

Board Members
Rori Stumpf, Chairman
Brian White, Vice Chair
Gibb Phenegar, Clerk
Christina Oster, Member
Tom Emero, Member
Carol Gould, Associate Member



Medway Town Hall
155 Village Street
Medway, MA 02053
Telephone (508) 321-4890
zoning@townofmedway.org

TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
MODIFICATION TO VARIANCES
119A & 119B MAIN STREET AND 1 & 3 ELM STREET
DENIAL

Applicant(s): Maritime Housing Fund, LLC (the "Applicant")
P.O. Box 591
Bellingham, MA 02019

Location of Property: 119A Main Street, 119B Main Street, 1 Elm Street and 3 Elm Street,
Assessor's Parcel IDs 48-047, 48-047-0001, 48-047-0002, 48-047-0003 in
the CB Zoning District.

Approval Requested: The application is for **modification** of the variances granted December 5,
2018 to construct 2, two-family duplexes which do not have the appearance
of single family homes. The modification is to allow the two duplexes to
have a common driveway from Main Street instead of Elm Street.

Members Participating: Rori Stumpf (Chair), Brian White (Vice Chair), Gibb Phenegar (Clerk),
Christina Oster (Member), Tom Emero (Member), Brian Cowan (Associate
Member)

Members Voting: Rori Stumpf (Chair), Brian White (Vice Chair), Gibb Phenegar (Clerk),
Christina Oster (Member), Tom Emero (Member)

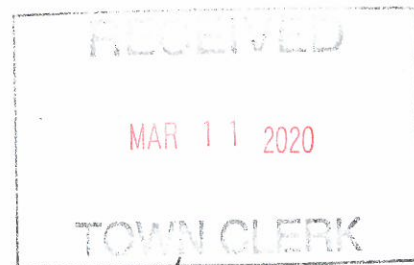
Date Application Filed: February 5, 2020

Hearing Opened: March 4, 2020

Hearing Closed: March 4, 2020

Date of Decision: March 4, 2020

Decision: DENIED



*30 day appeal
March 31, 2020*

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Decision: DENIED

I. PROCEDURAL HISTORY

1. On February 5, 2020, the Applicant filed an application for a modification to the Board's decision of December 5, 2018 to construct 2, two-family duplexes which do not have the appearance of single family homes. The decision is recorded at the Norfolk County Registry of Deeds, Book 36556, Page 531. Condition 2 of the variance granted on December 5, 2018 provides: "2. Access to the two, two-family dwellings to be constructed on Lot 1 and Lot 2 shall be by a common driveway to be constructed from Elm Street across remaining land of the applicant (Lot 4 on the ZBA Plan, now Assessor's Parcel 48-047-0003), not from Main Street as shown on the ZBA Plan." The requested modification is to allow the two duplexes to have a common driveway from Main Street instead of Elm Street.
2. Notice of the public hearing was published in the Milford Daily News on February 19, 2020, and February 26, 2020, and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A §11.
3. The public hearing was opened March 4, 2020, and closed the same evening.
4. The Property is currently located in the Central Business (CB) Zoning District. The property at 123 Main Street, including Lots 1 and 2, was split-zoned for many years, with the frontage located along Elm and Main Street in the Central Business District and the rear portion of the lots located in the Agricultural Residential II District (AR-II). The rear portion of the property was rezoned from AR-II to CB on May 8, 2017. However, an ANR plan for the property was endorsed by the Planning and Economic Development Board on April 11, 2017; therefore, the use provisions of the Zoning Bylaw that were in effect when the ANR plan was endorsed were "frozen" for three years from the date of endorsement of the ANR plan. Accordingly, the rear portion of the property, where the Applicant proposes the two duplexes, can still be used in accordance with the Table 1 uses for the AR-II district as in effect on April 11, 2017.
5. The AR-II district in effect on April 11, 2017 allowed a "two family dwelling, provided that the exterior of the dwelling has the appearance of a single family dwelling". Although the ANR froze the use provisions, it does not protect the property from current dimensional requirements. In the CB zone, the front setback requirement is 10 feet, the side setback is 10 feet or 25 if abutting a residential zone, and rear setback is 25 feet. The minimum lot area requirement is 10,000 sq. ft. and there is no minimum frontage requirement. According to the plan submitted with the application, entitled "Proposed Structure Location Plan of Land in Medway, MA", dated May 23, 2018, (the "ZBA Plan") Lot 1 has 48,253 square feet of upland, and Lot 2 has 43,747 square feet of upland, each sufficient for a two-family home under the AR-II requirements.
6. The Applicant was represented by Stephen Kenney, esquire of Kenney & Kenney, 181 Village Street, Medway, MA.
7. The Board notified Town departments, boards and committees of this 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

