

Board Members
Brian White, Chair
Gibb Phenegar, Vice Chair
Christina Oster, Clerk
Joe Barresi, Member
Tom Emero, 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
VARIANCE
37 HOLLISTON STREET

Applicant(s): Mark Bittrolff

Location of Property: 37 Holliston Street (Assessor Parcel ID: 50-037).

Approval Requested: The application is for the issuance of a **variance** under Section 6.1, Table 2, Dimensional and Density Regulations, for a proposed division of the existing lot into two lots, to allow the creation of a lot with only 107.27 feet of frontage for the existing house, and a second lot with 150 feet of frontage, in an area where 150 feet of frontage is required.

Members Participating: Brian White, Chair; Gibb Phenegar, Vice Chair; Christina Oster, Clerk; Joe Barresi, Member

Members Voting: Brian White, Chair; Gibb Phenegar, Vice Chair; Christina Oster, Clerk; Joe Barresi, Member

Date of Decision: July 19, 2023

Decision: **Granted with Conditions**

I. PROCEDURAL HISTORY

1. On June 23, 2023, the Applicants filed for the issuance of a **variance** under Section 6.1, Table 2, of the Zoning Bylaw.
2. Notice of the public hearing was published in the Milford Daily News on July 5, 2023, and July 12, 2023, and notice sent by mail to all parties in interest and posted in Town Hall as required by G.L. c. 40A §11.
3. The public hearing was opened on July 19, 2023. The hearing was closed the same evening.

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RECEIVED TOWN CLERK
JUL 25 '23 AM 11:20

DECISION
VARIANCE
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20 Day Appeal
August 14, 2023

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4. The Property is located in the AR-II (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 lot frontage requirement is 150 feet.

5. The Board notified Town departments, boards, and committees of this application.

6. 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 Stephen Kenney was present with his client, Mark Bittrolff, to discuss the application. He explained that the applicant wishes to split the existing oversized lot into two lots, to allow the creation of a lot with only 107.27 feet of frontage for the existing house, and a second lot with 150 feet of frontage. The Zoning District, AR-II, requires 150 feet of frontage. Because the lot is oversized for the district, it is advantageous to divide the lot into two. Attorney Kenney stated the existing single-family residence is pre-existing non-conforming. Attorney Kenney stated the required area and setbacks would be met, but the frontage would not. In addition, the applicant is seeking a variance from the front setback for the existing house, which is only 22 feet from the front lot line where 35 feet is required. He noted the shape and size of the lot creates a hardship if there is literal enforcement of the Medway Zoning Bylaw because the applicant must pay real estate taxes on a large lot that is not entirely being use. He reviewed how the application meets all of the criteria for a variance. He stated the new dwelling would be within the setbacks, and would not encroach on any abutting properties, and that the proposed dwelling on lot 1 would be closer to the existing dwelling on lot 2. Attorney Kenney stated the new dwelling would create additional housing for the area with a single-family residence, the existing dwelling would not be expanded, and there would be no change to the stone retaining walls or driveway.

Abutters who were present raised concerns about stormwater runoff, preservation of trees to protect privacy, and an existing drainage ditch that runs along the back of the proposed lot 1, down to Holliston Street, and through a culver. The Board discussed and addressed these concerns.

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.

A. Section 6.1 Variance Criteria

1. Whether there are circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located.

The Board found that the trapezoid shape of the lot, the fact that the lot is substantially oversized compared to other lots in the district, and the placement of the existing house on the lot in the east corner near the road, do not affect generally the district in which the lot is located.

2. As a result of which, a literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the applicant, and;

The Board found that a literal enforcement of the Bylaw would create a substantial hardship to the applicant, due to paying higher taxes for a large lot where only a small portion is used.

3. Desirable relief may be granted without substantial detriment to the public good, and;

The Board found that there would not be substantial detriment to the public good after hearing the concerns of the abutters and addressing those during the course of the hearing.

4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

The variance will allow the creation of a lot that conforms to the Zoning Bylaw and can be used only for a single family home, and the existing lot with a pre-existing nonconforming house. Thus, it does not nullify or substantially derogate from the AR-II zoning district.

The Board finds that the Applicant has demonstrated through evidence submitted, including the variance plan, that it has/has not met all the required Variance Decision Criteria under Section 6.1.

