

Town of Medway
Zoning Board of Appeals Meeting
Sanford Hall, Medway Town Hall
155 Village St, Medway MA

MINUTES OF MEETING

July 6, 2016

Present: Chairman David Cole; Committee Members Eric Arbeene and Brian White (arrived at 7:41 PM); and Associate Member Rori Stumpf.

Also Present: Stephanie Mercandetti Director, Community and Economic Development; Mackenzie Leahy, Administrative Assistant, Community and Economic Development.

David Cole, Chairman, called the meeting to order at 7:37 PM.

Citizen comments:

There were no members of the public that wished to make comments on items other than those already on the agenda.

Approval of minutes:

A few minor changes were suggested by Chairman Cole to the draft meeting minutes for June 15, 2016.

A motion to accept the Minutes of the June 15, 2016 meeting with minor changes was made by Mr. Arbeene, seconded by Mr. White and approved unanimously.

Reorganization of the Board:

Chairman Cole asked that the Board wait to address this topic until the next meeting.

Upcoming meeting:

July 20, 2016: continued public hearing for Timber Crest Estates

- Ms. Mercandetti informed the Board that an email from the Applicant's representative was received requesting a continuance of the hearing to the first meeting of the Board during the month of August. The request was made to allow the applicant time to address a number of issues that were raised by the Board as well as the public during previous hearings.

Correspondence:

None.

Public Hearings:

7:45 P.M. - The Applicant, Philip Anza of Alder Street Realty, LLC, seeks 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 seeks 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.

The Board is in receipt of the following documents:

- A Special Permit Application stamped by the Town Clerk on May 24, 2016
- Site plan
- Copy of Certified Abutters List
- Letter from Grady Consulting, LLC
- An email from Principal Assessor, Donna Greenwood, received July 1, 2016, indicating that the record has been changed on parcel 63-001-0001 formerly known as 51 Alder St. to 50 Alder St.

The Board moved to hear the application. The applicant's representative, Paul Seaberg from Grady Consulting, was present to discuss the request with the Board. Mr. Seaberg explained that the site is located at the end of existing cul-de-sac, it is surrounded by businesses, and not in close proximity of any residential neighborhoods. It is a low-traffic business and he believes it will improve abutting property values. The plans have taken into account an increase buffer zone to wetlands to minimize any potential impact.

Chairman Cole noted that the Board traditionally requires that circumstances relating to the shape, topography, or soil conditions of the subject property be identified which in turn warrant a change in use variance. From the information that was presented and submitted to the Board, Chairman Cole doesn't see a relationship to warrant a change in use variance. Mr. Seaberg stated that the principal engineer and Mr. Anza's attorney would be more suitable to respond to the Board's concern. Chairman Cole asked for confirmation that the business would be sales and mechanical services only and not a body shop. Mr. Seaberg does not believe it is 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, they are proposing underground stormwater treatment. Mr. Arbeene asked where the business is currently located in Medway and Mr. Seaberg responded that he is not sure. Mr. Arbeene echoed the Chairman's argument that circumstances for changing the permitted use don't seem to be present.

Ms. Mercandetti noted that this is an existing business within the industrial park requesting to move to a different location within the same industrial park. The move would result in a loss of the grandfathered status.

Mr. White said it was important to note that this is a relocation within the same industrial park.

Chairman Cole stated that he would like more information from the applicant to help in the Board's decision. He asked that the hearing be continued on July 20, 2016 with the assumption that new information would be available. Otherwise, he asked that the applicant or his representatives please ask for further continuation until further facts are available.

Chairman Cole asked for public questions or comments and none were raised.

Chairman Cole moved to continue this hearing to July 20, 2016 at 8:00 PM, it was seconded by Mr. White and approved unanimously.

8:00 P.M. - The Applicant, Jeffrey Grenon Jr. of 6 Norfolk Avenue, seeks a variance from Section 6.1 of the Zoning Bylaw to allow for the reduction of a side setback from 15 ft. to 8 ft. and a rear setback from 15 ft. to 5 ft. for a vinyl 1 car- carport garage; and also seeks a variance from Section 6.1 of the Zoning Bylaw for the reduction of a side setback from 15 ft. to 1 ft. and a rear setback from 15 ft. to 9 ft. for a vinyl 2 car- carport garage.

