

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



Medway Town Hall
155 Village Street
Medway, MA 02053
Telephone (508) 321-4890
zoning@townofmedway.org

TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

**DECISION
VARIANCE
1 HIGH STREET**

RECEIVED TOWN CLERK
MAY 13 '22 AM 8:36

*20 day appeal
June 2, 2022*

Applicant(s): Karen E. Kilroy and Kevin P. Curriuan
36 Ellis Street
Medway, MA 02053

Location of Property: 1 High Street (Assessors' Parcel ID: 58-138).

Approval Requested: The application is for the issuance of a **variance** under Section 6.1 Schedule of Dimensional and Density Regulations for a 9,958 square foot lot where 10,000 square feet is required, and a **use variance** under Section 5.4 Schedule of Uses, to construct a two-family dwelling with the appearance of a single-family dwelling, which is not an allowed use in the VC District.

Members Participating: Brian White (Chair), Gibb Phenegar (Vice Chair), Christina Oster (Clerk), Joe Barresi (Member), Tom Emero (Member)

Members Voting: Brian White (Chair), Gibb Phenegar (Vice Chair), Joe Barresi (Member), Tom Emero (Member)

Date of Decision: May 4, 2022

Decision: **GRANTED WITH CONDITIONS**

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Date of Decision: May 4, 2022

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I. PROCEDURAL HISTORY

1. On January 12, 2022, the Applicant filed for the issuance of a **variance** under Section 6.1 Schedule of Dimensional and Density Regulations for a 9,958 square foot lot where 10,000 square feet is required, and a **use variance** under Section 5.4 Schedule of Uses, to construct a two-family dwelling with the appearance of a single-family dwelling, which is not an allowed use in the VC District.
2. Notice of the public hearing was published in the Milford Daily News on January 19, 2022, and January 26, 2022, and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A, §11.
3. The public hearing was opened on February 2, 2022. The hearing was continued to February 16, 2022, and further continued to March 16, 2022, April 6, 2022, and April 20, 2022. The Board did not hear any testimony on February 16th, March 16th, April 6th and April 20th; at each of these meetings, the hearing was simply continued at the applicant's request. The hearing was further continued at the applicant's request to May 4th, 2022. It was closed on May 4, 2022. The applicant requested, and the Board approved, an extension of time for the Board to take final action to June 30, 2022, which extension was filed with the Town Clerk.
4. The Property is located in the Village Commercial (VC) District. The front setback requirement is 20 feet, and the side and rear setback requirements are 10 feet. The minimum lot area requirement is 10,000 square feet and the front setback requirement is 20 feet.
5. The Board notified Town departments, boards, and committees of this application.
6. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section V. of this Decision.

II. TESTIMONY

At the public hearing session on February 2, 2022, the applicants, Kevin Currivan and Karen Kilroy, were present, and represented by Attorney Stephen Kenney. Attorney Kenney explained the application, noting that the shape of the lot is somewhat odd, as it abuts both Village Street and High Street. It currently is a vacant lot and was previously the site of a convenience store and apartment that was set close to High Street. Attorney Kenney provided a copy of the plan showing the location of the structure that was formerly on the lot to the Board. He explained that with the proposed two-family dwelling, all the setbacks required by the Zoning Bylaw would be met, and the only dimensional variance required would be the 42 square feet in area, as the Village Commercial district requires 10,000 square feet to be buildable. Attorney Kenney explained that a literal enforcement of the Zoning Bylaw would create a hardship on the owners, as without the area variance, the lot would not be buildable. He stated that there are two-family and multi-family residences within the area, as well as a few commercial uses, so the

construction of a two-family would be more accommodating to the surrounding neighborhood, as well as clean up the prominent corner on Village and High Street. Attorney Kenney explained that the lot would be sufficient for a two-family home, as the previous structure contained two units, and would also add to diverse housing supply in the area. Attorney Kenney stated that the owners are not planning on constructing the dwelling themselves and will be selling the property to a prospective builder.

Attorney Kenney noted that the plan provided to the Board is a conceptual plan, an example where the building could go on the lot but is not exactly what would be constructed. Since there is not a set architectural plan, Attorney Kenney proposed that the future builders would have to come either before the Building Commissioner or the Board to approve the plans for construction.

The Board members agreed that the dimensional variance is de minimis and not a concern. The members, however, stated that they would like to see more than a concept plan; they need to see what would be constructed on this lot. The members were hesitant to approve a use variance without a plan.

