

Zoning Board of Appeals
Minutes of Meeting 1/15/2009
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 5:15 pm. The minutes from December 18th were discussed for the approval. Several members had not had the chance to read them so it was decided to hold off on approval until the next board meeting.

-other items on the evening's agenda about Bradley Square and the Rolde Hearing scheduled for February 5th were discussed. Scheduling options for future meetings involving Bradley Square was talked about.

-At 5:20 Kris opened the meeting for a continuance of a hearing for Bob & Christine Higgins at 300 Farm Neck Way 1st heard December 18th. Greg Ehrman from Hutker Architects and Chris Alley from Schofield – Barbini & Hoehn represented the applicant and spoke to the Board about the revised plans they have for the placement of the 20 X 42' pool at the residence. He stated that the pool needs a special permit because the owners want to place it within the 50' setback for an R3 residence. Greg stated that at the last meeting he showed a site plan putting the pool 16.8' from the side setback and that the Board wanted it to be at least 20 feet. He showed an aerial photograph of the Higgins property. Greg stated the proposed redesign puts the pool 22 feet off the side property line and changes the dimensions of the pool to 16 X 42 feet and they will reconfigure some of the terracing to put the pool closer to the house. He said the pool location is vital to the homeowners to be viewable from the public spaces in the house (kitchen and family room); because they have young children who they want to see when they are in the pool. He showed that a curb cut has been eliminated and the parking court has been eliminated as well. Greg explained that on the site plan there showed an existing privet hedge that is 70 feet long and 5 feet tall that they will replant on the neighbor's side of the property line so as to provide screening of the pool.

-Kris asked about approval from the Farm Neck Association. Greg said they have approval on what was originally proposed and what has been redrawn does have to go back to them for further review. He talked to the head of the association who stated that the modification is not a problem because it reduces their concern on location even more than what was 1st proposed has only made it better.

-Gail asked if the driveway was relevant. There was a short discussion on all the projects planned for the property.

-Adam stated there had been no correspondence either for or against the project.

Peter asked for a review of the issue at hand. Kris said the one issue is the pool's location within the 50' side setback needing a special permit. There was discussion about the Boards' desire for the applicant to have the pool at least 20 feet from a setback that is a minimum requirement for any homes located in R1 and R2 districts.

Kris opened the floor for public comment. No one spoke either for or against the proposed application.

By consensus the Board closed the public hearing.

-Kris read the dimensional regulations for pools in residential districts. Peter said the compelling argument for approval is that within the homeowner's association they have the go ahead.

Kris asked for and got consensus that the special permit under 4.4.5.2 does apply.

-George made a motion to approve the plan as presented to have the pool 22 feet from the property line

Peter seconded.

In the discussion, Gail said the only issue is the relief to go closer than 50' and that the applicant made a compromise to go now 20+ feet satisfies the Boards' requirement and that the Farm Neck Association approves it and there is no neighbor objection makes the project not more detrimental to the neighborhood.

Joe said that even though the setback location is against an empty lot, the Board does need to protect it when it becomes developed. Kris thought a condition for approval would be that the privet hedge is installed as proposed by the applicant. Gail agreed. Greg said the association approved the replanting of the hedge as part of the agreement for the applicant to have the pool.

-The Board amended the motion for approval to include the replanting of the privet hedge as indicated on the site plan.

The Board voted 5 – 0 to grant a special permit to Bob & Christine Higgins at 300 Farm Neck Way to install a 16 X 42 foot pool twenty two feet from the side setback instead of fifty with the one condition that the 70 foot privet hedge be replanted according to the submitted site plan.

The next hearing was for Linda Skladzien Shapiro at 115 Winemack St. Kris read the notice public hearing, introduced Board Members and asked the applicant to make a presentation. Builder Mike Jackson represented the applicant. It was explained that the residence was nonconforming because it has less than 20,000 square feet for an R2 property and the front of the residence is 22' feet from the front and not 25. Mike explained that there would be a 10 X 10 foot four season sunroom added to the northeast corner of the residence. He showed pictures of the current home and where the additions would go. He also said there would be a 9 x 6 kitchen addition on the southeast corner of the house. Mike said that the project will also involve some renovation of the home because of its age and rot issues. He said where the 10 X 10 addition goes there will be roof work done. He explained that the applicant is having the work done because she intends on taking the inherited home as a year round residence. Mike also said the roof on the 6 X 9 addition will have to change as well.

