

Board Members  
Rori Stumpf, Chairman  
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, November 18, 2020 at 7:30 p.m.**

**Virtual Meeting**

#### **Meeting Minutes**

**Present:** Rori Stumpf, Chairman; Brian White, Vice Chair; Christina Oster, Member, Gibb Phenegar, Member, Tom Emero, 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. All persons participated remotely in the meeting via Zoom.

#### **Public Hearing**

**39 Alder Street** - The application is for the issuance of a **use variance** from Section 5.4, Table 1: Schedule of Uses of the Zoning Bylaw to allow an equipment rental and leasing business, including outdoor storage and preventative maintenance and repair of associated equipment on the property.

David Faist of CMG Environmental Services, the engineer of the project was present and gave an overview of the project that is proposed on property zoned for commercial use. The property is undeveloped between two developed properties; Lawrence Waste and another industrial property. They are proposing a building that will include offices along with garage area for maintenance of the equipment, as well as outdoor storage of the equipment. The proposed building and parking would be located at the front of the parcel and storage of equipment at the back. The area has been delineated for wetlands and the intent is to apply with the Conservation Commission for an Order of Conditions.

Mr. Costa, the applicant was present, and provided an overview of his business. They are currently renting a property in Hopedale and they own the fleet equipment that is leased out.

Mr. Phenegar inquired about how many employees; Mr. Costa stated 10. They are currently located about 5-7 miles from this proposed location.

Mr. Saint Andre stated that the Board has received many letters from different departments. She wanted to emphasize that the only proposal before the Board is the use variance. If approved, the applicant will need to go the Planning and Economic Development Board for site plan review, the Conservation Commission for a Notice of Intent (NOI) application, and DPW for curb cuts, and possibly other permits. She stated the Board would need to make the findings for the same criteria as dimensional variances in this application for a use variance. Mr. Stumpf went over the four required criteria that will be discussed. Ms. Saint Andre stated that the applicant did not discuss the criteria tonight during the presentation, although information was included in the application.

Mr. Stumpf inquired about the use and storage of the equipment for the business. Mr. Costa stated the outdoor storage space would be for the equipment that they own which is waiting to be serviced or rented, not bulk material or any other kind of material. Mr. Stumpf inquired about variance criterion #1, Mr. Costa stated that the business is very similar to what is already being done at the abutting property (Lawrence Waste). Mr. Faist provided some information about criterion #1 including the shape of the land which restricts where the building and parking lot can go. He also discussed the fire hydrant that the town installed that would need to be moved in order to use the curb cut, as well as a lot of wetlands on the property limiting development to only about 2 acres. Mr. Emero inquired about how the items cited by the applicant regarding the property connect them to a use variance. Mr. Faist stated that equipment rental is not listed in the bylaw anywhere, therefore the applicant is looking for a use variance. He stated the hardship relates to the development of the lot, and the applicant is interested in developing the lot for the business and not having the variance is a hardship.

Mr. Stumpf referred to the Accessory Uses section (Table 1.E.) particularly in the West Industrial zoning district, outdoor storage is allowed as an accessory use. He inquired if the applicant is implying the outdoor storage is an accessory to the business? Further, Mr. Stumpf stated that he believes the equipment is not an accessory use and that it is the core of the business. Mr. Faist referred to the letter from Attorney Bill Sack, noting the business is an equipment rental company and the outdoor storage of equipment is accessory to the business. Mr. Phenegar stated that an accessory use does not really apply here. Mr. Stumpf stated the definition of accessory use, and based off that, this is not allowed under the bylaw. Mr. White stated that in his view the accessory use space being proposed is quite large for this project, making it look like a storage yard that is housing equipment waiting to be leased. Mr. Stumpf stated that the zoning bylaw was recently amended to specifically avoid this type of outdoor storage.

Glenn Trindade, 7 Stanley Road, stated that preventing this specific use being proposed is the reason the zoning bylaw was amended about a year ago regarding outdoor storage. He stated he is speaking for himself, not the Board of Selectmen. Further, he stated the business is a great business, but the use is not what is wanted for that zoning district. Mr. Stumpf stated one of the reasons the bylaw was changed is due to wanting the highest and best use of property. Mr. Trindade stated that Lawrence Waste is a great business but that is the last type of business the Town wanted in the industrial park, and therefore the bylaw was changed in order to plan accordingly for the future of the district and industrial park as a whole.

