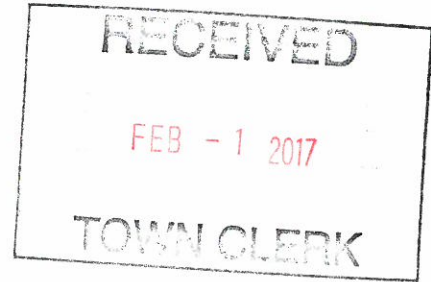


COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

IN THE MATTER OF:

**Broken Tree LLC
c/o Maria Varrichione
Petitioner**



OPINION OF THE BOARD

*20 day Appeal
Feb. 20, 2017*

**REQUEST FOR SPECIAL PERMITS
REQUEST FOR VARIANCE
249 Village Street
Medway, MA 02053**

Hearing: January 18, 2017

Decision: January 18, 2017

MEMBERS PRESENT:

**David Cole, Chairman
Carol Gould, Clerk
Eric Arbeene, Member
William Kennedy, Member
Rori Stumpf, Associate Member**

THE WRITTEN OPINION WAS DELIVERED ON FEBRUARY 1, 2017

OPINION OF THE BOARD

This is a proceeding of the Zoning Board of Appeals of the Town of Medway, MA (hereinafter the Board) acting under the Zoning Bylaw of the Town of Medway, MA, 02053, and Massachusetts General Laws, Chapter 40A, as amended, in which the petitioner, Broken Tree LLC c/o Maria Varrichione, seeks Special Permits under Section 5.4 Table 1 and Section 5.5 to allow construction of a two-family dwelling on a pre-existing non-conforming lot; and a Variance from Section 6.1 Table 2 to allow relief from the minimum lot size and frontage requirements, with respect to the property located at 249 Village Street.

Hearing

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on January 1, 2016 and January 11, 2016. Notice also was sent to all “parties of interest” and posted in the Town Hall as required by Massachusetts General Laws, Chapter 40A Section 11.

The following documents were received by the Board and included as part of the Application and file for this case:

1. Application received and stamped by the Town Clerk on December 28, 2016
2. Certified Plot Plan of 249 Village Street, dated October 26, 2016, prepared by Colonial Engineering Inc., of 11 Awl Street, Medway, MA
3. 249 Village Street Proposed Front Elevations and Floor Plan, received December 23, 2016
4. Correspondence with Bridget Graziano, Conservation Agent, most recently dated December 29, 2016
5. 249 Village Street Property Photos, received January 17, 2017
6. 249 Village Street Proposed Front, Rear, and Side Elevations, prepared by J. P. Rodgers of 55 Melanie Lane, Wrentham, MA, received January 17, 2017
7. Staff Report, dated January 17, 2017

The Public Hearing opened and closed on January 18, 2017, and all deliberations were conducted and the Decision rendered on the same day. The Medway Zoning Board of Appeals members present during the public hearing were David Cole, Chairman; Carol Gould, Clerk; Eric Arbeene, Member; William Kennedy, Member; and Rori Stumpf, Associate Member. The Board members voting were David Cole, Chairman; Carol Gould, Clerk; Eric Arbeene, Member; William Kennedy, Member; and Rori Stumpf, Associate Member.

Hearing Summary

The Applicant, Broken Tree LLC, c/o Maria Varrichione, who is also the manager of Broken Tree LLC, as well as Ms. Varrichione's son, Anthony Varrichione, appeared before the Board to discuss the request for Special Permits under Section 5.4 Table 1 and Section 5.5 to allow construction of a two-family dwelling on a pre-existing non-conforming lot; and a Variance from Section 6.1 Table 2 to allow relief from the minimum lot size and frontage requirements, with respect to the property located at 249 Village Street.

Ms. Varrichione explained that they would like to convert the single family into a two family, primarily because Anthony Varrichione would be living in the smaller side [unit] and it would be more economically feasible as a two-family. Ms. Varrichione would not be changing the elevations or appearance, as far as the looks on the outside prior to the house being burnt down.

Mr. Stumpf stated within the hearing that he was previously a neighbor of the Varrichione's and Maria Varrichione was the seller's agent on the house that he bought, but he had no financial interest or relationship with the family.

Chairman Cole stated that he believed Ms. Varrichione was "asking for a lot"—to approve a two-family house on a lot of only 15,000 square feet which is substantially less than required for even a single family house in that district [Village Residential, VR]. A single family house needs 22,500 square feet and a two-family needs 30,000. The lot only has 100 feet of frontage as opposed to the 150 foot minimum specified.

Ms. Varrichione stated that she wasn't changing the footprint, square footage, or number of bedrooms.

