

Board Members
Rori Stumpf, Chair
Brian White, Vice Chair
Gibb Phenegar, Clerk
Christina Oster, Member
Tom Emero, Member
Carol Gould, Associate Member



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TOWN OF MEDWAY

COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS

Wednesday, April 21, 2021 at 7:30 p.m.
Virtual Meeting
Meeting Minutes

Present (virtually): Brian White, Vice Chair; Gibb Phenegar, Member; Tom Emero, Member; Christina Oster, Member

Members absent: Rori Stumpf, Chair; Carol Gould, associate member

Also Present (virtually): Barbara Saint Andre, Director, Community and Economic Development
Morgan Harris, Administrative Assistant, Community and Economic Development

Call to Order

Mr. White called the meeting to order at 7:33 p.m. and read that this meeting is being broadcast and recorded by Medway Cable Access. Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place, no in-person attendance of members of the public will be permitted at this meeting. Board members will be participating remotely. For public hearings, access via Zoom is provided for the required opportunity for public participation. Information for participating via Zoom is posted at the end of the ZBA Agenda on the town website. He then read instructions on how to participate in the meeting. All persons participated remotely in the meeting via Zoom. Mr. White introduced all Board members participating remotely in the meeting.

Public Hearing

28 Granite Street (continuation) - The application is for the issuance of a **variance** from Section 6.1 to construct a two-story addition and garage set back 10.4 feet from the side lot line, where 15-foot setback is required.

The applicant's representative, Bryan Murphy from B M Carpentry, was present and explained the application. He stated that after the last hearing he spoke with the engineer and the architect for the project and came up with different plans in case the variance is denied. He clarified that while the topic of sewage came up at the last meeting, the house has a septic system. He also took issue with the Board referring to the project as a three-story addition, stating that it was only a two-story addition with a garage below. Mr. Murphy noted that elevation was a concern for this project since the ground slopes from the street toward the house. This would require additional digging should the addition be moved forward. He also noted that this house is currently one of the smallest on the street and again brought up that there were no objections from any neighbors. When asked if any changes were made from what was presented before, Mr. Murphy stated that they have nothing new to show. Ms. Oster noted that moving the addition forward would create more of an eye-sore from the street view.

Mr. White then discussed each of the variance criteria with the Board. The Board agreed that there would be no detriment to the public good, but found that the application did not meet the other three criteria for a variance.

Motion that the Applicant has not met all of the required variance decision criteria made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye

Gibb Phenegar - Aye

Christina Oster – Aye

Brian White – Aye

Ms. Saint Andre explained that since the application does not meet the requirements for a variance, the next step would be for the Board to deny the variance. She then explained the option for the applicant to withdraw without prejudice. Mr. Murphy then requested to withdraw his application without prejudice.

Motion to allow the Applicant to withdraw without prejudice made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye

Gibb Phenegar - Aye

Christina Oster – Aye

Brian White – Aye

Motion to close the public hearing for 28 Granite Street and allow any one Board member to sign the decision made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye

Gibb Phenegar - Aye

Christina Oster – Aye

Brian White – Aye

201 Village Street - The application is for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and/or a **variance** from Section 6.1 for lot size and lot frontage to convert a pre-existing nonconforming building from office space and single-bedroom apartment to a two-family/duplex with the appearance of a single-family house.

The applicant's representative, attorney Stephen Kenney from Kenney & Kenney Law, was present and explained the application. The applicant is looking to convert the structure, which consists of an office space and a one-bedroom apartment, to a two-family home with the appearance of a single-family. The structure is on a preexisting, nonconforming lot that is only 9,000 square feet with only 100 feet of frontage. He stated that the structure has been there since 1960 and that all other zoning requirements are met. Currently, the majority of the lot is a paved parking area, a large portion of which will be converted to lawn if the application is granted. An additional kitchen, and possibly a new bathroom, will be installed. Mr. Kenney noted that the conversion would create less traffic with residential use than the current office use. It would also be more conforming to the zoning district, which primarily consists of one- and two-family homes. It is consistent with the goals of the Master Plan, which encourages more variety in housing. Mr. Kenney stated that it is not clear if a variance is required because the lot is preexisting nonconforming,

