

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, September 2, 2020 at 7:30 p.m.
(Virtual Meeting)
Meeting Minutes

Present: Rori Stumpf, Chairman; Brian White, Vice Chair; Gibb Phenegar, Clerk; Tom Emero, Member; Carol Gould, Associate 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 Hearings

15 Meryl Street – The application is for the issuance of a **special permit** under Section 8.2 of the Zoning Bylaw to construct an Accessory Family Dwelling Unit ("AFDU") to the existing home on the property.

Jim Rissling, the applicants' representative and Architect was present and discussed the application. The applicants would like to add a unit in order for the Ms. Morin's parents to move in and live with them. Mr. Rissling explained that the existing lot is pre-existing, non-conforming. The proposed AFDU will only be one level with the exterior finishes to match the existing home, additionally, there will be one designated parking space in the existing driveway.

Mr. Stumpf then began a discussion with the Board. Mr. Phenegar inquired about the square footage and if the unit will be one story or two, Mr. Rissling explained it will only be one story and will be 792 square feet. Mr. Stumpf does not think this addition will make the lot more non-conforming, it fits the requirements for size and parking. Mr. Stumpf asked if the applicants are aware of the restrictions of an AFDU, to which they agreed they are aware of the requirements. Mr. Stumpf invited citizen comments,

however there were none. Mr. Phenegar stated that it conforms with everything that goes with the Bylaw and that he has no issues. Mr. Stumpf then went over the AFDU criteria, and it was decided that the applicants have met all the criteria.

With a motion made by Brian White, seconded by Gibb Phenegar, the Board finds that the Applicants have met all of the required Accessory Family Dwelling Unit decision criteria, passed with a roll call vote of 5-0.

Rori Stumpf – Aye

Brian White – Aye

Tom Emero – Aye

Gibb Phenegar – Aye

Carol Gould – Aye

Mr. Stumpf then went over the special permit criteria, and it was decided that the applicants have met all special permit criteria.

With a motion made by Brian White, seconded by Gibb Phenegar, the Board finds that the Applicants have met all of the required special permit decision criteria, passed with a roll call vote of 5-0.

Rori Stumpf – Aye

Brian White – Aye

Tom Emero – Aye

Gibb Phenegar – Aye

Carol Gould – Aye

The Board then discussed potential conditions for the permit. Ms. Saint Andre mentioned and inquired about the existing shed, which on the plans will have an addition added to it and be slightly relocated. She recommended that a condition should be added that the shed is to be built as shown on the revised plan and will comply with the revised plan. She then went over the boiler plate conditions.

Joe Chaves of JFC Pros, the applicants' contractor, explained that the parents want to be independent and would like the utilities (electric) to be separate from the existing home owners. Mr. Stumpf stated that down the road this cannot be made into a rental unit, which the applicants are aware of. The other board members had no issues with this request. Ms. Saint Andre asked what utilities Mr. Chaves was referring to, to which he replied electric. It was stated the water and sewer questions would need to go through the Department of Public Works.

Motion to grant the special permit request for 15 Meryl 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

Gibb Phenegar – Aye

Carol Gould – Aye

Motion to close the public hearing for 15 Meryl Street and to allow 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
Gibb Phenegar – Aye
Carol Gould – Aye

7 Barber Street – The application is for the issuance of a **special permit** under Section 8.2 of the Zoning Bylaw to construct an Accessory Family Dwelling Unit (“AFDU”) to the existing home on the property.

Mr. Brilmayer, the applicant, was present and discussed that he would like the AFDU for his parents to come and live with him. They are very independent and would like their own space. It will be attached to the home and it will have an adjoining door into the existing home. He intends to have it look like the existing home and blend in with the neighborhood.

