

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
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Medway, MA 02053
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
MODIFICATION TO VARIANCE & SPECIAL PERMIT
14 & 16R FRANKLIN STREET

Applicant(s): Lynne Tatevosian (the "Applicant")
2 Franklin Creek Lane
Medway, MA 02053

Location of Property: 14 and 16R Franklin Street (Assessor Parcel IDs: 57-078 (formerly 57-078 and 57-079)).

Approval Requested: Modification of the special permit and variance approved on August 7, 2019, for a two family dwelling under Section 5.4 Table 1.C of the Zoning Bylaw, and Section 6.1 of the Zoning Bylaw; the requested modification is to change the location of the dwelling, modify the building plans, and allow tree removal within setbacks.

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

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

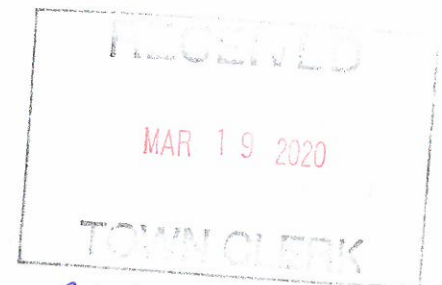
Date Application Filed: December 23, 2019

Hearing Opened: January 15, 2020

Hearing Closed: March 18, 2020

Date of Decision: March 18, 2020

Decision: GRANTED



20 day appeal
April 8, 2020

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I. PROCEDURAL HISTORY

1. On December 23, 2019, the Applicant's representative, Dan Merrikin of Legacy Engineering, filed an application for a modification to the Board's decision of August 7, 2019, which had approved a special permit under Section 5.4, Table 1.C of the Zoning Bylaw to construct a two-family dwelling that will have the exterior appearance of a single family dwelling, and a variance from Section 6.1 Table 2 of the Zoning Bylaw to allow for construction of the two-family dwelling on a lot with 89.31 feet of frontage where 150 feet is required. The requested modifications are to change the location of the dwelling, modify the building plans, and allow tree removal within the setbacks.
2. A previous variance from the minimum frontage requirements was granted for this property on June 20, 2018, to allow construction of a single family home. That variance was extended to December 20, 2019.
3. Notice of the public hearing was published in the Milford Daily News on January 1, 2020, and January 8, 2020 and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A §11.
4. The public hearing was opened on January 15, 2020. The hearing was continued to February 19, 2020, Christina Oster and Carol Gould each filed a certificate under the "Mullin Rule", G.L. c. 39, §23D, that she had reviewed the proceedings of the January 15, 2020 public hearing session prior to the Board's meeting on February 19, 2020. At the February 19, 2020 meeting, no evidence was taken by the Board as the applicant requested that the hearing be continued. The hearing was then continued again until March 4, 2020. The hearing was continued to March 18, 2020, at which time the hearing was closed.
5. The Property is located in the Agricultural Residential II District. The front setback requirement is 35 feet and the side and rear setback requirements are 15 feet. The minimum lot area requirement is 22,500 sq. ft. and the minimum frontage requirement is 150 feet.
6. The Board notified Town departments, boards and committees of this application.
7. 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

On January 14, 2020 the Applicant's engineer Dan Merrikin of Legacy Engineering was present to discuss the modification request. Mr. Stumpf stated he'd like to start by discussing the tree removal violation on the property. Condition no. 7 of the Board's decision prohibited removal of trees of 18" or greater diameter measured four feet from the ground within the front, side, and rear yard setbacks. Mr. Stumpf explained that the Board wanted a buffer zone and that is why

the condition was imposed. Mr. Merrikin explained the cease and desist order from the Building Commissioner, which determined that 6 trees were removed that the Building Commissioner believed were in direct violation of the condition, with photographs. Mr. Merrikin expressed the opinion that only three trees were removed that were in violation of the condition. There was discussion around whether there were 6 or 3 trees that were removed in violation of the ZBA decision.

Mr. Merrikin explained that the applicant acknowledges that the tree removal was wrong and intends to have an extensive landscaping plan to present that is forthcoming. He also explained that the applicant spoke with her direct abutters, and since the abutters did not have any issue with the trees being removed, she thought it would be acceptable to remove the trees within the setback although it directly violated a condition in the decision. Mr. Merrikin explained the current setback lines and stated there is opportunity to do some replanting. The applicant will need to go before the Conservation Commission for work in the buffer zone to wetlands that are on the adjacent property, as well as filing a land disturbance permit.

Andy Rodenhiser, chairman of the Medway Planning and Economic Development Board explained that there are rules and regulations for subdivisions and site plan that have tree requirements. He also explained that typically a site plan is provided with an inventory of trees on the property prior to a decision.

Mr. Phenegar inquired about why work continued when there was an active Cease and Desist in place from the Building Department. Ms. Tatevosian, the applicant, made a statement that she did not receive the cease and desist via email or by mail.

