

Hayes appeal denied by zoning board

Case awaiting Newport District Court ruling

By Sam Bari

The lengthy process by John A. Hayes to build a house at Bark Street and Seaside Drive reached another threshold of legal differences at the Nov. 25 meeting of the Zoning Board of Review sitting as the Planning Board of Appeal.

On his request for a variance from a freshwater wetlands setback in section 308 of the zoning ordinance, Hayes' attorney, Peter Brockmann, filed an appeal to the zoning board after the Planning Commission voted to deny a request for an advisory opinion on the matter.

Town Solicitor Wyatt Brochu challenged the validity of the appeal on the grounds that an advisory opinion is a recommendation and not a legal decision. Therefore, it is not eligible to be appealed, Brochu said.

He emphasized that when the Planning Commission acts as an advisory board and not a decision making body that makes a legal ruling, the request becomes a jurisdictional issue. The Planning Commission does not have the authority to make decisions concerning variances and an opinion cannot be appealed, he said.

Brochu added that the zoning board is authorized to make a decision to grant or deny variances. Consequently, the board has the right to allow the case to move forward and hear the request if the applicant agrees.

Zoning board member Richard Boren challenged the Planning Commission's recommendation to grant a special use permit for the same property. He said that its decision to recommend the permit was not valid due to the length of time that had transpired since Hayes first applied.

Many members of the board had changed, and present members who voted to grant the permit had not heard all of the testimony over the years that the case had been active, Boren said.

Boren cited Rhode Island case law that he felt were examples

that warranted the decision to be declared invalid because the board members were not aware of all of the information pertaining to the case.

However, the town solicitor did not agree. Brochu said that as long as the commissioners studied the written record, read the transcripts and listened to the tapes, they were informed enough to make a decision and participate in a vote.

The meeting was packed with abutters and neighbors to the Hayes property that came prepared with expert witnesses and attorneys to challenge the application for a variance in case the Planning Commission's recommendation for denial was overturned.

After speaking to Hayes, Brockmann approached the board and said that the only way the case could be resolved would be to go to Newport District Court and seek declaratory judgment on the issue concerning the special use permit. The appeal was dismissed and the board granted a continuance to the January meeting after the superior court makes a ruling on the case.

In an unrelated matter, the board heard the appeal of V.P. Enterprises, LLC, whose principles are Michael and Janice Dutton. Their appeal concerned the decision of the Planning Commission to deny their subdivision request.

The commissioners denied the request on the grounds that a portion of Holly Street could not be used by the subdivision as access to a public road because it would trespass on lot 247. Town Engineer Michael Gray clarified this at the public hearing when he presented a synopsis of the town's position on the matter.

Dutton's attorney, Joe Palumbo, agreed with Gray's analysis of the situation. Dutton appealed to the zoning board in an effort to overturn the decision and make a ruling on the use of the road. However, Zoning Board Chairman Thomas Ginnerty and other board members explained to Dutton that the use of the road was not a zoning board matter. If he wanted a ruling, it would have to come from the Town Council.

The zoning board ruled that the Planning Commission made no mistake in their ruling or analysis of the situation. The appeal was unanimously denied.

The board made a decision on a request by David Prior for a variance to the setback requirements for his property on Clarke Street so he could build a porch and stairs at the front of the house to provide a safe entry to the home. The existing stairs presently have no landing. The request was for a 10-foot setback where 15-feet are required. The board voted unanimously to grant the request.

Garden club to hold end-of-year party

The Quononoquott Garden Club will hold its last formal meeting of the year on Monday, Dec. 8, at 11 a.m. at St. Matthew's Parish Hall. The membership will reconvene in April 2009.

President Jill Meyer will conduct a short business meeting touching on club events of the last year as well as future ones. A garden tour, "Garden Treasures" is slated for June 27 and much of the planning for it will take place during the winter months.

Later in the evening, members and guests will meet at the home of member Jackie Hodgson and Fran Curren for a holiday gathering to celebrate and thank the membership for its work in the past year.

A highlight of the evening will be a silent auction with items relating to the garden. Proceeds will help fund the many civic beautification projects that the club participates in.

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