

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

IN THE MATTER OF: Timothy Newman
Petitioner



OPINION OF THE BOARD

*30 day appeal
date Oct 11, 2016*

REQUEST FOR VARIANCE
18 Delmar Road
Medway, MA 02053

Hearing: September 7, 2016

Decision: September 7, 2016

MEMBERS PRESENT: David J. Cole, Chairman
Carol Gould, Clerk
Eric Arbeene, Member
Brian White, Member
Rori Stumpf, Associate Member

THE WRITTEN OPINION WAS DELIVERED ON SEPTEMBER 21, 2016

OPINION OF THE BOARD

This is a proceeding of the Zoning Board of Appeals of the Town of Medway, MA (hereinafter the Board) acting under the Zoning Bylaw of the Town of Medway, MA, 02053, and Massachusetts General Laws, Chapter 40A, as amended, in which the petitioner, Timothy Newman, requested a Variance from Section 6.1 of the Zoning Bylaw to allow a relief of 20 feet from the required 35 foot setback, in order to install a pool 15 feet from the property line, with respect to property located at 18 Delmar Road, Assessor Parcel No. 30-025, AR-II Zoning District.

Hearing

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on August 17, 2016 and August 24, 2016. Notice also was sent to all "parties of interest" and posted in the Town Hall as required by Massachusetts General Laws, Chapter 40A Section 11.

The following documents were received by the Board and included as part of the Application and file for this case:

1. Application received and stamped by the Town Clerk and Board of Appeals on August 9, 2016.
2. Certified Plot Plan (1 page) of "18 Delmar Road," dated July, 28, 2016, prepared by O'Driscoll Land Surveying Co. of 46 Cottage Street, Medway, MA 02053.
3. Certified Plot Plan (1 page) of "18 Delmar Road," revised August, 19, 2016, prepared by O'Driscoll Land Surveying Co. of 46 Cottage Street, Medway, MA 02053.
4. Supplemental information regarding the conditions for requesting a variance, received via email on August 10, 2016 and August 12, 2016.

The Public Hearing opened on September 7, 2016 and was closed on September 7, 2016. The Medway Zoning Board of Appeals members present during the public hearing were David Cole, Chairman; Carol Gould, Clerk; Eric Arbeene, Member; Brian White, Member; and Rori Stumpf, Associate Member. The Board voted on the request for the variance on September 7, 2016. The Board members voting were David Cole, Chairman; Carol Gould, Clerk; Eric Arbeene, Member; Brian White, Member; and Rori Stumpf, Associate Member. There were no public comments made in support or opposition on the application during the public hearing.

Hearing Summary

The applicant, Timothy Newman, appeared before the Board to discuss the request for a variance for the property located at 18 Delmar Road.

Mr. Newman explained he hadn't realized that because he lived on a corner lot that the "backyard" was subject to the 35 foot front setback requirement in the zoning district.

Mackenzie Leahy, Community and Economic Development Administrative Assistant, explained that with a corner lot, the frontage may be met using more than one lot line bounding a street. In the case of 18 Delmar Road, the frontage could not be met only using the western lot line, what would typically be considered the front lot line. The applicant therefore had to use the northern lot line along with the western lot line to meet the frontage requirement, or the full corner bounding the street. That in turn labeled the northern lot line as a "front" lot line as well and required that the lot comply with the 35 foot front setback requirement on both the western and northern lot lines. Chairman Cole said that he was concerned how the Board would phrase the variance, should it be granted, because there was no way to distinguish between the front and side lot lines. Mr. White asked what the frontage was for the zoning district and Ms. Leahy answered 150 feet. Chairman Cole noted that it would be best to address the lot lines by cardinal directions and Ms. Leahy agreed.

Mr. Newman continued that he had the pool company review the lot and design the pool. His surveyor, Dan O'Driscoll, also reviewed the lot and provided a plot plan showing the location of the proposed pool 15 feet from the lot line. Mr. Newman submitted that plan to the Building Department when applying for a building permit, however, the application was denied because it did not meet the setback requirements. Mr. Newman explained that when the plot plan was submitted for the variance request, the plan had instead shown the pool 18 feet from the lot line in order to decrease the amount of relief being requested. Mr. Newman noted that there was a six foot white stockade fence already present on the lot. Chairman Cole inquired if the fence ran along lot line. Mr. Newman confirmed that the fence could be seen on the plot plan and that the whole backyard was fenced in. Chairman Cole noted that in residential districts, lot lines are often different than curb lines. Chairman Cole asked if Mr. Newman knew where the lot line was in relation to the curb line and if there was a sidewalk. Mr. Newman answered that there was no sidewalk and that he was not sure where the lot line was but that he had spoken to the Town when he had the fence installed. Chairman Cole asked how far the fence would be from the pool and Mr. Newman replied around ten feet.

