

Zoning Board of Appeals
Minutes of Meeting 7/15/2010
Oak Bluffs Town Council on Aging Building

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

The meeting began at 5:45 pm. There was a review of minutes from the 6/24 meeting.

A motion was made and seconded to accept the minutes from June's meeting.

The Board voted 5 – 0 - 1 to accept the minutes from June 24th, 2010.

-An agreement was made that the board would meet again the 4th Thursday in August (26th).

-Board members agreed to hold off the election of a chairman since several members have not yet been reappointed to the board. Adam pointed out that election of the chairman can come at any time.

Joe made a motion to keep things status quo until the next meeting so the Selectmen can make the necessary appointments for the board. George seconded.

The Board voted 5 – 0 to carry the motion.

-Kris talked about working on rewriting the by-laws that pertained to coastal and shore zone regulations. He said he sent a note to Joan Hughes, Chairman of the ConCom, as well as other interested parties to meet August 3rd to discuss how to redraft the bylaws so they are more consistent with other board reviews.

-There was discussion on new regulations for posting meetings and how the changes could affect future meetings and their agendas. Members decided to wait & see if everyone on the Board wanted to participate or if there would only be working group. Adam stated that any changes of DCPC regs had to be 1st approved by the MV Commission and then be passed at town meeting.

-There was discussion on how different states can use precedence to set policy.

-The 1st scheduled hearing was for Jim & Pam Butterick at 359 Barnes Road. Sitting for the hearing was Peter Yoars in addition to the other full members. The owners come to the board with plans to add a two car garage with an attached porch on to the residence. Builder Dan Perry showed the board that one side of the residence does not meet existing 50' setbacks. Dan showed on a site plan a 492 square foot garage would be built 15 feet from the side lot line but it would also have an 8 X 10' screened porch connected to the house to be used as breezeway. Dan said there would be an egress deck off of both the porch and garage.

-Kris stated that the board has been very reluctant in the past to increase a nonconforming setback. He stated that the residence is 42 feet from the side line and the addition would bring it down to 15 feet. He said that under the by-law that deals with nonconforming uses and structures, the board has to find that the proposed change is not substantially more detrimental than the existing one. Dan said the owners are looking to get permission now to put on the extension to the house instead of building the garage and asking for the connecting structure sometime in the future. He said the owners can have the garage and deck by right. Kris stated that this type of application has been presented to the board in prior years and has not been approved. Speaking for himself and not the board, Kris said he couldn't allow what was proposed because it is a huge increase in the nonconformity.

-Kris stated that if the structure was not in the 50' setback, only a variance would allow the garage and

porch addition. There was discussion on the interpretation of the dimensional regulations for detached accessory structures. Joe asked what the 10 X 8' porch would be used for. Dan said it will be primarily a walkway between house and garage. Joe said it appears that with the screened in porch, it looks like a big addition is being added on to the house.

-Adam stated that the garage as a detached structure would not need board review because it is less than 500 square feet and more than 10' off the property line. Kris asked if the applicants wanted to consider withdrawing or going through with a vote based on what was proposed or with modification. Joe asked if the neighbor most affected by the change had been contacted. Jim said he was aware of the plans but was not on island at the present time.

-Kris opened the floor for public comment. There was no correspondence to be read. Carla Rolde, a neighbor on Barnes Rd. asked why the garage needed a porch and a deck. Kris stated that a detached garage of 500 square feet or less can be 10 feet off the property line if it is solely used as a garage. Adam stated that the abutter notice stated that the garage would have a porch addition but did not include language that the porch was simply a connector type structure used to attach the garage to the residence.

-Kris closed the floor to public comment and asked for a motion.

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

The Board, by consensus, agreed that the matter qualified for consideration under 3.5.5.

-Kris stated the garage must be detached to take advantage of the 10 foot setback requirement. Putting something structural between the residence and the accessory structure disallows the 10 foot setback rule. There was clarification as to whether the allowable 500 feet could be one or two floors. Kris read the dimensional regulations for garages with a footprint less than 500 square feet.

-Kris called for a vote. Adam mentioned that in order for the application to be approved, the board had to vote in the supermajority.

