

**Town of Medway
Zoning Board of Appeals Meeting
Sanford Hall
Town Hall
155 Village St, Medway MA**

MINUTES OF MEETING

October 18, 2017

Present: Chair Eric Arbeene; Vice Chair Brian White; Committee Members: Rori Stumpf, Bridgette Kelly

Also present: Mackenzie Leahy, Administrative Assistant, Community & Economic Development

Chairman Arbeene called the meeting to order at 7:33 PM.

Citizen Comments:

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

Any other business that may properly come before the Board:

The Board began a brief discussion of the proposed amendments to the Zoning Board of Appeals Rules & Regulations. Ms. Leahy explained that the Board had given her the authority to look into changing them last year, but with a number of complicated applications

The Board briefly discussed the Tetra Tech invoice for Glen Brook Way peer review services.

A motion to approve the Tetra Tech invoice for \$2,672.64 was made by Mr. White, seconded by Mr. Stumpf, and approved 3-0 (Bridgette Kelly was not yet in attendance).

Public Hearings:

7:35 P.M. – The Applicant, Joanne Beksha Brown, seeks a Variance from Section 6.1 to divide one lot into two lots. “Lot 1” shall remain a conforming lot. The application seeks a variance for “Lot 2” which would have 43,938 sq. ft. of area where the required area is 44,000 sq. ft, with respect to the property located at 85 Winthrop St.

The Applicant and her representative provided an overview of the requested variance. Mr. Kenney explained that the applicant was requesting a variance of 63 sq. ft. The shape of the lot was changed due to two takings by the County of Norfolk for the relocation of Winthrop Street and Lovering Street. The property sits at the southeast corner of the intersection of the two streets. The taking changed the shape of the lot and also reduced the total area of the lot. The hardship of enforcing the bylaw is such that dimensional requirements for lot size prevent the Applicant from subdividing the property as would have been permitted by right had the takings not occurred. Grant of relief would not nullify or derogate from the intent of the bylaw, as the requested variance for 63 sq. ft. is de minimis in relation to the area requirements. In addition, many of the lots in the surrounding neighborhood are significantly smaller than the property and do not meet the current zoning dimensional requirements. Mr.

Kenney provided a portion of the assessor's map for the lot and surrounding lots to the Board for reference. Many of the surrounding lots are a quarter acre. As subdivided, Lot 2 would be just sort of the dimension requirement by 63 sq. ft., but both lots would be a full acre.

Sue Shemuga of 83 Winthrop Street attended the hearing and spoke in opposition of the variance.

The Board requested that Ms. Leahy draft a decision for the Board based on the discussion that they felt the conditions required for a variance had been met.

A motion to continue the hearing to 7:35 pm on November 1, 2017 was made by Mr. White, seconded by Mr. Stumpf and approved unanimously.

- The Applicant, William Goodwin & Rosemary Conway, seek a Special Permit under Section 5.4 Table 1 to allow for a personal kennel license, with respect to the property located at 5 Brookside Road.

The Applicant explained the request for a special permit for a personal kennel license. The Applicant had three dogs and had taken in another from the Baypath Humane Society. The Applicant stated that he knew state law allowed for up to four dogs and had not realized that the Town required a special permit for anything over three dogs. The dogs are small, mostly indoor dogs. They are typically restricted to the deck at nighttime and are let into the yard during the day only under supervision, due to the coyote population. There is no commercial operation on the premise, the dogs are under personal ownership.

The Board requested that Ms. Leahy draft a decision for the Board based on the discussion that they felt the requested special permit was within reason.

A motion to continue the hearing to 7:35 pm on November 1, 2017 was made by Mr. Stumpf, seconded by Mr. White and approved unanimously.

- The Applicant, Ambassador Pools, seeks a Variance from 6.1 to accommodate a pool that was installed 4 feet from the rear property line at 7 Legion Avenue; the required setback is 10 feet.

Mr. Johnston gave an overview of the application. He gave a background of Ambassador Pools, of which he is a co-owner. Mr. Johnston had offered to assist the owner of 7 Legion Ave with the permitting and not knowing that the property was a condo, they applied to the Building Department showing the pool in a location that was part of 5 Legion Ave's back yard. When the installers went to install the pool, there was some confusion about the correct location for the pool and it ended up within the setback.

The deck for the pool is about 4 feet from the rear property line, but the actual water wall is about 6 ½ feet from the rear property line. The pool is an above ground partially recessed pool. The pool is 12 feet by 20 feet not including the "L" shaped deck surrounding it. The 12x20 pool is the smallest above-ground pool that the business carries.

