

**Town of Medway
Zoning Board of Appeals Meeting
School Committee Presentation Room
Medway Middle School
45 Holliston St, Medway MA**

MINUTES OF MEETING

January 18, 2017

Present: Chairman David Cole; Clerk Carol Gould (arrived at 7:40 pm); Committee Members: Eric Arbeene, William Kennedy; Associate Member Rori Stumpf.

Also present: Stephanie Mercandetti, Director, Community & Economic Development; Mackenzie Leahy, Administrative Assistant, Community & Economic Development

Joanne Russo, Treasurer/Collector

Chairman Cole called the meeting to order at 7:38 PM.

Citizen Comments:

There were no members of the public that wished to make comments on items other than those already on the agenda.

Approval of Minutes:

A motion was made to approve the minutes of November 16, 2016 by Mr. Arbeene, seconded by Mr. Stumpf, and approved unanimously 4-0-0. (Ms. Gould did not vote.)

Mr. Kennedy made one amendment on the date of the January 4, 2017 minutes.

A motion was made to approve the minutes of January 4, 2017 as amended by Mr. Arbeene, seconded by Mr. Kennedy, and approved unanimously 4-0-0. (Ms. Gould did not vote.)

Public Hearings:

7:40 P.M. – The Applicants, Broken Tree LLC c/o Maria Varrichione, seek Special Permits under Section 5.4 Table 1 and Section 5.5 to allow construction of a two-family dwelling on a pre-existing non-conforming lot; and a Variance from Section 6.1 Table 2 to allow relief from the minimum lot size and frontage requirements with respect to the property located at 249 Village Street.

The Applicants, Broken Tree LLC c/o Maria Varrichione, who is also the manager of Broken Tree LLC, as well as Ms. Varrichione's son, Anthony Varrichione, appeared before the Board to discuss the request for Special Permits under Section 5.4 Table 1 and Section 5.5 to allow construction of a two-family dwelling on a pre-existing non-conforming lot; and a Variance from Section 6.1 Table 2 to allow relief from the minimum lot size and frontage requirements, with respect to the property located at 249 Village Street.

Ms. Varrichione explained that they would like to convert the single family into a two family, primarily because Anthony Varrichione would be living in the smaller side [unit] and it would be more economically feasible as a two-family. Ms. Varrichione would not be changing the elevations or appearance, as far as the looks on the outside prior to the house being burnt down.

Mr. Stumpf stated within the hearing that he was previously a neighbor of the Varrichione's and Maria Varrichione was the seller's agent on the house that he bought, but he had no financial interest or relationship with the family.

Chairman Cole stated that he believed Ms. Varrichione was "asking for a lot"—to approve a two-family house on a lot of only 15,000 square feet which is substantially less than is required for a single family house in that district [Village Residential, VR]. A single family house needs 22,500 square feet and a two-family needs 30,000. The lot only has 100 feet of frontage as opposed to the 150 foot minimum specified.

Ms. Varrichione stated that she wasn't changing the footprint, square footage, or number of bedrooms.

Chairman Cole also stated that he was concerned with the state of having a pre-existing single family house with two front doors. There has been a problem with unauthorized single family to two-family conversions. Chairman Cole asked if the house was listed as a single family when it was purchased; Ms. Varrichione answered that it was. Ms. Varrichione stated that the house had never been officially converted to a two-family, but [the doors on the house] had been like that for a long time. Chairman Cole presumed that it had not been that way for so long that it pre-dated zoning. Ms. Varrichione stated that it was clearly an addition because there were two separate basements.

Ms. Varrichione stated that the house was not one hundred percent burnt down but it was substantially damaged.

Ms. Varrichione stated that there were other two-families on the street, and an identical style on the right and either a cape-style or ranch-style house on the left that was newly renovated. Anthony Varrichione stated that the house was abutting the [Salmon Village] assisted living facility was going in; directly across the street was a multi-family house.

Ms. Gould asked if Ms. Varrichione was putting in a new deck. Ms. Varrichione answered that the structure underneath was intact but the boards would need to be replaced.

Chairman Cole asked how much parking was available. Ms. Varrichione answered that there was one car parking under [the deck], a one car garage, and the un-covered part could probably fit four cars, three comfortably. Chairman Cole stated that there was a problem because regulations state that for a two-family dwelling, the minimum lot area is 30,000 square feet and no parking shall be within 10 feet of an adjoining lot line and it looks like some of the parking would be within 10 feet of the lot line. Ms. Varrichione stated that she would not be putting in the parking, it is already there. Chairman Cole stated that Ms. Varrichione was asking to convert the house legally to a two-family.

