

Case No. 18-24
Date Filed: 14 May 2024

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 request for a variance to section 2.2 of the Edgartown Zoning Bylaw by Robert C. Weiss, Trustee of 3 Muskoday Way Nominee Trust. The applicant is asking to raze a dilapidated four-bedroom 2304 s.f. house and construct a new two-bedroom 1950 s.f. house on a .42-acre lot. The property is located a 3 Muskoday Way (Assr. Pcl. 36-137.2) in the R-20 Residential District.

1. On 14 May 2024 the application, 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 17th and 24th of May 2024.
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, 5 June 2024 at 4:00 p.m. the hearing was opened and held via Zoom. The following board members were in attendance: Martin Tomassian – Chair, Carol Grant, Nancy Whipple, Tom Pierce, and Robin Bray – alternate. Present for the applicants were attorneys Robert Moriarty of McCarron, Murphy & Vukota, and Mark Bobrowski of Blatman, Bobrowski, Haverty & Silverstein, LLC.

Attorney Moriarty began the presentation: in 1992 the ZBA issued a variance to Francis & Barbara Paciello that allowed them to divide their 39,976 s.f. parcel into two lots: one 21,800 s.f. conforming lot and another 18,176 s.f. nonconforming lot. Mr. Moriarty noted that essentially a line was drawn down the approximate middle of the original lot, which bisected an existing shed. There was a condition placed on the variance, which stipulated that no guest houses were to be allowed on either parcel, and no additions were permitted to any portion of the dwelling on the nonconforming parcel.

Mr. Moriarty said that the existing 2304 s.f. four-bedroom house on the nonconforming lot is falling down and full of mold and water damage. Mr. Moriarty said that his clients would like to raze the existing structure, which does not meet setbacks, to a more central location on the property. The proposed structure would have two bedrooms – not four – and be 354 s.f. smaller than the original structure. The lot also needs a new septic system and the relocation is necessary for the installation of the septic system and leaching field.

Mr. Moriarty acknowledged that the proposal does not meet the first criteria required for a variance: “That there are 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.” However, the variance that was issued by the board in 1992 created a nonconforming lot, so the applicants do not have the protections afforded to a preexisting, nonconforming lot. Thus, they have no alternative but to apply for a variance. Mr. Moriarty said that the property has been vacant for some time. Mr. Boch and Mr. Clemmy are hoping to use the new residence for overflow family and guests.

Mr. Tomassian asked if there were any letters from town boards or departments. There were none. There were no letters from abutters or other members of the public.

Abutters Steven Chilinski & Lisa Oppenheimer of 42 Field Club Drive, who are direct abutters to east said that they are very pleased with the new owners and their upgrades to the property such as fencing and landscaping. They asked if it would be possible to site the house a bit further to the south and west so that it would not be directly in their line of sight.

Ms. Grant said that relocating the structure at this juncture would require a continuation and new notice to abutters, as abutters on the other side of the property may object to the new location and have had no opportunity to review any new plans.

Mr. Tomassian commented that the application is for a variance, not a special permit. He noted that in order to grant a variance all four of the criteria must be met, not just one or two, or even three.

Mr. Pierce said that he was in favor of granting the variance and asked what the alternative would be: allowing the existing structure to just fall down? He said that it is clear from the photographs submitted with the application that the existing structure is not worth saving.

Ms. Whipple agreed, and commented that the applicants were proposing to replace the existing house with a smaller structure that meets setbacks. She said she thought the project would be welcomed by the neighborhood.

Ms. Grant that the plans seemed to indicate a structure larger than a typical two-bedroom home. Mr. Pierce said that the plans show that there will be no second story, just a cathedral ceiling. Ms. Grant asked, if that is the case, why do they need five second-story dormers.

Mr. Moriarty said that the dormers are to provide additional light to the downstairs spaces. He noted that the proposed dwelling is only 24-foot high, lower than the existing dwelling

and below the 32-foot height limitation. He said that no second floor was proposed or planned.

Mr. Pierce questioned why a variance was given in the first place if the property is now relegated to limbo.

Mr. Tomassian commented that if the board decides to grant the variance, they would be violating the bylaw and, if the variance is appealed, town counsel will not defend the permit.

Ms. Grant asked if the owners would be able to get a building permit to rebuild the existing structure in the same location.

The assistant stated that she believed the Building/Zoning Inspector would allow the reconstruction of the existing structure in the same location and with the same volume provided that there was no increase in the nonconformity. The assistant noted that the board had allowed variances in the past that did not strictly meet all four criteria, but were deemed to serve the common good and not derogate from the purpose of the bylaw.

Mr. Moriarty said that the newly designed septic system would not be possible if the house were to remain in the original location.

Ms. Grant said that the property should never have been subdivided in the first place. Mr. Tomassian noted that he was the sole negative vote in the 4 to 1 decision that granted the variance back in '92.

Mr. Moriarty said that if town counsel declined to defend the board's decision to grant the variance, the permit could be defended by the owners' attorneys at no cost to the town.

Mr. Chilinski said he would be in favor of the proposal and did not want to stand in the way of the new structure being built. He said that his concerns were not intended to kibosh the project.

Mr. Pierce made a motion to grant the variance saying that he believed that the proposal was modest and would improve the situation for the neighborhood. He said he understood that in order to grant a variance all four of the criteria must be met, and acknowledged that this was not the case with this application. He said he could not justify denying the request.

Ms. Whipple seconded the motion and voted to grant the variance for the same reasons.

Ms. Grant voted to deny the variance, saying that she did not believe the application fit the strict criteria for granting a variance. She noted that the applicants have other options and could likely rebuild the existing structure.

Ms. Bray voted to deny the variance.

Mr. Tomassian also voted to deny the variance. Request denied 3-2.

Respectfully submitted,

Lisa Morrison, Assistant