

Board Members
Brian White, Chair
Gibb Phenegar, Vice Chair
Christina Oster, Clerk
Joe Barresi, Member
Tom Emero, Member
Adam Kaufman, Associate
Member



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Medway, MA 02053
Telephone (508) 321-4890
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
VARIANCE
38 CLARK STREET

RECEIVED TOWN CLERK
MAY 13 '25 AM 7:48

20 day appeal period.
June 2, 2025

Applicant: Leland Custom Homes, Inc.

Location of Property: 38 Clark Street (Assessor Parcel ID: 25-007)

Approval Requested: The application is seeking a variance from the minimum upland area required by Section 6.2.D of the Zoning Bylaw in order to divide the property into two buildable lots, each of which will lack the required upland area, in order to construct two single-family homes.

Members Voting: Brian White, Chair; Gibb Phenegar, Vice Chair; Christina Oster, Clerk; Tom Emero, member; Adam Kaufman, Associate Member

Date of Decision: May 7, 2025

Decision: GRANTED WITH CONDITIONS

I. PROCEDURAL HISTORY

1. On February 24, 2025, the Applicant filed for a variance from the minimum upland area required by Section 6.2.D of the Zoning Bylaw in order to divide the property into two buildable lots, each of which will lack the required upland area, in order to construct two single-family homes.
2. Notice of the public hearing was published in the Milford Daily News on March 5, 2025, and March 12, 2025, and notice sent by mail to all parties in interest and posted in Town Hall as required by G.L. c. 40A §11.
3. The public hearing was opened on March 19, 2025, continued to April 16, 2025 (no evidence taken), and May 7, 2025, when the public hearing was closed.
4. The Board notified Town departments, boards, and committees of the application.

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4. The Board notified Town departments, boards, and committees of the application.

5. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's (ZBA) files and listed in Section V of this Decision.

II. SUMMARY OF EVIDENCE AND TESTIMONY

Attorney Stephen Kenney was present along with Tony Leland of Leland Custom Homes, Inc. and William Halsing of Land Planning on behalf of the applicant. Attorney Kenney explained that the applicant is seeking to divide the existing lot into two lots, remove the existing house, and build new single-family homes on each lot. In this zoning district, a lot needs 22,000 square feet of upland to be buildable. One of the lots would have 19,000 square feet of upland, the other would have 20,000 square feet of upland. The new houses would be set back further from Clark Street than the existing house, and would be constructed outside of the flood zone. He stated that the hardship is not being able to build two, single-family houses on this lot, which has about 7.14 acres. He cited the topography, soil conditions, the Army Corps of Engineers (ACE) easement, and flood zone as unique characteristics that create the hardship. He stated that desirable relief may be granted without substantial detriment to the public good where there will only be two single-family homes on large lots that comply with all zoning requirements except the upland area. He further stated that the relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw, which allows single-family homes in this district. He stated the variances requested are de minimus. Finally, he stated that, in response to comments from the Director of Health Derek Kwok, Mr. Halsing met with Mr. Kwok and that the applicant can construct a shared septic system that will meet Board of Health requirements.

Mr. Phenegar noted that he drove by the site, the entire back of the site is under water, with only a small portion near the existing house that is dry. He stated that the existing lot is a conforming lot, with 39,000 square feet of upland, so there does not appear to be a hardship. The only hardship would be a self-created hardship by dividing a buildable lot into two non-buildable lots. He is also concerned about whether two wells and a septic system will fit on the site that will comply with health department setback requirements. Mr. Emero stated that the Conservation Commission will review those issues.

Attorney Kenney explained that the flood zone has increased dramatically in the new FEMA maps that will be effective July 8th. They are using the new FEMA maps at the behest of the Conservation Commission. Ms. Saint Andre noted that there is a proposed zoning bylaw amendment to adopt the new FEMA maps, for which the Planning and Economic Development Board has already noticed its public hearing. Therefore, under G.L. c. 40A, §5, if those amendments are passed by Town Meeting, they will apply to this project. Attorney Kenney emphasized this is a large parcel of land that can be divided into two lots that conform to all zoning requirements except upland area, and that the variance is de minimus. It was noted that the construction of the two single family homes will require an Order of Conditions and Land Disturbance permit from the Conservation Commission.

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 the Plans, comments from Town officials and committees, and evidence and testimony presented at the public hearing.

