



Town of Medway
ZONING BOARD OF APPEALS
155 Village Street, Medway MA 02053
(508) 321-4915

Rori Stumpf, Chair
Brian White, Vice Chair
Carol Gould, Clerk
Christina Oster, Member
Gibb Phenegar, Member

Zoning Board of Appeals Meeting
Wednesday, December 5, 2018, 2018 at 7:30 pm
Sanford Hall
155 Village St, Medway, MA

MINUTES OF MEETING

Present: Chair, Rori Stumpf, Vice Chair, Brian White, Clerk, Carol Gould (arrived at 7:33 pm), Member Christina Oster and Member, Gibb Phenegar.

Also Present: Barbara Saint Andre, Director, Community and Economic Development and Kristin Stearley, Administrative Assistant, Community and Economic Development

Call to Order:
The Chairman, Rori Stumpf opened the meeting at 7:30 pm.

Review of Executive Session Minutes: December 16, 2015

Ms. Saint Andre stated that the Board needs to periodically review executive session minutes to determine if they can be released. The Board has one set of executive session minutes from December 16, 2015. She does not see anything that needs to remain private. She recommends the release of the minutes to the general public.

On a motion made by Brian White, seconded by Gibb Phenegar, the Board voted to release the executive session minutes from December 16, 2015. Vote passes unanimously (4-0-0) Ms. Gould was not in attendance.

Approval of 2019 Meeting Schedule:

On motion by Brian White, seconded by Gibb Phenegar, the Board voted to approve the meeting schedule for 2019. Vote passes unanimously (4-0-0) Ms. Gould was not in attendance.

Public Hearing:

123 Main Street (continued from October 3, 2018 and November 7, 2018): The Chairman opened the continued hearing for 123 Main Street at 7:36 pm.

Attorney Steven Kenney representing Thomas Steeves began by stating at the last hearing it was requested by the Board that they review a chronology of the application. He stated that Susan Affleck-Childs, Planning and Economic Development Coordinator prepared the chronology. He stated that the owner is agreeable to have the access driveway come in off of Elm Street instead of Main Street.

Mr. Phenegar stated that at the last meeting there was discussion about having the access from Elm Street especially for fire apparatus and he appreciates hearing that the applicant is amenable to that.

Mr. Stumpf reported that he was also concerned about the driveway crossing over the Central Business district. Ms. Oster concurred with Mr. Stumpf's concerns.

Mr. Stumpf asked if any members of any boards or commissions wished to speak.

Glen Trindade spoke on behalf of himself and stated that he would rather see the access from Elm Street instead of off Main Street.

Mr. Stumpf asked if any members of the public wished to speak.

Blair Hamilton of 121 Main Street stated he is an abutting property owner and is having problems with flooding on his property and in his basement. The Route 109 project is playing a part but he states so is the neighboring property. He presented photos of the condition of his property from September 18, 2018 after a particularly bad storm. He would like to Board to address the stormwater on the property and protect the wetlands. He has concerns about the amount of traffic on Elm Street.

Mr. Stumpf responded that he understands the concerns regarding the wetlands and the stormwater. Ms. Saint Andre stated that the Board could add a condition requiring the applicant to comply with the town stormwater bylaw. The Chair agreed that such a condition should be added. He stated that the best the Board can do is bolster the requirements through conditions that the stormwater be contained on the property. He also stated that the project would also have to go through the proper permitting process which would include review by the Building Department and the Conservation Department.

The Board began the process of findings. The members discussed the evidence submitted at both nights of the hearing, and the benefit of having a common driveway. Attorney Kenney stated that a variance was needed for the common driveway, and a variance needed for the two buildings to look like two-family homes, and the special permit therefore was not needed. He noted that the two buildings would not be visible from the street. He referred to the information contained in the application with respect to the criteria for a variance.

- 1. Are there circumstances relating to the shape, topography, or soil conditions of the subject property, which do not generally affect other land in the zoning district.*

On motion by Chairman Stumpf, seconded by Mr. White the Board finds that the "L" shape of the property, the wetlands and the limited frontage are circumstances related to shape and soil conditions which do not generally affect other land in the zoning district and are sufficient to grant the variance. Vote passes unanimously. (5-0-0)

2. *Is there substantial hardship caused by the circumstances from Criterion I when the Zoning Bylaw is literally enforced.*

On motion by Chairman Stumpf, seconded by Mr. White the Board finds that the literal enforcement of the Zoning Bylaw will provide a hardship to the property owner in regards to frontage, wetland coverage and location with respect to the Central Business district which make it hard t to utilize the property within the current Zoning Bylaw. Vote passes unanimously. (5-0-0)

3. *Would the grant of relief nullify or derogate from the intent of the Zoning Bylaw.*