Roof pitches were discussed. Gail asked about the proposed addition lines on the site plan. Mike said he drew them in on the advice of the civil engineer who produced them. Gail said the plan should have the engineer's proposed dimensional additions as well. There was discussion on having the correct "to scale" dimensions on an engineered site plan so that the building department can keep track of what's approved.

-Kris read a letter of support from Leila Carroll from 121 Winemack Street.

Mike pointed out the several changes he had planned for roof pitches. Joe asked about the 4 season sunroom and how the walls will be attached to the house. Mike discussed the 4 season room having two foot kneewalls and ultraview windows. He said there will be no plumbing and heat so it was questioned whether it will be 4 seasons or not.

Kris opened the floor for public comment. There was none. By consensus the Board closed the public hearing.

The Board reviewed the nonconforming issues. It was agreed that the applicant qualified for a special permit under 3.5.5.

Gail said it's not more detrimental because the additions are on the back side of the house where the house conforms to setbacks. She still has a concern about the lack of professional application to both the elevation drawings and the site plan.

Gail made a motion to approve the plan for the four season room be 10 X 10 feet in measurement with a 15 degree pitch roof and the kitchen addition be 9 X 6 feet with no change in roof line. Joe seconded.

Kris said it's not substantially more detrimental to the neighborhood than what's current and supports the alterations. Peter said it's diminimus and should be approved.

The Board voted 5 – 0 to grant the special permit to Linda Skladzien for the alteration work for 115 Winemack Street.

Next on the agenda was a Board discussion on when to meet next with Bradley Square. It was pointed out that since the MVC hearing had been postponed until February 5th, the Board didn't know when it could meet again to continue the public hearing. Adam pointed out that meeting with the MVC to modify the DRI may take longer than just the one hearing. Different days in February were discussed. Notice of how much time is needed when the Board would meet again was discussed. Adam stated that he does send out 300' abutter noticed when there is a question of when or if there was substantial time between when the hearings occur. Questions were asked if the Board should make a date certain for the next hearing or leave it

generally open. Kris pointed out that there is no clock issue because it has stopped with the referral back to the MVC. Joe said the Board should wait for the applicant to be finished with the MVC and then request to meet with the ZBA. Adam agreed. Gail said the hearing should continue generally until that time when the applicant is ready to come back to the Board.

-The number of votes needed to pass the project was talked about. Adam said because it's a 40B application, only 3 of either four or five members are needed to pass. Gail said the Board should wait until there is a formal notice from the applicant to re-meet which only has to be posted two days in advance.

Gail made a motion to continue the meeting generally until there is a conclusion of the MVC hearings and an agreed upon date has been set with propoer notification. Peter seconded.

The Board voted 4 – 0 – 1 to grant the continuance.

Next on the agenda was the upcoming hearing for Neil & Carla Rolde v. Mary & Kerry Caldon.

Adam handed to Board Members what was published in the newspapers about the meetings that are to occur on February 5th. He stated that Town Counsel is handling the case and members are to follow their guidance. He read a memo from M. Goldsmith that the planned site visit at 4 pm at the Caldon residence will not be for the general public. Gail asked what the counsels for the two parties say during the site visit should be very limited. Adam said it's an inspection only. He said that if any member of the Board needs instruction on how to act during the visit or how others present should act to confirm everything with counsel.

-Adam next handed out a review sheet which gave a timeline history of the questionable accessory structure that was built at the Caldon residence beginning in 2000. The Board and Adam went over the background information on the structure with space above. Gail and Adam talked about the different appeals that have occurred for the case. Gail asked what exactly will the Board be looking for during the site visit and hearing. Adam said the judge wants the abutters to have another hearing. He said that the judge wants another hearing so as to determine "whether the Caldon's converted their storage space to a guest house." Kris asked if there was any written clarification that could be read prior to the hearing it would be appreciated. Board members and Adam discussed the legality of the existing structure. Kris asked about plumbing and to what extent can they see how the building is plumbed out. Gail talked about the last visit she participated in and how the owner informed her of what was in the structure.

-Peter asked about the priors to the case. Adam said most of the information is in the analysis. Kris asked that the bylaws be read in the analysis and to look at the question again when the Board gets closer to the hearing date. The definition of a guest house was discussed. Kris said to look at 3.4.1, 3.4.3 and 10.3.2 is what should be looked at for definitions. Peter was asked if there will be a meeting set up with counsel prior to the 5th. Kris said peter could direct questions to either him or Adam that could be passed on to Michael G but he thought it was in everyone's best interest not to discuss the hearing with each other or again until the meeting that will occur February 5th @ 4pm at the Caldon residence, 369 Barnes Road.

