

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 18th, 2010

Re: Application of Michael Lehr, 133 Seaview Avenue, Oak Bluffs, MA. Map 18,
Lot 27

Applicant is seeking **Special Permits** to renovate, alter and add to a pre-existing, nonconforming residence that is in the Flood Plain, Coastal & Island Roads Overlay Districts

A. Background

1. By application received January 29, 2010 from the Town Clerk's office, a hearing was requested from the applicant on the requests before the Board of Appeals.

B. Summary of Meetings

2. On February 18th Zoning Board Chairman Kris Chvatal opened a duly posted public hearing. A quorum consisting of Kris Chvatal, George Warren, Peter Palches, Derek Tipton and Joe Re were present. Representing the applicant was Architect Chuck Sullivan, landscape architect Kristen Reimann and Engineer George Sourati. Michael Lehr was also present.

After reviewing the proposed plans to renovate and add to the existing structure, and the special permits required to accomplish all that was proposed, Kris asked George Sourati to explain why there were two designated wetland delineation lines on the site plan; one flagged by Cooper Environmental and one by the Horsley – Witten Group. George said the Cooper delineation was done for vegetation and soils. The Conservation Commission chose another research group to determine another part of the property that was deemed "wet". The Witten report did a soils and hydrology evaluation that put the wetlands area closer to the residence.

Kris asked why there weren't two radiuses drawn based on the two reports. George said that shore zone regulations looks only for wetland species as a wetlands indicator. Kris said the language on the site plan says the same thing in identifying wetland areas from both research groups. George said the state requires either soils or vegetation to determine wetland areas for local conservation commissions.

A determination was made that the Conservation Commission had only accepted the Witten report. Derek asked if the board should follow the measurement of the shore zone from the

closest point in the Witten report. George Sourati recommended the Cooper report because it satisfied the need for identification of wetland species in the Coastal District Shore Zone. Zoning Administrator Adam Wilson gave Kris a copy of the Witten report. He read from it. Adam read the definition of the Coastal District. He then read the definition of the Shore Zone within that district. George said because you have to look for a species as an indicator of wetlands in the shore zone, the Cooper report is the report the site plan followed to establish shore zone boundaries by the nearby pond. It was pointed out that another shore zone boundary was present on the site plan showing the existing structure lying within the zone from the ocean side property line along Seaview Avenue.

Kris stated a concern that the inclusion of the two reports raises enough issues for the board to not act. He said there is an issue of the board considering a special permit and not following the recommendations from another community review board that is part of the permitting process.

Kris read other notes from the Witten report detailing the soil analysis to determine boundaries according to Wetlands Protection Act regulations and local regulations. There was discussion on the dueling reports. Kris reminded the board that having a home in the shore zone doesn't shut you down from altering or building an addition on to it, it just doesn't allow you to add any plumbing.

Kris read the Coastal District regulations again. He then read excerpts from the Cooper report.

Derek pointed out that the Witten report showed a delineated area where soils and hydrology could support species within a growing season. Kris stated that the Cooper report used a method involving soils, topography and vegetation.

Kris wanted more time to research the different reports and the factors that went into them to determine which study to accept. The applicant requested a continuance which the Board, by consensus, agreed to. The hearing was continued to the next full meeting of the ZBA scheduled for March 18th at 6:05 pm.

3. On March 18th, Chairman Kris Chvatal continued the public hearing. Architect Chuck Sullivan introduced environmental engineer Doug Cooper, landscape architect Kristen Reimann and the owner Michael Lehr. He produced an area map that showed the residence is the second to last house on Seaview Ave. before Farm Pond. He stated that the house is nonconforming because it doesn't meet front or side setbacks for an R-2 zoned property. He said the lot does have over 20,000 sq. feet. He said the residence is below the flood plain elevation and they need to lift the house up to get it out of the flood plain.

