

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

IN THE MATTER OF: Estate of Barbara Ashman
Karen Arbour, Personal Representative
Petitioner

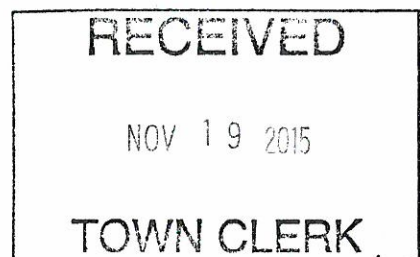
OPINION OF THE BOARD

REQUEST FOR A VARIANCE
33 West Street, Medway, MA

Hearing: November 4, 2015
Decision: November 4, 2015

MEMBERS PRESENT: David J. Cole, Chairman
Eric Arbeene, Member
William Kennedy, Member
Brian White, Associate Member

THE WRITTEN OPINION WAS DELIVERED ON November 18, 2015



*20 day appeal date
Nov 9 2015*

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 Bylaw of the Town of Medway, MA, 02053, and Massachusetts General Laws, Chapter 40A, as amended, in which the petitioner, Estate of Barbara Ashman, Karen Arbour Personal Representative, requests a Variance from the requirements of Section 6.1 of the Zoning Bylaw to allow for lot frontage having approximately 9 feet less than the minimum lot frontage of 150' required for the property located at 33 West Street, Medway.

Hearing

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on October 14 and 21. Notice also was sent to all "parties of interest" and posted in the Town Hall as required by Massachusetts General Laws, Chapter 40A Section 11.

The Public Hearing opened and closed on November 4, 2015. The Medway Zoning Board of Appeals members present during the public hearing were David Cole, Chairman; Eric Arbeene, Member; William Kennedy, Member and Brian White, Associate Member.

At the hearing, one resident spoke in favor of the request stating that the subdivision was never built and the Town should correct it. There were no members of the public who spoke in opposition.

Hearing Summary

The applicant's attorney, Mr. Barry Queen, appeared before the Board to request a Variance to allow for lot frontage having approximately 9 feet less than the minimum lot frontage of 150' required for the property located at 33 West Street, Medway.

Mr. Queen explained the request for relief from the minimum frontage requirement in the Zoning Bylaw for this property. He stated that the owner of the property, Barbara Ashman, is now deceased. He was contacted by the owner's daughter, Ms. Karen Arbour, the Estate's personal representative, about selling the property. While reviewing the property information, he found that the frontage, which is only 141 feet, does not meet the minimum requirement for the ARII Zoning District. Mr. Queen believes the error arose when the subject property was mistakenly included in the subdivision, whereas it was originally intended that it remain outside the subdivision. This resulted in the property being nonconforming to which a variance is required to make it compliant with zoning. Mr. Queen referenced specific language from the Planning and Economic Development Board's Subdivision Rules and Regulations.

The Board questioned the applicant if there was an existing house on the property and for an explanation in how this misstep occurred. It was noted the situation created is a difficult one and that the relief should have been granted at the time when the subdivision was approved.

Findings:

By a vote of 4-0-0:

1. The Board finds that the grant of an approved subdivision plan by the Planning and Economic Development Board including the subject lot without the grant of a variance for the frontage in reference to the subject lot was a clear error and contrary to the Zoning Bylaw at the time.
2. The Board finds that the aforementioned error in the grant of the subdivision creates a clear and substantial hardship upon the applicant in that the subject lot is not saleable in its present form.
3. The Board finds that the only avenue available for removal of the aforesaid hardship is the grant of the requested variance.

Relief Granted:

By a vote of 4-0-0:

The Zoning Board of Appeals hereby grants to the applicant, Estate of Barbara Ashman, Karen Arbour, Personal Representative, a Variance from the minimum frontage requirement of Section 6.1 of the Medway Zoning Bylaw to reduce the required frontage from 150 to 140 feet on property located at 33 West Street in accordance with the plans submitted.

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.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to MGL c. 40A, Section 17, within twenty (20) days after the date of filing this Decision with the Town Clerk.

In accordance with MGL c. 40A, Section 17, no variance shall take effect until a copy of the decision 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, or that if

such an appeal has been filed, that it has been dismissed or denied, 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. The fee for recording or registering shall be paid by the owner or applicant.



David J. Cole, Chairman



Eric Arbeene, Member

William Kennedy, Member



Brian White, Associate Member