



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
FINDING OF BUILDABLE LOT
22 SUMMER STREET

Date Application Filed: October 4, 2018

Applicant(s): Norman and Ann Vozzella ("the Applicants")
8 Sunnyside Lane
Milford, MA 01757

Location of Property: 22 Summer Street (Assessor Parcel ID: 56-045).

Approval Requested: Finding of a buildable lot, or a Variance under Section 6.1 Table 2 from the required 150 ft. of frontage to 106.6' and from the required 22,500 sq. ft. area to 21,344 sq. ft. to construct a single family residence.

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

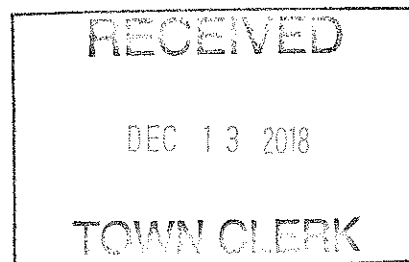
Members Voting: Rori Stumpf (Chair), Brian White (Vice Chair), Carol Gould (Clerk), Christina Oster, and Gibb Phenegar

Hearing Opened: November 7, 2018; continued to December 5, 2018

Hearing Closed: December 5, 2018

Date of Decision: December 5, 2018

Decision: FINDING OF BUILDABLE LOT GRANTED



20 Day Appeal Date
January 2, 2019



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I. PROCEDURAL HISTORY

1. On October 4, 2018, the Applicants' representative filed for a finding of a buildable lot, or a variance under section 6.1 Table 2 from the required 150 ft. of frontage to 106.6' and from the required 22,500 sq. ft. to 21,344 sq. ft. to construct a single family residence.
2. Notice of the public hearing was published in the Milford Daily News on October 24, 2018 and October 31, 2018, and notice sent by mail to all parties in interest and posted in Town Hall as required by G.L. c. 40A §11.
3. The public hearing was opened on November 7, 2018. The hearing was continued without the taking of any testimony to the December 5, 2018 meeting, as only three members of the Board were present on November 7th. The hearing was closed on December 5, 2018.
4. The Property is located in the Agricultural Residential II (AR-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 Applicants were represented by Stephen J. Kenney, esquire of Kenney & Kenney.
6. The Board notified Town departments, boards and committees of this application. The Board received comments from the Conservation Agent and Fire Chief.
7. 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 November 7, 2018 meeting, the Board opened the hearing and then immediately voted, without taking any testimony, to continue the hearing until December 5, 2018, because only three members of the Board were present.

At the December 5th hearing, Attorney Steven Kenney stated this is a pre-existing non-conforming lot. The owner purchased the property on June 3, 1965. The lot is shown on a plan that was filed at the Norfolk County Registry of Deeds on November 8, 1950, Plan Book 2960, page 283. It has approximately 106.6 feet of frontage and 21,344 square feet. He stated that the Town did not adopt zoning until 1951. He submitted prior zoning amendments that include a 1959 amendment setting minimum requirements of 150 feet of frontage and 22,500 square feet of area, which rendered this lot nonconforming. The Zoning Bylaw at the time included language that provided that one single family dwelling "may be erected on a lot having a lesser frontage and area where said lot existed at the time this By-law is adopted and did not adjoin other land of the same owner available in connection with said lot, or where a plan of said lot having such

lesser frontage and area was recorded in the Norfolk County Registry of Deeds prior to the adoption of these By-laws”. He stated that he had spent some time reviewing this with the Building Commissioner, who recommended that he bring the matter to the Board. He requested that the Board find that the lot is a pre-existing non-conforming buildable lot.

Attorney Kelly stated that if the Board doesn’t find that this is a pre-existing non-conforming buildable lot, he would then request a dimensional variance. He stated the shape of the lot is not significantly different from any other lot in the neighborhood. The hardship would be that the lot was considered a buildable lot at the time of purchase but now is not considered a buildable lot with changes in the Bylaw language throughout the years. The relief would be that a residential single family house would be constructed on the lot which is similar in size to other developed abutting lots.

It was the general opinion of the Board that the surrounding lots were of similar size and had been developed as single family homes. This lot being developed would not change the character of the neighborhood and would fit in. Further, the members agreed that the lot is a pre-existing, nonconforming lot that is “grandfathered” and therefore buildable.

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. Request for Finding of a “Grandfathered” Lot

The members agreed with attorney Kenney’s assertion that the lot is a pre-existing, nonconforming lot that is “grandfathered” and therefore buildable, based on the evidence submitted including the plan and the history of zoning amendments.

Upon motion by Mr. White and seconded by Ms. Oster the Board finds that the application does establish the lot as presented is a pre-existing non-conforming lot grandfathered in on the 1965 Zoning Bylaw. Vote passes unanimously. (5-0-0)

Because the Board granted the request for a finding of a buildable lot, it was not necessary to consider or grant a variance for the construction of the house, and the Board therefore did not grant the alternative request for a variance.

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 hereby GRANTS the Applicants, Norman and Ann Vozzella, a **FINDING** under Section 6.1 Table 2 of the Zoning Bylaw that the lot is a protected, pre-existing nonconforming lot that is buildable for the construction of a single family home (Parcel ID: 56-045), subject to the **CONDITIONS** herein.

1. This finding is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to this decision 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 shall be a violation of the *Medway Zoning Bylaw*.

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. Application dated October 4, 2018
2. Amendment to Zoning By-Law – approved March 11, 1959 and effective April 9, 1959
3. Article 1 voted at Special Town Meeting on January 14, 1965 to amend the Zoning By-Law and map
4. Two pages of Zoning By-laws, undated, referring to 1966 zoning map
5. Deed from Kirby to Vozzella recorded at Registry of Deeds June 4, 1965
6. Three views of a “Plan of Land of Lawrence Casso et ux Summer Street” dated November 8, 1950

B. During the course of the review, the following materials were submitted to the Board:

1. Email from Conservation Agent dated October 11, 2018
2. Email from Fire Chief dated October 15, 2018

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 5 to 0 on a motion made by Mr. White and seconded by Mr. Phenegar, the Zoning Board of Appeals hereby **GRANTS** the Applicants, Norman and Ann Vozzella, a **FINDING** under Section 6.1 Table 2, that the lot is a protected, pre-existing nonconforming lot that is buildable for a single family home, subject to the **CONDITIONS** herein. No other relief is granted.

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

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