



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
78 FISHER STREET**

Date Application Filed: July 19, 2017

Applicant(s): Alfred T. Fraser (the "Applicant")
78 Fisher Street
Medway, MA 02053

Location of Property: The Project is located on a parcel of land in Medway, 78 Fisher Street (Assessor Parcel No. 35-037).

Approval Requested: Variance from Section 6.1 of the Zoning Bylaw to divide one lot into two lots; one lot shall remain a conforming lot and the second would have 27,389 sq. ft. of area and 104.33 ft. of frontage.

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

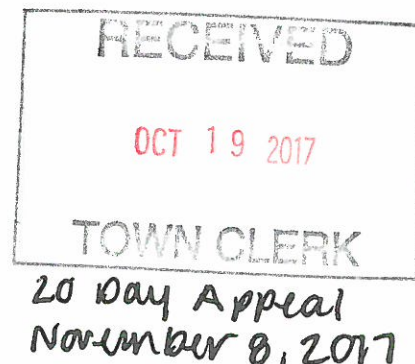
Members Voting: Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould (Clerk), Bridgette Kelly, and Rori Stumpf

Hearing Opened: August 16, 2017

Hearing Closed: October 11, 2017

Date of Decision: October 11, 2017

Decision: Granted with Conditions



I. PROCEDURAL HISTORY

1. On July 19, 2017, the Applicant filed a Variance Application, pursuant to G.L. c. 40A, as amended, and the Medway Zoning Bylaw, for 78 Fisher Street, Medway, Massachusetts, seeking a Variance from Section 6.1 of the Zoning Bylaw to divide the property located at 78 Fisher Street into two lots so as to construct a single family residence on "Lot 3," in addition to the single family structure currently on "Lot 4," as provided on the Plan of Land submitted with the application. Lot 4 shall remain a conforming lot. The Applicant sought a variance for Lot 3 which would have 27, 389 sq. ft. of area and 104.33 ft. of frontage.
2. Notice of the public hearing was published in the Milford Daily News on August 2, 2017 and August 9, 2017, 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 on August 16, 2017; the hearing was continued to September 6, 2017, October 4, 2017, which was continued without testimony, and October 11, 2017. The hearing was closed and the Decision was voted on October 11, 2017.
4. The Project is located at 78 Fisher Street, Assessor Parcel ID 35-037.
5. The Property is located in the Agricultural Residential I (AR-I) District.
6. During the public hearing, the Applicants were also represented by their counsel, Steve Kenney of Kenney & Kenney, 181 Village Street, Medway, MA 02053.
7. The Board notified Town departments, boards and committees of this application. The Board received written comments from the Board of Health, Treasurer/Collect, Department of Public Services, Conservation Agent, and Community & Economic Development Department.
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 August 16, 2017 hearing, the Applicant and his representative provided an overview of the requested Variance. There have not been any discussions with an architect or engineer about potential siting or location of a house, however, the Applicant had, at the time of the 1997 request for variance, completed percolation testing and was looking at a pre-fabricated home, but the timing was not right. The surrounding neighborhood was developed in the 1990's or earlier. The Applicant plans to sell the lot as a buildable lot.

Abutters from 80 Fisher Street and 75 Fisher Street spoke in opposition of the requested Variance at the August 16, 2017 hearing. Mr. Gibson of 80 Fisher Street was concerned about the natural vegetation and the slope stabilization that the existing land provided for without an additional house. Mr. Brooks of 75 Fisher Street was concerned about any additional stormwater runoff that an additional house or construction may have to the southern side of Fisher Street and, specifically, his property.

At the September 6, 2017 hearing, the Applicant and his representative addressed the concerns from the previous hearing and the concerns that arose from ZBA staff correspondence to other departments. The Applicant is looking to sell the lot to a builder or to develop the lot along with a builder. The Applicant is willing to address abutter concerns at time of construction. The Applicant and his representative had no issues with many of the requests, comments, or suggestions provided by Town Staff. The Applicant's representative suggested drafting conditions that might exceed conditions in a typical granted variance that would address the concerns of staff and abutters.

The Board was concerned with the potential impacts to the abutters, but were otherwise amenable to granting the variance.