but stated that they have applied for a variance and meet the criteria for a variance from lot size and lot frontage. He noted that the lot is preexisting nonconforming and much smaller than other lots in the area. The topographical conditions are such that the land slopes down sharply in the back towards the Charles River with a retaining wall in place. The small size, lack of frontage, and slope would create a financial hardship as it could not be converted to a two-family based on current zoning. Mr. Kenney stated that there would be no detriment to the public good, and that it will not nullify the intent of the zoning by-law because it will create a residential use. Mr. Kenney was not aware of the square footage of the house, but Mr. White noted that it would probably be around 600 square feet per floor, for a total of 1200 square feet.

Mr. Phenegar noted that the building is similar to the structure next door, and he did not have an issue with the permit as long as no exterior changes were made except to the lawn. He also noted that it would provide relatively inexpensive two-family housing. Mr. Kenney confirmed that no exterior changes would be made, except to the parking area which is currently large and unsightly. There was discussion surrounding conditions for the special permit, including that the exterior remain the same and that any unnecessary impervious surface be removed. Mr. White noted the large curb cuts that are currently on the property, stating that the applicant will have to work with the Department of Public Works to make changes to the curb cuts. Mr. Emero had concerns over whether the parking condition would be too restrictive, stating that there should be allowance for enough room for cars to turn around in the driveway to avoid backing out onto Village Street.

Ms. Saint Andre was asked about the issue surrounding whether a variance is required or not. The nonconforming structure is not being altered, and the nonconforming use is being eliminated in favor of a use allowed by the special permit, so Section 5.5 of the Bylaw does not seem to apply. The protection for a preexisting nonconforming lot does not apply because the lot has an existing building. If the Board grants the special permit, it seems prudent to also require the variance. The minimum lot size for AR-II is 22,500, but for a two-family home is 30,000 square feet, so converting the structure to a two-family home could be seen as increasing the nonconformity and requiring a variance.

Mr. and Ms. Luciano of 203 Village Street were present and expressed concern over where the driveway would be placed. They stated that they would prefer the driveway be on the left side of the building. Mr. Kenney confirmed that they will not be paving any areas that are currently lawn, so the driveway will not be on the right side of the building, and agreed that the Board could place a condition on the special permit and variance that prohibits the use of that portion of the lot for driveway or paving.

Mr. White then discussed each of the special permit criteria with the Board. The Board believed that Mr. Kenney had been thorough in explaining how the application met the criteria in his explanation and application. The Board found that the application met all the criteria for a special permit.

Motion that the Applicant has met all of the required special permit decision criteria made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye

Gibb Phenegar - Aye

Christina Oster – Aye

Brian White – Aye

Mr. White then discussed each of the variance criteria with the Board.

1. Whether 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;

The members noted that there are conditions relating to the topography of the land, in particular the fact that the back of the lot slopes steeply down to the Charles River, requiring the use of a retaining wall, that do not generally affect the AR-II district, as well as the size of the lot, and location of the structure, such that the structure could not be built on this land today.

2. A literal enforcement of the provisions of the zoning by-law would involve substantial hardship, financial or otherwise, to the applicant, and

The Board found that literal enforcement would create a hardship for the applicant, because without the variance, the existing structure could not be used as a two-family house, which would be a more conforming use under the Bylaw.

3. Desirable relief may be granted without substantial detriment to the public good.

The Board found that there would be no detriment to the public good because the proposed use aligns with the Zoning Bylaw and would replace a use that is prohibited in the AR-II.

4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law.

The Board found that the proposed use aligns with the purpose of the Zoning Bylaw because it would replace a use that is prohibited in the AR-II.

The Board re-iterated that Mr. Kenney had been thorough in explaining how the application met the criteria in his explanation and application. The Board found that the application met all the criteria for a variance.

