



Town of Dennis

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23 UNCLE BILLS WAY

ZBA VARIANCE STAFF REVIEW – February 19, 2026

APPLICANT:	Timothy Burke
PROJECT ADDRESS:	23 Uncle Bills Way, South Dennis MA 02660
MAP AND LOT NUMBER:	197-41
APPLICANT ADDRESS:	400 Washington Street Suite 408, Braintree, Massachusetts 02184
CASE NUMBER:	ZVAR-25-6
ZONING:	R-40; OK Historic
HEARING DATE:	January 26, 2026; Continued w/out Testimony 12-22-2025

1. Project Summary; Request per Zoning Bylaw; Plan Citations
2. Plans Specifications; Basic Site Data
3. Actions Requiring Findings
4. Town Department Comments
5. Proposed Conditions

PROPOSAL	Build Single Family Home
MGL Variance	<u>MGL 40A, Section 10:</u> <i>The permit granting authority shall have the power after public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.</i> <u>REQUIRED FINDING #1 SOIL, SHAPE OR TOPOGRAPHY OR STRUCTURE:</u> 1) <u>Circumstances relating to the Soil Conditions:</u> To make the required finding that a parcel is entitled to a variance due to uniquely poor or inadequate soil conditions, the Board of Appeals must conclude that: a) within the zoning district in question, the soil limitations are particular to the parcel subject to the application; b) the soil limitation would affect anyone attempting to use the property as permitted by relevant regulations, Id. (Brackett) at 116; and c) testimony or other evidence supports the conclusion that the parcel is truly unique with respect to soil or geologic conditions. 2) <u>Circumstances relating to the Shape:</u> A significantly unusual or unique shape that, for example, prevents siting a conforming building, and that is the cause of the hardship, may form the basis of a variance.

	3) <u>Circumstances relating to the Topography</u>: Cases that have been decided on topographical constraints follow the same pattern as those discussed previously. 4) <u>Circumstance relating to Structure</u>: "Unusual existing buildings that are structurally sound, have remaining value, and are not well suited to conforming uses have also been found sufficient, apart from all other considerations, to establish the uniqueness of the lot in question." (Zone MA-CLE 9-1). <u>REQUIRED FINDING #2 HARDSHIP</u>: Massachusetts's courts have held that the "hardship" "...must relate to the premises for which the variance was sought". <u>Hurley v. Kolligian</u>, (1955). a) In addition, the "hardship" must be linked, or be caused by, the lands or structure's unique or problematic soil conditions, shape or topography. In other words, based on the evidence presented in Required Finding #1, there is a demonstrated hardship. b) The statute requires that the Board of Appeals connect the unique circumstances of the lot (e.g. its soil conditions, shape or topography) <i>to the hardship that unique circumstances create</i>. c) "Unless circumstances relating to the soil conditions of the land, the shape of the land or topography of the land cause the hardship, no variance may be granted lawfully". d) "...any other considerations unrelated to the underlying real estate are irrelevant to the board's inquiry into the question of substantial hardship... e) One oft-repeated situation is where the petitioner has created the hardship from which they now need relief. <u>REQUIRED FINDING # 3 PUBLIC GOOD</u>: The third Required Finding is the Board's conclusion that the variance can be granted "without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw." a) "The test of the statute is general; the effect of a variance on the intent or purpose of the ordinance must be determined by appraising the effect on the entire neighborhood affected...
HISTORY	1. <u>On October 24, 1973</u>, the town amended its zoning bylaws and increased the minimum lot area in its R-40 Zoning District from 7,500 square feet to 20,000 square feet. 2. <u>On October 13, 2016</u>, the plaintiff bought a non-conforming, unimproved lot containing 7,650 square feet within the R-40 Zoning District. 3. <u>On June 2, 2020</u>, the plaintiff filed an application for a building permit. The Building Commissioner denied the application, and the plaintiff appealed that decision to the Zoning Board of Appeals. 4. <u>On March 3, 2021</u>, the Zoning Board of Appeals issued its decision indicating that it unanimously upheld the decision of the building commissioner that the lot did not have enough area and was not "grandfathered". 5. <u>On March 19, 2021</u>, the plaintiff filed his complaint and raised two claims: (1) the board's decision was legally unsupportable, arbitrary, and capricious, and (2) the board issued a special permit allowing him to build on the property. The judge allowed the board's motion for summary judgment, affirmed the board's decision, and further concluded that the board did not issue a special permit. The Appeals Court affirmed that Judgment. (Burke v. Zoning Bd. of Appeals of Dennis., 2025 Mass. App. Unpub. LEXIS 663 (Mass. App. Ct., Aug. 19, 2025)
FACTS	From the Denial of a Motion from Summary Judgement in the case of Burke versus the Town of Dennis, the following facts are those that are not in dispute, that were provided in