The last item on the agenda was a vote for Chairman. Kris talked with Board members about not really having a policy for the Chair to be a one year election. Gail questioned that and Kris responded that there's never been a vote to create a policy or rule that chairmanship of the Board be only one year. Kris then said that according to MGL 40A section 12 a zoning board shall elect annually from its own number a chairman. He stated that he has been chair for 19 months and that in the past other members of the board have also served terms longer than a year. He pointed out that other boards have a vote for a chair immediately following the seating of a new board. If that were the case then the ZBA potentially has a new board at the end of June when appointments are made for new associates and full members. He stated that his term as Chair ended 7 months prior and there hadn't been a vote for a new chair since.

-Adam stated that he is remiss for not reminding the Board back in July of '08 that there should have been a vote for chairman. Kris said there should be an election every July. He said he was comfortable moving for nominations and a vote for a chair at this meeting but he suggested that nominations tonight would be restricted only until the end of June '09 and a regular vote for Chairman would occur every July after that.

-Gail corrected Kris that in prior years the Board had an unwritten policy about who would be chair. She said in the past an election of a chairman was a "round robin" event that originally was year after year and

automatically went to the next senior member of the board. She said it wasn't so much an election as a good faith gesture to "pass the baton". She said that because the members are quasi-judicial judges, there are no agendas and it's not supposed to be political. So she believes it is an unwritten policy because that was the way it was practiced. She did say that what's been done in the past doesn't have to continue but there shouldn't be a departure in what 40A says unless no one wants to pay attention to it. Gail talked about how other boards do elections for chairman differently. She said the MV Commission does it before new members are brought in. The Selectmen do it right after the election. She stated what she's used to is a round robin that at the end of the year the Chairman passes the baton.

-Kris said there's a long gap between the baton being passed on an annual basis. Gail said there were circumstances where too many new members came on to the board at one time that prevented change in chairmanship. She said when Kris was voted as chair it was because he had enough time to be on the board and absorb the process.

Peter made a motion to elect Kris to continue as Chairman until the end of June '09 with the understanding that there is no prejudice that he can become Chair again. George seconded.

Kris asked are there any other nominations for Chair. Gail asked if associate members can be nominated for chair. Board members, by consensus, agreed that associates **could not** become chairman. It was questioned who then could become chair. When Peter asked about Michael Underwood, Kris stated that Michael was no longer a member and that he was never reappointed when his term came up last June.

-Joe asked why is there going to be a vote when historically the chair just passes to the next senior member? Kris stated he doesn't think that is the case. Joe said he thought that was the way Kris got the chairmanship. Kris said he was not the next seated person. Joe said it passed to him because other members didn't want it. Kris said people were asked if they were interested; it was not assumed that the next senior member should be the chair.

-There was more discussion about the selection of Kris as chair occurred in June of '07. Kris said what the board should do is move away from tradition and create actual policy or voted upon rules as to how the Board shall act when electing a new chair each year.

-Board members spent time trying to recall who was seeking the chairmanship back when the vote occurred. Adam restated that a vote occurred to make Kris chairman for a year and he's gone on past that time frame. Gail said he was a "chairman at will."

-George said it would be a good thing to keep Kris on as chair since Bradley Square was not done and that the appointment is only for another 5 months. Kris said he thought the same hand should be on the rudder at least until Bradley Square was over. Peter said it's a separate issue about what to do now and what to do formally when next year comes around.

-Gail said that she doesn't think Kris needs to remain chairman because of Bradley Square. She said the chairman's role should not be significant enough to affect the outcome of any application. She wants to maintain status quo which is to pass the baton upon expiration as well as to honor a vote after discussion for the chairmanship between June '07 and June '08. She said that the vote can occur anytime of the year.

-Joe said since Kris is already midway past his 2nd term to let him finish it out and then have a new chair. Gail said Kris should agree to pass the baton. Kris said policy about how the chair is passed should be at a separate meeting. Joe said it's not good that the committee is divided on this issue. George said part of what Gail is seeking is fine but he's all for members declining the chair if they don't want it. He thought perhaps there should be a vice chairman as well.

-Joe said there's too much static on this issue. Peter said there are issues about if Kris should continue and should there be a policy about baton passing. He said he should continue to June 30th. He wants to separate out the two issues. There was discussion about Associate Members and the role they play. Gail said Joe and Peter can nominate and can vote but cannot be chairman. Kris called for a vote on the motion.

The Board voted 4 – 1 to grant the motion to have Kris continue as Chairman until the end of June, 2009.

The meeting adjourned at 6:45 pm.