



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
Christina Oster, Assoc.

**DECISION
VARIANCE
114 D MAIN STREET**

Date Application Filed: March 6, 2018

Applicant(s): Sharon Knight & Daniel Macias (the "Applicants")
Tumble Beans Café & Play
858 Pond Street
Franklin, MA 02038

Location of Property: The Project is located on a parcel of land in Medway with proposed access to the property via frontage on Main Street. The property is located at 114 Main Street (Assessor Parcel No. 40-057), with the facility (tenant) location in the rear of the building, also known as 114 D Main Street.

Approval Requested: Variance from Section 7.2.5 of the Zoning Bylaw for a sign to exceed the 12 foot maximum height for a "projecting sign." The applicant requests a maximum height of 18 feet.

Members Participating: Eric Arbeene (Chair), Brian White (Vice Chair), Rori Stumpf, and Christina Oster

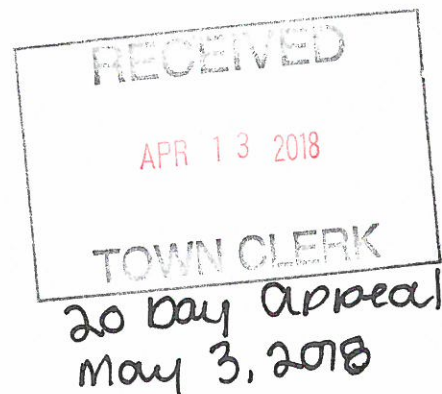
Members Voting: Eric Arbeene (Chair), Brian White (Vice Chair), Rori Stumpf, and Christina Oster

Hearing Opened: April 4, 2018

Hearing Closed: April 4, 2018

Date of Decision: April 4, 2018

Decision: Granted





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I. PROCEDURAL HISTORY

1. On March 6, 2018, the Applicant filed a Variance Application, pursuant to G.L. c. 40A, as amended, and the Medway Zoning Bylaw, for a sign to exceed the 12 foot maximum height for a “projecting sign.” The applicant requested a maximum height of 18 feet.
2. Notice of the public hearing was published in the Milford Daily News on March 21, 2018 and March 28, 2018, 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 April 4, 2018 and closed the same evening.
4. The applicant was not represented at the hearing.
5. The Project is located within the rear of the existing building at 114 Main Street, tenant location 114 D Main Street.
6. The Property is located in the Central Business Zoning District.
7. The Board notified Town departments, boards and committees of this application. The Board received written comments from the Fire Department and Building Department.
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 April 4, 2018 Zoning Board of Appeals meeting, the Applicants were not present. The Board decided to open the hearing.

Mackenzie Leahy, Administrative Assistant, briefly explained why the applicant had moved forward with the request, the immediate concern being safety where the sign had already been hit by a delivery vehicle, damaged, and if the sign was reinstalled in the same location, complying with the Zoning Bylaw, the sign could be hit again and could potentially pose a more severe threat of safety, specifically referencing the application and the comments provided by the Fire Chief and Building Department.

There were no members of the public in favor or in opposition of the request.

The Board briefing deliberated and were understanding that the applicants had tried to “do the right thing” by complying with the Zoning Bylaw and in turn had their sign damaged, costing the applicants additional funds as a new business, and the location also posed a safety concern.

The Board felt that the request was straight-forward and grant of the request was necessary.

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. The applicant has provided sufficient evidence that with the shape of the lot and improvements upon it, the twelve foot height restriction creates a hazard for emergency and delivery access and a hazard to persons on the property.
2. *Substantial hardship caused by the circumstances from Criteria A.1 when the Zoning Bylaw is literally enforced:*
 - a. The applicant would incur repeated financial hardships and potential liability for a falling and/or broken sign if the 12 foot height restriction was enforced.
3. *Why/how the grant of relief would not nullify or derogate from the intent of the Zoning Bylaw:*
 - a. The business for which the sign is needed is located within the Central Business District. As the area has existing commercial character, with businesses represented by signs much larger than that of the proposed, an increase to the height of the existing sign to 18 feet would not derogate from the intent of the Zoning Bylaw.

IV. CONDITIONS OF APPROVAL

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board **GRANTS** to Sharon Knight and Daniel Macias, dba *Tumble Beans Café & Play*, a **VARIANCE** from Section 7.2.5 height requirements for a projecting sign in the Central Business District. The maximum height of 12 feet is increased to a maximum height of 18 feet, for the business located at 114 D Main Street (Parcel ID 40-057).

1. This variance approval 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 new application.

Any work or use that deviates from the approved Variance or this Decision shall be a

violation of the *Medway Zoning Bylaw*, unless the Applicant requests a new application and such approval is provided in writing by the Board.

2. 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. If no request for extension is filed and approved, the Variance shall lapse one year from the date of Decision, unless acted on or otherwise specified, and may be reestablished only after a new filing, hearing, and decision.

V. INDEX OF DOCUMENTS

- A. The Variance application includes the following plans and information that were provided to the Board at the time the application was filed:

1. N/A

- B. During the course of the review, the following materials were submitted to the Board by Town Departments/Boards:

1. Fire Department Comments, provided by Chief Lynch, received March 29, 2018
2. Building Department Comments, provided by Jack Mee, received April 3, 2018

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

1. N/A

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision 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.

The next page provides the signatures of the Board.

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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 Medway Zoning Board of Appeals **GRANTS** to Sharon Knight and Daniel Macias, dba *Tumble Beans Café & Play*, a **VARIANCE** from Section 7.2.5 height requirements for a projecting sign in the Central Business District. The maximum height of 12 feet is increased to a maximum height of 18 feet, for the business located at 114 D Main Street (Parcel ID 40-057).

Member:	Vote:	Signature:
Eric Arbeene	Yes	
Brian White	Yes	
Carol Gould	-	
Rori Stumpf	Yes	
Bridgette Kelly	-	
Christina Oster	Yes	

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision 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 9 and 11, the Variance or Special Permit granted by this Decision shall not 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.