A. General Findings

1. The Property at 38 Clark Street is located in the AR-I (Agricultural Residential I) District. The front setback requirement is 35 feet, and the side and rear setback requirements are 15 feet. The minimum lot area requirement is 44,000 square feet, and the minimum lot frontage requirement is 180 feet.

2. Section 6.2.D of the Zoning Bylaw provides:

Buildable Lot. No structure may be erected on any lot that does not include contiguous upland area of at least 50 percent of the required minimum lot area for the zoning district. The upland shall be land that is not subject to protection under the Wetlands Protection Act, G.L. c. 131, § 40. The upland shall not include wetland replication areas that may be required by the Conservation Commission.

3. The Plan submitted by the Applicant shows the division of the property at 38 Clark Street into two lots, neither of which has the required 22,000 square feet of upland required by Section 6.2.D. The Applicant has therefore requested a variance from Section 6.2.D for both of the proposed lots shown on the Plan.

B. G.L. c. 40A, §10 Variance Criteria

1. Whether there are circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located.

The Board found that the unusual configuration of the lot with the wetlands, floodplain, and Army Corps of Engineers easement constituted unique conditions affecting the lot.

2. As a result of which, a literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the applicant, and;

The Board found that the new FEMA flood plain maps reduced the upland area and created a hardship because there is no longer sufficient upland for two buildable lots.

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

The Board found that having two single-family homes on a total of over 7 acres of land, with the conditions imposed by the Board, would not be a substantial detriment to the public good. The Board also noted that further review will be conducted by the Conservation Commission and Board of Health to protect the public good.

4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

The Board found that the modest variance from the upland requirement does not nullify or substantially derogate from the purpose of the Bylaw.

The Board finds that the Applicant has demonstrated through evidence submitted, that the application meets all the required variance decision criteria under G.L. c. 40A, §10 by a vote of 4-1, Mr. Phenegar voting in the negative.

IV. CONDITIONS OF APPROVAL

1. This variance is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the variance that may be required by the decisions of other Town boards, agencies or commissions shall be submitted to the Board for review as a new request.

2. Any work or use that deviates from this Decision may be a violation of the Medway Zoning Bylaw. All conditions imposed by this Decision are mandatory, and any violation of a condition imposed by this decision may be a violation of the Medway Zoning Bylaw. Any violations of this Decision may prevent the issuance of a building permit and/or occupancy permit or result in the issuance of a cease-and-desist order, noncriminal penalties, or fines, as further provided in Section 3.1 of the Zoning Bylaw. Please note that Section 3.1.F of the Zoning Bylaw provides:

1. Anyone who violates a provision of this Zoning Bylaw, or any condition of a variance, site plan review decision or special permit, shall be punishable by a fine of not more than three hundred dollars for each offense. Each day during which any portion of a violation continues shall constitute a separate offense.

2. As an alternative means of enforcement, the Building Commissioner may impose noncriminal penalties pursuant to G.L. c. 40, § 21D and Article 19 of the Town's General Bylaws, in accordance with the following schedule:

First offense: warning (verbal or written)

Second offense: one hundred dollars

Third offense: two hundred dollars

Fourth and each subsequent offense per violation: three hundred dollars

3. Pursuant to G.L. c. 40A, §10: "If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the

permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one-year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section.”

4. Any and all gutters and downspouts shall not be placed in a manner to allow discharge of stormwater to the street or toward abutting properties.

5. There shall be no tracking of construction materials onto any public way. In the event construction debris is carried onto a public way, the applicant shall be responsible for all clean-up of the roadway which shall occur as soon as possible and in any event within twelve hours of its occurrence.

6. The owner must affirm that there is no connection whether direct or indirect to the Town storm water system from the site, including any drainage sump pump, perimeter drains, roof drains, or any other source prior to issuance of any occupancy permit.

7. The applicant shall comply with all Department of Public Works (DPW) regulations and requirements for any street opening permits, utility connections, or other work within DPW jurisdiction.

8. This variance is applicable only to the lots as proposed in the concept plan submitted to the ZBA and attached hereto as exhibit A (herein referred to as “the Plan”). To divide the lot, the applicant shall submit a plan to the Planning and Economic Development Board (PEDB) under G.L. c. 41, §81P (approval not required under Subdivision Control Law- ANR) substantially as shown on the attached Plan. No material deviations from the attached Plan are authorized by this decision.