Motion that the Applicant has met all of the required variance decision criteria made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye

Gibb Phenegar - Aye

Christina Oster – Aye

Brian White – Aye

Ms. Saint Andre summarized the boiler plate conditions as well as the conditions mentioned during the discussion, including that there be parking sufficient for a two-family residence, that no changes to the exterior of the house be made, and that no area that is currently unpaved will be paved.

Motion to grant the variance and special permit with the conditions as stated made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye
Gibb Phenegar - Aye
Christina Oster – Aye
Brian White – Aye

Motion to close the public hearing for 201 Village Street and to allow any one Board member to sign the decision made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye
Gibb Phenegar - Aye
Christina Oster – Aye
Brian White – Aye

24 Milford Street - The application is for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for a Kennel License for up to 10 dogs.

The applicants, James Murphy and Lori Ann Mosher Murphy, were present and explained the application. They have had a kennel license for up to five dogs since 2008. They explained that the rescue organization they work with is no longer active in Massachusetts, but they were recently contacted due to their connections with the rescue to take care of older dogs with medical conditions. Ms. Mosher Murphy went on to say that all the dogs are the same breed, Cavalier King Charles Spaniels, which are relatively small dogs. She noted that ten dogs are a lot, and they would only need the expanded license for a few years.

Mr. White opened the discussion to the Board. In response to questions from the Ms. Oster, Ms. Mosher Murphy clarified that there is chain-link fencing already in place. She also stated that they currently have five dogs who are all sick. Mr. White stated that he lives near this property and did not realize there were that many dogs living there, which is a compliment to how well the applicants care for the dogs. The Board was impressed with the letters of support both from Brenda Hamelin, the Animal Control Officer, and Healthy Paws Veterinary Center.

Ms. Saint Andre noted that Mrs. Mosher Murphy had mentioned putting a time limit for the special permit. She stated that this was a possibility, however, if the applicants wanted to continue with the kennel license for the higher number of dogs in the future, they would need to come back before the Board. She suggested the special permit have a condition that it would only be valid for these applicants. There was further discussion regarding potential conditions if the application were to be approved, including that there be a limit of not more than ten dogs, no kennel operation other than rescuing dogs, and that this permit would supersede and replace the previous special permit: as well as the Board's boiler plate conditions.

Mr. White reviewed each of the special permit criteria with the Board. The members agreed that each of the criteria were met by the application.

Motion that the Applicant has met all of the required special permit decision criteria made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye
Gibb Phenegar - Aye
Christina Oster – Aye
Brian White – Aye

The members then reviewed the conditions, including which of the boilerplate conditions should be included.

Motion to grant the special permit with conditions as stated made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye
Gibb Phenegar - Aye
Christina Oster – Aye
Brian White – Aye

Motion to close the public hearing for 24 Milford Street and allow any one Board member to sign the decision made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye
Gibb Phenegar - Aye
Christina Oster – Aye
Brian White – Aye

Other Business

There was discussion regarding changing the fees online to match what should be charged for a determination/finding for a nonconformity. Ms. Saint Andre noted that on Citizenserve, the online processing platform, a fee of \$50 is automatically entered. She believes the fees should be amended to match the special permit fees for a nonconforming structure and use, which are \$185 for one- or two-family dwellings and \$375 for commercial use.

Motion to amend online fees to match what is being charged made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye
Gibb Phenegar - Aye
Christina Oster – Aye
Brian White – Aye

Approval of Minutes

- April 7, 2021

Motion to approve the minutes for April 7, 2021 as presented made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye
Christina Oster – Aye
Brian White – Aye
Gibb Phenegar - Aye

Upcoming Meetings

- May 5, 2021 – There are no applications scheduled, so this meeting will likely be cancelled.
- May 19, 2021

Adjournment

Motion to adjourn the meeting at 8:44 p.m. made by Gibb Phenegar, seconded Christina Oster, passed by a roll call vote of: 4-0

Tom Emero – Aye

Gibb Phenegar - Aye

Christina Oster – Aye

Brian White – Aye

Respectfully submitted,

Morgan Harris

Administrative Assistant

Community and Economic Development

Edited by

Barbara J. Saint Andre

Director, Community and Economic Development