

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
VARIANCE - DENIED
7 WELLINGTON STREET**

Date Application Filed: April 19, 2019

Applicant(s): Paul and Marlena Doucette (the "Applicants")
7 Wellington Street
Medway, MA 02053

Location of Property: 7 Wellington Street (Assessors' Parcel ID: 58-175).

Approval Requested: Variance from Section 6.1 of the Zoning Bylaw to split the property into two lots. The Applicants seek variances for the required 150 feet of frontage for proposed Lot 2, which will have 90.81 feet of frontage, and from the required square footage of 22,500 square feet for both proposed lots; Lot 1 will be 11,062 square feet and Lot 2 will be 12,549 square feet.

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

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

Hearing Opened: May 15, 2019

Hearing Closed: July 17, 2019

Date of Decision: July 17, 2019

Decision: DENIED



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I. PROCEDURAL HISTORY

1. On April 19, 2019, 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. The Applicants seek a variance from the required 150 feet of frontage for Lot 2 and a variance from the minimum required 22,500 square feet of area for each of the two proposed lots.
2. Notice of the public hearing was published in the Milford Daily News on May 1, 2019 and May 8, 2019, 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 May 15, 2019. The Board continued the public hearing to June 5, 2019, June 19, 2019 and July 17, 2019. The Board closed the public hearing on July 17, 2019.
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 square feet. Minimum lot frontage is 150 feet. The current lot meets the required lot area and frontage requirements for a buildable lot. If the lot is split, each new lot will be nonconforming, with Lot 1 meeting the frontage requirement but nonconforming as to lot area with only 11,062 sq. ft. in area, and Lot 2 being nonconforming as to lot frontage with only 90.81 feet of frontage and nonconforming as to lot area with only 12,549 sq. ft. in area.
5. The Applicants were represented by Patrick Mulvehill of Mulvehill Real Estate and Land Use Planning, 869 Washington Street Norwood, MA.
6. The Board notified Town departments, boards and committees of this application.
7. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeals' files and listed in Section V. of this Decision.
8. Carol Gould could not attend the May 15, 2019 meeting, she submitted a Mullin Rule form. Christina Oster could not attend the June 19, 2019 meeting, she submitted a Mullin Rule form.

II. TESTIMONY

At the May 15, 2019 meeting, the hearing was opened by the Board. The Applicants Paul and Marlena Doucette and their representative, Patrick Mulvehill, were present. Mr. Mulvehill explained his role and experience being on the Zoning Board of Appeals in Norwood for 25 years. He then provided an overview of what the Applicants are proposing for the variance application. They bought the home knowing it needed a lot of work and over time they have put a lot of work into the home. They would like to build a single family, single level home on Lot 1 if granted. The home owner has been advised to limit himself to single level home living due to

medical restrictions. Mr. Mulvehill stated the Applicants would be open to any conditions that are put forward if the application is granted. The Applicants live in the neighborhood with family and close friends who currently help with the maintenance and upkeep on the property due to Mr. Doucette's limitations. They want to stay in Medway.

Mr. Mulvehill then referenced the variance that was granted for 30 Wellington Street on March 3, 2018 and the newly constructed house on the new lot and stated that this is not what the Applicants are going to do with their new lot if granted. Mr. Mulvehill provided some aerial photos of the property and some pictures of the style of homes the Applicants have researched and would consider building (these photographs are attached). He stated they are aware of what conditions might be put forth and that they would be open to complying with them.

Members of the Board then provided comments regarding the application.

Andy Rodenhiser, Chairman of Planning and Economic Development Board discussed the letter submitted by the PEDB. He stated that ZBA decisions should be decided based on the land and not the owner. He also discussed conditions that should be put in place if this application is granted.

Two abutters (Maria Doucette and Brian Dunn) were present and stated they were in favor of the requested variance. The hearing was continued to Wednesday June 5, 2019.

On June 5th, the Applicants, Paul and Marlena Doucette, were present with their representative, Patrick Mulvehill. Mr. Mulvehill handed out floor plans along with pictures of the type of new proposed home with square footage dimensions. He again reiterated that the Doucettes want to stay in the neighborhood and will live in the newly constructed home with no intent to build and sell.

There was a discussion around conditions and what is reasonable and acceptable. Mr. Stumpf explained that the variance is attached to the land not to the property owners.

Mr. Mulvehill stated that the visual compatibility of the proposed new lot should be taken into consideration, and as the Applicant's health is declining, this will really help the family. He stated again that the Applicants want to stay in Medway and will do what they need to while still respecting the Medway Zoning Bylaws.

Board members provided comments regarding the application and the criteria.

Mr. Stumpf inquired if the Board was ready to vote. There was a consensus that they were not ready to vote based on needing to discuss the variance criteria further. The Board then decided to continue the hearing to June 19, 2019.

At the hearing on June 19, 2019, Mr. Mulvehill and the Applicants, Paul and Marlena Doucette, were present. He stated that he has done some research of variances previously granted by the Board in the last two years and specifically the language for the variance criteria.

Mr. Stumpf asked the Board if there are any questions, no board members brought forth any

questions. A question was raised regarding the fact that only four members were present, and what would be needed for a granting vote. It was confirmed they would need 4 affirmative votes to grant the variance. The Applicants requested to continue the hearing to the next meeting in order to have all five Board members present, and stated they will file for an extension of the time limit for the variance decision. The Board voted to continue the hearing to July 17, 2019.

