

Zoning Board of Appeals  
Minutes of Meeting 3/18/2010  
Oak Bluffs Town Council on Aging Building

Members present: Kris Chvatal, Chairman, Peter Palches, Derek Tipton, George Warren, 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 March 4<sup>th</sup> were discussed for approval. A motion was made and seconded to accept the minutes from March 4<sup>th</sup>.

**The Board voted 5– 0 to approve the minutes from 3/4/2010**

-The Board agreed to meet again in April on the 29<sup>th</sup>.

-Adam had Board Members sign off on stamped site plans for Hobart at 9 Wood Duck Way and building plans for Richheimer at 17 Spindle's Path.

Peter P. asked how the meeting went with Peter Y. and the ConCom. Peter Y. said that the ConCom was looking for additional documents regarding the Richardson application. Kris said he had met with the Chairman of the ConCom and had discussed getting both boards on the same path to understanding regulations as they pertain to wetlands and coastal waters.

-The 1<sup>st</sup> order of business was the continued hearing for Michael Lehr at 133 Seaview Ave from February. Architect Chuck Sullivan introduced environmental engineer Doug Cooper, landscape architect Kristen Reimann and the owner, Lehr. He produced an area map that showed the residence is the second to last house on Seaview Ave. before Farm Pond. He stated that the house is nonconforming because it doesn't meet front or side setbacks for an R-2 zoned property. He said the lot does have 20,000 sq. feet. He said the residence is below the flood plain elevation and they need to lift the house up to get it out of the flood plain. He said the proposed renovation and addition + the new septic design has been approved by the ConCom and the Board of Health. The addition has also been approved by the Cottage City Historic District Commission.

-Chuck stated the proposal is to take off the 12 X 16 foot back part of the house and rebuild to create a new master bedroom and bath and expand the kitchen. He said the whole house will be renovated as well in order to bring it up to building code. Chuck told the board that one of the bedrooms on the 1<sup>st</sup> floor was being rearranged so that there can be a new bathroom and an area for a washer and dryer.

-Board members & Chuck discussed the new deck on the back of the house with a pergola above.

-There was discussion on the different special permits needed and if the board can issue one comprehensive permit with all the by-law allowances put together.

-Chuck showed photos of the Seaview Ave. residence and how the proposed addition would affect neighbor's views.

-Kris summarized the different by-laws that have to be considered in special permitting. He said the house is pre-existing, nonconforming. He read language from the Island Roads district as well as Coastal District regulations and the local flood plain overlay district by-law.

-Doug Cooper spoke to the board about the wetland delineation report he did for engineer George Sourati, who along with Chuck represents Lehr. He said the property has three sets of wetlands adjacent to it. The wetlands report he did identifies the different "fringes" of both salt and freshwater wetland areas on the property. He said there is also a "lobe" of wet soil that goes into a mowed meadow behind the house. He said the other report submitted by Horsely- Whitten tested soil conditions because the vegetation in the lobe

was expository.

-Doug stated he's been doing wetland reports for 25 years and was a state regulator for 15 years. He said the shore zone regulations developed by the MV Commission were to help boards and commissions regulate areas that had a direct impact on coastal, tidal and other bodies of water and to include dunes, salt marshes and beaches. He said the shore zone is defined by the identification of salt marsh grass, dune grass and beach grass – vegetation types specific to the shore.

-Board members discussed with Doug the area of the property that's been subjected to fill from prior years that prevents wetland species from growing. He said the Whitten report did soil sampling to satisfy the state requirement of determining the wetlands boundary.

-There was talk about who was hired to do the two separate studies. Kris read a section of the DEP report on how to delineate bordering vegetated wetlands. Doug and board members talked about that part of the property that is periodically mowed. Doug mentioned that the Whitten report suggests re-vegetation in the mowed area with plants that do not need wetland support to grow.

-Doug said the shore zone regulations were adopted before state regulations went into effect to determine wetland areas. He said that very obvious wetland species such as marsh grass and cattails were included so that a simple determination could be made as to where wetlands were. Coastal resources and associated wetlands were discussed. George Sourati talked to the board about the differences the state requires local ConCom's acceptance of wetland areas and what zoning requires under coastal district regulations. Kris read the shore zone regulation 9.1.4.

