

Date filed: 18 March 2020

File No.: 21-20

## **DECISION AND FINDINGS OF THE ZONING BOARD OF APPEALS**

**Re: Appeal under M.G.L. Chapter 40A Sections 8 & 15 by WJH LLC, Green Hollow LLC, the Reily Family Limited Partnership, and William Boatner Reily IV and Caroline Reily of the Building Inspector's determination not to enforce Sections 7.3 and 7.4 D of the Edgartown Zoning Bylaw as it pertains to property located at 32 Ocean View Avenue, Assessor's Parcel 29-137 in the R-60 Residential District owned by Thomas M. Sheehan, Tr. c/o Donald Sullivan  
Book: 78 Page: 299 (Registered)**

### **PROCEDURAL HISTORY:**

1. On 7 February 2020, Timothy Moriarty, attorney for the Reilys, filed a request with the Building Inspector for enforcement of section 7 of the Edgartown Zoning Bylaw - Floodplain Zoning.
2. In his letter, Mr. Moriarty states that areas of the Sullivan property within the floodplain were cleared of vegetation and completely excavated in order to allow for the construction of a driveway and retaining wall.
3. Mr. Moriarty states in his letter that these activities require both an order of conditions from the Conservation Commission and a Special Permit from the Zoning Board of Appeals for new construction in the floodplain.
4. Mr. Moriarty asks that the Building Inspector enforce the bylaw by requiring Mr. Sullivan to remove the retaining wall and driveway within the floodplain and to restore these areas to their previous undisturbed state.
5. On 21 February 2020, the Building Inspector, Reade Milne, responded by letter to Mr. Moriarty stating that she did not believe that the activities required a special permit as they are 'incidental to the construction of a residence or other structure for which a building permit has been issued,' under the requirements of Sections 7.4(D) and 7.9 pertaining to the definition of 'alteration of the land form.'
6. On 18 March 2020, Mr. Moriarty filed an appeal of the Building Inspector's decision to deny his enforcement request with the Town Clerk and the Zoning Board of Appeals.
7. After consultation with and approval from Mr. Moriarty, the hearing was scheduled for 30 September 2020. Notices were placed on the town's website, in the *Vineyard Gazette* on September 11<sup>th</sup> and September 18<sup>th</sup> 2020, and abutters were notified of the time and date of the hearing and the necessary Zoom information to attend the hearing.

8. On 30 September 2020 the hearing was held remotely via Zoom. Mr. Moriarty and his clients, Mr. & Mrs. Reily were present, as were Mr. Sullivan and his attorney, Michael Bonner. Also in attendance were Doug Hoehn, Eric Las, and Jason Brickman.

9. The Board reviewed the appeal, the plans and photographs, and all other materials and information submitted prior to the close of the public hearing. The Board received and gave due consideration to the testimony given at the public hearing [See Record of Proceedings].

#### FACTS:

1. On 25 October 2019, Mr. Sullivan received a negative determination of applicability from the Edgartown Conservation Commission for the work in floodplain. The Commission determined that no Notice of Intent was required for either the wall, the driveway, or the small portion of a stairway that was within the floodplain.

2. On 30 October 2019, Mr. Moriarty appealed the Commission's determination to DEP and Mr. Sullivan was told to file a notice of intent for the work, which Mr. Sullivan did on 28 July 2020.

3. According to the institutional memory of both board members and staff, in the last thirty years the Zoning Board of Appeals has *never* issued a Special Permit under Floodplain Zoning. All work allowed in the flood zone has always been incidental to a construction project that required a building permit and, consequently, no additional special permit has ever been required.

4. When asked to provide an instance when the Edgartown ZBA had issued a Flood Plain Special permit, Mr. Moriarty could not.

5. Installation and location of the driveway and a retaining wall under 6-feet do not require permits, as they are allowed by right.

6. Mr. Moriarty's contends that because a Floodplain Special Permit was not obtained, the three building permits issued for the property were issued in error. The building permits in question were issued in March of 2019 (main house), and October of 2019 (pool and garage) - well beyond the 30-day appeal period and the appeal is, therefore, time-barred and the ZBA has no jurisdiction.

#### FINDINGS:

1. Based on the above, the ZBA finds that the Building Inspector properly exercised her discretion in not granting zoning enforcement or relief to the Reilys. The ZBA agrees and concurs with the Building Inspector's 21 February 2020 decision in all respects.

2. The ZBA finds that there is no basis to conclude that the project does not comply with Section 7 of the Zoning Bylaw.

3. The ZBA unanimously determines that the zoning enforcement is denied, and affirms the decision of the Building Inspector by a roll-call vote of 5-0.

4. As recorded in the record of proceedings, the board voted unanimously to allow the assistant to sign the decision on their behalf.

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Lisa C. Morrison  
Assistant

Note: This decision was filed in the office of the Town Clerk on 19 October 2020. Appeals, if any, should be made pursuant to Section 17 of Chapter 40A of the Massachusetts General Laws and should be filed within 20 days of the filing of this decision in the Office of the Town Clerk.

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I hereby certify that no appeal has been filed in the twenty-day period following the date of filing this decision.