

Case: #30-2015

Date Filed: 23 September 2015

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 Donna McPherson a special permit under section 11.9 f of the bylaw to demolish an existing dwelling and construct a new dwelling and detached garage with living space above on a preexisting, nonconforming lot located at 10 Tilton Way, Assr. Pcl. 20C-177 in the R-5 Residential District.

1. On 23 September 2015 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 25th and October 2nd 2015.
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, 14 October 2015 at 7:00 p.m. the public hearing was held in the Town Hall. The following board members were sitting for this hearing: Richard Knight – acting Chairman, Nancy Kelly – alternate, Gerry Conover – alternate, Nancy Whipple, and John Magnuson.

Patrick Ahearn, architect, began the presentation for the applicant, Donna McPherson, who was also present. Mr. Ahearn submitted a new set of plans dated 13 October 2015, which were revised following recent conversations with an abutter.

Mr. Ahearn explained that the lot is 6784 s.f. and is located adjacent to the Hob Knob Inn's parking lot. He said that he has attempted to devise a plan that is appropriate in scale for the neighborhood and meets the needs of his client. After consultation with an abutter, the garage was moved closer to the rear of the proposed main house. Additional

6-foot high solid-board cedar fencing was added along the sides of the property – up to the existing hedge on the Hob Knob side and up to the existing fencing on the Ford side. In addition a line of 12-14 foot arborvitae will be planted running along the sides of the garage and across the rear of the property as shown on the ‘Illustrative Site Plan’ dated 13 October 2015.

Mr. Ahearn noted that the project meets or exceeds the required setbacks. Off-street parking will be provided on a brick apron in the front of the property. The garage will be used primarily for boat storage and to store a car in the off-season.

Mr. Ahearn commented that the average size of lots in the village area is 6000 s.f. He said that the design is for a small Greek revival cottage similar to many others in the area. The living area of the first floor is 1420 s.f., the second floor 1118 s.f., for a total of 2538 s.f. The house will have three bedrooms and a detached fourth bedroom will be located over the garage

Mr. Knight asked if there were any letters from town boards or departments. There were none. A letter in favor of the project from abutters Paul & Lisa Cunningham was read.

Michelle Casavant, who identified herself as Ms. McPherson’s real estate agent, spoke in favor of the project. She said that she is confident that Ms. McPherson will be an asset to the neighborhood.

Claire Bennett, a current neighbor of Ms. McPherson’s, said that as a landscape architect she has never seen a homeowner who takes better care of her property than Ms. McPherson. She said that she was also trained as an architect and thinks the plans are excellent.

Martin Tomassian, an abutter, said that he was opposed to the two previous applications, but is in favor of this design. He said that he approves of the location of the garage at the rear of the property.

Eric Peters, attorney representing the Bucklands, submitted a letter dated 14 October 2015 outlining his clients’ concerns. He noted that the lot is doubly nonconforming as it has neither the required 10,000 s.f. of lot area or the necessary 50-feet of frontage. Mr. Peters noted that the current proposal represents a total increase in living area of almost 350% over what currently exists on the lot.

Mr. Peters’ letter [see file] includes a detailed analysis of the structures on the other two nonconforming lots on Tilton Way – noting that this lot is the smallest, narrowest, and longest of the three. He commented that because of the nature of this configuration any development on the lot would have a greater impact on the neighborhood in terms of density, mass, noise, and loss of privacy.

Mr. Peters noted that the proposed residence is only 5.5-feet from the northeast side yard and 8.6-feet from the southeast side yard. Mr. Peters said that this 8.6-foot span is

proposed as an access for the garage some 60-feet in the rear. Mr. Peters had with him a 2x4 cut to 8.6-feet to illustrate just how narrow the proposed car lane would be. He also pointed out that a set of stairs to the mudroom is also located in this narrow strip, further impeding access.

Mr. Peters noted that earlier plans provided to the Planning Board showed a 1096 s.f. basement that were not included with this set.

Mr. Peters commented that, in his opinion, the plan currently before the board is not appreciably different from the ones previously denied by the board [See analysis on page 8 of Peters' letter].

Mr. Peters also took issue with Mr. Ahearn's analysis of lot size to footprint in his submittal of 9 January 2015. He said that Mr. Ahearn's analysis is misleading as it includes conforming lots, which have no bearing on the current situation.

Mr. Peters also cited the Bransford case and noted that the board had denied the construction of a 2300 s.f. house on a nonconforming half-acre lot. He commented that this proposal is for a 2538 s.f. house and two-story garage on a 6784 s.f. lot.

Mr. Peters said that the current proposal will clearly be more objectionable and detrimental to the character of the neighborhood than the original structure and noted that the scope of the nonconformity far exceeds other nonconformities in the neighborhood.

William Fruhan, an abutter and resident of 136-140 Upper Main Street, spoke in opposition to the project and submitted a letter dated 14 October 2015. Mr. Fruhan stated that the current proposal is only "modestly different in lot coverage" when compared to the proposal denied by the board in 2013. He objected to the scale of the current project and said it is not compatible in a neighborhood where lot coverage averages 21%.

Mr. Fruhan was concerned about the outdoor firepit at the back of the house and the fact that the garage has a ground-floor bathroom. Given the inaccessibility of the garage to vehicles, he said he believes it is likely that this structure will be used for entertainment purposes and as a one-bedroom house, rather than for boat or automobile storage. He said that he is concerned about the noise that would be generated in this outdoor entertainment area.

