

Orleans Zoning Board of Appeals
Minutes
October 20, 2010

A meeting of the Orleans Zoning Board of Appeals was held in the Skaket Meeting Room at Town Hall. Present were Robert Osterberg, William Piersol, Rolf Soderstrom, D. Beth McCartney, Matthew Cole, Greg DeLory, and Michael Marnik. Building Commissioner Brian Harrison and Board Secretary Sandy Stewart were also present.

Chairman Osterberg called the meeting to order at 7:00 p.m.

Case #1917 (Continued)

C&C Realty Trust applied for a Special Permit as set forth in MGL Chapter 40A, Section 6, under Orleans Zoning Bylaw Sections 164-6(2) and 164-8 to extend/relocate a nonconforming use (used car sales) in the General Business (GB) District to a lot in the General Business/Affordable Housing District (GB/AHD) and to extend this use into the AHD. In the alternative, the applicant seeks a Variance. The property is located at 5 Nell's Way, Orleans Map #46, Parcel #18.

At the Applicant's attorney's request, on motion by Mr. Piersol and seconded by Mr. Marnik, by a vote of 4-1-0, the Board granted the Applicant leave to withdraw the application without prejudice. Voting in favor were Mr. Piersol, Ms. McCartney, Mr. Marnik, and Mr. Cole. Mr. Osterberg dissented, stating "I vote to deny the motion because there is no reason to allow for a possible repetitive application. The Applicant has conceded that there is no authority in the Zoning Bylaw to support the grant of a Special Permit to conduct a prohibited use in the districts. Similarly, the application is devoid of any imaginable basis for the grant of a Variance."

Case #1918

Matt Doyle applied for a Special Permit as set forth in MGL Chapter 40A, Section 9, under Orleans Zoning Bylaw Sections 164-4 and 164 Attachment 1:3 to conduct a customary home occupation yard maintenance business. The property is located at 142 Route 28, Orleans Map #48, Parcel #15.

At the Board's request, with the Applicant's concurrence, and on motion by Mr. Osterberg and seconded by Mr. Cole, the Board voted unanimously to continue the hearing on the application to the next regularly scheduled meeting on November 3, 2010. Voting in favor were Mr. Piersol, Mr. Osterberg, Mr. Soderstrom, Ms. McCartney, and Mr. Cole.

Case #1919

Doncroft, LLC applied for a Special Permit as set forth in MGL Chapter 40A, Section 9, under Orleans Zoning Bylaw Sections 164-8 and 164-13 to extend general business use into a residential zone and to exceed 2,500 square feet of commercial use subject to 164-38 commercial regulations. The property is located at 19 Lots Hollow Road, Orleans Map #40, Parcel #85.

At the Board's request, with the Applicant's concurrence, and on motion by Mr. Osterberg and seconded by Ms. McCartney, the Board voted unanimously to continue the hearing on the application to the next regularly scheduled meeting on November 3, 2010. Voting in favor were Mr. Piersol, Mr. Osterberg, Mr. Soderstrom, Ms. McCartney, and Mr. Cole.

Case #1920

Robert L. and Judith L. Wilkinson applied for a Special Permit as set forth in MGL Chapter 40A, Section 6, under Orleans Zoning Bylaw Section 164-3(a)(b), 164-21C, 164-43 and 164-44 to construct a 10' by 12' deck in violation of the coastal bank set back requirement. The property is located at 20 Pershing Lane, Orleans Map #56, Parcel #18.

Special Permit granted. See attached Decision. Documents reviewed include the original application and a Site Plan prepared by Ryder & Wilcox, Inc., P.E. & P.L.S., Job No. 4066, dated August 31, 2010. Documents are held in the permanent Zoning Board of Appeals case file located at Town Hall.

In other business, on motion by Mr. Osterberg and seconded by Mr. Soderstrom, the Board voted 5-0-2 to approve minutes of the October 6, 2010 meeting amended as follows: Case #1917, line 3, after the word "application" add "The Hearing was closed to further evidence. Following discussion, the board members, Mr. Osterberg, Mr. Soderstrom, Ms. McCartney, Mr. Piersol and Mr. Marnik, unanimously determined that the application for a Special Permit should be denied and by 3-2 that the application for a Variance should be denied. Mr. Osterberg, Mr. Soderstrom and Mr. Marnik were in favor of the denial." Mr. Cole and Ms. McCartney abstained.

On motion by Mr. Osterberg and seconded by Ms. McCartney, the meeting was adjourned at 9:45 p.m.

Sandy Stewart
Board Secretary

CASE NO. 1917

APPLICATION OF
C & C REALTY TRUST

BOARD OF ZONING APPEALS

NO. 5 NELL'S WAY
ORLEANS, MA

TOWN OF ORLEANS, MA

**ORDER ACCEPTING APPLICANT'S
REQUEST TO WITHDRAW APPLICATION WITHOUT PREJUDICE**

On October 6 and October 20, 2010, the above numbered and styled case came on for hearing before the Orleans Zoning Board of Appeals, wherein C & C Realty Trust was Applicant.

The Board heard the case in a duly advertised and scheduled public hearing. Mr. Robert Osterberg, Chairman, presided. Attorney Benjamin E. Zehnder presented the application.

A quorum of Board members was present.

