



Still standing on Eastern Point

By Patrick Anderson

Staff Writer

June 30, 2009 11:00 pm

For more than seven years, Virgil Martinonis' large Eastern Point home has been one court ruling away from being razed to the last yellow brick.

Built to replace a stately Victorian that burned in a gas-fueled 2001 explosion, the new house has views of Gloucester Harbor, a red-roofed Mediterranean design and a silhouette challenged repeatedly by the Boston hotelier who owns a gated-estate across the street.

Last week, the state court of appeals ruled in Martinonis' favor, upholding a Gloucester zoning board ruling that the owner of a catastrophically destroyed house has leeway to rebuild in more modern style and slightly larger.

But even now, the future of the house on Eastern Point Boulevard adjacent to the historic Beauport mansion is uncertain.

Yesterday, the lawyer representing Donald Saunders, the Boston real estate developer who has tried to block construction of the Martinonis house, said he and his client are "contemplating" appealing the case to the Massachusetts Supreme Judicial Court.

The legal battle over the Martinonis' house carries implications for not only Eastern Point, but other exclusive coastal enclaves, where residents are quick to challenge plans for buildings they consider eyesores or that may block their views of the sea.

Saunders, the plaintiff, also adds intrigue to the case.

While he and several members of his family own multiple properties on Eastern Point, Saunders is rarely seen on the exclusive, private peninsula, a neighbor said yesterday, and the grand estate across the street from the Martinonis property is often vacant.

Saunders has been married to Liv Ullmann, the acclaimed Norwegian actress known for her work in films by the late Swedish director Ingmar Bergman, to whom she was considered a muse.

Saunders and Ullmann are both listed in the 2008 Eastern Point residents guide, which gives Saunders' permanent address in Boston's Back Bay.

Apart from his personal life, Saunders has appeared in the Boston newspapers over the years for his hotel acquisitions and legal battles with his brother, who is also an Eastern Point property owner.

In addition to the house across the street from Martinonis, Saunders also owns at least one other property on Eastern Point and other members of the Saunders family own as many as a dozen more.

Saunders' Boston-based lawyer, Joel Kozol, yesterday declined to discuss his client's use of his Eastern Point properties or how he has been harmed by the Martinonis house.

Directly across the street from the Martinonis property, Saunders' house is a grand three-story gray Colonial with a massive garage, extensive landscaping and a row of high windows peering up and out toward the harbor.

On a visit to Eastern Point Monday, the Saunders estate was spotless and mowed, but there were no traces of anyone inside and no one answered the doorbell.

When Saunders bought the property, it was across the street from Martinonis' first house, a Victorian that was one of the original 11 built on the Point in the late 19th century.

Originally a summer cottage for a Canadian merchant and member of parliament, the house was also owned by Nathaniel Gorton of the seafood company and Caroline Sinkler, who was part of a group of high-living enclave residents including Henry Sleeper, who owned the adjacent mansion Beauport.

Martinonis, an engineer by trade, purchased the property in 1967, according to assessors records.

Built before the city's zoning ordinances, the original house exceeded current height limits and did not conform to front and side yard setbacks, but was grandfathered in.

After the house was destroyed, Martinonis hired an architect who drew up plans for a replacement in a different architectural style, with a roughly similar footprint and the same height, but described in subsequent legal proceedings as "fuller" and "fatter" with a "Mediterranean flare."

The new house has 14,769 total square feet of space, compared with 9,611 square feet in the old Victorian.

Before beginning construction, Martinonis asked the Gloucester Zoning Board of Appeals if he would need a height variance to build the new house.

He was told he could build by right, because the zoning ordinance allowed for a house to be rebuilt after a fire that is "in substantially the form" of the old structure, which the Martinonis plan was deemed to be.

Saunders disagreed, citing the overall expansion of the new structure and its affect on his property's view of the water. He appealed the decision in Superior Court along with a request for an injunction to stop construction.

The injunction was denied, but a judge warned Martinonis that he would be building at his own risk and if the case ultimately turned against him, he could be forced to tear the house down.

The judge also asked the ZBA to look at the plans again to rule on whether the new design would intensify the noncomformity or be detrimental to the neighborhood.

Concluding the Superior Court case, Judge Howard Whitehead affirmed the ZBA decision, prompting Saunders to appeal again.

In the appeals court decision released last Wednesday, the three-judge panel agreed that Martinonis did not need a variance to rebuild on the site and gave deference to the local board.

But while two of the judges agreed with the ZBA that the new design should be allowed because it was substantially the same, a third wrote a separate concurring decision on different grounds.

The third judge based his decision on state law and the statement by the ZBA that the new house did not intensify the aspects of the house that did not conform to zoning.

After the decision, Michael Fee, a Boston real estate and land-use attorney, said he had expected that the judges would not try to overturn the local board and the decision would have had a wider impact if it had gone the other way.

"It underscores the principal that in zoning, the zoning board has the power," said Fee, a member of the Massachusetts Bar Association Property Law Council. "The decisions are rarely overturned. There are numerous stumbling blocks for challengers, both procedural and substantial."

Attempts to reach Martinonis by phone and at his house on Eastern Point this week were unsuccessful, but his Gloucester attorney, Brian Cassidy, said Martinonis was pleased by the ruling and relieved.

Cassidy did not express concern about a possible Supreme Judicial Court appeal.

"They are very happy that this is the end of the line," Cassidy said of the Martinonis family. "After they lost their house, the judge said go ahead and build it, but at own risk; you could be forced to tear it down. That burden was always hanging out there."

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Photos



Kate Glass/Gloucester Daily Times photos The owner of 76 Eastern Point Blvd., left, has lost an appeal to the state court over the local zoning board's decision to allow his neighbor at 77 Eastern Point Blvd., right, to rebuild his home after a fire destroyed it in 2001. The rebuilt home is larger and in a different design from the Victorian that was destroyed by fire. Staff Photographer



Kate Glass/Gloucester Daily Times photos The owner of 76 Eastern Point Blvd., left, has lost an appeal to the state court over the local zoning board's decision to allow his neighbor at 77 Eastern Point Blvd., right, to rebuild his home after a fire destroyed it in 2001. The rebuilt home is larger and in a different design from the Victorian that was destroyed by fire. Staff Photographer