

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



Medway Town Hall  
155 Village Street  
Medway, MA 02053  
Telephone (508) 321-4890  
zoning@townofmedway.org

# TOWN OF MEDWAY

## COMMONWEALTH OF MASSACHUSETTS

### ZONING BOARD OF APPEALS

**Wednesday, August 5, 2020 at 7:30 p.m.**  
**Virtual Meeting**  
**Meeting Minutes**

**Present:** Rori Stumpf, Chair; Brian White, Vice-Chair; Gibb Phenegar, Clerk; Tom Emero, Member; Christina Oster, Member

**Also Present:** Barbara Saint Andre, Director, Community and Economic Development  
Stefany Ohannesian, Administrative Assistant, Community and Economic Development

#### **Call to Order**

Chairman Rori Stumpf called the meeting to order at 7:30 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.

#### **Public Hearings**

**14 Phillips Street (continued from July 15, 2020)-** The application is for the issuance of a **special permit** under Section 5.5.E. **and/or variance** from Section 6.1 of the Zoning Bylaw to demolish the existing, nonconforming garage and replace it with a new garage of similar dimensions (24' x 32') within the side setback of the property.

Ms. Graves was present and stated that at the last meeting they discussed the dimensions and non-conforming state of the proposed structure. She stated that they are proposing to have the new garage five feet from the lot line rather than 3.5 feet as they originally requested. She stated this would result in less square footage of nonconforming space than the current garage. She submitted photos of abutting properties and their existing garages to show how they look in relation to what is proposed here.

Mr. Stumpf then moved on to the Board members for questions. Mr. Phenegar inquired about the size and height of the structure, which is the same as originally proposed while being 5 feet from the

property line, not 1 foot as existing. Ms. Oster stated that she has no issues with the proposal, which she believes will be of value to the neighborhood and in line with the existing neighborhood. Ms. Saint Andre inquired about the size of the garage, and Ms. Graves stated it would be 24' wide x 32' deep and 24' feet high. Mr. Stumpf inquired about why they cannot move it over 5 more feet to make it conforming, Ms. Graves stated it would be too close to the dwelling, and that Conservation does not want the garage moved any further back as it would create issues with wetlands.

Amy Ribao of 12 Phillips St stated she came to offer support for the project.

Mr. Stumpf then moved on to the criteria for either a special permit or variance. He started with the special permit criteria. Mr. Emero inquired about the dimensions of the existing structure which Ms. Graves stated is currently 20' x 20'. The setback would be gaining 20 square feet with the new proposed structure. Ms. Saint Andre stated that the new garage would not be in compliance with the current dimensional regulations therefore it would potentially need a variance.

### **Criteria for Special Permit**

**A. Section 5.5.E: Nonconforming Structures other than One-Family and Two-Family Dwellings.** A legally pre-existing nonconforming building or structure may be structurally altered, enlarged or reconstructed provided that such alteration, enlargement or reconstruction is in compliance with the applicable dimensional regulations and does not increase the extent of the nonconformity, provided that the Board of Appeals determines by the grant of a special permit that such alteration, enlargement or reconstruction will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

It was discussed that the proposed garage will not meet the applicable dimensional regulations because it will not meet the 10 foot side setback requirement.

**With a motion made by Brian White seconded by Gibb Phenegar the Board finds that the Applicant has not proved that the proposed new structure is in compliance with the applicable dimensional regulations by a roll call vote of 5-0.**

**Brian White – Aye**

**Tom Emero – Aye**

**Christina Oster – Aye**

**Gibb Phenegar – Aye**

**Rori Stumpf – Aye**

There was discussion that the Board should take a vote formally denying the special permit.

**With a motion made by Brian White seconded by Gibb Phenegar the Board finds that the Applicant has not met all of the required special permit decision criteria and therefore deny the special permit by a roll call vote of 5-0.**

**Brian White – Aye**

**Tom Emero – Aye**

**Christina Oster – Aye**

**Gibb Phenegar – Aye**  
**Rori Stumpf – Aye**

Mr. Stumpf then moved on to the variance criteria due to the proposed structure encroaching 5 feet on the required 10-foot side setback of the property.

**Variance from Section 6.1:**

Board needs to make findings on whether the four criteria for a **variance** have been met:

1. Circumstances relating to the shape, topography, or soil conditions of the subject property, which do not generally affect other land in the zoning district.