Mr. Merrikin then presented the revised architectural plans and explained the differences from what was previously approved by the Board. There will be a 48 square foot increase to the front of the home with an office on the first floor and bedroom on the second floor. There will no longer be a deck off the back of the home, which was on the previous plan. The applicant would like the foot print and elevation of the building as shown on the new plans to replace the total living space condition in the previously approved decision. Mr. Merrikin also stated that there will be stormwater management on the property, which is on the plan newly submitted to the Board. Franklin Street is a scenic road and they would like to preserve a small rock wall to the front of the property. Mr. Merrikin explained that he will need to go to Conservation Commission regarding the wetlands and stormwater management.

Mr. Merrikin asked for a continuation to February 19, 2020, due to not wanting the Board to approve a plan that may change based on meetings with other Town boards and commissions.

On February 19, 2020, no evidence was taken as the applicant's engineer requested a continuation in writing to the Board; the hearing was continued to March 4, 2020.

On March 4, 2020, Mr. Merrikin presented and explained the new plan that was submitted on March 4, 2020 that included drainage and stormwater management, which includes 3 systems on the property. The plan has added plantings that are proposed around the property including trees (deciduous and Evergreen trees) and grass areas. The house has been shifted up about 20 feet

from the rear of the lot and about 50 sq. feet was added to the proposed home.

Mr. Stumpf brought up the letter from the Conservation Commission (herein “Commission”) dated January 13, 2020 and if the applicant would be okay with the conditions proposed in that letter. Mr. Merrikin briefly went over the conditions in that letter. Mr. Merrikin explained they plan to submit an application for a Notice of Intent and land disturbance permit to the Commission and plan to attend the March 26, 2020 Commission meeting. Andy Rodenhiser, Chairman of the Planning and Economic Development Board was present and suggested that the Board use the tree calculation that the Planning and Economic Development Board uses in regards to their applications. Mr. Stumpf explained his decision weighs heavily on the restoration plan. Mr. Merrikin explained there are 16 proposed trees on the plan. Bridget Graziano, Medway Conservation Agent explained that the Commission agreed with the Board about the trees that were taken down in violation.

Mr. Stumpf stated that he did not feel comfortable reaching a decision without the applicant working with the Commission. Mr. Merrikin asked that the Board share with them what they are requesting based off the proposed plan. Mr. Merrikin explained that parts of the land are going to be, and what was cleared already prior to the work done in regards to the tree removal. Mr. Emero inquired if the Commission can make a recommendation to the Board regarding the trees. Mr. White stated that they based the original conditions on recommendations from other Board’s opinions as being experts in this area. Mr. White explained he would like to either take the suggestion from the Planning Board regarding tree calculation, or a letter from the Commission with their recommendations. It was decided that they would like to receive recommendations from Ms. Graziano and continue the hearing to March 18, 2020.

On March 18, 2020, the applicant’s engineer summarized discussions that he had had with the Town’s Conservation Agent. He discussed the latest plan that he submitted earlier that day, showing the proposed plantings (an additional 21 trees), which he stated had been reviewed by the Conservation Agent. The Board members collectively discussed the proposed plan and concluded that this has substantially satisfied all concerns of the Board. Ms. Graziano confirmed that the plan was acceptable.

The Board then discussed the potential conditions. Ms. Graziano had submitted a proposed condition to address the plantings, which was reviewed and accepted by the Board. Mr. Merrikin’s proposed conditions were also reviewed by Mr. Merrikin and the Board.

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 and comments submitted by residents placed in the public record during the course of the hearings.

The Board incorporates its findings from the original decision and finds that the proposed modification meets the requirements for modification of the special permit and variance.

IV. CONDITIONS OF APPROVAL

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board **GRANTS** the Applicant, Lynne Tatevosian, a Modification of the variance and special permit granted on August 7, 2019, subject to compliance with the plans submitted, including: 1. “14 Franklin Street Existing Conditions & Erosion Control Plan of Land in Medway” dated March 4, 2020 Owner: Lynne Tatevosian, prepared by Legacy Engineering 730 Main Street Suite 2C Millis, MA 02054 (3 sheets); 2. “Progress Print 2020-03-18 Sketch Plan” for 14 Franklin Street Plan of Land dated March 4, 2020, Owner and Applicant: Lynne Tatevosian, prepared by Legacy Engineering, Inc.; and subject to the conditions set forth in this Decision.

All provisions of the original decision continue in effect except as modified by this Decision. Conditions 1, 2, 3, and 4 in the original decision shall continue in full force and effect unless modified by this Decision. Conditions 5, 6 and 7 of the original decision are hereby stricken, and replaced with the following conditions:

5. The site shall be constructed in substantial compliance with the plan prepared by Legacy Engineering LLC entitled “14 Franklin Street Plan of Land in Medway, MA”, dated March 4, 2020 (the “Site Plan”) (three sheets). Notwithstanding the provisions of Condition 1, it is recognized that the Conservation Commission may require certain changes to the Site Plan as discussed below. Such changes do not require further approval from the Board as discussed below.

