

Case No. 35-22

Application filed: 24 October 2022

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 Goldeneye LLC (David Malm) for a special permit under section 10.1 G of the bylaw to construct an in-ground pool, spa, and pool cabana on a preexisting, nonconforming lot at 24 Katama Bay View Road (Assr. Pcl. 46-18.1) in the R-60 Residential District.

1. On 24 October 2022 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 28 October and 4 November 2022.
3. At the applicant's request the hearing was rescheduled from 16 November 2023 and then again to 15 February 2023. An advertisement, a true copy of which is marked "B," was published in the *Vineyard Gazette* on 27 January 2023 and 3 February 2023.
4. Notice of the hearing, a copy of which is marked "C," was mailed, postage prepaid, to the petitioners; the abutters and abutters to 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, 15 February 2023, the hearing was opened and held via Zoom. The following board members were in attendance: Martin Tomassian – Chair, Thomas Pierce, Carol Grant, Pam Dolby, and Robin Bray – alternate. 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 Rob McCarron, Doug Hoehn of Schofield, Barbini & Hoehn, Carlos Teles – landscape contractor, Peggy Schwier – landscape designer, and Patrick Ahearn – architect were all present for the applicant.

Mr. Hoehn began the presentation noting that the lot is preexisting, nonconforming at 1.03 acres in the R-60 Residential Zone, where an acre and a half is required for a conforming lot. The lot currently has a 3500 s.f. 3-bedroom dwelling and a 3-car garage with living space above. The applicant would like to construct an 18 x 40 pool, a 525 s.f. cabana containing a

half-bath and kitchenette. At 16 feet in height, the cabana conforms to all height and setback requirements.

Mr. Hoehn said that the proposal had been approved by the Conservation Commission. The pool will have a salt-based filtration system and the pool equipment will be located in a sound-proofed section in the cabana's basement. As required by the Conservation Commission, a dry well will be installed to handle draw down at the end of the season. There is currently a thick stand of vegetation between Plover Lane and the pool. The intent is to fully screen the property so that the pool will not be visible to the neighbors. The vegetative screen will also help to mitigate noise from the pool.

No additional exterior lighting other than what is required by the building code is proposed.

Mr. Hoehn noted that he located six existing pools in the area from the water side of Edgartown Bay Road to Mattakesett Bay Road and Katama Bay View Drive. The closest pool is about 285 feet away off Plover Circle. The furthest pool in the area is over 1500 feet away. Mr. Hoehn said that he is aware that permits have been granted for three additional pools in the area.

Carlos Teles said that he met with Mr. Malm at the site. He said that Mr. Malm intends to screen the entire backyard. He said that Mr. Malm intends to live on the property. His Herring Creek Farm property now belongs to his ex-wife.

Mr. Tomassian asked if there were any letters from town boards or departments. There were not. The assistant noted that five letters had been received from direct abutters: Mitch & Paula Weisman of 4 Plover Circle, David & Leslie Ofer of 3 Plover Circle, Eric Caplan of 20 Katama Bay View Road, Brian Carty of 44 Edgartown Bay Road, and Jody Landau & Joseph Sieber of 30 Katama Bay View Road. All were opposed to the project and many cited a recent article in the *Wall Street Journal* dated 25 January 2023, which detailed Mr. Malm's substantial real estate purchases on Martha's Vineyard in recent years and his involvement in the luxury seasonal rental market. These letters were distributed to the members and the applicant's representatives prior to the hearing.

Mr. Tomassian asked if there was anyone present who wished to speak in favor of the proposal.

Norman Rankow stated that the Health Agent, Matt Poole, will require a deed restriction mandating that the pool cabana is not used as sleeping space.

Martha Cohan, a former neighbor of Mr. Malm's at Herring Creek, said that Mr. Malm has been a good neighbor who is always willing to help. She said she has never had any noise issues with Mr. Malm.

Mr. Tomassian then asked if there was anyone present who wished to speak in opposition to the project. Mitchell Weisman, who lives directly across Plover Lane from the proposed location of the pool, said there was not much vegetation between the pool and Plover Lane; just a few shrubs. Mr. Weisman said that when the house was owned by Mr. Hedley, who sold to Mr. Malm, the property was the site of many noisy, late night parties. He said that noise really carries in the neighborhood and he is concerned that adding a pool and cabana

would aggravate the situation. He said he is concerned that the property will be used as a high end rental by people who have no attachment to the community.

Eric Caplan of 20 Katama Bay View Drive said that his family has lived in the area since 1965. He said that when Mr. Hedley built the house and garage in 2016 he did not object at the time because he was under the impression that that would be all the development permitted on the lot. Mr. Caplan said that he too was concerned about the property being rented as he does not believe renters have as much respect for the neighborhood as residents. He agreed with Mr. Weisman's concerns about noise and said he cherishes the quiet of his neighborhood.

Brian Carty of 44 Edgartown Bay View Road said that he has lived in the neighborhood for 30 years. He said he is concerned about the changes that have occurred in the area in recent years. He also mentioned the *WSJ* article and believes that the house will become a high-end rental at some point. He said that he believes if this project is allowed to go forward, it will totally change the character of the neighborhood. He said he believed 'enough is enough.'

Jodi Landau of 30 Katama Bay View Road was also opposed to the project. She said that she and her husband have lived in the area for 12 years and consider it to be a close knit community. She said that the neighbors are speaking with one voice: they feel threatened and believe the future of their quiet neighborhood is in jeopardy.

