



Town of Medway
ZONING BOARD OF APPEALS
155 Village Street, Medway, MA 02053

Eric Arbeene, Chair
Brian White, Vice Chair
Carol Gould, Clerk
Bridgette Kelly, Member
Rori Stumpf, Member

**DECISION
VARIANCE
106 OAKLAND STREET**

Date Application Filed: August 14, 2017

Applicant(s): Brenda Murrell & Alan Moles (the "Applicants")
106 Oakland Street
Medway, MA 02053

Location of Property: The Project is located on a parcel of land in Medway located at 106 Oakland Street (Assessor Parcel ID: 33-016).

Approval Requested: Variance from Section 6.1 of the Medway Zoning Bylaw to accommodate as deck that is 6.1 feet away from the property line where a 15 foot side setback is required.

Members Participating: Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould (Clerk), Bridgette Kelly, and Rori Stumpf

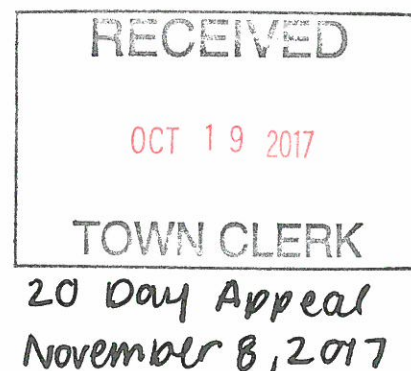
Members Voting: Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould (Clerk), Bridgette Kelly, and Rori Stumpf

Hearing Opened: September 6, 2017

Hearing Closed: October 11, 2017

Date of Decision: October 11, 2017

Decision: Denied



I. PROCEDURAL HISTORY

1. On May 17, 2017, the Applicants filed a Variance application, pursuant to G.L. c. 40A, as amended, and the Medway Zoning Bylaw, to accommodate a deck that was constructed within the 15 foot side setback requirement.
2. Hearings for the application dated May 17, 2017 were held July 5, 2017 and August 2, 2017. The Board requested a certified plot plan for 106 Oakland Street to know the exact variance needed. The Applicants requested to withdraw their application without prejudice at the beginning August 2, 2017 meeting in order to apply for the correct variance at a later date. The request to withdraw the application was approved by the Board unanimously.
3. On August 14, 2017, the Applicants filed a new Variance application, pursuant to G.L. c. 40A, as amended, and the Medway Zoning Bylaw, to accommodate a deck that was constructed 6.1 feet away from the northeastern property line, as shown on the certified plot plan, where the required side setback is 15 feet.
4. Notice of the public hearing was published in the Milford Daily News on August 23, 2017 and August 30, 2017, and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A §11.
5. The public hearing was opened on September 6, 2017, and continued to October 4, 2017 which was continued without testimony until October 11, 2017. The Board closed the public hearing on October 11, 2017.
6. The Property is located in the Agricultural Residential I District. The required front setback is 35 feet and the required side and rear setbacks are 15 feet.
7. The Board notified Town departments, boards and committees of the application dated May 17, 2017. The Board received written comments for the application from the Building Department and Community & Economic Development Department. Those comment, along with all other documents from the application dated May 17, 2017, and prior hearings, were provided to the Board during the new hearing process for the August 14, 2017 application.
8. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section V. of this Decision.

II. TESTIMONY

At the September 6, 2017 meeting, the Board was provided with the information from the previous application, dated May 17, 2017 and withdrawn on August 2, 2017 along with the new application and certified plot plan of 106 Oakland Street.

Due to the discrepancy which required the Applicants to withdraw the previous application and re-apply with the correct variance request, the Applicants requested a waiver of the application fees and legal notice invoice costs. The Board voted unanimously to grant the requested waivers.

The Applicants provided an overview of their variance request. Ms. Murrell explained that the applicants had gone about the process backwards and that the applicants should have requested the variance prior to constructing the deck. Ms. Murrell explained that the Applicants had previously applied to the Board and that the request to withdraw the previous application was at the request, by the Board, to provide a certified plot plan showing the correct location of all buildings and structures on the premises. The Applicants received a building permit and had final approval from the Building Department when they were told that they would need to apply for a variance. However, the Building Inspector that reviewed the application, Rindo Barese, does not act as the Zoning Enforcement Officer, and had not reviewed the structure for compliance with zoning, only compliance with Building Code. After the Zoning Enforcement Officer, Jack Mee, reviewed the permit, he required the Applicants to either relocate or alter the deck to comply with the setbacks or to apply to the Board for a Variance.

The Applicants stated that they would incur substantial hardship if they needed to relocate the deck or alter the deck because there was a large sum of money already invested in the construction of the deck, permits, plot plans, and fees that they have already paid for.

Mr. Stumpf stated that he wished there was at least some record of support from the Applicants' neighbors. Other members of the Board concurred.

Mr. Stumpf stated that if he was looking at this as a new application, there might be some consideration due to the shape of the lot and location of the home, but there was no argument of hardship.

Mr. Arbeene stated that the deck might not have needed to be as large as it was.

The Applicants stated that there is a slight slope downwards in topography towards the fence but not a significant slope. There would be few other locations for the deck with the existing location of the pool, ac condensers, and other structures on the property.