The Board voted 2 in favor (George & Joe) and 3 against (Kris, Peter & Derek). The special permit was not granted.

-Peter Yoars was replaced on the board by Andrea Rogers.

-The next hearing was for Peter & Judith Case of 65 Brush Pond Road. The application calls for several additions to be built on to a nonconforming residence, including a deck that is in the coastal zone shore district. Peter showed board members that the southeast corner of the property is where the house is 17 feet from the lot line. Also in the northeast corner there is a deck that is in the shore zone. Peter said that the plan is to expand without further encroaching on the southeast corner. The expansion proposal would rearrange the floor plan involving a bedroom and laundry area, improve a deck to be adjacent to the living/dining room area. Another proposed expansion is to take an existing patio and replace it with a screened porch. Peter said the goal is to have more room in the residence as they make plans to use it beyond just the summer season.

-Kris asked what the current distance was from the side setback where the patio is. Peter said it's 30 feet. The proposed screened porch would reduce the setback down to 17 feet.

-Kris opened the floor for public comment. Two letters were read, one from Delucas @ 63 Brush Pond Rd. and the other from Schnetke @ 69 Brush Pond Rd. Both letters endorsed the proposed changes to the Case residence. On neighbor, Duncan Holthousen @ 38 Brush Pond Rd., spoke in favor of the application.

-Kris asked for and received consensus that two special permits should be voted upon; one under the 3.5.5 by-law and the other under 9.6.a.1. He stated that on one side of the house the existing nonconformities are not affected by the proposed additions. But on the other side, where the proposed porch was being built over the former patio, there was an introduction of a new nonconformity. He asked the applicant to

reconsider building the porch to be 20 feet from the side property line and not 17. Kris explained to board members that in applying zoning by-law 3.5.5, the residence would be nonconforming on two sides of the house instead of one. Kris read from a document he obtained at a vested rights seminar he went to in 2007 that stated “the creation of a new nonconformity may require a variance as well as a Section 6 finding.” Adam clarified that the finding in question is that the proposed change is not substantially more detrimental to the neighborhood than what currently exists.

-Kris then told the applicant that the application as presented wouldn't qualify for a variance because it doesn't meet the conditions to be considered as such. Joe, Andrea and Peter talked about reducing the size of the porch or expanding it in different directions. Kris got consensus that all the other proposed changes to the residence under 3.5.5 were not substantially more detrimental.

-Kris proposed that the porch be no less than 20 feet from the side setback. There was discussion about reducing the setback from 17 to 18 feet. Kris said a change in the foot print from 30 to less than 20 feet would require a variance. Derek agreed.

Peter said he'd make the porch 20 feet from the property line. Derek made a motion to approve the application under 3.5.5 provided that the proposed porch be reduced to allow for a 20 foot setback. Joe seconded.

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

-Derek asked if the proposed addition in the shore zone had any additional plumbing. Peter said no.

Andrea made a motion to approve the proposed changes to the residence under 9.6.a.1. Derek seconded.

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

Peter Yoars once again joined the board and Andrea went off for the final hearing.

-The last hearing was for Angela Laiken at 425 Barnes Road. The application asked for an addition to a pre-existing, nonconforming residence that is in the Coastal District Shore Zone. David Laiken and his son Eli sat with the board and 1st explained that the house and lot are all nonconforming. The proposal is to convert an existing patio porch into a three season sun room. The site plan showed that the house is in the shore zone. David stated that they had met with the Conservation Commission and their plan has been approved.

-Kris reviewed the nonconforming aspects of the residence and stated that the proposed sun room would not create a new nonconformity.

-Kris opened the floor for public comment. There was none and no correspondence to be read.

There was consensus that zoning by-law 3.5.5 was applicable. Joe made a motion to accept the plans as presented. Peter seconded.

Kris stated that the proposed change was not substantially more detrimental to the neighborhood than what currently existed.

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

-Board members made a determination that the alteration to the residence does not increase the plumbing facilities nor requires an increase in the sanitary disposal system.

Peter made a motion under 9.6.a.1 to approve the alteration of the residence in the shore zone. Derek seconded.

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

The meeting adjourned at 7:05 pm.