

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



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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

RECEIVED TOWN CLERK
DEC 8 '21 PM 3:20

DECISION
VARIANCE AND SPECIAL PERMIT
5 OAKVIEW CIRCLE

20 day appeal
December 27, 2021

Applicant(s): John and Ellen Deckers

Location of Property: 5 Oakview Circle (Assessor Parcel ID: 42-035).

Approval Requested: The application is for the issuance of a **variance** under Section 6.1 Schedule of Dimensional and Density Regulations and a **special permit** under Section 5.5 Nonconforming Structures to construct a covered porch and landing on the front of the house which would encroach on the required front yard setback.

Members Participating: Brian White, Chair; Gibb Phenegar, Vice Chair, Christina Oster, Clerk; Joe Barresi, Member; Tom Emero, Member

Members Voting: Brian White, Chair; Gibb Phenegar, Vice Chair, Christina Oster, Clerk; Joe Barresi, Member; Tom Emero, Member

Date of Decision: December 1, 2021

Decision: **GRANTED**

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I. PROCEDURAL HISTORY

1. On November 9, 2021, the Applicants filed for the issuance of a **variance** under Section 6.1 Schedule of Dimensional and Density Regulations and a **special permit** under Section 5.5.C Nonconforming Structures.
2. Notice of the public hearing was published in the Milford Daily News on November 17, 2021 and November 24, 2021, and notice sent by mail to all parties in interest and posted in Town Hall as required by G.L. c. 40A §11.
3. The public hearing was opened on December 1, 2021. The hearing was closed the same evening.
4. The Property is located in the Agricultural Residential I District (AR-I). 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.
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

John and Ellen Deckers of 5 Oakview Circle were present to review the application. They are seeking a variance under Section 6.1 Schedule of Dimensional and Density Regulations and a special permit under Section 5.5 Nonconforming Structures to construct a covered porch and landing on the front of the home. Mr. Deckers described that the addition of a porch is to make the house more aesthetically cohesive, as well as provide accessibility for their in-laws who may be living with them in the future. Mr. Deckers noted that there is the possibility of installing a ramp in the future, and this is the only space on the lot that would fit a ramp. The landing in front of the porch would encroach on the required front yard setback by about 5 feet.

The lot is nonconforming as to size, being only about 14,500 square feet. The lot is also an odd pie shape, which combined with the zoning setback requirements severely restricts any extensions of the house without intruding into the setbacks. Also, because the front of the lot slopes toward the street, a ramp can only be built from the proposed landed going toward the side of the lot.

Mr. White and the Board members reviewed the criteria for extension of a nonconforming single family home, and determined that the extension, while it would increase the nonconformity of the house, would not be substantially more detrimental to the neighborhood, based on the materials provided and testimony. Mr. White and the Board members then reviewed the variance criteria, and determined that the application meets the variance decision requirements, based on the materials provided and testimony.

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.

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.

The Board found that the proposed addition will be nonconforming as to front setback, therefore creating a new nonconformity that the Board finds will increase the nonconforming nature of the single-family structure. Because the Board found that the proposed addition will increase the nonconforming nature of the pre-existing nonconforming single-family structure, the addition requires a special permit under Section 5.5.C.2.

2. Section 5.5.C.2: Will the proposed addition to the structure be substantially more detrimental to the neighborhood than the existing nonconforming structure?

The Board found that the proposed front porch addition will not be substantially more detrimental to the neighborhood, and therefore granted the special permit under Section 5.5.C.2

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 the unusual, pie-shaped lot, as well as the slope of the front portion of the lot, and the placement of the house relative to the required setbacks, are unique circumstances relating to the shape of the lot and topography that do not affect generally the zoning district.

2. As a result of which, a literal enforcement of the provisions of the zoning Bylaw would involve substantial hardship, financial or otherwise, to the applicant, and

The Board found that a literal enforcement would cause a hardship as there is no practical way to place an entrance suitable for a ramp without infringing on a setback.

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

The Board found that there will not be any substantial detriment to the public good by the addition of a porch that encroaches only a modest amount into the 35-foot front setback.

4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

The Board found that the relief is modest in nature and will not nullify or substantially derogate from the purpose of the Zoning Bylaw.

The Board finds that the Applicant has demonstrated through evidence submitted, including the plot plan, the proposed pictures of the site, review of the square footage and usage of the proposed property, that it has met all the required Variance Decision Criteria under Section 6.1, and therefore grants the variance.

IV. GENERAL CONDITIONS

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board hereby **GRANTS** the Applicant, John and Ellen Deckers, a **VARIANCE** under Section 6.1 of the Zoning Bylaw, and a **SPECIAL PERMIT** under section 5.5.C of the Zoning Bylaw to construct a covered porch and landing on the front of the house at 5 Oakview Circle, (Parcel ID: 42-035), subject to the following **CONDITIONS**.

1. This variance and special permit is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the special permit and 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. As provided in Section 3.4.E of the Zoning Bylaw, special permits shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under G.L. c. 40A, §17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or, in the case of a special permit for construction, if construction has not begun by such date, except for good cause. Upon receipt of a written request by the applicant filed at least 30 days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and also the length of time requested.

4. 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.”

6. All site work shall be in compliance with the documents submitted to the Board as listed in Section V of this Decision, including the Plot Plan and Architectural Plan, 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.

V. 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. Application dated November 9, 2021.
2. A portion of “Certified Plot Plan 5 Oakview Circle” dated June 11, 2015, prepared by Daniel A. O’Driscoll, undated.
3. A portion of “Certified Plot Plan 5 Oakview Circle” dated June 11, 2015, prepared by Daniel A. O’Driscoll showing proposed porch and landing with stairs, (the Plan)
4. Photograph of existing house
5. Sketch entitled “Proposed Front Porch addition”, (the Architectural Plan)

VI. VOTE OF THE BOARD

By a vote of 5 to 0, the Zoning Board of Appeals hereby **GRANTS** the Applicants, John and Ellen Deckers, a **VARIANCE** under Section 6.1 of the Zoning Bylaw, and a **SPECIAL PERMIT** under Section 5.5.C of the Zoning Bylaw, to construct a covered porch and landing on the front of the house at 5 Oakview Circle (Parcel ID: 42-035), in accordance with the application, the Plan and the Architectural Plan provided, and subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Brian White	Aye	_____
Gibb Phenegar	Aye	_____
Christina Oster	Aye	_____
Joe Barresi	Aye	_____
Tom Emero	Aye	_____

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms set forth. A copy of this Decision has been filed with the Medway Town Clerk and Planning and Economic Development Board, and will be mailed to the Applicant, and notice will be mailed to all parties in interest as provided in General Laws, chapter 40A, section 15.

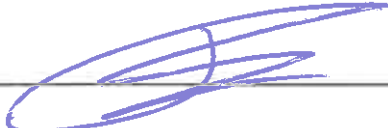
Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, chapter 40A, section 17, and shall be filed within 20 days after the filing of this notice in the office of the Medway Town Clerk.

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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Member:	Vote:	Signature:
Brian White	Aye	_____
Gibb Phenegar	Aye	_____
Christina Oster	Aye	_____
Joe Barresi	Aye	_____
Tom Emero	Aye	

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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 20 days have elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. 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.