

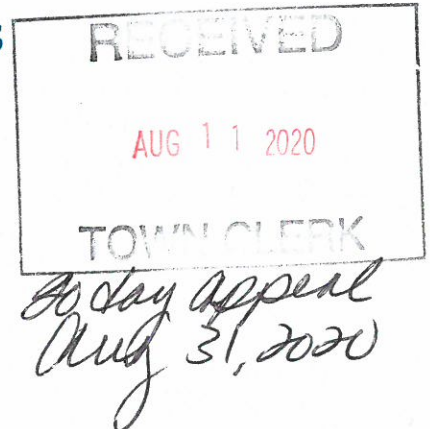
Board Members
Rori Stumpf, Chairman
Brian White, Vice Chair
Gibb Phenegar, Clerk
Christina Oster, Member
Tom Emero, Member
Carol Gould, Associate Member



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 - DENIED
SPECIAL PERMIT AND/OR VARIANCE
14 PHILLIPS STREET



Applicant(s): Kerry and Kevin Graves ("the Applicant")
14 Phillips Street
Medway, MA 02053

Location of Property: 14 Phillips Street (Assessors' Parcel ID: 58-171)

Approval Requested: The application is for the issuance of a **special permit** under Section 5.5.E. **and/or variance** from Section 6.1 of the Zoning Bylaw to demolish the existing, nonconforming garage and replace it with a new garage of similar dimensions (24' x 32') within the side setback of the property.

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

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

Date Application Filed: June 5, 2020

Hearing Opened: July 15, 2020

Hearing Closed: August 5, 2020

Date of Decision: August 5, 2020

Decision: DENIED

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I. PROCEDURAL HISTORY

1. On June 5, 2020, the Applicant filed an application for a special permit under Section 5.5.E nonconforming structure and/or variance from Section 6.1 for the structure being proposed within the side setback.
2. Notice of the public hearing was published in the Milford Daily News on July 1, 2020 and July 8, 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 July 15, 2020, the hearing was continued to August 5, 2020. The hearing was closed on August 5, 2020.
4. The property is located in the Village Residential (VR) Zoning District. The front setback requirement is 20 feet and the side and rear setback requirements are 10 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. Christina Oster was not present at the July 15, 2020 session of the public hearing, but she filed a Certification pursuant to G.L. c. 39, §23D for the July 15, 2020 meeting with the Town Clerk on August 4, 2020, and was present at the August 5, 2020 public hearing session.
7. 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.

On July 15th, Kerry Graves, one of the applicants, was present and discussed the petition. She stated they bought this home in 2012. The current garage is 1.5 feet from the lot line. The prior owner had been granted a special permit by the Zoning Board of Appeals in 2011 to demolish the current garage and build a new one five feet from the lot line, however, after she and her husband Kevin purchased the home, they were not able to update the garage as previously planned. They are proposing to replace the garage structure, further in from the lot line (3.5 feet) and proposing to build it slightly larger. They feel they cannot comply with the ten foot required setback because the lot is narrow and they don't want to cut off access to the back door of the house. Mr. Stumpf inquired about plans of the proposed structure. Ms. Graves stated they did not have architectural plans yet. Mr. Stumpf also inquired about the 3.5 foot or 5-foot proposed setback, and asked for clarification on what they are proposing to do.

Mr. Phenegar inquired why they cannot place the garage at the 10-foot setback line. Ms. Graves stated that the driveway would need to be curved and it would be very close to the dwelling, which would impact

the rear entrance of the home which is their primary entrance and exit.

Ms. Gould inquired about the photos provided of the current garage and its condition. She asked if the Building Commissioner has seen it or condemned it. Ms. Graves stated that he has not been out, and noted that the garage does not have a foundation. Mr. Stumpf questioned why they cannot build the proposed structure in accordance with the by-law and current dimensional requirements. Ms. Graves stated that if it were moved back the structure would be closer to Chicken Brook. Mr. Phenegar stated that he would be very hesitant to approve something that would be built within the setback. Mr. Emero questioned if the applicant wanted to rebuild the garage the same exact size and location, or if the applicant wanted to build the structure larger and in a different location. He stated he would have an issue with the increase of the non-conforming nature of the structure. Ms. Graves stated that their intent is to keep the look of the neighborhood and have more storage. Mr. Phenegar stated that doing a quick calculation, the proposed structure would be almost twice as large as the existing one.

Ms. Graves clarified the size of the proposed structure and location being within the setback. Mr. Stumpf stated the Board would like more information on what the garage would look like and that they would like an idea on footprint and height. Mr. Stumpf stated that they need to determine if the structure will be more detrimental to the neighborhood, and he would like to see that the structure is not dramatically imposing on the neighbors. The Board then decided to continue the hearing to August 5, 2020 with the applicant's consent.

On August 5, 2020, Ms. Graves was present, and stated that at the last meeting they discussed the dimensions and non-conforming state of the proposed structure. She stated that they are proposing to have the new garage five feet from the lot line rather than 3.5 feet as they originally requested. She stated this would result in less square footage of nonconforming space than the current garage. She submitted photos of abutting properties and their existing garages to show how they look in relation to what is proposed here.

