

**COMMONWEALTH OF MASSACHUSETTS**

**NORFOLK, SS**

**IN THE MATTER OF:**

**Kevin Goddard  
Petitioner**

**OPINION OF THE BOARD**

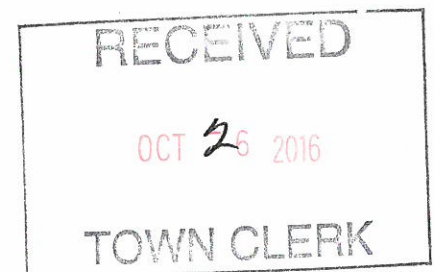
**REQUEST FOR VARIANCE  
54 Main Street  
Medway, MA 02053**

**Hearing: October 5, 2016**

**Decision: October 12, 2016**

**MEMBERS PRESENT:**

**David Cole, Chairman  
Carol Gould, Clerk  
Eric Arbeene, Member  
William Kennedy, Member  
Brian White, Member  
Rori Stumpf, Associate Member**



*29 day appeal  
date  
Nov 15, 2016*

**THE WRITTEN OPINION WAS DELIVERED ON OCTOBER 26, 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, Kevin Goddard, requested a Variance from Section 6.1 of the Zoning Bylaw to allow for the placement of a prefabricated garage 10 feet from the property line, where a 15 foot side setback is required, with respect to the property located at 54 Main Street, Assessor Parcel No. 41-016, 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 September 21, 2016 and September 28, 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. Applications submitted September 6, 2016 (*not stamped in with the Clerk, per applicant's request to review and/or revise application*)
2. Application dated September 12, 2016
3. 54 Main Street Plot Plan, dated 8/17/16, prepared by Applewood Survey LLC of 21 Green Street, Holliston, MA 01746
4. 54 Main Street Revised Plot Plan, dated 9/17/16, prepared by Applewood Survey LLC of 21 Green Street, Holliston, MA 01746
5. 54 Main Street Deed
6. Site Preparation and Foundation for the Prefabricated Garage
7. Dimensions of the Prefabricated Garage
8. Image of the Prefabricated Garage
9. Email Correspondence between Applicant and Staff, dated September 9, 2016
10. Email Correspondence between Applicant and Staff, dated September 20, 2016
11. Medway Building Commissioner Comments, “RE:54 Main Street variance application,” dated August 28, 2016
12. Staff Report “RE: Staff Report #1: 54 Main Street – Kevin Goddard Variance Application”
13. Staff Report “RE: Staff Report #2: 54 Main Street – Kevin Goddard Variance Application”
14. Zoning Board of Appeals audio recording from the October 5, 2016 Meeting

#### 15. Zoning Board of Appeals audio recording from the October 12, 2016 Special Meeting

The Public Hearing opened on October 5, 2016 and was closed on October 5, 2016. The Medway Zoning Board of Appeals members present during the public hearing were David Cole, Chairman; Carol Gould, Clerk; Eric Arbeene, Member; William Kennedy, Member; Brian White, Member; and Rori Stumpf, Associate Member. The Board voted on the request for the variance on October 12, 2016, at a Special Zoning Board of Appeals meeting. The Board members voting were David Cole, Chairman; Carol Gould, Clerk; William Kennedy, Member; Brian White, Member; and Rori Stumpf, Associate Member. There were no public comments made in support or opposition of the application during the public hearing.



## **Hearing Summary**

The applicant, Kevin Goddard, appeared before the Board to discuss the request for a variance for the property located at 54 Main Street.

Mr. Goddard stated that the size of the lot makes it “hard to work with,” and that the house is centered on the lot; the setbacks of the district are also limiting and make finding a placement for a shed or a garage difficult.

Chairman Cole stated that he did not understand why the applicant had shown the garage off-centered from the driveway on the plot plan. Mr. Goddard stated that the intended use of the garage was not for an every-day garage, but rather for the storage of a vehicle.

Chairman Cole noted that the Zoning Board of Appeals should minimize the amount of variance requested, as a variance is an exception to the Zoning Bylaw and the Board should not grant more of a variance than it needs to. Chairman Cole stated that the applicant was asking for the garage to be placed 10.2 feet from the western side lot line and asked that the applicant explain why the garage could not be placed any closer to the existing house. Chairman Cole was skeptical of why the applicant needed 13 feet from the garage to the house. Mr. Goddard explained that at a 15 foot setback, the garage would only be 8 feet from the house. Chairman Cole asked if there was an issue with a 12 foot setback rather than a 10.2 foot setback for the garage. Mr. Goddard answered that there was not an issue, and restated that he was only looking for more room between the garage and the house than the side setback of 15 feet would allow for.

