

Board Members
Rori Stumpf, Chairman
Brian White, Vice Chair
Gibb Phenegar, Clerk
Christina Oster, Member
Tom Emero, Member
Carol Gould, Associate Member



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TOWN OF MEDWAY

COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS

Wednesday, September 16, 2020 at 7:30 p.m.

(Virtual Meeting)

Meeting Minutes

Present: Rori Stumpf, Chairman; Brian White, Vice Chair; Gibb Phenegar, Clerk; Tom Emero, Member (arrived at 7:57 p.m.); Christina Oster, Member; Carol Gould, Associate Member

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

Call to Order

Chairman Rori Stumpf called the meeting to order at 7:30 p.m. and read that this meeting is being broadcast and recorded by Medway Cable Access. Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place, no in-person attendance of members of the public will be permitted at this meeting. Board members will be participating remotely. For public hearings, access via Zoom is provided for the required opportunity for public participation. Information for participating via Zoom is posted at the end of the ZBA Agenda on the town website. He then read instructions on how to participate in the meeting. All persons participated remotely in the meeting via Zoom.

Public Hearings

72A Fisher Street - The application is for a **Modification** of a previously granted **variance** for the property, to remove the following conditions from the variance: 1. that only one single family home may be built on the lot; and 2. that the applicant shall impose, by including in the deed, a covenant running with the land that the premises are not to be subdivided and are to be used only for one single family dwelling.

Mr. Stumpf stated that he and Mr. Phenegar visited the property as well as 8 Rockwood Road's property. Attorney Kenney stated that they have submitted a plan to the board with the distance of the proposed house location from the lot lines of Rockwood Road and Fisher Street abutters. The proposed home is proposed to be 82 feet from the Rockwood Road property and 50 feet from the Fisher Street properties. He suggests that any decision made to include the plan submitted have a five foot leeway on either side of the house as they would like to have a small utility shed to the right of the barn. Attorney Kenney said that if the Board votes positively they will still have to go to the Planning and Economic Development Board (PEDB) and they will be improving Fisher Street drainage as a whole. Attorney Kenney had been in touch with direct abutters in regards to their concerns.

Mr. Stumpf opened a discussion with the Board. Mr. Phenegar asking about the basketball court, and if it will stay or go. Attorney Kenney stated that if the PEDB wanted them to have the full circle roadway then yes it would go, if not then the applicants would want it to stay. Mr. Phenegar inquired if the proposed home will be a single story home, to which the response was yes. Mr. Phenegar then asked about the 5 foot plus or minus to be allowed on the proposed home. Mr. Phenegar then inquired about how far would the “no cut line” be from the 8 Rockwood Road, roughly a 30 foot no cut zone. Attorney Kenney mentioned that there has been no further discussion about it with abutters at this point. Attorney Kenney stated he thinks the “no cut” line request would be 60 feet. The applicants are looking to clear less than 20,000 square feet land disturbance. Ms. Gould inquired about any other abutters with concerns, no one else has reached out with concerns.

Mr. McSweeney stated he wanted to answer Mr. Phenegar’s questions, they are looking to do an approximately 2,000 square foot home or less, and in regard to the no-cut zone, it would be around 50 feet from the back corner of the proposed house. Roughly it would be between 50 – 70 feet of a no cut zone. Mr. McSweeney stated between 30 – 50 feet from the lot line, there are only 3-4 trees in the zone and they are mostly dead so they would come down.

Ms. Saint Andre stated that Mr. McSweeney mentioned a 2,000 sq. foot home, she inquired if it would be gross floor area or foot print. Gross floor area would include the basement, to which Mr. McSweeney stated it will be 2,000 square feet for the footprint, plus there will be a basement.

Penny Sigl, 76 Fisher Street, stated that she is concerned about this project because of her private water well being close to the proposed septic system. She is also concerned about erosion on the slope and drainage. Mr. Stumpf stated that if this is approved the applicants would have go to before the PEDB and as part of the application, the applicants would address issues of drainage. If any structure is built there it would have to go through Conservation as well.

