

Case # 35-22
Date Filed: 24 October 2024

DECISION AND FINDINGS OF THE ZONING BOARD OF APPEALS

Re: Request for a special permit under section 10.1 G of the Edgartown Zoning Bylaw
Applicant/Owner: Goldeneye LLC (David Malm)
Assessor's Parcel: map 46 lot 18.1
Land Court Certificate: 14206

PROCEDURAL HISTORY

1. Application was for a special permit under section 10.1 G of the zoning bylaw to permit the construction of an 18 foot by 40 foot in-ground pool, spa, and pool cabana on a preexisting, nonconforming lot at 24 Katama Bay View Road in the R-60 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, 15 February 2022 via Zoom.
3. The application was accompanied by a site plan from Schofield, Barbini & Hoehn dated 5 October 2022 (revised) and by additional plans and elevations from Patrick Ahearn dated 5 October 2022. .
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 1.03 acre lot in the R-60 residential neighborhood where the minimum conforming lot size is one and a half acres.
2. Because the lot is nonconforming, the proposed construction of a pool, spa, and pool cabana requires a special permit from the Zoning Board of Appeal.
3. A number of abutters attended the hearing and expressed concerns about the proposal and its effect on the neighborhood. Chief among those concerns was the likelihood of increased noise from the large pool and cabana. Also of concern was a recent *Wall Street Journal* article, which detailed Mr. Malm's recent purchase of several multi-million dollar properties on Martha's Vineyard to be used as high-end seasonal rentals. [See Record of Proceedings].
4. The board also received a number of letters from direct butters, all whom were opposed to the project, citing concerns about increased noise, overdevelopment on the lot, and change in the character of the

neighborhood.

5. No abutters or close neighbors wrote or spoke in favor of the proposal.
6. Mr. Malm's representatives said that Mr. Malm intends to use the property as his personal residence and proposed a stipulation that he would not rent the property for three years.

FINDINGS:

The Board found that the proposal does not comply with the provisions of 10.1 G and is not in harmony with the general purpose and intent of the bylaw for the following reasons:

1. The proposed pool, spa, and cabana will be located in a fairly densely populated residential neighborhood. Immediate abutters all expressed serious concerns about the likelihood of increased noise being generated from the pool and cabana, which would result in adverse impacts to their neighborhood and the quiet enjoy
2. Although the applicant proposed additional vegetative screening to provide privacy and sound mitigation for the pool and cabana, the board did not find those proposed measures adequate. Several abutters commented that noise carries especially well in the Katama area.
3. Residents were also concerned that the property could become a high-end rental and that the pool, spa, and cabana would increase the likelihood that the property would become a 'party house' for a series of short-term renters, which has the potential to exacerbate their noise concerns.
4. Although there are several pools in the general neighborhood, none of the adjacent lots have pools or cabanas.

DECISION:

Based on the above findings and reasons, the Board voted 3-0 to deny the special permit. Two members abstained from the vote.

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: 35-2022.

Board of Appeals,

Lisa C. Morrison, Assistant

Note: This decision was filed in the office of the Town Clerk on 24 February 2023. 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.

_____2023

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

Attest: _____