The Board then discussed the variance criteria.

Board needs to make specific findings on whether the four criteria for a **variance** as set forth in G.L. c. 40A, §10 have been met by the requested variance:

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,

Mr. Phenegar stated that there are no factors to support this criterion. Mr. Stumpf and Mr. White agreed.

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

Mr. Phenegar stated there are no hardships to support this criterion and the other members agreed. Mr. Stumpf further clarified that the hardship must be for the property, not the owner.

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

Mr. White stated that the proposed use does not meet criteria the Board is looking for with respect to development of this property, but is not hazardous to the area. The other members agreed.

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

Mr. White stated that this proposed use does not fall within the intent of the bylaw and would be against the intent of the bylaw in that district. The other members agreed.

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

**Rori Stumpf - Aye**

**Brian White - Aye**

**Tom Emero - Aye**

**Christina Oster - Aye**

**Gibb Phenegar – Aye**

Ms. Saint Andre asked for further explanation of findings to support the denial.

**Motion to deny the use variance request for 39 Alder Street based on the following findings: the Board could not find any circumstances related to soil, shape or topography unique to this property, they could not find substantial hardship financial or otherwise related to this property that would be attached to the property that requires the relief of a variance, finally, this would derogate from the zoning bylaw, particularly in light of the bylaw being recently amended to avoid such uses; made by Brian White, seconded by Gibb Phenegar, passed with a roll call vote of 5-0.**

**Rori Stumpf - Aye**

**Brian White - Aye**

**Tom Emero - Aye**

**Christina Oster - Aye**

**Gibb Phenegar – Aye**

**Motion to close the public hearing for 39 Alder 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 of 5-0.**

**Rori Stumpf - Aye**

**Brian White - Aye**

**Tom Emero - Aye**

**Christina Oster - Aye**

**Gibb Phenegar – Aye**

**13A Fisher Street** - The application is for the issuance of a **variance** from Section 6.1 of the Zoning Bylaw to reduce the required side setback from 15 feet to 11 feet, and reduce the required rear setback from 15 feet to 12 feet, to construct a pool house within the setback.

Ryan Walsh, the applicant and property owner was present and explained his application. He stated the property is smaller than others in the district, sloping from the front to the rear where it slopes towards the wetlands. There is not much space to place the pool house with the setback requirements. Mr. Phenegar inquired about the pool's construction, Mr. Walsh stated that it was installed in 2016 along with the hot tub, and the patio is constructed from concrete. The yard is fenced in to conform to Town bylaws and for safety reasons. Mr. Stumpf stated that the lot slopes back dramatically, and the house is set back pretty far, limiting the back yard; and the yard is wider from the street and grows narrow to the back. There were three abutter letters submitted in support of this proposed project. Mr. White inquired about where the shallow end and deep end of the pool were regarding the plan. Mr. Walsh explained that they are proposing that the pool house be on the shallow end for safety reasons; they also want to set the pool house back from the pool a bit for safety reasons. Mr. Emero inquired about the abutters that are closest to the proposed pool house. There is a letter of support from one of them (Gay, rear setback abutter), but not the other (Long, side setback abutter). Mr. Walsh stated that he had spoken to Mr. Long who is not opposed, and can ask him for a letter in support if necessary. The Board discussed the variances requested being 12 feet from the rear setback and 11 feet from the side setback, where the requirement is 15 feet. Mr. Stumpf noted that the 15 foot setbacks are the same for one acre lots but take up a lot more space on smaller, half acre lots such as this one. Mr. Phenegar inquired about the footprint of the proposed pool house and what the little enclosed room would be for. Mr. Walsh explained the intent is to use the room for storage and as a changing area for guests. The door to the enclosed area will be from the pavilion, not the door as shown on the plans. There is further discussion on the layout of the pavilion, which will be open on two sides. The board then discussed the variance criteria.