	compliance with Land Court Rule 4 as supported by evidence in the record, that are material to the questions before the court, and that remain part of the record in light of the Court's ruling on the Board's motion to strike, discussed further below. <i>The Property and Contiguous Lots</i> 1. 23 Uncle Bills Way, Dennis is an unimproved lot shown as Lot 105 on plan number 329868 (sheet 4), which plan was filed with the Land Registration Department of the Barnstable County Registry of Deeds on October 22, 1965 (the "Plan"). Plaintiff's Response to the Defendants' Statement of Undisputed Facts ("Pl. Resp. SOF"), 1 1; Affidavit of Daniel J. Fortier ("Fortier Aff."), 11] 3, 4. 2. Plaintiff is the current record owner of the Property. Plaintiff acquired title to the Property on October 13, 2016, via deed from Barbara Drake, acting as the personal representative of the estate of Gregory Drake, recorded Land Registration Department of the Barnstable County Registry of Deeds (the "Registry") document number 1305902.3 3. The Property is located in the R-40 Zoning District. Fortier Aff., 7. 4. The Property contains approximately 7,650 square feet of area. Pl. Resp. SOF, 11 2; Fortier Aff., Exh. 1. 5. Prior to November 11, 1972, the Property (Lot 105) and three other contiguous lots were owned by Victor Tine and Helen J. Tine, specifically Lots 99, 101, and 103 as depicted on the Plan (those three lots being the "Contiguous Lots"). On November 11, 1972, Victor Tine and Helen J. Tine transferred the Property and the Contiguous Lots to Frank Hanifl and Edward White, Jr., by deed recorded at the Registry as document number 167320. Affidavit of Robin Stein ("Stein Aff."), Exh. 1. 6. On September 5, 1973, Frank Hanifl and Edward White, Jr., transferred the Property and Contiguous Lots to Gregory W. Drake. The deed is recorded at the Registry as document number 178797. Stein Aff., Exh. 2. 7. On July 17, 1974, Gregory W. Drake transferred Lot 103, directly adjacent to Lot 105, to Barbara L. Hall, Trustee of C.M.L. Realty Trust. The deed is recorded at the Registry as document number 188085. Stein Aff., Exh. 3. 8. The Property was held in common ownership with the adjacent Lot 103 until July 17, 1974.4 Pl. Resp. SOF, 1 4; Stein Aff., Exh. 1-5. 9. Effective October 24, 1973, the Town enacted the 1973 Bylaw Amendment, increasing the minimum lot area required for dwellings in the R-40 Zoning District from 7,500 square feet to 20,000 square feet. Pl. Resp. SOF, 3; Fortier Aff., 111 5, 6. [283] 10. Prior to the 1973 Bylaw Amendment, the Property was build-able, containing 7,650 square feet, just above the requisite 7,500 square feet. Defendant's Response to Plaintiff's Statement of Additional Facts ("Def's Resp. SOF"), {1 21; Plaintiff's Record Appendix ("Pl. App."), Ex. 4.
PROJECT SUMMARY	• To build a house on an undersized lot. • The <u>Applicants case for a variance is that:</u> ○ <u>Soil</u>: That 23 Uncles Bills Way (the "Land") is burdened by a foundation, as well as the consequences of illegal dumping and alterations to the Land during the reconstruction of Uncle Bills Way. ○ <u>Shape</u>: Applicant make no comment. ○ <u>Topography</u>: Applicant make no comment.

