



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
Christina Oster, Assoc. Memb

**DECISION
VARIANCE
30 WELLINGTON STREET**

Date Application Filed: March 6, 2018

Applicant(s): Sharon Dupiche-Carlista ("the Applicant")
30 Wellington Street
Medway, MA 02053

Location of Property: The Property is located at 30 Wellington Street (Assessor Parcel IDs: 58-010, 58-011).

Approval Requested: Variance from Section 6.1 of the Zoning Bylaw to split the property into two lots. Where, under common ownership, the two lots are currently "merged" to meet the zoning requirements for frontage and area in the VR Zoning District, the applicant requests to utilize these lots as separate parcels. The applicant seeks a variance from the required 150 feet of frontage and a variance from the minimum required 22,500 square feet of area for each of the two parcels.

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

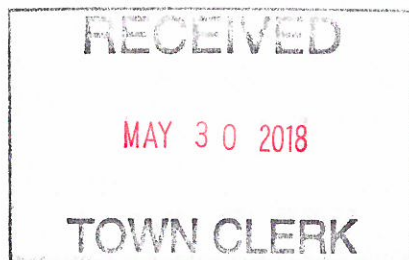
Members Voting: Brian White (Vice Chair), Carol Gould, Rori Stumpf, and Bridgette Kelly

Hearing Opened: April 4, 2018

Hearing Closed: May 16, 2018

Date of Decision: May 16, 2018

Decision: Granted



*30 day appeal
June 19, 2018*



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
Christina Oster, Assoc. Member

**DECISION
VARIANCE
30 WELLINGTON STREET**

Date Application Filed: March 6, 2018

Applicant(s): Sharon Dupiche-Carlista (“the Applicant”)
30 Wellington Street
Medway, MA 02053

Location of Property: The Property is located at 30 Wellington Street (Assessor Parcel IDs: 58-010, 58-011).

Approval Requested: Variance from Section 6.1 of the Zoning Bylaw to split the property into two lots. Where, under common ownership, the two lots are currently “merged” to meet the zoning requirements for frontage and area in the VR Zoning District, the applicant requests to utilize these lots as separate parcels. The applicant seeks a variance from the required 150 feet of frontage and a variance from the minimum required 22,500 square feet of area for each of the two parcels.

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

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

Hearing Opened: April 4, 2018

Hearing Closed: May 16, 2018

Date of Decision: May 16, 2018

Decision: Granted

I. PROCEDURAL HISTORY

1. On March 6, 2018, the Applicant's Representative filed an applicant for a variance from Section 6.1 of the Zoning Bylaw to split the property into two lots. Where, under common ownership, the two lots are currently "merged" to meet the zoning requirements for frontage and area in the VR Zoning District, the applicant requests to utilize these lots as separate parcels. The applicant seeks a variance from the required 150 feet of frontage and a variance from the minimum required 22,500 square feet of area for each of the two parcels.
2. Notice of the public hearing was published in the Milford Daily News on March 14, 2018 and March 21, 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 April 4, 2018. The public hearing was continued to April 18, 2018, where it was further continued without testimony to May 2, 2018. On May 2, 2018, the hearing was continued to May 16, 2018. The Board closed the public hearing the same evening.
4. The Property is located in the Village Residential (VR) District. The front setback requirement is 20 feet and the side and rear setback requirements are 10 feet. The minimum lot area requirement is 22,500 s.f.
5. The two lots are under common ownership and are "merged" to meet the zoning requirements for frontage and area in the VR Zoning District.
6. The Applicant was represented by Stephen Kenney of Kenney & Kenney, 181 Village Street, Medway, MA 02053 and Paul DeSimone of Colonial Engineering, 11 Awl Street, Medway, MA 02053.
7. The Board notified Town departments, boards and committees of this application. The Board received comments from Conservation Agent Bridget Graziano
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 April 04, 2018 meeting, the hearing was opened by the Board. The Applicant and their representative, Stephen Kenney, were present. Mr. Kenney provided assessor's records to the Board showing that the land has been assessed as separate parcels, and are described as separate parcels on a deed. The parcels were created at a time when zoning was not in place in the Town of Medway. The parcels are pre-existing nonconforming, however, under MGL C. 40A Section 6, where the lots do not meet minimum lot size or frontage and they are under common ownership, they are "merged" into one lot for zoning purposes.

Mr. Kenney stated that they believed that substantial hardship would occur where Ms. Dupiche-Carlista purchased two lots according to the deed. The existing home needs extensive maintenance and Ms. Dupiche-Carlista is a single mother with a son whose medical bills aren't covered by insurance.

The surrounding neighborhood has lots of similar size as to what the applicant is requesting for the two separate lots.

Mr. Kenney stated that the applicant hopes to convey the lot as a buildable single family lot. The sale from the lot would help to cover renovations of the existing home and medical bills.

Mr. Stumpf noted that if the lot was divided, the existing garage would be noncompliant with setback requirements. Ms. Dupiche-Carlista stated that the garage needs extensive maintenance as is and would be willing to take it down or would need to apply for the appropriate variances.