On motion by Mr. White, seconded by Mr. Phenegar that this relief would not nullify or derogate from the intent of the Zoning Bylaw because the plan presented would allow land that had been zoned ARII which allows for residential development to be built in a residential area. Vote passes with Chairman Stumpf opposing. (4-1-0)

4. *There would not be substantial detriment to the public good.*

On motion by Chairman Stumpf seconded by Mr. Phenegar, there would not be substantial detriment to the public good because this location is not firmly within a residential nor Central Business district and is far enough away from residential abutters to not impact residential abutters be detrimental. Vote passes unanimously. (5-0-0)

On motion by Mr. White, seconded by Mr. Phenegar, the Board finds that the common driveway is allowed in order to limit the wetlands crossings. Vote passes unanimously. (5-0-0)

The Board then moved to discuss the granting of a variance. Ms. Saint Andre reminded the Board to consider any conditions they may want to attach to their final decision. The Fire Department had forwarded comments with their concerns about the property. Mr. Stumpf reviewed the Fire Department's comments. They requested a 20' wide access road, a sweep analysis for Medway fire trucks, a tar or cement driveway which can support 75,000 pounds, and a hydrant be located within 400' of a building.

On motion by Mr. White, seconded by Mr. Phenegar, the Board unanimously voted to impose conditions that the access road be 20' wide, a sweep analysis be conducted for Medway fire trucks, the driveway be tar or cement and be capable of supporting 75,000 pounds, and a hydrant be located within 400' of a building voted. (5-0-0)

On motion by Mr. White, seconded by Mr. Phenegar, the Board voted to impose a condition that the applicant will comply with the Medway Bylaw Article 26 on stormwater and Mass DEP Stormwater standards. Vote passes unanimously. (5-0-0)

On motion by Mr. White seconded by Mr. Phenegar, the Board voted to impose condition that applicant comply with Town of Medway water and sewer rules and regulations. Vote passes unanimously. (5-0-0)

Ms. Saint Andre noted that the property at 123 Main Street has been divided into four lots, it was agreed by attorney Kenney that the variances will apply to Lots 1 and 2 shown on the plan. The Chairman read comments from Conservation Agent. It was also pointed out that a variance is required under section 6.2.E.3, which requires access over the lot frontage. The issues related to whether to grant that variance are the same issue as for the common driveway.

On motion by Mr. White, seconded by Mr. Phenegar, the Board voted to grant the variances for 123 Main Street to construct a common driveway, for relief from the requirement that a two family dwelling will appear as a one family dwelling, and relief from section 6.2.E.3 subject to the conditions. Vote passes unanimously. (5-0-0)

On motion by Mr. White, seconded by Ms. Oster, the Board unanimously voted to allow any one member of the Board to sign the final decision on behalf of the Board. Vote passes unanimously. (5-0-0)

On motion by Mr. White, seconded by Mr. Phenegar, the Board unanimously voted to close the public hearing on 123 Main Street. (5-0-0)

22 Summer Street (continued from November 7, 2018): The Chairman opened the continued public hearing at 8:18 pm.

Attorney Steven Kenney represented the applicants Norman and Ann Vozzella. He stated they are seeking a finding or a determination that the lot is buildable and if not then a dimensional variance to allow for a buildable lot. The vacant lot is 21,344 sq. ft. and has a frontage of 106.6' when the required area is 22,500 sq. ft. with 150' frontage. He stated that this is a pre-existing non-conforming lot. It is similar in size to surrounding lots in the area that all have single family homes constructed on them. The owners purchased the property June 3, 1965. At the time of purchase the Bylaw dated January 14, 1965 stated; "Any dwelling hereafter erected in this district indicated on the Zoning By-Law Map dated September 23, 1966, shall be located on a lot having a continuous frontage of not less than 180 ft. on a street or streets, and an area of not less than 44,000 sq. ft. except that one single family dwelling may be erected on a lot having lesser frontage and area where said lot existed at the time this By-Law was adopted and did not adjoin other land of the same owner available for use in connection with said lot, or where a plan of said lot having such lesser frontage and area was recorded in the Norfolk County Registry of Deeds prior to the adoption of these By-laws."

Attorney Kenney stated that if the Board does not find that the vacant lot is a pre-existing non-conforming lot then he would like to pursue a dimensional variance. He stated the shape of the lot is not significantly different than the other lots in the area. Hardship would be caused if the applicant were not able to construct a single family home on the lot or convey the lot as a buildable lot even though it has the same amount of frontage and area as surrounding lots that have been improved. The relief would not nullify or derogate from the Bylaw because the other lots have similar frontage and square footage and the structure constructed would be a single family dwelling. There would be no detriment to the public good as only a single family dwelling would be constructed.