IV. CONDITIONS OF APPROVAL

1. This variance is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the variance that may be required by the decisions of other Town boards, agencies or commissions shall be submitted to the Board for review as a new request.

2. Any work or use that deviates from this Decision may be a violation of the Medway Zoning Bylaw. All conditions imposed by this Decision are mandatory, and any violation of a condition imposed by this decision may be a violation of the Medway Zoning Bylaw. Any violations of this Decision may prevent the issuance of a building permit and/or occupancy permit or result in the

issuance of a cease and desist order, noncriminal penalties, or fines, as further provided in Section 3.1 of the Zoning Bylaw. Please note that Section 3.1.F of the Zoning Bylaw provides:

1. Anyone who violates a provision of this Zoning Bylaw, or any condition of a variance, site plan review decision or special permit, shall be punishable by a fine of not more than three hundred dollars for each offense. Each day during which any portion of a violation continues shall constitute a separate offense.
2. As an alternative means of enforcement, the Building Commissioner may impose noncriminal penalties pursuant to G.L. c. 40, § 21D and Article XX of the Town's General Bylaws, in accordance with the following schedule:
First offense: warning (verbal or written)
Second offense: one hundred dollars
Third offense: two hundred dollars
Fourth and each subsequent offense per violation: three hundred dollars
3. Pursuant to G.L. c. 40A, §10: "If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one-year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section."
4. Any construction of a building on the vacant lot must comply with all Department of Public Works (DPW) regulations and requirements for street openings, utility connections, driveways, stormwater, and other site work within the jurisdiction of the DPW. There shall be no tracking of construction materials onto any public way. In the event construction debris is carried onto a public way, the applicant shall be responsible for all clean-up of the roadway which shall occur as soon as possible and in any event within twelve hours of its occurrence.
5. Any construction of a building on the vacant lot must include a stormwater management system which infiltrates all roof run off from the building into the ground. Any and all gutters and downspouts shall not be placed in a manner to allow discharge of stormwater to the street or toward abutting properties.
6. The owner must affirm that there is no connection whether direct or indirect to the Town storm water system from the site, including any drainage sump pump, perimeter drains, roof drains, or any other source.

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. Application dated June 23, 2023.
2. “Variance Plan” prepared by Land Planning, Inc., dated March 23, 2023 (herein “the Plan”).

B. Other documents received by the Board:

1. Email from Nolan Lynch, Highway Surveyor, dated July 3, 2023
2. Email from Bridget Graziano, Conservation Agent, dated July 10, 2023
3. Email from Derek Kwok, Health Director, dated June 28, 2023

VI. VOTE OF THE BOARD

By a vote of 4 to 0, the Zoning Board of Appeals hereby GRANTS the Applicant, Mark Bittrolff, a **VARIANCE** under Section 6.1, Table 2, of the Zoning Bylaw, to divide the existing two lots, to allow the creation of a lot with only 107.27 feet of frontage for the existing house, and a second lot with 150 feet of frontage, in an area where 150 feet of frontage is required, and for the front setback of the existing house at 22 feet where 35 feet is required, located at 37 Holliston Street (Parcel ID: 50-037), in accordance with the application and Plan, and subject to the **CONDITIONS** herein. A copy of the Plan is attached hereto.

Member:	Vote:	Signature:
Brian White	Aye	_____
Gibb Phenegar	Aye	_____
Christina Oster	Aye	_____
Joe Barresi	Aye	_____

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms 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 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, and shall be filed within 20 days after the filing of this notice in the office of the Medway Town Clerk.

In accordance with Massachusetts General Laws, chapter 40A, Section 11, no variance 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, 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 and notification by the Applicant of the recording at the Norfolk Registry of Deeds, shall be furnished to the Board.

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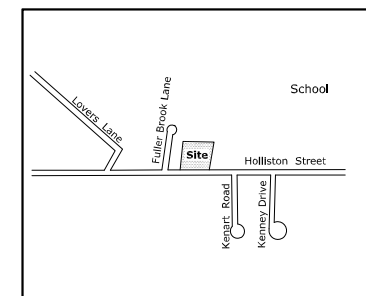
Member:	Vote:	Signature:
Brian White	Aye	
Gibb Phenegar	Aye	_____
Christina Oster	Aye	_____
Joe Barresi	Aye	_____