Christina Oster asked what the rationale for a two-family dwelling would be, rather than single-family. Mr. Currivan explained that it was previously used as a multi-use lot, when it was a convenience store with a residency above. Attorney Kenney noted that this is also based on the salability and value of the lot.

It was agreed to continue the public hearing to allow the applicants time to determine whether they wished to come back with plans showing the proposed building, ask to withdraw without prejudice, or take some other course.

The applicants submitted plans for the proposed two-family dwelling, which were reviewed by the Board and discussed at the continued public hearing on May 4, 2022. Attorney Kenney provided the plans to the Board and stated that he believes the proposal is something the Town would appreciate in this district. The members agreed that the two-family dwelling will enhance this area of town and help fulfill the need for multi-family housing in town.

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 evidence and testimony presented at the public hearing. The Board considered each variance criterion separately.

A. Section 6.1 Variance Criteria

The Board considered the criteria for a variance for lot size and for the use of the property as a two-family dwelling:

1. Whether owing to 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 shape of the lot is unusual. It is a corner lot where Village Street and High Street meet at an odd angle, resulting in an odd-shaped lot that is not typical in the zoning district.

2. A literal enforcement of the provisions of the zoning by-law would involve substantial hardship, financial or otherwise, to the applicant, and

The Board found that the hardship is that the lot is not buildable without the dimensional variance, which in any event is de minimis as the lot is 9,958 square feet where 10,000 square feet is required. Further, for the use variance, the lot is more suitable for a two-family dwelling because the surrounding neighborhood includes multi-family, mixed-use, and commercial uses and a two-family dwelling fits into the neighborhood and provides a transition.

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

The dimensional variance is de minimis and will not create substantial detriment to the public good. The lot has been vacant for some time, and the construction of the new two-family will be an upgrade for the site and fit into the neighborhood.

4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law.

The dimensional variance is de minimis and will not nullify or substantially derogate from the intent or purpose of the zoning by-law. The two-family use is consistent with the neighborhood, and the area is also in the Multi-Family Housing overlay district, and will not nullify or substantially derogate from the intent or purpose of the zoning by-law.

The Board finds that the Applicants have demonstrated through their submittals and testimony, that they have met all the required variance decision criteria under Section 6.1 of the Zoning Bylaw and G.L. c. 40A, §10.

IV. CONDITIONS OF APPROVAL

1. Smoke, heat and carbon monoxide detectors must be installed in accordance with the Massachusetts Fire and Building Codes.

2. 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.

3. 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 XX 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

4. 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."

5. The applicant shall install a dry well or other approved stormwater system which infiltrates all roof run off into the ground. 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.

6. All site work shall be in compliance with the documents submitted to the Board as listed in Section V of this Decision, including the Plans and Architectural Plans, provided, however, that the Building Commissioner may approve minor changes in the course of construction that are of such a nature as are usually approved as "field changes" that do not require further review by the Board.

7. There shall be no tracking of construction materials onto any public way. Daily sweeping of roadways adjacent to the site shall be done to ensure that any loose gravel and dirt is removed from the roadways and does not create hazardous or deleterious conditions for vehicles, pedestrians or abutting residents. 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.

8. 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.
9. The applicant shall comply with all Department of Public Works regulations and requirements for construction of the two-family house, including but not limited to the requirement that each dwelling unit has a separate water connection and water meter, and that each dwelling unit has a separate sewer connection; and shall obtain any necessary permits from the Department of Public Works for a two-family house.
10. Plantings as shown on the Landscaping Plan shall not include any species identified as invasive, likely invasive, or potentially invasive in The Evaluation of Non-Native Plant Species for Invasiveness in Massachusetts by the Massachusetts Invasive Plant Advisory Group. This publication is available at: [Final Report: "Invasive and Likely Invasive Plants in Massachusetts" \(massnrc.org\)](https://massnrc.org).