Arthur Buckland, an abutter and resident of 6 Tilton Way, also objected to the proposal and submitted a letter detailing his concerns dated 14 October 2015. Mr. Buckland commented that in order to build the two structures, 18 mature trees will need to be clear cut. Mr. Buckland maintained that because the lot is so narrow, the actual building of the two structures would necessitate substantial damage to neighboring properties. He noted that the hedge on the Hob Knob side is just 3-feet from the wall of the proposed house. He said he could not imagine that the excavation required for the proposal would not damage the roots of the hedges on either side. In addition, he said he has trouble

imagining where construction equipment will go unless it is on the neighbors' plantings, which will be destroyed.

Mr. Buckland also raised several concerns relative to the narrowness of the driveway and questioned the adequacy of the on-site parking, as well as noise from the outdoor entertainment area. He was concerned that the large second floor deck looks directly down on the Ford's backyard.

Mr. Buckland said that Tyler McPherson told him that a few years ago that he was developing the property for sale and intended to maximize the square footage in order to get the highest sale price. Mr. Buckland said that he believes that is still the case with this application.

Mr. Peters noted that neither the Buckland property nor the Ford property have garages.

Mr. Ahearn began his rebuttal by noting that there is no lot coverage limitation in Edgartown. He said that if this lot were a 10,000 s.f. conforming lot in R-5 the owner could *by right* build a 32-foot cube right up to the setbacks. Mr. Ahearn said that the abutters' analysis of the percentage of lot coverage does not apply.

Mr. Ahearn said that he met with Mr. Buckland in Boston yesterday and heard his concerns. He said that they worked out several compromises that resulted in the plan currently before the board. He said he finds it somewhat disingenuous that Mr. Buckland did not let him know yesterday that he would be speaking against the plan.

Mr. Ahearn noted that a typical parking lot slot is 8-feet 6-inches wide. This driveway is 8-feet 8-inches wide. He said that the mudroom steps could easily be relocated, if necessary.

Addressing the concerns raised regarding the use of the garage as an entertainment venue, Mr. Ahearn said that the garage could be conditioned to ensure that it would not be used as living space.

Mr. Ahearn said that the concerns raised about construction on narrow lots undermining foundations or ruining plantings are exaggerated. He said that any competent contractor is capable of managing construction on small, narrow lots without causing damage to adjacent properties. Mr. Ahearn said that the board will remember approving a recent project on Dunham Road, where the neighbors were very concerned that the excavation would damage their property. Mr. Ahearn said that the project was completed, and there were no impacts whatsoever.

Mr. Ahearn commented that this house is designed to be 26-feet high in a 32-foot zone. He noted that the rear wing is even shorter. He noted that the nearby Hob Knob Inn is 32-feet high. He acknowledged that the current structures on the lot are very small, but noted that there are two very substantial structures 4,000 s.f. structures owned by Maggie White right across the street.

Mr. Ahearn said that his analysis was based on architectural scale, not lot coverage. He said that he believes the current proposal is architecturally compatible with many others in the neighborhood both in scale and in the type of materials that will be used. He said that the design was conceived as if this lot were in the Historic District.

Mr. Ahearn said that he cannot understand Mr. Buckman's objections and said he does not believe that the project will affect him in any way. The house will be completely screened from his property by fencing and arborvitae.

Mr. Ahearn stated that Ms. McPherson just went through a divorce and was awarded this property. She intends to make it her home. Mr. Ahearn urged the board to look at the realities of zoning - the majority of lots in the village are 6000 s.f. preexisting, nonconforming lots. He said that he believes the proposal is consistent architecturally with many others in Edgartown. He also noted that there were no objections from several other abutters, notably Mr. Tomassian, Ms. White, and Mr. Ford. He also noted that one of the objections came from an abutter who lives on another street and has two large structures on his lots.

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

Ms. Kelly asked for some clarification regarding a window well on the plan, and asked Mr. Ahearn how the construction would be staged. Mr. Ahearn said that they will first pour a slab foundation for the garage and then begin excavation for the house – moving backwards towards Tilton Way.

Mr. Conover confirmed that the current structure is nonconforming in that it is located 10-feet within the front yard setback.

Ms. Whipple said that she was concerned about the second floor balconies and their affect on the immediate neighbor. Mr. Ahearn commented that the balconies are on the side of the property adjacent to the easement and Mr. Ford's property – who has not objected.

Mr. Magnuson noted that the board has approved several similar projects on equally small or smaller lots and commented that there has been quite a bit of development in this area. He mentioned a recent decision by the board on Cummings Way. He noted that something will be built on this property and it will certainly be larger than what currently exists on the lot. He said he did not think that a 2500 s.f. was too large for the neighborhood, and noted that there are several large houses in the area.

Mr. Knight said that he thinks the house might be too large, but perhaps its effect could be remediated by certain conditions. He asked for motions.

Mr. Magnuson made a motion to grant the permit with the following conditions:

1. First floor of the garage is to be unheated and unconditioned and not used for living space. Half-bath on the first-floor of the garage is not approved and may not be constructed.
2. No exterior construction is to take place from the 15th of June through Labor Day. Construction may take place between the hours of 8 a.m. and 5 p.m., Monday through Friday.
3. Any damage to plantings or fencing on adjacent properties shall be promptly repaired.

Mr. Magnuson went on to say that he believed the site was appropriate, as there are similar sized-structures in the neighborhood. He said that he did not believe that the structure would have an adverse effect on the neighborhood and, although it is certainly larger than what currently exists, it will not be out of scale with other nearby structures. He said that he believes that – with the above conditions – the project will not be detrimental of the neighborhood.

Ms. Whipple seconded the motion and voted to grant the special permit for the same reasons and with the same conditions.

Ms. Kelly voted to grant the special permit for the same reasons and with the same conditions.

Mr. Conover voted to grant the special permit for the same reasons and with the same conditions.

Mr. Knight also voted to grant the special permit for the same reasons and with the same conditions.

Respectfully submitted,

Lisa C. Morrison, Assistant