Ms. Varrichione stated that the house was 26 feet by 38 feet with the addition of 17 feet by 16 feet. Chairman Cole noted that the house conformed to all setback requirements.

Chairman Cole asked why the applicant chose to apply for a two-family house instead of an accessory family dwelling unit. Ms. Varrichione stated that Anthony Varrichione would like to rent the other unit.

Chairman Cole stated that he was aware of the wetlands but did not believe they were a problem in this instance.

Ms. Varrichione stated that a benefit for the Town was that with the two bedroom and the studio, it would be less likely to have the same type of families and less likely to add any children to the schools. The tax base would be a little higher because the two-family would be assessed a little higher than a single family.

Mr. Stumpf stated that he would like to understand what the substantial hardship was. It seems in this case the property was purchased recently. Ms. Varrichione stated that the property was purchased recently with the intent to “rehab” it and resell it, but then as Ms. Varrichione and Anthony Varrichione began looking into it, Ms. Varrichione said that the house would be a good starter home and a way to afford it would be to convert the house to a two-family in order to help with the finances.

Kathy Babineau of 251 Village Street stated that she was concerned that the house had one kitchen that would be converted and a one and a half bath going to two. She was concerned because of the elevation of the surrounding properties. Ms. Babineau stated that her land was lower and had more wetlands. Ms. Babineau stated that she was also concerned with the size of the parking [area] and also the narrow driveway. Chairman Cole asked if Ms. Babineau was concerned with drainage; Ms. Babineau replied that she was. Chairman Cole stated that the applicant was building on the existing footprint. Ms. Mercandetti stated there had been percolation testing but there hadn’t been anything filed with the Board of Health. Anything septic related would be permitted through the Board of Health; should the applicant plan to excavate any soils, they would potentially need to file with the Conservation Commission. Ms. Mercandetti stated that they applicant was most likely not done with the permitting process. Ms. Varrichione stated that regardless, the septic would be addressed, whether or not a single or two-family. Ms. Varrichione stated that the size of the septic wouldn’t change for a single or two-family as it was the same number of bedrooms.

Chairman Cole stated that there were two bedrooms in one unit and one bedroom in the other unit. The applicant has a one car garage. Ms. Varrichione also noted the car port. Chairman Cole stated that at least one car would be parked in the driveway. Chairman Cole stated that he was concerned that the driveway only fits one car wide. Ms. Varrichione stated that if someone was renting the two bedroom unit, they would have tandem parking in the garage and under the deck; Anthony Varrichione would park at the very tip of the driveway allowing the renters to drive out.

Mr. Kennedy re-iterated that in Table 2 of the Medway Zoning Bylaw for dimensional regulations a two-family no parking shall be permitted within 10 feet of an adjoining lot line. Ms. Leahy noted that the footnote to the table is part of the requested variance under 6.1 Table 2; since the footnote is part of the table, it could be included in the findings or conditions within the Decision. Chairman Cole stated that the hardship would be of the existing layout of the driveway.

Chairman Cole stated that his fundamental problem with the application was that if the Board granted the application for a two-family on 15,000 square feet with 100 feet of frontage, Chairman Cole would

find it very difficult to turn down an application for a two-family in VR [Village Residential District] in the future. Chairman Cole stated that he believed most of the lots in VR were conforming to minimum lot size and frontage; Ms. Leahy stated that most of the lots did not meet the minimum lot size and frontage requirements.

Mr. Arbeene asked if granting the request would set some sort of precedent; Chairman Cole stated that was his concern.

Ms. Varrichione stated that in most conversions to a two-family, people would be adding more bedrooms or people living there, but that wasn't the case in this application. Mr. Stumpf stated that there were ways to build two-families and multi-families in the current Bylaw and he was having a hard time deciding where "the bar is crossed." Mr. Stumpf asked what the compelling reason was to allow the two-family.

Ms. Varrichione stated that there weren't many rentals in Town, especially for young people.

Chairman Cole stated that he understood the validity of Ms. Varrichione's argument from a social policy point of view, unfortunately the function of the Board is to administer the Medway Zoning Bylaw.

Mr. Arbeene stated that the applicant's case they were making was an economic hardship.

A motion to close the hearing for 249 Village Street, Broken Tree LLC c/o Maria Varrichione, was made by Mr. Arbeene; seconded by Ms. Gould; approved unanimously.

During deliberations, Mr. Stumpf stated that he was not sure the application had a "hardship." He didn't see a compelling reason to comfortably use going forward with other applicants to approve this, even though the Town is in need of more affordable housing. Mr. Stumpf's fear was that this [approval] could be used to circumvent the Bylaw widely and easily. He regrettably is leaning not in favor of the application.

