

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



Medway Town Hall
155 Village Street
Medway, MA 02053
Telephone (508) 321-4890
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

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20 Day Appeal
July 15, 2021

DECISION
VARIANCE AND SPECIAL PERMIT DENIED
1 KENART ROAD

Applicant(s): Krunal and Ankita Patel
1 Kenart Road
Medway, MA 02053

Location of Property: 1 Kenart Road (Assessors' Parcel ID: 50-027).

Approval Requested: The application is for the issuance of a **variance** from Section 6.1 for the addition of a 2-car garage set back 17.5 feet from a front lot line where a 35-foot setback is required, and a **special permit** under Section 5.5 of the Zoning Bylaw to extend the pre-existing nonconforming one-family structure.

Members Participating: Brian White (Vice Chair), Gibb Phenegar (Clerk), Tom Emero (Member), Carol Gould (Associate Member)

Members Voting: Brian White (Vice Chair), Gibb Phenegar (Clerk), Tom Emero (Member), Carol Gould (Associate Member)

Date of Decision: June 16, 2021

Decision: DENIED

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I. PROCEDURAL HISTORY

1. On May 21, 2021, the Applicants filed for a variance from Section 6.1 for the addition of a 2-car garage set back 17.5 feet from a front lot line where a 35-foot setback is required, and a special permit under Section 5.5 of the Zoning Bylaw to extend the pre-existing nonconforming one-family structure.
2. Notice of the public hearing was published in the Milford Daily News on June 2, 2021 and June 9, 2021 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 June 16, 2021. Because two members of the Board were absent, Brian White, the Vice Chair acting as Chair in the absence of Rori Stumpf, designated associate member Carol Gould to sit on this hearing. The hearing was closed the same evening.
4. The Property is located in the Agricultural Residential I (ARI) 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 sq. ft. and the minimum frontage requirement is 180 feet.
5. The Board notified Town departments, boards, and committees of this application. The Board received comments from the Fire Department, the Department of Public Works, and the Planning and Economic Development Board.
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

The applicant, Mr. Patel, was present and explained that he wants to add a garage with a bedroom above it. He explained that the lot is small and there is a preexisting nonconformity with the front setback on Kenart Road. Mr. White clarified that because this is a corner lot, there are two front setback requirements of 35 feet. He also stated that there seemed to be no way to move the addition around because of the septic system. It was clarified that there are no building plans yet because the applicant is waiting to see if the variance is granted.

Mr. Phenegar stated that the house is currently set back 22 feet from Kenart Road, but the proposed addition would bring the structure to 17 feet from Koyview Place. This means the addition would be almost 80% in the setback and would substantially increase the nonconformity. Mr. White agreed, stating that the addition would encroach on both front setbacks. Mr. White agreed with the letter written by the Planning and Economic Development Board, which stated its opposition to the addition.

The Board discussed the criteria for extension of a nonconforming single-family house, and a variance, and voted to deny both applications.

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 Zoning Bylaw. The Board also considered the application materials, evidence and testimony presented at the public hearing, and comments submitted and placed in the public record during the course of the hearing.

A. Section 5.5.C Nonconforming Single Family Structure Decision Criteria

1. Section 5.5.C.1

The Board found that the current single-family structure on the premises is a pre-existing, nonconforming single-family structure, nonconforming as to lot size and front setback. The current structure is 22 feet from Kenart Road where 35 feet is required. The proposed addition would be 17 feet from Koyview Place, instead of the current 43, where a 35-foot setback is also required. This creates a new nonconformity, increasing the nonconforming nature of the structure.

2. Section 5.5.C.2

Because the Board found that the proposed addition will increase the nonconforming nature of the pre-existing nonconforming single-family structure, a special permit is required under Section 5.5.C.2. The Board found that the proposed addition will be substantially more detrimental to the neighborhood, where the proposed addition would increase the nonconformity not only on Kenart Road, but also on Koyview Place. Further, the proposed addition will be located right near the road. Finally, the Board does not believe the proposed addition would fit well with the neighborhood.

The Board found that the proposed addition will be substantially more detrimental to the neighborhood. The Board voted to deny the special permit application.

B. Section 6.1 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 there is nothing unique to the location other than siting of the structure. Additionally, the lot is similar to other lots on the street.

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 literal enforcement would not involve substantial hardship to the applicant.

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

The Board did not make a finding, in light of the fact that the applicant did not meet the other three criteria.

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

The Board found that desirable relief would substantially derogate from the intent or purpose of the zoning bylaw where 80% of the proposed addition would be within the required front setbacks.

In light of the above findings, the Board determined that the application does not meet the criteria for a variance and must be denied.

IV. 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. Plot Plan: “Proposed Addition Plan 1 Kenart Road” dated May 18, 2021 prepared by Connorstone Engineering.

B. During the course of the review, the following materials were submitted to the Board:

1. Email from Dave D’Amico, Medway Department of Public Works Director on June 2, 2021
2. Email from Jeffrey Lynch, Medway Fire Chief on May 28, 2021
3. Memo from Planning and Economic Development Board date June 15, 2021

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VI. VOTE OF THE BOARD

By a vote of 4 to 0 on a motion made by Gibb Phenegar and seconded by Tom Emero, the Zoning Board of Appeals hereby ***DENIES*** the Applicants, Krunal and Ankita Patel, a ***VARIANCE*** under Section 6.1 for the addition of a 2-car garage set back 17.5 feet from a front lot line where a 35-foot setback is required, and ***DENIES*** a ***SPECIAL PERMIT*** under Section 5.5 of the Zoning Bylaw to extend the pre-existing nonconforming one-family structure.


Member:	Vote:	Signature:
Brian White	AYE	_____
Tom Emero	AYE	_____
Carol Gould	AYE	_____
Gibb Phenegar	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.

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