

Case No. 35-21
Date Filed: 14 July 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 by Jackson Sandland, trustee of Long Hill Realty Trust, for a special permit under section 10.3 F of the zoning bylaw to convert a former assisted living facility to employee housing. The property is located at 3 Long Hill Road (Assr. Pcl. 20A-7.3) in the R-60 Residential District.

1. On 14 July 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 16 July and 23 July 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.
4. At the applicant's request, the hearing was postponed to 1 September 2021. Interested parties were informed of the new date at the 4 August 2021 ZBA meeting, and notice of the postponement was posted in the town hall and on the town's website.
5. On 1 September 2021 at 4:45 p.m. the hearing was opened and held via Zoom. The following board members were in attendance: Martin Tomassian - Chairman, Julia Livingston - alternate, Nancy Whipple, Pamela Dolby, and John Magnuson. Chairman Tomassian opened the meeting and read the necessary requirements for conducting remote meetings in compliance with both the Governor's order and the Open Meeting Law.

Attorney Robert Moriarty was present for the applicant, who was also in attendance. Mr. Moriarty said that he was standing in for his partner, Marilyn Vukota, who was called off-island. The application is the result of an enforcement action initiated by Building Inspector Reade Milne stemming from a neighborhood complaint.

Mr. Moriarty noted that the existing special permit for the assisted living facility is still in force because of the state's tolling of timelines due to Covid-19. Mr. Moriarty said that this application could be viewed as a simple change of use: the only change is the age of the occupants. He noted that Long Hill was designed to house 20 unrelated people, meets all setbacks, and retains the appearance of a single-family dwelling.

Mr. Moriarty noted that even though Ms. Sandland passed away in 2019, at least one resident remained at Long Hill after her death. Mr. Moriarty commented that according to Massachusetts state law, a special permit remains in effect for a period two years of non-use. According to his calculations, the existing special permit would be in effect until March of 2022. Mr. Moriarty commented that the structure is unique in that it is designed to house 20 unrelated people, which fills a pressing need for affordable employee housing.

Mr. Moriarty said that while he understands that the neighbors have concerns, he urged the board to allow this change of use.

Chairman Tomassian asked if there were any letters from town boards or departments. There were none. A letter from Mark Hess, general manager of the Edgartown Golf Club, expressed approval of the proposal, citing the need for employee housing in Edgartown.

Letters of objection from J.P. Bretl and attorney Michael Greber were circulated among the members and the applicant's attorney prior to the hearing.

Mr. Tomassian asked if there was anyone in the audience who wished to comment in favor of the proposal. There were none.

Mr. Tomassian then asked for opponents of the proposal.

Attorney Michael Greber, beneficiary of 76 Eel Pond Lane and with the consent of Karen Shaffer, Trustee, requested that the matter be adjourned so that they have time to address the proposal for a change of use, rather than a special permit for employee housing. Mr. Tomassian said that only the applicant can request a postponement at this point.

Mr. Greber outlined a number of concerns, which are further described in his letter, including: lack of a proper applicant as a leaseholder is not the same as an 'employee/owner' as required in the bylaw, incompleteness of the application, inconsistent number of bedrooms and number of employees, inadequacy of the current kitchen facilities and septic system to accommodate 20 residents. Mr. Greber noted that when used as an assisted living facility, the maximum number of seniors was between 9 and 10 residents. Mr. Greber also took issue with a recent MLS listing that describes the structure as having five bedrooms.

Bill Mahoney of 96 Old Orchard Lane said there is a huge difference between the way seniors and young people use the property. Seniors rarely have guests at night, don't come home drunk at all hours, and don't listen to loud music. He said that there are cars coming and going all the time and turning around in his driveway with their headlights on. He said the road in is in terrible shape and hasn't been paved in thirty years. He said that there used to be 3 or 4 round trips per day from the house, now there are 35 to 40. He said that if this is allowed to continue, the value of neighboring properties will be significantly affected. Mr. Mahoney said that there was another way in to the property, via Golf Club road. He suggested that Golf Club wouldn't mind the 'minimal' traffic. Mr. Mahoney concluded his comments by stating that he was 100% against the proposal.

John Denson and his wife, Erin, of 70 Eel Pond Lane, said that he supports employee housing, but this is not the way to do it. He said he made three noise complaints over the summer. He said there have been tents erected in the yard of the Sandland house - 50 yards from his house. He said that there is no comparison between 20 twenty-somethings and 10 seniors. He said that he believes the application is deficient, and is very concerned about setting a precedent should the special permit be approved.

