

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

RECEIVED TOWN CLERK
AUG 24 '21 PM 2:31

20 Day Appeal
Sept. 15, 2021

DECISION
VARIANCE
4 HAWTHORNE ROAD

Applicant(s): Gregory and Lizabeth Antonuccio
4 Hawthorne Road
Medway, MA 02053

Location of Property: 4 Hawthorne Road (Assessors' Parcel ID: 54-114)

Approval Requested: The application is for the issuance of a **variance** from Section 6.1 of the Zoning Bylaw to construct an above-ground pool set back 11.3 feet from the rear lot line where a 15-foot setback is required.

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

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

Date of Decision: August 18, 2021

Decision: **GRANTED WITH CONDITIONS**

Board Members
Brian White, Chair
Gibb Phenegar, Vice Chair
Christina Oster, Member
Tom Emero, Member
Rori Stumpf, 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
4 HAWTHORNE ROAD

Applicant(s): Gregory and Lizabeth Antonuccio
4 Hawthorne Road
Medway, MA 02053

Location of Property: 4 Hawthorne Road (Assessors' Parcel ID: 54-114)

Approval Requested: The application is for the issuance of a **variance** from Section 6.1 of the Zoning Bylaw to construct an above-ground pool set back 11.3 feet from the rear lot line where a 15-foot setback is required.

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

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

Date of Decision: August 18, 2021

Decision: **GRANTED WITH CONDITIONS**

I. PROCEDURAL HISTORY

1. On July 21, 2021, the Applicants filed an application for a variance from Section 6.1 to construct an above-ground pool set back 11.3 feet from the rear lot line where a 15-foot setback is required.
2. Notice of the public hearing was published in the Milford Daily News on August 4, 2021 and August 11, 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 August 18, 2021. Member Christina Oster recused herself, and the Chair designated associate member Carol Gould to sit on this application. The hearing was 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

Attorney Stephen Kenney, the representative for Mr. and Ms. Antonuccio, was present and explained the application. The applicants are seeking a variance of 3.7 feet from the rear lot line to construct an above-ground pool. Mr. Kenney stated that the lot is large, around 53,000 square feet in a zoning district with a minimum lot size of 22,500 square feet. The lot is unique due to a drainage easement and extensive wetlands covering a majority of the lot. Mr. Kenney stated that this is the only location a pool could go, with wetlands to the south, the driveway to the north, and the septic system in the front yard. The plan provided was approved by the Conservation Commission, with conditions of approval preventing the pool from being put in another location. He stated that there would be no harm to the public with a variance of only 3.7 feet on a 53,000 square-foot lot. He also argued that setbacks are intended to ensure structures are a reasonable distance from neighbors. Since this is not a building, but still considered a structure, it is much lower in profile. The yard also backs up to a heavily wooded area, so there will not be harm to any abutters. The size of the pool is 16 by 24 feet with a 10-foot deck attached.

Mr. Emero noted that the pool is a relatively modest size and is as close to the steps to the house as possible while still providing walking access. Mr. Phenegar noted that the septic system is close to the wetlands, and Mr. Kenney confirmed that it was at the 50-foot wetland buffer.

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 each variance criterion separately.

A. 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 unusual shape of the lot, and the soil conditions i.e. wetlands create conditions that do not generally affect other lots in the zoning district. Due to the existing home, driveway, and septic system, the pool cannot be placed elsewhere on the lot without intruding on the wetlands.

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 a literal enforcement of the provisions of the zoning by-law would involve substantial hardship given the unusual shape of the lot, and the soil conditions.

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

The Board found that relief may be granted without substantial detriment to the public good because the rear lot line abuts a wooded 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 the relief does not nullify or substantially derogate from the intent of the zoning by-law; the pool is of modest size, and the amount of intrusion into the required setback is only about 3.7 feet.

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 addition 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. 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.

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: “DEP Number 216-981 Proposed Pool Plan of Land” dated March 25, 2021, last revision June 15, 2021 prepared by Colonial Engineering

VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Gibb Phenegar and seconded by Tom Emero the Zoning Board of Appeals hereby **GRANTS** the Applicants, Gregory and Lizabeth Antonnucio, a **VARIANCE** from Section 6.1 to construct an above-ground pool set back 11.3 feet from the rear lot line where a 15-foot setback is required, in accordance with the plans submitted to the Board, and subject to the conditions herein.

Member:	Vote:	Signature:
Brian White	Aye	_____
Gibb Phenegar	Aye	_____
Tom Emero	Aye	_____
Rori Stumpf	Aye	_____
Carol Gould	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.



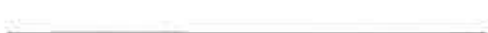


Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, chapter 40A, section 17, and shall be filed within twenty days after the filing of this notice in the office of the Medway Town Clerk.

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 Gibb Phenegar and seconded by Tom Emero the Zoning Board of Appeals hereby **GRANTS** the Applicants, Gregory and Lizabeth Antonnucio, a **VARIANCE** from Section 6.1 to construct an above-ground pool set back 11.3 feet from the rear lot line where a 15-foot setback is required, in accordance with the plans submitted to the Board, and subject to the conditions herein.

Member:	Vote:	Signature:
Brian White	Aye	
Gibb Phenegar	Aye	
Tom Emero	Aye	
Rori Stumpf	Aye	
Carol Gould	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.

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.