

Zoning Board of Appeals
Town of Oak Bluffs

Kris Chvatal, Chairman

Members:

Derek Tipton

Joe Re

George Warren

Peter Palches

Associate Members:

Andrea Rogers

Peter Yoars

NOTICE OF DECISION

January 21st, 2010

Re: Application of Cottage City Limited Partnership, 10 North Bluff Avenue, Oak Bluffs, MA. Map 9, Lot 47

Applicant is seeking a **Special Permit** to demolish an existing residence and replace it with a new building.

A. Background

1. By application received January 5th, 2010 from the Town Clerk's office, a hearing was requested from the applicant on the request before the Board of Appeals.

B. Summary of Meeting

2. On January 21st Zoning Board Chairman Kris Chvatal opened a duly posted public hearing. A quorum consisting of Kris Chvatal, Joseph Re, Peter Palches, Derek Tipton and Peter Yoars were present. Architect Maurice (Mo) O'Connor, Betsy and Mark Luce presented to the board the plan to demolish the existing residence and replace it with a new building.

Kris 1st stated that the property is in an R-1 District requiring 10,000 square feet and the lot only has 2,150. He stated for the record that there is only 50 feet of frontage and R-1 requires 80, setbacks are 20 all the way around but the current residence is 5.3 in the front, 3.9 & 22.1 on the sides and 4.5 feet in the rear.

Mo 1st showed a picture of the existing single floor residence and commented on the poor structural shape it is in. The plan is to demolish and replace it with a two story duplex residence that will have 824 sq. feet of living space on each floor. Mo stated that the new residence's use would be tied with the hotel in front of the property that is owned by the applicants. Mo said they had to change their original design of the structure because the two story ridgeline that was over the existing footprint would have blocked views of an abutting neighbor. They designed the building to be put further back on the lot and run horizontally towards the hotel. He also said a deck has been put towards the back of the structure facing towards another residence the applicants own. He said that they are going to the planning

board for special permitting to make this residence an extension of the hotel.

Mo said the 1st floor unit of the proposed structure would be for employee housing and the 2nd floor unit as a rental. Adam Wilson, the Zoning Administrator, discussed the use regulations for motels/hotels in residential zones that have to have a site plan review from the planning board in order for them to be allowed. Board members discussed the relevancy of the new structure's use and the nonconforming aspects of the new structure as well.

Betsy said the size of the new house is in keeping with other two and three floor homes in the neighborhood and the design is similar as well.

Board members asked where other abutters were in relation to the new residence. Adam reported that Copeland has allowed the demolition to occur but won't grant their certificate of appropriateness until plans are finalized.

3. The floor was opened for public comment. Barbara Berninger from 7 Pasque Avenue talked about how she has lost so much of her view over the past 40 years. She made a claim that the property right behind the proposed new structure is also residential but is also tied in with the adjacent hotel. Patricia Wallace from 10 Saco Ave expressed her concerns that the use of the new house as a duplex and for commercial purposes encroaches more business use into the residential area. She pointed out that the hotel is for sale and doesn't see how the duplex could still be used to rent when the hotel passes to another owner.

Derek said if the hotel is sold, the proposed residence would still remain as a two, two bedroom home.

-Kris read zoning by-law 3.5.5. He said the board should be looking at the pre-existing, nonconforming structure and not its use. A new use issuance will be granted by the Planning Board only after a site plan review. He told board members to look at the structure and its proposed change but factor in things like traffic & parking, noise and views as impacting the neighborhood with the structure's increased use. Peter said with or without approval from the Planning Board, the ZBA is looking at approving a duplex. Joe stated that if a bigger structure is allowed on the property then the increase in its use is allowed as well. Kris asked about the changes in footprint. Adam stated that the existing residence is 34' long by 24' wide and the new structure is 24' long by 38' wide. The height of the existing structure goes from 13' 6" up to 26' 10".