	○ Hardship: “The dispute between the Town and the applicant is longstanding. At this juncture, both parties have expended considerable time and resources to address the issue of whether the Land is buildable.” ○ Precedent: ▪ Applicant believes a Building Permit was issued in 1993. ▪ Applicant cites numerous variances granted over 50 years ago
REQUEST	Finding per: <u>MGL 40A, Section 10:</u> <i>That a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures <u>but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise...</u></i>
PLOT PLAN	Proposed Site Plan of 23 Uncle Bills Way, for TVB Trust 400 Washington Street, Suite 408 Braintree, MA by, All Cape Septic LLC, 618 Route 28 West Yarmouth, MA 02673. Plan consisting of 2 sheets with Zoning Summary Table, Septic Flow Profile, Construction Notes and System design Calculations. Plans Dated 12-01-2020 by Steven B Moore.
BUILDING PLANS	Plans of 23 Uncle Bills Way, South Dennis for and by Timothy Burke consisting of 6 pages with Front & Right Elevations, Left & Rear Elevations, First Floor Plan, Second Floor Plan, and Framing section M, Framing Section N & Deck Framing Section. Plan dated March 2019; Revised 11-28-2020. No Stamp
OTHER	Proposed Floor and Elevation Plans

Basic Site Data	Required/ Allowed	Existing	Proposed
Frontage	50'		84'
Front Setback	25'		25'
Right Side Setback	15'		17'
Left Side Setback	15'		17'
Rear Setback	25'		25'
Lot Area	40,000sf		7,650 sf
Lot Width	100'		84'
Non-conforming floor space within Setbacks		0	0
D2. Increase in new non-conforming floor space by more than 40% within any 10-year period			0
Cumulative footprint size of all structures			
Cumulative lot coverage (footprint) percent	15%	0	14.7%
Cumulative floor space of all structures (F.A.R.)	1,147 sf	0	1,123 sf
Cumulative F.A.R. % all structures	30%		NA

§ **MGL 40A, Section 10: Variance**

Variance Request based on:	FINDING
Soil conditions	
Shape of the lot	
Topography	
Showing substantial hardship, financial or otherwise	
Public Good	

TOWN DEPARTMENTS COMMENTS:

- **PLANNING:**

- The lot is undersized for the current zoning. It has 7,650 sf in the R-40 Zoning District that requires 40,000 square feet area minimum.
- The lot does not appear to be protected through legacy as it was jointly owned with neighboring lots since the bylaw changed almost 50 years ago.
- Minimum Lot Area required in this district appears to have been raised from 7,500 sf to 20,000 sf in 1977 and raised again to 40,000 sf in 1984.
- Numerous variances were granted to similar lots in the 1970's in the years just after the minimum area was increased
- The lot is undersized for the Towns Zoning Bylaw that encourages Affordable Housing which currently requires a minimum of 10,000 sf of area for an "Affordable Lot".
- The lot is undersized for the State's new law that makes lots that were unbuildable for over 50 years to be developed with a house no bigger than 1,850 sf and no less than 3 bedrooms and no short term or seasonal rentals per Section 10 of the Affordable Homes Act.
- It is unclear how many bedrooms this lot would be able to sustain with a septic. It would likely require an enhanced de-nitrification system. The lot is in Phase 7 of the Water Resource Recovery Facility Collection and Conveyance plan.
- The Planning Department is recommending the Town adjust Section 4.9 (to encourage affordable housing) to lower the minimum area required to 7,500 sf for an "Affordable Lot" since the State supplanted the Town bylaw by allowing development of 10,000 sf lots with a lower requirement of only restricting them to no short term or seasonal rentals. Though in a draft article does not have unanimous support and would need to be approved by ATM.

- **NATURAL RESOURCES:** Not in Conservation jurisdiction.

- **HEALTH:** Complete septic application would be required.

- **BUILDING:** Variance required at minimum. Lot 105 was held in common ownership with adjoining land when zoning increased from 7,500 sq ft to 20,000 sq ft.