9. If the ANR plan endorsed by the PEDB deviates from the lot configuration as shown on the Plan such that the calculation of buildable upland area is altered, the applicant must re-apply to the ZBA for a variance.

10. The endorsed ANR plan must be recorded at the Norfolk County Registry of Deeds before the variance decision is recorded so that the variance decision will be recorded in the chain of title for both lots.

11. This variance allows the construction of single-family homes only on the two lots shown on the Plan. No two-family or multi-family housing is allowed.

12. The applicant submitted plans that show proposed locations for septic systems and wells. Those are for informational purposes only. The Board’s approval of this variance does not constitute approval of septic system or well locations, which must be approved by the Board of

Health. The applicant must obtain Board of Health approval for the location of wells and septic systems before installing the wells and septic systems.

13. The existing garage shown on the Plan will be demolished and debris removed in accordance with all town bylaws and state codes prior to any occupancy permit being issued.

14. A Land Disturbance Permit is required if the total area of land to be disturbed during construction on the two newly created lots equals or exceeds 20,000 square feet. A Tree Preservation Permit is required for removal of any trees with a dbh of 15 inches or more in the zoning setback. All Town General Bylaws must be complied with.

V. INDEX OF DOCUMENTS

A. The application included the following information that was provided to the Board at the time the application was filed:

1. Application for variance received February 24, 2025
2. "Variance Plan Located at 38 Clark Street Medway MA prepared for Tony Leland", dated January 27, 2025, prepared by Land Planning, Inc. (herein "the Plan")

B. Other documents received from the applicant:

1. Army Corps of Engineers easement, dated October 1, 1982
2. "Variance Plan Located at 38 Clark Street Medway MA prepared for Tony Leland", dated January 27, 2025, revised March 25, 2025 prepared by Land Planning, Inc.
3. Undated plan showing former flood plain limit and flood plain limit effective as of July 8, 2025
4. Deed of property to Leland Custom Homes, Inc.






C. Other documents received by the Board:

1. Email From Derek Kwok, Health Director, 3/7/2025
2. Email from Bridget Graziano, Conservation Agent, 3/5/2025
3. Opinion from Town Counsel, 3/6/2025
4. Email from M. Kampersal, 3/18/2025
5. Email From Derek Kwok, Health Director, 3/25/2025
6. Email from Bridget Graziano, Conservation Agent, 4/1/2025
7. Joe Barresi G.L. c. 39, §23D certificate for 3/19/2025 meeting

[remainder of page intentionally left blank; signature page follows]

VI. VOTE OF THE BOARD

By a vote of 4-1, the Zoning Board of Appeals hereby GRANTS the Applicant, a Variance under G.L. c. 40A §10, and Zoning Bylaw Section 3.2.B.4, from the minimum upland area required by Section 6.2.D of the Zoning Bylaw in order to divide the property into two buildable lots, each of which will lack the required upland area, in order to construct two single family homes, subject to the CONDITIONS contained in this decision and in accordance with the Plan attached hereto.

Member:	Vote:	Signature:
Brian White, Chair	Aye	
Gibb Phenegar, Vice-Chair	Nay	
Christina Oster, Clerk	Aye	
Tom Emero, Member	Aye	
Adam Kaufman, Associate Member	Aye	

The Board and the Applicant have complied with all statutory requirements for the issuance of this variance on the terms herein 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 General Laws, chapter 40A, section 15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, chapter 40A, section 17, and shall be filed within twenty days after the filing of this notice in the office of the Medway Town Clerk.

In accordance with Massachusetts General Laws, chapter 40A, Section 11, no variance 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 and notification by the Applicant of the recording, shall be furnished to the Board.

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Member:	Vote:	Signature:
Brian White, Chair	Aye	_____
Gibb Phenegar, Vice-Chair	Nay	_____
Christina Oster, Clerk	Aye	_____
Tom Emero, Member	Aye	_____
Adam Kaufman, Associate Member	Aye	_____