J. P. Bretl referenced his email of 30 August 2021, which was written on behalf of his wife and thirteen other abutters of 3 Long Hill Road. He said he agrees with all the earlier comments and believes the applicants are ineligible to apply for the special permit as they are not the owners of the

property - only the leaseholders. He said that many of the obligations of the earlier special permit have been ignored or not fulfilled. He said the permitted number of residents has been exceeded, the access is deficient, and he is concerned about the septic capacity. He noted that all these conditions have risks for neighboring properties and could expose the town to liability.

Michelle Dunn of 20 Orran Norton Way said she is totally opposed to the application and supports all of the neighbors who have written in opposition. She said the constant trespassing is a violation of her property rights.

Maria Black and her father, Tom Black, who has lived on Orran Norton Way for 26-years, said that for many of her neighbors their houses are their most important investment. She said that if the current use is allowed to continue, there will be a significant negative impact on the value of their properties. She said that the assisted living facility had very little impact on the quality of life in the neighborhood, but now that it is being used as a transient residential facility the neighbors are subject to foul language, noise, and trespassing at all hours. She noted that the owner, Mr. Sandland, lives in California and is not affected by these problems.

Jack Burritt of 3 Orchard Lane said that there have been an inordinate number of cars coming into their yard and through their garden this past summer to turn around. He said the road is very narrow and there is just too much traffic. He said that he is concerned about the health, safety, and welfare of the community.

Mike Costello of 4 Orchard Lane said the current use is a clear violation of local zoning. He said that the Harborview has not done its due diligence and moved the employees in without any permission. He said if they had not been reported, he believes they would be happy to just let the situation slide. He said that no penalties had been assessed by the town for the zoning violations. He concluded by saying he was very much opposed to the proposal.

Attorney Moriarty commented that a lease does give the applicant some right of ownership. Mr. Tomassian interjected that the ownership issue is something of a red herring in this case.

Mr. Moriarty said that the applicants have been trying to comply with local zoning. He noted that the Board of Health has inspected the title V septic system and given it a pass for the current number of residents.

Mr. Moriarty said that the board has a hard choice given the opposition, but that employee housing is crucial to the town. He said a 'no' vote will ensure that the property becomes just another McMansion. He said that the way the house is currently configured, there is no better facility for employee housing. He said that the only difference between the earlier iteration and this one is the age of the inhabitants. He said that many of the employees commute by bicycle. He said he went by the property today and counted three cars on the property.

Mr. Tomassian then closed the public portion of the hearing for discussion by the board. He said that the initial owner of the property was a client and that he was familiar with the property. He said he feels for the neighbors and had no idea what they were going through.

Ms. Dolby said that she has the highest respect for Mr. Moriarty but recalled that when the employee housing section of the bylaw was put into effect the intent was to allow housing out at the airport or in an area other than in the middle of a residential neighborhood. She said that such a facility would need a strong, live-in manager. Ms. Dolby said she doesn't see the current situation getting any better.

Ms. Livingston commented that the applicant has not even tried to comply with the zoning bylaw: there is no resident manager or deed restriction as required by 10.3 F. Ms. Livingston said that she is not sure whether or not the owner should be the applicant or the Harborview.

Ms. Whipple said that she believes the Harborview 'bulldozed' their way in, and commented that a home for the elderly is radically different than a house full of twenty-somethings.

Mr. Magnuson agreed and said the proposed change is major, not minor. He said that he agrees that there is a need for employee housing, but that this is not the place - even if there were a resident manager.

Mr. Tomassian agreed that this is not the way to do employee housing. A house full of 20-year-olds will need to let off steam, which is natural, but not at the expense of a neighborhood. Mr. Tomassian said that the town needs to revisit having dormitories at the airport.

Ms. Livingston made a motion to deny the application, saying that the applicant has not shown that they comply with the requirements of the bylaw. She noted that changing from an assisted living facility to staff housing is a significant change. Ms. Whipple seconded the motion and voted to deny the request for the same reasons.

Ms. Dolby, Mr. Magnuson, and Mr. Tomassian also voted by roll-call vote to deny the application for the same reasons.

Special permit request is denied 0-5.

Respectfully submitted,

Lisa C. Morrison, Assistant