



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, May 1, 2019 at 7:30 pm
Sanford Hall
155 Village Street Medway, MA 02053
Meeting Minutes

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

Absent: Christina Oster, Member

Also Present: Barbara Saint Andre, Director, Community and Economic Development and Stefany Ohannesian, Administrative Assistant, Community and Economic Development

Chairman Rori Stumpf called the meeting to order at 7:30 pm

Glen Brook Way Comprehensive Permit Modification Request for review:

Jennifer Van Campen of Metro West Collaborative gave an overview of where they are at with the project. They are trying to get the building permit and it will take up to 6 months for finances to be finalized. She gave an overview the requested modification as to items that can't be satisfied until the building is actually nearing completion. Ms. Van Campen stated there are 7 items that are no longer applicable due to being part of the initial comprehensive permit decision, or that can be put off to either commencement of work or certificate of occupancy.

Ms. Saint Andre asked Ms. Van Campen to clarify when referring to item 39I in her letter is she actually referring to item 39I xvii and if she has any objections to this clarification, Ms. Van Campen agreed.

Motion to find that the request for modifications to Glen Brook Way comprehensive permit **constitute insubstantial** changes, by: Brian White, second: Gibb Phenegar, passed by Vote: 3 - 0 - 0

Public Hearings

48 Gorwin Drive – Variance Application under Section 6.1 of the Zoning Bylaw for proposed addition of a two car garage to west side of the house that will decrease the side yard setback to 8 feet.

Sarah Cabral (DiFlumeri) was present with her husband Giuseppe DiFlumeri, who explained to the Board that they are proposing to add on a two car garage to enhance the quality of living and their home. Mr. DiFlumeri also explained that they have observed other additions in the neighborhood and what they are proposing would be comparable to those in terms of size and setback.

Mr. Stumpf questioned if they had thought of putting the garage anywhere else on the lot. Mr. DiFlumeri stated they considered other places on the property to put the garage but the proposed location would be the best location for the addition. Placing the garage to the rear of the house would eliminate most of the back yard.

Mr. Stumpf questioned what they would use the garage for. Mr. DiFlumeri stated it would be for storing a car and other storage, he stated it would not be used as living space.

Carol Gould asked about the large bushes on that side of the lot, and what they are proposing to do with them. Mr. DiFlumeri stated he spoke with that abutter, and after the proposed garage is built they would take out those existing bushes and put up new, smaller ones. He also mentioned that the lot line was right in the middle of those bushes.

Ms. Saint Andre questioned what the height of the proposed garage would be. Mr. DiFlumeri it would be 1-2 feet shorter than the existing home. He stated he measured his current home from the peak to the ground and it is 17 feet high. Ms. Saint Andre questioned if the variance was granted would they be opposed to having a set condition that the proposed garage be 16 feet or lower. Mr. DiFlumeri stated there would be no issues with that condition. Ms. Saint Andre also questioned the front setback of the property, would the proposed garage be 27 feet or 31 feet back from the street. Mr. DiFlumeri among examining the proposed plot plan agreed that the proposed garage would be 31 feet back from the street.

There were no comments or objections from any abutters or Board members present

The Board then discussed and made decisions on whether the four criteria for a variance have been met:

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.

Mr. White moved, seconded by Mr. Phenegar, that the Board find that there are circumstances related to the unusual shape of the lot, in the shape of the lot as a corner lot with a radius formed by Lee Lane, and with the placement of the existing structure and surface area, there would be no other place to put the garage without creating other setback dimension issues, and these conditions do not generally affect other land in the zoning district; motion passed with a vote of 4-0-0.

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

Mr. White moved, seconded by Mr. Phenegar that the Board find that the conditions as found above cause a substantial hardship due to where the house sits on the existing lot; motion passed with a vote of 4-0-0.

