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Case No. 45-19
Date Filed: 10 December 2019

RECORD OF PROCEEDINGS

I, Lisa C. Morrison, assistant to the Zoning Board of Appeals of the town of Edgartown, hereby certify that the following is a detailed record of proceedings pertaining to the appeal filed by Shute Building Realty Trust, Benjamin L. Hall, Tr. under MGL ch. 40A, section 8 of the Building/Zoning Inspector's decision not to issue a cease and desist order relative to development activities at 66 Main Street, known as the "Yellow House" (Assessor's Parcel 203-125). The property is owned by the town of Edgartown and leased to Summer & Main LLC, Christopher Celeste, manager, and is located in the B-I Business District.

1. On 10 December 2019 the application, a true copy of which is marked "A," was presented to the Town Clerk.
2. In addition, an advertisement, a true copy of which is marked "B," was published in the Vineyard Gazette on December 27th and January 3rd 2020.
3. Notice of the hearing, a copy of which is marked "C," was mailed, postage prepaid, to the petitioners; the abutters - owners of land adjacent to the subject property within 300-feet of the property lines - all as they appear on the most recent, applicable, certified tax list; and to all the proper town boards and departments.
4. On Wednesday, 15 January 2020 at 7:15 p.m. the hearing was opened and Chairman Tomassian made a motion to continue the hearing for two weeks until 29 January 2020 at the applicant's request and as stipulated is the "Agreement to Extend Time Limits under G.L. c 40A s 15" and agreed to by the Ben Hall and the town. [See file and minutes of 15 January 2020.]
5. On Wednesday, 29 January 2020 at 8:15 Chairman Tomassian opened the hearing and the notice was read. Member present included: Martin Tomassian – Chairman, Nancy Whipple, Carol Grant, Richard Knight, and Robin Bray – alternate. Tomassian noted that the only issue for the board to decide is whether or not they support the Building Inspector's decision not to issue a cease and desist order. He said that he expected the appellant, Mr. Hall, to confine his remarks to that issue alone.

Mr. Hall asked permission to record the proceedings. Mr. Tomassian agreed.

Tomassian asked when the building inspector's decision was issued. Mr. Hall replied that it was issued October 21st but was not received by him via certified mail until October 30th. Mr. Tomassian asked when the appeal was filed. The assistant said that a notice of appeal was filed with the town clerk on 20 November 2019. On 25 November 2019 a letter was hand-delivered to Mr. Hall stating that the Notice of Appeal filed with the town clerk does not comply with the board's Rules and Regulations (Article II Section I), which requires that all requests for action by the board be made on the official application form and accompanied by the filing fee of \$100. The application and fee were received on 10 December 2019. Mr. Tomassian noted that the application was received after the 30 day appeal period.

Mr. Hall said that he believes that the town did not follow its own rules and that there was a lack of transparency in the application process for the Yellow House. He asked the board to enforce its zoning regulations. Mr. Tomassian responded that the board does not *enforce* any zoning regulations.

Mr. Hall said that the MVC regulations prohibit the town from issuing any permits for activities that trigger review as a DRI. Mr. Hall said that the project should have been referred to the Commission as a mixed use development of four or more units. Mr. Hall asked to read the MVC regulations.

Tomassian said he was familiar with the DRI Regulations and checklist and asked Mr. Hall to dispense with the reading. Mr. Tomassian said that he did not necessarily agree with Mr. Hall's interpretation of 3.2 and asked whether or not Mr. Hall had contacted the Commission for their opinion. Mr. Hall said that in his opinion the regulations are clear and the project should have been sent.

Mr. Hall asked that any witnesses that are called be sworn in and that he be allowed the opportunity to cross-examine. Mr. Tomassian denied the request.

Mr. Hall said the division of the property approved by the Planning Board was also done incorrectly. He said that MVC regulations require that any division of commercial property must be referred as a DRI. He noted that no site plan was submitted with the building permit application.

The division was undertaken in order to correct the fact that the new building housing Rosebud was built within the 5-foot setback. He said that the application was submitted to the Planning Board by the Town Administrator without a vote by the selectmen to convey the land.

Mr. Hall said that in 2003, the date of the taking by the town, the building was essentially one unit. He said that it had not been a multi-unit structure for some time and, therefore, the Building Inspector should not have used that reason to avoid sending the project to the Commission

Mr. Hall said that there is a disconnect between what was applied for and what is being built. He said the application is lacking in detail. He said that no plan has been filed in the Registry of Deeds. He said that there is no evidence that a Preservation Restriction has been filed as required for projects using CPC funds. Mr. Hall said that to the best of his knowledge no permits for demolition or for lifting the building were ever issued.

