

Case No. 29-24
Date Filed: 1 October 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 2.3 D of the Edgartown Zoning Bylaw by Katama Acquisitions LLC. The applicant is asking to construct a single-family home on a nonconforming .32-acre lot at 61 Herring Creek Road (Assr. Pcl. 36-32) in the R-20 Residential District.

1. On 1 October 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 4th and 11th of October 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, 23 October 2024 at 4:15 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 Pamela Dolby. Attorney Richard Dubin was present for the applicant, Shawn Chapps, who was also in attendance.

The notice was read and Chairman Tomassian outlined the procedures for the hearing. Attorney Dubin made the presentation. Mr. Dubin said that this is an usual situation: Mr. Chapps bought 61 Herring Creek Road back in 2012 from John Kheary. On the same date, Kheary also sold two additional adjacent lots 63 Herring Creek Road and 65 Herring Creek Road. All three lots are approximately 1/3 of an acre. Before purchasing the property, Mr. Chapps consulted both the Board of Health and the Building Inspector to confirm that the lots were buildable under zoning.

In 2012, Mr. Chapps applied for and received a building permit to construct a 3-bedroom, single-family residence on behalf of the Mathieu's at 65 Herring Creek Road. Confident that his nearly identical lot was also buildable, Mr. Chapps held off building on his parcel until

September of 2022 when he sold the property to Christopher & Liza Branch. When Mr Chapps applied for a building permit, he was told by the current Building Inspector that, unfortunately, her predecessor had made an error and the lot was not buildable. The three lots were in common ownership at the time the bylaw changed and - because all three were substandard - they would merge for zoning purposes. In the interest of fairness, Mr. Chapps bought the property back from the Branchs.

Attorney Dubin said that Mr. Chapps is now asking for a variance to allow the lot to be buildable. He noted that the lot is in an area of similarly sized lots all of which have been built on. He said that Mr. Chapps would be willing to limit the size of the house to no more than 3500 s.f. He would also agree not to build a swimming pool on the lot and would plant a vegetative buffer along three sides of the property. Mr. Chapps said he would consider a condition that would prohibit summer rentals.

Attorney Dubin said that he believed that the board could grant desirable relief without substantial detriment to the public good or to the intent of the bylaw. He said that the reversal of the original decision has caused Mr. Chapps financial hardship.

Mr. Dubin said he believed that allowing Mr. Chapps to build on the property would enhance the neighborhood. He said allowing the property to remain vacant was not in the town's or the neighborhood's best interest.

Chairman Tomassian asked if there was anyone present who wished to speak in favor of the application. Bill Shepherd of 63 Herring Creek Road said that he supports Mr. Chapps. He said his only concern is that he thinks a 3500 s.f. house is too large, noting that his house is 2100 s.f. and Mr. Mathieu's 2300 s.f. He said he believed a smaller house would better conform to the existing character of the neighborhood. He said he was also in favor of not allowing pools and asked that there be a setback of at least 16-feet from his property line. He said he was also in favor of a condition limiting summer rentals.

William Croke of 62 Herring Creek Road said his property was directly across the street from Mr. Chapps's. He said that he also supports the project and would like to echo some of Mr. Shepherd's concerns. He said he believed that having a structure on the property would upgrade all the properties in the neighborhood. He also thought that the house should be smaller than 3500 s.f. He also was in favor of the no pool rule and the proposed landscaping.

A letter from another direct abutter, Tighe Mathieu of 65 Herring Creek Road, was read. Mr. Mathieu was also in favor of the proposal. He said that Shawn Chapps is a well known designer and builder with a great reputation. He said he thinks it unfair that he was allowed to build on his lot while Mr. Chapp is unable to build on his nearly identical lot.

Attorney Dubin thanked the abutters for their support, and as there was nothing to rebut, he concluded his presentation noting that Mr. Chapps has agreed to reduce the size of the house to 2800 s.f.

Chairman Tomassian then closed the public portion of the hearing for discussion by the board. Mr. Tomassian said that in order for a variance to be granted all four criteria must be met. The first one is usually the stumbling block as it requires "*that there are circumstances relating to the soil conditions, shape or topography which especially affect the land or*

structure in question, but which do not affect generally the zoning district in which the land or structure is located.” The three other criteria that relate to financial hardship, preserving the intent or purpose of the bylaw, and not harming the public good are easier to meet. A lot that is simply too small does not comply with the requirements. In order to comply with the first criteria an impediment such as a giant boulder, ravine, or river running through the property would be required.

Ms. Dolby commented that it was an unfortunate situation. She said that she could not recall the board granting a variance to make a substandard lot buildable unless it was for affordable housing. She said she imagined that if this variance were granted, there would be many others who would seek similar relief. She said it was a very unfortunate mistake. In general, once zoning changes, the owners have a grace period of 8 years in which to build. Ms. Dolby said that she imagines the owner could sue the town for compensation, but that would not make the lot buildable.

The assistant noted that the Affordable Homes Act does allow building on a lot that has been held in common ownership, with certain restrictions.

Mr. Tomassian said that even though he knows and respects both the applicant and his attorney, it is the board’s job to enforce the Zoning Bylaw and this application simply does not meet the criteria.

Ms. Grant agreed and said that allowing the project to go forward would be setting a bad precedent.

Ms. Dolby made a motion to deny the request for a variance as the proposal does not meet the criteria necessary for the granting of a variance. She noted that if anyone were to appeal the variance, the town would not be able to defend its decision.

Ms. Grant seconded the motion and voted to deny the variance.

Ms. Whipple, Mr. Pierce, and Mr. Tomassian also voted to deny the variance.

Respectfully submitted,

Lisa Morrison
Assistant