Mr. White asked if there had been any topographic or survey studies to ensure that there was the required amount of uplands for the property. Ms. Dupiche-Carlista noted that there hadn't been any studies or surveys but she would be happy to move forward with testing after preliminary approval.

Mr. Stumpf noted that it was difficult where the legal standing was for the requested variance. Mr. White stated that he felt additional information was necessary.

The Board moved to public comment.

Theresa O'Brien, 32 Wellington St, spoke in opposition of the proposed request.

Tim Rice, 19 Lincoln Street, stated that he didn't abut the property but lived in the neighborhood. Mr. Rice was concerned because a property owner recently split a lot on Mann Street and added a new house that did not fit into the surrounding neighborhood. Mr. Rice did not want to see the same thing happen to this lot. Mr. Rice also stated that it was clear that the house needed work when it was for sale and that was clear to see, he also understood from the time of sale that it was to be considered one lot.

Mike Janikas, 19 High Street, spoke in opposition of the proposed request.

Caren Carew, 18 High Street, spoke in opposition of the proposed request.

Mary O'Brien, 32 Wellington Street, spoke in opposition of the proposed request.

Kathleen Murray, 32 Wellington Street, spoke in opposition of the proposed request.

Mr. White stated that based on the Applicant's testimony and the testimony from neighbors, that additional information was necessary. The Board concurred.

The Board continued the hearing to April 18, 2018, where it was further continued without testimony to May 2, 2018.

At the May 2, 2018 hearing, the Applicant's representative Stephen Kenney reiterated a number of points that were previously made. Mr. Kenney also noted that the applicant had seven letters of support from a residents in the surrounding district. The Applicant's representative Paul DeSimone explained that the wetlands had been delineated and there was, in fact, sufficient uplands and room for a single family dwelling on the premises.

Mr. Arbeene was concerned that while a majority of the lots in that neighborhood were undersized and nonconforming, there is a bylaw requirement for 22,500 square feet and 150 feet of frontage for a reason. Mackenzie Leahy, Community & Economic Development, explained that although the zoning district required more area and frontage than what the applicant proposed, the dimensional requirements that are in place now date back to the 1950's and do not necessarily reflect the size of the lots in the neighborhood. Town Staff and the Planning and Economic Development Board had recognized that, which is why the Village Residential (VR) District was created. The VR District was intended to reduce a number of dimensional requirements from that of the Agricultural Residential II (AR-II) Zoning District in order to be more in line with the existing lots and to bring a significant number of the lots into conformity, however, residents felt that this had the potential to affect the character of the zoning district.

Brian Bernier, 8 Thayer Road, spoke in favor of the request.

Knox Rogers, 4 Stagecoach Way, spoke in favor of the request.

Rosemary Baumgartner, 11 Mann Street, spoke in opposition of the request.

The Applicant noted that she was not selling the property for commercial gain, she intended to stay in Medway. The Applicant also stated that she was willing to include some type of condition in regards to the type of house that could be built on the lot.

At the May 16, 2018 hearing, the Board voted the decision.

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 petitioner Sharon P. Dupiche-Carlista purchased the subject property on June 10, 2016. The property was described as separate parcels, Parcel A on the deed being Lot C on the plan entitled “Plan of Land in West Medway, MA., Scale 30’= 1”, October 4, 1946, H.W. Whittier, C.E. Natick, Mass.” recorded with the Norfolk County Registry of Deeds on November 15, 1946 as Plan No. 1048 of 1946 in Book 2646, Page 576. Parcel B of the deed refers to Lot B in the above referenced plan. The two parcels have been described separately throughout the years since 1946. The Town of Medway has assessed the two parcels separately. The parcels have been shown and known as separate parcels since 1946 when the plan was recorded with the Norfolk County Registry of Deeds. At the time that the parcels were created in 1946, the Town of Medway did not have a Zoning Bylaw in effect and the parcels were considered separate buildable parcels in the Town of Medway at that time. There is a home with an address of 30 Wellington Street located on Lot B, which is the smaller of the two lots. The shape of the lots are such that the home that presently sits on Lot B, which is a smaller lot, can be divided from Lot C in accordance with the plans that are on record at the Norfolk County Registry of Deeds since 1946. Lot C, which the petitioner wishes to convey and have a single family residence built upon, is deeper and larger than Lot B, which the petitioner’s house presently stands upon. Lot C is 3,804 square feet larger than Lot B. The shape and depth of Lot C can allow for a single family residence to be built upon Lot C while conforming in all other respects with all Zoning Bylaws of the Town of Medway and without unduly encroaching upon or crowding any of the neighbors and/or abutters. The shape of the lots are such that they are similar to those in the surrounding neighborhoods, where many of the lots are pre-existing nonconforming due to size and frontage. The soil conditions are such that it is not possible to develop the lot(s) except for purposes of single family homes.
2. *Substantial hardship caused by the circumstances from Criteria A.1 when the Zoning Bylaw is literally enforced.* The petitioner purchased, pursuant to her deed, two parcels. The plan that is on record at the Norfolk County Registry of Deeds since 1946 also shows two separate parcels. The Town of Medway has assessed these two parcels as separate parcels. The substantial hardship that exists is that if the requested variances are not granted, the petitioner will not be able to convey