Mackenzie Leahy, Community and Economic Development Department Administrative Assistant, reviewed the application and explained to the Board that the Department had received an initial application from Mr. Goddard on September 6, 2016 but it was not stamped in with the Town Clerk, per the applicant’s request. Instead, an application was submitted by Mr. Goddard on September 12, 2016. The Department also received comments from Jack Mee, Building Commissioner, regarding the application; there are issues with the sheds currently existing on the property, not relating to Mr. Goddard’s variance request before the Board for the garage. Ms. Leahy continued that the lot is a pre-existing non-conforming lot and the house is nearly centered on the lot. If the garage met the required setback, it would be 8 feet from the house, not including the distance from the existing porch extending outwards from the western portion of the house. Ms. Leahy continued that there did not appear to be another location for the garage that would not be within the setback, not on the middle of the property, or not close to the existing house. Mr. Goddard clarified that the “porch” was not a porch, but rather steps off the house.

Chairman Cole asked if there were any comments received from the public; Ms. Leahy responded that there had not been any comments received from the public. No comments were made by the public during the hearing.

Mr. White asked if there was any precedent to address both the garage setback and the shed, as discussed by Mr. Mee's comments, noting that one shed on the plot plan was pre-existing non-conforming but that the other shed was not pre-existing and did not meet the setback requirements. Mr. Goddard explained that he moved the shed that was not in compliance on the plot plan to become compliant. Chairman Cole noted that the application for a variance was only for the garage and the Board could not grant a variance for something that had not already been included in the application. Chairman Cole explained that if there were issues with compliance regarding the existing shed, the Board would require a separate application. Ms. Leahy clarified that she had conversations with Mr. Goddard as well as Stephanie Mercandetti, Community and Economic Development Department Director, and Mr. Mee regarding the application. Ms. Leahy noted that the staff recognized that the Board could not address the shed's noncompliance within the current variance application for the garage, however it was necessary to inform the Board of the existing sheds and that the Board would need to determine whether the applicant would need to apply for a second variance or whether the Board would condition within the decision that the shed's noncompliance status was addressed.

Ms. Mercandetti explained that Ms. Leahy had done some research on the sheds shown on the plot plan and found that one of the sheds was there at the time of construction of the house but the other was not, however Mr. Goddard noted that he had moved the shed and it could be conditioned that at the time of resubmission for a building permit, the applicant would need to show the new location of the shed. Chairman Cole stated that seemed an appropriate way to conditioning the shed within the variance decision.

Mr. Goddard stated that from his understanding he would need to submit another plot plan, but he believed that was an unnecessary cost that could be verified by the Building Department. Chairman Cole explained that the Board was not proposing that Mr. Goddard have the property resurveyed, only that he mark up the current location of the shed that has been moved and that Mr. Goddard demonstrate he is not in need of another variance. Ms. Mercandetti explained that the shed's location would be something that would be verified at the time that Mr. Goddard apply for the building permit. Ms. Mercandetti explained that with the issuance of a variance there would need to be a modification to the building permit.

The hearing was closed, but deliberation were made on September 12, 2016 during a Special Zoning Board of Appeals meeting. No public attended the meeting.

During Deliberations, Chairman Cole re-noted that Mr. Goddard stated that he had already moved the nonconforming shed into conformance and that the Board would condition Mr. Goddard supply a modified plot plan to show that the shed is in a conforming position.

Mr. Stumpf stated that if shape of the property was valid reason to grant the variance and no neighbors had objected the request, then Mr. Stumpf did not see any detriment to granting the variance. Mr. White disagreed and did not believe that the lot met any of the requirements regarding shape, topography, or soil conditions for a variance, but that if the Board was looking at reducing the side



setback by any amount, that the Board keep the garage setback in line with the existing driveway. Mr. White was inclined to grant the variance but to have the garage aligned with the driveway.

Mr. Kennedy stated that the variance may be a first step in considering expanding the existing concrete driveway; Mr. White stated that was the reason as to why he would prefer the garage aligning with the existing driveway edge.

Ms. Gould stated that Mr. Goddard had said there was an existing fence that would be in front of the garage (the southern side of the lot).

Mr. Stumpf stated that if the garage met the 15 foot setback there would only be 8 feet distance to the house and a few feet distance to the stairs.

Ms. Mercandetti explained to Ms. Gould that the location of the existing sheds and the garage would be verified by the Building Department when they inspected the garage.

Ms. Gould stated that she would like to see the garage moved further into compliance with the side setback requirement but recognized that it would leave garage close to the stairs.

Chairman Cole stated that 12 feet by 24 feet was large for a one-car garage. Mr. Stumpf explained that he did not understand how Mr. Goddard would get the car into the garage. Ms. Gould stated that Mr. Goddard had not said if would be taking the stockade fence down to install the garage.

Chairman Cole stated that if the Board granted a variance of around 2.5 feet less than the requested 10.2 feet, the garage would be more aligned with the existing driveway; if the garage met the setback requirements, there would not be enough room between the house and the garage.

Mr. Kennedy stated that he was more inclined to grant a variance with the garage located 12 feet from the side lot line versus the requested 10.2 feet; Chairman Cole stated that was why he had asked Mr. Goddard if he would find a variance of a few feet less acceptable. Chairman Cole stated that a the a variance that allowed the garage to be located 12 or 13 feet from the side lot line would align the garage better with the driveway and would also leave enough distance between the garage and the house.