Mr. Stumpf inquired about the size of the addition and location in regards to the existing home. Mr. Brilmayer explained that all the work would be in the back of the home and that it will look like the existing home and be attractive to the neighborhood. He also explained that there would be no separate utilities. Mr. Stumpf stated that the proposal will not make the lot more non-conforming. Mr. Brilmayer stated that the proposed AFDU will be 936 sq. feet, in order to be wheelchair accessible, and have a second bedroom due to his father’s sleep cycles. Mr. Phenegar inquired about a second floor, the applicant stated that there would be a loft, however he further explained it would actually be a complete second floor, making the request for a roughly 1900 square foot AFDU. Mr. Brilmayer explained the proposed second floor would be an open floor plan, but the same size as the proposed footprint of the first floor. Ms. Gould inquired if the second floor would be finished, the applicant agreed the intention is to finish it. Mr. Phenegar inquired about dimensioned floor plans, Mr. Brilmayer stated that he would get plans if it was approved, he did not want to incur the expense of having plans prepared if not necessary. Mr. Stumpf stated confusion about the second floor and how it fits into the existing house or not. Mr. White stated that he would need more information before moving forward to a decision, Mr. Phenegar agreed and stated that due to the size of the requested square footage it is difficult to make a decision at this time. Mr. Brilmayer stated he is working with an engineer and can get plans for another meeting. Mr. Phenegar stated they need a simple floor plan, Mr. Stumpf stated they want to know the mass and how it would look.

Mr. Brilmayer stated that he is proposing to do something very tasteful and has abutter support. Mr. Phenegar inquired about the number of bedrooms, which would need further approval for more than one. Mr. Stumpf stated that he has no problem with the second bedroom and square footage. He stated that he would like to see more of a floor plan to be able to move forward.

Ms. Saint Andre inquired about a designated parking space for the AFDU. Mr. Brilmayer stated he is going to use his existing driveway. Mr. Stumpf asked him to mark the proposed spot on the plans for the next meeting. There was a discussion about the driveway and the number of cars that could be parked in it. Mr. Brilmayer stated there would only be about 2 cars maximum in the driveway. He inquired about the next meeting which is September 16th, 2020.

Mr. Stumpf then invited any citizen comment.

Matthew Hayes, 23 North Street, stated that he supports the project and that it meets the intent of the bylaw.

Phil Tepfer, 5 Barber Street, stated that he is in support of the project and the second floor does make sense to be more consistent with the current look of the existing home.

Motion to continue the hearing for 7 Barber Street to September 16, 2020 at 7:30 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

Gibb Phenegar – Aye

Carol Gould – 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.

Attorney Stephen Kenney, the applicant's representative, was present and explained the request for modification and the conditions they are looking to be removed from the July 17, 1997 variance due to changes in circumstances. They are seeking to remove the conditions and to allow two single family homes to be on the lot with the intent to subdivide the lot. The applicants wish to stay in Medway and want to build a smaller home on the potential new lot. The new home would be an L shaped ranch home next to a previously constructed barn. The applicants applied in 2019 for a variance request with the ZBA but withdrew the application without prejudice. During that application process the Planning and Economic Development Board had explained in a letter to the Board that a private way subdivision will assist with dealing with stormwater and drainage on site. The applicants are working with Legacy Engineering to design stormwater.

Attorney Kenney then went over the variance criteria. He explained that the lot is very oddly shaped, with 144 feet of frontage, then opens up in the back and contains 4 acres. The majority of lots in the area are one acre. Further, the lot slopes up from the street to a hill. The substantial hardship is the real estate taxes of the 4 acre lot are high and they would like to downsize by subdividing the lot. It would not substantially nullify or derogate from the intent of the zoning by-law, which is to prevent over burdening a parcel of real estate or over-construction. The proposed location of the home is so that it would impose the least upon abutters and neighbors.

Attorney Kenney continued that the applicants are intending to improve the drainage on the lot and driveway, and will in turn improve the drainage of Fisher Street as well, which will address the concerns of the DPW Director. They have met with two neighbors, one being Jeff O'Neill of 78 Fisher Street who has concerns and was shown where the proposed home will be and the wooded area that will be maintained. They met also met with Laurel Singer and John Boardman of 8 Rockwood Road, showing them where the home will be located as well as the wooded area that would remain. The applicants have offered Ms. Singer and Mr. Boardman a 30 foot no cut zone as well as a single level ranch style home, and that the home would be constructed at least 60 feet from their lot line. There is a precedent for such a

request; 32R Hill Street in 1994 had a similar variance granted for the property with the same condition for only one single family home, and the PEDB granted a two lot subdivision 20 years later.

