his quest to build a newer, bigger home. He said he'd have a problem with the scale and size if it were replacing only one of the two old homes. There is no increase of existing nonconformity and an actual decrease of total nonconformity because one of the nonconforming homes is being done away with while the other's setback issues are being maintained with the proposed new residence.

-Peter talked about how even a fence change can alter the aesthetics of a neighborhood. Peter said creating open space is a positive for the neighborhood.

Board members discussed what other accessory structures could go on the property at a later date.

-Gail argued that the lots are in common ownership then they are restricted in what they can build. She talked about the history of how the property was acquired.

-Maura McGroarty of Katama Avenue said she has issues of which entity within the Clancy family is applying for these permits and how did they get the right to build such a large house on the 1st lot that does not have the required square footage for an R2 residence.

At this point in the meeting there were several discussions that occurred simultaneously between George S. and the 2 neighbors, Kris and Gail and Peter and George W.

-Maura said that there may be problems with traffic at the intersection and how the new house may impact site lines. Gail said it would be better if the house was put more in the middle of the newly configured lot.

-Shelley Christianson said the placement may be a safety problem with neighbors. George showed where the garage will enter and exit. Gail said when the house is used in season there will be parking and traffic issues because the house is so close to the road. George S and Gail debated how much impact one house vs. two will have in the neighborhood.

Kris closed the public hearing portion of the meeting.

Joe said there will be less non conforming space with just the one house. He said a lot of conformity is being taken away and some conformity being added.

George W. asked about the intent to have so much open space between the current residence and the proposed guest house. George S. said the open space would be for a kids play area.

The Board discussed the proposal being less detrimental if the new home was in the middle of the property and not at one end. Peter said it's the applicant's prerogative to put the house where he wants. Gail said the board has jurisdiction when there's nonconformity and the proposed structure continues to be in the setback. Gail thinks the impact of the new home so close to the road is a detriment.

-Kris asked if anyone wanted to make a motion to move the proposed new house to the center of the lot as a condition for approval. No one said anything. Kris asked again.

Kris asked if there's an argument not to move the building sideways but back so that it conforms on all sides. There was discussion about trying to mitigate site lines by moving the new structure back 6 feet.

-George S. said they have already worked with neighbors to preserve trees and set the location that favors their views.

Peter made a motion to approve the plans as presented. Joe seconded.

In the discussion it was asked if there should be a condition so that the area between the two homes remains open. The future use of the space being used by the applicant for different reasons was discussed. Adam pointed out that the septic design will utilize most of the open area on the lot and that it would be unlikely that another structure could be put on the land.

Discussion closed and the board voted.

The Board voted 5 – 0 to grant the special permit to Tom Clancy for the demo and new house replacement at 8 & 12 Naushon Avenue.

The meeting adjourned at 9:00 pm