Attorney Steve Kenney, the applicant's representative was present, as well as Dan Merrikin of Legacy Engineering, the applicant's engineer. Mr. Kenney explained that the original decision from December 5, 2018 required access from Elm Street, not Main Street, and that the applicant is requesting modification of the variance to allow access from Main Street. The applicant was required to file a Notice of Intent with the Conservation Commission for the proposed driveway from Elm Street, which will require work within the Commission's 25 foot "no touch" zone, and alteration of the wetlands resource area. The Commission members indicated at the hearing on the Notice of Intent that the proposed impacts to the wetlands along Elm Street could be avoided by accessing the site from Main Street, which would be preferable from the Commission's point of view. Attorney Kenney also reviewed for the Board the criteria for a variance, and the reasons supporting the applicant's modification request.

Mr. Merrikin went over the plan that was originally submitted to the Board in May 23, 2018. He then showed the plan that was submitted in December 2019 to Conservation, which depicts the driveway from Elm Street, the utilities coming in off Main Street, and the location of the stormwater management systems. He then showed the plan from March of 2020, depicting the proposed driveway from Main Street, including the turnaround for the Fire Department per its request. Mr. Merrikin explained that the Conservation Commission did not want wetland disruption, and coming in on Main Street would eliminate any wetland disruption. He stated the opinion that there is not enough area along the Mains Street frontage to use it for commercial use.

Andy Rodenhiser, Chair of the Planning and Economic Development Board (PEDB), explained that the requested driveway really could be considered a subdivision road. Mr. Rodenhiser said the road should be built to the subdivision standards due to the amount of dwelling units (five) proposed to be served from the "common" driveway. The PEDB does not want the potential commercial use of the lot along the Main Street frontage to be interrupted by the proposed driveway. The PEDB also submitted written comments, emphasizing that it had opposed the original variance request, and that this proposal is not the best use of this commercially zoned property, which is located at the gateway to the Town's central business district and would preclude any future commercial development of the site. Further, the comments stated that the PEDB views the proposed common driveway from Main Street as the equivalent of a road, and an attempt to circumvent the Subdivision Control Law requirements.

Bridger Graziano, Conservation Agent, and David Travalini, Chair of the Conservation Commission, were also present. Mr. Travalini expressed his opinion as one member of the Commission that the access from Elm Street would not meet the Commission requirements, due to having to cross a wetland. Ms. Graziano explained that the wetlands on the site have been delineated 4 separate times, and that there is an intermittent flow along the Elm Street frontage that is not depicted on the plans submitted to the Board. The applicant is proposing to do work within the 0-25 foot "no touch" buffer zone of the Town Wetlands Protection bylaw, but the applicant has not requested a waiver to go into the no touch buffer zone, nor have the criteria been met to potentially grant the waiver. She stated that if there is a road there it would create a dam effect and potentially cause flooding on Elm Street. The Commission also submitted written comments to the Board opposing the Elm Street access. Ms. Graziano stated that the Commission would support commercial development along Main Street if proposed, but they are concerned with the wetlands resource areas. Mr. Rodenhiser stated that if a commercial development came forward the PEDB would most likely be in favor as well. He also stated that the applicant's proposal is inconsistent with the Town's Master Plan.

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 hearing.