Chairman Cole asked Mr. Newman if he knew when the house was built. Mr. Newman responded that the house was built in 1961. Chairman Cole noted that at the time of building the house the front setback would have been 25 feet, but that the house does not comply with the setback requirements from the current Zoning Bylaw. Mr. Newman noted that the front setback of 34.3 feet was an addition that was put on in 2010 and he had previously been granted a variance for the addition. Mr. Newman clarified that the 31.3 foot setback was pre-existing.

Chairman Cole explained that the conditions for granting a variance were related to the lot shape, soil or topography which does not generally affect other land in the zoning district. Chairman Cole expressed that one of the conditions was clearly met with the lot being undersized at 14,900 square feet when the minimum lot size is 22,500 square feet for the AR-II Zoning District; and being on a corner lot, the 35 foot setback requirement covered a substantial amount of the lot. Chairman Cole further added that one of the considerations is how much of a variance the Board will grant; a variance is an exception to the Zoning Bylaw and the Board does not want to grant more of a variance than it needs to. Chairman Cole asked Mr. Newman what would prevent him from moving the pool another 5 feet in from the lot line. Mr. Newman explained that moving the pool any further from the lot line would place it in the middle of the back yard and there would be no usable grass or area left.

Chairman Cole noted that if the pool was moved any further south that it would also be close to the house. Mr. Newman expressed that the pool contractor and surveyor had looked at multiple placement options and felt that the proposed location was best.

Chairman Cole noted that the pool conformed to the other setback requirements and that it was only the setback from the northern lot line that was not met. He again reiterated that moving the pool in any further to the center of the lot would be too close to the house. Ms. Leahy noted that there had been no comments received from any other boards or departments.

During the deliberations, Mr. Stumpf stated that he was inclined to vote in favor of the applicant and that Mr. Newman had demonstrated that the request met the requirements for a hardship in terms of shape of the property. Mr. White stated that he had the same assessment, due to the unique shape of the property and its relative size compared to other parcels in the zoning district. Mr. Arbeene noted that the layout of the backyard and placement of the pool as proposed was the most advantageous placement and that any other placement on the lot would not be suitable so he was in favor of granting the variance. Ms. Gould stated that she was in agreement with the other board members. Chairman Cole stated that he was also in agreement with Board comments already expressed and that there was a clear case for relief from the requirements of the Zoning Bylaw.

Findings:

By a vote of 5-0-0:

1. The Board finds that the Applicant demonstrated that there are circumstances relating to the shape of the subject lot especially affecting this lot, but not generally affecting the zoning district in which it is located; and in particular the limited size of the subject lot which is approximately 14,900 square feet, substantially less than the 22,500 square feet required by the AR-II zoning district, the location of the lot on a bend on Delmar Road, which requires a 35 foot setback along both the north and west sides of the subject lot, and the placement of the existing buildings on the lot all render construction of additional structures within the restrictions of the Zoning Bylaw difficult.
2. The Board finds that the Applicant demonstrated that in view of the limited size of the subject lot and the location of the existing buildings thereon, the proposed location for the swimming pool represents essentially the only practicable location for that pool; and that any attempt to increase the setback substantially by moving the pool in a southerly direction would place the pool too close to the existing house.
3. The Board finds that a literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship to the Applicant by precluding building of the proposed pool and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the Bylaw.

Relief Granted:

By a vote of 5-0-0:

The Board hereby grants to the applicant, Timothy Newman, a Variance from the requirements from Section 6 of the Medway Zoning Bylaw for the construction of a 40 feet by 20 feet pool at 18 Delmar Road, Medway MA subject to the following terms and conditions:

- A. The pool shall be constructed substantially at the location shown on the plan submitted with the application.
- B. The setback along the northern lot line shall be reduced from 35 feet to 17 feet.
- C. For the avoidance of doubt, no relief is granted with respect to the setback from the eastern lot line.

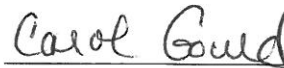
The Board hereby makes a detailed record of its findings and proceedings relative to this petition, sets forth its reasons for its findings and decision, incorporates by reference any plan or diagram received by it, directs that this decision be filed in the office of the Town Clerk and be made a public record and that notice and copies of its decision be made forthwith to all parties or persons interested.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to MGL c. 40A, Section 17, within twenty (20) days after the date of filing this Decision with the Town Clerk.

In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the decision 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, or that if such an appeal has been filed, that it has been dismissed or denied, 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. The fee for recording or registering shall be paid by the owner or applicant.



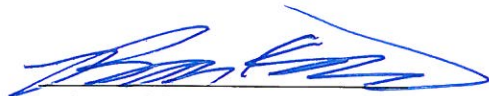
David J. Cole, Chairman



Carol Gould, Clerk



Eric Arbeene, Member



Brian White, Member



Rori Stumpf, Associate Member