Laurel Singer, 8 Rockwood Road stated that correspondence from Attorney Kenney indicated that Mr. McSweeney stated any lighting would not shine on their property. She wanted to make sure that would be incorporated in any decision as well as anything to be approved would have a firm no cut zone, she wants to maintain as much privacy as possible between the two properties. Ms. Singer stated that Beth Thompson of 10 Rockwood is asking for a fence to be put up between the two properties.

Mr. McSweeney stated he would not have a problem with putting up a fence, but stated that the Thompson’s took down a lot of trees from their property when they moved in.

Mr. Whitney, 74 Fisher Street is concerned about drainage issues and worried about their water well also. He refers to the plan and the different elevations of the area and that it is not a good place for any new structures on the site. He also stated that on the plan it says “potential” house location and they are nervous that it will be moved again. He then went over the 1997 ZBA meeting that took place for the original variance that he explained at the last meeting as well.

Jeff O’Neill, 78 Fisher Street stated that he has a lot of drainage issues because of the lot as it currently exists. The proposed septic location is concerning to him due to drainage issues. He stated that he is requesting that they protect the privacy of the property with some plantings around the septic system area.

Attorney Kenney stated that the Board of Health would be involved and that no septic would be placed near a water well, and that the applicants want to keep as much of the wooded area as possible. If approved, the PEDB will address all drainage and roadwork to happen on the lot.

Mr. McSweeney stated that they have no issue with changing the wording “potential” to “proposed” on the plan, and will commit to build the house as shown; they are just asking for a few feet of flexibility for final adjustments if the house plan changes. The septic is proposed as shown due to it being a low area and best potential location.

Mr. Stumpf then started to discuss the variance criteria. There being all five members present, plus the associate member, it was questioned as to which members are eligible to vote. Ms. Saint Andre stated that Mr. Emero did not join the meeting until sometime after the public hearing was underway, and felt that as a result he was not eligible to vote.

Variance criteria from Section 6.1:

1. Whether owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;

Mr. White stated that due to the lot being a hammerhead lot it is unlike the rest of the lots in the area. Mr. Stumpf stated that the topography has a high grade and the size and shape is unusual. Mr. Stumpf, however, doesn't see how that relates to overturning the original variance. Mr. Stumpf stated that a positive is that the drainage would improve. Mr. White stated that where the potential house is located is only 8 feet higher in elevation, so the shape of the lot is a big factor. Mr. Phenegar agreed that the shape and topography of the lot make it unique.

2. A literal enforcement of the provisions of the zoning by-law would involve substantial hardship, financial or otherwise, to the applicant, and

Mr. Stumpf stated he does not think it applies because a hardship is something that would be applicable to any subsequent owner, for example, if a lot is unbuildable under current by-laws. Ms. Oster agreed. Mr. White stated he does not see it as a hardship on zoning, they are looking for relief from relief that has already been granted with a condition imposed. He stated it comes back to the previous variance, and he is not sure what the standing is where the applicant does not meet a criterion for this decision. Ms. Saint Andre stated that the criteria for modifying a variance is the same for granting a variance, and the Board must make findings to support the criteria being met. The prior variance was for one single family home, and now they are asking essentially for a variance for more than one house on the lot.

Attorney Kenney stated that in regards to criterion #1 the shape and topography of the lot are factors. Attorney Kenney stated the hardship is that the real estate taxes have significantly increased, and an additional single family residence would be a benefit to the town. In regards to hardship, the lot is large enough being 4 acres, for two single family homes.

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

Mr. Phenegar stated that he agreed with this criterion, and that there will be less erosion and drainage issues. Mr. Phenegar then stated that someone could buy that property and turn it into a farm, getting rid of a lot of trees for a potential pasture. A small house with a lot of conditions he believes is the highest and best use. Mr. Stumpf stated that he is looking at this as an abutter, and this would affect four direct abutters. He sees a number of concerns, and is not convinced this will not be detrimental to the abutters.

