

Board Members
Rori Stumpf, Chairman
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
zoning@townofmedway.org

TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
VARIANCE
110 HOLLISTON STREET

Applicant(s): David and Denise Palmieri
110 Holliston Street
Medway, MA 02053

Location of Property: 110 Holliston Street (Assessors' Parcel ID: 31-046)

Approval Requested: The application is for the issuance of a **variance** from Section 6.1 of the Zoning Bylaw to allow a pre-existing shed to be located 8.1 feet from the south lot line, and 3.6 feet from the east lot line, and to construct an 11 foot by 14 foot addition to the pre-existing shed, also 3.6 feet from the east lot line, where a 15 foot setback is required on both sides.

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

Members Voting: Rori Stumpf (Chair), Brian White (Vice Chair), Gibb Phenegar (Clerk), Tom Emero (Member), Christina Oster (Member)

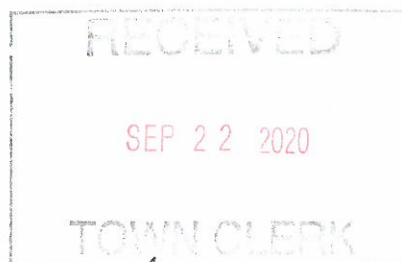
Date Application Filed: August 24, 2020

Hearing Opened: September 16, 2020

Hearing Closed: September 16, 2020

Date of Decision: September 16, 2020

Decision: GRANTED



10 day appeal date
Oct 13, 2020

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I. PROCEDURAL HISTORY

1. On August 24, 2020, the Applicant filed an application for a variance from Section 6.1 to allow a pre-existing shed to be located 8.1 feet from the south lot line, and 3.6 feet from the east lot line, and to construct an 11 foot by 14 foot addition to the pre-existing shed, also 3.6 feet from the east lot line, where a 15 foot setback is required on both sides.
2. Notice of the public hearing was published in the Milford Daily News on September 2, 2020 and September 9, 2020 and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A, §11. The notices included instructions for participating remotely in the public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place.
3. The public hearing was opened on September 16, 2020, the hearing was closed the same evening.
4. The property is located in the Agricultural Residential - I (AR-I) Zoning 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.
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 public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place, was held via Zoom platform and was also broadcast live on Medway Cable Access. All persons participated remotely.

Mr. Palmieri was present and shared a PowerPoint presentation along with a summary of his application. He explained he was not aware he needed a variance for this shed addition and was not trying to circumvent the Town's bylaws. He explained there is an existing shed on the property and he is asking for a variance for the original shed and the shed addition. The shed addition is essentially a second shed that is attached to the side of the pre-existing shed. Each of the two sheds is less than 200 square feet, but because they are connected, they are considered one structure of more than 200 square feet, and therefore need to comply with the 15 foot setback. Even if the two sheds were separated, they would need to comply with a five foot setback. He went through the variance criteria, explaining the lot is 9,292 square feet, and in the AR-I district the lot size requirement is 44,000 square feet, making the lot 79% smaller than other lots in this zoning district. The lot is a corner lot to Holliston Street and Virginia Road and is not square. The hardship is not self-created and the reality is they only have 2,338 square feet of buildable space on the lot if setbacks are literally enforced. The space where the shed abuts 108 Holliston Street and 2 Virginia Road is not useable space for any of the properties. He stated they have submitted 14 abutter support letters for this project and it will and has met the Design Review Guidelines for the Town.

Mr. Stumpf opened the discussion to the Board. Mr. Stumpf inquired about what would be needed to separate the sheds. Mr. Palmieri stated it would take a significant amount of labor, as they are nailed and

screwed together. He also pointed out that the shed roof line meets the design review guidelines. Mr. Palmieri stated the existing shed is on a concrete slab. Mr. Phenegar stated that this is a difficult case, and if the applicant had applied for a building permit this would have been caught beforehand. Mr. Palmieri stated that the structure is about 80% complete and the intent is to keep them two separate sheds. The Board then reviewed the variance criteria.

Rich McDougall, 108 Holliston Street, stated that the structure is unbelievable and he is in strong support of this and this was an honest mistake. They support the current location of the shed and addition.

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 and comments submitted by residents placed in the public record during the course of the hearings. The Board considered and voted on each variance criterion separately.

C. Section 6.1 Variance Criteria

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 small size of the lot, the fact that it is a corner lot and the setbacks leave only a small buildable area, its unusual shape in that it is not square, and the location of the house in the middle of the lot were circumstances that affected this lot but not lots generally in the AR-1 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 literal enforcement of the side yard setbacks would involve substantial hardship to the applicant because of the unique circumstances found above, which does not allow an accessory structure to be located in conformity with the zoning setbacks on the property without unreasonably intruding into the very small area of usable land in the back yard. (One member voted in the negative on this criterion.)