- **ENGINEERING:**

- The project as presented will alter greater than 500sf of ground, and is therefore required to meet the intent of the Town of Dennis Stormwater By-Law.
- Construction period linear erosion and sedimentation controls should be provided at a clearly defined limit of work, upgradient of the property lines, and as close as practical to the area of disturbance. The controls should be installed and maintained until all work is completed.
- Inlet protection (silt sacks) shall be provided for the two catch basins directly abutting the property in Uncle Bill's Way, and maintained throughout the project. Any structural damage to the catch basins, as a result of construction work at the site and as determined by the Engineering Department, shall be repaired at the applicant or contractors' expense, and under the direction of the Engineering Department. If inlet protection is not installed and maintained, and sediment is allowed to accumulate in the basins, or clog the town owned subsurface drainage system, the applicant or contractor will be responsible for removing all the accumulated sediment, and providing funds to repair or replace the system.
- The plan proposes fill and or grading to construct new slopes adjacent to the proposed dwelling, which permits the top of house foundation to be above the existing road elevation. The applicant should consider the inclusion of shallow swales or depressions at the base of any slopes to slow the velocity of runoff and infiltration prior to reaching the property line.
- All disturbed areas of the site should be stabilized and re-vegetated as soon as practical,

- The plan provides drywells for subsurface infiltration of collected roof runoff.
- Any existing screening to abutting properties should be maintained to the extents practical. Additional screening along the side and rear property lines should be considered in locations where existing vegetation is removed as part of the project or a 10ft. vegetated buffer can be provided in accordance with 2.3.4.1.b of the Zoning By-Law.
- A road opening permit will be required for construction of the new driveway. The proposed driveway location shall be adjusted as required, and constructed in such a manner that vehicles will not travel over the town owned catch basin when entering the property.
- Any paved berm along the road edge shall remain in place and incorporated into the paved apron, or if removed prior to or during construction, be replaced.
- The plan appears to indicate the proposed driveway will slope from the garage toward the town road layout. The new driveway shall be constructed with a low point, up-gradient of the road layout line, to contain all runoff generated from the driveway surface, and direct to adjacent natural areas for infiltration. Runoff from the drive surface may also be contained and directed to a complete subsurface drainage system.
- Construction vehicles should not park in Uncle Bill's Way for extended periods of time when work is being performed at the site.
- A stone construction entrance should be installed in the area where the new driveway is proposed. Contractor shall maintain the paved surface of Way free of accumulated sediment.

POSSIBLE CONDITIONS IF APPROVED	1. The lot owners shall apply for all required permits and will comply with the intent of the Dennis Stormwater By-law, all requirements of the Dennis Conservation Commission and Board of Health and any other permits that are required. 2. Construction shall not commence before 7:00 am nor continue after 7:00 pm Monday through Friday and shall not commence before 7:00 am nor continue after 5:00 pm on Saturdays. No construction shall occur on Sundays. 3. The addition shall not generate new light, noise, litter, odor or other sources of nuisance. Any new lighting shall be restricted to downward-shielded motion sensitive security lighting that is "Dark-Sky" compliant. 4. Grading should be limited to what is absolutely necessary and as many existing trees as possible should be maintained. Disturbed areas should be stabilized and revegetated as soon as practical following construction to minimize erosion. Additional screening should be provided in areas where vegetation is removed. 5. The contractor shall be responsible for maintaining the road in a condition free of accumulated sediment during construction and all appropriate drainage and erosion control measures as suggested by town engineering shall be implemented. 6. There shall be no exterior construction (including foundation work) or heavy equipment between the Friday before July 4 and the day after Labor Day or on legal holidays. 7. Construction vehicles shall not park in or block the road. 8. A Road Opening permit will be required for construction of the new driveway before a Building Permit is issued. 9. Complete septic application and Board of Health approval is required before a Building Permit is issued. 10. Compliance with all applicable laws, bylaws, rules and regulations 11. Construction shall be in substantial compliance with the application and plans submitted to the Board.
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