Mr. Arbeene stated that he generally agreed with Mr. Stumpf and did not see the hardship. Mr. Arbeene asked Ms. Mercandetti if this [approval] would set a precedent. Ms. Mercandetti stated that the variance is three-part legal test that needs to be met. The special permit has specific criteria that needs to be met. However, the variance is contingent upon the two-family use.

Chairman Cole stated that there was no precedent to approve other applications, but usually there is some consistency.

Mr. Kennedy stated that he had no issue with the special permit, but he had an issue with the variance. Mr. Kennedy stated that it seemed like an investment property.

Ms. Gould stated that there seemed to be no hardship other than Ms. Varrichione wanting a place for her son to live. Ms. Gould stated that it seemed like a "flip."

Chairman Cole stated that the apparent understanding of variances was that the hardship needs to be in proportion with the variance. The application would be going from 30,000 square feet minimum lot size and 150 foot minimum frontage to 15,000 square feet and 100 feet of frontage for a two-family is pretty drastic, particularly on septic.

Chairman Cole had less of an issue with the parking, as it was an existing driveway, and there would be a substantial hardship in ripping up the driveway and moving it somewhere else.

Chairman Cole moved to find that the applicant failed to demonstrate a hardship sufficient to justify a variance from the 30,000 square feet minimum lot size and the 150 foot minimum frontage required for a two-family conversion to 15,000 square feet and 100 feet of frontage present on the subject lot. The motion was seconded by Mr. Arbeene and approved unanimously.

In view of the foregoing finding, Chairman Cole moved to deny any relief for the request of variance. The motion was seconded by Mr. Arbeene and approved unanimously.

Ms. Mercandetti clarified that there are two special permits before the Board, one for the use as a two-family, and one to rebuild the nonconforming structure.

Chairman Cole stated that he had no problem with the applicant rebuilding on the existing structure.

Mr. Stumpf asked if the applicant would usually need to come before the Board for a special permit if the house burnt down and the applicant wanted to rebuild; Ms. Mercandetti answered that they would need if the house was nonconforming. The Board would need to make the finding to determine if it would be increasing the nonconformity and if it was, the Board would need to grant a special permit.

Chairman Cole moved to find that the proposed rebuilding of the structure on the footprint of the pre-existing building would not increase the nonconforming nature of the structure. The motion was seconded by Mr. Arbeene and approved unanimously.

Chairman Cole moved to find that grant of a special permit for reconstruction of the building on the existing footprint would not be inconsistent with any of the criteria for issuance of a Special Permit set forth in Section 3.4 of the Zoning Bylaw. The motion was seconded by Mr. Kennedy and approved unanimously.

In view of the foregoing findings, Chairman Cole moved to grant to the applicant a special permit for reconstruction on the footprint of the pre-existing structure. The motion was seconded by Mr. Arbeene and approved unanimously.

Chairman Cole moved to find that the pre-existing nonconforming structure was legally always a single family house, that use of a reconstructed dwelling as a two family house would represent a substantial increase in the extent of nonconformity and that the applicant failed to demonstrate sufficient grounds for such increase in nonconformity. The motion was seconded by Mr. Stumpf and approved unanimously.

In view of the foregoing findings, Chairman Cole moved to deny the application for a two-family dwelling under Section 5.4 of the Zoning Bylaw. The motion was seconded by Ms. Gould and approved unanimously.

8:00 P.M. – Tax Delinquent Hearing, under Article XVI of the Medway General Bylaws, with respect to the following properties which are part of the proposed “Timber Crest Estates”: 13 Ohlson Circle (14-020), 21R Fairway Lane (08-016), 11 Woodland Road (09-058), OR Woodland Road (14-005 and 08-019), 177A Holliston Street (09-006) and 102 Winthrop Street (08-020).

Ms. Mercandetti stated that Treasurer/Collector Joanne Russo was in attendance. Under Article 16 of the Medway General Bylaws, the Treasurer/Collector produces a tax delinquent list and some of the properties involved in the proposed Timber Crest Estates were in that list. Letters were sent to the property owners and the applicant, because of the number of properties involved. Letters were sent via regular and certified mail and the Board has received the green cards back from the certified mail.

Chairman Cole asked if the taxes included interest and penalties. Ms. Russo stated that they included the taxes, interest, penalties, and fees. Ms. Mercandetti noted that the Tax Delinquency involved 6 properties and 7 Parcel IDs [within the proposed Timber Crest Estates development].

Chairman Cole stated that all monies being paid, the Board would take no action. Ms. Mercandetti stated that the taxes were just paid that day, January 18, 2017.

