

Zoning Board of Appeals  
Minutes of Meeting 1/21/2010  
Oak Bluffs Town Council on Aging Building

Members present: Kris Chvatal, Chairman, Peter Palches, Derek Tipton, Joe Re,  
Also present: Associate Members Andrea Rogers & Peter Yoars. Adam Wilson, Zoning Administrator & ZBA Clerk.

The meeting began at 6:00 pm. The minutes from December 17<sup>th</sup> were discussed for approval.  
A motion was made and seconded to accept the minutes from December 17<sup>th</sup>.

**The Board voted 6– 0 to approve the minutes from 12/17/2009**

-The Board agreed to meet again in February on the 18<sup>th</sup>.

-The 1st hearing on the agenda was the application for Ron & Bonnie Kenney at 6 Pulpit Rock Rd. Associate Andrea Rogers sat in on the application. Architect Greg Milne and Ron told the board that the house is in the Waterview Farm subdivision. Greg pointed out the nonconforming aspects of the residence and lot size. The application asks to build a two floor addition and entryway onto the house. Kris read the approval letter from the Waterview Association. The existing square footage of the residence and the proposed additional footage were discussed. Ron pointed out that the existing deck would remain. Board members were shown that the addition is on the side of the house facing towards Osprey Lane and does not encroach toward any neighbor. Adam stated that the applicant had Board of Health approval for the proposed bedroom.

-There was discussion on the trees taken down by the next door neighbor. Kris reminded the board that the subdivision is R-3 and that no resident can conform to R-3 requirements for 60,000 sq. foot lots and 50' setbacks. The proposed plan showed a decrease in the side setback going from 47.2 → 28.3 feet and the rear setback from 29.9 → 20.5 feet.

-Kris opened the floor for public comment. There was none. Besides the letter from the association, a letter of complaint about noise from Richard Conrad from 8 Pulpit Rock Rd. was read by Ron. He and the board discussed the minimal rental history of the property.

-The height of the residence goes from 21'9" → 22'10". Board members were shown on the site plan that the proposed addition is on the other side of the residence, furthest way from the neighbor Conrad.

-Kris said prior applications from Waterview have been approved using R-2 guidelines. By consensus, the board agreed that ZB1 3.5.5 applies. Peter made a motion to approve to proposed plans as presented, Derek seconded.

In the discussion board members agreed that the proposed addition is not substantially more detrimental to the neighborhood than what currently existed.

**.The Board voted 5 - 0 to grant the special permit to Ron & Bonny Kenney at 6 Pulpit Rock Road.**

-Before the next hearing, Andrea was replaced by Peter Yoars.

-The 2nd hearing was for Patricia Egan at 5 Elmwood Avenue. Patty and Steve Masterson showed the board that they have a 192 sq. foot shed next to the residence that they want to move to the corner of the lot 1 foot from the property line and 15 feet from Elmwood Ave. She explained that the shed could not conform to 20' setbacks because the lot area had to remain open for a septic field. Nonconforming setback and lot size issues for the R-2 residence were discussed.

-Letters from a direct abutter and several other 300' abutters were read, all in support of the proposed

mudroom, garage with apartment above and storage shed. Kris opened the floor for public comment. There was no one to speak for or against the applicant.

-Peter P asked if the structure to be moved was truly a shed. Patty & Steve stated that it would be for storage only; they had no plans to make it habitable even though it had a history of being a former cottage moved up from the campgrounds in the 1920's. There was discussion on shed/garage structures being 10' off the property line.

-Kris went through the conditions for having an accessory apartment above the garage and found that the applicant met all of them to allow it by right. Board members expressed concern that the storage shed added to the outside of the garage apartment would go into the 20' setback, creating a new nonconformity. Kris didn't think the board could allow it without a variance. Patty said it would only be used to store wood. It was pointed out that if it were detached, even by 6", because its footprint is only 96 sq. feet, it could then be 5' off the side property line. There was agreement that the planned shed would be detached and the other shed be no less than 10' from the lot line to be allowed.

