

DRAFT
Zoning Board of Appeals
Minutes of Meeting 9/16/2010
Oak Bluffs Council on Aging Building

Members present: Kris Chvatal, Chairman, Peter Palches, Associate Members Andrea Rogers and Peter Yoars.

Also present: Adam Wilson, Zoning Administrator & ZBA Clerk. Joan Hughes, Chairman Conservation Commission.

The meeting began at 6:00 pm.

Minutes from 8 – 26 and 9 – 9 were reviewed. A motion was made by Andrea and seconded by Peter Y. to accept the minutes from August 26th.

The Board voted 4 – 0 to accept the minutes as written from August 26th.

A motion was made by Andrea and seconded by Peter Y. to accept the minutes from September 9th.

The Board voted 4 – 0 to accept the minutes as written from September 9th.

The Board agreed to meet again the 3rd Thursday in October (21st.)

-The 1st hearing was for the Storm Smart Committee and their request for the Board to adopt new rules and regulations for the recently amended flood plain by-law. Adam, who is a member of the committee along with Joan talked with the board about what process the Board will have in dealing with the provision of considering a waiver of strict compliance.

-Joan said a waiver in the regulations is language put in place because the ZBA should have the power to waive regulations if a project is not applicable or if the board can see there's a benefit to the town in allowing the project to go forward. Peter P. asked what kind of benefit. Adam said a natural resource could be preserved that the town wants so certain regulations could be waived in order to get that particular benefit.

-There was discussion on procedure for waivers. Adam & Joan said if there is written application by an applicant seeking a waiver, it is done before the hearing for a special permit. The Board would make a determination that a regulation does not necessarily apply to a particular project and as a matter of record vote for a waiver with the minutes recording the vote and the reasons why.

-Board members and Joan talked about the relationship the ConCom has in getting a project to the board with necessary technical approvals so they can more generally permit a project that's been determined not to increase flood heights or pose additional threats to public safety or conflict with local by-laws. Adam stated that the waiver rule is installed in the proposed regulations as a remedy needed when an applicant seeks different kinds of solutions in achieving permitting for a project that cannot meet ever single compliance requirement.

-There was discussion on the two different waiver meetings – one would be for determining that certain regulations do not apply and the other would be an allowance to by-pass a rule because the outcome of the project would be a benefit to the town.

Committee members talked about the language change so that a representative and not a member of the board is part of the proposed Plan Review Committee. Other members of the PRC were discussed. Kris asked about the language in the flood plain by-law the board has to take into consideration in granting a special permit. Joan said that there would be a reporting to the ZBA by ConCom of any potential increase of flood height or additional threats to safety. Adam said if the board wishes to confirm there are no threats then they can bring in experts such as fire and police representatives to report on those issues.

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

Peter Y. made a motion to adopt the rules and regulations for the flood plain by-law. Andrea seconded.

The Board voted 4 – 0 to adopt the new rules and regulations for the zoning flood plain by-law.

-The next hearing, under old business, was for Alan Hobart of 9 Wood Duck Way, and a change in the building plans to renovate his residence given a special permit March 4th, 2010. Alan showed the Board a change in plans for a house renovation at the above stated address. The old set of plans and new set were shown to the board. Alan said that the footprint stays the same but the 2nd floor has an overhang that originally had a bathroom and a closet that cantilevers out beyond the foundation of the house. Alan said that there was a change in the location of the bathroom on the 2nd floor putting it closer to the house. As a result there is a reduction in the nonconforming setback of the house to the property line. Alan said they also want to include a 2nd floor deck that is over a pre-existing footing. He wants to put an opendeck over the footing.

-Adam submitted a letter from the Sengekontacket Architectural Review Board approving the changes to the plan. Peter asked if neighbors are aware of the changes. Alan said they are aware as they are members of the review board.

-Board members discussed whether or not the changes need another public hearing. Kris posed the questions of whether or not the change in the plans makes any difference in the granting of the original approval. Adam and Kris gave members direction on either voting to approve the changes as presented or to vote to have another hearing. Kris didn't think that the deck addition was not substantially more detrimental to the neighborhood and that the architectural review board has approved the change in plans.

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

Peter P. made a motion to approve the changes. Peter Y. seconded.

Peter P. said there should be site visits when these type of changes come up. Peter Y said the changes are substantial but overall an improvement to the entire project. Kris said he didn't think the changes were big enough to warrant another public hearing and abutter notification. He approves the plans as presented.

The Board voted 4 – 0 to approve the changes to the plans to renovate and add to the residence at 9 Wood Duck Way.

-Board members and Adam had a discussion on what types of changes could occur with language dealing with the overlay coastal district. Copies of the regulations from Tisbury and Edgartown were passed out. Adam talked about a change in the language dealing with the definition of the dimensions for the Shore Zone. He said the shore zone distance should be measured both by the presence of a wetlands indicator species and/or soil hydrology. The board agreed that today's testing for wetlands has a greater reliance on soil testing and not the presence of a species. Kris pointed out that the chairman of the Conservation Commission only uses that type of reporting and the ZBA should do the same.

-There was discussion on the issue of plumbing outside of the shore zone and what to be done if sewerage is involved. Kris gave an accounting of a meeting he had with Ron Rappaport who advised him to take a shot of changing the rules as long as the changes are thought to be in the best interests of the town. His office would then fully review the changes to make them work within the scope of the law. Andrea talked about how the current by-law gave argument on the ambiguous relationship of residences located either in or out of the shore zone. Kris asked if the by-law be made more restrictive. Peter Y and Andrea did not like how the Lehr application left the board hand tied in its ruling. Peter P. asked if there is a way for applications to be reviewed for the better – better construction, use of the environment, structure in relation to the land – and not be so restrictive to what's currently regulated.

-Tisbury's regulations were reviewed. There was discussion on the idea of having a set amount of additional square footage vs. additional plumbing. The relevant language that appears to hang up each board is whether or not the structure is "within" the shore zone.

-Kris said there should be a road map for people who want to invest in their properties but at the same time protect the environment. There was talk about trying to find a way to adopt new regulations that coincide with the new technologies for sanitary disposal. Adam stated that certain advanced systems aren't as

effective in reducing nitrogen load if they are not used on a regular, year round basis. He also said that clearly the most effective means of taking nitrogen out of the ground is sewerage.

-Kris asked Adam if he could take shot in writing new language for coastal district regulations. Peter P. asked that if sewerage can be allowed then there should be a way for a homeowner to build into a habitat that is not intrusive and esthetically pleasing to the homeowner, the neighborhood, and the community. He hopes that there can be a provision so that homeowners can fulfill a vision of having a eco friendly, green, home. Kris said it would be his hope that by-laws can be crafted so that type of goal can be achieved. Board members agreed.

The meeting adjourned @ 7:10 pm