

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

IN THE MATTER OF: Anthony F. Mele and Marguerite K. Mele
Petitioners

PROPERTY OWNER: Anthony F. Mele and Marguerite K. Mele
203 Main St.
Medway, MA 02053

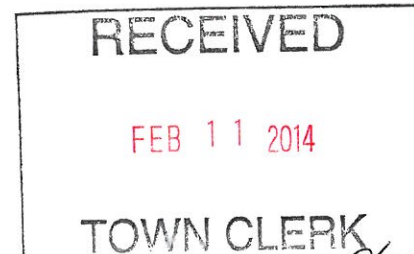
OPINION OF THE BOARD

REQUEST FOR VARIENCE
14 and 16R Franklin Street
Medway, MA 02053

Hearing: October 2, 2013
October 16, 2013
Decision: November 20, 2013

MEMBERS PRESENT: David Cole, Chairman
Arlene Doherty, Clerk
Anthony Biocchi
Carol Gould
Craig Olsen

THE WRITTEN OPINION WAS DELIVERED ON FEBRUARY 5, 2014



*no day appeal, date
March 3, 2014*

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 By-Laws of the Town of Medway, MA, 02053 and the Massachusetts General Law Chapter 40A, as amended, in which the petitioners, Anthony F. Mele and Marguerite K. Mele, request Variances to frontage and (V.F.4) Lot Shape Factor (V.B.5) to lots known as Lot 1 and Lot 2, 14 and 16R Franklin Street, Medway, MA 02053

Hearing

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on September 18 and 25, 2013. Notice also was sent to all "parties in interest" and posted in the Town Hall as required by Massachusetts General Laws Chapter 40A, Section 11. The postponement to October 16, 2013 was posted as required.

The Public Hearing, scheduled for October 2, 2013, was opened and postponed at the request of Attorney Kenney. Subsequently the hearing was held and the record closed on October 16, 2013. At the hearing, no members of the public spoke in favor of, two members of the public spoke in opposition to the application.

Hearing Summary

The hearing scheduled for October 2, 2013 was postponed at the request of Attorney Paul Kenney due to only a four-member Board being present.

On October 16, 2013, the Applicants, Anthony F. Mele and Marguerite K. Mele, represented by their attorney, Paul Kenney, came before the board to request Variances to Frontage and Lot Shape Factor for two lots, known as Lot 1 and Lot 2, 14 and 16R Franklin St. and located within the ARII zoning district. Attorney Kenney explained that the petitioners were granted a variance to frontage to create the two lots on May 6, 1992. Each lot contains sufficient area for the district, however, lacks the required frontage. The approved variance and plan of land was recorded in the Registry of Deeds on September 18, 1992. The Planning Board issued an ANR, shown on the plan of land and signed by an agent of the Planning Board on September 8, 1992. The Medway Board of Assessors list the lots individually (Parcel 57-078 and 57-079) and have classified the lots as DEV Land (Developable Land). As such, the petitioners have paid real estate taxes on each lot since the recording in the Norfolk County Registry of Deeds. The Lot Shape Factor provision was not a requirement when the decision was granted in 1992. It was only with the Decision of the Supreme Judicial Court in *Cornell v. Bd. Of Appeals of Dracut*, 453 Mass. 888 (2009) that it was determined to be necessary to either seek a building permit or convey one of the relevant lots within a one year period after the grant of variance to preserve the variance indefinitely. The Applicants were for some time

unaware of the change of law and signed a Purchase and Sale Agreement relating to one of the subject lot which required that a valid variance be obtained.

The hearing was then closed by unanimous vote. Unable to come to a satisfactory conclusion and due to the late hour, the Board voted by unanimous consent to continue deliberations to the next meeting scheduled for October 30, 2013. The Board wished to research the SJC decision of 2009.

On October 30, 2013, deliberations continued, however, despite having read the 2009 SJC decision, the Board still had questions and voted unanimously to seek input from Town Counsel. Therefore, the Board postponed further deliberation until receiving said input from Town Counsel.

On November 20, 2013, the Board re-opened deliberations. After some preliminary discussion, the Board subsequently moved to Executive Session for the purpose of considering the opinion received from Town Counsel. After returning to open session, motions were made and the findings and decision are detailed below.

Findings:

By Vote of 5-0:

1. In view of case law, the variance granted by his Board, May 6, 1992, is indeed null and void.
2. The petitioners failed to demonstrate circumstances relating to shape, topography or soil conditions sufficient to justify the requested variance.

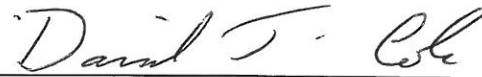
Relief Denied

By vote of 5-0:

In view of the above findings, relief is denied.

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.

**IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAW,
CHAPTER 40A, SECTION 11 NO VARIANCE, SPECIAL PERMIT OR
CONSTRUCTIVE GRANT OF A VARIANCE TAKES EFFECT UNTIL
RECORDED IN THE REGISTRY OF DEEDS.**

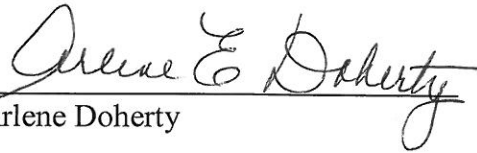


David Cole, Chairman

Anthony Biocchi



Carol Gould



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