

Case No. 22-19
Date Filed: 11 July 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 Lynn Allegaert under MGL ch. 40A, section 15, of the Building/Zoning Inspector's decision to issue a special permit under section 11.9 f (now 10.1 G) of the bylaw to allow the construction and relocation of a 176 s.f. pool bar to replace an existing 225 sq. ft. pool bar at the Harbor View Hotel, located at 131 North Water Street, Assr. Pcl. 20B-107 in the R-5 Residential District.

1. On 11 July 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 July 12th and July 19th.
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.

On Wednesday, 31 July 2019 at 7:30 p.m. the public hearing was held in the Town Hall. The following board members were sitting for this hearing: Martin Tomassian – Chairman, Nancy Kelly – alternate, Carol Grant, Richard Knight, and John Magnuson.

Attorney Felicia Ellsworth of Wilmer Hale was present for the applicant, as was attorney Dan Larkosh. Ms. Ellsworth said that the appeal of the issuance of the building permit is based on the argument that the special permit is invalid because of defective notice. She also noted that the structure that was built did not conform to the plans approved in the special permit. [The only variation was a 3-foot cupola, which has since been removed.]

Ellsworth said that at least half of the abutters did not receive notice of the May 1st hearing. She said that the notice for the current hearing is also defective as it referenced section 11.9 f of the bylaw, which has since been superseded by section 10.1 G. She said that section 11.9 now refers to signage and this could be potentially misleading. [The original application for the pool bar relocation filed by attorney Sean Murphy in April 2019 cited

section 11.9 f of the earlier bylaw. The current application for an appeal filed by attorney Dan Larkosh in June of 2019 also cited several sections of the earlier bylaw.]

Ellsworth said that the third defect was that the pool bar has been entirely removed from the pool area into the green space. She noted that the Harbor View's application made no mention of adjacent seating or the fire pits. She said that the area surrounding the new bar has become an open-air restaurant. A stand-alone attraction that is open to the public. She argued that this use is not consistent with the special permits issued in 1990 and 1992, which limited the service of beverages and food to the pool deck.

Ellsworth noted that if the abutters had received notice, they would have shared their alarm at these changes with the board. Ellsworth said that the abutters are asking the board to schedule a new hearing so that they may voice their concerns. Ellsworth noted that the prior bar was nestled on the opposite site of the pool, surrounded by the main portion of the hotel and the Mayhew building, which helped to mitigate noise and other disturbances from the immediate abutters.

Lynn Allegaert, 14 Thayer Street, said that she had no problem with noise from the previous pool bar. In early June she noticed construction taking place in the green space outside the pool area. An area, she said, that was supposed to be free from commercial activity. She immediately contacted the Building Inspector and was given a copy of the special permit that was issued on 3 May 2019, which allowed the bar to be moved from the east side to the west side of the pool area. Ms. Allegaert said that neither she, nor many of the other abutters, received notice of the hearing.

Ms. Allegaert said that the intent of the 1990 and 1992 special permits was to keep the service of food and drink contained on the deck inside the pool area and away from the abutting residential neighborhood. She said that the bar is now located outside the fence surrounding the pool on a 2300 sq. ft. terrace that could accommodate 150 people and has three fire pits. She said the pool bar is no longer restricted to those using the pool and is open to the public. She said this is clearly an intensification of use and will have a negative impact on the neighborhood.

Ms. Allegaert said her property is just 60-feet from this new restaurant/bar and the noise and commotion emanating from the bar will have a negative effect both on her ability to enjoy her property and her property's value. She asked that the special permit and the building permit be rescinded.

James Swartz, 1 Starbuck Neck, began by saying that he was appreciative of the substantial improvements made to the hotel by the new owner. Mr. Swartz said that he received no notice of the May 1st hearing. He noted that his address has not changed in 18 years, and that he has received numerous notices over the years, just not for the May 1st hearing.

Mr. Swartz said that the whole purpose of the 1990 and 1992 special permits was to contain the level of noise. Mr. Swartz then quoted letters from the file written by Peter Sharp for the hearings in 1990 and 1992. Mr. Sharp was concerned about noise and amplified music emanating from the hotel and disturbing surrounding residential neighborhood. Mr. Swartz said that the safeguards put in place 30 years ago have worked reasonably well, but require constant enforcement by the abutters.

Mr. Swartz said that every season he and other abutters have to deal with multiple violations of the special permits such as drunken outdoor parties and amplified music. He said that this season has been considerably worse. He said as recently as last Thursday he had to interrupt his evening to address hotel management about loud amplified music on the porch that prevented his grandchildren from sleeping.

