



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

**DECISION
VARIANCE
11 & 13 CLARK STREET**

Date Application Filed: August 9, 2017

Applicant(s): Egidio A. Rovedo
Rose M. Rovedo
Patrice R. Green, f/k/a Patrice R. Rovedo (the "Applicants")
11 Clark Street
Medway, MA 02053

Location of Property: The Project is located on two parcels of land in Medway, 11 Clark Street (Assessor Parcel No. 43-011) and 13 Clark Street (Assessor Parcel No. 43-010).

Approval Requested: Variance from Section 6.1 of the Zoning Bylaw to divide one lot into two lots; both lots shall have adequate area, "Lot 1" shall have 150 feet of frontage and "Lot 2" shall have 150.04 feet of frontage where 180 feet is required.

Members Participating: Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould (Clerk), Bridgette Kelly, and Rori Stumpf

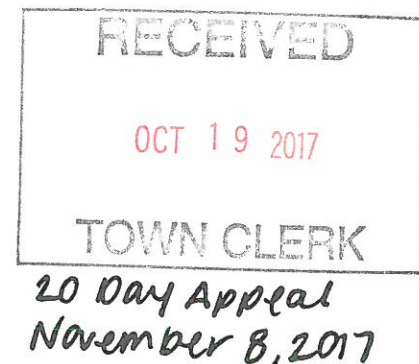
Members Voting: Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould (Clerk), Bridgette Kelly, and Rori Stumpf

Hearing Opened: September 6, 2017

Hearing Closed: October 11, 2017

Date of Decision: October 11, 2017

Decision: Granted with Conditions



I. PROCEDURAL HISTORY

1. On August 9, 2017, the Applicant filed a Variance Application, pursuant to G.L. c. 40A, as amended, and the Medway Zoning Bylaw, for 11 and 13 Clark Street, Medway, Massachusetts, seeking a Variance from Section 6.1 of the Zoning Bylaw to divide the properties in order to allow for construction of a single family home at 13 Clark Street. Where, under common ownership, the two lots are “merged” to meet the current zoning requirements for frontage in the AR-I Zoning District, the Applicants request to utilize these lots as separate single family lots. The Applicants seek a frontage Variance for 11 Clark Street to 150 feet and 13 Clark Street to 150.04 feet where 180 feet of frontage is required.
2. Notice of the public hearing was published in the Milford Daily News on August 23, 2017 and August 30, 2017, 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 September 6, 2017; the hearing was continued to October 4, 2017 which was continued without testimony, to October 11, 2017. The hearing was closed and the Decision was voted on October 11, 2017.
4. The Project is located at 11 Clark Street (Assessor Parcel No. 43-011) and 13 Clark Street (Assessor Parcel No. 43-010).
5. The Properties are located in the Agricultural Residential I (AR-I) District.
6. During the public hearing, the Applicants were also represented by their counsel, Steve Kenney of Kenney & Kenney, 181 Village Street, Medway, MA 02053.
7. The Board notified Town departments, boards and committees of this application. No comments were received.
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 September 6, 2017 hearing, the Applicant and his representative provided an overview of the requested Variance. 11 and 13 Clark Street (“the properties”) were purchased in 1972. The plan provided to the Board was recorded with the registry of deeds in 1973; the plan was an ANR plan signed by a member of the Medway Planning Board in 1972 and at the time the plan was signed, both lots were conforming. Both Lot 1 (11 Clark Street) and Lot 2 (13 Clark Street) meet the current dimensional requirement for area, and at the time met the requirements for frontage, which was 150 feet. The zoning changed from AR-II to AR-I and the zoning requires 180 feet of frontage. Lot 2 is currently a vacant lot and Lot 1 is currently has a single family house. Patrice is the only child of Egidio and Rose Rovedo and would like to live close to her

parents; they require assistance and Patrice would like to assist them rather than them going to a nursing home. At the time of purchase, the two lots were conforming and were part of Egidio and Rose's retirement plan, but over the years, with zoning changes, the lots have become nonconforming and lost their grandfathered protections due to the lots remaining in common ownership.

Ralph Farrington of 10 Clark Street spoke in favor of the request. There were previously three "double lots," or lots under common ownership, when he moved to Town in 1981. Patrice explained that the existing cart path would be used as the driveway for Lot 2.

Tom Reardon of 15 Clark Street spoke in favor of the request and stated that he preferred that over knocking down the existing home. He requested to maintain the trees between the properties to which Patrice explained that she had intended to do so.

No testimony was given at the hearing on October 11, 2017.