-The board reviewed the DEP data sheet the Whitten report had submitted to the ConCom. Doug said that because the site was altered and the vegetation non descriptive, soils were used to determine the wetland area. Joe asked that the board consider moving to take the Whitten report off the table because it did not measure the vegetation the board would be looking for to satisfy the shore zone regulations. Kris said there may be a flaw in the by-law that provides different criteria for various review boards to consider wetland areas. Mowing wetland areas without a ConCom permit was talked about.

-Ken Pailler from 11 Canonicus Ave. asked that the board look at the order of conditions the ConCom put together to approve the project. The board looked at several of the conditions from ConCom. Chuck and George stated that ConCom's conditions deal with construction guidelines and type of septic system to be installed. For ConCom's purposes, the Whitten study is the one ConCom is accepting as part of their approval of the project.

-The applicants moved onto the site plan showing the part of the structure in the shore zone from the Seaview Ave. side of the property and claiming that the proposed addition was not in it. It was pointed out that if the board accepted the Whitten report, the entire house would be within 100' of the wetland area.

-Kris read letters from abutters. Thea Hansen of #4 & 6 Canonicus objected to a loss of views from her two homes. Frank & Tina Barvenik from 14 Vanessa Way expressed concern about the new mounded septic system. Lois Wilson from 15 Vanessa Way stated that a 5 bedroom home will negatively impact the fragile wetland area. Bettye Baker from 7 Canonicus Ave objected also to the mounded septic system. Ralph Lanzetti from 129 Seaview Ave, a direct abutter, wrote to endorse the change in the structure.

-George talked to the board about the requirement that a new septic system be installed because the current system, which has a cesspool, is in the groundwater and is polluting the pond. He also pointed out that the mounded system will be 10' above sea level and only 4' above the road elevation.

-There was a determination that the existing house has five bedrooms. Kristen Reimann said there is vegetation all along the road that will hide the mounded system and a plan is in place to vegetate the mound so that it is unobtrusive to passersby.

-Kris asked the board if it would be alright to grant separate special permits. He 1<sup>st</sup> asked for consideration of the overheight request in the Island Roads District. Chuck said the current house is 26' from mean average grade and to go to 28'. Chuck said this is necessary to get the house's 1<sup>st</sup> floor out of the flood plain elevation. A majority of board members agreed that the increase in height of the residence won't be detrimental to the visual character along Seaview Avenue.

Joe made a motion to allow the height of the residence to go from 26 to 28' from mean average grade.

Derek seconded.

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

-Kris then asked for consideration of a special permit to alter the land form in the flood plain. He wanted to know if board members felt that the proposed new mounded septic system, which would be 4' above the road elevation, is a liability of altering the drainage of the property or run-off to the detriment of other landholders or the Town. A majority of members stated it was not.

Derek made a motion to allow the applicant an alteration of the land form in the flood plain. George seconded.

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

-Kris then asked for a consideration of a special permit to alter and add to a pre-existing, nonconforming residence under 3.5.5 and use regulations. Chuck said the addition does not further encroach on the existing nonconforming setbacks. Kris stated the new addition does not expand any of the existing nonconformities in terms of setbacks and the new square footage does not overburden the 34,700 sq. foot lot. Peter asked if views were being compromised because of the pergola addition. Chuck showed pictures once again of how much view is being lost from homes on Canonicus Avenue.

Peter thought the addition doesn't need to have the pergola. No one wanted to condition a special permit to not allow the additional structure. There was discussion on the merits of having the pergola for wind and sunlight protection.

A majority of board members expressed views that the proposed addition was not substantially more detrimental to the neighborhood than what currently existed.

Joe made a motion to allow the applicant to alter and add to the pre-existing, nonconforming residence at 133 Seaview Avenue. George seconded.

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

Derek made a motion to accept the Cooper delineation report so that guidelines can be set for the shore zone special permit. Joe seconded.