Ms. Oster questioned if the Conservation Agent had performed a site visit. It was unclear but any improvements on the lot would need to go through the proper permitting process.

Mr. Stumpf asked if the applicants believed the lot was grandfathered and the response from Attorney Kenney was that he had been going over this with the Building Official and it was ultimately decided to come before this Board to get a determination. He does believe that this is a pre-existing non-conforming lot and doesn't think a variance is required.

Mr. Phenegar drove by the site and noted that all the lots surrounding this are of similar shape and size and all have been improved with a single family dwelling.

Mr. Stumpf asked if there were any comments from staff, the public, or any member of any Board. There was none.

Mr. Stumpf then requested a motion for a Finding of a grandfathered lot.

Upon motion by Mr. White and seconded by Ms. Oster the Board finds that the application does establish the lot as presented is a pre-existing non-conforming lot grandfathered in on the 1965 Zoning Bylaw. Vote passes unanimously. (5-0-0)

On motion by Mr. White, seconded by Mr. Phenegar, the Board unanimously grants the request for 22 Summer Street based on the finding of a pre-existing non-conforming lot subject to conditions voted. (5-0-0)

On motion by Mr. White, seconded by Mr. Phenegar, the Board unanimously voted to allow any one member of the Board to sign the decision for 22 Summer Street. (5-0-0)

On motion by Mr. White, seconded by Mr. Phenegar, the Board unanimously voted to close the public hearing on 22 Summer Street. (5-0-0)

333 Village Street (continued from November 7, 2018): The Chairman opened the continued public hearing at 8:31 pm.

Bruce Wilson of GW Site Solutions and Jeff Derosa presented the application. The original structure was destroyed by a fire and had to be demolished. The owners are reconstructing a new dwelling on the site. Mr. Wilson submitted photos of the original structure and the new structure as well as plot plans which detailed the existing footprint superimposed with the footprint of the new structure. This is a corner lot so it is at a disadvantage for setbacks with two frontages. The new structure was built as closely as possible on the old footprint but the bulkhead added for basement access on the Haven Street side encroaches 2' beyond the original setbacks. He does not feel that it derogates from the intent of the Zoning Bylaw and would like the Board to issue a Finding.

Mr. Wilson stated that they started construction in September and the Building Inspector continued to allow construction. It was discovered late into the construction that the bulkhead encroached further than the original footprint and at that time they knew it was time to come before this Board. It would be difficult at this time to relocate the bulkhead because of utility placement in the basement and the cost it would incur. This is the best placement for access to the basement to maintain the utilities.

Mr. Stumpf stated it would have been easier had this been discovered earlier. Mr. Wilson concurred and stated this was something that fell between the cracks. Had he or the homeowner known of it they would have taken care of it at the time but he didn't catch it, the homeowner didn't catch it nor did the Building Inspector.

Ms. Oster stated that after reviewing the materials and visiting the site she does not have any issues with this request.

Mr. Wilson addressed the letter from the Planning and Economic Development Board. He stated that had he known they had any questions he would have attended a meeting. He put together the drawings showing the old footprint superimposed with the new footprint to show that there is very similar.

The Board asked how much it would cost to relocate the bulkhead. Mr. Wilson responded that it would be a big job having to block up the opening and make a new opening. Probably in the range of \$7-\$8,000 or more. Mr. Derosa stated this is being paid for by insurance so he does not have the budget to make changes like this.

Mr. White tried to determine what was in that corner where the bulkhead is that would preclude a saw cut. The electrical panel is in that corner and a deck is going on the back of the house.

Mr. Stumpf reminded the Board that the questions they need to answer when making a decision for this application would be:

1. Does the bulkhead increase the nonconforming nature of the structure with respect to the setback?
2. Is the bulkhead substantially more detrimental to the neighborhood?

Ms. Oster and Mr. Phenegar both stated they have no issues with the project.

Mr. White stated he was sympathetic to the homeowner based on the level of construction completeness at this time but his concern is from a design standpoint. He is not of the same mindset as the Planning and Economic Development Board but he is waffling on his decision of this application. Ms. Oster asked Mr. White to elaborate. He stated he does not understand how the problem of the bulkhead would not have been noticed until now from a contractor's point of view. He also questioned why there were propane tanks in the front yard. Mr. Derosa responded that he ordered the bulkhead and that the propane tanks are temporary. His home is heated by gas and he cannot get the gas from the street hooked up because of the issues with Columbia Gas. He is working on a long term solution for the gas. Mr. White stated he felt a bit better knowing that it was the homeowner who ordered the bulkhead.

Mr. Stumpf stated that in answering the two questions, he does not think that the house as built increases the nonconforming nature of the structure. In some respects it decreases the nonconforming nature because it is set back further from Village Street than before. He does not see how the construction could be more detrimental to the neighborhood. It is a new house and slightly taller but does not impact the neighborhood.