Mr. Emero stated that the location of the house relative to the side setback of the property appears to have been located where it was to leave the house with a reasonable backyard, and to locate the garage where a garage would typically be located relative to the house. He believes that it is because of the shape of the property that the garage is being proposed where it is. Mr. Phenegar stated he disagreed, and believes that there is plenty of room to put the garage somewhere else on the lot, and it is no different than any other lot on the street, and there are no issues with topography or shape of the lot. Ms. Oster agreed with Mr. Phenegar.

2. Substantial hardship caused by the circumstances from Criteria A.1 when the Zoning Bylaw is literally enforced.

Mr. Emero stated that the applicant can legally rebuild the existing structure where it is, and is seeking to do a better and more thorough job by meeting the standard of not making the structure more non-conforming. Mr. Phenegar stated that there isn't hardship because there are other locations on the property that the garage can be built, maybe not as large, by meeting the dimensional requirements. Ms. Oster agreed.

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

Ms. Oster stated that if the applicant made additional modifications to the proposal, reduction of size for example, desirable relief could be granted. She asked the Chair for clarification on this criteria, which the Chair provided. She then stated that she does not believe it will be detrimental to the public good. Mr. Emero and Mr. White agreed.

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

Mr. Emero agreed and believes relief can be granted without derogating from the by-law, because the applicant is making a structure less nonconforming, proposing to advance 20 square feet on the setback. This meets the purpose of the by-law, which is not to make a non-conforming structure more non-conforming. She could rebuild the same garage one foot from the property line, building the garage five feet from the property line is more desirable.

**With a motion made by Tom Emero, seconded by Christina Oster that the Board finds that the Applicant has met all of the required variance decision criteria, the motion did not pass by a roll call vote of 2-3.**

**Brian White – Nay**

**Tom Emero – Aye**

**Christina Oster – Aye**

**Gibb Phenegar – Nay**

**Rori Stumpf – Nay**

**Motion to deny the variance due to not meeting decision criteria made by Gibb Phenegar, seconded by Brian White passed with a roll call vote of 3-2.**

**Brian White – Aye**

**Tom Emero – Nay**

**Christina Oster – Nay**

**Gibb Phenegar – Aye**

**Rori Stumpf – Aye**

**Motion to close the public hearing for 14 Phillips Street and to allow any one member of the Board to sign the decision made by Brian White, seconded by Gibb Phenegar passed with a roll call vote 5-0.**

**Brian White – Aye**

**Tom Emero – Aye**

**Christina Oster – Aye**

**Gibb Phenegar – Aye**

**Rori Stumpf – Aye**

**72A Fisher Street** - The application is for a **Modification** of a previously granted **variance** for the property, to remove the following conditions from the variance: 1. that only one single family home may be built on the lot; and 2. that the applicant shall impose, by including in the deed, a covenant running with the land that the premises are not to be subdivided and are to be used only for one single family dwelling.

After Chairman Mr. Stumpf opened the public hearing, Attorney Stephen Kenney, the applicant's representative, was present and stated that they are requesting a continuance due to some abutters concerns that they are trying to settle before bringing the modification request forward. The Board and attorney Kenney agreed to continue the public hearing to September 2, 2020.

**Motion to continue the hearing for 72A Fisher Street to September 2, 2020 at 7:30 p.m. made by Brian White, seconded by Gibb Phenegar passed with a roll call vote of 5-0.**

**Brian White – Aye**

**Tom Emero – Aye**

**Christina Oster – Aye**

**Gibb Phenegar – Aye**

**Rori Stumpf – Aye**

## **Approval of Minutes**

- July 15, 2020

**Motion to approve the minutes for July 15, 2020 as presented made by Gibb Phenegar, seconded by Brian White passed with a roll call vote of 5-0.**

**Brian White – Aye**

**Tom Emero – Aye**

**Christina Oster – Aye**

**Gibb Phenegar – Aye**

**Rori Stumpf – Aye**

## **5. Upcoming Meetings**

- August 19, 2020 – no new applications therefore this meeting has been canceled
- September 2, 2020 – 72A Fisher Street Modification continuance

There was a brief discussion among the members and Town staff regarding the file sharing platform being used and how to affectively get the documents to the Board members to view. Town staff will seek guidance from the IT department on improvement of file sharing.

## **6. Adjournment**

**Motion to adjourn the meeting at 8:13 p.m. made by Brian White, seconded by Gibb Phenegar passed with a roll call vote of 5-0.**

**Brian White – Aye**

**Tom Emero – Aye**

**Christina Oster – Aye**

**Gibb Phenegar – Aye**

**Rori Stumpf – Aye**

Respectfully submitted,

Stefany Ohannesian

Administrative Assistant

Community and Economic Development

Edited by

Barbara J. Saint Andre

Director, Community and Economic Development