

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

March 4th, 2010

Re: Application of John M Beatty & Joan Darack, Newton Ave. Realty Trust, 236
Newton Road, Oak Bluffs, MA. Map 13, Lot 34

Applicants are seeking **Special Permits** for a renovation and 272 square foot addition to a pre-existing, nonconforming residence that is also in the Shore Zone of the Coastal District

A. Background

1. By application received February 4, 2010 from the Town Clerk's office, a hearing was requested from the applicants on the requests before the Board of Appeals.

B. Summary of Meeting

2. On March 4th Zoning Board Chairman Kris Chvatal opened a duly posted public hearing. A quorum consisting of Kris Chvatal, George Warren, Peter Palches, Derek Tipton and Andrea Rogers were present. Builder Michael Carroll 1st stated that there were two buildings on the property and the proposal is to renovate and build an addition onto the main residence. He showed that the main residence has one side setback issue that makes it nonconforming. He also pointed out that the residence is within the 100 foot boundary of the Coastal District Shore Zone.

Michael showed building plans for the renovation and addition to the home. He said there is an 11 foot section of the building that is one story and has two bedrooms and a bathroom that the owners wish to enlarge. There is an existing stairway in one of the bedrooms that would be relocated for safety and privacy concerns and placed in the addition for access to the laundry room area. The new stairwell would be built to code.

Joan Darack spoke to the board. She said that they need to expand the front part of the house to make the two bedrooms more accommodating and to replace the stairs that are too narrow and treacherous in a home that has many guests and children living in it. She stated that her family has owned the residence for 18 years but prior to that the former owner built a large accessory structure on the property too close to the lot line which angered many neighbors and ultimately had to get a zoning board variance in 1990 to be made legal.

3. In the time for public comment, 7 letters in opposition to the proposed renovation and addition were read. One letter in support was also read. Attorney Luke Debettencourt

spoke of how the addition will set a precedent for future building on both this property and in the neighborhood and that potential harm may come to Lagoon Pond as a result. He said the 1990 decision has language in it that prevents any further expansion on the property. He asked for conditions that the septic system be upgraded if the proposed addition were allowed.

4. There was discussion on the board's need to grant a special permit for the alteration of the residence in the shore zone. Michael stated that there is no need to upgrade the septic system because there is no plan to increase the number of bedrooms on the property. He also said that there is no increase in the water generating fixtures in the house. The Conservation Commission has approved the proposed plans without the need to grant any variance or special permit because the increase is less than a 25% expansion that requires special dispensation from that board. Michael said that the septic system was inspected when the 2nd floor was added in 2001. The health agent will make a determination if there is a need to upgrade.

5. Derek made a motion to approve the plans as presented. The motion carried 5 – 0.

C. Decision

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

D. Reasons/Findings

7. 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 applicants have the right to apply for a special permit under zbl 9.6.a;
- b. The proposed renovation to the building and addition to the existing residential structure neither includes nor requires increased plumbing facilities or on site sanitary disposal facilities.

E. Summary of Meeting, Pt II

8. The board discussed the condition in the 1990 Fender zoning decision that doesn't allow any future consideration of any building plans on the property. Zoning Administrator Adam Wilson stated that the 1990 decision grants a variance that allowed the former owner to keep on his property an illegally built accessory structure. He thought that the intent given in the language of that decision is you can keep the garage and its varied use but nothing further can be added to that structure. Adam talked of how the current owners did apply for a special permit to do work on that particular building and were denied by the board in 2006 because the prior decision had stated such. Adam then went on to say that the applicants did come to the board in 2001 to add a second floor to the main residence and were given a special permit with no objection from neighbors in either public testimony or written correspondence.

Kris said he has trouble believing that a zoning board can have the power to withdraw

anybody's right to file for a special permit. There was discussion on homeowner's rights to file for permits under both state and local regulations and the past board's overzealousness in preventing future considerations on this particular lot. Kris stated that under other circumstances he can't think that neighbors would have any objection to an application such as this that is really only a minor alteration of an existing house that doesn't increase any of the existing nonconformities. He said that under the 3.5.5 by-law allowing alterations and renovations to occur without substantial detriment to the neighborhood, this project is so small that it barely needs special permitting. Derek and Andrea agreed. Peter said there shouldn't be conditions on board decisions that affect future boards from considering substantial detriment.

9. Peter made a motion to approve the plans as presented. The motion carried 5 – 0.

F. Decision

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

G. Reasons/Findings

11. 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 applicants have the right to apply for a special permit under zbl 3.5.5;
- b. The applicants were allowed to put a second floor on their residence in 2001 so there is no reason not to let them alter it again making it safe for those who inhabit it;
- c. the proposed renovation and alteration is not substantially more detrimental than the existing nonconforming use or structure to the neighborhood.

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. Any changes to the project receiving a special permit, no matter how minor, have to be brought back to the Board for further approval.

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. At that time, the decision, along with the

original signature page must be filed at the Dukes County Registry of Deeds before it is legally recognized.

Recorded Vote
The following members of the Zoning Board of Appeals voted to grant a **special permit** to John Beatty and Joan Darack to build an addition onto the residence at 236 Newton Rd that has no increase in plumbing facilities or on site sanitary disposal facilities in the Coastal District Shore Zone.

(Kris Chvatal)

(Andrea Rogers)

(Derek Tipton)

(Peter Palches)

(George Warren)

Recorded Vote
The following members of the Zoning Board of Appeals voted to grant a **special permit** to John Beatty and Joan Darack to build a 272 square foot addition onto a pre-existing, nonconforming residence at 236 Newton Rd.

(Kris Chvatal)

(Andrea Rogers)

(Derek Tipton)

(Peter Palches)

(George Warren)

Received and filed in the Office of the Town Clerk:

Date:_____