

Zoning Board of Appeals
Minutes of Meeting 3/4/2010
Oak Bluffs Town Council on Aging Building

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

The meeting began at 6:00 pm. The minutes from February 18th were discussed for approval. Adam said he has made an edit as per Peter's request.

A motion was made and seconded to accept the minutes from February 18th.

The Board voted 5– 0 to approve the minutes from 2/18/2010

-The Board agreed to meet again in March on the 18th. There is only one application to be heard and that is the continuance of Lehr application from February.

-Adam brought to the attention of the Board that site visits do not require public posting or the need to officially meet if a quorum is achieved at the site.

-The 1st hearing for the evening was for Richard Gaffey at 37 Katama Avenue. Architect Chuck Sullivan along with Dave Gaffey represented the applicant. Chuck showed a site plan and stated that it is a pre-existing, nonconforming lot with no structure on it. Chuck said there is an approved building permit in place and approvals from ConCom, Board of Health and Cottage City. The proposed structure is looking to have a special permit for over height on the Coastal District and a flood plain permit because part of the site is below the 10' flood elevation and there is an alteration of the land form to build the structure and install the septic system. Chuck explained that because the proposed structure is in the 100 year flood they can't have a basement and the 1st floor can't have any floor framing in the flood plain elevation. He said that lifting the house up will make it a healthier building and won't affect views. Chuck said the height difference is 30" increase from 24 feet to 26' 6". Chuck stated that the property is within 500 feet of a wetland but not within the 100' shore zone area.

-Peter asked about setbacks being only 3 feet for the proposed structure. Adam said because the lot is empty and created prior to zoning, setbacks are waived in the 1st time building application.

-Kris opened the floor for public comment. Maura McGroarity from 38 Katama Avenue spoke of her concern that the scale of the house is large in relation to the small setbacks it's been given when permitted to build. There was no correspondence to be read. Kris closed the floor for board discussion.

There was discussion on the granting of a flood plain permit and who should grant it. Kris said he thinks the board needs to grant a special permit for the change in grade as an alteration of the land form. Chuck explained how the land form changes in order to construct the elevation around the disposal system. He said the actual change to accommodate the elevation needed around the septic system is only 3 to 4 inches.

-Kris got consensus that 8.1 does apply.

Peter asked if the Board can decide on the flood plain special permit request when it wasn't posted. Adam said the board can act in any action related thereto the special permitting process for the applicant.

Kris said if the total change in elevation is only 3 to 4 inches to accommodate the septic system, he thought it was only a minor alteration of the land form.

Derek made a motion to approve the alteration of the land form. Andrea seconded.

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

-There was discussion on prior approvals for height differences in the Coastal District. Kris said there have been exemptions because the structures were trying to get 2nd floors up to code.

-Adam asked if shade trees are being addressed. Chuck said he's talked to Tree Warden Joe DeBettencourt and the applicants have addressed his concerns that several trees are maintained and preserved on the property. Kris asked if the board has issues on the elasticity of different heights applicants have asked for in both the current and prior requests. Peter's concern would only be if it were blocking a view.

George made a motion to approve the height addition as presented. Derek seconded.

Kris said 30" is an awful lot to give when not required.

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

The next hearing was for Alan Hobart at 9 Wood Duck Way. Chip Mitchell and Alan Hobart presented a plan to alter the house and repair it after it had been damaged a year ago. The addition is incorporated into repair of the main house. Chip stated that the addition will reduce the setback that is currently 0 feet to 2.5 feet. He also pointed out that there will be another addition adding a second floor to another part of the residence that cantilevers out over the property.

-Kris read off the nonconforming aspects of the property. He got consensus that the application can be considered under zoning by-law 3.5.5. Kris read approval letters from the following:

Gary Shriver from the Sengekontacket architectural review committee;

Paul Swartz's from 26 Box Turtle Ln.

Robert DeClerico from 14 Wood Duck Way;

April & Albert Hamel at 10 Wood Duck Way;

Barbar Plessner at 18 Wood Duck Way.

In public comment – Gary Shriver, a direct abutter, spoke of his support.

Kris said the applicant is showing a reduction in the nonconformity. He also didn't think the requested changes overburdened the lot. A determination was made that the increase in new floor space is 650 square feet. Board members agreed that the project is not substantially more detrimental than what currently exists.

Peter made a motion to approve the plans motioned, Andrea seconded.

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

-The final hearing was for Joan Darack & John Beatty at 236 Newton Rd and their plans to add a 272 square foot addition to their home. Builder Michael Carroll 1st stated that there were two buildings on the property and the proposal is to build an addition onto the main residence. He showed that the main residence has one side setback issue.

-Peter asked about other nonconformities that exist on the property that neighbors have concerns about and that prior appeals boards have addressed. Kris said that the board should deal with what's proposed 1st and then get into other matters regarding the property as correspondence is read and public opinion given.