Omar Sahtira was present on behalf of Timber Crest LLC and explained that they had submitted a letter in order to reserve the right contest the payment of taxes. Ms. Leahy stated that the letter was titled "13 Ohlson Circle (Assessor's Parcel ID: 14-020)," and the letter does not address any of the other parcels in the Tax Delinquent Hearing.

Chairman Cole motioned to take no action on the Tax Delinquent Hearing on the grounds that all taxes have been paid. The motion was seconded by Mr. Arbeene and approved unanimously.

8:05 P.M. – (Continuance requested by the Applicant to continue the hearing without testimony to February 1, 2017) The Applicant, Timber Crest LLC, seeks a Comprehensive Permit under MGL c. 40B, Sections 20-23 as amended, to allow construction of a 157 unit development to be called "Timber Crest Estates" containing 25% affordable units on 170.36 acres which is comprised of the properties located at 143 Holliston Street, 153R Holliston Street, 177A Holliston Street, 21R Fairway Lane, 13 Ohlson Circle, 102 Winthrop Street, 11 Woodland Road, 0R Woodland Road, and 165 Holliston Street, Medway, MA.

The applicant has submitted a request to continue the hearing without testimony to February 1, 2017.

Chairman Cole stated that he was concerned with the April deadline and half the issues not resolved. Any further continuance past February 1, 2017, the Board will need to seek an extension of the deadline.

Ms. Mercandetti noted that the current extension is until April 3, 2017. This last continuance, Ms. Mercandetti had asked the applicant for the continuance as she was concerned that the applicant had not submitted any new information that the Board, Staff, and Consultants to review. Ms. Mercandetti stated that Staff had anticipated scheduling a Traffic and Safety working session which would be prior to February 1st and the applicant was working on revisions that they are anxious to get to the Board. Ms. Mercandetti stated that she expected new information to be submitted prior to the hearing in order to have a public hearing with testimony and presentation.

Chairman Cole moved continue the hearing for Timber Crest LLC to February 1, 2017 at 7:35 PM; seconded by Mr. Arbeene; approved unanimously.

Any other business that may properly come before the Board:

Ms. Leahy stated that the Zoning Board application does not have anything that permits or recognizes that permission might be needed for site visits or site access for either the Board or other departments, boards, or committees. Ms. Leahy thought it would be a good idea to include a statement within the application where the applicant could authorize the Board or Staff to the Board to have access to the property for a site visit if necessary and also to determine if site visits would be necessary from other departments, boards, or committees.

Mr. Kennedy asked if the Board had any current problems with this. Ms. Leahy said that there were not problems so far, but should it be needed in the future, it would be important that the ZBA has the authority prior to a hearing. At the bottom of the form includes a statement that if the applicant declines or neglects to fill out the form that the applicant would not be giving access and that it would be voluntary prior to the hearing, and once the hearing was opened, then the Board could determine if a site visit would be necessary. This [language] is something that is included in the Building Department's application, as well as the Conservation Commission's applications.

Chairman Cole asked under what condition the non-owner would be signing as the applicant. Ms. Mercandetti noted that the applicant could have site control.

Ms. Mercandetti stated that the language mirrors what the Building Department and Conservation Commission has. The form clarifies that a site visit might be necessary in order for Staff to provide comments to the Board, usually if the Board wanted a site visit, Staff would schedule that. Ms. Mercandetti stated that there is an expectation of access, but the form makes it more formalized.

Ms. Leahy stated that there have been situations in the past, and with the most recent application for 249 Village Street, that Conservation has asked if they can go on a site visit and Staff have said that Conservation will need to contact the applicant, whereas the form would allow access from the start.

Ms. Mercandetti stated that courtesy would dictate that a site visit would be scheduled and the applicant would be informed.

A motion to approve the "Site Visit Form" was made by Mr. Arbeene; seconded by Mr. Stumpf; approved unanimously.

Correspondence:

None.

Upcoming Meetings:

Ms. Leahy stated that the Board had received an appeal for the Building Inspector/Zoning Enforcement Officer's decision to deny a building permit for 2 West Street. However, the hearing has not been scheduled yet as Staff is waiting for more correspondence between the Building Inspector and the

Applicant. The application would most likely be scheduled for February 15, 2017, unless the appeal was withdrawn.

Adjournment

***A motion to adjourn was made by Ms. Gould, seconded by Mr. Arbeene and approved unanimously.
The Board adjourned at 9:03 p.m.***

Respectfully submitted,

Mackenzie Leahy
Administrative Assistant
Community and Economic Development