Chuck stated the proposal is to take off the 12 X 16 foot back part of the house and rebuild to create a new master bedroom and bath and expand the kitchen. He said the whole house will be renovated as well in order to bring it up to code. Chuck told the board that one of the bedrooms on the 1st floor was being rearranged so that there can be a new bathroom and an area for a washer and dryer. There will be a new deck on the back of the house with a pergola above. Chuck showed photos of the Seaview Avenue residence and how the proposed addition would affect neighbor's views.

Kris summarized the different by-laws that have to be considered in special permitting. He

said the house is pre-existing, nonconforming. He read language from the Island Roads District as well as Coastal District regulations and the local flood plain overlay district by-law.

Doug Cooper spoke to the board about the wetland delineation report he did for engineer George Sourati, who along with Chuck represents Lehr. He said the property has three sets of wetlands adjacent to it. The wetlands report he did identifies the different “fringes” of both salt and freshwater wetland areas on the property. He said there is also a “lobe” of wet soil that goes into a mowed meadow behind the house. He said the other report submitted by Horsley- Witten tested soil conditions because the vegetation in the lobe was expository. Doug stated he’s been doing wetland reports for 25 years and was a state regulator for 15 years. He said the shore zone regulations developed by the MV Commission were to help boards and committees regulate areas that had a direct impact on coastal, tidal and other bodies of water and to include dunes, salt marshes and beaches. He said the shore zone is defined by the identification of salt marsh grass, dune grass and beach grass – vegetation types specific to the shore.

Board members discussed with Doug the area of the property that’s been subjected to fill from prior years that prevents wetland species from growing. He said the Witten report did soil sampling to satisfy the state requirement of determining the wetlands boundary. Doug said that because the site was altered and the vegetation non descriptive, the Witten group engaged in soil testing to determine the wetland area. Joe asked that the board consider moving to take the Whitten report off the table because it did not measure the vegetation the board would be looking for to satisfy the shore zone regulations. Kris said there may be a flaw in the by-law that provides different criteria for various review boards to consider wetland areas.

4. In the time for public comment, 5 letters in opposition to the proposed renovation and addition were read. One letter in support was also read. Ken Pailler from 11 Canonicus Avenue asked the board to review conditions the Conservation Commission imposed in approving the project. Thea Hansen from 6 Canonicus expressed her concern about a loss of views with the proposed height of the new addition.

5. Kris asked the board if it would be alright to grant separate special permits. He 1st asked for consideration of the over height request in the Island Roads District. Chuck said the current house is 26’ from mean average grade and to go to 28’. Chuck said this is necessary to get the house out of the flood plain elevation.

6. Joe made a motion to approve the plans as presented to allow the height of the residence to go from 26 to 28’ from mean average grade in the Islands Roads District. The motion carried 4 – 1.

C. Decision

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

D. Reasons/Findings

8. 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 zbl 10.5.c, i;
- b. A majority of board members agreed that the increase in height of the residence won't be detrimental to the visual character along Seaview Avenue.

9. Kris then asked for consideration of a special permit to alter the land form in the flood plain. Engineer George Sourati talked to the board about the requirement that a new septic system be installed because the current system, which has a cesspool, is in the groundwater and is polluting the pond. He also pointed out that the mounded system will be 10' above sea level and only 4' above the road elevation.

Landscape Architect Kristen Reimann said there is vegetation all along the road that will hide the mounded system and a plan is in place to vegetate the mound so that it is unobtrusive to passersby.

10. Derek made a motion to allow the applicant an alteration of the land form in the flood plain. The motion carried 5 – 0.

E. 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 that part of the application is granted.

F. 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 applicant has the right to apply for a special permit under zbl 8.1.5.5;
- b. A majority of board members felt that the proposed new mounded septic system, which would be 4' above the road elevation, is not a liability of altering the drainage of the property or run-off to the detriment of other landholders or the Town.

12. Kris then asked for a consideration of a special permit to alter and add to a pre-existing, nonconforming residence under 3.5.5 and use regulations. Chuck said the proposed addition does not further encroach on the existing nonconforming setbacks. He showed pictures of how the proposed renovation and addition to the structure at 133 Seaview Ave will affect views from homes on Canonicus Avenue. There was discussion on the merits of having the pergola on the proposed back deck for wind and sunlight protection.