Mr. Brooks of 75 Fisher Street was in attendance and felt that his concerns could be mitigated with the right review, but he wanted to make sure that the mitigation and review would actually occur.

No testimony was given at the hearing on October 11, 2017.

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. A substantial number of lots in the surrounding neighborhood in the district are nonconforming to the current Medway Zoning Bylaw. Many lots had been split prior to the area being converted from AR-II Zoning to AR-I Zoning. 78 Fisher Street is one of the few lots that had not been split prior to the change in zoning districts and dimensional requirements.

- b. The shape of the existing parcel is that an additional parcel can be created with adequate frontage and size for a single family home, appropriated scaled to the surrounding neighborhood.
2. *Substantial hardship caused by the circumstances from Criteria A.1 when the Zoning Bylaw is literally enforced:*
3. The Applicant was granted a similar variance in 1997 and the circumstances of hardship still apply. The Applicant and Applicant's Wife require an accessible home. The existing house at 78 Fisher Street is not accessible. The Applicant was previously granted the requested relief, however, due to financial hardship, the Applicant took no action on the variance. In 1997 a variance was requested to build a new accessible house and, now, the variance is requested to sell both properties to afford the cost burden of relocating to an accessible home.
4. *Why/how the grant of relief would not nullify or derogate from the intent of the Zoning Bylaw:*
 - a. The Zoning in the surrounding neighborhood was AR-II until 1978. Many of the existing lots are nonconforming. Due to the larger-than-average size of 78 Fisher Street, the property can be split with one conforming lot (Lot 4) and one lot which still provides similar frontage and area of the surrounding neighborhood (Lot 3).

B. Other Findings

1. The Applicant agreed to provide conditions which would alleviate adverse impacts to the abutting properties of 80 Fisher Street and 75 Fisher Street. These conditions were provided in correspondence from the Applicant's representative. Such conditions appease concerns that the Board heard from abutters. Granting of the requested variance, inclusive of the conditions as provided for by the Applicant's representative, will not be detrimental to the adjoining properties, abutters, or surrounding neighborhood.
2. There are known drainage issues towards the southern side of Fisher Street, as it has no storm drain system. An additional house may result in additional flooding to the southern side of Fisher Street. Providing an engineer review to ensure that the water storage on-site would at a minimum be maintained, and preferably preferred, would alleviate concerns regarding water runoff in granting the requested variance.
3. Wetlands located on the existing parcel for 78 Fisher Street are non-jurisdictional and do not require a permit from the Conservation Commission, however, the wetlands act as natural local recharge areas. Maintaining these wetland areas would reduce potential additional flooding to the South side of Fisher Street and alleviate any impact on the neighborhood with granting of the requested variance.

4. There is a significant slope at adjoining boundary for 78 Fisher Street and 80 Fisher Street. The natural vegetation acts as a slope stabilizer as well a natural buffer for 80 Fisher Street. To the extent feasible that any proposed house on "Lot 3" can be located towards the rear of the property and natural vegetation be maintained, the visual impact to the abutter located at 80 Fisher Street would be reduced.

IV. DECISION

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 a Variance from Section 6.1 of the Medway Zoning Bylaw to divide the property located at 78 Fisher Street into two lots so as to construct a single family residence on "Lot 3," as provided on the Plan of Land of Map 35 Parcel 37, dated February 8, 2017 and revised March 9, 2017, prepared by Paul J. DeSimone P.L.S., submitted with the application, and attached hereto, subject to the conditions and limitations set forth herein.