Lot C as a single family residential lot while all of the other lots in the neighborhood and/or abutting lots are smaller than Lot C and have single family residential homes built upon them. The other lots in the area in the neighborhood of 30 Wellington Street are all substantially the same size or smaller lots, as Lot A being shown on the subject plan of 9,890 square feet and Lot B being shown on the subject plan of 12,960 square feet. With the allowance of the variance as requested the single family residence that will be built upon Lot C will be in conformity with the Zoning Bylaw requirements in all other respects.

3. *Why/how the grant of relief would not nullify or derogate from the intent of the Zoning Bylaw.* The grant of relief would not nullify or derogate from the intent of the Zoning Bylaw as the petitioner wishes to build a single family residence on Lot C or convey Lot C for a single family residence to be built upon which would be in conformity with all of the Zoning Bylaw requirements other than the variances granted. The surrounding neighborhood has lots of similar size and this would not be out of character for the neighborhood. Construction of a single family residence on Lot C that is in conformity with all other Zoning Bylaw requirements except area and frontage would be consistent with the intent of the Zoning Bylaw in creating housing in the Town of Medway that is affordable to current residents of the Town of Medway.

The Applicant's representative 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.

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, Sharon Dupiche-Carlista, **VARIANCE** from Section 6.1 of the Zoning Bylaw to split the property at 30 Wellington Street into two lots, known as Parcel ID 58-010 (Lot B) and 58-011 (Lot C) and as shown on the plan of land in West Medway Mass for Lots A, B, C, and D, prepared by H.W. Whittier C.E. of Natick Mass, dated October 4, 1946, and on file with the Norfolk Registry of Deeds as No. 1048-1946, bk. 2646 pg. 576, subject to the **CONDITIONS** herein.

1. The applicant shall move, raze, or otherwise remove the existing garage so that all buildings and structures on the existing parcels are compliant with setback requirements.
2. Lot B and Lot C shall be used for single family homes. Due to the undersized nature of the lot and in order to ensure adequacy of facilities, no future application shall be applied for to allow for use of the lots as duplex/two-family or multifamily dwellings unless said lots meet comply with all dimensional requirements for a duplex/two-family or multifamily dwellings at time of application.
3. 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 new request.

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

4. 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. If no request for extension is filed and approved, the variance shall lapse one year from the date of Decision, unless action is taken, or as may be otherwise specified herein, and may be reestablished only after a new filing, hearing, and decision.

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. General Variance Form and addendum
2. Plan of land in West Medway Mass for Lots A, B, C, and D, prepared by H.W. Whittier C.E. of Natick Mass, dated October 4, 1946

3. Quitclaim Deed of 30 Wellington Street
4. Town of Medway Municipal Lien on 30 Wellington Street

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

1. Correspondence: Mackenzie Leahy to Stephen Kenney, March 26, 2018
2. Comments: Bridget Graziano, March 28, 2018

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

1. Request for Continuance without Testimony, received April 12, 2018
2. Letters of Support from Abutters, received April 30, 2018
3. Wellington Street Neighborhood Land Analysis prepared by Sharon Dupiche-Carlista, received April 30, 2018
4. Plans of land for parcels included in Wellington Street Neighborhood Land Analysis, received April 30, 2018
5. Assessor's Map of Wellington Street Neighborhood, received April 30, 2018
6. Plan of Land entitled "Existing Conditions Plan of Land in Medway, MA., Scale 1"=20', April 16, 2008, Owner: Sharon P. Dupiche-Carlista, 30 Wellington Street, Medway, MA 02053, Colonial Engineering Inc., 11 Awl Street, Medway, MA 508-533-1644"
7. Additional Letter of Support from Abutter, received May 2, 2018
8. Photo Tour of Wellington, High, Lincoln, and Mann Streets, received May 2, 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.

[Intentionally Blank]

VI. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Rori Stumpf and seconded by Christina Oster, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Sharon Dupiche-Carlita, a **VARIANCE** from Section 6.1 of the Zoning Bylaw to split the property 30 Wellington Street into two lots, known as Parcel ID 58-010 (Lot B) and 58-011 (Lot C) and as shown on the plan of land in West Medway Mass for Lots A, B, C, and D, prepared by H.W. Whittier C.E. of Natick Mass, dated October 4, 1946, and on file with the Norfolk Registry of Deeds as No. 1048-1946, bk. 2646 pg. 576, subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Eric Arbeene	--	_____
Brian White	<u>YES</u>	<u>Not available to sign</u>
Carol Gould	<u>YES</u>	<u>Carol Gould</u>
Bridgette Kelly	<u>YES</u>	<u>Not available to sign</u>
Rori Stumpf	<u>YES</u>	<u>Not available to sign</u>
Christina Oster	--	_____

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 20 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 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.