The Board is in receipt of the following documents:

- A Special Permit Application stamped by the Town Clerk on June 10, 2016
- Site plan for existing and proposed conditions
- Property pictures and google maps

The Board moved to hear the application. The applicant, Mr. Grenon, was present to discuss his request with the Board.

Mr. Grenon informed the Board that the carports contain tools and vehicles that the applicant has restored with his father. The structures are unnoticeable from the street due to vegetation on the property. He also noted that he has received written approval from all abutting neighbors.

Chairman Cole indicated that the Bylaw requires that particular property conditions related to shape, topography or soil conditions be shown which warrant a change in the setbacks. Mr. Grenon stated that the property shape is the only condition that he believes deserves consideration in regard to his request for the decrease in setbacks. Chairman Cole further noted that applicant needs to show that the proposed project cannot be achieved in conformance with the zoning bylaw. He asked why not move the 1 car – car port garage back 10 ft.? Mr. Grenon stated that doing so would make the structure more noticeable to neighbors whereas now it is pretty well hidden. In addition, the applicant noted that he has significantly improved the landscape on his property and considered the placement of the carports where they would allow for part of the yard to be used for entertaining or recreation. Chairman Cole asked about driveways and Mr. Grenon said that no driveways to the car port garages exist or would be built. Chairman Cole noted his concern with the requested setbacks for the 2 car- car port garage in particular as a setback of 1 ft. would result in an intrusion on the abutting neighbor's property. The Board also raised the question of whether these structures would be considered temporary or permanent structures. Ms. Mercandetti noted that the intended use is for longer than the allowed 180 days. Mr. White stated that from the pictures submitted, it appears that one abutting neighbor also has a structure very close to the property line. The applicant informed the Board that as much as possible he has avoided intruding on his neighbors while retaining some of the usable space in his own yard. Mr. Stumpf noted that applicant has signed acceptance from abutting neighbors. Chairman Cole asked whether these structures were already in existence and the applicant confirmed that they were. Mr. Grenon said that he was not aware that the use of these structures required a permit or consideration to setbacks. He was approached by the building inspector due to a complaint that was received and was then instructed to comply with the Bylaw or apply for a variance.

Chairman asked for public questions or comments.

Mr. Paul Coffey of 19 Guernsey Street is an abutting neighbor who signed the letter indicating his approval of the applicant's request. He stated that he is concerned about the resale value of his property being negatively impacted by the structures on Mr. Grenon's property. Chairman Cole indicated that the Board cannot predict or give opinions on how a project affects property values. Mr. Coffey asked if a third structure would be able to be added at a later date or if a permanent structure could later be built within those setbacks if the Board approved Mr. Grenon's current variance request. The Board informed him that no other structures would be permitted within the setbacks without an additional application and hearing.

Mr. Grenon assured the Board and his neighbor that he would upkeep the structures and that he would not allow them to get to a point where they look tattered or torn.

Ms. Mercandetti reminded the Board that under the statute, the Board may impose conditions.

Mr. Angelo Solari of 4 Norfolk Avenue was present to express his approval of Mr. Grenon's request and noted that he had no issue with the proximity to his property line. He further stated that Mr. Grenon has done the best he possibly can to minimize impact on his neighbors.

Mr. Joe McDougal of 8 Norfolk Avenue was present to express his approval of Mr. Grenon's current request, but would like the matter to be revisited within a certain timeframe and would prefer that the carports not become permanent structures.

Ms. Leahy asked about the cost of carports and tarps versus building a permanent garage. Mr. Grenon said that replacement tarps costs approximately \$75 to \$125 each depending on size and noted that an actual structure would be considerably more. He received a quote for about \$60,000.

Ms. Mercandetti noted that the carports are not considered temporary structures because they will be in place for more than 180 days.

Chairman Cole confirmed that variances run with the land. Mr. Stumpf asked if you can make the variance expire, but Mr. Arbeene noted that an expiration may be difficult to enforce. Mr. White suggested that one of the limitations read that approval of the variance is relative to the vinyl carports only.

Applicant has no problems abiding to any criteria imposed by the Board.

A motion to close the hearing was made by Mr. Arbeene, seconded by Mr. White and approved unanimously.

