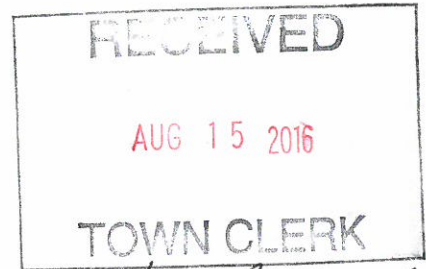


COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

IN THE MATTER OF: **Philip Anza**
 Alder Street Realty LLC
 Petitioner



*30 day appeal
date Sept 5, 2016*

OPINION OF THE BOARD

REQUEST FOR VARIANCES
50 Alder Street
Medway, MA 02053

Hearings: July 6, 2016
 July 20, 2016
Decision: August 3, 2016

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

THE WRITTEN OPINION WAS DELIVERED ON AUGUST 15, 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, Philip Anza of Alder Street Realty LLC, requested a Variance from Section 5.4 of the Zoning Bylaw to grant the use of an automotive sales and services business in the Industrial III Zoning district where prohibited; and also to allow for a Variance from Section 6.1 of the Zoning Bylaw for the reduction in the required front yard setback from 30 ft. to 24.9 ft. for the construction of the proposed building.

Hearing

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on June 15, 2016 and June 22, 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 May 24, 2016.
2. Enclosure letter regarding Variance Application to the Zoning Board of Appeals from Grady Consulting, L.L.C. regarding the submitted application and documents, received 5/23/16.
3. Property Site Plan (7 pages of plans) of "51 Alder Street," dated March 30, 2016, prepared by Grady Consulting, L.L.C. of 71 Evergreen Street, Suite 1, Kingston, MA 02364.
4. Response letter to the Board's comments made at the July 6, 2016 public hearing from Grady Consulting, L.L.C., received via email 7/15/16.

The Public Hearing opened on July 6, 2016 and was continued to July 20, 2016. The Public Hearing closed on July 20, 2016. The Medway Zoning Board of Appeals members present during the public hearing were David Cole, Chairman; Eric Arbeene, Member; Brian White, Member; and Rori Stumpf, Associate Member. The Board voted on the request for the variances on August 3, 2016. The Board members voting were David Cole, Chairman; 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, Phil Anza of Alder Street Realty LLC, and the applicant's representative, Paul Seaberg of Grady Consulting LLC, appeared before the Board to discuss the applicant's request for variances for the property located at 50 Alder Street.

Mr. Seaberg explained that the site was located at the end of existing cul-de-sac, abutting properties consist of industrial businesses as well as the 495 Highway, and the site is not in close proximity of any residential neighborhoods. Mr. Seaberg stated that the business would not greatly impact the current low-traffic area and he believes it will improve abutting property values. The plans have taken into account an increase in the buffer zone surrounding the wetlands, in the rear of the property, to minimize any potential impact to said wetlands. Mr. Seaberg stated that it the proposed location would be a relocation of a current business in Medway.

Chairman Cole noted that the Board traditionally requires that circumstances relating to the shape, topography, or soil conditions of the subject property be identified that do not generally affect other surrounding lots. Chairman Cole noted that the applicant had clearly established that there was a particular factor relating to soil conditions, mainly the wetlands and the applicant's desire to push the proposed use away from the wetlands that arguably justified the request for a reduction in setback. Chairman Cole stated that he didn't see a relationship to warrant a change in the use variance from the information that was presented and submitted to the Board. Mr. Seaberg stated that the principal engineer and Mr. Anza's attorney would be more suitable to respond to the Board's concern about the use variance. Chairman Cole asked if the applicant had abided by the front setback how close the proposed use would be to the wetlands. Mr. Seaberg stated that it would bring the building to about 21.4 feet from the wetlands, where a 25 foot buffer zone is preferred.

Chairman Cole asked for confirmation that the business would be sales and services only and not a body shop. Mr. Seaberg stated that he did not believe the use would be a body shop. Chairman Cole also asked if consideration had been given to possible environmental impacts and Mr. Seaberg said that in addition to the increased buffer to wetland areas, the applicant is proposing floor drains within the building where the business would be conducted and underground stormwater treatment for any sort of runoff. Chairman Cole asked how many parking spaces there would be. Mr. Seaberg answered that there would be 17 parking spaces, which Mr. Seaberg believes will be enough spaces to conduct business. Chairman Cole asked how many employees there would be. Mr. Seaberg responded that he believed it would be two (2) or three (3) employees. Mr. Arbeene asked where the business is currently located in Medway and Mr. Seaberg responded that he was not sure. Mr. Arbeene echoed the Chairman's argument that circumstances for a variance from the setback seemed justified, but justification for circumstances for a variance from the permitted use didn't seem to be present. Chairman Cole went through the permitted uses for Industrial III Zoning District, but stated that unfortunately did not find any closely related allowed use.