**The Board voted 4 – 1 to accept the Cooper report.**

-Kris said the problem with the shore zone application will be how the language of the district regulations is interpreted. He said the applicant believes that because the addition falls outside of the special zone, it is not subject to its regulations and restrictions. Kris questioned that interpretation and noted the issue is about increased plumbing. Chuck stated the regulations state that plumbing may not be added in the shore zone. Derek countered saying it means not within the building within the shore zone. Kris read the shore zone regulation:

“uses requiring special permit from the Board of Appeals. Within the shore zone, the Board of Appeals may grant a special permit for any of the following: alterations to buildings and additions to existing residential structures provide that such addition or alteration neither includes nor requires increased plumbing facilities

or on site sanitary disposal facilities.” Kris then stated to George and Chuck that the structure is in the shore zone and you’re applying for an alteration to a building within the shore zone that is adding bathrooms and a new kitchen. He said it’s an application to alter a building in the shore zone. The alteration itself is not in the zone but the building is. George said if he was just putting an addition on the house, he wouldn’t need a special permit. Kris said any house in the shore zone needs a special permit if it is being altered or added to, and it is not allowed to have plumbing.

-There was discussion on past decisions allowing special permits for shore zone homes with added plumbing. Kris said zoning decisions are on a case by case basis and the board may have erred in past decisions.

Board members asked the owner if there was a dishwasher in the home. He said he didn’t think so. The improvements to the kitchen were discussed. Chuck said the project puts two new bathrooms in the home. Lehr asked the questions of whether or not he could add a guest house instead. Kris said only if he can meet certain conditions would a detached guest house be allowed. Lehr said the board’s interpretation is “strained”.

-Kris stated that the intent of the by-law wetland protection and he’s 100% sure the bylaw is being interpreted the right way. Lehr stated that without the additional bathrooms, the project is killed and the house is useless. He asked why the board was taking this stance. Kris said it’s because the request for an addition is not, according to the town’s zoning by-laws, available by right and has to be specially permitted. Kris said we are starting with a house in the coastal zone with one bathroom. When the addition is put on, we now have a house in the coastal zone with three bathrooms. To him that’s additional plumbing for two bathrooms and is not allowed under the by-law.

-Kris stated that the by-law does not say that the plumbing should or should not be in the shore zone, the by-law does not say the addition should or should not be in the shore zone. The by-law regulates structures and the current residence is in the shore zone with one bathroom and will end up with three.

-George S. said other towns allow this type of project in their shore zones with the same type of regulations.

-There was a request to take the matter to town counsel. Kris said the job of the board under state guidelines is to interpret its own bylaws and that was what the board intended to do.

George made a motion to allow the alteration an addition to the residence in the Coastal District shore zone. Joe seconded.

In the discussion George said that the board has given the applicant every other special permit and should grant this one as well. Peter said he’s persuaded by the arithmetic that a one bathroom house in the shore zone was becoming a 3 bathroom house in the shore zone. Kris asked for and got consensus that the applicant has the right to apply for a special permit under Coastal District regulations 9.6.a.i.

**The Board voted 2 -3. The special permit was not granted.**

Next on the agenda was a hearing to modify a special permit given in 2008 to Casper & Gregory Joseph to demolish and replace the residence at 44 Windemere Rd. Fred Walters came to the board as a new owner and Bob Sparks had a purchase & sales agreement showing the Fred intended to buy the home but wanted to replace it with a stick frame construction instead of the modular plans the board approved with the special permit.

-Kris asked if there was any change in the number of bedrooms in the house. Fred said it was still 3. He did say he wanted to add a 2<sup>nd</sup> floor deck that would be an increase of 250 square feet.

-The approved home was to have 3 bathrooms and Fred was looking for 3 ½ . Board members felt that because the residence was in the Coastal district, there couldn’t be any increase in bathrooms so Fred agreed to keep it at 3.

Patrick King from Windemere Road had a document from 5 neighbors, including himself, that supported the

change in plans to build a stick framed house. There was discussion on the height still having to be 27' from grade to satisfy ConCom's conditions of having the 1<sup>st</sup> floor out of the flood plain. Kris felt it wasn't necessary to have 9' ceilings on the 1<sup>st</sup> floor and asked Fred if it could be the same as the 2<sup>nd</sup> floor. Fred agreed to have both floors at 8'.

Derek made a motion to approve the modification of the plans to replace the structure at 44 Windemere Road with stick frame construction instead of modular with the conditions that the house would only have 3 bathrooms, an allowed deck expansion of 250 square feet and ceiling heights on both floors at 8'. George seconded.

**The Board voted 5 – 0 to grant the changes.**

The meeting adjourned at 8:45 pm.