13. Joe made a motion to allow the applicant to alter and add to the pre-existing, nonconforming residence at 133 Seaview Avenue. The motion carried 5 – 0.

G. Decision

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

H. Reasons/Findings

15. 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 zbl 3.5.5;
- b. The new addition does not expand any of the existing nonconformities in terms of setbacks and the new square footage does not overburden the 34,700 sq. foot lot;
- c. A majority of board members expressed views that the proposed addition was not substantially more detrimental to the neighborhood than what currently existed.

16. Derek made a motion to accept the Cooper delineation report so that guidelines can be set for the shore zone special permit. The motion carried 4 – 1.

17. In considering a special permit in the Coastal District, Kris said the applicant believes that because the addition falls outside of the shore zone, it is not subject to its regulations and restrictions. Kris questioned that interpretation and noted the issue is about increased plumbing. Chuck stated the overlay regulations state that plumbing may not be added in the shore zone. Derek countered saying it may mean not within the residence within the shore zone. Kris read the shore zone regulation:

“Uses requiring special permit from the Board of Appeals. Within the shore zone, the Board of appeals may grant a special permit for any of the following: alterations to buildings and additions to existing residential structures provide that such addition or alteration neither includes nor requires increased plumbing facilities or on site sanitary disposal facilities.”

Kris then stated to George Sourati and Chuck Sullivan that the site plan shows the existing structure is in the shore zone and the application is for an alteration to a building within the shore zone that is adding bathrooms and a new kitchen. The addition itself is not in the zone but the building is. Chuck said the project puts two new bathrooms in the home.

Kris said we are starting with a house in the shore zone with one bathroom. When the addition is put on, we now have a house in the shore zone with three bathrooms. To him that's additional plumbing for two bathrooms and is not allowed under the by-law.

Kris stated that the by-law does not say that the plumbing should or should not be in the shore zone, the by-law does not say the addition should or should not be in the shore zone. The by-law regulates structures and the current residence is in the shore zone with one bathroom and will end up with three.

18. George made a motion to allow the alteration and addition to the residence in the Coastal District shore zone. The motion failed 2 – 3.

I. Decision

19. A majority (4 votes) of the 5 member Zoning Appeals Board is required to approve the application. Accordingly, the motion to approve did not carry and that part of the application is denied.

J. Reasons/Findings

20. 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 applicants have the right to apply for a special permit under zbl 9.6.a.i;
- b. The existing structure is partially located within the 100 foot boundary of the shore zone of the overlay coastal district.
- c. The proposed renovation and addition will increase plumbing facilities in that structure.

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. 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 Michael Lehr of 133 Seaview Avenue to allow the height of the residence to go from 26 to 28 feet from mean average grade in the Islands Roads District.

(Kris Chvatal)

(George Warren)

(Derek Tipton)

(Joe Re)

Recorded Vote

The following members of the Zoning Board of Appeals voted to grant a **special permit** to Michael Lehr of 133 Seaview Avenue an alteration of the land form in the flood plain overlay district

(Kris Chvatal)

(Joe Re)

(Derek Tipton)

(Peter Palches)

(George Warren)

Recorded Vote

The following members of the Zoning Board of Appeals voted to grant a **special permit** to Michael Lehr of 133 Seaview Avenue to alter and add to the pre-existing, nonconforming residence.

(Kris Chvatal)

(Joe Re)

(Derek Tipton)

(Peter Palches)

(George Warren)

Recorded Vote

The following members of the Zoning Board of Appeals voted to grant a **special permit** to Michael Lehr of 133 Seaview Avenue to allow the alteration and addition to the residence in the Coastal District Shore Zone.

(George Warren)

(Joe Re)

The following members of the Zoning Board of Appeals voted to not grant a **special permit** to Michael Lehr of 133 Seaview Avenue to allow the alteration and addition to the residence in the Coastal District Shore Zone.

(Kris Chvatal)

(Peter Palches)

(Derek Tipton)

Received and filed in the Office of the Town Clerk:

Date:_____