

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

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

**DECISION  
VARIANCE & SPECIAL PERMIT  
14 & 16R FRANKLIN STREET**

**Date Application Filed:** June 7, 2019

**Applicant(s):** Lynne Tatevosian (the "Applicant")  
11 Franklin Street  
Medway, MA 02053

**Location of Property:** 14 and 16R Franklin Street (Assessor Parcel IDs: 57-078 and 57-079).

**Approval Requested:** Special Permit under Section 5.4 Table 1.C of the Zoning Bylaw to construct a two-family house that will have the exterior appearance of a single family dwelling, and for a variance from Section 6.1 Table 2 of the Zoning Bylaw to allow for a lot with 89.31 feet of frontage where 150 feet is required.

**Members Participating:** Rori Stumpf (Chair), Brian White (Vice Chair), Carol Gould (Clerk), Gibb Phenegar (Member), Tom Emero (Associate Member)

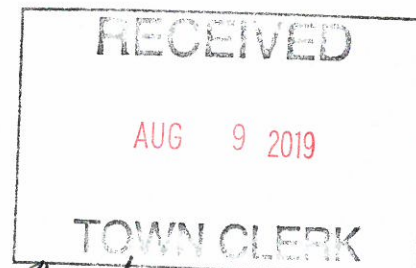
**Members Voting:** Rori Stumpf (Chair), Brian White (Vice Chair), Gibb Phenegar (Member), Tom Emero, (Associate Member)

**Hearing Opened:** July 3, 2019

**Hearing Closed:** August 7, 2019

**Date of Decision:** August 7, 2019

**Decision:** GRANTED



*Today appeal  
August 29, 2019*



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## **I. PROCEDURAL HISTORY**

1. On June 7, 2019, the Applicant filed an applicant for a Special Permit under Section 5.4 Table 1.C of the Zoning Bylaw to construct a two-family house that will have the exterior appearance of a single family dwelling, and for a variance from Section 6.1 Table 2 of the Zoning Bylaw to allow for a lot with 89.31 feet of frontage where 150 feet is required.
2. Notice of the public hearing was published in the Milford Daily News on June 19, 2019 and June 26, 2019, 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 July 3, 2019, with members Stumpf, White, Gould and Phenegar present. The hearing was continued to August 7, 2019, with members Stumpf, White, Phenegar, and Emero present. Mr. Emero, an associate member, was designated by the Chairman on August 7<sup>th</sup> to sit on this case due to the unavailability of Ms. Gould. Mr. Emero filed a certificate under the “Mullin Rule”, G.L. c. 39, §23D, that he had reviewed the proceedings of the July 3, 2019 public hearing session prior to the Board’s meeting on August 7<sup>th</sup>. The Board closed the public hearing on August 7, 2019.
4. The Property is located in the Agricultural Residential II District. The front setback requirement is 35 feet and the side and rear setback requirements are 15 feet. The minimum lot area requirement is 22,500 sq. ft. and the minimum frontage requirement is 150 feet.
5. The Board notified Town departments, boards and committees of this application.
6. 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 public hearing on July 3, 2019 Lynne Tatevosian was present and began by discussing the previous variance that was granted to this property in June 2018. She explained that she bought the property in February 2019 and stated that, based on the needs of her family, she would like to build a two family home on the property.

Mr. Stumpf asked about the plans being proposed for this property. Ms. Tatevosian stated that she has an appointment with an architect scheduled to prepare plans. She discussed the location of the garage of the new construction. The board members questioned the size of the home on the lot. She states she would meet all the required setbacks to build a 3,500 sq. ft. home.

Mr. White stated that the new home would be out of character for the neighborhood and he discussed the scale. Mr. Stumpf stated that his concern is with protecting the abutters and making sure this proposed two-family will fit in with the neighborhood. Mr. Phenegar stated that he is hesitant because there are no plans that are drawn to scale, therefore he cannot vision what it will

actually look like. The Board reiterated that 3,500 sq. ft. of home is very large for that area and the neighborhood. The Board members request the applicant provide architectural plans to give them a better idea of what the proposed home will look like on the property to scale.

Paul Santosusso, 2 Franklin Creek Lane stated that his house abuts the property and is 3,000 square feet and that the house next to him is 3,400 sq. feet which also abuts the property.

There was a discussion among the Board whether to vote on the application or continue the hearing. They decided to continue the hearing to give the applicant a chance to submit plans shown to scale

At the hearing on August 7, 2019, Ms. Tatevosian was present and provided the Board with a plot plan with a proposed foundation as well as a drawing of the proposed front elevation. She explained the plan in more detail as well as provided an overview of what the layout of the home would look like based on the picture of the proposed elevation plan provided. During the discussion the Board asked the Applicant if she had any proposed floor plans, at that time a brief recess was held in order for the Applicant to produce the materials for the Board.

When the hearing reopened the Board discussed the trees and vegetation on the lot, the abutting properties and the square footage of the residences as well as potential conditions if the request is granted. After viewing all provided materials, the members reviewed the criteria for the Special Permit, upon going through the criteria the Board found that the Applicant met all criteria and decided to grant the request. The Board then discussed the variance criteria, based on their discussion they determined that she met all criteria and decided to grant the variance request. It was noted that the Board had granted a frontage variance for this lot on May 14, 2018, but that variance had been for only a single-family home.

### **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. *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 shape of the lot is unique in that it is shaped like an “L”, with the lot narrow along the frontage and widening out at the back. This is a lot shape that is unique to the zoning district and other lots in the district do not share this unique shape.

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

Without frontage relief the lot would be essentially undevelopable, which causes a substantial hardship resulting from the unique shape of the lot. Any owner of the

lot would incur a financial hardship to pay taxes on an essentially unusable lot if a variance is not granted.

