



TOWN OF STURBRIDGE

Zoning Board of Appeals

VARIANCE DECISION/DETAILED RECORD

THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF STURBRIDGE
August 18, 2022

File # ZB-2022-000013

The members of the Permit Granting Authority hereby certify that the following is a detailed record of all the Board's proceedings regarding the petition of Russell Corriveau whose address is 79 Molasses Hill Road, Brookfield MA regarding property owned by Kristine Zenaro located at 25 Westwood Drive, Sturbridge, MA. 01566, which is the property affected by this variance request.

The application to the Board is dated July 13, 2022 and was received by the Board and the Town Clerk on July 18, 2022. The application requests a variance from Section 300-15.13 which requires "All driveways shall access on the way on which the legal frontage for that lot is established." The legal frontage of 125' exists on Westwood Drive, however, this lot is unusual in that it also has frontage on Cedar Street. The 49.49' of frontage on Cedar Street is sufficient for the construction of a driveway, but does not meet the 125' required to qualify as legal frontage for the lot. The applicant requests a variance that would allow for the use of the Cedar Street frontage as the legal frontage as they have determined that this would create a more suitable access for this property.

A notice of the public hearing on this Variance was:

1. Published in the Southbridge Evening News, a newspaper of general circulation in the Town of Sturbridge on July 28, 2022 and August 4, 2022;
2. Posted in a conspicuous place in the town hall at least fourteen days before the hearing was held on August 17, 2022, and;
3. Mailed on July 20, 2022 postage prepaid (certificate of mailing), at least fourteen days before the hearing to the petitioner, abutters to the property in question, owners of land directly opposite from the property in question on any private or public street or way, abutters to abutters whose property is located within three hundred feet of the property line of the property in question, the Planning Board of the Town of Sturbridge and the Planning Board of abutting cities and towns including the Towns of Brimfield, Brookfield, Charlton, East Brookfield, Holland, Southbridge, and Union. The notice was mailed to the names of persons and at the addresses as provided by the most recent tax list kept by the Town Assessors, with the Assessors certifying such names and addresses.

The applicant submitted the following documents:

1. Cover Letter dated July 15, 2022 (includes photographs of the frontage along Cedar and Westwood);
2. Completed application for Variance dated July 13, 2022;
3. Certified list of abutters;
4. Copy of the Deed, September 3, 2008;
5. A plan entitled "ZBA Variance Request Plan Set – Lot C Westwood Drive, Sturbridge, Massachusetts by McClure Engineering, Inc. dated July 15, 2022;
6. Filing fee;

Additional Materials Reviewed:

1. Correspondence dated August 7, 2022 from Mr. Daniel and Dr. Kathyln Clark – 146 Cedar Street;
2. Correspondence dated August 8, 2022 from Mrs. Samantha and Mr. Seth Mansur – 148 Cedar Street;
3. Email dated August 8, 2022 from Abigail and Alex Angell;
4. Email dated August 9, 2022 from Mr. Obi and Mrs. Chichi Agonmoh

The Public Hearing on this application was held on August 17, 2022 at 6:35 PM there were abutters present who spoke against the Variance requested. In addition the correspondence submitted by the above noted abutters all spoke of concerns related to the grant of the variance. The following regular members of the Board were: Margret Cooney, Fidelis Onwubueke, Diane Trapasso, Michael Young, David Zonia, Elizabeth Banks, and Tom Welch (who recused himself from the public hearing because he is a direct abutter of the property in question)

At the close of the Public Hearing on August 17, 2022, the Board discussed the petition in relation to the required Findings. **As to Required Finding # 1 - Soil Conditions, shape or topography of the property, which condition especially affects the property, but does not generally affect other property in the zoning district;**

The Board found that this property is located on Westwood Drive and has recently been divided into Lots, A, B, C and the remaining land. All of the lots created met the frontage requirement for construction of a single family home in the SR District. Lot C, or 25 Westwood has frontage on both Westwood and Cedar Streets and therefore has an unusual shape in comparison to other properties in the District that have frontage on only one street.

The property is steep as evidenced from the topography shown on the plans submitted. A driveway coming in from the Westwood Drive side would be a 12% slope, which is the maximum allowed under the Town bylaw without express approval from the DPW Director and the Fire Chief (See § 250-13 of the General Bylaw). A driveway on Cedar Street can be built with a 10% maximum slope. The topography is therefore a limiting factor, and while it would not preclude development from the Westwood Drive side, it would certainly be more challenging and require a greater area of 2:1 side slopes on either side of the driveway.

