

MINUTES OF THE MEETING JANUARY 12, 2012  
CHINCOTEAGUE BOARD OF ZONING APPEALS

MEMBERS PRESENT:

Mr. Arthur Leonard  
Mr. Robert Cherrix  
Mr. Jack Gilliss  
Mr. Jesse Speidel  
Mr. Donald Thornton

MEMBERS ABSENT:

Mr. Edward Moran  
Mr. Mike McGee

Kenny L. Lewis, Staff Support

1. Call to Order

Mr. Leonard called the meeting to order at 7:35 pm.

2. Approval of Minutes of Meeting Held December 8, 2011

Mr. Speidel motioned, seconded by Mr. Gilliss, to approve the minutes as presented. The motion was unanimously approved.

3. Appeal 01-12-1 A request to appeal the decision of the Zoning Administrator, from John P. Custis, Esq., agent for Mr. & Mrs. Luther Carter, 6351 Cropper Street. The property owner converted a retail gift shop into a residence. Section 5.1.3 of the Town Zoning Ordinance requires if a non-conforming use is discontinued for a period of 5 years, it must comply with current zoning. The structure has not been used as a residence since 1962 or 49 years. This property is zoned Residential District R3.

If the decision is upheld, then the applicant request a variance from Section 5.1.3 and sections 2.11, 2.114, 2.115, 3.7 and 3.8 of the Town's Zoning Ordinance. The property is zoned Residential District R-3.

4. Public Comments

Mr. Lewis advised the Board that on September 19, 2011 he received a phone call from Luther Carter requesting to remove the 911 number from his structure that fronts Cropper Street.

Upon further discussion, Mr. Carter advised that he has changed the use of the gift shop to a residence. At that time he was notified that this is a zoning and building code violation.

Attached you will find my correspondence to Mr. Carter and correspondence from his attorney, John Custis, Esq.

I would like to go over the letter sent by Mr. Custis. In said letter, page 1, it is stated that the Carter's went to the Board of Zoning Appeals in 1984 to operate the structure for commercial purposes. I must assume this is correct. We have no documentation on file of this appeal.

On page 2, 2<sup>nd</sup> paragraph, Mr. Custis states that I have classified the gift shop as a non-conforming activity. This is incorrect. I classified a previous use of the structure for residential purposes as a non-conforming use.

On page 2, 3<sup>rd</sup> paragraph, Mr. Custis advises that the Carters now wish to use the building as a residential dwelling, a permitted use in the R-3 Zoning District. Although a residential dwelling is a use permitted by right, Section 3.7 "Uses permitted by right" states "The following uses shall be permitted in residential district R-3 subject to all other provisions of this ordinance." Other provisions include: setbacks, minimum land area, attached units vs non-attached. Etc....

On page 5, paragraph 3, Mr. Custis states that "in running the shop, was in no way abandoning or relinquishing the Carters right to use the building as a residential dwelling". In the correspondence sent to adjoining property owners by Mr. Carter it states "Back in November 1983 when we purchased for a second home the Cliff Daisey residence at 6342 Cleveland Street, it came with several ancillary structures, including a small cottage which some two decades before had been rented by a Coast Guard family but then vacated in disrepair after the 1962 flood."

It appears that the structure prior to seeking a special use permit from the Board of Zoning Appeals was a "non-use" structure, maybe used as a shed. If the structure were to revert to the previous use, then it would be as a "non-use" structure. It is determined by Mr. Caters letter that the structure has not been used as a residence for 49 years. Additionally, when was the other cottage established and was it approved by the Town due to the zoning ordinance prohibited multiple dwellings on a parcel..

The Town of Chincoteague adopted zoning in May of 1969. The zoning ordinance at that time grandfathered uses for a period of two years. If the structure was not used from 1962 through 2011 then the grandfathering expired. The Town annexed the island in 1989 and revised the current zoning ordinance in 1994. In 1994 the Town extended the grandfathering for a 5 year period.

In my opinion there are two matters must be resolved. First is my interpretation correct when section 5.1.3 was applied.

If the interpretation is correct then the Board must look at the regulations that apply where section 5.1.3 states "any subsequent use shall conform to the requirements of this ordinance".

The Carter's nor their attorney requested a variance from either of the code sections listed below. I assume they are requesting a blanket variance for all the items listed below.

This would include the following:

1. Section 30-3.(a) of the Town Code; Flood elevation requirements, structure raised to base flood elevation. The floor system is currently 6.3'. The structure will need to be elevated to 7.0' above mean sea level.
2. Section 3.9.1. (1) of the Town Zoning Ordinance; Minimum lot size; 10,500 square feet in area. The parcel is approximately 8,433.25 square feet in area.
3. Section 3.9.1. (2) of the Town Zoning Ordinance; For each "attached family or dwelling unit" permitted above one, the lot size required shall increase by 3,000 square feet.
4. Section 3.9.3 (1) of the Town Zoning Ordinance; The minimum side yard setback is 10'. The current structure is located 3.3'.
5. Section 3.9.2 of the Town Zoning Ordinance; Structures excluding steps, a landing not greater than 5 feet by 5 feet shall be located a minimum of 25' feet from any street right-of-way. When a structure is to be built in an area where there are existing structures, the minimum setback may be waived, and the setback line may be the average of the structures on either side.

Mr. Lewis advised that Mr. David Burgess, the owner's contractor changed the use of the structure without first obtaining a building permit. If a permit application had been submitted then he would have been notified of the zoning violations.