V. INDEX OF DOCUMENTS

- A.** The application included the following plans and information that were provided to the Board at the time the application was filed:
 1. "Plan Showing Proposed 2-Unit Residential Building", by D. O'Brien Land Surveying, dated 12/21/2020.
 2. "Plan Showing Existing Conditions", by Dennis O'Brien, P.L.S., dated February 14, 2007.
- B.** During the course of the review, the following materials were submitted to the Board:
 1. 1 High Street Decision dated March 21, 2012 – Request for Special Permit and Variance.
 2. Undated plot plan showing proposed two-family home.
 3. Plan showing elevations for proposed two-family home, by HPA Design, Inc., dated April 5, 2022, two sheets (the "Architectural Plans").
 4. Plan showing proposed landscaping on the lot, undated (the "Landscaping Plan")
 5. "Map 58 Parcel 138 Proposed Structure of Land, dated 4/15/22, prepared by Colonial Engineering (the "Plot Plan")
- C.** Comments from Town officials:
 1. Emails from Barry Smith, Water and Sewer Superintendent, dated January 18, 2022, and May 2, 2022.

VI. VOTE OF THE BOARD

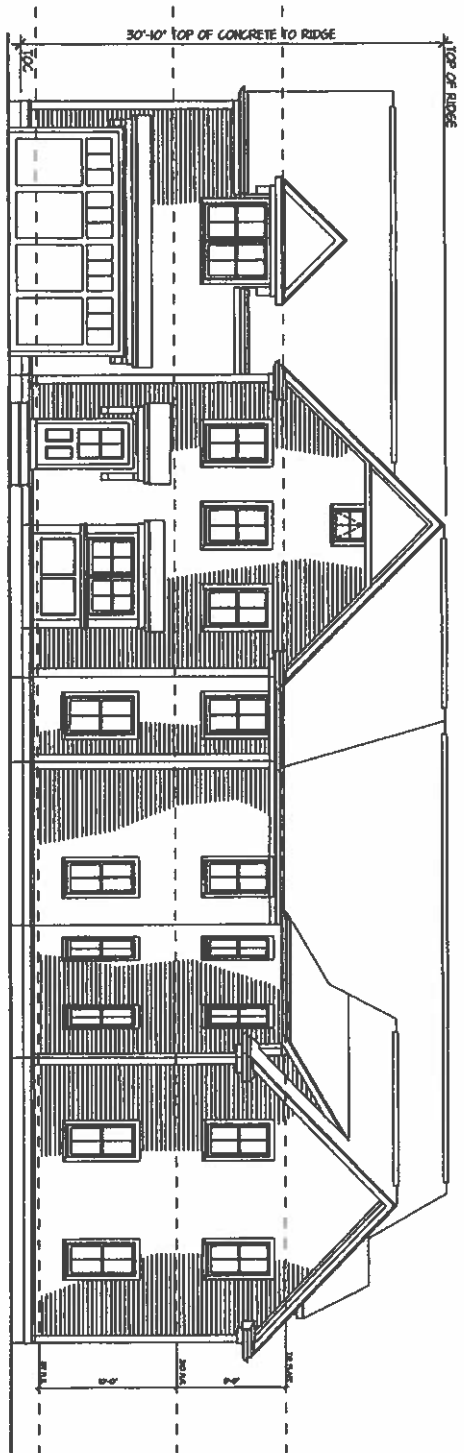
By a vote of 4 to 0 on a motion made by Gibb Phenegar and seconded by Joe Barresi, the Zoning Board of Appeals hereby **GRANTS** the Applicants Karen E. Kilroy and Kevin P. Curri van a **VARIANCE** under Section 6.1 Schedule of Dimensional and Density Regulations for lot size, and a **USE VARIANCE** under Section 5.4 Schedule of Uses, to construct a two-family dwelling with the appearance of a single-family dwelling, located at 1 High Street (Assessors' Parcel ID: 58-138), in accordance with the application, the Plot Plan, the Architectural Plans, and the Landscaping Plan, all of which plans are attached hereto and made part of this decision, and subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Brian White	Aye	_____
Gibb Phenegar	Aye	_____
Tom Emero	Aye	_____
Joe Barresi	Aye	_____