Derek made a motion to approve the plans as presented with the following conditions:

1. The proposed 96 sq. foot storage shed is to be detached from the proposed garage/guest apartment;
2. The new location of the existing 192 sq. foot shed on the property is to moved to a location no closer than 10' from the property lines;
3. The relocated shed is to have no plumbing and never be used for residential purposes.

Peter Yoars seconded.

**The Board voted 5 - 0 to grant the special permit to Patricia Egan at 5 Elmwood Avenue.**

-Before the next hearing Andrea once again sat for the Board and Peter Yoars sat out.

-The 3rd hearing was for Mark & Sharon DePucchio at 31 Old Barnes Rd and their plans to build additional decking on to a residence that is in the shore zone of the Coastal District. Mark showed the existing deck configuration and the problem he has with them as means of egress in and out of the residence. His goal is to change the traffic pattern in and out of the house.

-Kris read off the nonconforming aspects of the property. Peter asked about wetlands and Mark stated he had ConCom approval. The special permit he was seeking was in the shore zone regulations. Adam stated that the DCPC regs had more bearing on the application than nonconforming uses and structures.

-Kris read ZBL 9.6 and the conditions that must be met in order to obtain a special permit. Kris opened the floor for public comment. There was no one to speak for or against the applicant.

Board members agreed that the project had ConCom approval and there was no increase in plumbing or living sq. footage.

Andrea made a motion to approve the plans as presented. Derek seconded.

**The Board voted 5 - 0 to grant the special permit to Mark & Sharon Depucchio at 31 Old Barnes Rd.**

-Before the next hearing, Andrea was replaced by Peter Yoars.

-The last hearing was for Leo Convery and Cottage City Limited Partnership at 10 North Bluff Avenue. Mo O'Connor, Betsy and Mark Luce presented to the board their plan to demolish the existing residence and replace it with a new building.

-Kris 1<sup>st</sup> stated that the property is in an R-1 District requiring 10,000 sq. feet and the lot only has 2,150. He stated for the record that there is only 50 feet of frontage and R-1 requires 80, setbacks are 20 all the way around but the current residence is 5.3 in the front, 3.9 & 22.1 on the sides and 4.5 feet in the rear.

-Mo 1<sup>st</sup> showed a picture of the existing single floor residence and commented on the rough shape it is in. The plan is to demolish and replace it with a two story residence that will have 824 sq. feet of living space on each floor. Mo stated that the new residence would be in conjunction with the hotel in front of the

property. Mo said they had to change their original plans because the two story ridge that was over the existing footprint would have blocked views of the abutting neighbor. So they designed the building to be put further back on the lot and run horizontally towards the hotel. He also said a deck has been put towards the back of the structure facing towards the properties the Convery's own. He said that they are going to the planning board for special permitting to make this residence an extension of the hotel.

-Mo said the 1<sup>st</sup> floor unit of the proposed structure would be for employee housing and the 2<sup>nd</sup> floor unit as a rental tied in with the hotel. Adam discussed the use regulations for motels/hotels in residential zones that have to have a site plan review from the planning board in order for it to be allowed. Board members discussed the relevancy of the new structure's use and the nonconforming aspects of the new structure as well. Betsy said the size of the new house is in keeping with other two and three floor homes in the neighborhood and the design is similar as well.

-Board members asked where other abutters were in relation to the new residence. Adam reported that Copeland has allowed the demolition to occur but won't grant their certificate until plans are finalized.

-The applicants explained who was where and how they rotated the building in order to preserve views.

-Kris opened the floor for public comment. Barbara Berninger from 7 Pasque Avenue talked about how she has lost so much of her view over the past 40 years. She made a claim that the property right behind the proposed new structure is also residential but is used in conjunction with the adjacent hotel the applicants own. Patricia Wallace from 10 Saco Ave also expressed her concerns that the use of the new house as a duplex and for commercial purposes encroaches more business use into the residential area. She pointed out that the hotel is for sale and doesn't see how the duplex could still be used to rent when the hotel sells to someone else.

