



Town of Medway
ZONING BOARD OF APPEALS
155 Village Street, Medway, MA 02053

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

DECISION
VARIANCE APPLICATION – DENIED
135 HOLLISTON STREET

Date Application Filed: July 9, 2018

Applicant(s): D.W. Solutions Incorporated (“the Applicant”)
22 Holman Street
Apartment 2
Attleboro, MA 02703

Location of Property: The Property is located at 135 Holliston Street (Assessor Parcel ID: 22-018).

Approval Requested: Variance from Section 5.4 of the Zoning Bylaw to convert a single family residence to a 3 or 4 family residence.

Members Participating: Rori Stumpf (Chair), Brian White (Vice Chair), Carol Gould, Christina Oster, and Gibb Phenegar

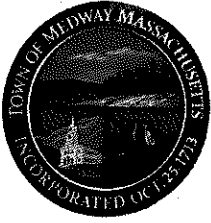
Members Voting: Rori Stumpf (Chair), Brian White (Vice Chair), Carol Gould, Christina Oster, and Gibb Phenegar

Hearing Opened: August 1, 2018

Hearing Closed: September 5, 2018

Date of Decision: September 5, 2018

Decision: Denied



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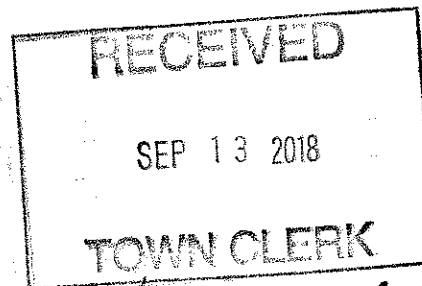
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*30 day appeal date
Oct 3, 2018*

I. PROCEDURAL HISTORY

1. On July 9, 2018, the Applicant's representative filed an applicant for a variance from Section 5.4 of the Zoning Bylaw to convert an existing single family residence to a 3 or 4 family residence.
2. Notice of the public hearing was published in the Milford Daily News on July 18, 2018 and July 25, 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 August 1, 2018. The hearing was continued to August 15, 2018, and continued again to September 5, 2018. The hearing was closed on September 5, 2018.
4. The Property is located in the Agricultural Residential I (AR-I) Zoning District. The front setback requirement is 35 feet and the side and rear setback requirements are 15 feet. The minimum lot area requirement is 44,000 s.f. and the minimum frontage requirement is 180 feet. Multifamily housing is not allowed by-right or by special permit in the AR-I District.
5. The Applicant was represented by Stephen Kenney of Kenney & Kenney, 181 Village Street, Medway.
6. The Board notified Town departments, boards and committees of this application. The Board received comments from the Fire Department, Department of Public Services, Assessing Department, and the Planning and Economic Development Board.
7. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section IV of this Decision.

II. TESTIMONY

The public hearing was opened by the Board on August 1, 2018. The Applicant's representative, Stephen Kenney, provided an overview of the request. The Applicant hoped for 3 or 4 units but did not have a preference as to which could be accomplished on the site. Mr. Kenney also noted that there was an existing garage that would be razed. The building would maintain the existing appearance, with improvements, but additional parking would need to be added. Rori Stumpf stated that although he thought it was great that someone was looking to make improvements to the property, he had a hard time seeing how the proposal for a 4 unit multifamily was consistent with AR-I zoning district. He noted that there were no details on fencing or planting on how the parking would be screened from the roadway.

Other members of the Board had concerns about the visual impact from the parking. Brian White stated that he would like to see re-arrangement of the parking so that fewer spaces were visible from the roadway. Janet Clark, 139 Holliston Street had some concerns about the

potential for future expansion if the permit was granted. Dan Pollock, 4 Redgate Drive, had concerns as well and questioned how the residents would access the units.

The Board determined that additional information was needed and that they would like to see a revised parking layout with screening included prior to making any decision.

At the August 15, 2018 meeting, the Applicant requested that the Board continue the public hearing to its next meeting without taking any testimony. Accordingly, the Board voted to continue the public hearing to its next meeting; no testimony was taken at the August 15th meeting.

At the September 5, 2018 meeting, Mr. Kenney provided an update from the previous meeting. He indicated various properties for which exceptions and allowances have been provided. Mr. Kenney stated that the street can handle the traffic and the site can accommodate the parking. It was his assertion that the hardship is the wetlands area on site, and also the topography since the lot is not typical for the area due to the amount of acreage which could allow for a three or four family. He stated that the Timbercrest development will change the traffic in this area. Further, there is a need for multi-family housing and this will clean up the property which is an eyesore.

The Board discussed that the traffic increase caused by Timbercrest development would be minimal to this area. Chairman Stumpf questioned the financial hardship. He noted that he spoke with the assessor and the buildable portion property is being taxed in accordance with the rates of the town. The yearly tax on the additional, nonbuildable portion of the land is only \$212, which is not a financial hardship.