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

The grant of relief would not cause substantial detriment to the public good as the property will be used for a two family dwelling, with conditions imposed by the Board to protect the public good. The lot has more than enough area for a two-family dwelling under the Bylaw.

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

The grant of relief would not nullify or substantially derogate from the intent of the Zoning Bylaw, which allows for two-family dwellings in this area by special permit.

**The Board finds that the Applicant has provided documentation in the variance application form submitted with this application, and as explained during the hearing, to meet all of the required variance criteria, with a motion made by Brian White, seconded by Gibb Phenegar passed by a vote of 4-0.**

**B. Section 3.4 Special Permit Decision Criteria**

1. *The proposed site is an appropriate location for the proposed use.*
2. *Adequate and appropriate facilities will be provided for the operation of the proposed use.*
3. *The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.*
4. *The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*
5. *The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials, or other undesirable visual, site, or operational attributes of the proposed use.*
6. *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*
7. *The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.*
8. *The proposed use is consistent with the goals of the Medway Master Plan.*
9. *The proposed use will not be detrimental to the public good.*

**The Board finds that the Applicant has demonstrated through testimony and written materials, specifically the Special Permit Form submitted with the application, that the application, with the conditions imposed by the Board, meets all of the required special permit decision criteria, with a motion made by Brian White, seconded by Gibb Phenegar, passed by a vote of 4-0.**

#### 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** the Applicant, Lynne Tatevosian, a **VARIANCE** from Section 6.1 Table 2 of the Zoning Bylaw to Bylaw to allow for a lot with 89.31 feet of frontage where 150 feet is required, subject to the Plan of Land submitted and subject to the conditions set forth in this 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, Lynne Tatevosian, a **SPECIAL PERMIT** under Section 5.4 Table 1.C of the Zoning Bylaw to construct a two-family house that will have the exterior appearance of a single family dwelling, subject to the Plan of Land submitted and subject to the conditions set forth in this Decision.

1. This variance and special permit is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the special permit or 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 request.
2. Any work or use that deviates from this Decision may be a violation of the Medway Zoning Bylaw.
3. As provided in Section 3.4.E of the Zoning Bylaw, special permits shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under G.L. c. 40A, §17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or, in the case of a special permit for construction, if construction has not begun by such date, except for good cause. Upon receipt of a written request by the applicant filed at least 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.

Pursuant to G.L. c. 40A, §10: “If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one-year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section.”

4. The building shall meet the Massachusetts State Fire Code regarding Smoke and Carbon Monoxide detectors.

5. Driveway runoff should not flow out to Franklin Street, but should be managed on-site through some low-impact stormwater management practices such as swales and/or a rain garden. The Applicant should also be required to install roof drains on the new building to recharge roof stormwater directly into the ground.
6. The total amount of living space of the two-family dwelling shall not exceed 3,650 square feet, substantially as shown on the Floor Plan. The exterior measurement of the building shall be substantially in compliance with the Floor Plan, Plan of Land, and Front Elevation drawing. The two-family dwelling shall be located in conformity with the Plan of Land.
7. The applicant shall not remove trees of 18" diameter or greater as measured four feet from the ground within the front, side and rear setbacks of the property, and shall maintain as much existing vegetation as practicable around the property.

## **V. 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. Medway Zoning Board of Appeals Variance Decision for 14 and 16R Franklin Street dated June 21, 2018
2. Aerial photo of lot with hand drawn proposed location of the building
3. "Plan of Land in Medway, MA" for 14-16R Franklin Street Medway, MA dated July 28, 2019, Owner: Lynne Tatevosian prepared by Colonial Engineering, Inc. 11 Awl Street Medway, MA 02053 (herein the "Plan of Land")
4. List of abutters who are in favor of the Variance and Special Permit applications for 14-16R Franklin Street Medway, MA 02053 from Lynne Tatevosian received July 1, 2019
5. Mullin Rule form filed by Tom Emero for the July 3, 2019 meeting, stamped in by the Town Clerk on August 6, 2019
6. Tatevosian Residence Front Elevation (herein "Front Elevation drawing")
7. "Tatevosian Residence" Proposed floor plan submitted August 7, 2019 (2 sheets) (herein "Floor Plan")

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

1. Email from Chief Lynch, Medway Fire Dept. on June 11, 2019
2. Email from Bridget Graziano, Conservation Agent on June 11, 2019
3. Email from Joanne Russo Medway Treasurer on June 11, 2019
4. Letter from Andy Rodenhiser, Chairman of the Medway Planning and Economic Development Board dated June 21, 2019

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## VI. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Brian White and seconded by Gibb Phenegar, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Lynne Tatevosian, a **VARIANCE** from Section 6.1 Table 2 of the Zoning Bylaw to Bylaw to allow for a lot with 89.31 feet of frontage where 150 feet is required, subject to the Plan of Land and subject to the conditions set forth in this Decision.

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Member:	Vote:	Signature:
Rori Stumpf	YES	_____
Brian White	YES	_____
Gibb Phenegar	YES	_____
Tom Emero	YES	_____

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

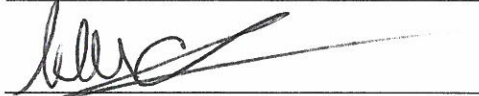

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty days after the filing of this notice in the Office of the Medway Town Clerk.

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, in the case of a variance, 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, and in the case of a special permit, that 20 days have elapsed after the decision has been filed in the office of the town clerk and either that no appeal has been filed or the appeal has been filed within such time. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. The fee for recording or registering shall be

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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.