Mr. White stated that having the lot re-engineered to improve the drainage would be beneficial to the abutters and believes the drainage issue being fixed would be much more valuable than the issue with trees. Ms. Oster agrees with Mr. Stumpf's view on this criterion. Attorney Kenney inquired if Mr. Emero could vote, but he is not able to as he did not join the meeting until about 7:57 p.m., after the public hearing was under way. It was decided to continue with the discussion of criteria with the members who were present from the beginning of the meeting.

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

Mr. Phenegar agreed with this criterion as well. He stated that what the applicants are proposing to do meets all setbacks and requirements of the current zoning bylaw. Having to go through the PEDB private way subdivision regulations, will result in a lot more restrictions as to drainage, access, and other items. Also, the circumstances have changed in 23 years. Attorney Kenney stated that this is not over burdening a 4-acre parcel and would not be over intruding on the current abutters.

It was decided to make a motion and vote on each of the four criteria separately.

Attorney Kenney requested a hearing continuation to allow Mr. Emero to review the complete record of this session of the public hearing and file an affidavit per General Laws chapter 39 so that he could participate as an active voting member at the next meeting. It was noted that the applicant had already agreed to an extension of time for the Board to act until October 13th. There was a discussion among the members around whether to continue the hearing again or to vote on a decision. Mr. White and Mr. Phenegar wanted to hear Mr. Emero's perspective and input. Mr. Stumpf, Ms. Oster, and Ms. Gould felt they were ready to vote tonight. Ms. Oster asked if the Board could get Mr. Emero's input tonight, and Ms. Saint Andre stated that Mr. Emero could certainly do so as this is a public meeting. Mr. Phenegar and Mr. White stated they would like to have Mr. Emero be an active member and are in favor of continuing the hearing. It was decided to continue the hearing to allow Mr. Emero to be an active part of the application.

Motion to continue the hearing for 72A Fisher Street to October 7, 2020 at 7:30 p.m. made by Brian White, seconded by Gibb Phenegar, passed with a by a roll call vote of 4-1.

Brian White Aye

Gibb Phenegar Aye

Christina Oster Aye

Carol Gould Aye

Rori Stumpf Nay

Motion to accept the extension of time for the Board to act until October 13, 2020 made by Brian White, seconded by Gibb Phenegar, passed with a roll call vote of 5-0.

Brian White Aye
Gibb Phenegar Aye
Christina Oster Aye
Carol Gould Aye
Rori Stumpf Aye

7 Barber Street – The application is for the issuance of a **special permit** under Section 8.2 of the Zoning Bylaw to construct an Accessory Family Dwelling Unit (“AFDU”) to the existing home on the property.

Mr. Brilmayer was present and explained that the existing garage, which has 396 square feet and is only 2 feet from the side lot line, will be razed. In addition, 308 square feet of the existing house will be incorporated into the AFDU. He explained the addition will be in compliance with the 10 foot side setback requirement. He presented a rendering of where the proposed stairs will be up to the loft. The reconfiguration will make the property more conforming. Mr. Stumpf stated he has no issues with the additional square footage requested and the location of the proposed AFDU.

Mr. Phenegar stated that it is very difficult to see what will be built without engineered plans. Mr. Brilmayer stated that the proposed open loft would be a 400 square foot area of usable space with a steep roof line. Ms. Gould stated that the size of the structure is concerning. Mr. Brilmayer stated that he would like adequate space for his parents and that there are abutting properties that are significantly larger. He stated that he wants to stay in Medway and wants his parents to be able to live with him and be taken care of. He also mentioned having strong abutter support. Mr. Emero inquired about the lot coverage and if he did not remove the garage, would the lot coverage be exceeded. Mr. Brilmayer explained that he would not be able to do this addition if the garage was remaining, therefore he does not intend to keep the garage.

Mr. Stumpf stated that this proposed AFDU will be more conforming to the lot and that although it is larger, the most of the mass will be hidden as it is behind the existing structure. Currently, this addition could be built without any variances needed because it complies with all setbacks. There is also a lot of abutter support which is an important factor.

Ms. Saint Andre went over the requirements of Section 5.5.C.3 for a single or two-family non-conforming structure to make a non-conforming lot more non-conforming. Due to being in compliance with these requirements, the applicant would not need further permits or variances to build this addition, just a permit for the use. Mr. Phenegar stated that he is in favor of AFDU’s but in the past other projects have been built that were not what was presented.

