

Case # 28-23

Date Application Filed: 22 August 2023

## DECISION AND FINDINGS OF THE ZONING BOARD OF APPEALS

**Re: Request for a variance to section 2.1 D of the Edgartown Zoning Bylaw**

**Applicant: Stephen Rusckowki**

**Owners: Frank J. & Donna M. Angiulo Tr.**

**Assessor's Parcel: map 22 lot 133.14**

**22 Duncan Close**

### PROCEDURAL HISTORY

1. Application was for a variance to Section 2.1 D to allow a substandard lot to be buildable.
2. A public hearing - after proper notice was given to abutters, town departments, and placed in the *Vineyard Gazette* – was held on Wednesday, 13 September 2023 via Zoom.
3. The application was accompanied by a site plan from Schofield, Barbini & Hoehn dated 9 August 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 nonconforming .65-acre lot in the R-60 Residential District.
2. The lot is located in the Birnam Woods subdivision, which was approved by the Planning Board in 1977.
3. In 1980 the town of Edgartown changed the underlying zoning district from R-20 (half-acre) to R-60 (acre and a half).
4. In 1981 the owner of the subdivision, Sure Oil & Chemical Corporation, owned the subject property as well as the adjacent lot, 21 Duncan Close.
5. 22 Duncan Close and 21 Duncan Close were sold by Sure Oil in 1981. A house was built on 21 Duncan Close in 1985.
6. Under M.G.L. Chapter 40A Section 5, owners of lots that were held in common ownership at the time

of subdivision have eight years in which to build.

FINDINGS:

The Board found that the proposal does not comply with the provisions of either 2.1 D or any of the four criteria necessary for the granting of a variance. [See the Record of Proceedings filed with the Town Clerk along with this decision.]

1. There are no topographic, soil or shape anomalies that affect this lot in particular and make literal enforcement of the provisions of the bylaw impossible.
2. The petitioner has not shown that enforcement of the bylaw would involve substantial hardship.
3. The petitioner has not shown that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the bylaw or without substantial detriment to the public good.
4. The town of Edgartown has, by ratifying Section 10.3 E (Substandard Lots as Affordable Home Sites) of the bylaw, determined that substandard lots should be buildable only when certain criteria are met. [See 10.3 E 1-4]

DECISION:

Based on the above findings and reasons, the Board voted 5-0 to deny the request for a variance.

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: 28-2023.

Board of Appeals,

Lisa C. Morrison, Assistant

Note: This decision was filed in the office of the Town Clerk on 25 September 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: \_\_\_\_\_