Mr. Phenegar inquired about the size of the home, Attorney Kenney responded that it would be around an 1800 sq. feet, single level ranch. Ms. Gould inquired about the driveway and where they would get the frontage from. Attorney Kenney stated they would do a limited subdivision; the private way would come up to a turnaround at the top of the driveway where frontage would be created.

Ms. Saint Andre inquired about the conditions Attorney Kenney had discussed with the abutters, and if the Board were to approve this request, how would those conditions be enforced. Attorney Kenney went over the 3 conditions, being a 30 foot no cut zone from the lot line of 8 Rockwood Road, a single level ranch style home, and that the new structure would be built more than 60 feet from the lot line of 8 Rockwood Road. He stated the applicants would be open to imposing them as conditions of the modification decision if the board was agreeable.

Laurel Singer, 8 Rockwood Road, stated she has been trying to work with the McSweeneys (the applicants) through Attorney Kenney. They have concerns with the lack of plans and destruction of trees. They are not fully opposed, but they are concerned about tree removal, and they bought their house because of the deed restriction in place. They have asked for a 30 foot no cut zone, and that the applicants would not build the home within 60 feet from the property line, which she believes shouldn't be a problem. They have also asked for a one story home that would match existing one story homes in Medway, and no additional buildings on the property with the barn on the property being quite large. In addition, they have asked that no lights be shining towards their property. They do not intend to move away and want to work with the applicants in order to make this project happen.

Steven and Edith Whitney, 74 Fisher Street, Mr. Whitney stated they have been living there for over 30 years. He was an abutter at the original application hearing at the time in 1997 and the builder said that 4 houses could go there which was not what any abutters at the time wanted. Mr. Whitney explained that the settlement of the original variance was for the one single family home and deed restriction. They are worried about the drainage and the quality of well water, their septic and sight lines. He also stated that there is a lot of land to build on in Medway and they are opposed to this proposed project.

Patrick McSweeney, 72A Fisher Street, the property owner and applicant stated that they are trying to really work with the neighbors. He was not aware of the history of the first meeting that occurred in regards to the 1997 variance. He stated that in regards to the 60-foot line, that they are reasonable but that would limit their opportunity to build and appease other neighbors. They also want to limit their land disturbance as well due to additional permits needed to be obtained for that by the Town.

Andrea McCarthy, 72 Fisher Street, stated that her property would be the most affected by this project. She stated the applicants have spent the last year trying to accommodate the neighbors to have this project happen. She also agreed with the fact that they would be putting in drainage will improve the area very much, if this is approved.

Jeff O'Neill, 78 Fisher Street, he stated that there is great value to uphold the original variance and since meeting with Attorney Kenney it's difficult to see what would be approved, in regards to potential plans. He stated that the options are "wide open" if this is approved.

Attorney Kenney stated that if this is granted, the Board can impose more conditions on the modification. He also stated that the width of the lot is 200 feet wide and a 60 foot no cut zone takes up a lot of room, therefore leaving little room to build the home.

Edith Whitney stated that the McSweeneys' have built a home, a tennis court and a barn, therefore they are concerned about more buildouts on the property.

Mr. McSweeney stated that in regards to the barn that he went through all proper requirements and steps with the Town to build. He stated that there are many things he could do with the lot that they are not intending to do, they simply want to build a smaller home. They are open to restrictions being placed in order to do this project.

Mr. Stumpf stated that he likes that they are intending to improve the drainage on the property and that a decision in favor would affect 9 abutters. Mr. Stumpf stated he would like to go walk the property to get a better feel for the property. He stated he feels that a deed restriction should not be applied lightly as well as should not be overturned lightly.

