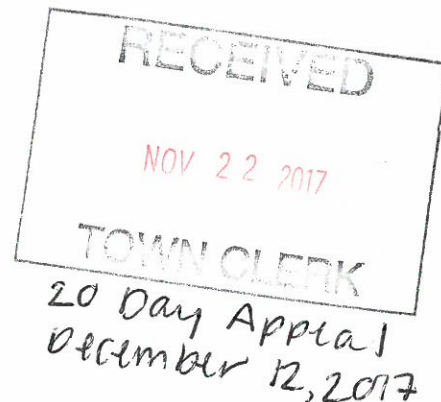




Town of Medway  
**ZONING BOARD OF APPEALS**  
155 Village Street, Medway, MA 02053

Eric Arbeene, Chair  
Brian White, Vice Chair  
Carol Gould, Clerk  
Bridgette Kelly, Member  
Rori Stumpf, Member

**DECISION  
SPECIAL PERMIT  
5 BUTTERCUP LANE**



**Date Application Filed:** October 10, 2017

**Applicant(s):** James Landry (the "Applicant")  
55 Cordaville Road  
Ashland, MA 01721

**Location of Property:** The Project is located on a parcel of land in Medway located at 5 Buttercup Lane (Assessor Parcel ID: 21-052).

**Approval Requested:** Special Permit under Section 5.5 Nonconforming Uses and Structures of the Medway Zoning Bylaw to demolish and replace a single story home with a two story home on a pre-existing nonconforming lot due to insufficient area and frontage.

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

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

**Hearing Opened:** November 1, 2017

**Hearing Closed:** November 15, 2017

**Date of Decision:** November 15, 2017

**Decision:** Granted with Conditions

## **I. PROCEDURAL HISTORY**

1. On October 10, 2017, the Applicants filed a Special Permit application, pursuant to G.L. c. 40A, as amended, and the Medway Zoning Bylaw, in order to replace the existing single story home with a two story home on a pre-existing nonconforming lot.
2. Notice of the public hearing was published in the Milford Daily News on October 18, 2017 and October 25, 2017, 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 November 1, 2017. The Board closed the public hearing on November 15, 2017.
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.
5. The Board notified Town departments, boards, and committees of this application. The Board received comments from the Treasurer/Collector, Conservation Agent, and Board of Health.
6. 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 1, 2017 meeting, the hearing was opened by the Board. The Applicant provided an overview of the proposed two story home. They explained they were in the process of purchasing the home which was why the homeowner was under a different name. The current house was built around 1959/1960. The existing house would need new siding, roof, doors, etc...It's beyond a remodel. The house would need to be demolished in order to meet the new energy codes. They would like to demolish the existing house, leaving only the foundation and then rebuild with a two story home. The home is large for the lot, however, the roof line, as proposed, is brought down to reduce the appearance of height and size. In the application, the applicant provided comparable homes in the neighborhood of similar size. The existing house is currently encroaching the front setback by 5 feet and would like to request an addition 8 feet to the front for the proposed deck and roof line. When facing the house, the chimney is currently on the left side of the house. The applicant would like to move the chimney to the right side which would be encroaching the southern side setback by 7 inches. The rear setback and northern side setback would be met. The home would tie into sewer, the applicant had spoken to the Department of Public Services already. The property is in pre-foreclosure of a contested estate.

Ms. Mercandetti, Director of Community & Economic Development stated that the Board of Health's questions had been addressed, and that the only other comment was from the Conservation Agent requesting mitigation for the roof runoff.



The Applicant explained that it was a home that they would be moving into, not selling.

Mr. Stumpf stated that he liked the proposal and felt that the application was very thorough.

John Babineau, 7 Buttercup Lane, stated that it looked like a beautiful house and that anything would be an improvement to the existing house. Mr. Babineau stated that he had been living next to a “haunted house” since 1998. Mr. Babineau was only concerned with the size of the proposed home.

Ms. Gould stated that the home was very large and asked how much square footage there was for the entire home. The applicant stated that it would be around 3,000 sq. ft.

There was no discussion at the November 15, 2017 hearing.

### **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. Section 3.4 Special Permit Decision Criteria**

1. *The proposed site is an appropriate location for the proposed use.*
  2. *Adequate and appropriate facilities will be provided for the operation of the proposed use.*
  3. *The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.*
  4. *The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*
  5. *The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials, or other undesirable visual, site, or operational attributes of the proposed use.*
  6. *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*
  7. *The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.*
  8. *The proposed use is consistent with the goals of the Medway Master Plan.*
  9. *The proposed use will not be detrimental to the public good.*
- a. The Board finds that the proposed replacement of the existing single story home with a two story home is consistent with all of the required criteria under Section 3.4 of the Medway Zoning Bylaw.

