



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  
85 WINTHROP STREET**



**Date Application Filed:** September 7, 2017

**Applicant(s):** Joanne Beksha Brown (the "Applicant")  
85 Winthrop Street  
Medway, MA 02053

**Location of Property:** The Project is located on a parcel of land in Medway, 85 Winthrop Street (Assessor Parcel No. 14-034).

**Approval Requested:** Variance from Section 6.1 of the Zoning Bylaw to divide one lot into two lots. "Lot 1" shall remain a conforming lot. "Lot 2" shall have 43,937 sq. ft. of area where the required area is 44,000 sq. ft.

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

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

**Hearing Opened:** October 4, 2017

**Hearing Closed:** November 1, 2017

**Date of Decision:** November 1, 2017

**Decision:** Granted with Conditions



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## **I. PROCEDURAL HISTORY**

1. On September 7, 2017, the Applicant filed an application for a variance, pursuant to G.L. c. 40A, as amended, and the Medway Zoning Bylaw, for 85 Winthrop Street, Medway, Massachusetts, seeking a Variance from Section 6.1 of the Zoning Bylaw to divide one lot into two lots. “Lot 1” shall remain a conforming lot. “Lot 2” shall have 43,937 sq. ft. of area where the required area is 44,000 sq. ft.
2. Notice of the public hearing was published in the Milford Daily News on September 20, 2017 and September 27, 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 October 4, 2017, continued without testimony until October 18, 2017. The hearing was also continued to November 1, 2017. The hearing was closed and the Decision was voted on November 1, 2017.
4. The Project is located at 85 Winthrop Street (Assessor Parcel No. 14-034).
5. The Property is located in the Agricultural Residential I (AR-I) District. The required frontage is 180 feet and the required area is 44,000 sq. ft.
6. During the public hearing, the Applicants were also represented by their counsel, Paul Kenney of Kenney & Kenney, 181 Village Street, Medway, MA 02053.
7. The Board notified Town departments, boards and committees of this application. Comments were received by the Board of Health and Conservation Commission.
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 October 4, 2017 meeting, the hearing was opened and continued without testimony to the October 18, 2017 ZBA meeting.

At the October 18, 2017 hearing, the Applicant and her representative provided an overview of the requested variance. Mr. Kenney explained that the applicant was requesting a variance of 63 sq. ft. The shape of the lot was changed due to two takings by the County of Norfolk for the relocation of Winthrop Street and Lovering Street. The property sits at the southeast corner of the intersection of the two streets. The taking changed the shape of the lot and also reduced the total area of the lot. The hardship of enforcing the bylaw is such that dimensional requirements for lot size prevent the Applicant from subdividing the property as would have been permitted by right had the takings not occurred. Grant of relief would not nullify or derogate from the intent of the bylaw, as the requested variance for 63 sq. ft. is de minimis in relation to the area requirements. In addition, many of the lots in the surrounding neighborhood are significantly

smaller than the property and do not meet the current zoning dimensional requirements. Mr. Kenney provided a portion of the assessor's map for the lot and surrounding lots to the Board for reference. Many of the surrounding lots are a quarter acre. As subdivided, Lot 2 would be just sort of the dimension requirement by 63 sq. ft., but both lots would be a full acre.

Sue Shemuga of 83 Winthrop Street attended the hearing on October 18, 2017 and November 1, 2017 and spoke in opposition of the variance.

The Board closed the hearing on November 1, 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. In 1955 and 1962, the County of Norfolk made takings for the relocation of Winthrop Street and Lovering Street. While land was taken for most properties along Winthrop Street and Lovering Street, 85 Winthrop Street is located on the corner and intersection of the streets.

Had a taking occurred on only one side of the lot, similar to other properties along Winthrop Street and Lovering Street, 85 Winthrop Street would still have an adequate lot shape and size, and would have the right to split the lot without requiring a variance.

The takings changed the shape of the lot and reduced the total area of the lot.

- b. The shape of the existing parcel is such that an additional parcel can be created with adequate frontage and size for a single family home, appropriately scaled to the surrounding neighborhood.

