

Case No. 16-19
Date Filed: 30 April 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 request of Gary Duala for a special permit under section 11.9 f of the zoning bylaw to (1) demolish a one-story nonconforming structure and (2) construct a new conforming dwelling, swimming pool, and associated fencing on a preexisting, nonconforming lot located at 147 South Water Street, Assr. Pcl. 29A-19 in the R-5 Residential District.

1. On 30 April 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 May 3rd and May 10th 2019.
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, 15 May 2019 at 7:15 p.m. the public hearing was held in the Town Hall. The following board members were sitting for this hearing: Martin Tomassian – Chairman, Richard Knight, Nancy Whipple, Carol Grant, and John Magnuson.

Architect Chuck Sullivan, attorney Geoghan Coogan, and prospective purchasers Gary Daula and Richard Torcia were all present. Sullivan began the presentation and explained that the proposal involves removing an 800 sq. ft., one-story structure that was built in the 70s and constructing a new 4018 sq. ft. structure (footprint of 1655 sq. ft.), an attached 316 sq. ft. garage, and a 16-ft by 32-ft swimming pool. The proposal meets all necessary setbacks and height requirements, but is 724 sq. ft. short of the area necessary to be a conforming lot.

Mr. Tomassian asked if there were any letters from town boards or departments. There were none. Mr. Tomassian asked if there were any letters from abutters.

A letter from Pamela Findlay of 6 Cummings Way was read. Ms. Findlay's is a direct abutter. Findlay's letter outlined a number of concerns including: the height and massing of the

proposed new structure, the loss of privacy, the increase in noise from the proposed pool and pool equipment, the loss of the character of the neighborhood.

Findlay pointed out that the neighborhood is currently home to more modest houses that have a 'quieter and lower impact on the neighbors.' She said this house is much more imposing and suits the style and architecture of North Water Street. She noted that portions of the proposed dwelling will be just 6-feet from the shared property line and will have windows and dormers that look directly down onto her house and deck. She was also concerned that by granting a special permit for a development of this size on a nonconforming lot, the board would be setting a dangerous precedent.

A letter from Mike & Ann Long of 5 Cummings Way (across Cummings Way from the subject property) was read. The Longs were in support of the project and wrote that they know Mr. Torcia and Mr. Daula personally and thought that both they and the proposed dwelling would be an asset to the neighborhood.

A letter from abutters Rex & Laura Lee Gedney was read. The Gedneys own 153 South Water as well as 147 South Water Street, the subject property. The Gedneys noted that the current dwelling is in poor repair and among the smallest in the neighborhood. The Gedneys wrote that they believed that the architecture and the scale of the project was appropriate for the neighborhood.

Mr. Tomassian asked for public comment. Heather Cohan of 141 South Water Street said she was also speaking for another abutter, Diana Dozier, of 20 Cummings Way. Ms. Cohan said she did not understand how the board could consider allowing a three-story house to be built on a nonconforming lot. She noted that the property is in the newly expanded historic district. She said that within the 'circle of abutters' only three houses have over 3000 sq. ft. of living space; twelve have under 2000 sq. ft. [Ms. Cohan submitted a list of the square footages of all the houses and the areas of lots in the neighborhood for comparison – see file.] She noted that there are only two pools in the immediate area. Ms. Cohan also noted that the property was unusual in that it had six direct abutters and two across South Water Street.

Susan Brown, of 144 and 138 Katama Road, said that she was also concerned by the 'grandness' of the plan. She said that she thought the letter of support from the proposed sellers should be disregarded by the board as biased. She was also concerned about the fate of the large maple at the front of the property and wondered whether it was protected by the town as a shade tree. Mr. Tomassian commented that shade trees were the province of the Selectmen.

Mr. Coogan began the rebuttal by noting that the property is just 724 sq. ft. shy of being a conforming lot, which would allow the applicants to build the proposal as of right. He said he found it somewhat disingenuous that Ms. Findlay would complain as she has a house with 2586 sq. ft. of living space on a 4140 sq. ft. lot. Mr. Coogan said that he is sure that his client would be amenable to making some adjustments to the plan in light of objections from the abutters.

Mr. Tomassian then closed the public portion of the hearing for discussion and questions from the board.

Mr. Knight asked how many square feet of living space were proposed. Mr. Sullivan replied that the total living space was just over 4000 sq. ft, not including the finished basement or the garage. The balconies, decks, and porches add an additional 941 sq. ft. to the total.

Mr. Coogan submitted a chart showing an analysis of living space to lot size in the neighborhood. He noted that according to his calculations the proposed living area is 43% of the lot area, well within the median in the neighborhood, which ranges from a low of 22% to a high of 78%, with Ms. Findlay's coming in at 62%.

Mr. Magnuson commented that there was considerable opposition to the proposal from the neighbors. Ms. Whipple agreed and said she was concerned that there was so much opposition. She said she would like to see the project down-sized and the balconies removed.

Mr. Knight said that he believed the project was way too large for both the lot and the neighborhood. He said that replacing a small cottage with a house of this size and scale was out of character with the neighborhood. He said he wonders whether the board is doing a good thing for the town to keep allowing the construction of large houses, especially when there are several large houses currently on the market. He said that there was no guarantee that this house would not end up on the market as well as a 'spec house.'

Mr. Coogan interjected that it was not a 'spec house.'

Ms. Grant agreed and noted that the house is built out practically to the setbacks on three sides. She commented that she lives around the corner, where there are still small houses.

Mr. Knight made a motion to deny the application saying that he did not believe that it met the criteria required under 11.9 f of the bylaw, which requires – among others - that the proposal “will not be more objectionable or substantially more detrimental to the character of the neighborhood than the original structure.” He said he did not believe this was proven in the presentation. Ms. Grant seconded the motion and voted to deny the application.

Mr. Coogan asked to withdraw the application. He said that this was the first presentation of the plan before the board. Mr. Tomassian stated that it was inappropriate for Mr. Coogan to interrupt the vote and that the hearing had been closed. He said the Zoning Board is not an advisory board and does not design projects – it votes on what has been presented.

Mr. Magnuson said that he would be in favor of allowing the applicant to withdraw. Ms. Whipple agreed.

Mr. Tomassian asked for a vote on the original motion. Mr. Knight and Ms. Grant voted to deny. Ms. Whipple, Mr. Magnuson, and Mr. Tomassian voted to permit the applicant to withdraw. 2-3 motion does not carry.

Mr. Magnuson made a motion to allow the applicant to withdraw the application. Ms. Whipple seconded the motion and voted to allow the applicant to withdraw. Mr. Knight and Ms. Grant voted not to allow the applicant to withdraw. Mr. Tomassian voted to allow the applicant to withdraw. 3-2 motion does not carry.

Mr. Tomassian said that he believed a vote of a minimum of four members is required for any action by the board on a special permit, variance, or appeal.

Mr. Tomassian asked for another motion. Mr. Knight again made a motion to deny the application for the above-stated reasons. Ms. Grant seconded the motion and voted to deny. Mr. Tomassian voted to deny. Ms. Whipple voted to deny in order to support the action of the board. Mr. Magnuson voted to allow the applicant to withdraw. 4 to 1 motion to deny carries.

Respectfully submitted,

Lisa C. Morrison, Assistant