Chairman Cole also stated that he was concerned with the state of there being a pre-existing single family house with two front doors. There has been a problem with unauthorized single family to two-family conversions. Chairman Cole asked if the house was listed as a single family when it was purchased; Ms. Varrichione answered that it was. Ms. Varrichione stated that the house had never been officially converted to a two-family, but [the doors on the house] had been like that for "a long time." Chairman Cole presumed that it had not been that way for so long that it pre-dated zoning. Ms. Varrichione stated that it was clearly an addition because there were two separate basements.

Ms. Varrichione stated that the house was not one hundred percent burnt down but it was substantially damaged.

Ms. Varrichione stated that there were other two-families on the street, and an identical style on the right and either a cape-style or ranch-style house on the left that was newly renovated. Anthony Varrichione stated that the house was abutting the [Salmon Village] assisted living facility was going in; and across the street were some multi-family units.

Ms. Gould asked if Ms. Varrichione was putting in a new deck. Ms. Varrichione answered that the structure underneath was intact but the boards would need to be replaced.

Chairman Cole asked how much parking was available. Ms. Varrichione answered that there was one car parking under [the deck], a one car garage, and the un-covered part could probably fit four cars, three comfortably. Chairman Cole stated that there was a problem because regulations state that for a two-family dwelling, the minimum lot area is 30,000 square feet and no parking shall be within 10 feet of an adjoining lot line and it looks like some of the parking would be within 10 feet of the lot line. Ms. Varrichione stated that she would not be putting in the parking, it is already there. Chairman Cole stated that Ms. Varrichione was asking to convert the house legally to a two-family, implying that Ms. Varrichione would need to conform to the parking regulation for a two-family within Section 6.1.

Ms. Varrichione stated that the house was 26 feet by 38 feet with the addition of 17 feet by 16 feet. Chairman Cole noted that the house conformed to all setback requirements.

Chairman Cole asked why the applicant chose to apply for a two-family house instead of an accessory family dwelling unit [with a single family house instead]. Ms. Varrichione stated that Anthony Varrichione would like to rent out the other unit.

Chairman Cole stated that he was aware of the wetlands but did not believe they were a problem in this instance.

Ms. Varrichione stated that a benefit for the Town was that with the two bedroom and the studio, it would be less likely to have the same type of families and less likely to add any children to the schools. The tax base would be a little higher because the two-family would be assessed a little higher than a single family.

Mr. Stumpf stated that he would like to understand what the substantial hardship was; it seemed in this case the property was purchased recently. Ms. Varrichione stated that the property was purchased recently with the intent to "rehab" it and resell it, but then as Ms. Varrichione and Anthony Varrichione began looking into it, Ms. Varrichione said that the house would be a good starter home for Anthony Varrichione and that a way to afford it would be to convert the house to a two-family in order to help with the finances.

Kathy Babineau of 251 Village Street stated that she was concerned that the house currently had one kitchen that would be converted with two kitchens, and a one and a half bath going to two. She was concerned because of the elevation of the surrounding properties. Ms. Babineau stated that her land was lower and had more wetlands. She was also concerned with the size of the parking [area] and the narrow driveway. Chairman Cole asked if Ms. Babineau was concerned with drainage; Ms. Babineau replied that she was. Chairman Cole stated that the applicant was building on the existing footprint. Ms. Mercandetti stated there had been percolation testing but there hadn't been anything

filed with the Board of Health. Anything septic related would be permitted through the Board of Health; should the applicant plan to excavate any soils, they would potentially need to file with the Conservation Commission. Ms. Mercandetti stated that they applicant was most likely not done with the permitting process. Ms. Varrichione stated that regardless, the septic would be addressed, whether or not a single or two-family. Ms. Varrichione stated that the size of the septic wouldn't change for a single or two-family as it was the same number of bedrooms.

Chairman Cole stated that there were two bedrooms in one unit and one bedroom in the other unit. The applicant has a one car garage. Ms. Varrichione also noted the car port. Chairman Cole stated that at least one car would be parked in the driveway. Chairman Cole was concerned that the driveway only fits one car wide. Ms. Varrichione stated that if someone was renting the two bedroom unit, they would have tandem parking in the garage and under the deck; Anthony Varrichione would park at the very tip of the driveway allowing the renters to drive out.

Mr. Kennedy re-iterated that in [Section 6.1] Table 2 of the Medway Zoning Bylaw, no parking shall be permitted within 10 feet of an adjoining lot line for a two-family. Ms. Leahy noted that the footnote to the table is part of the requested variance under 6.1 Table 2; since the footnote is part of the table, it could be included in the findings or conditions within the Decision. Chairman Cole stated that the hardship would be of the existing layout of the driveway.

Chairman Cole stated that his fundamental problem with the application was that if the Board granted the application for a two-family on 15,000 square feet with 100 feet of frontage, Chairman Cole would find it very difficult to turn down an application for a two-family in VR in the future. Chairman Cole believed most of the lots in VR were conforming to minimum lot size and frontage; Ms. Leahy stated that most of the lots did not meet the minimum lot size and frontage requirements.

