

Case No. 28-23
Application filed: 22 August 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 Stephen Rusckowski for a variance to section 2.1 D to allow a substandard lot to be buildable. The property is located on a .65-acre lot at 22 Duncan Close in the Birnam Woods Subdivision, Assr. Pcl. 22-133.14 in the R-60 Residential District. The property is currently owned by Frank & Donna Angiulo.

1. On 22 August 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 25th of August and the 1st of September 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, 13 September 2023, the hearing was opened and held via Zoom. The following board members were in attendance: Martin Tomassian – Chair, Nancy Whipple, Carol Grant, Thomas Pierce and Pam Dolby. 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.

Doug Hoehn of Schofield, Barbini & Hoehn was present for the applicant. Mr. Hoehn explained that the Birnam Woods subdivision was approved in 1977 when the area was zoned R-20. The owner of the subdivision, Sure Oil & Chemical Corporation, began selling lots in 1978. In 1980 the town changed the zoning from R-20 to R-60. Sure Oil owned the subject property as well as the adjoining lot (Map 22 Lot 133.22). Lot 133.22 was sold in 1981 and was built on in 1986, within the 8-year window.

The Angiulos also bought their lot in 1981. It is one of only two lots in the subdivision that have not been built on. Most of the lots in the area are slightly larger than half an acre and all became nonconforming as a result of the 1980 zoning change.

Mr. Hoehn explained that because the two contiguous lots were in common ownership at the time of the zoning change, M.G.L. Ch. 40A Section 6 mandates that owners have 8 years to build, after which the lot becomes unbuildable.

Mr. Hoehn said that his client, who owns 35 Old Purchase Road, would like to purchase the property. He has no immediate plans to build on the lot, but would like to protect the lot's buildability and, perhaps, build a house for members of his family down the road.

Mr. Hoehn acknowledged that the criteria necessary for granting a variance is very narrow, but noted that the board had granted several of them in the past. Mr. Hoehn also acknowledged that his client is not eligible for a special permit under section 10.3 E Substandard Lots as Affordable Home Sites.

Mr. Hoehn said if the board grants the variance, his client is willing to limit the size of the house and number of bedrooms.

Mr. Tomassian asked if anyone wished to speak in favor of the proposal. Frank Angiulo, owner, said that he and his wife bought the property in their 20s and hoped to build a retirement home. Mr. Angiulo said that unfortunately his health prevented him from doing so. He noted that he and his wife have been paying taxes, water and sewer assessments, as well as HOA dues since 1981. He said that the property was assessed as if it were a buildable lot.

There were no letters from town boards or departments. The only letter received was from Mr. & Mrs. Angiulo, which was circulated among the members and residents of Burnam Woods prior to the meeting.

The assistant clarified that the board's past practice of granting variances for nonbuildable lots had been discouraged by town counsel, who said that such variances were unlikely to hold up in court should there be any appeal.

Mr. Tomassian then asked if there was anyone present who wished to speak in opposition. Maryellen Wyman, President of the Burnam Woods HOA, said that she does not know the prospective purchaser and has a lot of questions.

Mitchell Studley of 3 Duncan Close said that he believes it would be premature for the board to grant the applicant permission to build as no plans have been made available for review. He also questioned whether the applicant had standing to bring the application to the board as he does not own the lot.

Mr. Hoehn replied that the applicant has contracted to purchase the property and therefore has standing. No house plans were designed as the applicant has no immediate intention of building on the property. The site plan shows the footprint of a proposed two-bedroom dwelling that meets all required setbacks.

Mr. Tomassian then closed the public portion of the hearing for discussion by the board. Mr. Tomassian commented that variances are notoriously difficult to obtain and noted that the Oak Bluffs Zoning Board of Appeals routinely denies any request for a variance.

Mr. Tomassian then summarized the four criteria necessary for the granting of a variance:

1. That there are circumstances relating to soil, shape, or topography that affect the lot in question, but which do not affect generally the zoning district.
2. That due to those circumstances literal enforcement of the zoning bylaw would involve substantial hardship, financial or otherwise, to the petitioner.
3. That relief may be granted without nullifying or substantially derogating from the intent or purpose of the bylaw.
4. That relief may be granted without substantial detriment to the public good.

Mr. Tomassian said that an example of the type of condition necessary for the granting of a variance would be if there was a large rock outcrop or a stream running through the middle of the property. He said that he does not believe that the criteria have been met in this case. He also noted that a lot more than eight years have elapsed.

Ms. Dolby noted that when the town voted for 10.3 E, the decision to use substandard lots for affordable home sites was made very clear. She noted that there are still a number of unbuildable lots that would qualify for a special permits and allowing a variance in this instance would set a bad precedent. She said she feels badly for the Angiulos and suggested that they may be able to find a buyer who could take advantage of the affordable component.

Mr. Pierce said he also felt badly for the Angiulos.

Ms. Whipple said that she is not willing to say yes to anything at present.

Mr. Pierce made a motion to deny the variance, saying that it did not meet any of the necessary criteria and would set a bad precedent.

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

Ms. Grant, Ms. Whipple, and Mr. Tomassian also voted to deny the variance for the same reasons.

Motion carries 5 to 0.

Respectfully submitted,

Lisa C. Morrison, Assistant