

Case No. 13-19  
Date Filed: 10 April 2019

### 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 appeal by Norman & Margaret Rankow of the Building/Zoning Inspector's decision not to enforce certain provisions of a special permit issued by the Edgartown Planning Board in June of 2017. The provisions pertain to the use of a pier located at 41 South Water Street, Assr. Pcl. 20D-328. Mr. & Mrs. Rankow own property at 31 South Water Street, Assr. Pcl. 20D-326.1. .

1. On 10 April 2019 the appeal, a true copy of which is marked "A," was presented to the Town Clerk.
2. In addition, an advertisement, a true copy of which is marked "B," was published in the Vineyard Gazette on April 12<sup>th</sup> and April 19<sup>th</sup> 2019.
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.

On Wednesday, 1 May 2019 at 7:10 p.m. the public hearing was held in the Town Hall. The following board members were sitting for this hearing: Martin Tomassian – Chairman, Richard Knight, Nancy Whipple, Carol Grant, and John Magnuson.

Mr. Rankow began his presentation with a brief history: In June of 2007 the Planning Board issued a special permit to David Vietor, et al. for a special permit to expand an existing pier at 41-61 South Water Street, Assr. Pcl. 20D-327. Condition 13 of the special permit states that the pier is “for the exclusive use of the owners of the four lots Map 20D Lots 325, 326.1, 327, and 328.” (See decision in file.) Mr. Rankow is the owner of two of those lots: 326.1 and 327.

In October of 2018, Mr. Rankow placed a small boat on the pier and was contacted by the Reeds – owners of 41 South Water Street – and their attorney Sean Murphy and asked to remove his boat. Rankow said that it was his understanding that special permits run with the land not with an individual, unless otherwise stated. Mr. Rankow said he did not

understand why the condition was 'wiped out' when the Vietors sold the property to the Reeds. In December of 2018, Mr. Rankow wrote to the the Planning Board for clarification. (See letter in file).

On 8 January 2019, Rankow received an answer from the Building/Zoning Inspector, which stated that the special permit did not grant any *specific* property rights to the owners of the four lots, simply that they were the only ones who could use the pier, should the owner of lot 328 choose to allow them to do so. The letter noted that the permit did not specify 'shared use,' only 'exclusive use.' When Vietor sold the property to the Reeds, he also sold them all rights to the pier.

Sean Murphy, attorney for the Reeds, commented that the letter on the Building Inspector's stationery was written by Ron Rappaport, town counsel. He said that Mr. Rappaport thoroughly researched the matter. He noted that the pier is off a 9-foot strip that is zoned as B-I. The Planning Board was acting to safeguard the pier from becoming a commercial marina by *limiting the use* of the pier to the owners of the four lots. However, the special permit did not grant the *right* to use the pier to the owners of those lots. When the Vietors sold the property to the Reeds, they gave up all their rights to the pier. Mr. Murphy noted that the issue has been in court for eight years. He commented that there is nothing in Mr. Rankow's deed that gives him the right to use the pier.

Mr. Rankow said that he has tried to be a good neighbor, but that he has been playing defense since he bought the property. He asked why - if condition 13 is no longer in force - is condition 17 still honored? Condition 17 states that no addition piers may be constructed on any of the four lots listed above.

Mr. Tomassian commented that when the special permit was granted, the Vietor family owned all four lots. The condition simply states that should Mr. Vietor allow anyone else to use the pier, it must be the owner of one of the four lots. It does not state that the owners of those lots *must* be allowed to use the pier; they can use it only if Mr. Vietor allows them to.

Mr. Tomassian said that the issue before the board tonight is not to decide whether or not the special condition is or is not valid, but whether or not the board upholds the decision of the Building Inspector.

Mr. Magnuson made a motion to uphold the decision of the Building Inspector not to enforce conditions #10 and #13 of the special permit issued by the Planning Board on 6 June 2007 and deny the appeal for the reasons stated and outlined in the Building Inspector's decision dated 8 January 2019.

Ms. Whipple seconded the motion and voted to uphold the decision of the Building Inspector and deny the appeal for the same reasons.

Mr. Knight, Mr. Magnuson, and Mr. Tomassian also voted to uphold the decision of the Building Inspector and deny the appeal.

Respectfully submitted,

Lisa C. Morrison, Assistant