

Zoning Board of Appeals
Minutes of Meeting 2/18/2010
Oak Bluffs Town Council on Aging Building

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

The meeting began at 5:50 pm. The minutes from January 21st were discussed for approval.
A motion was made and seconded to accept the minutes with amendments from Peter P. and Joe from January 21st.

The Board voted 7 – 0 to approve the minutes from 1/21/2010

-The Board agreed to meet again in March on the 18th. There was discussion about the other meeting scheduled March 4th.

-Kris asked if someone from the board could attend a ConCom meeting for a new application by Richardson at 43 Sengekontacket Road February 23rd. Peter Yoars said he would attend.

-The Board met with Fred Hancock, newest appointed Oak Bluffs member to the Martha's Vineyard Commission. Board Members and Fred discussed better ways to open up communication between the two community review groups and to stay informed with the proposed new regulations for wind energy. Fred gave a little personal history to the Board and how he came to being appointed by the selectmen to the MVC.

-1st on the agenda was the continued hearing from December for Dave Richardson at 43 Sengekontacket Rd. Sitting with the board was Dave, Engineer George Sourati, Architect Jamie Weisman and Attorney Geoghan Coogen.

-There was discussion on the opinion handed down by town counsel that a residence located in the Coastal District Shore Zone could not be demolished and replaced. The applicants stated that they were seeking to alter the residence all along and had stated such on their application to the zoning board. They also stated that the advertisement in the paper was incorrect because the existing house was not pre-existing, nonconforming.

-Adam stated that the building permit application declared the applicant's wish to demolish a two bedroom residence and replace it with a four bedroom home. The denial from the building inspector reflected the applicant's stated request. Adam also pointed out that if the residence was built prior to the adoption of the coastal district regulations, it is in fact pre-existing and nonconforming from DCPC regulations.

-There was discussion on saving a percentage of the house and floor systems for alteration purposes. Adam stated that if there was a change in the proposal then it should go back to the Building Inspector first for his review before being passed onto the board.

-Kris opened the floor for public comment. There was none. He then closed the floor.

-Kris stated his intention to seek a motion to deny the applicant's demolition request. The applicants asked instead for the board to consider a withdrawal of the entire application request.

-Peter Yoars made a motion to allow the withdrawal of the applicant's request for a special permit to demolish the existing residence at 43 Sengekontacket Road and replace in with a new building. Andrea seconded.

The Board voted 4 – 1 to approve the motion.

-The next hearing was for Daniel Richheimer at 17 Spindles Path Rd. Sitting for the Board were full board members Peter Palches, George Warren, Kris Chvatal, Derek Tipton and Joe Re. Daniel and his father Skip explained that he had just bought the home with an understanding that an existing accessory structure was permitted to be converted into a guest house. After the sale occurred he found out that there was a condition he couldn't meet not being an owner for five previous years.

-Kris pointed out the nonconforming setback issues for the current woodshop building. Daniel said they would be keeping the same building with a small bump out area for storage. Kris said that under 3.4.2 the applicant can't meet the 5 year rule. Daniel said they are moving from California next May to live on island year round.

-There was discussion on the intent of the condition. Adam explained that the five year rule was in effect to prevent speculation building.

-Kris opened the floor for public comment. Moira Fitzgerald from 86 Wing Rd. said she had no problem with the design. Adam stated there was no written correspondence. Kris closed the floor.

Kris asked what the use of the guest house will be. Daniel said it would not be rented out and only used for friends and family.

Derek made a motion to approve the plans as presented and grant the condition of having the guest house with less than 5 years of ownership. George seconded.

-In the discussion Peter stated that he personally had to wait five years to build the guest house on his property. He expressed concerns that the intent of the 5 year rule was being considered too lightly. He didn't know if ignorance of the law can allow an exemption from 5 years of ownership. Kris pointed out that anyone can come to the board with less than 5 years of ownership and seek special permitting on a case by case basis.

-There was a brief discussion on possibly conditioning the use of the guest house. Kris read the zoning by law for guest apartments.

The Board voted 4 – 1 to approve the special permit.