Phil Tepfer, 5 Barber Street stated he is a direct abutter and is in strong support of this project. He stated the razed garage will be more beneficial to his property as well as the second floor.

Mr. Stumpf then went over the criteria for an AFDU, the Board agreed the applicant met all AFDU criteria. The Board members also approved the second bedroom and the additional square footage including the proposed loft.

With a motion made by Brian White, seconded by Gibb Phenegar, the Board finds that the Applicant has met all of the required Accessory Family Dwelling Unit decision criteria with a roll call vote of 5-0.

**Brian White Aye
Gibb Phenegar Aye
Christina Oster Aye
Tom Emero Aye
Rori Stumpf Aye**

Motion to allow the AFDU to be more than 800 sq. feet, in accordance with the plans submitted, made by Brian White, seconded by Gibb Phenegar, passed with a roll call vote of 5-0.

**Brian White Aye
Gibb Phenegar Aye
Christina Oster Aye
Tom Emero Aye
Rori Stumpf Aye**

Motion to allow the AFDU to include a second bedroom, in accordance with the plans submitted, made by Brian White, seconded by Gibb Phenegar, passed with a roll call vote of 5-0.

**Brian White Aye
Gibb Phenegar Aye
Christina Oster Aye
Tom Emero Aye
Rori Stumpf Aye**

Mr. Stumpf then went over the special permit criteria. It was decided that the applicant has met all special permit criteria.

With a motion made by Brian White, seconded by Gibb Phenegar, the Board finds that the Applicant has met all of the required special permit decision criteria by a roll call vote of 5-0.

**Brian White Aye
Gibb Phenegar Aye
Christina Oster Aye
Tom Emero Aye
Rori Stumpf Aye**

Ms. Saint Andre then went over the boiler plate conditions. She stated that the Board may want to make it clear that the garage must be razed and that the first floor foot print is 24 feet x 36 feet as well as how to describe the loft area. Mr. Stumpf stated that they should also condition that the height not exceed 35 feet. There was a discussion around when the garage would be taken down. Mr. Phenegar suggested a condition similar to “before construction on the AFDU the garage will need to be taken down”. Ms. Ohannesian inquired about the dimensions of the home being 26’ x 36’ or 24’ x 36’, due to different plans submitted. Mr. White stated he would want a plot plan from a professional to be followed. Mr. Stumpf suggested that a condition could state the AFDU could be up to 26’ x 36’ in size without reducing the setbacks. It was ultimately decided to condition the revised plan submitted by Colonial Engineering.

Motion to grant the special permit request for 7 Barber Street with conditions set forth by Brian White, seconded by Gibb Phenegar, passed by a roll call vote of 5-0

Brian White Aye
Gibb Phenegar Aye
Christina Oster Aye
Tom Emero Aye
Rori Stumpf Aye

Motion to close the public hearing for 7 Barber Street and to allow any one member of the Board to sign the decision by Brian White, seconded by Gibb Phenegar, passed by a roll call vote of 5-0

Brian White Aye
Gibb Phenegar Aye
Christina Oster Aye
Tom Emero Aye
Rori Stumpf Aye

110 Holliston Street – The application is for the issuance of a **variance** from Section 6.1 of the Zoning Bylaw to construct an 11 foot by 14 foot addition to a current pre-existing non-conforming shed on the property to be within the setbacks of the property.