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

The Board found that there is no substantial detriment to the public good because the structure is attractive, is built to match the existing house, and does not intrude on the neighbors.

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 this criterion is met; the existing shed has the same setback as the addition. The addition does not derogate from the bylaw any more than the first one, and the combined sheds also fit in with the neighborhood.

IV. CONDITIONS OF APPROVAL

1. 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.
2. 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
3. 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."
4. The shed shall be built in compliance with the documents submitted to the Board as listed in Section V of this Decision, 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. The dimensions shall not be changed without Board approval.
5. 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.
6. An engineer 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.

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. Letter to Zoning Board of Appeals, dated August 20, 2020, from David Palmieri
2. Anticipated questions letter, dated August 22, 2020, from David Palmieri
3. “Building Plans” packet containing four sheets: “Certified Plot Plan Located at 110 Holliston Street”, dated August 20, 2020 prepared by Continental Land Survey, LLC, 105 Beaver Street, Franklin, MA (“Plot Plan”); 110 Holliston St. “Specs 11x14 shed addition”; “Front view” 110 Holliston Shed; “side view” 110 Holliston Shed
4. “Handout 1”, highlighting existing and new shed on the Plot Plan
5. “Handout 2” showing setbacks and amount of conforming lot space on the Plot Plan
6. “Handout 3” – “Simple Timeline of Events”
7. “Handout 4” – “View Permit” Citizen Serve building permit
8. “Handout 5” various abutter letters from:
 - 2 Virginia Road – James and Frances Donahue
 - 108 Holliston Street – Kathy MacDougall
 - 109 Holliston Street – Jeanne Johnson
 - 1 Virginia Road – Dorothy Dullard
 - 3 Virginia Road – Evan and Samantha Batcheller
 - 107 Holliston Street – Brianne Lardiere
 - 7 Virginia Road – Richard and Jean Geneseo
 - 4 Virginia Road – John and Bonnie Lewis-Gentry
9. “Handout 6” ZBA meeting minutes, May 1, 2019, October 7, 2015, September 2, 2015

B. Additional materials submitted throughout the public hearing process:

1. “Photographic Support for Variance Application 110 Holliston Street”, received August 25, 2020 from David Palmieri
2. Abutter support letter from Lisa Balunas, 9 Virginia Road, Medway, MA 02053 dated August 21, 2020
3. Abutter support letter from Angelica and Marques Crosby, 5 Virginia Road, Medway MA, 02053 received August 25, 2020
4. Abutter support letter from Linda Gentilucci, 10 Virginia Road, Medway, MA 02053 dated August 25, 2020
5. Abutter support letter from Peter and Cynthia Young, 106 Holliston Street, Medway, MA 02053 dated August 26, 2020

6. “Medway No. 3 (10 Sheets)” Holliston Street 1962 plan to modify and widen street

7. “Subdivision in Medway, Mass belonging to Vincent Fiori dated September 1953 prepared by H.W. Whittier, C.E, Natick, MA

8. Abutter support letter from Thomas and Colleen O’Rourke, 114 Holliston Street, Medway, MA 02053 received August 28, 2020

9. Abutter support letter from Mike and Christine Miller, 4 Applegate Road, Medway, MA 02053 dated August 2020

C. During the course of the review, the following materials were submitted to the Board by Town departments and boards:

1. Email from Mike Fasolino, Medway Deputy Fire Chief on August 27, 2020

2. Email from Bridget Graziano, Medway Conservation Agent on August 27, 2020

3. Email from David D’Amico, Medway DPW Director on August 31, 2020

4. Letter from Susy Affleck-Childs, Medway Planning and Economic Development Coordinator on September 16, 2020

VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Brian White and seconded by Gibb Phenegar the Zoning Board of Appeals hereby **GRANTS** the Applicants, David and Denise Palmieri, a **VARIANCE** from Section 6.1 to allow a pre-existing shed to be located 8.1 feet from the south lot line, and 3.6 feet from the east lot line, and to construct an 11 foot by 14 foot addition to the pre-existing shed, also 3.6 feet from the east lot line, where a 15 foot setback is required on both sides., in accordance with the plans submitted to the Board, and subject to the conditions herein.

Member:	Vote:	Signature:
Rori Stumpf	AYE	_____
Brian White	AYE	_____
Gibb Phenegar	AYE	_____
Tom Emero	AYE	_____
Christina Oster	AYE	_____

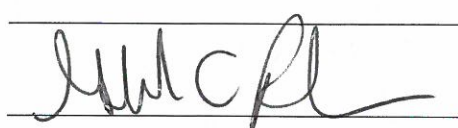
The Board and the Applicant have complied with all statutory requirements for the issuance of this variance on the terms herein set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §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.

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.

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