Board needs to make specific findings on whether the four criteria for a **variance** as set forth in G.L. c. 40A, §10 have been met by the requested variance:

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,

**Mr. Stumpf stated that the topography of the lot is unique because it slopes from the front to the back, and also narrows from the front to the back of the property, which do not affect other lots in the district, therefore there are unique circumstances related to the shape and topography of the lot, so moved by Brian White seconded by Gibb Phenegar, passed with a roll call vote of 5-0**

**Rori Stumpf - Aye**  
**Brian White - Aye**  
**Tom Emero - Aye**  
**Christina Oster - Aye**  
**Gibb Phenegar – Aye**

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

**Mr. Stumpf stated that this is a unique lot and any owner would have reduced use of the lot due to the shape and topography making it a hardship on the current owner and future owner, so moved by Brian White seconded by Gibb Phenegar, passed with a roll call vote of 5-0.**

**Rori Stumpf - Aye**  
**Brian White - Aye**  
**Tom Emero - Aye**  
**Christina Oster - Aye**  
**Gibb Phenegar – Aye**

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

**Mr. Stumpf stated that the proposed location of the pool house would not be detrimental to the public good as it is in the back yard of the lot within a fenced area, in addition to abutter support, moved by Brian White seconded by Gibb Phenegar, passed with a roll call vote of 5-0.**

**Rori Stumpf - Aye**  
**Brian White - Aye**  
**Tom Emero - Aye**  
**Christina Oster - Aye**  
**Gibb Phenegar – Aye**

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

**Mr. Stumpf stated the grant of relief, which is only 3 feet and 4 feet closer to the lot lines, would not nullify or substantially derogate from the intent or purpose of the bylaw, as the size of the lot (22,500 square feet) is smaller than others in the Town; the 15 foot setbacks are more appropriate for larger, one-acre lots; and therefore the slightly reduced setbacks are appropriate here and does not substantially derogate from the intent of the zoning bylaw, made by Brian White seconded by Christina Oster, passed with a roll call vote of 4-1.**

**Rori Stumpf - Aye**  
**Brian White - Aye**  
**Tom Emero - Aye**  
**Christina Oster - Aye**  
**Gibb Phenegar – Nay**

**With a motion made by Brian White, seconded by Tom Emero, the Board finds that the Applicant has met all the required variance decision criteria passed a roll call vote of 4-1.**

**Rori Stumpf - Aye**

**Brian White - Aye**

**Tom Emero - Aye**

**Christina Oster - Aye**

**Gibb Phenegar – Nay**

Ms. Saint Andre then discussed the boiler plate conditions to see which ones would apply to this decision. She suggested conditions # 5 and # 8 may not be necessary. Mr. Walsh inquired about what is a considered substantial or insubstantial change. Mr. Stumpf clarified that the main concern would be the footprint and would need to be in substantial accordance with the approved plans.

**Motion to grant the variance request for 13A Fisher Street with conditions set forth, made by Brian White, seconded by Gibb Phenegar, passed with a roll call vote of 5-0.**

**Rori Stumpf - Aye**

**Brian White - Aye**

**Tom Emero - Aye**

**Christina Oster - Aye**

**Gibb Phenegar – Aye**

**Motion to close the public hearing for 13A Fisher 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 of 5-0.**

**Rori Stumpf - Aye**

**Brian White - Aye**

**Tom Emero - Aye**

**Christina Oster - Aye**

**Gibb Phenegar – Aye**

## **Other Business**

### **Approval of Minutes**

- October 21, 2020

**Motion to approve the minutes for October 21, 2020 as presented made by Gibb Phenegar, seconded by Brian White, passed with a roll call vote of 5-0.**

**Rori Stumpf - Aye**

**Brian White - Aye**

**Tom Emero - Aye**

**Christina Oster - Aye**

**Gibb Phenegar – Aye**

## **Upcoming Meetings**

- December 2, 2020 – 12 Charles River Road – Special Permit and/or Variance Request
- December 16, 2020

### **Adjournment**

**Motion to adjourn the meeting at 8:45 p.m. made by Brian White, seconded by Gibb Phenegar, passed with a roll call vote of 5-0**

**Rori Stumpf – Aye**

**Brian White - Aye**

**Tom Emero - Aye**

**Christina Oster - Aye**

**Gibb Phenegar – Aye**

Respectfully submitted,

Stefany Ohannesian

Administrative Assistant

Community and Economic Development

Edited by Barbara J. Saint Andre

Director, Community and Economic Development