

Zoning Board of Appeals  
Town of Oak Bluffs

Kris Chvatal, Chairman

Members:

Gail Barmakian

Jane Lofgren

Michael Underwood

George Warren

Associate Members:

Joseph Re

Peter Palches

NOTICE OF DECISION

May 28th, 2009

Re: Application of Jean T. & Charlotte L. Barbey, 459 Barnes Road, Oak Bluffs,  
Ma. Map 41, Lot 1

Applicants are seeking a **Special Permit** to plant 10 White Pine and 22 Viburnum as evergreen and deciduous screen along Barnes Road in the Island Roads District.

A. Background

1. By application received May 12, 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 May 28<sup>th</sup> Zoning Board Chairman Kris Chvatal opened a duly posted public hearing. A quorum consisting of Kris Chvatal; George Warren; Gail Barmakian; Joe Re; and Jane Lofgren were present. Landscape Architect Kristen Reimann represented the Barbeys. She showed a site plan of the property as well as pictures showing where the house is off of Barnes Rd. She showed where the new driveway comes in and where existing vegetation is. She said the existing white pines were planted many years ago and a power line pole that had been removed disturbed some of the existing shrubs along the road. Kristen said an area of 50 – 60 feet is where they want to plant the white pines. She stated that there is no view of the lagoon from Barnes Road.

A letter from the Land Bank Commission was read expressing a desire to have views maintained. The Board Members then read 9.2.5 (d) of the overlay by-law that deals with height conditions being exempted for the applicant with a special permit. Kris mentioned of having done a site visit and thought only a summer property opposite the Featherstone entrance might lose a 2<sup>nd</sup> story winter water view.

Kristen stated there are ten 8 – 10' white pines to be planted. She didn't think they would grow very tall being exposed to northwest winds as opposed to growing in a forest. She said the Viburnum's wouldn't grow any taller than 10'.

Kris stated that it's a question of a potential loss of scenic views for only one particular neighbor vs. a homeowner wanting additional screening for 50' of his back yard. He said the road view is not a factor and the abutter that may be affected had been notified and has not appeared. There was discussion if the land bank property from the high ridge area is affected at all.

George said he conducted a site visit and parked in different areas around the property and couldn't see the landscape changes making any difference.

3. No one spoke either in favor or against the proposed screen planting.

4. George made a motion to approve the plans as presented

5. The Board voted to allow the planting of white pine and viburnum along the property line adjacent to the property at 459 Barnes Road. The motion carried 5 – 0.

#### C. Decision

6. 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

7. 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 9.2.5 (d) because the proposed trees and shrubs to be planted are greater in height than 36' in the Island Roads District;

b. The project appeared to be no more detrimental to the neighborhood than what currently existed. There appeared to be no detrimental impact of the proposed plantings affecting views of the water from Barnes Road.

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 Kathleen R. Taylor of 29 Thompson Avenue allowing the rebuilding of a nonconforming deck and adding 10 X 20 feet to it.

\_\_\_\_\_  
(Kris Chvatal)

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(Gail Barmakian)

\_\_\_\_\_  
(George Warren)

\_\_\_\_\_  
(Joseph Re)

\_\_\_\_\_  
(Jane Lofgren)

Received and filed in the Office of the Town Clerk:

Date:\_\_\_\_\_