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

Mr. White moved, seconded by Mr. Phenegar that the Board find that based on no objection from any abutters, and that there are other additions with similar setback encroachment in the neighborhood that the addition would not cause substantial detriment to the public good; passed with a unanimous vote of 4-0-0.

4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law.

Mr. White moved, seconded by Mr. Phenegar that the Board find that the relief can be granted without nullifying or substantially derogating from the zoning bylaw due to the fact that there are other additions with similar setback encroachment in the neighborhood; passed by a unanimous vote of 4-0-0.

The Board then discussed the conditions to be placed on variance. One particular condition to be added is "The height of the garage shall not exceed 16 feet at the peak and no second story shall be added to the garage" with a motion made by Brian White and seconded by Gibb Phenegar passed with a unanimous vote of 4-0-0. Ms. Saint Andre stated that the Board should also add its usual boilerplate conditions, the Board members agreed.

The Board then decided to grant this variance request for 48 Gorwin Drive (subject to conditions) which was made by: Brian White and seconded by Gibb Phenegar passed with a vote: 4-0-0.

Ms. Saint Andre then explained why the Board should make a finding based on the existing lot already being a nonconforming lot based on the size of the lot and being too close to the front lot line.

The Board determined that the existing single family home at 48 Gorwin Drive is a legally existing, nonconforming structure, in that it is nonconforming in the following respects: The lot does not meet the minimum lot size for the AR-II District, and the existing house does not comply with the required 35-foot front setback made by Brian White and seconded by Gibb Phenegar passed with a unanimous vote of 4-0-0.

The Board finds that the application to add a two car garage does not increase the nonconforming nature of the structure made by Brian White and seconded by Gibb Phenegar passed with a unanimous vote of 4-0-0.

Motion to close the public hearing for 48 Gorwin Drive made by Brian White and seconded by Gibb Phenegar passed with a unanimous vote of 4-0-0.

Motion to allow any one member of the Board to sign the decision made by Brian White, and seconded by Gibb Phenegar passed with a unanimous for of 4 - 0 – 0.

32 Milford Street – Determination/Finding and potential Special Permit under Section 5.5.C of the Zoning Bylaw for proposed demolition of the existing, nonconforming single family house, and construction of a new single-family house on the property that would exceed the height of the existing house.

The Applicants Jim and Lisa Washek were present and provided an overview of the proposed two story dwelling. Mr. Washek presented his application by stating the existing house is not cost effective to continue to renovate. They propose to demolish the pre-existing nonconforming single family house and build a new one that would be smaller in scale in relation to other new construction abutting the property. They would keep the existing garage and construct the new house which would be 1800-1900 square foot Colonial style in its place.

Mr. Stumpf discussed the Historical Commission finding on the existing house that the house was not of significant historical importance to the Town and the Commission does not object to the demolition of the house. Mr. Phenegar spoke to the property being surrounded by 3 new houses and confirms that Mr. and Mrs. Washek own the existing garage structure on the property. He confirms they would be rotating the new house to face a different direction on the property.

Mr. Stumpf stated there are no objection by any abutters or Board members for the proposed demolition of the existing home.

The Board determines that the existing single family home at 32 Milford Street is a legally existing, nonconforming structure, in that it is nonconforming in the following respects: The lot is a pre-existing nonconforming lot due to insufficient frontage, as the AR-II zone requires 150 feet of frontage, but the Property has only 132 feet. In addition, it appears that the existing house does not comply with the required 35-foot front setback; motion made by Brian White and seconded by Gibb Phenegar passed with a unanimous vote of 4-0-0.

The Board finds that the application to raze the pre-existing, nonconforming single family home and construct a new two-story single family home which will exceed the height of the existing home, substantially in accordance with the plans provided does not increase the nonconforming nature of the structure; motion made by Brian White and seconded by Gibb Phenegar passed with a unanimous vote of 4-0-0.