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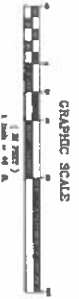
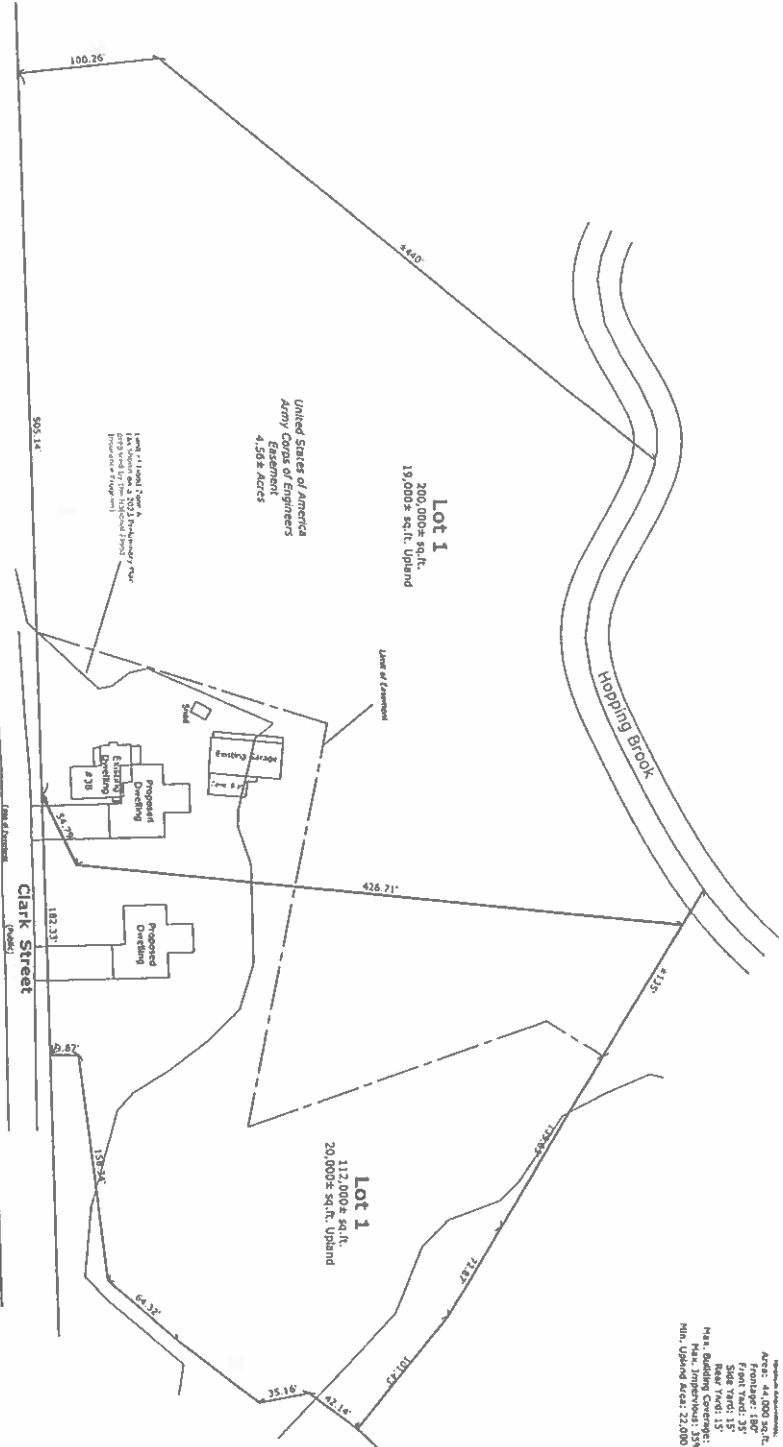
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Exhibit A



Zoning Data
 ZONE: AB-1
 Average Lot Area: 41,000 sq. ft.
 Average Lot Depth: 150 ft.
 Average Lot Width: 35 ft.
 Subd. Yrs: 15
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 Max. Building Coverage: 25%
 Max. Impervious: 35%
 Min. Upd. Area: 21,000 sq. ft.



Variance Plan
 Located at
38 Clark Street
Medway, MA
 Prepared for
Tony Leland

REVISIONS	
No	Date
1	01/11/01
2	01/11/01
3	01/11/01
4	01/11/01
5	01/11/01
6	01/11/01
7	01/11/01
8	01/11/01
9	01/11/01
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17	01/11/01
18	01/11/01
19	01/11/01
20	01/11/01



Land Planning, Inc.
 Civil Engineers - Land Surveyors
 Environmental Consultants

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Date: JANUARY 27, 2005
 Job No: 01972
 Sheet No: 1