She said she was skeptical of Mr. Malm's assertion that he intends to live on the property. She said that after reading the *WSJ* article, it seems clear that Mr. Malm will ultimately rent out the property.

She was also concerned about the cabana's potential to morph into a guest house, as it already has most of the amenities of a full-scale guest house. She is concerned that the property will become a 'party house' – complete with outdoor music and television and exterior lighting.

She reiterated that sound travels readily in Katama. She said she often hears noise from the pool on the Shipsey property at 5 Plover Circle, several lots away. She said she can only imagine how noisy a pool right next door would be. She said that although Mr. Hoehn said that there were 6 pools in the area, she said that none of her immediate neighbors had pools. She said that she doesn't have much faith in noise mitigation measures. She urged the board to deny the request.

Joseph Sieber, also of 30 Katama Bay View Road, spoke in opposition to the proposal. He said that there is a direct conflict between screening the pool and keeping a view of Katama Bay. He said that trees have disappeared from the property to enhance the water view. He also noted that the prevailing winds blow from the Malm property across his, increasing the likelihood that noise from the pool will be a constant source of annoyance. He urged the board to deny the proposal.

Mr. Hoehn noted that the cabana will be deed restricted with the Board of Health to ensure that it will not be used as sleeping space. He said that he has provided the Board of Health with similar deed restrictions for similar circumstance as least a dozen times.

Mr. McCarron began the rebuttal by saying that he read all the letters prior to the hearing and found them to be inaccurate and hyperbolic. He says that he believes that the neighborhood was stirred up by one man's campaign. He noted that the Siebers did not object to the Gibney pool, which was installed in 2015 at 50 Edgartown Bay Road. Nor did they oppose the Shipsey pool at 5 Plover Circle, which has half the area of Mr. Malm's lot. He noted that the Sieber's opposed the Hedley proposal for a pool at the Conservation Commission, but not at the Planning Board. Mr. McCarron noted that Mr. Sieber and Mr. Carty are both appealing an order of conditions issued by the Conservation Commission for the Karps at 31 Edgartown Bay Road.

Mr. McCarron said that Mr. Malm should not be punished for the conduct of the prior owners. He said that the *WSJ* article has been taken wildly out of context. He said that Mr. Malm fully intends to live on the property. He said that both the Siebers and Mr. Caplan rent their houses. The Sieber house is listed on VRBO and the Caplan residence is listed on Sandpiper. He said this is a neighborhood of second homes, not primary residences. He said that nothing Mr. Malm proposes to do on the property is out of the ordinary. He noted that both the Planning Board and the ZBA regularly issue special permits for swimming pools.

Mr. McCarron said that Mr. Malm is willing to pledge not to rent the property for three years, which is highly unusual. He said that Mr. Malm is willing to submit a landscape plan for review and approval by the board. He said that Mr. Malm will be a good neighbor and noted that he is a former trustee of the Sheriff's Meadow Foundation.

Mr. Tomassian then closed the public portion of the hearing for discussion by the board.

Ms. Grant said that the board grants pool permits based on the individual merits, or demerits, of each case. She said that just because there is a pool on one side of the street, doesn't necessarily mean that the board will grant one on the other side.

Mr. Pierce said that typically the board does not grant special permits pools when, as in this case, there is active opposition from direct abutters. He said he has serious reservations about the project.

Ms. Dolby said that she does not base her opinions on *WSJ* articles, but she is concerned that just about every direct abutter opposes the project. She said that she has voted to allow many pools, but has also voted to deny many.

Ms. Bray said that she agrees with the other three board members who have spoken. She said she is concerned about the pool's effect on the quiet enjoyment of people using the adjacent Sheriff's Meadow Property. She said that pools seem to be getting larger and larger and pool cabanas are being built with more and more amenities, all of which contribute to people moving their living areas outdoors. She said that all that noise can have a cumulative on the neighborhood. She said that she would not want to live next to a large pool. She said she believes that board has a responsibility to do whatever it can to preserve a neighborhood's way of life.

Ms. Grant said that the pool area is almost as large as the garage. She said she believes that the cabana, spa, and pool have the potential to attract a large group of people and create problems for the abutters. She said she could see the backyard becoming 'Party Central.'

Mr. Tomassian said that he agrees with his fellow board members. He said that one of the requirements for granting a special permit is that the project will not negatively impact the neighborhood. He said he believes that in the case, the project will negatively impact the neighborhood.

Mr. McCarron asked if the board would accept a request to withdraw.

Ms. Grant said that she believed it was too late for the applicant to withdraw.

Ms. Dolby said she had no problem allowing the applicant to withdraw. Mr. Pierce agreed. Mr. Tomassian, Ms. Grant, and Ms. Bray were not in favor of allowing the applicant to withdraw at this stage.

Ms. Grant made a motion to deny the application as the proposal was not in harmony with the general purpose and intent of the bylaw. She said that she believed the project would have a negative impact on the neighborhood and that the site was not appropriate. She noted that the direct abutters were united in their opposition to the proposal.

Ms. Bray seconded the motion and voted to deny the application. Mr. Tomassian also voted to deny the application. Ms. Dolby and Mr. Pierce abstained from the voting.

Application denied: 0-3, 2 abstentions.

Respectfully submitted,

Lisa Morrison
Assistant