

Case # 7-21

Date Filed: 23 December 2020

DECISION AND FINDINGS OF THE ZONING BOARD OF APPEALS

Re: Request for a special permit under section 10.3 D of the Edgartown Zoning Bylaw

Applicants/Owners: Christopher & Elizabeth Buehler

Assessor's Parcel: map 11A lot 275

Book: 1029 Page: 771

PROCEDURAL HISTORY

1. The application is for a special permit under section 10.3 D of the bylaw to permit the conversion of a garage to an accessory apartment on a preexisting, nonconforming lot located at 55 Tenth Street North in the R-20 Residential District.
2. A public hearing - after proper notice was given to abutters, town departments, and placed in the *Vineyard Gazette* – was held on Wednesday, 17 February 2020 via Zoom.
3. The application was accompanied by a site plan (dated 12 December 2007 – Deca) and a set of floor plans showing the layout of the proposed accessory apartment and the plan for decommissioning the bedroom in the main house - all dated 23 December 2020.
4. The Board reviewed the application, the plans, and all other materials and information submitted prior to the close of the public hearing. The Board received and gave due consideration to the testimony given at the public hearing [See Record of Proceedings].

FACTS

1. The property consists of a preexisting nonconforming +/- 12,000 sq. ft. lot in the R-20 Residential District.
2. Accessory apartments are allowed by special permit in any zoning district, provided certain standards and criteria are met.
3. The proposed accessory apartment will be located in the existing two-story garage, which is connected to the main house by a one-story mudroom.
4. The total living area in the accessory apartment will be 766 sq. ft. - including stairways. Four 8-foot by 8-foot areas on the second floor are excluded from the living area calculation as the ceiling height of these areas is less than 5-feet.
5. The accessory apartment will consist of a kitchen, living room, bathroom, and bedroom.

5. The applicant submitted a plan to decommission a third bedroom in the main house by taking out a wall. This plan has been approved by both the Building Inspector and the Board of Health.
6. The applicant has agreed to remove all cooking facilities from the basement and place a restriction on the deed that prohibits the basement area from being used for human habitation or as 'sleeping space.'
7. There were no objections to the proposal by any town boards or departments.
8. Although one abutter objected to the proposal, seven abutters wrote in favor of the proposal and two other abutters attended the hearing and spoke in favor of the project. Several abutters commented that the Buehlers were both good neighbors and good stewards of their property.

FINDINGS:

The Board finds that the proposal – as presented – complies with the provisions of 10.3 D of the zoning bylaw for the following reasons:

1. It is in harmony with the general purpose and intent of the bylaw. The accessory apartment will provide the owners with rental income that will ensure that they can retain ownership of their home (10.3.D.2.d)
2. Section 10.3.D.2.f of the bylaw allows owners of existing illegal apartments to bring their property into compliance. The board understands that due to personal and other extenuating circumstances the Buehlers have had an unlicensed apartment in the basement of their main house as well as one in the garage. The Buehlers have been cooperative and transparent in their dealings with both the Board of Health and the Building Inspector and have worked to bring their property into compliance with zoning and health codes.
3. As required by 10.3 D.3.a the accessory apartment will be a complete, separate housekeeping unit that will function independently from the main house.
4. The applicants understand that, according to 10.3.D.3.b, the accessory apartment and the principal dwelling may not both be rented out at the same time, and the owners must occupy either the main house or the apartment.
5. The garage complies with 10.3.d.3.c as the design of the garage is compatible with that normally found in a residential neighborhood.
6. The proposed accessory apartment complies with the required size and parking requirements as outlined in 10.3.D.3.d & f.
7. The proposal will provide a number of benefits to both the applicants and the community: It will contribute to the financial stability of a year-round island family of long standing, provide a legal residence for an existing tenant, and bring the property into compliance with both zoning and the board of health.

CONDITIONS

The following condition was placed on the permit:

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 is issued.

DECISION

Based on the above findings and reasons, the Board voted 5-0 to grant the special permit.

This decision of the Board of Appeals and a record of proceedings are on file in the Zoning Board office and in the office of the Town Clerk, Town Hall under Case No: 7-2021.

Board of Appeals,

Lisa C. Morrison, Assistant

Note: This decision was filed in the office of the Town Clerk on 1 March 2021. Appeals, if any, should be made pursuant to Section 17 of Chapter 40A of the Massachusetts General Laws and should be filed within 20 days of the filing of this decision in the office of the Town Clerk.

_____2021
I hereby certify that no appeal has been filed in the twenty-day period following the date of filing this decision.

Attest: _____