The Board found that the proposed modification did not meet the criteria for the grant of a variance. In particular, the Board found that desirable relief could **not** be granted without nullifying or substantially derogating from the intent or purpose of the by-law. The Town has zoned the area abutting Main Street for commercial use, and this commercial zoning has been in effect for a number of years, including in 2017 when the ANR plan was filed. The land along Main Street is an important commercial corridor, and needs to be preserved for commercial use. Placing the driveway access to the interior dwelling units from the Main Street frontage would preclude any commercial use of the lots along Main Street, and is contrary to the Town's Master Plan. This is one of the reasons the Board had required access from Elm Street in its original decision, and the applicant did not sustain its burden of proving that the requested modification met all of the criteria necessary for a variance.

The Board members are respectful of the Commission's concerns, but that those concerns need to be addressed by the Commission during its hearing process.

IV. VOTE

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board **DENIED** the Applicant, Maritime Housing Fund, LLC, a Modification of the variances granted on December 5, 2018 to allow the two duplexes to share a common driveway entering on Main Street and not Elm Street.

V. INDEX OF DOCUMENTS

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

1. "The Corner of Elm & Main Medway, MA Site Plan", Sheets C-0 through C-6, dated December 10, 2019 prepared for Thomas Steeves, 15 Chase Street, Bellingham, MA 02019, prepared by Legacy Engineering, LLC, 730 Main Street Suite 2C, Millis, MA 02054.
2. "Plan of Land in Medway, MA" dated March 5, 2018, revised March 27, 2018, prepared for Maritime Housing Fund, LLC, prepared by Colonial Engineering, Inc, 11 Awl Street Medway, MA.
3. "Proposed Structure Location Plan of Land in Medway, MA" dated May 23, 2018, prepared for Maritime Housing Fund, LLC, prepared by Colonial Engineering, Inc., 11 Awl Street, Medway, MA

The following additional materials were filed by the applicant:

4. "The Corner of Elm & Main Layout Plan of Land in Medway" revised February 10, 2020, Owner: Thomas Steeves, prepared by Legacy Engineering, LLC, 730 Main Street Suite 2C, Millis, MA 02054, Sheet C-2.
5. "Progress Print" Updates per discussion with Fire Dept. revised March 3, 2020, Owner: Thomas Steeves, prepared by Legacy Engineering, LLC, 730 Main Street Suite 2C, Millis, MA 02053, Sheet C-2.

B. During the course of the review, the following materials were submitted to the Board by Town departments and boards:

1. Email from Joanne Russo, Medway Treasurer, dated February 11, 2020
2. Email from Michael Fasolino, Medway Deputy Fire Chief, dated February 13, 2020
3. Email from Sergeant Jeffrey Watson, Medway Safety Officer, dated February 27, 2020
4. Email from Bridget Graziano, Medway Conservation Agent, dated March 3, 2020
5. Letter from Susy Affleck-Childs, Medway Planning and Economic Development Coordinator, dated March 4, 2020

VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Brian White and seconded by Gibb Phenegar, the Zoning Board of Appeals hereby ***DENIED*** the Applicant, Maritime Housing Fund, LLC a Modification of the variances granted on December 5, 2018 to allow the two duplexes to share a common driveway entering on Main Street and not Elm Street.

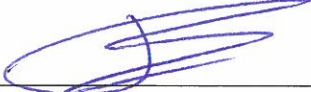
Member:	Vote:	Signature:
Rori Stumpf	YES	_____
Brian White	YES	_____
Gibb Phenegar	YES	_____
Christina Oster	YES	_____
Tom Emero	YES	_____

The Board and the Applicant have complied with all statutory requirements. 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 General Laws chapter 40A, section 15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, chapter 40A, section 17, which shall be filed within twenty days after the filing of this decision in the office of the Medway Town Clerk.

VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Brian White and seconded by Gibb Phenegar, the Zoning Board of Appeals hereby ***DENIED*** the Applicant, Maritime Housing Fund, LLC a Modification of the variances granted on December 5, 2018 to allow the two duplexes to share a common driveway entering on Main Street and not Elm Street.

Member:	Vote:	Signature:
Rori Stumpf	YES	_____
Brian White	YES	_____
Gibb Phenegar	YES	_____
Christina Oster	YES	_____
Tom Emero	YES	_____ 

The Board and the Applicant have complied with all statutory requirements. 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 General Laws chapter 40A, section 15.

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