6. Notwithstanding the provisions of Condition 1, it is recognized that the Conservation Commission may require changes to the proposed plantings within the 100-foot wetland buffer zone with respect to the type, size, and/or quantity of proposed plantings, or to the stormwater management system. Such changes do not require further approval by the Board, nor do the installation of additional plantings on the property beyond what is shown on the Site Plan and otherwise required herein.

7. In addition to the proposed plantings outside of the 100-foot wetland buffer zone shown on the Plan, the applicant shall plant approximately 21 (deciduous) saplings (6’-8’) within the building setbacks area as depicted on the plans titled, “14 Franklin Street Proposed Plan of Land in Medway, MA” by Legacy Engineering, dated March 18, 2020 as Progress Print. The saplings shall be planted 10’-13’ on center and shall be native species (not cultivars) to Massachusetts. The applicant shall submit a final planting plan depicting the location of the plantings and the species proposed for planting. This plan shall be submitted to Conservation and Building Departments for review and approval, prior to the issuance of a Building Permit. The Conservation Agent shall be authorized to approve the planting of some of these 21 saplings within the interior of the site.

8. The proposed two-family dwelling shall have substantially the same footprint and location as shown on the Site Plan. There is no limitation on the amount of interior living space of the structure.

V. INDEX OF DOCUMENTS

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

1. “Plan of Land in Medway, MA” dated November 8, 2019, Owner: Lynne Tatevosian, prepared by Colonial Engineering, Inc., 11 Awl Street, Medway, MA 02053
2. “Tatevosian Residence” elevation plans dated October 2019, prepared by Shane Structures, P.O. Box 81, Hopkinton, MA 01748 (herein the “Building Plans”)

Additional materials were submitted by the applicant during the course of the public hearing:

3. Email from Lynne Tatevosian dated January 8, 2020, with three attached letters of support from Joseph Mele (12 Franklin Street), Paul Santosuosso (2 Franklin Creek Lane), and Joseph and Beth Tunney (16 Franklin Street)
4. “14 Franklin Street Site Plan of Land” dated January 15, 2020 Owner: Lynne Tatevosian, prepared by Legacy Engineering, 730 Main Street Suite 2C, Millis, MA 02054
4. Email from Dan Merrikin, Legacy Engineering requesting to continue hearing to March 4, 2020 received on February 15, 2020.
5. “14 Franklin Street Existing Conditions & Erosion Control Plan of Land in Medway” dated March 4, 2020 Owner: Lynne Tatevosian, prepared by Legacy Engineering 730 Main Street Suite 2C Millis, MA 02054.
6. “Re:14-16R Franklin Street Modification” letter from Dan Merrikin of Legacy Engineering dated March 17, 2020 with letter enclosed from Urban Forestry Solutions.
7. Email dated March 18, 2020 from Dan Merrikin, Legacy Engineering, Inc. including “2020-03-18 Draft Conditions” attachment
8. “Progress Print 2020-03-18 Sketch Plan” for 14 Franklin Street Plan of Land dated March 4, 2020, Owner and Applicant: Lynne Tatevosian, prepared by Legacy Engineering, Inc.

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

1. Comments from Jack Mee, Medway Building Commissioner, on December 24, 2019
2. Email from Joanne Russo, Medway Treasurer, on December 26, 2019.
3. Email from Susy Affleck-Childs, Planning and Economic Development Coordinator, on December 31, 2019.
4. Letter from Planning and Economic Development Board dated January 15, 2020
5. Email letter from Bridget Graziano, Medway Conservation Agent, dated January 13, 2020
6. Email letter from Bridget Graziano, Medway Conservation Agent, dated March 17, 2020
7. Email from Bridget Graziano, Medway Conservation Agent, dated March 18, 2020
8. Conservation Commission Enforcement Order

C. The following additional materials were received:

1. Cease and Desist order from Jack Mee, dated November 26, 2019
2. Photographs of trees cut on site and tree stumps from Building Department
3. Aerial photographs of the site
4. Email from Jill Rogers on January 15, 2020.

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VI. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Brian White and seconded by Gibb Phenegar, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Lynne Tatevosian, a Modification of the variance and special permit granted on August 7, 2019, subject to the Plans submitted and subject to the conditions set forth in this Decision.

Member:	Vote:	Signature:
Rori Stumpf	Yes	_____
Brian White	Yes	_____
Gibb Phenegar	Yes	_____
Tom Emero	Yes	_____


The Board and the Applicant have complied with all statutory requirements for the issuance of this variance and special permit 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 Massachusetts General Laws 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 after the filing of this notice in the office of the Medway Town Clerk.

In accordance with General Laws 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, 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, in the case of a variance, 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; and in the case of a special permit, that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. 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.

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