Kris talked about the proposed trade being made to reduce the nonconforming front setback and increase the side setback for the benefit of the abutting neighbor.

Kris said it's unfortunate that residents have lost their views because zoning has allowed homeowners the right to construct taller buildings. He said that because the neighborhood already has large buildings, the additional unit in the duplex won't have that much of an impact. Peter Y said he doesn't think what's proposed will add any significant problems to the neighborhood in terms of parking, noise and traffic. Kris reminded everyone to keep in mind the exact language of substantial detriment as it applied to this specific case. Joe stated that he would like to see another plan with only one floor because the lot will be overburdened with what is proposed. Betsy said it was not financially feasible and that all

the other buildings in the area had at least two stories. Kris talked about the “canyon” effect where the current residence is surrounded by other homes that are much taller. He said in that neighborhood, despite the size of the lot, if everyone has built two and three story homes, the applicant has the right to do so as well.

Joe said it looks more like a shed than house so its conversion to a duplex is a substantial increase in its use to house people on a very small lot. Peter P. said the neighbors have stated their concerns that the proposed new structure will be an expansion of business use in an area that has had neighborly concerns about noise and the new use of the property could potentially increase those problems. He stated that the proposed use is substantially more detrimental. He said that residential districts are for single family structures and what is proposed is not and that it won’t be used as a residential property. He said it will change the quality of the neighborhood if it is allowed.

4. Peter Yoars made a motion to approve the plans as presented.

The motion was voted 3 – 2.

C. Decision

5. A majority (4 votes) of the 5 member Zoning Appeals Board is required to approve the application. Accordingly, the motion to approve failed and the application is denied.

D. Reasons/Findings

6. As articulated during the course of the meeting, the Appeals Board Members who vote in favor of the motion to approve the application make the following findings;

- a. The applicant has the right to apply for a special permit under zoning by-law 3.5.5;
- b. The proposed replacement building is not substantially more detrimental to the neighborhood than what currently exists.

7. As articulated during the course of the meeting, the Appeals Board Members who voted against the motion to approve the application make the following findings;

- a. The applicant has the right to apply for a special permit under zoning by-law 3.5.5;
- b. The proposed two story, four bedroom residence overburdens the existing size of the lot;
- c. The use of the new home as a commercial duplex increases business use in a residential district and is therefore substantially more detrimental to the neighborhood than what currently exists.

As the law provides, appeals, if any, shall be made pursuant to Section Seventeen (17) of Chapter 40 – A, The Zoning Act, and shall be filed within twenty (20) days after the filing of this decision in the Office of the Oak Bluffs Town Clerk.

Said Board of Appeals is a legally constructed Appeals Board, exercising the powers granted to it under Section Fourteen (14) of Chapter 40 – A, and under Chapter 831, a 1977

Act further regulating the protection of lands and the waters of the island of Martha's Vineyard.

As required by law, The Board of Appeals certifies that copies of this decision and documents referred to in it, have been filed with the Oak Bluffs Building Inspector, Planning Board and Town Clerk. This decision does not relieve the applicant from obtaining all other necessary permits.

After expiration of the twenty (20) day appeal period, the applicant will receive the original copy of this decision. It will include the original signature page, signed by the members of the Board of Appeals presiding at the hearing. This copy will verify, by the Town Clerk, that no appeals have been filed, and if there were appeals filed those said appeals were dismissed or denied against this decision.

Recorded Vote

The following members of the Zoning Board of Appeals voted to grant a **special permit** to Cottage City Limited Partnership at 10 North Bluff Avenue to demolish a pre-existing, nonconforming residence and replace it with a new building.

(Kris Chvatal)

(Peter Yoars)

(Derek Tipton)

The following members of the Zoning Board of Appeals voted not to grant a **special permit** to Cottage City Limited Partnership at 10 North Bluff Avenue to demolish a pre-existing, nonconforming residence and replace it with a new building

(Peter Palches)

(Joe Re)

Received and filed in the Office of the Town Clerk:

Date:_____