

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

June 24<sup>th</sup>, 2010

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

Applicant is seeking **Special Permit** to add plumbing as part of a renovation and alteration of a pre-existing, nonconforming residence that is in the Coastal Overlay District.

A. Background

1. By remand order received June 4, 2010 from the Massachusetts Land Court, a hearing was requested from the applicant on the request before the Board of Appeals.

B. Summary of the Meeting

2. On June 24<sup>th</sup> Zoning Board Chairman Kris Chvatal opened a duly posted public hearing. A quorum consisting of Kris Chvatal, George Warren, Andrea Rogers, Derek Tipton and Joe Re were present. Representing the applicant was Architect Chuck Sullivan. Michael Lehr was also present. Kris read a portion of the written decision made from the 3/18 meeting. "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 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.

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

3. Architect Chuck Sullivan showed the board the floor plan with the 100' limit of the shore zone. He said that the key to the reconsideration is where the words, “within the shore zone” is placed within the by-law.

He explained that because the sentence is first and interpreted to be similar to other 100 year flood language you would find in conservation, there is a limitation of additional plumbing facilities but only in that area that's been designated “in the Shore Zone.” He showed on a floor plan that within the renovated residence, the new plumbing is in that part of the altered residence outside the Shore Zone.

Kris said that Town Counsel thinks there is merit to both the board and applicant's interpretation. It is not clear cut which is right and wrong. What the Board is burdened with is that the overlay by-law is not well written. With an emphasis on plumbing as a key determining factor in regulating coastal zone building, that concept is outdated. Today's technologies for wastewater disposal have vastly changed. Kris thinks the by-law should be updated from when it was 1<sup>st</sup> written in the '70's.

Board members discussed the zoning board's responsibilities to protect the town's resources and whether or not the tools they have to do that job are flawed. Chuck said that the applicant has been to the Conservation Commission & Board of Health. There is an approval in place to put in a new, state of the art septic system to replace the failed cesspools that are in the groundwater. Kris said that when the by-law was written, there wasn't the ability to make better disposal systems. So it seems that the only way to protect water resources was to not allow more bathrooms and other types of plumbing.

Joe stated that the new system should be a big factor in the decision to allow the additional bathrooms in the proposal because it can more than accommodate the additional runoff.

Derek said that having re-read the by-law, he could not decide which was more obvious – whether the plumbing or the structure could not be less than 100 feet from the water. He said the applicant should not be penalized because the by-law is not clear as to its intent.

Andrea said that until the language of the bylaw is clearly spelled out, the applicant should be able to have enough plumbing to accommodate the number of people living in the residence.

4. In the time for public comment, no one spoke either for or against the proposal. There was no correspondence to be read. Kris closed the public hearing.

5. Joe made a motion to approve the special permit for the proposed plans as presented to allow additional plumbing in the altered/renovated residence at 133 Seaview Avenue. 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 voted for the motion to approve the application make the following findings;

- a. The applicants have the right to apply for a special permit under zbl 9.1.A.6.a(i);
- b. Because a new, enhanced sanitary disposal system is being installed as part of the overall renovation to the residence, replacing a failed system, water quality is being maintained and pollution prevented;
- c. The proposed additional plumbing facilities are part of an alteration and addition to the residence is not “within the Shore Zone” of the Coastal District.

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

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 add plumbing as part of a renovation and alteration of a pre-existing, nonconforming residence that is in the Coastal Overlay District.

\_\_\_\_\_  
(George Warren)

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(Joe Re)

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(Kris Chvatal)

\_\_\_\_\_  
(Andrea Rogers)

\_\_\_\_\_  
(Derek Tipton)

Received and filed in the Office of the Town Clerk:

Date:\_\_\_\_\_