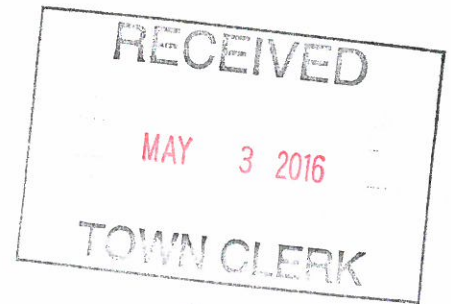


COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

IN THE MATTER OF:     Steve Linnell  
                                 Petitioner



*20 Day Appeal  
May 23, 2016*

OPINION OF THE BOARD

REQUEST FOR VARIANCES  
180 Main Street, Medway, MA

Hearing: April 6, 2016  
Decision: April 20, 2016

MEMBERS PRESENT:     David J. Cole, Chairman  
                                 Carol Gould, Clerk  
                                 William Kennedy, Member  
                                 Brian White, Member

THE WRITTEN OPINION WAS DELIVERED ON MAY 3, 2016

## **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, Steve Linnell, request Variances from Sections 5.4 and 6.1 of the Zoning Bylaw to allow for an additional dwelling unit and allow for a 10ft side setback where a minimum of 15ft is required for an existing deck on the property located at 180 Main Street, Medway.

### **Hearing**

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on March 23, 2016 and March 30, 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 and Board of Appeals on March 14, 2016.
2. Certified Plot Plan for 180 Main Street, dated March 10, 2016, prepared by Summit Engineering & Survey, Inc. of 710 Main Street, N. Oxford, MA 01537 received with the Application.
3. Elevations, Foundation and Roof Framing Plans for the 4 Bay Garage at 180 Main Street, dated May 20, 2003, prepared by J.D.B., Company Unknown, received with the Application.
4. Proposed Elevations and Floor Plans for Prestige 2 Story, dated 8/17/2015 revised 10/2/2015, prepared by Professional Building Systems, Inc. of 72 East Market Street, PO Box 219, Middleburg, PA 17842 received with the Application.
5. Hand drawn sketch showing approximate distances to structures on adjacent properties provided by the Applicant and received with the Application.
6. Letter from the Building Commissioner Jack Mee, dated April 4, 2016.

The Public Hearing opened and closed on April 6, 2016. 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 Brian White, Member. The Board voted on the request for variances on April 20, 2016.

At the hearing, the Board received correspondence from direct abutters sent by letter in opposition to the application. An abutter commented on the character of the neighborhood and referenced the Rabbit Hill Historic District. It was noted that the area is mainly single family homes with the exception of this property. Another abutter commented on the need for the 5<sup>th</sup> dwelling unit and stated that there is already four units on the property.

## **Hearing Summary**

The applicant, Steve Linnell, appeared before the Board to discuss the request for Variances for the property located at 180 Main Street.

Mr. Linnell declined the opportunity to provide an opening statement.

The Board discussed the present arrangement of the lot with the existing house facing Main Street, a garage in the northeast corner and another garage in the northwest corner. It was explained that more than one dwelling per lot is prohibited unless authorized by another provision in the Zoning Bylaw. The Board then inquired about the number of dwelling units and where the deck was being located.

Mr. Linnell explained that he bought the house which comprised of the existing four units and one garage. He secured a building permit and built a four bay garage for storage with the second floor for use as an office and rec room. He never sought an occupancy permit. He has been living on the second floor above the garage for seven years. Attached to the garage is the deck, which was under construction when the Building Department issued a Stop Work order. Mr. Linnell stated that he is working with the Building Department on a number of items including utilities with respect to the property.

The Board expressed concern about the addition of a fifth dwelling unit where there are already four preexisting nonconforming units present at the property. The Board inquired if all of the existing units in the house were occupied. Mr. Linnell responded yes. The Board reviewed the distance of adjacent structures to the subject property.

The Board concurred that the property is located in the Rabbit Hill historic district and the addition of another dwelling unit on a parcel less than an acre and which already has four units would be inconsistent with the density in that area and create more strain. The area of the subject lot is approximately 35,000 square feet. The Board noted the property is located in the Agricultural-Residential II zoning district where the area required for a single family home is 22,500 square feet and 30,000 square feet for a two family home when granted a special permit.

The Board felt that the applicant failed to demonstrate sufficient evidence to determine if the request meets the criteria for a Variance according to Massachusetts General Laws Chapter 40A and the Town's Zoning Bylaw.

The Board determined that the only logical place for the location of the deck is where it was being proposed. However, in reviewing the plans and with no dimensions of the deck provided, it appeared that the depth of the deck was approximately 15ft. As no evidence was presented on the contrary, the Board believed the applicant could have built a 10ft deck in conformance with the dimensional regulations for ARII and therefore not need relief from the side setback.

**Findings:**

By a vote of 4-0-0:

1. The Board finds that the applicant failed to provide any evidence of conditions relating to the shape, topography or soil conditions of the subject lot especially affecting the subject lot and not generally applicable to other lots in the zoning district.
2. The Board finds that the undisputed testimony during the hearing was that there are already four pre-existing nonconforming dwelling units on the subject lot and that the grant of the proposed variance would create a fifth unit on the subject lot whereas the existing zoning for the ARII zoning district, in which the subject lot lies, permits only single family dwellings as of right and two-family dwellings by special permit.
3. The Board finds that the area of the subject lot being approximately 0.79 acre is only slightly greater than the 30,000 square foot minimum normally prescribed for a two-family dwelling in the subject zoning district.
4. The Board finds that having the location of the existing building in the northwestern part of the subject lot and the presence of garage doors along the eastern face of this building, the proposed location for the deck is essentially the only practicable location for a deck attached to that building.
5. The Board finds that, given the spacing between the existing building and the northwestern side lot line of the subject lot, a deck of reasonable size could be constructed without encroaching on the 15ft side setback requirement imposed by the Zoning Bylaw.
6. The Board finds that the applicant failed to present any substantial evidence as to why a deck conforming to the side setback requirement would not be adequate.

**Relief Denied:**

In view of the foregoing findings and by a vote of 4-0-0:

The Zoning Board of Appeals hereby denies the request for a Variance from Section 5.4 of the Medway Zoning Bylaw to the applicant, Steve Linnell of 180 Main Street, Medway, MA to allow for an additional dwelling unit on the property.

The Zoning Board of Appeals hereby denies the request for a Variance from Section 6.1 of the Medway Zoning Bylaw to the applicant, Steve Linnell of 180 Main Street, Medway, MA to allow for a 10ft side setback for a deck on the property.

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.

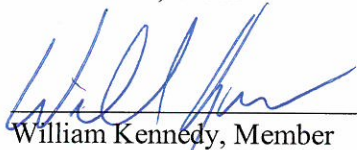
In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed, or that if 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.



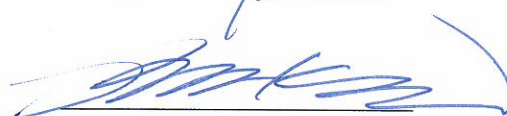
David J. Cole, Chairman



Carol Gould, Clerk



William Kennedy, Member



Brian White, Member