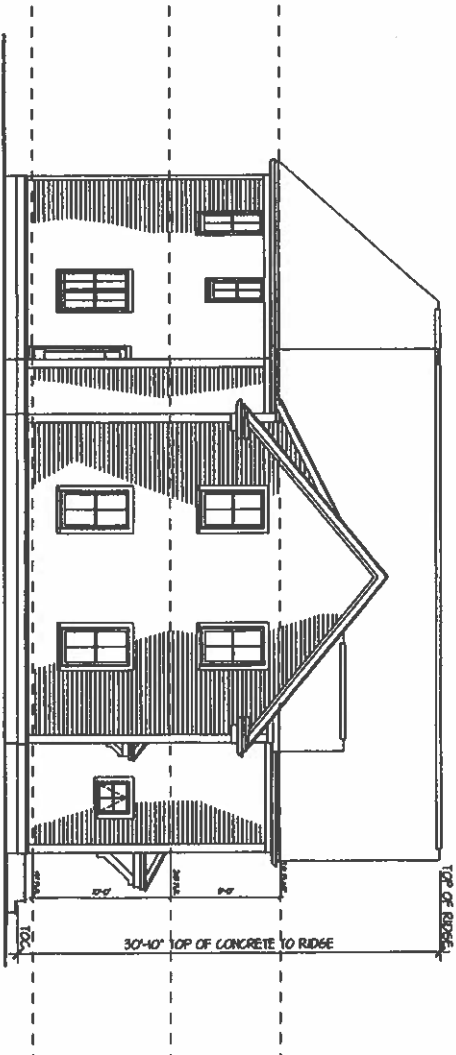
The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in General 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 20 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 certified by the Registry, and notification by the Applicant of the recording, shall be furnished to the Board.



A FRONT ELEVATION (VILLAGE STREET)
1/4" = 1'



B LEFT ELEVATION
1/4" = 1'



Design, Inc.
ARCHITECTS

35 Main Street
Medbury, MA 01757
(978) 731-4077
(978) 504-3444
Contact@PDADesign.com

CONSTRUCTION BY:

SILVA
DEVELOPMENT LLC
1 HIGH ST
MEDBURY, MA

PROJECT #:

APRIL 5, 2022

DRAWN BY:

CHECKED BY:

SCALE: SEE DRAWING

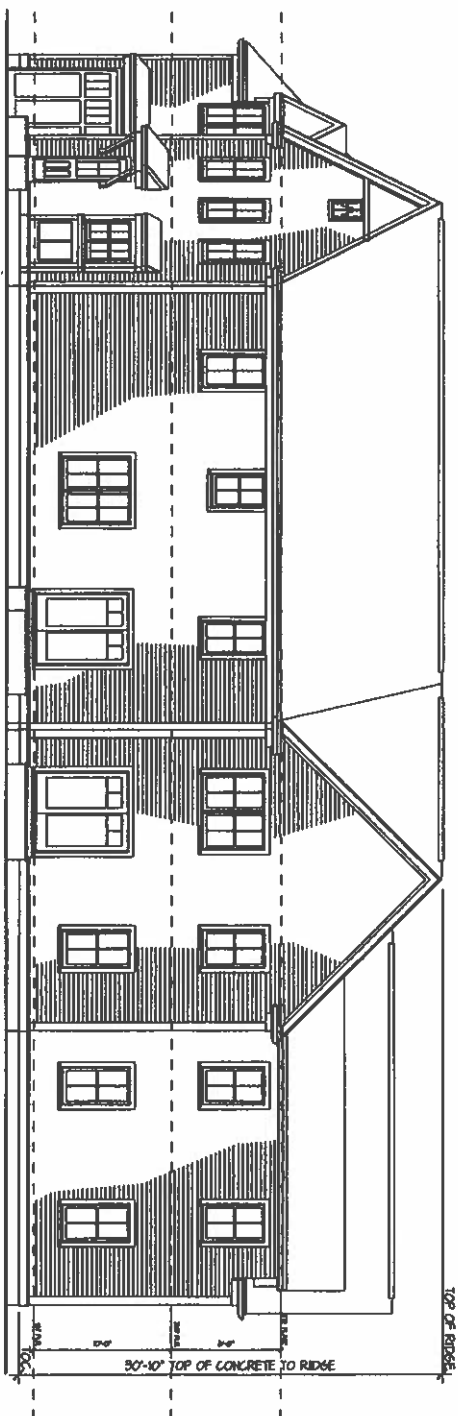
SHEET TITLE:

ELEVATIONS

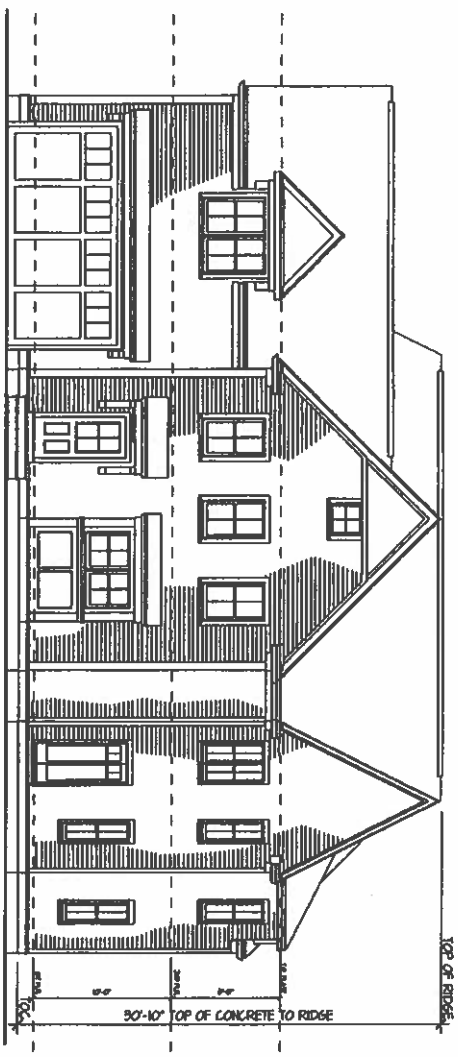
This drawing and specifications were prepared by the Architect and are intended to be used by the Contractor in the construction of the project. The Architect is not responsible for the construction of the project or for the performance of the Contractor.

A2.1

Sheet 4 of 15



RIGHT ELEVATION (HIGH STREET)



Design, Inc.
ARCHITECTS

35 Main Street
Bedford, MA 01757
(P) 781.407.0000
(P) 508.394.8839
Contact@P-ADesign.com

CONSTRUCTION BY:

**SILVA
DEVELOPMENT LLC**
1 HIGH ST
MEDWAY, MA

[illegible]

APRIL 5, 2022

DRAWN BY: DEY

CHECKED BY: HPARMB

SCALE: SEE DRAWING

SHEET 1111LE

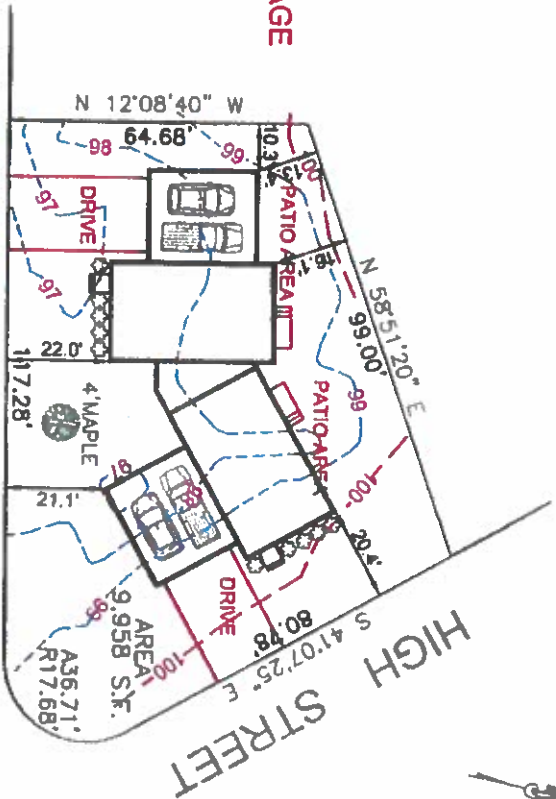
ELEVATIONS

Ag. 2

ZONE VC
 AREA 10,000 S.F.
 FRONTAGE N/A
 SETBACK 20'
 SIDEYARD 10'
 REARYARD 10'
 LOT COVERAGE
 STRUCTURE 80%
 IMPERVIOUS N/A
 NOT WITHIN THE G.P.D
PROPOSED LOT COVERAGE
STRUCTURE 26.9%

VILLAGE STREET

S 77°51'20" W
 BM SPK SET
 IN POLE#13
 ASS. ELEV.=100.00



HIGH STREET

MAP 58 PARCEL 138
 PROPOSED STRUCTURE
 PLAN OF LAND

MEDWAY, MA.