-Adam said the site plan could be signed because it had an engineer's stamp on it but the building plans still had the former owner's name on them and had to be changed before the board could sign off on them.

-The next hearing was for Elinor Reed at 21 Pennacook Ave and her application to convert an existing nonconforming accessory structure into a guest apartment with less than 7,500 square feet of open space on the lot which is unpaved and unoccupied by any structure.

-Architect Doug Ulwick represented the applicant. He said the Reed's have owned the property since the 1960's. Doug showed a site plan that shows the lot doesn't have 7,500 square feet on it. He said the lot does have four parking spaces which, in the neighborhood is at least two more than what most residences have. He said it's a pre-existing two car garage which will be converted into a one bedroom apartment. He said he has all the necessary sign offs from wastewater, water department and CCHDC. Doug showed there are setback nonconformities for the structure but that the conversion won't change the existing setbacks. There will be a monitor cupola added to the garage but there won't be any change to the garage other than replacing one of the doors with windows. He said the additional loft space is 66 sq. feet.

-Doug said the intent for the owner is to live in the guest house during the summer and rent out the main residence. He showed on the plan an entry court patio area to create privacy between the main and guest house. There was talk of the main house being a single family home. Doug showed there was a vacant lot behind the garage. Doug talked about how the project works in a modest fashion by not moving the garage and simply renovating it.

-Kris opened the floor for public comment. Bill Reagan from Pequot Avenue spoke of his support for the project. Doug submitted correspondence from direct abutters approving of the proposed plans. Kris then closed the floor.

-Peter said that considerations for special permits shouldn't be made on judgments about people's characters.

-Kris got consensus that zbl 3.4 for accessory apartments do apply and that the condition under 3.4.1 for not having enough space warrants a special permit as well as additional parking.

Joe made a motion to approve the plans presented and allow the conversion to occur despite the lot not having 7,500 sq. feet of open space. Derek seconded.

Peter said he has an issue of how close this structure is to property setbacks and that it's conversion to habitable space puts it very close to neighbors. He said there should be some consideration to moving the garage further away from the property lines. Kris said that condition would make the project cost prohibitive. Making no change in the existing footprint makes the conversion to a guest house no more detrimental than what currently exists.

The Board voted 4 – 1 to grant the special permit.

The next hearing was for Charles Hajjar at 10 Anthiers Lane and a special permit to allow the construction of a pool inside the 50 foot setback for an R-3 residence. Engineer George Sourati showed the site plan for a house under construction. He showed where the 50' setback is and how they want to build on a location where the slope of the property is the least and where they won't have to elevate the structure because of the lot's high groundwater clearance. He said they would level the grade and create a patio next to the pool.

-There was discussion to move the pool's spa area to another area on the site at the request of an abutting neighbor. It goes from 31' to 37' away from the side setback. Board members talked about considering sliding the pool further over to comply. George said if that were the case the pool will have to be elevated to clear groundwater underneath.

Kris opened the floor for public comment. There was none and no correspondence to be read. Kris closed the floor. Joe asked if there are any other setbacks issues besides the one. Kris said it is the only one to consider. Kris said that special permits are granted when there are issues dealing with the land or location that necessitate special permitting. He said there seems to be an alternative for the applicants to construct something smaller that could comply with 50' all the way around. He has a concern of granting an exemption for what basically is a design choice. George said there is a topographical reason to put it level with the site and not have it raised. He said the design makes it the least intrusive to the house and the neighbors.

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

The Board voted 5 – 0 to grant the special permit.

The last hearing was for Michael Lehr at 133 Seaview Avenue. The applicant was presenting a plan to renovate and add to a residence that is in the Coastal, Island Roads and Flood Plain Overlay Districts. Representing the applicant was Architect Chuck Sullivan, landscape architect Kristen Reimann and Engineer George Sourati. Michael Lehr was also present.