-There was discussion on which of the 3 properties the applicant owns would be for sale. Derek said if the hotel is sold, the proposed residence would remain as two, two bedroom duplex.

-Kris read ZBL 3.5.5. He said it's a pre-existing, nonconforming structure, not use. So the new use issue will be granted by the Planning Board after a site plan review. He told the board to look at the structure and its proposed change but factor in things like traffic & parking, noise and views as impacting the neighborhood with the structures increased use. Peter said with or without approval from the Planning Board, the ZBA is looking at approving a duplex. Joe stated that if a bigger structure is allowed on the property then the increase in its use is allowed as well.

-Kris asked about the changes in footprint. Adam stated that the existing residence is 34' long by 24' wide. The new structure is 24' long by 38' wide. The height of the existing structure goes from 13' 6" up to 26' 10". Mo said the 1<sup>st</sup> proposal was two feet higher but has been reduced with the change in footprint.

-There was a short conversation between Adam and Kris on lot coverage. Kris talked about the proposed trade being made to reduce the nonconforming front setback and increasing the side setback for the benefit of the abutting neighbor.

-There was talk of the new residence being two floors. Betsy said all the other houses in the neighborhood have at least two floors and they need a residence that can support staff housing and have a rental to offset the cost of the new residence.

-Kris talked about the height of the new building being 6 feet shorter than what is allowed in a residential district. Joe asked when a lot is this small, where does the line get drawn that anything can be rebuilt on it? Kris said it's unfortunate that residents have lost their views because zoning has allowed homeowners the right to construct taller buildings. He said that because the neighborhood already has large buildings, the additional unit in the duplex won't have that much of an impact.

By consensus, the Board agreed that ZBL 3.5.5 does apply.

-Peter Y said he doesn't think what's proposed will add any significant problems to the neighborhood in terms of parking, noise and traffic. Kris reminded everyone to keep in mind the exact language of

substantial detriment as it applied to this specific case. Joe stated that he would like to see another plan with only one floor because the lot will be overburdened with what is proposed. Betsy said it was not financially feasible and that all the other buildings in the area had at least two stories. Kris talked about the “canyon” effect where the current residence is surrounded by other homes that are much taller. He said in that neighborhood, despite the size of the lot, if everyone has built two and three story homes, the applicant has the right to do so as well.

-The current seasonal use of the residence was talked about. Joe said it looks more like a shed than house so its conversion to a duplex is a substantial increase in its use to house people. Kris said there has to be a compelling argument not to allow the applicants the right to have a two story house when everyone else has one. Peter P. said the neighbors have stated their concerns that the proposed new structure will be an expansion of business use that has had problems with them in terms of noise and will increase those problems. He asked that the proposed use is substantially more detrimental. Kris said the applicant seeks special permitting for the structure. Peter stated that residential districts are for single family structures and what is proposed is not and that it won't be used as a residential property. He said it will change the quality of the neighborhood if it is allowed.

Peter Y made a motion to approve the plans as submitted. Derek seconded.

**The Board voted 3 Ayes (Kris, Peter Y & Derek) and 2 Nays to approve the motion.**

-The motion did not carry and the application was not approved.

-Under new business, Adam showed board members the proposed new plans to change the by-laws for flood plain permits. He produced a large town map showing where different properties were located in the flood zones. He said he had been working with conservation and the Storm Smart group from Boston to develop new regs that changes the scope of special permitting in coastal flood areas. The goal of the by-law change is to restrict or prohibit development and uses on land subject to coastal storm flowage and its buffer zones in order to minimize potential loss of life, destruction of property and environmental damage inevitably resulting from inappropriate development on land known to be subject to storms, flooding, erosion, relative sea level rise and other coastal zone hazards. He said that the significant changes to the by-law will be to transfer some of the allowable buildings and uses to go from “by right” to special permitting and some of the specially permitted uses to become “prohibited.”

-The meeting adjourned @ 8:00pm