Ms. Gould asked why the applicant had not come before the board before to change the footprint of the house before construction began. Mr. Derosa responded that he was working with an architect and the Building Department and this never came up until recently.

Ms. Saint Andre stated that according to state law, one and two family dwellings have special protection including the right to reconstruct. If an owner wants to change it, the Board needs to look at two things. First, how is this nonconforming and is it being made more nonconforming? Then if it is more nonconforming, is it making it more substantially detrimental to the neighborhood? This is a very high standard.

Section 5.5.C.1

On motion made by Mr. White, seconded by Mr. Phenegar, the Board unanimously voted to find that the application does not show that the house as built significantly increases the nonconforming nature of the structure. (5-0-0)

Section 5.5.C.2 Nonconforming Uses & Structures

On motion made by Mr. White, seconded by Mr. Phenegar, the Board unanimously voted to find that the reconstruction of the house as set forth in the application will not be substantially more detrimental to the neighborhood, and therefore grants a special permit under Section 5.5.C.2. (5-0-0)

On motion by Mr. White, seconded by Mr. Phenegar, the Board unanimously voted to allow any one member of the Board to sign the decision for 333 Village Street. (5-0-0)

On motion by Mr. White, seconded by Mr. Phenegar, the Board unanimously voted to close the public hearing on 333 Village Street. (5-0-0)

Other Business

Discussion: ZBA Rules and Standards for Comprehensive Permit Applications

Ms. Saint Andre sent a comparison to the Board. There is a state law in the regulations that requires a reasonable filing fee for comprehensive permits that should be consistent with other filing fees. She used a hypothetical development proposal of 190 units in the comparison table of fees. The present fee schedule for comprehensive permits would collect \$59,000. Using the Site Plan Review fee schedule came to the same \$59,000. The fee schedule for an ARCPUD (Adult Retirement Community Planned Unit Development) was \$10,250 and an OSRD (Open Space Residential Development) was \$8,250 but these are not really very comparable.

Ms. Saint Andre stated that the current fee schedule has two components, the base filing fee which increases incrementally with the number of units and the price per unit which also increases incrementally. This hits a developer in three ways, the base fee goes up based on the number of units, as well as the price per unit, and the total cost increases because there is a cost per unit. The fees are supposed to reimburse the town for administrative costs which can be expensive for a large project. She does not think that the base fee needs to be rising incrementally along with the cost per unit. She recommends that not both fees should go up and that the Board should keep the base fee rising incrementally in place but make the price per unit a standard fee of \$50. The option of requesting peer review fees is still in place should the project warrant it. She does not want the Board to get into the situation where there is a fee challenge. This change would make it more equitable.

On a motion made by Mr. White, seconded by Mr. Phenegar, the Board voted to modify the Comprehensive Permit Fee Schedule to limit the price per unit to \$50. Vote passes unanimously (5-0-0)

Discussion of Possible Zoning Amendments for the Annual Town Meeting

Ms. Saint Andre stated that the Board may wish to start thinking about any zoning amendments they may like to add to the warrant for the Annual Town Meeting. She mentioned use variances and determining the definition of a kennel. Things come up through the year that the Board may notice or issues that arise. The deadline to get any changes in is in about a month so now is the time to start putting together the list.

Ms. Oster asked if there was any sort of statistic put together on these issues. Ms. Saint Andre stated that there wasn't. The only thing that seems to have been coming up lately is kennels.

Mr. Stumpf stated he is not in favor of use variances. They are subjective. He would like to see some sort of standard.

Ms. Saint Andre stated that there are different ways of handling use variances. For example, the city of Framingham allows use variances in their business and industrial zones but not in residential. Medway currently has list of uses that are prohibited and cannot be allowed by use variance and that is the model that has been used so far. She recommended the Board think about this and over the next meeting or two decide on what it would like to bring before the Town Meeting.

Correspondence:

There was no correspondence presented to the Zoning Board of Appeals.

Meeting Start Time Discussion:

Ms. Saint Andre asked Chairman Stumpf if he would like to change the start time for the hearings from 7:35 pm to 7:30 pm. Mr. Stumpf agreed to start the hearings at 7:30 pm

Approval of Minutes:

On a motion made by Brian White and seconded by Gibb Phenegar, the minutes from November 7, 2018 were accepted unanimously (5-0-0)

Upcoming Meetings:

- December 19, 2018 – Cancelled
- January 2, 2019

Adjournment:

On a motion made by Brian White and seconded by Gibb Phenegar, the Zoning Board of Appeals voted unanimously to adjourn the meeting at 9:15 pm. (5-0-0)

Respectfully Submitted,

Kristin Stearley
Administrative Assistant
Community and Economic Development