Mr. Kennedy stated that there needed to be a reason as to why the Board was granting a variance at 12 feet versus the 10.2 feet requested. Mr. White explained that the Board could grant a lesser variance as long as it would still allow Mr. Goddard the original intentions of creating enough distance between the garage and the house for egress.

Chairman Cole stated that there were many lots in the area that were 100 feet by 100 feet and that there was already some precedent that a side setback of 10 feet for the simple reason that the amount of side yard space is limiting on those lots.

Mr. Stumpf asked if the Building Inspector would look at the alignment of the garage and driveway or if there was any design standard in Town for that alignment. Chairman Cole stated that there was no design standard in Town, provided the setback was met. Mr. White had stated that he had wished there was more insight on past cases with similar lots.

Mr. Stumpf stated that he didn't see the justification with an extra two feet variance. Chairman Cole explained that the variance should be minimized if there was no substantial hardship. Ms. Gould agreed with the location of the garage 12 feet from the side lot line.

Mr. White explained that his concern was that Mr. Goddard's argument was the shape and size of the lot but that he did not clarify his need for access and did not present any clear point as to why he needed the garage at a 10.2 foot setback. Mr. Kennedy stated that he believed Mr. Goddard addressed that in the application. Chairman Cole summarized the application and stated that the function of Zoning is to have things reasonably uniform and is not necessarily meant for best use of the property. Mr. White explained that if Mr. Goddard had made any arguments for access there would be more reason for the Board to grant the 10.2 foot setback; there were other arguments to be had, but Mr. Goddard did not present those arguments to the Board.

Mr. Stumpf explained that he felt the variance was more about size versus the shape. Chairman Cole stated that usually the Board interprets size to also fall under shape.

Mr. Kennedy summarized that Ms. Gould and Chairman Cole felt a 12 foot setback, or 3 foot variance would suffice, that Mr. Kennedy and Mr. Stumpf felt a 10.2 foot setback, or 4.10 foot variance was acceptable, and that Mr. White was undecided. Mr. Stumpf stated that if a 12 foot setback would allow the Board to grant the variance, he would vote in favor.

Chairman Cole stated that if the applicant had needed another variance request, he felt that the Board would request that the applicant withdraw without prejudice and resubmit a new application including all variances needed on the resubmission.



## **Findings:**

By a vote of 5-0-0:

1. The Board finds that the Applicant demonstrated conditions relating to the shape of the subject lot, particularly affecting the subject lot and not generally affecting lots in the relevant zoning district, namely the limited size of the pre-existing non-conforming lot, which comprises only 10,000 square feet as against the 22,500 square feet minimum as required by the AR-II Zoning District, and the placement of the existing house on the lot, which impose a hardship on the lot.
2. The Board finds that some reduction in the side setback requirement on the west side of the lot can be granted without substantial detriment to the public good.
3. The Board finds that given the spacing of approximately 35.3 feet between the west wall of the existing house and the west lot line and the presence of existing steps at the north-west corner of the existing house, in considering the extent of the variance to be granted, it is necessary to balance the setback of the proposed garage from the western side lot line against the spacing of the east side of the garage from the aforesaid steps; and the Board finds a reduction of the side setback requirement from 15 feet to 12 feet will leave adequate spacing between the east side of the proposed garage and the aforesaid steps.
4. The Board finds that during the pendency of the present application, the Building Inspector raised the question of whether the position one of the existing sheds did not conform with the Zoning District requirements, but that during the hearing, the applicant testified that the shed had been moved to a location conforming with the current Zoning District requirements; and that it is appropriate for the Board and the Building Inspector to be satisfied that granting of the existing variance will not result in any continuing violation of the existing Zoning regulations on the subject lot.

**Relief Granted:**

By a vote of 5-0-0:

The Board hereby grants to the applicant, Kevin Goddard of 54 Main Street, a Variance for the construction of a twelve (12) foot by twenty-four (24) foot garage on the west side of the lot at 54 Main Street, subject to the following terms and conditions:

- A. The garage shall be placed substantially in accordance to the lot plan, submitted with the application;
- B. The side setback from the west side lot line shall be reduced from fifteen (15) feet to twelve (12) feet, no variation of rear or front setbacks being granted; and
- C. Prior to the existence of the building permit of the proposed garage, the applicant shall submit to the building inspector a revised plot plan showing that the shed showed on the existing plot plan as being in a non-conforming location has been moved to a location conforming to the existing zoning regulations.

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.

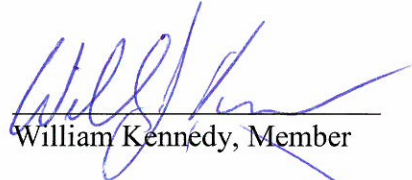
In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed, or that if 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



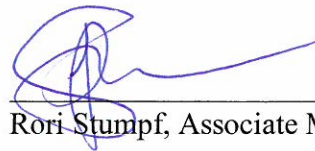
Carol Gould, Clerk



William Kennedy, Member



Brian White, Member



Rori Stumpf, Associate Member