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. A substantial number of lots in the surrounding neighborhood in the district are nonconforming to the current Medway Zoning Bylaw. Many lots had been split prior to the area being converted from AR-II Zoning to AR-I Zoning. 11 and 13 Clark Street were also split prior to the area being converted from AR-II to AR-I Zoning and were conforming at the time that the land was purchased.
 - b. The shape of the existing parcel is that an additional parcel can be created with adequate frontage and size for a single family home, appropriately scaled to the surrounding neighborhood.
2. *Substantial hardship caused by the circumstances from Criteria A.1 when the Zoning Bylaw is literally enforced:*
3. The properties were conforming to zoning up until 1978, however, the Applicants believed that the two lots were still legal buildable lots with a pre-existing nonconforming nature. The Applicants require additional care. Without the ability for Patrice to construct a house on the lot, Egidio and Rose would be

forced to sell the properties and move to a nursing home. Where the Applicants have been paying taxes on what they believed to be two separate buildable lots, prohibiting construction on Lot 2 would put a financial burden on the Applicants that they otherwise should not have incurred.

4. *Why/how the grant of relief would not nullify or derogate from the intent of the Zoning Bylaw:*
 - a. The Zoning in the surrounding neighborhood was AR-II until 1978. Many of the existing lots are nonconforming. At the time, the two lots were conforming. Both lots would remain conforming to the required dimensional area, but would have a variance from the frontage requirement of approximately 30 feet.

B. Other Findings

1. Based on the testimony given by the Applicants and their representative, it appears that the intention of the Applicants have always been to use the two lots as separate lots, with no intention to merge the two lots. The Applicants was not aware of the zoning changes until they went to develop Lot 2. The Lots have since lost their grandfathered rights as they have been under common ownership since the zoning change in 1978.
2. Patrice intends to maintain the tree line between Lot 2 and the property at 15 Clark Street.

IV. DECISION

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board grants the Applicant a Variance from Section 6.1 of the Medway Zoning Bylaw. Where, under common ownership, the two lots are currently “merged” to meet the zoning requirements for frontage in the AR-I Zoning District, as , the Applicants are granted Variances to utilize 11 and 13 Clark Street as separate single family parcels. 11 Clark Street shall have 150 feet of frontage and 13 Clark Street shall have 150.04 feet of frontage where 180 feet of frontage is otherwise required, as shown on the Plan of Land of Lot 1 and Lot 2 Clark Street, registry record January 2, 1973 with Deed, Filed as No 1 of 1973, Book 4900 Page 386, prepared by Schofield Brothers Inc. of 121 East Main Street, Milford, MA, submitted with the application, and attached hereto, subject to the conditions and limitations set forth herein.

1. Construction of a new house at 13 Clark Street (Lot 2) shall meet all other dimensional or otherwise application regulations as may be required by the Medway Zoning Bylaw.
2. The existing cart path on Lot 2 shall be used for creation the driveway on said lot.
3. To the extent that the existing vegetation along the boundary of 13 Clark Street and 15 Clark Street does not interfere with any necessary testing, sewer/septic, well/water line, it

shall be maintained as a natural barrier between the properties and shall not be clear cut.

4. This Variance 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 modification.

Any work or use that deviates from the granted Variance or this Decision shall be a violation of the *Medway Zoning Bylaw*.

5. 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, not to exceed 6 months. If no request for extension is filed and approved, the Variance shall lapse one years from the date of Decision, unless exercised or otherwise specified, and may be reestablished only after a new filing, hearing, and decision.

V. INDEX OF DOCUMENTS

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

1. Plan of Land of Lot 1 and Lot 2 Clark Street, registry record January 2, 1973 with Deed, Filed as No 1 of 1973, Book 4900 Page 386, prepared by Schofield Brothers Inc. of 121 East Main Street, Milford, MA
2. Deed of Lot 1 and Lot 2 Clark Street, Book 6862 Page 211-212
3. Deed of Lot 1 and Lot 2 Clark Street, Book 4900 Page 386-387
4. Variance Decision for 7 Clark Street to subdivide the existing parcel into two lots, dated March 15, 2000
5. Revision to Application, provided by Stephen Kenney, received August 17, 2017

VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Rori Stumpf and seconded by Brian White, the Zoning Board of Appeals hereby **GRANTS** the Applicant, a **VARIANCE FROM SECTION 6.1** of the Zoning Bylaw to utilize 11 and 13 Clark Street as separate single family parcels. 11 Clark Street shall have 150 feet of frontage and 13 Clark Street shall have 150.04 feet of frontage where 180 feet of frontage is otherwise required, as shown on the Plan of Land of Lot 1 and Lot 2 Clark Street, registry record January 2, 1973 with Deed, Filed as No 1 of 1973, Book 4900 Page 386, prepared by Schofield Brothers Inc. of 121 East Main Street, Milford, MA, submitted with the application, and attached hereto, subject to the **CONDITIONS** herein.

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

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