

Case No. 18-23
Application filed: 6 June 2023

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 relating to the request by Brien O'Brien for a special permit under Section 10.1 G 4 of the zoning bylaw to expand the living area of a preexisting nonconforming guest house by converting the finished basement to living space. The property is located at 93 North Water Street (Assr. Pcl. 20D-281) in the R-20 Residential District.

1. On 6 June 2023 the hearing notice, 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 the 9th and 16th of June 2023.
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 and abutters to abutters 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, 28 June 2023, the hearing was opened and held via Zoom. The following board members were in attendance: Martin Tomassian – Chair, Pam Dolby, Thomas Pierce, Nancy Whipple 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 was present for the applicants, Brien O'Brien & Mary Hasten who were also present. Mr. McCarron said he would first like to address the email dated 21 June from the Building/Zoning Inspector to the Board. In her email Ms. Milne stated that - in her opinion - the application should have been filed under Section 2.3 B 9 for a guest house larger than 900 s.f., not under 10.1 G 4. Mr. McCarron said he would like to explain why he disagrees with Ms. Milne's opinion. [See also McCarron's letter to the Board dated 27 June 2023.]

Section 2.3 B 9 states that for the board to grant a special permit for a guest house larger than 900 s.f. all requirements of 2.3 A 1 must be met. This section cannot be applied

because the O'Brien lot is less than 15,000 s.f. Mr. McCarron commented that in her letter Ms. Milne stated that the existing guest house on a 15,000 s.f. lot constitutes a preexisting, nonconforming condition. Mr. McCarron said that for this reason, filing the request under 10.1 G 4 is the appropriate procedural route.

Mr. McCarron noted that no exterior dimensional changes are proposed, nor or any additional bedrooms. No changes to the footprint of the structure are proposed. The project involves converting the finished basement to a media room and powder room. The only visible changes to the exterior will be the removal of two sets of garage doors on the lower level and their replacement with four double-hung windows. Living space would increase from 900 s.f to 1235 s.f.

Mr. McCarron noted that the HDC has approved these changes to the exterior and commented that the changes would be an aesthetic improvement.

Mr. McCarron said that the Conservation Commission did not hear the application as it was determined that there would be no changes affecting Historic Views and Vistas.

Mr. McCarron said he believed that the project would not be more objectionable to the character of the neighborhood.

Mr. McCarron noted that the property has a total of two bedrooms and a combined 2700 s.f. of living space between the two structures. He said that he believes the project is modest and unobtrusive.

Mr. McCarron commented that other than the letter from Ms. Milne, the only other letter is a strong letter of support from a close neighbor. No letters of objection or concern were received. He said he does not see how the Board could find that proposal would be more objectionable or detrimental to the character to the neighborhood.

Mr. McCarron said he wished to explain the reason for the proposed powder room on the ground floor. He said that the O'Briens have a grandchild who uses braces to walk and this bathroom can be accessed without using any stairs.

Mr. McCarron suggested that there would be no issue of precedence should the Board grant the permit as very few lots under 15,000 s.f. have preexisting guest houses.

Mr. Tomassian asked if there were any proponents present who wished to speak. A letter of support from Paul & Alysa Stafford of 101 North Water Street was read.

Ms. Milne said she would like the opportunity to clarify her position. Ms. Milne said she understands Mr. McCarron's point that this is a very minimal project. She said that if the application had been referred to her, she would have rejected it and the Board would be hearing this as an appeal. Ms. Milne said that it is her job to determine which section of the bylaw an application is filed under and she believes Section 2.3 B 9 is the appropriate section. She said that, in this case, she would have determined that this is an expansion of a nonconforming guest house on a lot of less than 15,000 s.f., which cannot be allowed under current zoning.

Mr. Tomassian asked Mr. McCarron if there had been a special permit issued for this particular structure. Mr. McCarron said that he believed there had been one, but he was unable to locate it in the registry. The assistant noted that she had the special permit file.

Mr. McCarron said that it was not his intention to circumvent Ms. Milne. He said he reached out a half-dozen times and could not get through. He said he was not fully aware that he needed the Building Inspector to vet the application prior to filing it with the Board.

Mr. McCarron reiterated his argument that the application should be filed under 10.1 G not 2.3 B 9.

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

Ms. Dolby asked the assistant for details about the special permit. The assistant replied that in 2010 the applicants applied for and received a special permit to demolish the existing guest house and construct a new guest house that would be 27 s.f. larger and 14 feet higher.

Ms. Dolby commented that she thought the applicants were extremely lucky to have been able to rebuild the guest house on a lot where, under normal circumstances, a guest house would not have been allowed at all.

Ms. Dolby took issue with Mr. McCarron's statement that allowing this expansion would not set a precedent because there are very few guest houses on lots with less than 15,000 s.f. Ms. Dolby said that there are many guest houses on small lots in the R-5 Residential District that would like to expand into basements or attics. Ms. Dolby said that she can't recall the Board approving a guest house over 900 s.f. on a small lot, let alone on one that does not meet the dimensional requirements to have a guest house in the first place. She noted that the media room could easily be used as a bedroom. She said she would not be able to vote in favor of the application.

Mr. Pierce said that he agrees with Ms. Milne's determination that the application should be rejected. He said he also believed that granting the special permit would set a precedent. He said he was also surprised that the applicants were granted a special permit for a guest house back in 2010. Mr. Pierce said he would not be able to support the guest house being expanded.

Mr. Bray agreed and said she believed it would set a precedent. She said she appreciated the needs of the family, but did not see how the expansion could be allowed.

Ms. Whipple agreed with Ms. Dolby and said she did not see how it could be allowed under the bylaw.

Mr. Pierce made a motion to deny the application for the reasons stated above and outlined in Ms. Milne's letter.

Ms. Dolby seconded the motion and voted to deny the application for the same reasons.

Ms. Whipple, Ms. Bray, and Mr. Tomassian also voted to deny the application for the same reasons.

Motion carries 5-0, application denied.

Respectfully submitted,

Lisa C. Morrison, Assistant