At the Applicant's attorney's request, on motion made and seconded, the Board granted the Applicant leave to withdraw the application in Case No. 1917 without prejudice to again re-file the same.

Voting in Opposition: Mr. Robert Osterberg, who states, "I vote to deny the motion because there is no reason to allow for a possible repetitive application. The Applicant has conceded that there is no authority in the Zoning Bylaw to support the grant of a Special Permit to conduct a prohibited use in the districts. Similarly, the application is devoid of any imaginable basis for the grant of a Variance."

Voting in Favor of Order of Withdrawal

October 20, 2010

Mr. William Piersol
Mr. Michael Marnik
Ms. D. Beth McCartney
Mr. Matthew Cole

_____/s/_____
Robert Osterberg, Chairman

_____/s/_____
Matthew Cole, Clerk

CASE NO. 1920

APPLICATION OF

ZONING BOARD OF APPEALS

ROBERT L. & JUDITH L. WILKINSON
NO. 20 PERSHING LANE
ORLEANS, MA

BOOK 23839, PAGE 90
MAP 56, PARCEL 18
TOWN OF ORLEANS, MA

DECISION

THE HEARING:

On October 20, 2010, Case No. 1920 came on for hearing before the Orleans Zoning Board of Appeals. Robert L. and Judith L. Wilkinson applied for a Special Permit as set forth in MGL Chapter 40A, Section 6, under Orleans Zoning Bylaw Section 164-3(a)(b), 164-21C, 164-43 and 164-44 to construct a 10' by 12' deck in violation of the coastal bank setback requirement. The property is located at 20 Pershing Lane, Orleans Map #56, Parcel #18. The hearing was duly advertised and scheduled.

Mr. Robert Osterberg, Chairman of the Orleans Zoning Board of Appeals, chaired the hearing. Also in attendance were Mr. William Piersol, Mr. Rolf Soderstrom, Ms. D. Beth McCartney and Mr. Matthew Cole, regular Board members; Mr. Greg DeLory and Mr. Michael Marnik, associate Board members; Mr. Brian Harrison, Building Commissioner; and Ms. Sandy Stewart, Board Secretary. Ms. McCartney recused herself and left the room. The Chairman announced that he, Mr. Piersol, Mr. Soderstrom, Mr. Cole and Mr. DeLory would vote on the application.

Mr. David Lyttle of Ryder & Wilcox and Mr. Wilkinson presented the details of this application to the Board. No person appeared, either in favor of, or in opposition to the application. No letters were received by the Town with regard to the application. The Chairman then closed the hearing for the taking of further testimony.

Following public deliberation by the Board and based upon the application, including the Site Plan prepared by Ryder & Wilcox, Inc., P.E. & P.L.S., Job No. 4066, dated August 31, 2010, the Board adopted the following

FINDINGS OF FACT:

1. The subject property, known as 20 Pershing Lane, shown as Parcel #18 on Orleans Map #56, is in a Residential District.
2. The existing single-family dwelling is a pre-existing, nonconforming structure built around 1950.
3. The existing nonconformity in the dwelling is the failure to meet the required setback from the coastal bank.
4. The proposed deck will increase the existing violation of the coastal setback requirement by the dwelling.
5. The applicant will remove a separate gazebo on the lot which also fails to meet the coastal setback requirement for that structure.
6. As a result of the removal of the gazebo, the total violation of the coastal setback on the lot by all structures will be reduced
7. The site is suitable and adequate for the proposed deck at 1.9 acres.

Orleans Zoning Board of Appeals
Case #1920, 20 Pershing Lane

8. The proposed deck will have no impact on traffic flow or safety.

9. The proposed deck will have no negative impact on the visual character of the neighborhood. The deck will not be visible from the water and the gazebo at the water's edge will be removed.
10. The proposed deck will have no impact on the method of sewage disposal, source of water, drainage, or water resources.
11. Utilities and public services will be unaffected by the deck.
12. Noise and litter will not be increased after construction is complete.
13. The proposed deck will not be detrimental to the established and future character of the neighborhood and will be in harmony with the general intent and purpose of the Zoning Bylaw.

THE DECISION:

Based on the FINDINGS OF FACT, on motion by Mr. Piersol and seconded by Mr. Soderstrom, the Board grants a Special Permit pursuant to Sections 164-3(a)(b), 164-21C, 164-43 and 164-44, to run with the land, for construction of a 10' by 12' deck in violation of the coastal bank setback requirement in conformity with the site plan dated August 10, 2010.

VOTING IN OPPOSITION: Mr. Osterberg, who states, "I vote to deny the application because it cannot be justified as an authorized Special Permit. Section 164-3.C(1)(c) expressly requires a Variance when a proposed alteration to a nonconforming structure intensifies 'an existing nonconformity by extending further into a required setback area.' The proposed deck intensifies the existing nonconformity in the required coastal bank setback area. The argument that eliminating another similarly nonconforming structure on the lot is a reason to ignore the clear mandate of the Bylaw is without merit."

VOTING IN FAVOR:
 Mr. Rolf Soderstrom
 Mr. Matthew Cole
 Mr. William Piersol
 Mr. Greg DeLory

Dated: October 20, 2010

_____/s/_____
 ROBERT OSTERBERG, Chairman

_____/s/_____
 MATTHEW COLE, Clerk