

DRAFT
Zoning Board of Appeals
Minutes of Meeting 6/24/2010
Oak Bluffs Town Council on Aging Building

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

The meeting began at 6:00 pm. There was a review of minutes from the 3/18 and 4/29 meetings.
A motion was made and seconded to accept the minutes from both March and April's meetings.
The Board voted 5 – 0 to accept the minutes from March 18th & April 29th.

-An agreement was made that the board would meet again the 3rd Thursday in July (15th).

-The 1st scheduled hearing was for Maurice O'Connor and Beth Blankenship at 79 Linton Avenue. The owners are coming to the board with plans to add a 791 square foot addition on to the residence. He showed the board that the lot is undersized and the existing structure is in the setbacks. Kris saw from the site plan that the residence is 15 feet from the front of the lot and 10 feet from the rear.

-Mo said the plan is to replace the kitchen and add a second floor for a master bedroom and a bathroom and a couple of closets. Kris asked about current building height. Mo said it's 13 – 14 feet. The proposed addition would raise the roof height to 22 feet. Mo showed a letter from neighbors approving of the proposed plans.

Kris read the letter from Frank Redd of 10 County Rd. approving the proposed changes. Kris asked Adam if there was any other correspondence. Adam said there was none.

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

-In the discussion Kris stated that there will be a reduction of the existing side setbacks but well within the 20 foot setback for an R1 property. Andrea asked where Redd's property was and how he is impacted. Kris stated that the 10 feet the residence is from the back of the property goes to 12 feet. There is additional living space being added but it doesn't appear more nonconforming.

Derek made a motion to approve the plans as presented under zoning by-law 3.5.5 that the proposed addition is any more detrimental than the existing nonconforming use or structure to the neighborhood.
George seconded.

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

-Adam presented a change of plans for the Schnetke project at 69 Brush Pond Road. He showed that the screened porch addition and second floor decking needs to be changed to comply with building code safety regulations for railings. The Board, by consensus approved the changes and signed off on the new elevation plans.

-The last hearing was for Michael Lehr at 133 Seaview Avenue. Kris read the notice stating that the hearing was a reconsideration of a vote made to not approve an alteration and addition of the residence at 133 Seaview Ave. because it is in the shore zone of the Coastal Overlay District. The Board would hear the applicant again on a remand order from the Massachusetts Land Court.

-Kris read a portion of the written decision made from the 3/18 meeting. "In considering a special permit in the Coastal District, Kris said the applicant believes that because the addition falls outside of the shore 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 overlay regulations state that plumbing may not be added in the shore zone. Derek countered saying it may mean not within the residence 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 Sourati and Chuck Sullivan that the site plan shows the existing structure is in the shore zone and the application is for an alteration to a building within the shore zone that is adding bathrooms and a new kitchen. The addition itself is not in the zone but the building is. Chuck said the project puts two new bathrooms in the home.

Kris said we are starting with a house in the shore zone with one bathroom. When the addition is put on, we now have a house in the shore 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 made a motion to allow the alteration and addition to the residence in the Coastal District shore zone. The motion failed 2 – 3.”

-Adam pointed out that tonight’s meeting does not have a voting member from the 3/18 meeting. Peter Palches was not present but Andrea Rogers did attend the March meeting and was familiar with the decision made that night and was capable to sit in on this meeting in Peter’s place.

-Architect Chuck Sullivan showed the board the floor plan with the 100’ limit of the shore zone. He said that the key to the reconsideration is where the words, “within the shore zone” is placed within the by-law. He explained that because the language is first and similar to other 100 year flood language you would find in conservation, there is a limitation of additional plumbing facilities but only in that area that’s been designated “in the Shore Zone.” He showed on a floor plan that within the renovated residence, the new plumbing is in that part of the altered residence is outside the Shore Zone.

-Kris said that Town Counsel thinks there is merit to both the board and applicant’s interpretation. It is not clear cut which is right and wrong. What the Board is burdened with is that the overlay by-law is not well written. With an emphasis on plumbing as a key determining factor in regulating coastal zone building, that concept is outdated. Today’s technologies for wastewater disposal have vastly changed. Kris thinks the by-law should be updated from when it was 1st written in the ‘70’s.

-Board members discussed the zoning board’s responsibilities to protect the town’s resources and whether or not the tools they have to do that job are flawed. Kris said there as to be a reconsideration of which interpretation the board should use.

-Chuck said that the applicant has been to ConCom & Board of Health. There is an approval in place to put in a new, state of the art septic system to replace that failed cesspools that are in the groundwater. Kris said that when the by-law was written, there wasn’t the ability to make better disposal systems. So it seems that the only way to protect water resources was to not allow more bathrooms and other types of plumbing.

-Joe stated that the new system should be part of the decision to allow the additional bathrooms in the proposal because it can more than accommodate the additional runoff. Derek said that having re-read the by-law, he could not decide which was more obvious – whether the plumbing or the structure could not be less than 100 feet from the water. He said the applicant should not be penalized because the by-law is not clear as to its intent. Andrea said that until the language of the bylaw is clearly spelled out, the applicant should be able to have enough plumbing to accommodate the number of people living in the residence.

The Board and Chuck discussed sewerage issues. Michael Lehr talked with the board about the limitation of

the number of bathrooms vs. the number of bedrooms in a home.

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

Joe made a motion to approve the special permit under ZBL 9.1.A.6.a(i) for the proposed plans as presented to allow additional plumbing in the altered/renovated residence at 133 Seaview Avenue. Derek seconded.

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

The meeting adjourned at 6:45 pm.