Mr. Phenegar inquired about the size and height of the structure, which is the same as originally proposed while being 5 feet from the property line, not 1 foot as existing. Ms. Oster stated that she has no issues with the proposal, which she believes will be of value to the neighborhood and in line with the existing neighborhood. Ms. Saint Andre inquired about the size of the garage, and Ms. Graves stated it would be 24' wide x 32' deep and 24' feet high. Mr. Stumpf inquired about why they cannot move it over 5 more feet to make it conforming, Ms. Graves stated it would be too close to the dwelling and that Conservation does not want the garage moved any further back as it would create issues with wetlands.

Mr. Stumpf then moved on to the criteria for either a special permit or variance. He started with the special permit criteria. Mr. Emero inquired about the dimensions of the existing structure, Ms. Graves stated the existing garage is 20' x 20'. The setback would be gaining 20 square feet with the new proposed structure because it will be moved back from a one-foot setback to a five-foot setback.

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 first addressed the application for a special permit.

A. Section 5.5.E: Nonconforming Structures other than One-Family and Two-Family Dwellings. A legally pre-existing nonconforming building or structure may be structurally altered, enlarged or reconstructed provided that such alteration, enlargement or reconstruction is in compliance with the applicable dimensional regulations and does not increase the extent of the nonconformity, provided that the Board of Appeals determines by the grant of a special permit that such alteration, enlargement or reconstruction will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

The Board found that the Applicant has not proved that the proposed new structure is in compliance with the applicable dimensional regulations as required by Section 5.5.E because it will not comply with the ten-foot side setback requirement. The Board then voted to deny the special permit application.

C. Section 6.1 Variance Criteria

1. Circumstances relating to the shape, topography, or soil conditions of the subject property, which do not generally affect other land in the zoning district.

The lot is long and narrow and the land is flat, therefore it does not affect the ability to utilize the entire lot for a potential structure, and there are no circumstances that are unique to this property, as other lots in the zoning district are similar.

2. Substantial hardship caused by the circumstances from Criteria A.1 when the Zoning Bylaw is literally enforced.

Although the lot is long and narrow there is still adequate room to build the garage while meeting the dimensional requirements.

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

Desirable relief could be granted if additional modifications were made to the proposed structure making it more conforming to the dimensional requirements. However, that was not done for this proposed project.

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

The grant of relief would nullify from the intent of the Bylaw due to the proposed structure being larger and still within the setback.

The Board found that the Applicant has not proved through documentation in the variance application form submitted with this application, and as explained during the hearing, to meet all of the required variance criteria. The Board then voted to deny the variance application.

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 prepared for Holly M. Parent 14 Phillips Street Medway, MA" dated June 20, 2011 prepared by Jarvis Land Survey, Inc. 29 Grafton Circle Shrewsbury, MA 01545
2. 3 photographs of the current structure

3. Medway Zoning Board of Appeals Special Permit Decision dated October 5, 2011 for 14 Phillips Street

B. Additional materials submitted throughout the public hearing process:

1. Email from Kerry Graves on July 10, 2020 with attached photo of walkway and plot plan with drawing of structure if placed within setback requirements.
2. Email from abutter James Tiernan in support on July 15, 2020
3. Email from Kerry Graves on July 30, 2020 with attached photos of existing garages on two abutting properties, plot plan showing location of Chicken Brook and sample layout of garage
4. Email from abutter Bob Yates in support on August 3, 2020
5. Email from abutter Jennifer Webber in support on August 5, 2020
6. Email from Andy Rodenhiser, on June 25, 2020

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

1. Email from David D'Amico, Medway Dept. of Public Works Director on June 23, 2020
2. Email from Joanne Russo, Medway Treasurer on June 24, 2020
3. Email from Mike Fasolino, Medway Deputy Fire Chief on June 24, 2020
4. Memorandum from Barbara Saint Andre, Director, Community and Economic Development dated July 8, 2020
5. Email from Bridget Graziano, Conservation Agent on August 3, 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 to DENY the special permit, the Zoning Board of Appeals hereby **DENIED** the Applicant, Kerry Graves, a **SPECIAL PERMIT** under Section 5.5.E. of the Zoning Bylaw for a Nonconforming Structure for not meeting applicable criteria.

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

By a vote of 3 to 2, on a motion made by Gibb Phenegar and seconded by Brian White to DENY the variance, the Zoning Board of Appeals hereby **DENIED** the Applicant, Kerry Graves, a **VARIANCE** from Section 6.1 for not meeting applicable criteria.

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

The Board and the Applicant have complied with all statutory requirements for the issuance of this special permit on the terms hereinafter 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 Massachusetts 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, §17, which shall be filed within twenty days after the filing of this decision in the office of the Medway Town Clerk.

VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Brian White and seconded by Gibb Phenegar to DENY the special permit, the Zoning Board of Appeals hereby **DENIED** the Applicant, Kerry Graves, a **SPECIAL PERMIT** under Section 5.5.E. of the Zoning Bylaw for a Nonconforming Structure for not meeting applicable criteria.

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

By a vote of 3 to 2, on a motion made by Gibb Phenegar and seconded by Brian White to DENY the variance, the Zoning Board of Appeals hereby **DENIED** the Applicant, Kerry Graves, a **VARIANCE** from Section 6.1 for not meeting applicable criteria.

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

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