Ms. Saint Andre recommended a condition that the new structure should meet all Zoning Bylaws regarding dimensions, except the frontage requirement as the lot is already nonconforming as to frontage. One other condition that should be considered is that the Applicants should comply

with the comments from Department of Public Services as well as the Conservation Agent when completing the new construction, and also standard conditions.

Motion was made to approve the conditions as discussed made by Brian White and seconded by Gibb Phenegar passed with a unanimous vote of 4-0-0.

Motion to grant request for 32 Milford Street (subject to conditions), made by Brian White seconded by Gibb Phenegar passed with a unanimous vote of 4-0-0.

Motion to close the hearing for 32 Milford Street was made by Brian White and seconded by Gibb Phenegar passed with a unanimous vote of 4-0-0.

Motion to allow any one member of the Board to sign the decision: by Brian White and seconded by Gibb Phenegar passed with a unanimous vote of 4-0-0

72A Fisher Street – Variance from Section 6.1 of the Zoning Bylaw, which requires 180 feet of frontage, to split the current lot into two lots, resulting in new Lot 1 having 57.9 feet of frontage and new Lot 2 having 60 feet of frontage.

Attorney Stephen Kenney, representative for Patrick and Kathleen McSweeney, was present with the Applicants and gave an overview of the project. He discussed the previous variance granted for the lot to Robert Curatola in July 17, 1997. The Applicants currently live on the lot and have lived there since 1998.

Mr. Kenney then provided information about the lot regarding the four variance criteria in the following order.

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.

Mr. Kenney discussed the shape and size of the parcel being four acres which has 117.9-foot frontage; the driveway goes up a hill and the large area of the lot sits on the hill. There are no wetlands located on the parcel. Mr. Kenney and the Applicants believe the best option is a variance for use of the land rather than a subdivision, mostly due to the impact a subdivision would have on immediate abutters. They are suggesting that construction of one additional home would be the best use for the land.

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

Mr. Kenney stated the real estate taxes have increased for the lot and continue to increase. Also, it would be a tax benefit to the town to have an additional home on the parcel.

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

The Applicants would like to stay in Medway and due to limited options of available land they would like to split the lot.

4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law.

The intent is not overburden or overly construct so it does not impose upon abutters and would actually be a better situation than a subdivision. He stated that all other requirements of the Zoning Bylaw would be met.

Mr. Kenney described that the driveway will stay the same and it will not disrupt abutters. He also discussed the existing variance and the language stating there is to be only one single family dwelling on the lot with no further subdivision. He stated that the existing variance can be modified by the Board. He stated other lots in the area are similar in size being around one acre, this lot is four acres and dividing the lot into two 2 acre parcels would be beneficial.

Mr. Kenney then discussed the letter from the Medway Planning and Economic Development Board, addressing the concerns they raised about the driveway. He stated that he believes this is not the best option due to multiple reasons, including cutting down of trees as well as the impact on direct abutters. He states the driveway would remain as a “common driveway” and it would be written into the deed that the maintenance of it be the responsibility of the owners.

Mr. Kenney then presented two letters to the Board from direct abutters Randy Scheid of 6 Rockwood Road as well as Matthew Kealey of 72 Fisher Street.

Mr. Stumpf discussed frontage of the property already being reduced by a prior variance. He states that the Planning and Economic Development Board would be more suitable in discussing issues of drainage, etc. He also raised the question of why the Applicants are going through the Zoning Board of Appeals instead of Planning and Economic Development Board.

Mr. Kenney stated that applying for a variance makes more sense and they are only proposing one single family home. They believe there are supportable grounds for a variance grant and that there could be more problems if they were to go in front of the Planning and Economic Development Board regarding the language stated in the current variance for the property.

Mr. Phenegar questioned the Applicant being aware of the language on the deed prior to purchasing the house. Mr. McSweeney stated that yes they were aware.

Mr. White stated that he believes it would be more fitting for the Applicant to go through the Planning and Economic Development Board.