*2. Substantial hardship caused by the circumstances from Criteria A.1 when the Zoning Bylaw is literally enforced:*

- a. The properties were conforming to zoning up until 1962, when the second taking occurred along Lovering Street. The land was large enough prior to the 1962 taking to split the lot into two lots meeting the dimensional requirements of 180 feet of frontage and 44,000 sq. ft. in area. To literally enforce the bylaw would be

to deny the right of the property owner to develop the land in the manner for which would otherwise be allowed by right had both takings not occurred.

3. *Why/how the grant of relief would not nullify or derogate from the intent of the Zoning Bylaw:*
  - a. The requested variance is for “Lot 2” to be created with 43,937 sq. ft. of area where 44,000 sq. ft. is required, the differential being 63 sq. ft. The takings of 1955 and 1962 was such that the area of 85 Winthrop Street was reduced by 10,240 sq. ft. The requested variance for 63 sq. ft. is insignificant in correlation to the reduction of property by 10,240 sq. ft. due to the taking of land in 1955 and 1962.
  - b. Many of the properties in the surrounding neighborhood do not meet the current dimensional requirements of the Zoning Bylaw. A reduction from the required 44,000 sq. ft. to the requested 43,937 sq. ft., where all other zoning requirements are met, is insubstantial and would not nullify from the intent of the zoning bylaw. The property can be split with one conforming lot (Lot 1) and one lot which still provides adequate frontage and a minimal reduction in area for the surrounding neighborhood (Lot 2).

#### 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 85 Winthrop Street into two lots. "Lot 1" shall remain a conforming lot. "Lot 2" shall have 43,937 sq. ft. of area where the required area is 44,000 sq. ft., as shown on the Plan of Land of Lot 1 and Lot 2 at the corner of Winthrop Street and Lovering Street, prepared by Colonial Engineering Inc. of 11 Awl Street, Medway, MA, as revised during the hearing, and attached hereto, subject to the conditions and limitations set forth herein.

1. Construction of a new house at 85 Winthrop Street (Lot 2) shall meet all other dimensional or otherwise application regulations as may be required by the Medway Zoning Bylaw.
2. An as-built, prepared by a registered engineer, shall be provided following final inspection by the Building Department.
3. 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*.

4. 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 Lot 1 and Lot 2 at the corner of Winthrop Street and Lovering Street, prepared by Colonial Engineering Inc. of 11 Awl Street, Medway, MA
2. Norfolk County Taking of 1955, book 3382 pages 104 – 112
3. Norfolk County Taking of 1962, book 4037 pages 82 – 90

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

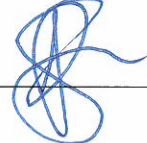
1. Comments: Board of Health, Beth Hallal, received September 27, 2017
2. Comments: Conservation Commission, Bridget Graziano, received October 3, 2017
3. Correspondence: From Mackenzie Leahy, Administrative Assistant, to Sue Shemuga, 83 Winthrop Street
4. Revised Plan of Land of Lot 1 and Lot 2 at the corner of Winthrop Street and Lovering Street, prepared by Colonial Engineering Inc. of 11 Awl Street, Medway, MA

**C.** During the course of the review, the following materials were submitted to the Board by the applicant and their representatives:

1. Copy of assessor's map showing surrounding parcels and lot sizes with property highlighted in yellow, received at the hearing on October 18, 2017

## VI. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Rori Stumpf and seconded by Brian White, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Joanne Beksha Brown, a **VARIANCE FROM SECTION 6.1** of the Zoning Bylaw to divide 85 Winthrop Street into two lots. "Lot 1" shall remain a conforming lot. "Lot 2" shall have 43,937 sq. ft. of area where the required area is 44,000 sq. ft., as shown on the Plan of Land of Lot 1 and Lot 2 at the corner of Winthrop Street and Lovering Street, prepared by Colonial Engineering Inc. of 11 Awl Street, Medway, MA, as revised during the hearing, and attached hereto, subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Eric Arbeene	<u>Yes</u>	
Brian White	<u>Yes</u>	
Carol Gould	-	
Bridgette Kelly	<u>Yes</u>	<u>Bridgette K. Kelly</u> 
Rori Stumpf	<u>Yes</u>	

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, 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.