

Case: 22-18  
Date Filed: 27 June 2018

## 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 Victoria Haeselbarth for a special permit under section 11.19 of the zoning bylaw for an accessory apartment. The property is located on a preexisting, nonconforming at 7 Mercier Way, Assr. Pcl. 36-80 in the R-20 Residential District.

1. On 27 June 2018 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 June 29<sup>th</sup> and July 6<sup>th</sup> 2018.
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, 18 July 2018 at 7:15 p.m. the public hearing was held in the Town Hall. The following board members were sitting for this hearing: Richard Knight – acting chair, Carol Grant, John Magnuson, and Nancy Kelly – alternate.

The applicant Victoria Haeselbarth and her attorney, Mary Costello, were present. Mr. Knight explained that a unanimous decision is required to obtain a special permit with a four-member board. The applicant and her attorney agreed to proceed. Ms. Costello explained that they were under time restraints as there were some irregularities with the initial probate. Ms. Haeselbarth inherited the property from her deceased mother, who had taken out a reverse mortgage on the property.

Ms. Haeselbarth has been cleared for a mortgage, but the Land Court was concerned that there were no permits for the apartment.

Ms. Costello explained that there is a total of 1576 sq. ft. of living space in the structure consisting of a 1240 sq. ft. unit and a small 480 sq. ft. separate apartment (dimensions approximate). The apartment has been there since 1988.

Ms. Costello said that there is currently a year-round tenant in the apartment and, up until recently, Ms. Haeselbarth's mother, Diane, lived in the main unit. Ms. Haeselbarth's son would occupy the main unit when he returns to the island. He is currently off-island in school. Ms. Haeselbarth is not proposing any changes or expansion; she would just like the apartment to be on record.

The board had some questions about the layout of the apartment. The apartment is a completely separate duplex unit: the kitchen and entrance are on the first floor and the bedroom and bath on the second floor.

Mr. Knight asked if there were any letters from town boards or departments. The assistant read a letter from Matt Poole, Health Agent. Mr. Poole said that with some minor alterations, the property could be brought into full compliance. The property currently has a three bedroom septic and is classified by the Board of Health as a two-bedroom structure.

Mr. Knight asked if there were any letters from abutters or other members of the public. Letters from Robert Grinch of 11 Mercier Way and John Conley of 12 Knoll Drive were read. Both were concerned that the property is operating as an illegal duplex with an absentee landlord. Both were not in favor of the board granting a special permit.

Mark Nicoterra wrote in support of the project. He said that one of his employees lives in the apartment year-round with his wife. He said that with affordable year-round housing so hard to find, it is difficult to retain reliable and productive employees.

Mr. Knight then asked if anyone in the audience wished to comment. Mary Regan of 9 Mercier Way said that she was opposed to the project. She said that she has lived on her property seasonally since 1972 and was surprised to find a door being cut into the side of the house and an air conditioning unit installed. She noted that there were separate grills and trash receptacles on either side of the house in addition to a number of vehicles – all of which clearly indicates that the house is being used as an illegal two-family residence.

Shirley Searle of 1 Mercier Way said that she did not believe that the area was zoned for multi-family structures. She said she believed it should be a single-family residence and was not in favor of the board granting the special permit.

Wanda Williams who lives at 12 Mercier Way said that it is her understanding that with an accessory apartment, the owner must reside in one of the units and at no time could both units be rented out.

Ms. Haeselbarth said she was more than willing to work with her neighbors and to address their grievances. She said that her mother had owned the property for over 30 years. She said that she worked very hard over the past year to improve the property. She noted that her son is currently off-island being treated for a traumatic head injury, but the goal is for him to return in a few months and live in the main unit. Ms. Haeselbarth said that she needs to rent the apartment in order to pay the mortgage. She said she rents the apartment for an affordable rate, \$1200 a month. She said that she is not an absentee landlord, but lives full-time in Edgartown and works at the Council on Aging.

Mr. Knight then closed the public portion of the hearing for discussion among the board members.

Ms. Grant said that, in her opinion, the proposal does not meet the requirements necessary to meet the definition of an accessory apartment, as the owner does not reside on the property.

Mr. Knight said that he was all for affordable housing, but commented that the neighbors do not seem to be particularly happy with the way the property is being managed. He said that if the property were truly owner-occupied the board could look at the application more favorably.

Ms. Grant made a motion to deny the application because the proposal does not conform to the intent and purpose of the bylaw. She said that the objections from multiple abutters indicated that the proposal was not compatible with the character of the neighborhood.

Mr. Magnuson seconded the motion and voted to deny the special permit for the same reasons.

Ms. Kelly and Mr. Knight also voted to deny the special permit for the same reasons.

Respectfully submitted,

Lisa C. Morrison, Assistant