Mr. Palmieri was present and shared a PowerPoint presentation along with a summary of his application. He explained he was not aware he needed a variance for this shed addition and was not trying to circumvent the Town's bylaws. He explained there is an existing shed on the property and he is asking for a variance for the original shed and the shed addition. The shed addition is essentially a second shed that is attached to the side of the pre-existing shed. Each of the two sheds is less than 200 square feet, but because they are connected, they are considered one structure of more than 200 square feet, and therefore need to comply with the 15 foot setback. Even if the two sheds were separated, they would need to comply with a five foot setback. He went through the variance criteria, explaining his lot is 9,292 square feet and in the AR-I district the lot size requirement is 44,000 square feet, making the lot 79% smaller than other lots in this zoning district. The lot is a corner lot to Holliston Street and Virginia Road and is not square. The hardship is not self-created and the reality is they only have 2,338 square feet of buildable space on the lot if setbacks are literally enforced. The space where the shed abuts 108 Holliston Street and 2 Virginia Road is not useable space for any of the properties. He stated they have submitted 14 abutter support letters for this project and it will and has met the Design Review Guidelines for the Town. He went over some examples of similar variances, 48 Gorwin Drive, 9 Cider Mill Road, 15 High Street which were all granted. He then referred to the PEDB letter dated September 16, 2020 and made some clarifications in regards to information in the letter.

Mr. Stumpf opened the discussion to the Board. Mr. Stumpf inquired about what would be needed to separate the sheds. Mr. Palmieri stated it would take a significant amount of labor as it is nailed and screwed together. He also pointed out that the shed roof line meets the design review guidelines. Mr. Palmieri stated the existing shed is on a concrete slab, and that the setback requirements on the lot make it difficult to have any flexibility on where to place the shed. Mr. Phenegar stated that this is a difficult case, and if he had applied for a building permit this would have been caught beforehand. Mr. Palmieri stated that the structure is about 80% complete and the intent is to keep them two sheds with separate entrances. The Board then reviewed the variance criteria.

Mr. Stumpf stated that he does consider the size and shape of the lot being a large factor, in terms of setbacks and positioning of the new shed. Mr. White agreed. Mr. Stumpf also stated that the location of

the dwelling makes things difficult. He stated that the hardship has been self-inflicted and that it does not apply to this case, for example he could have a separate shed in the setback by right. Mr. White inquired about the purpose of the two sheds. Mr. Palmieri stated that they have a small house, with a crawl space and damp basement, so there is limited storage area. The second shed is for patio and deck furniture, sporting equipment, things that cannot be put in the attic. Mr. Stumpf inquired about the second shed being moved a foot or two over. Mr. Palmieri stated that it would just not look right or go with the design guidelines if the sheds are separated. Mr. Phenegar stated that the applicant has met criterion #3 because there has been no opposition of the abutters, the structure itself is beautiful and that it is not a detriment to the public good. Ms. Oster agreed. Mr. Phenegar again agreed with criterion #4, he stated that there is already an existing shed that has the same setbacks as the addition that does not derogate from the bylaw any more than the first one and it also fits in with the neighborhood.

Rich McDougall, 108 Holliston Street, stated that the structure is unbelievable and he is in strong support of this and this was an honest mistake. They support the current location of the shed and addition.

The Board then voted individually on each variance criterion individually.

Variance criteria from Section 6.1:

1. Whether owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located,

Mr. Stumpf stated that the size and shape of the lot, plus the location of the house being in middle of the lot leaving little room to put other structures on the lot, meets this requirement. The conditions related are that is it a corner lot, that it is not square in shape, and the size of the lot is very undersized.

Move that the applicant has met criterion #1 made by Brian White, seconded by Gibb Phenegar, passed with a roll call vote of 5-0

Brian White Aye

Gibb Phenegar Aye

Christina Oster Aye

Tom Emero Aye

Rori Stumpf Aye

2. A literal enforcement of the provisions of the zoning by-law would involve substantial hardship, financial or otherwise, to the applicant, and

Ms. Oster stated that personal needs are a hardship to the applicant and his family in regards to lack of existing storage space. Mr. Emero stated that whether there is a hardship depends on whether the second shed could have been constructed separately and 1.5 feet further away from the side lot line. Mr. Stumpf stated a case could be made that the setbacks are the hardship, but not combining the two sheds together would solve it. Mr. White believes the hardship is the size of the lot, and that there is not much space outside of the setbacks to place the structures.

Move that the applicant has met criterion #2 made by Brian White, seconded by Gibb Phenegar, passed with a roll call vote of 3-2, however, 4 affirmative votes are necessary to grant a variance.