1. Lot 4, as provided on the Plan of Land of Map 35 Parcel 37, dated February 8, 2017 and revised March 9, 2017, prepared by Paul J. DeSimone P.L.S., submitted with the application, and attached hereto, shall remain a conforming lot.
2. A Septic Plan for the existing house located on "Lot 4" and any proposed house to be located on "Lot 3" shall be approved by the Board of Health prior to issuance of a building permit. The Septic System for "Lot 3" shall be placed in an area that does not affect wells on other properties.
3. Any new Well(s) on "Lot 3" or "Lot 4" shall be approved by the Board of Health; Well water tests shall be performed and approved by the Board of Health prior to issuance of a building permit.
4. The location of any houses to be built on "Lot 3" shall be placed in a location nearer to the rear of the lot, while still allowing for adequate setbacks in conformance with the Medway Zoning Bylaw, Septic System placement, and Well placement.
5. There shall be no construction or fill of any wetlands on either "Lot 3" or "Lot 4."
6. An engineering review for Stormwater Management shall be performed and submitted to the appropriate Boards and Departments for review and inspection. No further on-site stormwater or groundwater shall be displaced from "Lot 3" or "Lot 4" onto abutters' properties. Re-grading for a new detention, retention, or rain garden area shall be performed as needed as per the findings and conclusion of the engineering review.
7. A Scenic Road Permit and Street Opening Permit shall be required prior to issuance of a building permit.
8. An as-built, prepared by a registered engineer, shall be provided following final inspection by the Building Department.

9. 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 modification.

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

10. Upon receipt of a written request by the applicant filed at least thirty (30) days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and also the length of time requested, not to exceed 6 months. If no request for extension is filed and approved, the Variance shall lapse one years from the date of Decision, unless exercised or otherwise specified, and may be reestablished only after a new filing, hearing, and decision.

V. INDEX OF DOCUMENTS

- A. This Variance application includes the following plans and information that were provided to the Board at the time the application was filed:

1. Plan of Land of Map 35 Parcel 37, dated February 8, 2017 and revised March 9, 2017, prepared by Paul J. DeSimone P.L.S, 403 Mahan Circle, Medway, MA 02053
2. Addendum provided by Stephen Kenney, regarding the existing use and previous permitting


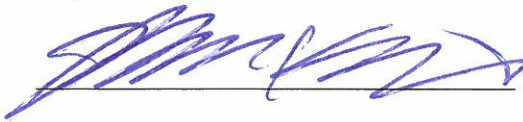

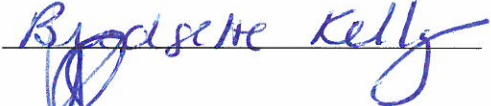
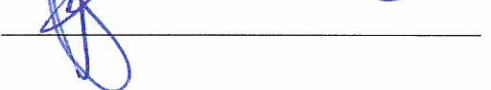
- B. During the course of the review, the following materials were submitted to the Board by Town Departments/Boards and Residents:

1. Treasurer/Collector Comments, provided by Joanne Russo, received August 2, 2017
2. Board of Health Comments, provided by Beth Hallal, received August 2, 2017
3. Department of Public Services Comments, provided by Dave Damico, received August 2, 2017
4. Conservation Agent Comments, provided by Bridget Graziano, received August 2, 2017
5. Abutter Comments, provided by Sean Gibson of 80 Fisher Street, received August 14, 2017

6. Memo RE: ANR (Subdivision Approval Not Required) Plan for 78 Fisher Street, provided by Susy Affleck-Childs, received August 16, 2017
 7. Community & Economic Development Department Comments, provided by Mackenzie Leahy, received August 16, 2017
 8. Board of Health Comments, provided by Beth Hallal, received August 17, 2017
 9. Department of Public Services Comments, provided by Dave Damico, received August 17, 2017
 10. Conservation Agent Comments, provided by Bridget Graziano, received August 17, 2017
 11. Community & Economic Development Department Comments, provided by Mackenzie Leahy, dated August 28, 2017
- C. During the course of the review, the following materials were submitted to the Board by the applicant and their representatives:
1. Correspondence from Stephen Kenney outlining suggested conditions for a grant of Variance with conditions, received September 26, 2017

VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Rori Stumpf and seconded by Brian White, the Zoning Board of Appeals hereby **GRANTS** the Applicant, a **VARIANCE FROM SECTION 6.1** of the Zoning Bylaw to divide the property located at 78 Fisher Street into two lots so as to construct a single family residence on "Lot 3," and maintain "Lot 4" as a conforming lot, as provided on the Plan of Land of Map 35 Parcel 37, dated February 8, 2017 and revised March 9, 2017, prepared by Paul J. DeSimone P.L.S., submitted with the application, and attached hereto, subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Eric Arbeene	Yes	
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 Variance 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.