Stephanie Mercandetti, Director of Community and Economic Development noted that this is an existing business within the industrial park requesting to move to a different location within the same industrial park. Ms. Mercandetti stated that the current use is grandfathered at its current location, however the move would result in a loss of the grandfathered status. Chairman Cole summarized Ms. Mercandetti's explanation that the applicant has a current business within Industrial III Zoning District that would like to move to a different location within the Industrial III Zoning District, though it is a nonconforming use. Chairman Cole asked if it would be an expansion of the business. Mr. Seaberg stated that it would be a slight expansion. Chairman Cole stated that the applicant would not be introducing a new use to the Industrial III Zoning District since the business is pre-existing within the district.

Mr. White said it was important to note that this is a relocation of a pre-existing nonconforming use within the same industrial park.

Chairman Cole stated that he would like more information from the applicant to help in the Board's decision.

At the continued public hearing held on July 20, 2016, Mr. Seaberg began by responding to some of the issues that were raised by Board members during the last hearing. Specifically, Mr. Seaberg addressed the circumstances of the subject property relating to shape, topography, or soil conditions that do not generally affect other land in the zoning district. Mr. Seaberg stated that other land in the Industrial III zoning district and abutting lots consist of manufacturing and distribution facilities. The existing lots range in size from 6.5 to 24 acres. The existing building footprints for these industrial uses range from 5,200 to 165,132 sq. ft. and the average size is approximately 47,000 sq. ft. The proposed site consists of 44,989 sq. ft. and only 18,774 sq. ft. of upland. Due to wetlands in the rear of the property, the maximum buildable area is approximately 6,070 sq. ft. without parking. The proposed site and existing lot, because of its shape and soil conditions, is not an appropriate or valuable lot for an industrial use. The shape and soil conditions together make the lot inadequate in size for an industrial use which is intended for assembling, fabrication, finishing, manufacturing, packaging, or processing of goods, or minerals as defined in the Zoning Bylaw. Mr. Seaberg believed that he had demonstrated that the proposed site is suitable for a commercial use of an automotive service and sales business and that an appropriate size facility can be constructed on the lot.

Chairman Cole asked whether the applicant owns any adjoining parcels of land. Mr. Anza responded that he owns the parcel behind the property (the abutting parcel located in Milford) and he intended to combine the parcels for a total of about 1 acre.

Mr. Anza noted that he has been doing business in the current location for about 12 years and that the prior owner operated a similar business on that lot. Mr. Anza stated that it was a small business which the applicant does not foresee expanding by much. Chairman Cole noted that this application is unique in the fact that it concerns an already operating pre-existing nonconforming business that the applicant simply wants to relocate to a different lot within the same industrial park. The Chairman asked for the dimensions of the current business and Mr. Anza said it was roughly twenty (20) feet by forty eight (48) feet.

Mr. Anza stated that he has spoken to all three abutting neighbors (all commercial) and none were opposed to his request. Furthermore, he stated that the nearest residential neighbor is approximately a ½ mile away.

During deliberations, the Board reviewed the applicant's submitted materials and recognized that the proposed use is not allowed within the Industrial III Zoning District but that its operation a pre-existing nonconforming use. The Board also recognized that the use would make the most out of the location and property size based upon the allowed uses in the Industrial III Zoning District and the size that most industrial businesses need.

Findings:

By a vote of 4-0-0:

1. The Board finds that the applicant demonstrated that the limited size of the subject lot, and the presence of substantial amount of wetlands thereon, render the subject lot essentially ill-fitted for the industrial uses prescribed by the Zoning Bylaw and that a small commercial use represents an effective use of the subject lot.
2. The Board finds that the applicant has previously conducted a similar business within the same industrial zoning district for a number of years without objection from his present neighbors and that the owners and/or occupiers of the lots adjacent to the subject lot have raised no objections to the proposed use.
3. The Board finds that the proposed use, although not permitted under the Zoning Bylaw, is not of a type which would be disruptive to permitted uses in the zoning district and hence that the requested relief can be granted without substantial detriment to the public good or excessive deviation from the intent of the Zoning Bylaw.
4. The Board finds that the location of the wetlands on the subject lot, and the desirability of maintaining a substantial separation between the wetlands and the construction needed for the proposed automotive sales and service building, render it desirable to place the building significantly closer to the front lot line than permitted by current zoning.

Relief Granted:

By a vote of 4-0-0:

The Zoning Board of Appeals hereby grants to the applicant, Philip Anza of Alder Street Realty LLC, variances from the requirements of Sections 5.4 and 6.1 of the Zoning Bylaw for the property located at 50 Alder Street, Medway MA:

- A. To permit the carrying on of an Automotive Sales and Service building in the Industrial III Zoning District at 50 Alder Street, Assessor Lot No. 63-001-0001; and
- B. To permit construction to a front setback of 24 feet instead of the 30 feet prescribed by the Zoning Bylaw,

subject to the condition that the building shall be constructed substantially in accordance to the plan submitted.

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.



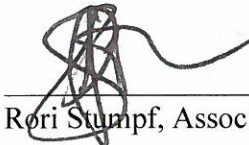
David J. Cole, Chairman



Eric Arbeene, Member



Brian White, Member



Rori Stumpf, Associate Member