-Chuck showed a picture of the house on Seaview Avenue. It was stated that the Lehr's had recently purchased the house and want to renovate it because they have a growing family. Chuck said both the Coastal and Island Road Districts require a special permit if the roof height is above 24' from mean natural grade. He said the existing house is currently 26' high and to go to 28' because the first floor is below the flood plain. He said the ConCom wants the 1st floor out of the 100 year flood plain. He showed the nonconforming aspects of the residential structure. It is 5' from the north property side line and the back of the house is 18' off the south side line. Chuck said part of the back of the house will be removed to make way for the new addition. He said that the applicant has gotten approvals from the Board of Health, Con Com and Cottage City.

-Kris asked what will be in the addition. Chuck said it will have a kitchen area and entryway as well as a master bedroom and bathroom on the 2nd floor. Kris asked Chuck to explain why there were two designated wetland areas on the site plan; one flagged by Cooper Environmental and one by the Horsley – Whitten Group. George said the Cooper delineation was done for vegetation and soils. The Conservation Commission chose another research group to determine another part of the property that was deemed "wet".

HW did a soils and hydrology evaluation that put the wetlands area closer to the residence.

Kris asked why there weren't two radiuses drawn based on the two reports. George said that shore zone regulations look only for wetland species as a wetlands indicator. Kris said the language on the site plan says the same thing in identifying wetland areas from both research groups. George said the state requires either soils or vegetation to determine wetland areas for local conservation commissions.

-Kris asked which report was accepted by ConCom. George said both were accepted. Adam showed the ConCom's order of conditions for the project accepting only the Whitten report. Derek asked if the board should follow the measurement of the shore zone from the closest point in the Whitten report. George stated that it shouldn't be followed because the H-W group did not do the right survey to satisfy the shore zone regulations.

-Adam gave Kris a copy of the Whitten report. He read from it:

"The purpose of the site visit was to determine whether the wetland boundary accurately represented the limits of wetland indicator vegetation and indicators of hydrology in with the regulations of the Massachusetts Wetlands Protection Act." Adam showed the board a site plan including a radius from the Whitten report. George asked for the definition of the shore zone as it is written under section 9.

-Adam read the definition of the Coastal District. He then read the definition of the shore zone. George said because you have to look for a species as an indicator of wetlands in the shore zone, the Cooper report is the report the site plan followed to establish shore zone boundaries by Farm Pond.

-Kris stated a concern that the inclusion of the two reports raises enough issues for the board to not act. He said there is a legal issue of the board considering a special permit and not following the recommendations from another community review board that is part of the permitting process.

-George said the determination of bordering vegetative wetlands is based on 3 components: soils, species and hydrology. Two of the three must be present to detect the delineation mark.

-Kris read some more from the report:

"As the site visit did not occur during the growing season and the site is largely dominated by a large open area of maintained vegetation, it is our opinion that the soils were more reliable indicator of hydric conditions. Direct observations of standing water or soil saturation, while generally indicative of wetland hydrology, are less reliable during the non-growing season."

-Kris read other notes from the report detailing the soil analysis to determine boundaries according to WPA regulations and local regulations. There was discussion on the dueling reports. Kris reminded the board that being in the shore zone doesn't shut you down from adding to your home. It just doesn't allow you to add any plumbing.

-Kris read the Coastal District regulations. He pointed out the Whitten report tested in an area where wetland species might grow if testing was done in the growing season. Kris then read the Cooper report. Derek pointed out that the Whitten report showed a delineated area where soils and hydrology could support species within a growing season. Kris stated that the Cooper report used a method involving soils, topography and vegetation. Peter asked about the other concerns with the project. Kris thought it should be referred to counsel since making the right choice to accept either study is the difference in allowing other consideration to come into play for special permitting or nixing the project altogether. Kris wants to ask what to weigh in determining which study to use: the difference in method and if the local by-law favors one method from another. Does the local by-law give the board any guidance on which one to choose? Does the local by-law have any reference going back to state law for clarification purposes?

-There was discussion on loss of views by neighbors. Chuck said he can do a site presentation from neighbor's homes.

-The applicant agreed to continue the hearing to March 18th at 6:05 pm. An extension was signed and the meeting was concluded.

-The meeting adjourned at 8:15 pm.