Brian White Aye

Gibb Phenegar Aye

Christina Oster Aye

Tom Emero Nay

Rori Stumpf Nay

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

Mr. White stated it would not be detrimental, Ms. Oster and Mr. Phenegar agreed. There is an existing non-conforming shed that is the same size as the addition.

Move that the applicant has met criterion #3 made by Brian White, seconded by Gibb Phenegar, passed with a roll call vote of 5-0

Brian White Aye

Gibb Phenegar Aye

Christina Oster Aye

Tom Emero Aye

Rori Stumpf Aye

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

Mr. Phenegar stated that there is already an existing shed that has the same setbacks as the addition; the new shed does not derogate from the bylaw any more than the first one, and it also fits in with the neighborhood.

Move that the applicant has met criterion #4 made by Brian White, seconded by Gibb Phenegar, passed with a roll call vote of 5-0

Brian White Aye

Gibb Phenegar Aye

Christina Oster Aye

Tom Emero Aye

Rori Stumpf Aye

Mr. Palmieri reiterated his intent and why he designed the shed addition the way it is. There was a 3-2 vote on criterion #2, meaning the applicant would not meet all criteria for relief. There was a discussion about the two sheds being connected, obtaining relief of the setback as one structure within the setback and not two structures. Mr. Palmieri stated he was trying to meet the bylaw by creating one nicely designed structure instead of having two separate structures close together and not meeting the Design Review Guidelines. Mr. Stumpf then stated he would like to reconsider his vote.

Motion to reconsider the vote for criterion #2 made by Tom Emero, seconded by Gibb Phenegar, passed with a roll call vote of 4-1.

Tom Emero Nay

Brian White Aye

**Gibb Phenegar Aye
Rori Stumpf Aye
Christina Oster Aye**

Move that the applicant has met this criterion #2 made by Gibb Phenegar, seconded by Brian White, passed with a roll call vote of 4-1.

**Brian White Aye
Gibb Phenegar Aye
Christina Oster Aye
Tom Emero Nay
Rori Stumpf Aye**

With a motion made by Brian White, seconded by Gibb Phenegar, the Board finds that the Applicant has met all of the required variance decision criteria by a roll call vote of 4-1.

**Brian White Aye
Gibb Phenegar Aye
Christina Oster Aye
Tom Emero Nay
Rori Stumpf Aye**

The applicant stated he understands the boiler plate conditions to be imposed on the variance from the previous discussion on 7 Barber Street, which he was present for.

Mr. Stumpf made a statement that this should not give residents the idea to circumvent the Zoning Bylaw by proceeding on a project and come for a variance after the fact.

Motion to grant the variance request for 110 Holliston Street with conditions as set forth, made by Brian White, seconded by Gibb Phenegar, passed by a roll call vote of 5-0.

**Brian White Aye
Gibb Phenegar Aye
Christina Oster Aye
Tom Emero Aye
Rori Stumpf Aye**

Motion to close the public hearing for 110 Holliston Street and to allow any one member of the Board to sign the decision made by Brian White, seconded by Gibb Phenegar, passed by a roll call vote of 5-0.

**Brian White Aye
Gibb Phenegar Aye
Christina Oster Aye
Tom Emero Aye
Rori Stumpf Aye**

Approval of Minutes

- September 2, 2020

Motion to approve the minutes for September 2, 2020 as presented made by Brian White, seconded by Gibb Phenegar, passed by a roll call vote of 5-0.

Brian White Aye

Gibb Phenegar Aye

Christina Oster Aye

Tom Emero Aye

Rori Stumpf Aye

Upcoming Meetings

- October 7, 2020 – 62 Adams Street AFDU application
- October 21, 2020

Adjournment

Motion to adjourn the meeting at 10:05 p.m. made by Brian White, seconded by Gibb Phenegar, passed by a roll call vote of 5-0.

Brian White Aye

Gibb Phenegar Aye

Christina Oster Aye

Tom Emero Aye

Rori Stumpf Aye

Respectfully submitted,

Stefany Ohannesian

Administrative Assistant

Community and Economic Development

Edited by

Barbara J. Saint Andre

Director, Community and Economic Development