The pool was for a handicapped child. The direction that it was installed is the only way for there to be access to the pool for the child. In addition, had the installers put the pool in a different location, the pool might have blocked access to the shed. Mr. Johnston also stated that there was personal hardship regarding the money involved.

Mr. Johnston referred to section 6.1 of the Bylaw and stated that prior to application, Ms. Leahy referred him to review the requirements of section 6.1 and the footnotes to see if any of them applied to his situation.

Ms. Leahy explained that the property is one lot, but for assessing purposes, it is considered two. It is a condo with a shared property. The yard is split in the rear for 5 Legion Ave and 7 Legion Ave.

Ms. Leahy also explained that there is some allowance in the bylaw for consideration prior to applying for a variance regarding a note to the table for the Village Residential district regarding the setback requirements. Mr. Johnston provided a letter to the Zoning Enforcement Officer who determined that he couldn't make a determination on that portion of the bylaw.

Mr. Johnston explained that he had not applied for the permit, but one of his installers did.

Ms. Kelly summarized that where the pool was shown on the building permit is not where it was installed.

A number of abutters were present for the hearing.

James Harrington of 5 Legion Ave stated that he had no knowledge that his condo neighbor had planned to install a pool until his wife told him to look out his window and it was already installed. The pool is somewhere around 4 feet from the condo's windows. Mr. Harrington stated that they could have installed a smaller pool. Rosemary Harrington of 5 Legion Ave had submitted a letter to the Board regarding the property.

Adam Kaufman of 15 Cassidy Lane stated that if the permit wasn't approved for that location, they shouldn't have installed the pool. Mr. Kaufman also stated that it would have been courtesy to talk to the owners neighbor at 5 Legion Ave prior to installing the pool and should have found a smaller pool.

Judy Armstrong and her sister Peggy Armstrong of 5 Cole Ave, also speaking on behalf of their mother at 3 Cole Ave, stated that luckily there is vegetation and fence between 7 Legion Ave and 3 Cole Ave, but they are concerns about the impact on the potential sale of 3 Cole Ave if and when they try to sell the home.

Mike Dickson of 4 Cole Ave stated that the pool shouldn't have been put in if it didn't meet the requirements.

Julie Lesperance of 7 Legion Ave spoke to the Board and stated that there was a major miscommunication of location and if she knew that she would that she needed to apply for a variance, she wouldn't have had the pool installed at all. Mr. White asked where Ms. Lesperance would ideally like to see the pool. Ms. Lesperance stated that she would like to have her son have access but also provide the greatest distance between the pool and the condo for 5 Legion Ave as possible.

A motion to continue the hearing to 7:35 pm on November 1, 2017 was made by Mr. Stumpf, seconded by Mr. White and approved unanimously.

- The Applicants, Todd Allen & HIS Corporation LLC, seeks a Special Permit under Section 5.5 to replace a single story home with a two story home on a pre-existing nonconforming lot due to insufficient area.

The Applicants provided an overview of the proposed two story home. They explained that the existing home has no foundation and is a condemned home. The Applicants intend to replace the home and build a two story home. The proposed home has nearly the same footprint and meets the setbacks, but because of the nonconforming nature of the lot and the request to increase the height of the home, the Applicants needed to apply for the Special Permit under Section 5.5 Nonconforming Uses and Structures of the Medway Zoning Bylaw.

Carol Fasulo, 12 Charles View Lane, and Bill Micucci, 7 Charles View Lane, attended the hearing, also speaking for the Charles View Condo Association, and spoke in favor of the application, however, they did have some concerns about construction and maintenance of the emergency access road between Cherokee Lane and Charles View Lane. They explained that they did not want to see construction vehicles driving through the emergency access and also would like it on the record for a potential buyer that they are aware that there is an emergency access road there.

Barbara Ryan, 5 Charles River Road, explained that she was the neighbor of 3 Cherokee Lane spoke in favor of the rehabilitation of the home and lot.

The Board found that the proposed replacement of the existing single story home with a two story home was consistent with all of the required criteria under Section 3.4 of the Medway Zoning Bylaw.

The Board found that the proposed changes would not be more detrimental to the neighborhood than the existing nonconforming use, rather the changes would serve as a benefit to the neighborhood and the public good.

A motion to Grant the requested special permit for 3 Cherokee Lane, substantially in accordance with the plans provided, was made by Mr. White, seconded by Mr. Stumpf, and approved unanimously.

Correspondence:

None.

Approval of Minutes:

Tabled.

Upcoming Meetings:

One new application were received and were scheduled for November 1, 2017.

Adjournment

A motion to adjourn was made by Mr. White, seconded by Mr. Stumpf and approved unanimously. The Board adjourned at 9:58p.m.

Respectfully submitted,

Mackenzie Leahy
Administrative Assistant
Community and Economic Development