-Michael showed building plans for the renovation and addition to the home. He said there is an 11' section of the building that is one story and has two bedrooms and a bathroom that the owners wish to enlarge.

There is an existing stairway in one of the bedrooms that would be removed for safety and privacy concerns and placed in the addition for access to the laundry room area. The new stairwell would be built to code.

-Joan Darack spoke to the board. She said that they need to expand the front part of the house to make the two bedrooms more accommodating and to replace the stairs that are too narrow and treacherous in a home that has many guests and children living in it. She stated that her family has owned the residence for 18 years and understands the objections the neighbors have with what the former owner did with the property and the accessory structure that is there today.

Kris read correspondence from the following people:

Gayle Potter from 254 Newton Rd stating her objection that expansion should not occur so close to the water;

James Harding from Newton Road stated his objection over the expansion based on a 1990 zoning board decision;

Robert Weiss from 85 Worcester Ave, a 300' abutter, stated his objection over attempts that have been made to alter the garage/guest house;

Sally Ann Quebec et al. from 230 Newton stated their concerns over more expansion to occur on the lot;

Lisa Zahn & Carl Sager from 237 Newton Rd stated their objection based on the 1990 decision and that there wasn't 7,500 square feet on the lot to allow the main residence to be expanded;

Sally Ann Kakas e-mailed an additional letter asking for adherence to the language in the 1990 decision;

Luke Debettencourt, attorney for the Zahn Family was read in opposition to the plan;

Amy Robertson at 240 Newton Rd. wrote in favor of the proposed addition. Joan pointed out she is the direct abutter that would be most affected by the addition.

-Kris opened the floor for public comment. Attorney Luke Debettencourt spoke of how the addition will set a precedent for future building on both this property and in the neighborhood and that potential harm may come to Lagoon Pond as a result. He said the 1990 decision has language in it that prevents any further expansion on the property. He asked for conditions that the septic system be upgraded if the proposed addition were allowed. No one else spoke.

Kris closed the floor for public comment. He asked for got consensus from board members that the applicants did qualify for a special permit under 9.6 Coastal Zone regulations. Michael stated that there is no need to upgrade the septic system because there is no plan to increase the number of bedrooms on the property. He also said that there is no increase in the water generating fixtures in the house. ConCom has approved the proposed plans without the need to grant any variance or special permit because the increase is less than a 25% expansion that requires special dispensation from the ConCom. Michael said that the septic system has been inspected when the 2nd floor was added in 2001. The health agent will determine if there is a need to upgrade.

-Andrea asked about the stairs and why they can't be rebuilt in their present location. Michael said the stairs is in one of the bedrooms. He said they are steep and do not have enough head room and potentially dangerous when carrying laundry. He showed the plans where the existing floor plan is and where the basement is and how the stairs have to be longer and wider.

-Kris asked and got consensus from board members that the applicants also qualified for a special permit under zoning by-law 3.5.5. It was decided that the applicant would need two separate votes in order for the project to be approved.

Kris brought up the condition in the 1990 Fender zoning decision that doesn't allow any future consideration of any building plans on the property. Adam stated that the 1990 decision grants a variance that allowed the former owner to keep on his property an illegally built garage. He thought that the intent given in the language of that decision is you can keep the garage and its varied use but nothing further can be added to that structure. Adam talked of how the current owners did apply for a special permit to do work on that particular structure and were denied by the board in 2006 because the prior decision had stated such. Adam then went on to say that the applicants did come to the board in 2001 to add a second floor to the main residence and were given a special permit with no objection from neighbors in either public testimony or written correspondence.

-Kris said he has trouble believing that a zoning board can have the power to withdraw anybody's right to file for a special permit. There was discussion on homeowner's rights to file for permits under both state and local regulations and the past board's overzealousness in preventing future considerations on this

particular lot.

-Derek made a motion to approve that portion of the application under shore zone regulations based on the fact that it doesn't require any increase in plumbing facilities or on site septic disposal facilities. Andrea seconded.

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

-Kris stated that under other circumstances he can't think that neighbors would have any objection to an application such as this that is really only a minor alteration of an existing house that doesn't increase any of the existing nonconformities. He said that under the 3.5.5 by-law allowing alterations and renovations to occur without substantial detriment to the neighborhood, this project is so small that it barely needs special permitting. Derek and Andrea agreed. Peter said there shouldn't be conditions on board decisions that affect future boards from considering substantial detriment.

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

-Kris agreed that under by-law 3.5.5 the proposed extension and alteration is not substantially more detrimental than the existing nonconforming use or structure to the neighborhood. George said the applicants were allowed to put a second floor on their residence so there is no reason not to let them alter it again making it safe for those who inhabit it.

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

The meeting adjourned at 8:15 pm