8:15 P.M. – The Applicant, Paul LaPerriere of Medway Realty, LLC, seeks a variance from Section 7.2.5 (Table 5, "Multi-Tenant") of the Zoning Bylaw to allow relief from the minimum setback from any Street Lot Line (feet). The applicant is requesting a relief from the required 15 ft. setback for a primary sign to 11 ft.; and is also requesting a relief from the required 10 ft. setback for a secondary sign to 4.8 ft.

The Board is in receipt of the following documents:

- A Special Permit Application stamped by the Town Clerk June 17, 2016
- Prior decision of the Board for variance request stamped by the Town Clerk August 11, 2015
- Site plans

- Letter from applicant's attorney, Bethany Bartlett received June 6, 2016

The applicant, Paul LaPerriere and his attorney, Bethany Bartlett, were present to discuss the request with the Board.

Chairman Cole noted that the applicant sought a variance months ago for two sets of signs at Medway Shopping Center to replace current signs. The Board granted that physical structure variance. Since then the applicant has found out that an additional variance is necessary. This request is in regard to the same structures in the same location, just closer to the lot line than originally thought.

Ms. Bartlett explained that they had gone through the Design Review Committee process and Mr. LaPerriere started sign construction while concurrently having the property surveyed. Then the building inspector noted that the footing signs are closer to setbacks than originally thought. The applicant is asking for an additional variance for the signs. The signs cannot be moved to a different location due to the Route 109 Redevelopment Project which will include the addition of a new traffic signal. Ms. Bartlett noted that not having the variance issued would create a significant hardship on the Medway Shopping Center project as well on the Route 109 Redevelopment Project.

Chairman Cole stated that a 4.8 ft. setback seemed a little tight. Mr. White asked whether the footing or the sign were encroaching on the setback. Mr. LaPerriere noted that the footing and the sign are in the same location. The footings were put in the islands necessary for the Route 109 Redevelopment Project. Chairman Cole asked applicant to clarify if the sign would be 4.8 ft. from the actual curve or just from the setback. Mr. LaPerriere said it would be just from the setback. He further added that going too much further back would interfere with the flow of traffic within the shopping center. Chairman Cole summarized that the signs need to remain where they are so that they can be read from the road as well as for traffic flow considerations. They are also to be in the same physical position they have been throughout the previous application process. The Chairman asked if the curb can possibly be moved back, but Mr. LaPerriere stated that it needs to remain where it is.

Chairman Cole asked for public questions or comments and none were raised.

A motion to close the hearing was made by Mr. White, seconded by Mr. Arbeene and approved unanimously.

Chairman Cole moved to continue this hearing on July 20, 2016 at 8:00 PM, it was seconded by Mr. White and approved unanimously.

Other Business:

- ZBA Application fees: Ms. Mercandetti informed the Board that the current filing fee for ZBA is \$175 and has been past practice that it includes the fee for advertisement in the Milford Daily News. A recent analysis has shown that the cost of legal advertisement can come close to or exceed the filing fee. Going forward in the new fiscal year, Ms. Mercandetti proposes that the applicant cover the legal advertisement cost in addition to the ZBA filing fee. Ms. Leahy has conducted research and compared filing fees and what is covered by the fee in nearby towns. Medway is comparable in regard to the fees for variances and appeals. Advertising fees range from \$148-\$163 (\$196 for the recent advertisement for Medway Shopping Center). There is also the additional cost of mailing notices to abutters. Mr. White and Mr. Arbeene think it's

easier to have a one stop shop. Ms. Mercandetti stated that the once a proof from the newspaper is received, the applicant would be notified of the cost and the applicant would be responsible for paying directly. The Board is in favor of the proposal as it ensures that the town doesn't incur costs which exceed the filing fees and it also ensures that residents aren't penalized by an increase in a flat fee when commercial advertisements are typically the most costly.

Unanimous consent was given by the Board. A clause will be added to the application stating that advertising fees are not included in the filing fee.

- Staff report: Ms. Leahy has created a fillable ZBA application form that can be typed into and printed for submittal. This make the process more convenient and more accessible. Instructions will be provided stating that the form needs to be downloaded and filled out. In addition, Ms. Leahy has created a binder for each Board member containing all pertinent information in regard to present and future applications in an effort to streamline and organize the manner in which paperwork is handled. Binders will be collected at the end of each meeting so that they may be updated before the next meeting takes place. Lastly, going forward, abutters will receive a notice of decision instead of the full decision unless requested.
- Ms. Mercandetti reminded the Board that a request was received from the Timber Crest Estates representative requesting a continuance of the hearing to the first meeting of the Board during the month of August.
- Ms. Mercandetti asked Board members to please notify her of known absences for upcoming meetings; Mr. Arbeene informed her he will be unavailable August 3, 2016 and Chairman Cole stated a conflict for September 21, 2016.