Mr. Swartz said that the ZBA has essentially granted the Harbor View a permit to open a 2500 sq. ft. outdoor restaurant with full bar and seating for 50, which could easily be expanded to 50 more. He said the patio has upwards of 50 new lights and is open not just to hotel guests but to the general public as well. He said this is not what was intended in the previous special permits, which limited the use of the pool bar to bathers and loungers in the immediate vicinity of the pool. Mr. Swartz said the new bar/restaurant has nothing to do with the pool: it is simply a new outdoor bar and restaurant.

In addition to noise, Mr. Swartz said that the negative impacts on the neighborhood will include traffic congestion, parking problems, and increased foot traffic in a quiet residential neighborhood. Mr. Swartz alleged that the hotel managed to slip through the permitting process with the help of administrators and boards, leaving the community to pay the price.

Geoffrey Caraboolad, 63 Fuller Street, said that he too received no notice. He said he also found it strange that Mr. Chiu, the new owner, did not come by personally to let him know of his plans as he had done several times earlier. He said he hopes the board will require the new owner to abide by the restrictions of the earlier special permit, as not doing so would mean setting a dangerous precedent.

Granville White, 4 Ox Pond Meadow, said that he received no notice of the May 1st hearing. [Mr. White's is not an abutter to abutter within 300-feet].

Joe Smith, 1 Ox Pond Meadow, commented that his children are third-generation Edgartown summer residents. He said over the years the Harbor View has been the source of many problems including parking, easement issues, and increased noise and drunken behavior. He said that the outdoor restaurant is moving the neighborhood in the wrong direction.

Bob Forrester, 7 Starbuck Neck, said that he has owned his property for 36-years. He said that his property is close to the main entrance of the hotel, and he has tried over the years to be a good neighbor. He said he does feel the impact from noise and is constantly picking up napkins and glasses that find their way onto his property. He said that people frequently block his driveway. He said that although the hotel is an anomaly in the neighborhood, he acknowledged that it has been there for over 100-years. He said he believes that if the ZBA had been aware of what was really intended by the application to move the pool bar, it would never have gotten through. He said that the new pool bar is clearly a new outdoor restaurant and bar open to the public.

A number of abutters and Edgartown residents stood to voice their objections including: Dudley Cannada, Linda Forrester, Kathy Smith, Isobel Brooker Case, Susan Swartz, Andrew Houlahan, Sara Barbato, and Margaret Littlejohn.

Attorney Kevin O'Flaherty of Goulston Storrs introduced himself to the board and noted that he recently represented the Harbor View in Superior Court. He said that the issue before the board tonight is only whether or not the building inspector correctly issued the

building permit. The only issue with the building permit was the fact that the pool bar was built with a cupola, which was not on the plans approved by the ZBA. The cupola was promptly removed and the structure is now in compliance with the special permit.

Mr. O'Flaherty said that the issues raised by Ms. Ellsworth and the abutters concern the special permit – not the Building Inspector's decision to issue the building permit. Mr. O'Flaherty said that the abutters sued the town and the Harbor View in Superior Court and asked for an injunction, which was denied emphatically by Judge Ricciardone. He said that the matters raised by the abutters and their attorney as to whether or not the special permit should have been issued will be decided in Superior Court. He said the board could not repeal its own decision.

Ms. Ellsworth responded saying that because of defective notice, the special permit – and therefore the building permit – is invalid and should be revoked. She said that a new hearing should be held after proper notice listing the correct section of the bylaw and describing the new pool bar as an outdoor restaurant and bar.

Mr. Tomassian asked if there were any letters from town boards or departments. There were none. Mr. Tomassian then closed the public portion of the hearing for discussion by the board.

Mr. Knight said that he believes that – for whatever reason – many of the abutters did not receive notice. He said that in his opinion that makes the initial hearing defective. He also commented that the Harbor View has been before the board many times in recent years and he has not heard any of these complaints before. He said he was offended by the accusations that the board was devious or dishonest.

Mr. Magnuson made a motion to uphold the decision of the Building Inspector and said that he believed that the Building Inspector was correct in issuing the building permit. He said that the issues raised by the abutters will be decided in Superior Court. At present, the special permit is valid and the Building Inspector did what he was required to do by issuing the building permit.

Ms. Grant seconded the motion and voted to uphold the decision of the Building Inspector saying that she believed that the Building Inspector was correct in issuing the building permit. Ms. Kelly and Mr. Tomassian also voted to uphold the decision of the Building Inspector to issue the building permit.

Mr. Knight said that because the hearing was defective, the decision by the Building Inspector to issue the building permit was also defective.

Motion carries 4 to 1.

Respectfully submitted,

Lisa C. Morrison