SCALE: 1"=40' 4/15/22

OWNER: Jon Curriuan
 1 High Street
 Medway, Ma. 02053

COLONIAL ENGINEERING INC.
 1 AWL STREET MEDWAY, MA. 02053
 508-533-1644

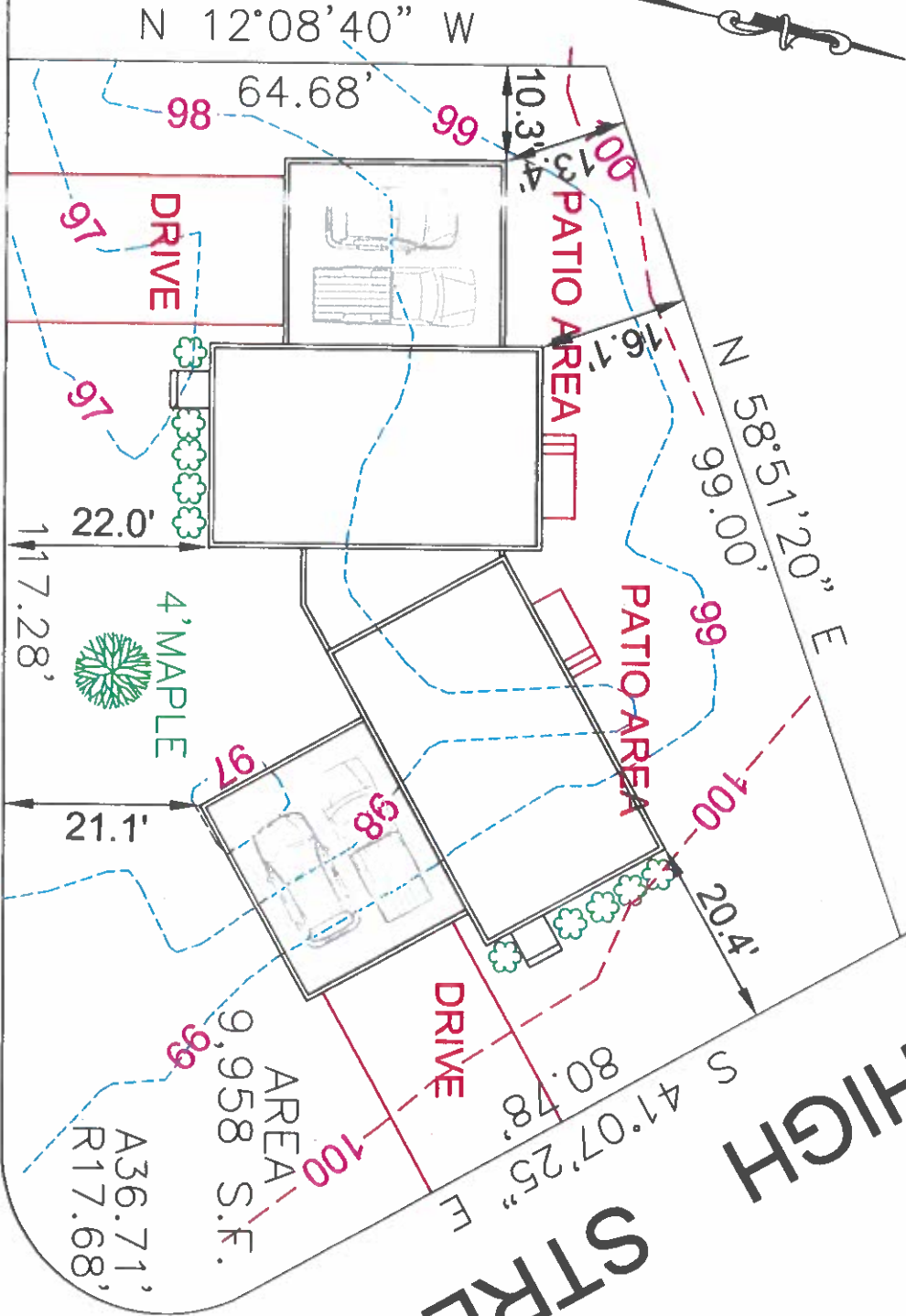


Anthony M. Dellorco

I CERTIFY THAT THE PROPOSED
 STRUCTURE SHOWN ON THIS
 PLAN CONFORMS TO THE ZONING
 SETBACKS OF THE TOWN OF
 MEDWAY, MA. AND DOES NOT
 LIE WITHIN THE FLOOD ZONE.

HIGH STREET





VILLAGE STREET



BM SPK SET
IN POLE#13
ASS. ELEV.=100.00

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Member:	Vote:	Signature:
Brian White	Aye	
Gibb Phenegar	Aye	
Tom Emero	Aye	
Joe Barresi	Aye	

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