Deliberations:

The Board moved to deliberate on the application for Mr. Grenon.

Mr. White asked for the Board's definition of topography based on past precedent. Chairman Cole stated that it normally refers to the nature of the land or elevation. Ms. Mercandetti added that the vegetation aspect brought up by the applicant would be more in terms of placement within the lot and not topography. Mr. White noted that in the applicant's neighborhood, buildings are very close together and Mr. Arbeene pointed out that it is a mixed commercial and residential neighborhood. Chairman Cole also noted that these structures are already existing and therefore the Board either accepts their location or asks the applicant to move them and thus incur an expense. Mr. White added that the setbacks are in place for aesthetics purposes and Mr. Grenon seems to have considered minimizing the impact of his structures on the aesthetics of the neighborhood when placing them in their current location. The Board asked for clarification on what size of structures need a permit. Ms. Mercandetti informed the members that a building permit is not required for a structure that is 10x20 ft. or smaller and when it complies with the setbacks. Chairman Cole stated that he believes some relief is in order, however the setback requested for the 2 car- car port garage seems too close to the property line. Mr. Arbeene focused on the fact that the applicant has tried to hide the structures within the

landscape on his property and added that these are meant to be temporary and not meant to be there indefinitely.

After careful consideration and discussion of all the points above, and taking into account the comments from abutting neighbors as well as the cost that would be incurred by the applicant to move the structures already in place, the Board decided on the following:

Chairman Cole moved to find that the applicant demonstrated conditions relating to the shape of the subject lot especially affecting such lot but not generally affecting the zoning district in which the subject lot is located, namely the limited size and the shape of the subject lot, coupled with the location of the existing buildings thereon, especially the existing garage, render the proposed locations of the two carport garages essentially the only practicable locations therefor.

Mr. White seconded and it was passed unanimously.

Chairman Cole moved to find that the applicant testified that the existing locations of the carport garages were chosen to take advantage of cover provided by existing trees thereby lessening the visual impact of the carport garages as seen from Norfolk Avenue.

Mr. White seconded and it was passed unanimously.

Chairman Cole moved to find that it would be inappropriate to replace the existing soft sided carport garages without foundations with more permanent structures on permanent foundations at the same locations and further, noted that members of the public expressed concern about possible detrimental effects of the long-term existence of the existing carport garages.

Mr. White seconded and it was passed unanimously.

Chairman Cole moved to find that in view of the preceding findings a literal enforcement of the provisions of the Medway Zoning Bylaw would involve substantial hardship to the applicant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Mr. White seconded and it was passed unanimously.

Chairman Cole moved to grant to the applicant, Jeffrey F. Grenon, Jr., a Variance from the requirements of Section 6.1 of the Medway Zoning Bylaw for the erection of a 12 x 20 1-car carport garage and a 20 x 20 2-car carport garage at 6 Norfolk Avenue subject to the following terms and conditions:

A. The two carports garages shall be erected substantially in accordance with the site plan submitted with the application;

B. The rear setback requirement shall be varied to 5 feet for the 1-car carport garage and to 9 feet for the 2-car carport garage;

C. The side setback requirement shall be varied to 8 feet from the northern side lot line for the 1-car carport garage and to 0 feet from the south side lot line for the 2-car carport garage;

D. This variance shall only extend to soft sided carport garages having no permanent foundations;

E. The soft covering of both carport garages shall at all times be maintained in good condition with no visible rips, fraying or damage; and

F. This variance shall expire seven years from the date of this decision.

Mr. White seconded and it was passed unanimously.

Variance granted.

The Board deferred deliberations on Medway Shopping Center application until the July 20, 2016 meeting.

Adjournment

A motion to adjourn was made by Mr. White, seconded by Mr. Arbeene and passed unanimously. The Board adjourned at 10: 26p.m.

Respectfully submitted,

Filipa LeClair
Meeting Recording Secretary