

Zoning Board of Appeals Town of Oak Bluffs

Kris Chvatal, Chairman

Members:

Derek Tipton

Joe Re

Peter Palches

George Warren

Associate Members:

Andrea Rogers

Peter Yoars

NOTICE OF DECISION

November 19th, 2008

Re: Application of Reginald M. & Diane L. Felton, 16 Samoset Ave.,
Oak Bluffs, MA., Map 10, Lot 31

Applicants are seeking a **Special Permit** to build a two floor addition on to a pre-existing, nonconforming residence.

A. Background

1. By application received August 31, 2009 from the Town Clerk's office, a hearing was requested from the applicants on their request before the Board of Appeals.

B. Summary of Meetings

2. On September 17th Zoning Board Chairman Kris Chvatal opened a duly posted public hearing. A quorum consisting of Kris Chvatal; Derek Tipton; Peter Palches; and Andrea Rogers were present. The applicants' representative, Bill Reagan, was told that there were only four members sitting so any approval of what was being requested would need a unanimous vote. Billy was given the option of either continuing the hearing or postpone until October when there will be five members. Billy said he wanted to proceed with the four member board. He showed plans to build an 18.5' wide X 22.5' long two floor addition to the existing residence. The Board noted that the residence is nonconforming due to front, side and rear setback issues and the lot being undersized for an R1 residence. Bill showed elevation plans of what the addition would look like at the southwest corner of the property. He explained that the addition would address the couple's needs for accommodations in the off season. Billy stated that the house used to have a separate dwelling in the area where he is proposing to build on and that remnants of that servant's quarters are still in the ground. Board members expressed concerns that the addition, as an increase of the existing nonconformity, is big enough to be substantially more detrimental. The hearing was opened for public comment and no one spoke either for or against the project. There was no correspondence to be read. Kris asked Bill if he would like a continuance to the next meeting so that Board Members could conduct a site visit. Billy agreed to the extension and would stake out the area where the proposed addition would go. Kris Chvatal made a motion to grant the request of the applicant to continue the public hearing to October 15th at 6:05pm.

The motion carried 4 – 0 to continue the Felton application to the next meeting of the ZBA.

3. On October 15th, Zoning Board Chairman Kris Chvatal continued the public hearing. Bill Reagan was present. Bill talked about the history of the Felton's ownership of the residence and what they plan to do if the 1st floor bedroom and 2nd floor office addition is approved. He showed the Board an analysis he did of the neighborhood open space lot coverage and said that the increase in the Felton footprint still leaves a lot of open space equal to other residences in the area. The current home takes up 40% of the lot. The addition will increase lot coverage to 48%. The amount of living square footage in the house and what would be added to it was discussed. Kris said it's a 40% increase in living space and adds another bedroom to the 3 bedroom home. Peter said the addition leaves very little room on the lot and casts new shadows on neighbor's properties. Board members stated the proposed addition is very difficult to accept because it is a substantial increase in the existing nonconformity. It is a two story addition that is quite sizable to a residence that is already large. It's not compelling to add more to it. Bill asked for another continuance so as to come back with revised plans.

Kris spelled out what the Board has concerns with:

1. The addition is a substantial increase in the existing nonconforming side setback;
2. There is too much of an increase in the living square footage being proposed (40%);

Kris Chvatal made a motion to grant the request of the applicant to continue the public hearing to November 19th at 6:05pm.

The motion carried 4 – 0 to continue the Felton application to the next meeting of the ZBA.

4. When the Board reconvened on November 19th, Bill Reagan showed board members a new site plan that has the proposed addition conforming to the existing nonconforming side setback of the property. Kris asked what's changed with the construction. Bill said the proposed 18.5' wide addition has been reduced down to 14' 4". The roof frame has changed and the roof pitch is a little steeper although the proposed height remains the same. The increase in square footage goes from 850 down to 700 and there is an increase of 28% in living square footage as opposed to the original 40% proposal.

5. Derek Tipton made a motion to approve the revised plans to build a 14.4' wide X 22.5' long two floor addition to the existing residence.

6. The Board voted to approve the motion to grant a special permit for the addition to a pre-existing, nonconforming residence. The motion carried 4 – 0.

C. Decision

7. 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.

E. Reasons/Findings

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

- a. The applicants have the right to apply for a special permit under zoning by-law 3.5.5;
- b. The 1st proposal for an 850 square foot, two floor addition was a substantial increase in the existing nonconformity of the residence and its current setbacks;
- c. There is too much of an increase in the living square footage being proposed (40%);
- d. The reduction in the proposed side setback matching the existing setback from the front of the residence + the reduction on total living square footage from 850 to 700 was an effective compromise for the proposed addition to make it not substantially more detrimental to the neighborhood than what currently exists.

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 to Reginald M. & Diane L. Felton, a special permit to build a two floor addition on to the pre-existing, nonconforming residence located at 16 Samoset Avenue.

(Kris Chvatal)

(Andrea Rogers)

(Peter Palches)

(Derek Tipton)

Received and filed in the Office of the Town Clerk:

Date:_____