Mr. Kenney responded that the 3.5 acres with a 5,800 sq. ft. home is larger than most in the area and it does not have adequate frontage to divide into other parcels. The Chairman indicated that the Medway Planning and Economic Development Board sent a letter in opposition of this variance application, noting it is not in accordance with the intent of the zoning bylaw.

Member Phenagar indicated that he appreciates the screening for parking and has no issue with the two entrances. He stated the parking will not be visible from the street. He does not have any issue with the proposed layout.

Member White likes the idea of what is being proposed but does not see it meeting all the criteria it needs to meet, such as topography. The massing of the existing structure will not change; the proposal will not change the neighborhood or the character of the property. The parking layout is decent, it is not just one big paved area. It is an eyesore now.

Member Gould felt this would be setting a precedent, as this use is not allowed in the district. Member Stumpf indicated that use variances need to be issued sparingly and he does not see how this meets the criteria for granting a variance. He does not see how the soil or topography of land warrants this variance. The property is usable for a single family home. The

conditions of the property do not cause a financial hardship. The intent is to encourage multifamily but not in the AR-1 area.

Member Pheneger communicates that this property has been a dump for years and is a detriment to the neighborhood and this would benefit the character of the neighborhood.

Mr. Kenney stated that the wetlands on the site merit the variance, as well as the shape of the lot which is narrow at the street and goes back to the right. It is a large lot and the full lot is not usable. He stated the financial hardship is minimal but there is other hardship.

Member Gould responded that the buyer created his own financial hardship. The Applicant bought the lot in this condition.

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 hearing and comments submitted by residents placed in the public record during the course of the hearings.

A. Variance Criteria

- 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.*

The Board was unable to find that the Applicant has demonstrated that this criterion is met. There are no circumstances related to the shape, topography or soil conditions of the property which do not generally affect other land in the zoning district and cause a hardship. There was no showing that the presence of wetlands on the site is unusual for land in the AR-I zoning district.

- 2. Is there substantial hardship caused by the circumstances from Criterion A.1 when the Zoning Bylaw is literally enforced.*

The Board found that the literal enforcement of the zoning ordinance would not cause a substantial hardship, financial or otherwise, because the buildable portion of the lot is buildable without a variance as is.

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

The Board found that the approval of this multi-family dwelling would not be in accordance with the intent of the Zoning Bylaw for the AR-I zoning district.

As noted during the discussion, granting a use variance for a multi-family house in the AR-I district would substantially derogate from the intent of the Bylaw. The intent of the AR-I zoning district is single family homes. The Town has a multi-family housing overlay district in the zoning bylaw, but this property is not in that overlay district. The predominate use in the area of this property is single family homes; this was noted in comments from Mr. Paul Martin and the Planning and Economic Development Board.

IV. INDEX OF DOCUMENTS

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

1. Proposed Parking Layout, dated July 18, 2018.
2. Correspondence between M. Leahy and Stephen Kenney, dated July 27, 2018.
3. Revised Parking Layout, dated August 8, 2018.

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

1. Comments: Department of Public Services, dated July 31, 2018.
2. Comments: Fire Department, dated July 27, 2018.
3. Comments: Assessor, dated July 12, 2018.
4. Mullin Form: Submitted by Christina Oster, Zoning Board of Appeals member, dated August 12, 2018.
5. Letter from Planning and Economic Development Board dated August 29, 2018.

C. During the course of the review, the following materials were submitted to the Board by abutters:

1. Comments: Paul Martin, 2 Fern Path, dated August 2, 2018, opposed to application.

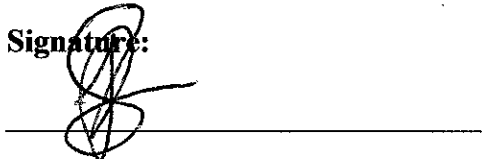
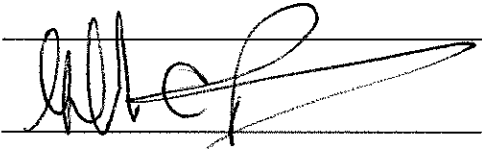
A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

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 after the filing of this notice in the Office of the Medway Town Clerk.

The next page provides the signatures of the Board.

VI. VOTE OF THE BOARD

Gibb Phenegar made a motion to approve the variance, seconded by Brian White; the Zoning Board of Appeals voted 2 members in favor of the motion and 3 members opposed; the motion failed, the ZBA therefore denied the application for a variance from Section 5.4 of the Zoning Bylaw to convert a single family residence to a 3 or 4 family residence for the property located at 135 Holliston Street.

Member:	Vote:	Signature:
Rori Stumpf	nay	
Brian White	aye	_____
Carol Gould	nay	_____
Christina Oster	nay	
Gibb Phenegar	aye	_____

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