Ms. Gould stated that she is concerned about the reduction of frontage to the property. Mr. Kenney stated that they understand that there is a procedure to be followed by the Planning and Economic Development Board but that does not mean that a variance could not be granted.

Mr. Phenegar questioned the Bylaws that are in place currently regarding smaller subdivisions that would allow them to build a subdivision only consisting of one other house. Mr. Phenegar

asked where the Applicants will live and Mr. McSweeney stated they would live in a newly constructed home on Lot 2 if it were to be split.

Mr. McSweeney also referred to letter provided by the Planning and Economic Development Board and clarified that they are not developers and purely want to be able to remain in Medway by building a new home in order to downsize and splitting their current lot would allow this.

Ms. Gould discussed the language in the deed again regarding the lot only being used for a single family dwelling.

Ms. Saint Andre questioned where the existing driveway is located on the lot. She also stated that if a variance is granted the property would be divided into two lots and questioned who would be responsible if it was a “common driveway”, which is not something that is typically allowed in Medway. Mr. Kenney stated that the idea would be to have the existing driveway remain to be shared by both properties and that there would be language recorded in the new deed with the Registry of Deeds regarding maintenance of the driveway being shared by both property owners.

Andy Rodenhiser, Chairman of the Planning and Economic Development Board spoke about the history of the lot, and that the hardship was self- created when the ANR was done. He stated that the Planning Board believes a subdivision is the right route to go due to drainage and any further impact of the construction of a new home. He stated that he doesn’t believe that creating a second lot that has a shortage of frontage is the right way to go.

Laurel Singer, 8 Rockwood Road stated she is curious where the proposed new single family residence is going to be on the new lot. Mr. Kenney showed Ms. Singer the plot plan and where the proposed new home would be on the lot. After seeing the potential location of the proposed new home Ms. Singer stated that she would be opposed to this project due to the impact it would have on her backyard and her privacy.

Andrea McCarthy 72 Fisher Street stated that she is not opposed and believes the variance is the route to go as they do not want the subdivision.

Randy Scheif 6 Rockwood Road stated that as an abutter hearing the risk of the lot being subdivided, he would rather have it be a variance than a subdivision as he desires to keep the integrity of the land. He states he would be in favor of the variance.

Mr. Rodenhiser spoke about the Planning and Economic Development Board having regulations about the length of a road in a subdivision being 600 feet. He also cautioned the Board regarding the decision they make potentially setting a precedent to other applicants in the future.

Ms. Saint Andre stated that the existing home has a current variance on the lot, therefore if they were to apply to have a subdivision to split the lot the Applicants would need to come before the Board to have the current variance modified.

The Board discussed the driveway and the impact on abutters if it were to be made into a private way. Mr. Rodenhiser stated that the Planning and Economic Development Board has allowed for narrower roadways and they would be open to potential waivers for some of the condition if this project would be submitted as a subdivision.

Mr. Phenegar asked Mr. McSweeney if he would be able to go and look at the property as well as Mr. Stumpf. Mr. McSweeney states that anyone can come on the property to get a better idea.

Ms. Singer questioned the valuation of her property if this were to go through and asks about potential conditions or restrictions to be set forth for the potential decision. Mr. Stumpf also asked Ms. Singer if he can go on her property to get a better idea of the impact this proposed new home would have on her property and she agreed.

Motion to continue the hearing for 72A Fisher Street to Wednesday June 5, 2019 at 7:30 pm in Sanford Hall made by Brian White and seconded by Gibb Phenegar passed with a unanimous vote of 4-0-0.

Upcoming Meetings

- May 15, 2019 –
 - 7 Wellington Street – Variance for lot split and frontage requirements
 - 39 Main Comprehensive Permit – Traffic Review

Adjournment

Motion to Adjourn the meeting made by Brian White seconded by Gibb Phenegar passed with a unanimous vote of 4-0-0 at 8:47 pm

Respectfully Submitted,

Stefany Ohannesian
Administrative Assistant, Community and Economic Development