Based upon the above, a motion was made by Ms. Trapasso and seconded by Ms. Cooney and voted 6-0, to find that the variance request meets criteria #1 that states that soil conditions, shape or topography of the property, which condition especially affects the property, but does not generally affect other property in the zoning district.

As to Required Finding # 2: That there is a hardship;

The Board found that based upon the information submitted, the costs to construct a driveway from the Westwood Drive side would be greater than coming in from Cedar Street. The sewer on Cedar Street is gravity feed versus a force main on Westwood Drive. It would also appear that a greater amount of clearing and excavation would occur on the Westwood Drive side. The costs combined with the additional clearing and excavation show that there is a linkage in hardship caused by the lands and a way to counter that based on the unusual shape of the lot and the fact that there is frontage on two separate streets allowing reasonable access. The property is not unbuildable certainly, but the costs and land disturbance will certainly be greater coming in from Westwood Drive.

A motion was made by Ms. Trapasso and seconded by Ms. Cooney and voted 6-0, to find that the variance request meets criteria #2 that states that there is a hardship;

Required Finding # 3: That the variance could be granted “without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such by-law”.

After discussion a motion was made by Ms. Trapasso and seconded by Mr. Young. However that vote failed at 4-1-1 (Mr. Onwubueke opposed and Mr. Zonia abstaining). Clarification was asked for on the final required Finding from the Town Planner and that was provided. After the explanation, the two not voting in favor indicated that they now had a better understanding and would consider a new vote on this criteria. A motion was then made by Ms. Trapasso, seconded by Ms. Banks and voted unanimously to withdraw the last motion and vote.

Additional discussion ensued regarding Finding # 3 and the Board found that The Suburban Residential District allows for single family dwellings by right. The proposal to construct a single family home in this area is an appropriate permitted use and does not derogate from the intent or purpose of the bylaw.

The request to construct a single family home and a driveway off of Cedar Street, will not create a detriment to the public good or a substantial derogation from the bylaw. The lot is developable and will contain a single family home. The only issue is where the driveway will be located.

After finding that the required criteria for the grant of a variance has been met a motion was made by Mr. Trapasso, seconded by Mr. Onwubueke and voted 6-0 to approve the variance requested to allow the driveway to be constructed on the Cedar Street frontage for the purpose of constructing a Single Family Home as shown on the plans and supporting documents submitted with the following conditions:

1. All work to be in accordance with the plan submitted.
2. Limits of clearing as shown on the plan shall be marked prior to construction and adhered to throughout the construction process except that a variation not to exceed 15' from what is shown may occur.
3. An erosion control plan and stormwater management plan shall be submitted to the Planning Department and DPW Director for review and approval prior to start of construction. All erosion control measures must be installed and inspected by the DPW Director or her designee prior to the start of construction.
4. Construction fence shall be added to the plan along the length of the proposed driveway and the location shall be reviewed and approved by the DPW Director or her designee prior installation. All construction fence shall be in place prior to the start of construction.
5. The applicant shall investigate options to implement traffic calming measures for the driveway and if that can be achieved the footprint of the home may change to accommodate this change provided limits of clearing shall not deviate by more than fifteen feet.
6. There shall be no further subdivision of Lot C in perpetuity.
7. All other necessary state and local permits shall be obtained prior to the start of construction.
8. The Variance Decision shall be recorded in the Worcester District Registry of Deeds prior to applying for a driveway or building permit.

The following members were present and voting as follows with respect to the requested Variance:

Member Margret Cooney voting to grant the variance requested.

Member Elizabeth Banks voting to grant the variance requested.

Member Fidelis Onwubueke, voting to grant the variance requested.

Member Diane Trapasso voting to grant the variance requested.

Member Michael Young voting to grant the variance requested.

Member David Zonia voting to grant the variance requested.

The Board granted the above variance because based upon the information provided; they did make the finding that the applicant met the criteria for the granting of a variance.

M.G.L. Ch. 40A, § 10 requires that the grant of a variance be made only where the Board of Appeals finds the three required findings have been reached in the affirmative as detailed above.

Copies of this decision have been filed with the Zoning Board of Appeals Office, the Town Clerk's Office and the Office of the Planning Board as required by M.G.L. Ch. 40A, § 11.

Any appeal of this decision of the Zoning Board of Appeals must be made to a court of competent jurisdiction within twenty days from the date this decision was filed with the Sturbridge Town Clerk, pursuant to Section 17, Chapter 40A of the general laws of the Commonwealth of Massachusetts as amended.

Elizabeth Banks

Elizabeth Banks, Chair
Zoning Board of Appeals

Copy to:

Applicant

Peter Engle, PE, McClure Engineering

Town Clerk

Building Inspector

DPW Director

File