

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
13A FISHER STREET
GRANTED

Applicant(s): Ryan and Maura Walsh
13A Fisher Street
Medway, MA 02053

Location of Property: 13A Fisher Street (Assessors' Parcel ID: 55-014)

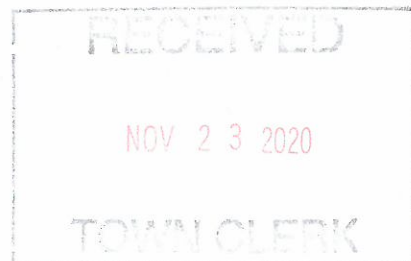
Approval Requested: The application is for the issuance of a **variance** from Section 6.1 of the Zoning Bylaw to reduce the required side setback from 15 feet to 11 feet, and reduce the required rear setback from 15 feet to 12 feet, to construct a pool house within the setback.

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 of Decision: November 18, 2020

Decision: GRANTED



20 day appeal
December 14, 2020

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I. PROCEDURAL HISTORY

1. On October 26, 2020, the Applicant filed an application for the issuance of a variance from Section 6.1 of the Zoning Bylaw to reduce the required side setback from 15 feet to 11 feet, and reduce the required rear setback from 15 feet to 12 feet, to construct a pool house within the setback.
2. Notice of the public hearing was published in the Milford Daily News on November 4, 2020 and November 11, 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 November 18, 2020 and closed the same evening.
4. The property is located in the Agricultural Residential II (AR-II) 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 22,500 sq. ft. and the minimum frontage requirement is 150 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 Facebook page. All persons participated remotely.

Ryan Walsh, the applicant and property owner was present and explained his application. He stated the property is smaller than others in the district, sloping from the front to the rear where it slopes towards the wetlands. There is not much space to place the pool house with the setback requirements. Mr. Phenegar inquired about the pool's construction, Mr. Walsh stated that it was installed in 2016 along with the hot tub, and the patio is constructed from concrete. The yard is fenced in to conform to Town bylaws and for safety reasons. Mr. Stumpf stated that the lot slopes back dramatically, and the house is set back pretty far, limiting the back yard; and the yard is wider from the street and grows narrow to the back. There were three abutter letters submitted in support of this proposed project. Mr. White inquired about where the shallow end and deep end of the pool were regarding the plan. Mr. Walsh explained that they are proposing that the pool house be on the shallow end for safety reasons. Mr. Emero inquired about the abutters that closest to the proposed pool house. There is a letter of support from one of them (Gay, rear setback abutter), but not the other (Long, side setback abutter). The Board discussed the variances requested being 12 feet from the rear setback and 11 feet from the side setback, where the requirement is 15 feet. Mr. Phenegar inquired about the footprint of the proposed pool house and what the little enclosed room would be for. Mr. Walsh explained the intent is to use the room for storage and as a changing area for guests. The door to the enclosed area will be from the pavilion, not the door as shown on the plans. There is further discussion on the layout of the pavilion, which will be open on two sides. The board then discussed the criteria.

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 topography of the lot is unique because it slopes from the front to the back and also narrows from the front to the back of the property, which do not affect other lots in the 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 this is a unique lot and any owner would have reduced use of the lot due to the shape and topography, making it a hardship on the current owner and any future owners.

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

The Board found that the proposed location of the pool house would not be detrimental as it is in the back yard of the lot within a fenced area.

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 grant of relief, which is only 3 feet and 4 feet closer to the lot lines, would not nullify or substantially derogate from the intent or purpose of the bylaw, as the size of the lot (22,500 square feet) is smaller than others in the Town; the 15 foot setbacks are more appropriate for larger, one-acre lots; and therefore the slightly reduced setbacks are appropriate here.

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 pool house shall be built in compliance with the documents submitted to the Board as listed in Section V of this Decision and with the change in the location of the door as explained by the applicant during the public hearing, 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.

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. "Certified Plot Plan located at 13A Fisher Street", Owners: Ryan and Maura Walsh, dated October 16, 2020, prepared by Continental Land Survey, LLC, 105 Beaver Street, Franklin, MA

2. "14x18 Traditional Vinyl Pavilion with 6x6 Enclosure" (herein the "Building Plans"), Customer: Ryan Walsh, 13A Fisher Street, Medway, MA 02053, prepared by Baystate Outdoor Personia, 1048 S. Main Street, Bellingham, MA 02019, consisting of 7 sheets and "Cabinet Layout".

3. Abutter letter in support from Ed and Frances Gay of 3 Sorrento Lane, Medway, MA dated November 10, 2020

4. Abutter letter in support from Chris and Val Couillard of 4 Sorrento Lane, Medway, MA submitted on November 16, 2020

5. Abutter letter in support from Sumanth Avirneni and Tejaswi Surapaneni of 1 Sorrento Lane, Medway, MA submitted on November 16, 2020

B. 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 October 28, 2020

2. Email from Bridget Graziano, Medway Conservation Agent on October 28, 2020

3. Email from Barry Smith, Medway Water Superintendent on October 28, 2020

4. Email from Joanne Russo, Medway Treasurer on November 2, 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, Ryan and Maura Walsh, a **VARIANCE** from Section 6.1 of the Zoning Bylaw to reduce the required side setback from 15 feet to 11 feet, and reduce the required rear setback from 15 feet to 12 feet, to construct a pool house within the setback, to be constructed in accordance with the Plan and application 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.

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, Ryan and Maura Walsh, a **VARIANCE** from Section 6.1 of the Zoning Bylaw to reduce the required side setback from 15 feet to 11 feet, and reduce the required rear setback from 15 feet to 12 feet, to construct a pool house within the setback, to be constructed in accordance with the Plan and application 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	_____

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