

Case # 18-24

Date Application Filed: 14 May 2024

## DECISION AND FINDINGS OF THE ZONING BOARD OF APPEALS

**Re: Request for a variance to section 2.2 of the Edgartown Zoning Bylaw**  
**Applicant/Owner: Robert C. Weiss, Trustee of 3 Muskoday Way Nominee Trust**  
**Assessor's Parcel: map 36 lot 137.2**  
**3 Muskoday Way**

### PROCEDURAL AND FACTUAL HISTORY:

1. Application was for a variance to section 2.2 to allow an existing four-bedroom 2304 s.f. residence on a nonconforming .42 acre lot to be razed and a new two-bedroom 1950 s.f. residence to be constructed.
2. The new dwelling would be located in a more central location and meet the required R20 setbacks.
3. In 1992, the Zoning Board of Appeals granted a variance that divided a 39,976 s.f. parcel into two lots: a conforming 21,800 s.f. lot and a nonconforming 18,176 s.f. lot .
4. Conditions were placed on the variance which stipulated that (a) no guest houses were permitted on either parcel; and (2) that no additions to any portion of the dwelling on the nonconforming lot were permitted.
5. A public hearing - after proper notice was given to abutters, town departments, and placed in the *Vineyard Gazette* – was held on Wednesday, 5 June 2024 via Zoom.
6. The application was accompanied by a site plan and a septic plan from B.D. Billingham & Associates dated 2 May 2024.
7. Elevations and floor plans from Preferred Building Systems dated 25 March 2024 were also submitted. As were a narrative from Mark Bobrowski dated 3 May 2024, photos of the existing dwelling, and a copy of the Board's 1992 decision granting the initial variance.
8. 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].
9. One abutter had concerns relating to the location of the proposed new dwelling, but was ultimately not opposed to the project.
10. There were no letters from town boards or departments, either for or against the request.

FINDINGS:

1. Two members of the Board voted to grant the variance saying they believed that allowing the new structure to be built would be in the best interest of the neighborhood. They believed that the existing residence was 'beyond repair' and that 'desirable relief may be granted without substantial detriment to the public good.'
2. Three members of the Board voted not to grant the variance as they did not believe that the applicant had satisfied the criteria necessary for the granting of the variance. Specifically finding that there were "no circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in questions, but which do not affect generally the zoning district in which the land or structure is located."
3. In addition, the three opponents noted that allowing the variance would violate the Zoning Bylaw and would not be supported by Town Counsel should the variance be appealed.
4. At least two of the opponents believed that the initial 1992 variance should not have been granted.
5. One opponent also stated that the Building/Zoning Inspector would likely allow the applicant the option to rebuild the existing structure in the same location and with the same interior volume, provided there was no increase in the nonconformity.

DECISION:

Based on the above findings and reasons, the Board voted 3-2 to deny the request. [Four members must vote in favor for a variance to be granted.].

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: 18-2024.

Board of Appeals,

Lisa C. Morrison, Assistant

Note: This decision was filed in the office of the Town Clerk on 11 June 2024. 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.

\_\_\_\_\_2024

I hereby certify that no appeal has been filed in the twenty-day period following the date of filing this decision.

Attest: \_\_\_\_\_