Mr. Tomassian asked if Mr. Hall had discussed these issues with Adam Turner. Mr. Hall said that he had and was told that Mr. Turner would take them under advisement

Mr. Hall went on to allege that there was no authorization from the town or from Summer & Main to apply for building permits.

Mr. Hall said that with all due respect to Mr. Jason's long service to the town, he was not exactly informed as to what was being built where.

Brian Hall said that he had no doubt that whatever got kicked up to MVC would be kicked right back. Nevertheless, the project should have been referred. He said that there is not a level playing field. The field is sloped.

Ben Hall agreed and said that especially since this is a town project, the town should abide by its own rules. He said that if the town can get away without following MVC regulations and zoning rules, why should anyone obey?

Mr. Knight asked Mr. Hall to explain how he was aggrieved, how he has been specially damaged. Mr. Hall said that he has a right to expect that zoning will be enforced. He said that he believes that the project is not ADA compliant, and that there are fire and parking hazards.

Mr. Knight asked if Mr. Hall had attempted any kind of mediation. Mr. Hall replied that one does not mediate MVC requirements. He acknowledged that the optics of the situation look a lot like sour grapes on his part, but he said he believes in the principle that the proper process must be followed by everyone.

Mr. Jason, former Building and Zoning Inspector, said that he spoke to Adam Turner about the proposal and was told that neither the construction project nor the lot line adjustment required review. He said that the town has always followed the bylaw and has a better record of doing so than several people currently in the room.

James Hagerty, Town Administrator, said that he does not make decisions in a vacuum: all his decisions are made with the advice of Town Counsel and with the consent of the Selectmen.

Mr. Tomassian noted that the Selectmen sign all the warrants, including the one that paid the surveyor for the lot line adjustment.

Mr. Hall took issue with several statements. He said that Mr. Jason had not stated when he spoke with Mr. Turner. Mr. Hall said that he was told by Mr. Turner less than two weeks ago that the matter was still under advisement.

Mr. Hall said that just because the Selectmen signed off on the warrant does not necessarily mean that they authorized the project.

Mr. Tomassian then closed the public portion of the hearing. He said that the board would review the additional material submitted by Mr. Hall, consult with town counsel, and reconvene next week - 5 February 2020 - to make a decision.

Meeting was adjourned at 8:07 p.m.

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On Wednesday, 5 February 2020 the following board members reconvened: Martin Tomassian – Chairman, Nancy Whipple, Richard Knight, Carol Grant, and Robin Bray – alternate.

Ben Hall asked the chair if he could record the proceedings. Mr. Tomassian said he could take notes, he didn't need to record the proceedings.

Tomassian reminded the board that the public portion of the hearing is closed. Tomassian said he had done some research and had found both a Conservation Restriction and an Historic Preservation Restriction Agreement on file in the Registry of Deeds, book number 1485, pages 456 and 430, respectively. Both documents were recorded on 31 December 2018.

Tomassian commented that Mr. Hall's principal complaints were outlined in his letter dated 20 November 2019, but the appeal was not filed with the ZBA until 10 December 2019. Even though the appeal was timely, the board allowed the appeal to proceed.

Tomassian said that Mr. Hall presented no evidence that indicated in any substantive way how his client, Shute Building Realty Trust was aggrieved by either the lot line adjustment or the construction activities taking place at 66 Main Street.

Tomassian said he believed that Brian Hall had correctly assumed that had the lot line adjustment or the project been referred to the MV Commission, the Commission would have kicked it back to the town. Tomassian said that he believed Mr. Jason when he said that he consulted with Adam Turner, Executive Director of the MV Commission, and was told that no referral was necessary for either matter.

Tomassian said that he can find no basis to overturn the Building/Zoning Inspector's decision not to issue a cease and desist permit and made a motion to support the decision of the Building/Zoning Inspector. Knight seconded the motion and voted to support the decision of the Building/Zoning Inspector. Whipple, Bray, and Grant also voted to support the decision of the Building/Zoning Inspector.

Appeal denied 0-5.

Knight commented that he does not understand how Mr. Hall or his client can claim that any real harm has been done. He said that it does appear to be the 'sour grapes' that Mr. Hall alluded to at the earlier hearing. He said that if there was any real harm done to the plaintiff, he believes the board would want to know about it, but in this case he doesn't see any grounds for overturning the Building Inspector's decision.

Respectfully submitted,

Lisa C. Morrison, Zoning Board Administrator