

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 Richard and Ruth Gaffey, 37 Katama Avenue, Oak Bluffs, MA.
Map 17, Lot 43

Applicants are seeking a **Special Permit** to alter the land form in the Flood Plain Overlay District and a **Special Permit** to build a new residence with a roof height above 24 feet in the Coastal District.

A. Background

1. By application received January 29, 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. Architect Chuck Sullivan along with Dave Gaffey represented the applicants. Chuck showed a site plan and stated that it is a pre-existing, nonconforming lot with no structure on it. Chuck said there is an approved building permit in place and approvals from the Conservation Commission, Board of Health, Copeland and Cottage City Historic Districts. The proposed structure is looking to have a special permit for over height on the Coastal District and a flood plain permit because part of the site is below the 10' flood elevation and there is an alteration of the land form to build the structure and install the septic system. Chuck explained that because the proposed structure is in the 100 year flood plain they can't have a basement and the 1st floor's framing must be above the 10 foot contour. He said that lifting the house up will make it a healthier building and won't affect views. Chuck said the height difference is a 30" increase from 24 feet to 26' 6". Chuck stated that the property is within 500 feet of a wetland but not within the 100' shore zone area.

3. In the time for public comment, Maura McGroarity from 38 Katama Avenue spoke of her concern that the scale of the house is large in relation to the small setbacks it's been given when permitted to build. There was no correspondence to be read.

4. There was discussion on the board's needs to grant a special permit for the change in grade as an alteration of the land form. It was noted that the actual change to accommodate the elevation needed around the house and septic system is only 3 to 4 inches.

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 8.1.5.5
- b. The total change in elevation is only 3 to 4 inches to accommodate the house and septic system;
- c. There is no liability of altering the land form to the detriment of other landholders or the town.

E. Summary of Meeting, Pt II

8. The board discussed prior approvals for height differences in the Coastal District. Kris said there have been exceptions made because the proposed structures were trying to get 2nd floors high enough to meet habitable building code. Board members looked at the order of conditions the Conservation Commission had made that required the 1st floor of the proposed structure to be 36 inches above grade. The board examined whether or not the increase in height would block any neighbor's view.

9. George made a motion to approve the plans as presented. The motion carried 4 – 1.

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 9.7.a;
- b. The new roof height of 26 feet 6 inches does not block any neighbor's views;
- c. Preservation of existing shade trees shall be maintained. The height increase will not detract the character of views or cause damage to other adjacent structures, land or water.

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. 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 37 Katama Ave. Realty Trust of 37 Katama Avenue to alter the land form in the Flood Plain Overlay District.

(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 37 Katama Ave. Realty Trust of 37 Katama Avenue to build a new residence with a roof height to 26 feet, 6 inches in the Coastal District.

(Andrea Rogers)

(Derek Tipton)

(Peter Palches)

(George Warren)

Received and filed in the Office of the Town Clerk:

Date:_____