

Case No. 4-21
Date Filed: 26 January 2021

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 Catherine & Richard Thompson for a special permit under section 10.1 G of the bylaw to install a swimming pool, pool equipment shed, and deck on a preexisting nonconforming lot at 137 Katama Roa (Assr. Pcl. 29A-18.2) in the R-5 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 4:00 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. The applicant's representative, Doug Hoehn; the building contractor Tom Pierce; the landscape contractor Fred Fournier; and the applicant, Rich Thompson, were all present.

Mr. Hoehn began the presentation noting that the Thompson's are proposing a relatively small pool, 12-feet by 24-feet. The lot is nonconforming, having an area of 8000 plus s.f. in a district where a conforming lot needs 10,000 s.f. The pool will be located behind the house and meets all setbacks. At its closest point, it would be 8.3 feet from the rear property line. The pool equipment shed will be located in a sound-proofed shed just off the north side of the house.

Mr. Fournier said that the landscape plan involves removing dead and diseased plant materials and installing a 7- to 8-foot arborvitae hedge adjacent to a 6-foot stockade fence. The intent is to create a buffer of dense vegetation on three sides, between the pool and the abutters. The hedge is intended to create some privacy and noise buffer from the busy intersection of the bike path, Katama Road, and South Water Street.

Rich Thompson commented that he and his wife are in the process of renovating the property. He noted that they added no additional square footage to the home. They are just improving what is there. Mr. Thompson said the purpose of the pool is therapeutic: his son is disabled and benefits from pool therapy. A letter from his son's doctor testifying to these facts was submitted as part of the application. Mr. Thompson said that the family has a heated pool in Lexington, and they are hoping to provide their son with a similar therapeutic environment on the Vineyard. Mr. Thompson said that he appreciates his neighbors' concerns, and will do all he can to allay them.

Cathy Thompson reiterated that the primary purpose of the pool is therapeutic not recreational. She said that swimming has done wonders for her son.

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

Letters from abutters Heather Cohan of 141 South Water Street and Pam Findlay of 6 Cummings Way were read. Both were concerned about light pollution and noise from the pool and the pool equipment would negatively impact their privacy and quality of life and set a dangerous precedent in the neighborhood.

A letter from Gary Duala, a direct abutter to the rear, spoke in favor of the project and said he thought it would be an asset to the neighborhood.

Charles Tobin, a direct abutter at 139 Katama Road, said he had some questions but was neither for nor against the project.

Susan Brown of 144 Katama Road, across the street from the project, was concerned about noise and questioned whether or not the granting of special permits and/or variances defeated the whole purpose of zoning. Mr. Tomassian responded saying that should the board approve the pool, a standard condition would be that the pool equipment is located in a fully enclosed, sound-proofed structure. Mr. Tomassian commented that the application is for a special permit, not a variance, and no change in zoning is required for the board to approve the project.

Heather Cohan reiterated the comments from her letter, noting that though she is not a direct abutter, she believes the pool would have a negative impact on the neighborhood by setting a precedent. She said that the neighborhood is a modest one, with small lots.

Pam Findlay, who is also separated from the property by the Duala lot, had similar concerns. She said that when she walks down a certain section of South Water Street, she hears noise from the pool equipment. She said this is her worst nightmare. She said that if the board were to grant the permit, it may open the floodgates for pools in the neighborhood.

Gordon Brown of 138 Katama Road had some questions about the type of arbor vitae proposed for screening. Mr. Fournier replied that they are planning to use 7 to 8 feet tall Emerald Green arborvitae. He said that they are a slow growing species with very dense foliage.

Mr. Tomassian then asked the applicant if he wished to add anything as a rebuttal. Mr. Thompson said that he appreciated his abutters concerns and would be willing to do whatever is necessary to accommodate them.

Mr. Fournier said that no additional exterior lighting is planned, other than the lights required by code in the pool itself. There will be no uplighting and no lights in the trees. Mr. Fournier said that pool equipment technology has improved considerably and it is not comparable to the old 'open air' equipment. He said that housing the equipment in an insulated shed further ensures that there will be no noise from the equipment.

Catherine Thompson said that her son does not do a lot of splashing or jumping when using the pool.

Mr. Tomassian then closed the public portion of the hearing for discussion among the board members. Mr. Magnuson noted that, looking at the aerial photograph of the neighborhood, there were very few pools in this area. He thought that moving the pool equipment shed directly behind the house, rather than off the side, might be an improvement. He said that reconfiguring the pool so that it was parallel to the house rather than perpendicular to Mr. Tobin's property could also be an improvement.

Mr. Tomassian agreed that the plan could be improved and suggested that the applicant might wish to withdraw and return with a revised plan and, perhaps, a survey of other pools in the area.

Both Mr. Tomassian and Ms. Grant addressed the idea of precedence, saying that the board reviews each application separately, and makes decisions based on the unique set of circumstances and characteristics present on each property. The board does try to be consistent, but what they decide in one circumstance does not necessarily carry over to another.

Ms. Dolby commented that she was not present for the Duala hearing referred to in the Findlay and Cohan letters. The assistant noted that Duala application that was denied featured not only a pool, but also a proposed house that was four times the size of the existing structure. When Mr. Duala reapplied and was approved, it was for a smaller house and no pool.

After some further discussion, Ms. Whipple made a motion to allow the applicant to withdraw without prejudice. Ms. Dolby seconded the motion and also voted to allow the applicant to withdraw. Unanimously approved by roll-call vote, 5-0.

Respectfully submitted,

Lisa C. Morrison, Assistant