Mr. Phenegar stated he doesn't feel comfortable not knowing what is going to be built on the lot and would like to see setbacks, etc. He stated that at the last meeting a year ago the property owner was asked if he was aware of the deed restriction when they purchased the property, and it was confirmed that they were aware. He appreciates the work they are doing with the neighbors in trying to make solutions. Ms. Gould is concerned about overturning a deed restriction and she would like to see the property as well.

Mr. McSweeney stated that if he sold the lot, a lot more can be done to the lot; for example, a new owner could put a horse farm on the lot. If the lot is sold much worse could happen there in regards to what could be built or done with the lot.

Mr. Emero stated that he would be interested in going to the property as well, and he looks at a deed restriction differently and that nothing is permanent. He hasn't heard anything to make him vote against the application, but would still like to see the site. Mr. Stumpf asked for further clarification. Mr. Emero clarified that at one point in time a deed restriction made sense, however, it may not make sense later down the line and there are exceptions to everything upon review of current facts.

Mr. White stated that he would like to see more of a positive consensus among the abutters for this proposal, and that although all the abutters want more restrictions, it may be better for them to come to an agreement as to what can happen there. Any new owner could come in and clear the lot and in working with the applicants if they are denied in turn, no one will get what they want.

Attorney Kenney stated that all other provisions of the zoning bylaw will be complied with, also the Board has the opportunity to further control the lot in regards to other structures and further restrictions.

Ms. Saint Andre brought up the comments from the Conservation Commission reminding the applicant of the need for a land disturbance permit if over 20,000 square feet of land is disturbed.

It was decided to continue the hearing to September 16, 2020 for more information and for the Board members to be able to visit the site.

Motion to continue the hearing for 72A Fisher Street to September 16, 2020 at 7:30 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

Gibb Phenegar – Aye

Carol Gould – Aye

New Business

- Discuss potential zoning amendments for Fall Town Meeting

Ms. Saint Andre stated that the Planning and Economic Development Board is not going to propose too many new amendments. The PEDB will present the proposed zoning amendments from May Town meeting which were pulled from the warrant in order to keep the May Town Meeting warrant short due to COVID-19. She then discussed the proposed amendments which include the environmental standards section.

Approval of Minutes

- August 5, 2020

Motion to approve the minutes for August 5, 2020 as presented 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

Gibb Phenegar – Aye

Carol Gould – Aye

Upcoming Meetings

- September 16, 2020
 - Variance application – 110 Holliston St
 - 7 Barber St continuance
 - 72A Fisher St continuance
- October 7, 2020

Adjournment

Motion to adjourn the meeting at 9:19 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

Gibb Phenegar – Aye

Carol Gould – Aye

Respectfully submitted,

Stefany Ohannesian
Administrative Assistant
Community and Economic Development

Edited by Barbara J. Saint Andre
Director, Community and Economic Development

*Attached is the “Chat” section of the Zoom call to be included in the minutes as part of the meeting.

19:51:45 From MMORIN : I'm the home owner, we have zero plans to make it a rental ever
20:33:19 From Laurel Singer : I am an abutter and would like to be heard-
20:36:33 From Pat McSweeney : I would like to comment
20:39:22 From Jeff O : I would also like to comment please after Mr McSweeney
20:40:01 From Rori Stumpf : Yes. Everyone will get a change to talk
20:40:09 From Rori Stumpf : Chance to talk
20:44:26 From Medway Cable Access To Rori Stumpf(privately) : *6
20:44:36 From andrea mccarthy : I would like to say something as well. Thank you
20:45:07 From Jeff O : I am using my phone to speak *9 has been pressed
20:45:17 From Rori Stumpf To Medway Cable Access(privately) : Try *6
20:47:41 From Medway Cable Access To Rori Stumpf(privately) : *9 to raise hand *6 to unmute
20:52:15 From Laurel Singer : The 60 feet does not even come to the back corner of the barn - the closest corner
to our lot
21:11:22 From Jeff O : can you just clarify what is allowed in the zoning regulations?
21:12:21 From Laurel Singer : You may come to our house and walk the land, too