Mr. John P. Custis, Esq. spoke on behalf of Mr. & Mrs. Carter. Mr. Custis advised that there are 5 structures located on said parcel. He advised that the structure in question use to be a residential structure however was destroyed in the 62 flood. The Carters did go to the BZA for a special use permit to operate a small store on the property. The request was approved with conditions.

Mr. Carter decided to close the store in 2010 due to their age. Mr. Custis advised in 1984 the Carters installed residential lighting, a kitchen-net, bathroom with a shower and a wood stove in the structure with the intent it would revert back to a residence.

Mr. Custis advised the gift shop is not considered a non-conforming use. It was approved by the BZA in 1984. Mr. Custis advised that when the commercial use ceased, then any use permitted by right in the R-3 District was permitted in the structure.

Mr. Custis felt that there are two issues, one is a non-conforming activity and the other is a non-conforming structure. The use of the structure is an activity. Mr. Custis felt that the non-conforming structure is grandfathered for any use.

Mr. Custis told the Board that if the zoning administrator's decision is upheld, he would like to appeal for a blanket variance. Mr. Custis read the hardship criteria to the Board and felt he has met all conditions.

Mr. Custis advised that as long as the use going in the building is a conforming use the non-conforming structure can stay where it is provided it not enlarged or expanded. Mr. Custis advised that this structure was rented by a coast guard family back in 1962 or so and was damaged in the storm.

Mr. Custis advised if this Board upholds the zoning administrator's decision then they are asking for a blanket variance for the zoning violations. Mr. Custis read the state code on hardship requirements for a variance and felt they comply with all aspects of the code. Mr. Custis advised that if they can not use the property it is considered a "taking" as defined under state law. Mr. Custis advised that most of the structures on this street sit right along the sidewalk just as Mr. Carter's structure does. Mr. Custis advised that 6 of the 10 adjoining neighbors submitted approvals for the variance.

Mr. Custis advised they are looking at stopping the commercial use on the parcel and reverting back to residential use.

Mr. Thornton asked the amount of bedrooms in the two cottages and the main house and how many septic systems are on the parcel? Mr. Custis advised 5 bedrooms with one cesspool.

Mr. Cherrix questioned if the middle cottage is for rental or just for family? Mr. Carter advised it is being used for family. Mr. Cherrix questioned if either the new one or the existing cottage will be rented in the future. Mr. Carter advised no.

Mr. Thornton questioned if the parcel is one lot and how did the Cropper St. building get a 911 address. Mr. Carter advised that it is one parcel. He stated the 911 number was most likely assigned when the shop was opened.

Mr. Speidel questioned Mr. Lewis if the use of the structure back in 1962 was a non-conforming use. Mr. Lewis advised that in May of 1969 the Town adopted zoning. Prior to zoning anything was permitted. The 1969 ordinance stated if a use was abandoned for more than 2 years it would not be considered grandfathered. Mr. Lewis advised that not only did the use exceed the 2 year limit but went 49 years.

Mr. Speidel advised Mr. Custis that if he wanted to revert the building back to his business he can, however the residential use of the structure has been abandoned

for more than 5 years. Mr. Custis felt that the law allows him to use the structure as any permitted use under current zoning. Mr. Custis advised that when the special use permit was approved in 1984, any use that had been in the structure is now forgotten. Mr. Speidel advised that the use of this structure for a residential use does not conform to current zoning, the current zoning does not allow 2 residences on a lot. Mr. Custis disagreed with Mr. Speidel's determination.

Mr. Lewis advised that a single family dwelling is a permitted use in residential district R-3 however such use must comply with all other requirements of the ordinance. The use of a third dwelling unit on the parcel fails to meet current zoning requirements.

Mr. Thornton questioned when was the middle guest wing built. Mr. Carter advised in 1984. Mr. Carter advised that the cottages are about 400 square feet in area with pullout sofas. Mr. Carter advised that the total square feet of living space in all 3 structures is about 2,200 square feet in area which is a lot less than the other homes in the area.

Mrs. Nancy Conklin advised that when the Navy was here, housing was at a premium. She remembers both cottages being rented out at that time.

Mr. Gilliss questioned the use of the holding tank or cesspool for the amount of units.

Mary Ester Montessoro advised many years ago she wanted to have a gift shop at her mother's house. She advised that Mr. Jeffries said I can not get a license unless I live on the property.

#### 5. Board action on appeal

Mr. Thornton motioned to uphold the zoning administrator decision on his determination of facts. Second by Mr. Gilliss. All in favor. Motion carried.

Mr. Leonard felt that granting a blanket variance from the zoning requirements would create larger problems.

Mr. Speidel advised he felt that the proof of a land use hardship has not been proven. He felt that there may be a financial hardship however the owners have not been denied the use of their property in its entirety because they still have two other structures they can live in.

Mr. Thornton & Mr. Cherrix voiced their concerns regarding the height of the structure off the ground. The elevation certificate states its 6.3' above mean sea level when the house west of them is about 5 blocks above grade.

Mr. Gilliss wanted to be clear of the motion of the variance. Mr. Gilliss is under the impression that the blanket variance would cover the flood elevation issue, setbacks, lot size, the amount of unit on a parcel. The Board advised yes.

Mr. Cherrix motion that the blanket variance be denied. Mr. Thornton seconded the motion because it does not meet the floodplain; it does not meet septic requirements, and does not meet setbacks. All in favor. Motioned carried.

6. Adjournment

Mr. Leonard adjourned the meeting.

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Arthur Leonard, Chairman

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