## **B. Section 5.5 Nonconforming Uses and Structures**

1. The proposed replacement of the single family home with a two story home would result in an increase to the nonconforming nature of the existing home and property.
2. The existing home does not meet the front setback requirement of 35 feet. The existing home is 29.6 feet from the front lot line and proposed home is proposed to be 21.6 feet from the front lot line, excluding the steps for the proposed porch. The proposed home reduces the appearance in height and bulk by extending the roof line of the second story out over the proposed porch, which requires a reduction to the already nonconforming front setback. The proposed reduction of the front setback shall not be detrimental to the surrounding neighborhood.
3. The existing home meets the eastern side setback requirement of 15 feet. The proposed home is proposed to have a chimney which is 14.5 feet from the side lot line, which does not meet the side setback requirement of the AR-II district. The proposed reduction of the eastern side setback shall not be detrimental to the surrounding neighborhood.
4. The demolition and replacement of the existing home is necessary due to the current state of the home which would be an immense expense to renovate and remodel. An increase in the footprint of the proposed home from the existing home is necessary to accommodate a garage, front porch which helps to reduce the appearance in height and bulk, and to make the investment feasible. The proposed changes would not be more detrimental to the neighborhood than the existing nonconforming use, rather the changes would serve as a benefit to the neighborhood and the public good.

#### 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 Applicants, James Landry, a Special Permit for 5 Buttercup Lane, under Section 5.5 of the Zoning Bylaw, to replace a single story home with a two story home on a pre-existing nonconforming lot due to insufficient frontage and area.

1. The front setback shall be reduced from the required front setback of 35 feet to 21 feet.
2. The eastern side setback shall be reduced from the required side setback of 15 feet to 14 feet.
3. The home shall comply with the side setback along the northern lot line and rear setback on the eastern lot line.
4. Any further reduction to setback requirements shall require a modification to this decision.
5. A dry well or infiltration chamber(s) shall be installed on the property that adequately mitigates stormwater for roof runoff. It shall be designed to handle a 1 inch storm or greater.
6. No building permit shall be issued until all outstanding taxes are paid.
7. This Special Permit is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the Special Permit that may be required by the decisions of other Town boards, agencies or commissions shall be submitted to the Board for review as a modification.

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

8. Upon receipt of a written request by the applicant filed at least thirty (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 Special Permit shall lapse two years from the date of Decision, unless substantial 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.** This Variance application includes the following plans and information that were provided to the Board at the time the application was filed:

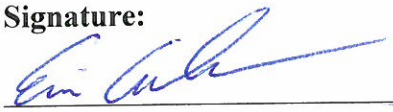
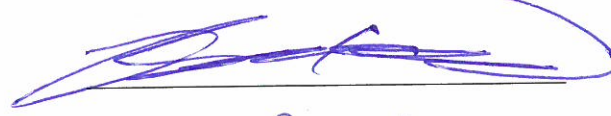
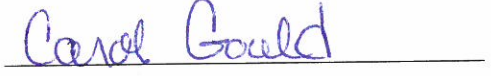
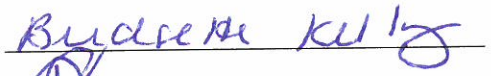
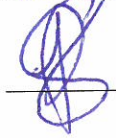
1. Plan of Land of 5 Buttercup Lane, prepared by colonial Engineering Inc. of 11 Awl Street, Medway MA 02053, dated September 24, 2017
2. Comparable Homes from Zillow and Assessor's Records
3. Colored Elevations of the Proposed Home, 4 pages
4. Floor Plans of the Proposed Home, prepared by P.L.A.N.S. Company, dated 10/04/17, 3 pages

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

1. Comments: Conservation Commission, Bridget Graziano, received October 23, 2017
2. Comments: Treasurer/Collector, received October 23, 2017
3. Comments: Board of Health, Beth Hallal, received October 26, 2017
4. Comments: Mackenzie Leahy, Administrative Assistant, received October 26, 2017
5. Existing Conditions, 4 photographs, provided by Mackenzie Leahy
6. Ownership Verification Information, provided by Applicant, received October 30, 2017

## VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Brian White and seconded by Rori Stumpf, the Zoning Board of Appeals hereby **GRANTS** the Applicants, James Landry, a Special Permit for 5 Buttercup Lane, under Section 5.5 of the Zoning Bylaw, to replace a single story home with a two story home on a pre-existing nonconforming lot due to insufficient frontage and area ***SUBJECT TO CONDITIONS HEREIN.***

Member:	Vote:	Signature:
Eric Arbeene	Yes	
Brian White	Yes	
Carol Gould	Yes	
Bridgette Kelly	Yes	
Rori Stumpf	Yes	

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.