Ms. Varrichione stated that in most conversions to a two-family, people would be adding more bedrooms or people living there, but that wasn't the case in this application. Mr. Stumpf stated that there were ways to build two-families and multi-families in the current Bylaw and he was having a hard time deciding where "the bar is crossed." Mr. Stumpf asked what the compelling reason was to allow the two-family.

Ms. Varrichione stated that there weren't many rentals in Town, especially for young people. Chairman Cole stated that he understood the validity of Ms. Varrichione's argument from a social policy point of view, unfortunately the function of the Board is to administer the Medway Zoning Bylaw.

Mr. Arbeene stated that the case the applicant was making was an economic hardship.

During deliberations, Mr. Stumpf stated that he was not sure the application had a "hardship." He didn't see a compelling reason to comfortably use going forward with other applicants to approve this, even though the Town is in need of more affordable housing. Mr. Stumpf's fear was that this

[approval] could be used to circumvent the Bylaw widely and easily. He, regrettably, was leaning not in favor of the application.

Mr. Arbeene stated that he generally agreed with Mr. Stumpf and did not see the hardship. Mr. Arbeene asked Ms. Mercandetti if this [approval] would set a precedent. Ms. Mercandetti stated that the variance is three-part legal test that needs to be met. The special permit has specific criteria that needs to be met. However, the variance is contingent upon the two-family use. Chairman Cole stated that there was no precedent to approve other applications, but usually there is some consistency.

Mr. Kennedy stated that he had no issue with the special permit, but he had an issue with the variance. Mr. Kennedy stated that it seemed like an investment property.

Ms. Gould stated that there seemed to be no hardship other than Ms. Varrichione wanting a place for her son to live. Ms. Gould stated that it seemed like a "flip."

Chairman Cole stated that the apparent understanding of variances was that the hardship needs to be in proportion with the variance. The application would be going from 30,000 square foot minimum lot size and 150 foot minimum frontage to 15,000 square feet and 100 feet of frontage for a two-family is pretty drastic, particularly on septic.

Chairman Cole had less of an issue with the parking, as it was an existing driveway, and there would be a substantial hardship in ripping up the driveway and moving it somewhere else.

Ms. Mercandetti clarified that there are two special permits before the Board, one for the use as a two-family, and one to rebuild the non-conforming structure.

Chairman Cole stated that he had no problem with the applicant rebuilding on the existing structure.

Findings:

By a vote of 5-0-0:

1. The Board finds that the applicant failed to demonstrate a hardship sufficient to justify a variance from the 30,000 square feet minimum lot size and the 150 foot minimum frontage required for a two-family conversion to 15,000 square feet and 100 feet of frontage present on the subject lot.
2. The Board finds that the proposed rebuilding of the structure on the footprint of the pre-existing building would not increase the nonconforming nature of the structure.
3. The Board finds find that grant of a special permit for reconstruction of the building on the existing footprint would not be inconsistent with any of the criteria for issuance of a Special Permit set forth in Section 3.4 of the Zoning Bylaw.
4. The Board finds that the pre-existing nonconforming structure was legally always a single family house, that use of a reconstructed dwelling as a two family house would represent a substantial increase in the extent of nonconformity and that the applicant failed to demonstrate sufficient grounds for such increase in nonconformity.

Relief Granted:

By a vote of 5-0-0:

The Board hereby denies the applicant, Broken Tree LLC c/o Maria Varrichione, any relief for the request of Variance; and

The Board grants the applicant, Broken Tree LLC c/o Maria Varrichione, a Special Permit for reconstruction on the footprint of the pre-existing structure; and

The Board denies the applicant, Broken Tree LLC c/o Maria Varrichione, the Special Permit application for a two-family dwelling under Section 5.4 of the Zoning Bylaw, with respect to the property 249 Village Street.


The Board hereby makes a detailed record of its findings and proceedings relative to this petition, sets forth its reasons for its findings and decision, incorporates by reference any plan or diagram received by it, directs that this decision be filed in the office of the Town Clerk and be made a public record and that notice and copies of its decision be made forthwith to all parties or persons interested.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to MGL c. 40A, Section 17, within twenty (20) days after the date of filing this Decision with the Town Clerk.

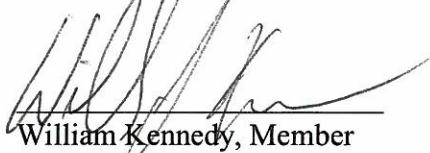
In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed, or that if such an appeal has been filed, that it has been dismissed or denied, 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. The fee for recording or registering shall be paid by the owner or applicant.



David J. Cole, Chairman



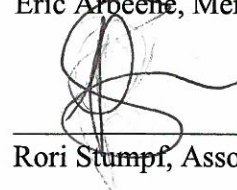
Carol Gould, Clerk



William Kennedy, Member



Eric Arbene, Member



Rori Stumpf, Associate Member