Members of the Board stated there concerns about residents installing or constructing buildings or structures which did not comply with Zoning and then asking for relief after installation or construction rather than prior to. The Board sympathized

The October 4, 2017 hearing was continued without testimony.

At the October 11, 2017, the Applicants reiterated their request for Variance. No additional information was provided.

There were no members of the public in attendance for hearings for the August 14, 2017 application, however, abutters at 1 Main Street attended the hearing for the May 17, 2017 application and expressed their concerns and opposition to the requested Variance.

III. FINDINGS

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A, as amended, and by the Medway Zoning Bylaw. The Board also considered evidence and testimony presented at the public hearings and comments submitted by Town departments, boards and committees as well as residents placed in the public record during the course of the hearings.

A. Variance Criteria

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:*
 - a. There are no circumstances relating to topography or soil conditions relevant to the requested variance. (Voted 5-0)
 - b. The shape of the lot (being a corner lot) does have a bearing on the location of the deck, but the shape of the lot does not negatively impact the potential locations of a similarly size deck or non-rectangular deck from being placed elsewhere on the property meeting the setback requirements. (Voted 4-1; Eric Arbeene opposed.)
2. *Substantial hardship caused by the circumstances from Criteria A.1 when the Zoning Bylaw is literally enforced:*
 - a. The Applicants have not provided evidence of substantial hardship, as defined by MGL 40A Section 10, due to the shape of, or other circumstances of, the subject property. (Voted 5-0)
3. *Why/how the grant of relief would not nullify or derogate from the intent of the Zoning Bylaw:*
 - a. The grant of relief would derogate from the Zoning Bylaw because it would place a structure within the limits of the setback requirements that would be out of character from the surrounding neighborhood. (Voted 3-2; Eric Arbeene and Carol Gould opposed.)
 - b. The grant of relief would derogate from the Zoning Bylaw because the Applicants did not properly apply for a variance in accordance with the Zoning Bylaw and MGL 40A Section 10 prior to construction of the deck. (Voted 5-0)

IV. DENIAL

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board ***DENIES*** the Applicants, Brenda Murrell & Alan Moles, a Variance from Section 6.1 of the Medway Zoning Bylaw to accommodate as deck,

located at 106 Oakland Street, which was constructed 6.1 feet away from the property line where a 15 foot side setback is required.

The Applicants shall work with the Zoning Enforcement Officer and Building Department to take immediate measures to remediate violations of the Zoning Bylaw pertinent to the construction and installation of the deck at the rear of the single family home at 106 Oakland Street.

Any work or use that deviates from this Decision shall be a violation of the *Medway Zoning Bylaw*.

Failure to cooperate in remediating violations of the Zoning Bylaw may result in Enforcement and/or Penalties under Section 3.1 Enforcement, Violations, and Penalties, of the Zoning Bylaw.

V. INDEX OF DOCUMENTS

A. The Variance application for the deck include the following plans and information that were provided to the Board at the time the application was filed:

1. Certified Plot Plan of 106 Oakland Street, prepared by Dunn McKenzie, Inc. of 206 Dedham Street, Norfolk, MA 02056
2. Request for Waiver of Fees




B. During the course of the review, the following materials were submitted to the Board from the previous application dated May 17, 2017:

1. Application for 106 Oakland Street, dated May 17, 2017
2. Building Permit Approval, received May 17, 2017
3. Deck Dimensions, hand drawn, received May 17, 2017
4. Plot Plan 1 from Mortgage Lender, no date, received May 17, 2017
5. Construction Plan of Main Street and Oakland Street showing 106 Oakland Street, no date, received May 17, 2017
6. Three (3) photos of Deck, received May 17, 2017
7. Comments: Building Department, received June 5, 2017
8. Comments: Abutters – 1 Main Street, received June 12, 2017
9. Comments: Community & Economic Development, received July 5, 2017

10. Correspondence: Brenda Murrell to Administrative Assistant, received July 28, 2017
11. Correspondence: Jim Neiva, Dunn McKenzie, Inc., received July 19, 2017
12. Comments: Community & Economic Development, received July 30, 2017
13. Eight (8) additional photos of Deck, received August 2, 2017
14. Request to Withdraw May 17, 2017 Application, received August 2, 2017

VOTE OF THE BOARD

By a vote of 4 to 1, on a motion made by Brian White and seconded by Bridgette Kelly, the Zoning Board of Appeals hereby ***DENIES*** the Applicants, Brenda Murrell & Alan Moles, a ***VARIANCE*** from Section 6.1 of the Medway Zoning Bylaw to accommodate as deck, located at 106 Oakland Street, which was constructed 6.1 feet away from the property line where a 15 foot side setback is required.

Member:	Vote:	Signature:
Eric Arbeene	No	
Brian White	Yes	
Carol Gould	Yes	
Bridgette Kelly	Yes	
Rori Stumpf	Yes	

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms hereinafter set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty days (20) after the filing of this notice in the Office of the Medway Town Clerk.

In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the Office of the Town Clerk and no appeal has been filed within said twenty day period or that any duly filed appeal has been dismissed or denied. The fee for recording or registering shall be paid by the Applicant. A copy of the recorded Decision certified by the Registry, and notification by the Applicant of the recording, shall be furnished to the Board.