

Case No. 7-21  
Date Filed: 23 December 2020

## 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 Chris & Beth Buehler for a special permit under section 10.3 D of the zoning bylaw to convert an existing garage into an accessory apartment on a preexisting, nonconforming lot located at 44 Tenth Street North (Assr. Pcl. 11A-275) in the R-20 Residential District.

1. On 26 January 2021 the application, a true copy of which is marked "A," was presented to the Town Clerk.
2. An advertisement, a true copy of which is marked "B," was published in the Vineyard Gazette on 29 January and 5 February 2021.
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, 17 February 2021 at 4:45 p.m. the hearing was opened and held via Zoom. The following board members were in attendance: Martin Tomassian – Chairman, Pam Dolby, Carol Grant, Nancy Whipple, and John Magnuson. Chairman Tomassian opened the hearing and read the necessary requirements for conducting remote meetings in compliance with both the Governor's order and the Open Meeting Law. The assistant read the legal notice.

Mr. Buehler began the presentation giving a brief history of the property. Mr. Buehler said his family has been under some stress, which was further exacerbated by the pandemic. Both he and his wife are small business owners, who have lived on the island year-round for decades. Mr. Buehler said that in 2018, he moved into the sober house for a year. His wife, trying to make ends meet, rented out the house for 6 weeks and moved into the garage with their youngest son. Mr. Buehler said that during that time, the renters had one big party, which included multiple parked cars that blocked the road. He said he was horrified.

More recently the house has been rented out in season to an older couple. However, there has never been more than six people residing on the property at one time - the maximum permitted in a three-bedroom house.

Mr. Buehler said that the current proposal is to decommission one bedroom in the main house in order to create a legal accessory apartment in the garage to provide income and year-round housing. The tenant, currently in the basement of the main house, will move into the apartment. Mr. Buehler said that both he and his wife are doing all they can to bring the property into conformity with the bylaw.

Mr. Tomassian asked if there were any letters from town boards or departments. There were none. The assistant then read letters of support from a number of abutters and neighbors including: Edmund Cottle III of 17 Tenth Street North, Suzie Pacheco of 24 Tenth Street North, Gerald Bennett owner of 70 Tenth Street North, Jen & Jerry McKenna of 64 Tenth Street North, Dana Thornton of 41 Ninth Street North, and Adarlecio Amaral of 68 Pilgrim Road. All wrote in support of the project and stated that the Buehlers were good and responsible stewards of the property.

Robert Hopkins, an attorney from Phillips & Angley representing abutter Richard Dusek - who has a house across the street from the Buehler property at 52 Tenth Street North - introduced himself to the board. Mr. Hopkins said that the Buehlers are not just asking for an accessory apartment, they are asking for forgiveness. Mr. Hopkins said that there have been years of letters to the building inspector and the board of health notifying them of zoning violations relative to illegal apartments above the garage and in the basement. Mr. Hopkins said that this has caused real problems for his client. He said that the property is not being used as a single-family home but as a lodging house with up to eight individuals residing on the property. He said this causes an increase in traffic on the dirt road and considerable noise and dust.

Mr. Hopkins said that the Buehlers are not applying to house an elderly family member, they are just asking for more space to rent out. He said that the past and present use of the property is wildly out of proportion to what is expected in a residential neighborhood, which does not have the facilities for that kind of use. He urged the board to deny the application.

Matt Poole, Edgartown Health Agent, said that he has been out to the property twice. He said that he, the building inspector, and the Buehlers have been working together to bring the property into compliance since early summer. He said that the conversion will require the decommissioning of a bedroom in the main house by removing a wall and a deed restriction that will prohibit the basement from being used for human habitation or as a 'sleeping space.'

Mary Jo O'Neill of 46 Pilgrim Road, a direct abutter at the rear of the property, asked if there would be any change in the footprint. When she was told there would be no change, she said that she had no problem with the proposal.

Elizabeth Cosgrove of 57 Ninth Street North asked if there would still be an apartment in the basement. When she was told that a deed restriction will prohibit the basement from being used for human habitation, she said that she had no problem with the project.

Rick Dusek, who owns property across the street at 52 Tenth Street North, noted that unlike the roads on either side, Tenth Street is not a paved road. He said he was down for three weeks this summer and saw lots of different people coming and going from the Buehler property.

Mr. Tomassian said that on his visit to the site he noted a full-sized door leading from Mr. Dusek's basement. He asked Mr. Dusek if he had an apartment in his basement. Mr. Dusek said he did not.

Mr. Buehler said that this past summer the house was rented to one elderly couple for six weeks. He, his wife, and his son were the only other residents. He said he's not sure which people Mr. Dusek is referring to. He said the only time he was aware of there being 24 cars was during the 2018 party, which he has already spoken about.

Mr. Tomassian then closed the public portion of the hearing for discussion among the board members. Ms. Dolby said she would like to clarify something said by attorney Hopkins. The zoning bylaw differentiates between 'family apartment,' 'island independent living,' and accessory apartments. One of the reasons the accessory apartment bylaw was created was to help people pay their mortgage and hold on to their property. She said that in this case, the Buehlers have been doing what they can to make a go of it. She says she believes the board needs to help them create a legal rental unit that will be overseen by the Board of Health and the Building Inspector. If there had been egregious violations on the property, neither the Health Agent nor the abutters would be supporting these people. Ms. Dolby said that she did not think that legalizing the accessory apartment would have a negative effect on the neighborhood. She said that one incident where there was a party with 24 cars could happen at any rental, or - indeed - at any home where the parents have left for the weekend.

Ms. Grant asked Mr. Dusek if he lived on the island year-round. Mr. Dusek said he does not.

Ms. Dolby made a motion to grant the special permit saying she believed it was in harmony with the general purpose and intent of the bylaw. She said she believed that the proposal complied with all the provisions listed in 10.3 D. She said she did not think that the apartment would be harmful to the neighborhood. She said she believed that the applicants deserve consideration and that the board should act with compassion. She noted that a fully executed deed restriction that (a) prohibits the basement from being used for human habitation or as a 'sleeping space' and (b) certifies that a bedroom in the main house has been decommissioned must be filed in the Registry of Deeds before any building permit or certificate of occupancy for the accessory apartment can be issued.

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 Mr. Tomassian also voted, by roll-call vote, to grant the special permit for the same reasons and with the same condition. Unanimously approved 5-0.

Respectfully submitted,

Lisa C. Morrison, Assistant