

Case No. 35-19
Date Filed: 11 September 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 hearing to decide on the merits of a repetitive petition and, if successful, on the request for a special permit under section 10.1 G of the zoning bylaw to demolish a one-story nonconforming structure and construct a new, conforming dwelling on a preexisting, nonconforming lot located at 147 South Water Street, Assr. Pcl. 29A-19 in the R-5 Residential District.

1. On 11 September 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 September 13th and September 20th 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, 2 October 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, Nancy Whipple, Carol Grant, John Magnuson, and Nancy Kelly - alternate.

Richard Torcia began the presentation. His partner Gary Daula was also present. Mr. Tomassian said that even though the Planning Board had found that the application had substantial and material changes, there is no guarantee that the Zoning Board will agree.

Mr. Torcia began by saying that he and Mr. Daula met with the neighbors, including Heather Cohan and Pamela Findlay. He said they were invited to their houses so that they could visualize the actual impact of their project on their neighbors. He said they then returned to the drawing board and took their neighbors' concerns into consideration while drafting the new plans.

Mr. Torcia then outlined the differences between the two plans: The original plan called for a 3-story house with 4100 sq. ft. of living space; the new plan eliminates the third story entirely and has 2985 sq. ft. of living space on two floors. The depth of the house has been reduced from 48-feet to 44-feet and the side porch has been shortened. The third floor dormers have been eliminated. The footprint of the house has been reversed preserving an historic maple tree in the front yard. The swimming pool has been eliminated.

Mr. Tomassian asked if the basement would contain additional living space not included in the 2985 sq. ft. figure. Mr. Torcia replied that there will be a rec room and a bedroom. Mr. Magnuson commented that basement living space is not included when calculating living space. A basement bedroom is included in the overall bedroom count, but not in the living space calculation.

Mr. Torcia commented that at the prior ZBA hearing, they were represented by both an attorney and an architect. He said that they decided this time to do the presentation by themselves so that they could speak from the heart. He said he believed that the process with the neighbors had worked well and that they were able to devise a plan that was good for both the neighbors and themselves.

Mr. Magnuson said that he believed that material and substantial changes had been made to the plan that addresses the original reasons for denial. He noted that the overall mass of the structure had been reduced with the elimination of the third floor and the amount of development on the lot had also been reduced by the elimination of the swimming pool. The applicants had compromised with their neighbors and eliminated dormers and porches that impinged on their neighbors' privacy. Mr. Magnuson said that, as he recalled, these were the primary reasons for the denial and they have been addressed by this new plan. Mr. Magnuson made a motion to grant the repetitive petition and allow the applicants to proceed with their request for a special permit.

Ms. Whipple seconded the motion and voted to allow the applicants to proceed with the special permit. Mr. Tomassian, Ms. Grant, and Ms. Kelly also agreed to allow the applicants to proceed. Unanimously approved 5-0.



[As stated above, as the request for a repetitive petition was approved, the board now moved on to consider the special permit]

Letters from abutter Heather Cohan and Edgartown resident Sarah Jane Hughes were read by the members and entered into the record.

Mr. Tomassian said that it is likely the board will condition any permit to forbid any exterior construction during the months of July and August. Both Mr. Torcia and Mr. Duala said they would have no problem with such a condition. Mr. Tomassian said that the applicants should also make sure that construction vehicles do not block the street or their neighbors' driveways.

Mr. Magnuson asked if Mr. Torcia and Mr. Duala were planning to live in the house. Mr. Torcia replied that they were.

Mr. Tomassian reminded the applicants that they need to check with Habitat for Humanity or other organization prior to demolishing the existing house.

Mr. Torcia said that they were aware of the 'Demolition Delay' section of the bylaw but had not initiated any process yet; they were waiting for the special permit before proceeding with anything.

There were no letters from town boards or departments and no one in the audience who wished to comment either pro or con.

Mr. Tomassian then closed the public portion of the hearing for discussion and questions from the board. No one had any additional concerns.

Mr. Tomassian made a motion to approve the special permit as presented in the plans dated 20 August 2019. He said that he appreciates that the applicants listened to the board's concerns and revised their application accordingly. Mr. Tomassian said that he finds the proposal to be in harmony with the bylaw, that the site is appropriate, and that the project will not adversely affect the neighborhood. He wished the applicants good luck. He added the condition that no exterior construction is to take place during the months of July and August.

The assistant asked whether or not the board would like to add a condition mandating construction fencing to keep debris from migrating onto the neighbors' properties. Mr. Magnuson said that he believed that was in the building inspector's purview. He said that he knows from experience that if any dust or debris is landing on neighboring properties one call to Lenny will take care of it.

Ms. Whipple seconded the motion and voted to grant the special permit for the same reasons and with the same condition. Mr. Magnuson, Ms. Grant, and Ms. Kelly also voted to grant the special permit for the same reasons and with the same condition. Special permit granted 5 to 0.

Respectfully submitted,

Lisa C. Morrison, Assistant