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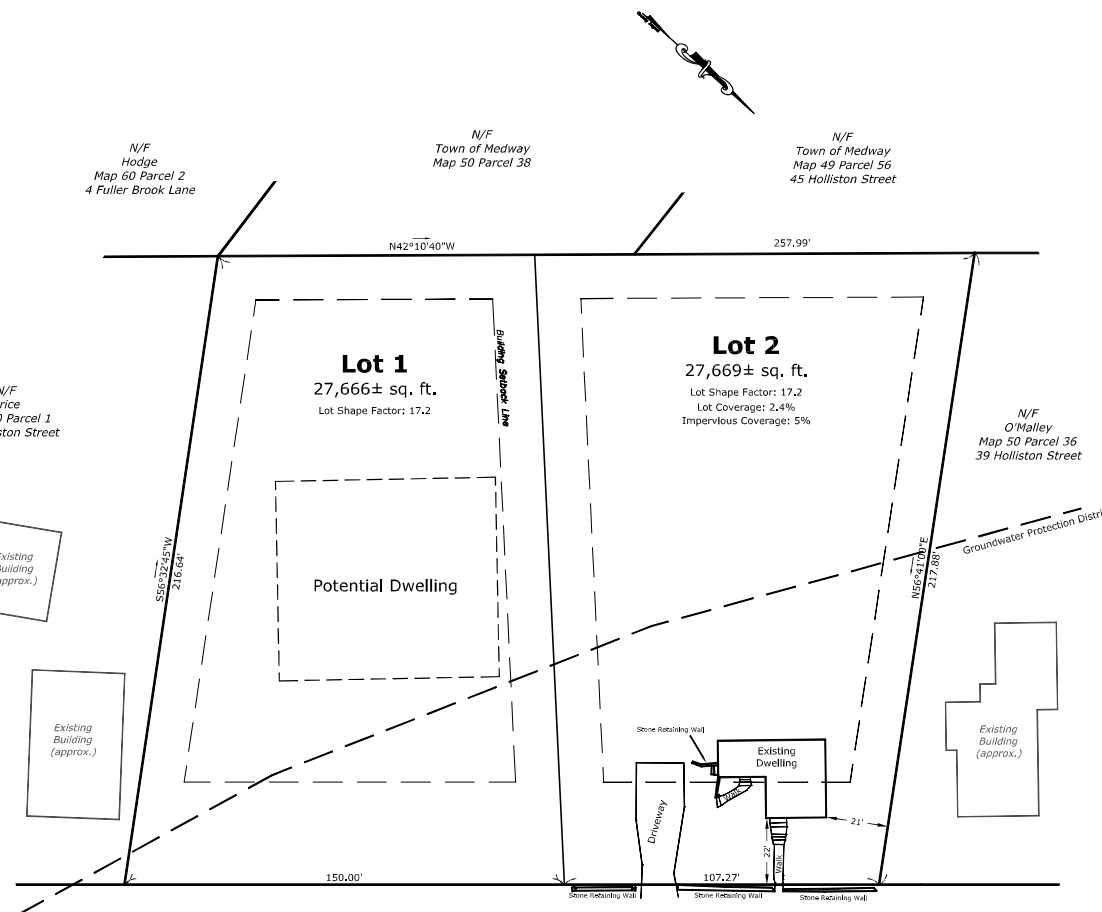
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Locus Plan
(not to scale)



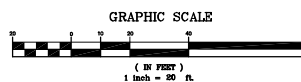
Holliston Street

(County Layout - 50' Wide)

ZONING DATA
ZONE: AR-II
(SINGLE FAMILY)
MINIMUM REQUIREMENTS
AREA: 22,500 SQ.FT.
FRONTAGE: 150'
FRONT YARD: 35'
SIDE YARD: 15'
REAR YARD: 15'
MAX. COVERAGE: 30%
MAX. IMPERVIOUS: 40%

Ownership:
Record Owner: Mark Joseph Bittrolff
37 Holliston Street
Medway, MA

Deed Book: 35607 Page: 9
Assessor ID: Map 50 Lot 37

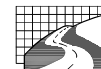


Variance Plan

Located at
37 Holliston Street
Medway, MA
Record owner
Mark Bittrolff
37 Holliston Street
Medway, MA

REVISIONS		
No.	Date	Description
1		
2		
3		
4		
5		
6		

Field By:	BHDL	1/23
Designed By:	WDH	3/23
Drawn By:	WDH	3/23
Checked By:	WDH	3/23



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Date	March 23, 2023	Sheet No.
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