On July 1, 2019 the applicants' representative Patrick Mulvehill filed an "Extension of Time to Open Hearing" specifically extending the time to file a decision to August 13, 2019 due to the 100-day deadline from filing the application being on July 27, 2019.

On July 17, 2019 Patrick Mulvehill was present with the Applicant, Paul Doucette, and reiterated what they are looking to do and asked the Board for approval. He also stated that throughout the process between various Town Departments and public comment there have not been any negative feedback regarding the application and the request.

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.

Motion made by Gibb Phenegar that the lot is very sandy and stated that due to that it would be very difficult to build on. There was no second for the motion.

2. Substantial hardship caused by the circumstances from Criteria A.1 when the Zoning Bylaw is literally enforced.

There was no motion made for this criterion.

3. Desirable relief may be granted without substantial detriment to the public good.

There was no motion made for this criterion.

4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law.

Brian White proposed a motion based on the information presented by the Applicants and comments received by various Town Department that this application would not derogate from the intent of the Zoning bylaw by right.

Motion made by Brian White that desirable relief may be granted without nullifying or substantially derogating from the intent of purpose of the zoning by-law, seconded by Gibb Phenegar passed with a vote of 4-1-0.

Mr. Stumpf then discussed each variance criteria individually. All four criteria must be met in order to grant a variance. Based on the criteria not being met the Board voted to deny the application. Mr. Stumpf stated there were two reasons for denial, one being the previously denied variance request from 1997 for this property, the second being that the Town Meeting voted down a proposed zoning change for the Village Residential Zoning District which would have reduced the minimum lot size to what the Applicants are proposing in their application at a recent Town Meeting in 2016.

Motion made by Brian White seconded by Carol Gould to deny the variance for 7 Wellington Street with a unanimous vote of 5-0.

IV. 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. “ZBA Plan of Land in Medway, Massachusetts 7 Wellington Street”, owners Paul and Marlene Doucette, prepared by Borderland Engineering, Inc. dated February 7, 2019 (the Plan).
2. Quitclaim Deed from the Norfolk County Registry of Deeds, Book 21236, Page 356
3. “Mortgage Inspection Plot Plan” prepared by P.N. Associates, Inc. dated June 15, 2004

B. During the course of the review, the following materials were submitted to the Board by Town departments and boards:

1. Email from Medway Fire Chief Jeff Lynch on April 30, 2019
2. Email from Medway Town Treasurer Joanne Russo on April 30, 2019
3. Email from Medway Department of Public Services Director David D’Amico on April 30, 2019
4. Email from Medway Town Treasurer Joanne Russo on May 13, 2019
5. Letter from Medway Planning and Economic Development Board Chairman Andy Rodenhiser on May 15, 2019

C. Additional documents submitted by Applicants during the course of the hearing:

1. Aerial photos of 7 Wellington Street Medway, MA 02053 provided by Patrick Mulvehill at the Zoning Board of Appeals meeting on May 15, 2019
2. Photographs of proposed single story homes to be considered as examples of what would be built if variance is granted provided by Patrick Mulvehill at the Zoning Board of Appeals meeting on May 15, 2019

3. Proposed house plans for the proposed newly constructed home on Lot 1 presented by Patrick Mulvehill at the June 5, 2019 Zoning Board of Appeals meeting.
4. Mullin Rule form signed by Carol Gould for the May 15, 2019 meeting, stamped in by Town Clerk on June 5, 2019.
5. Three prior granted decisions by the Medway Zoning Board of Appeals were presented at the June 19, 2019 Zoning Board of Appeals meeting; 180 Village Street Medway, MA 02053, 78 Fisher Street Medway, MA 02053 and 48 Gorwin Drive Medway, MA 02053.
6. “Extension of Time to Open Hearing” form submitted by Patrick Mulvehill to extend time to take final action and file with the Town Clerk to August 13, 2019 was received and filed on July 1, 2019 with the Medway Town Clerk.

VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Brian White and seconded by Carol Gould, the Zoning Board of Appeals hereby ***DENIED*** the Applicants, Paul and Marlena Doucette, a ***VARIANCE*** from Section 6.1 of the Zoning Bylaw from required minimum frontage and minimum lot size, to split the property the property 7 Wellington Street, Assessor's Parcel ID 58-175, into two lots.





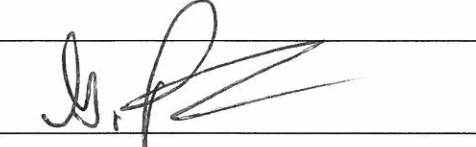
Member:	Vote:	Signature:
Rori Stumpf	Yes	_____
Brian White	Yes	_____
Carol Gould	Yes	_____
Christina Oster	Yes	_____
Gibb Phenegar	Yes	_____

The Board and the Applicants 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 Applicants, 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.

VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Brian White and seconded by Carol Gould, the Zoning Board of Appeals hereby ***DENIED*** the Applicants, Paul and Marlena Doucette, a ***VARIANCE*** from Section 6.1 of the Zoning Bylaw from required minimum frontage and minimum lot size, to split the property the property 7 Wellington Street, Assessor's Parcel ID 58-175, into two lots.

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

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