

Board Members
Brian White, Chair
Gibb Phenegar, Vice Chair
Christina Oster, Member
Joe Barresi, Member
Tom Emero, 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
10 OLD SUMMER STREET

RECEIVED TOWN CLERK
JAN 3 '23 2:51

20 Day Appeal
January 23, 2023

Applicant(s): Chris Mikolazyk & Sally Cox
10 Old Summer Street
Medway, MA 02053

Location of Property: 10 Old Summer Street (Assessors' Parcel ID: 56-054)

Approval Requested: The application is for the issuance of a **variance** from Section 6.1 of the Zoning Bylaw to construct an in-ground pool on a corner lot, set back 12.1 feet to 10.5 feet from a front lot line where a 35-foot setback is required.

Members Participating: Brian White (Chair), Christina Oster (Clerk), Joe Barresi (Member), Tom Emero (Member)

Members Voting: Brian White (Chair), Christina Oster (Clerk), Joe Barresi (Member), Tom Emero (Member)

Date of Decision: December 21, 2022

Decision: **GRANTED WITH CONDITIONS**

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I. PROCEDURAL HISTORY

1. On November 16, 2022, the Applicants filed an application for a variance from Section 6.1 to construct an in-ground pool on a corner lot, set back 12.1 feet to 10.5 feet from a front lot line where a 35-foot setback is required.
2. Notice of the public hearing was published in the MetroWest Daily News on December 7, 2022, and December 14, 2022, 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 December 21, 2022. 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. The property is a corner lot, and therefore has two front setbacks.
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 applicants, Chris Mikolazyk and Sally Cox, appeared at the public hearing. Mr. Mikolazyk stated that they are seeking a variance from the front setback to install an inground 18 foot x 36 foot vinyl pool. Because this is a corner lot, it makes the side yard subject to a front yard setback requirement. This is the only location where a pool can be built. Due to wetlands on the west side of house, the pool cannot be put there, and due to the septic system in the back yard, the pool cannot be built there. The pool installer will clearly mark the septic system area prior to construction. All debris from construction will be removed by the pool installer. They have also arranged to have the fence re-located to meet property line requirements. He stated that the public good would not be harmed by construction of a pool on a lot of over 22,000 square feet.

Mr. White noted the comments received from town staff, including the need to re-locate the fence outside of the right of way. He stated that the applicant should talk to the Police Chief regarding the fence. He asked if the applicant had arranged for an engineer to mark the septic system. Mr. Mikolazyk stated he spoke to one earlier today

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. The Board considered each variance criterion separately.

A. 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 shape of the lot, the fact it is a corner 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 or septic system.

2. A literal enforcement of the provisions of the zoning by-law would as a result of said circumstances involve substantial hardship, financial or otherwise, to the applicant.

The Board found that a literal enforcement of the provisions of the zoning by-law would involve substantial hardship; given the shape of the lot, the wetlands, and the septic system, there is no other suitable place for the pool to be located.

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, the pool will not adversely affect the public.

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 proposed set back is adequate given the fact it is a pool.

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 shall be built in compliance with the documents submitted to the Board as listed in Section V of this Decision, including the Plot Plan attached to 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, except that minor changes in dimension that do not increase the size of the pool or further encroach on any required setback, wetlands resource area, or septic system may be allowed by the Building Commissioner as field changes.

5. There shall be no tracking of construction materials onto any public way. Sweeping of roadways adjacent to the site shall be done as necessary 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 prior to issuance of the building permit 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.

7. All work shall be in compliance with the Board of Health and Conservation Commission requirements, as applicable. The applicant is encouraged to consult with the Conservation Agent and Health Agent well in advance of commencing construction.

8. Pool water is not permitted to be discharged into the Town roads, right-of-way, or catch basins as described in the Medway General Bylaws, Article XXVI, Stormwater Management and Land Disturbance. Additionally, pool water shall not be discharged into areas under Conservation Commission jurisdiction, including the 100’ buffer zone (Medway General Bylaws, Article XXI, General Wetlands Protection) without the Commission’s written authorization. In the event of pool water discharge, the applicant shall locate areas within the property limits to release the water which do not violate state or local laws, or may use a pump truck to remove water.

9. During construction, stockpiling and equipment storage is allowed only in areas outside the Conservation Commission jurisdiction and the limits of the existing septic system unless there is written authorization. Title V system components (septic tank, d-box, and soil absorption system) shall be located and marked off, so that construction of the pool is confirmed to be **at least 10 feet from septic tank and 20 feet from soil absorption system**. Marking off system components will also ensure heavy equipment/loads will not pass over system components. These areas (Conservation Commission jurisdiction and Title V components) shall be located per plans and marked with flagging or orange snow fencing prior to issuance of a building permit to ensure that during construction stockpiles and equipment do not access these areas. Wheel-mounted or other heavy equipment is not allowed to operate in areas under Conservation Commission jurisdiction, or within the limits of the septic system area, as marked.

10. The existing fence shall be removed from the Ardmore Circle right-of-way and relocated so it is inside the property line of 10 Old Summer Street, as per comments from the Building Commissioner, prior to completion of the pool.

11. A copy of this decision shall be provided to all contractors and kept on site at all times during construction.

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. Application dated November 16, 2022.
2. Plan titled “Proposed Pool Plan,” prepared by Dunn-McKenzie, Inc., dated November 15, 2022 (herein referred to as the “Plot Plan”).

B. During the course of the review, the following materials were submitted to the Board:

1. Email from Jonathan Ackley, Building Commissioner, dated November 21, 2022.
2. Email from Derek Kwok, Health Director, dated November 23, 2022.
3. Email from Bridget Graziano, Conservation Agent, dated December 8, 2022.
4. Email from applicant dated November 28, 2022.

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VI. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Joe Barresi and seconded Christina Oster, the Zoning Board of Appeals hereby GRANTS the Applicants, Chris Mikolazyk and Sally Cox, a **VARIANCE** from Section 6.1 to construct an in-ground pool on a corner lot, set back 12.1 feet to 10.5 feet from a front lot line where a 35-foot setback is required., in accordance with the Plot Plan submitted to the Board, **a copy of which is attached hereto as Attachment A**, and subject to the conditions herein.

Member:	Vote:	Signature:
Brian White	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 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 4 to 0, on a motion made by Joe Barresi and seconded Christina Oster, the Zoning Board of Appeals hereby GRANTS the Applicants, Chris Mikolazyk and Sally Cox, a *VARIANCE* from Section 6.1 to construct an in-ground pool on a corner lot, set back 12.1 feet to 10.5 feet from a front lot line where a 35-foot setback is required., in accordance with the Plot Plan submitted to the Board, **a copy of which is attached hereto as Attachment A**, and subject to the conditions herein.

Member:	Vote:	Signature:
Brian White	AYE	_____
Christina Oster	AYE	_____
Joe Barresi	AYE	_____
Tom Emero	AYE	

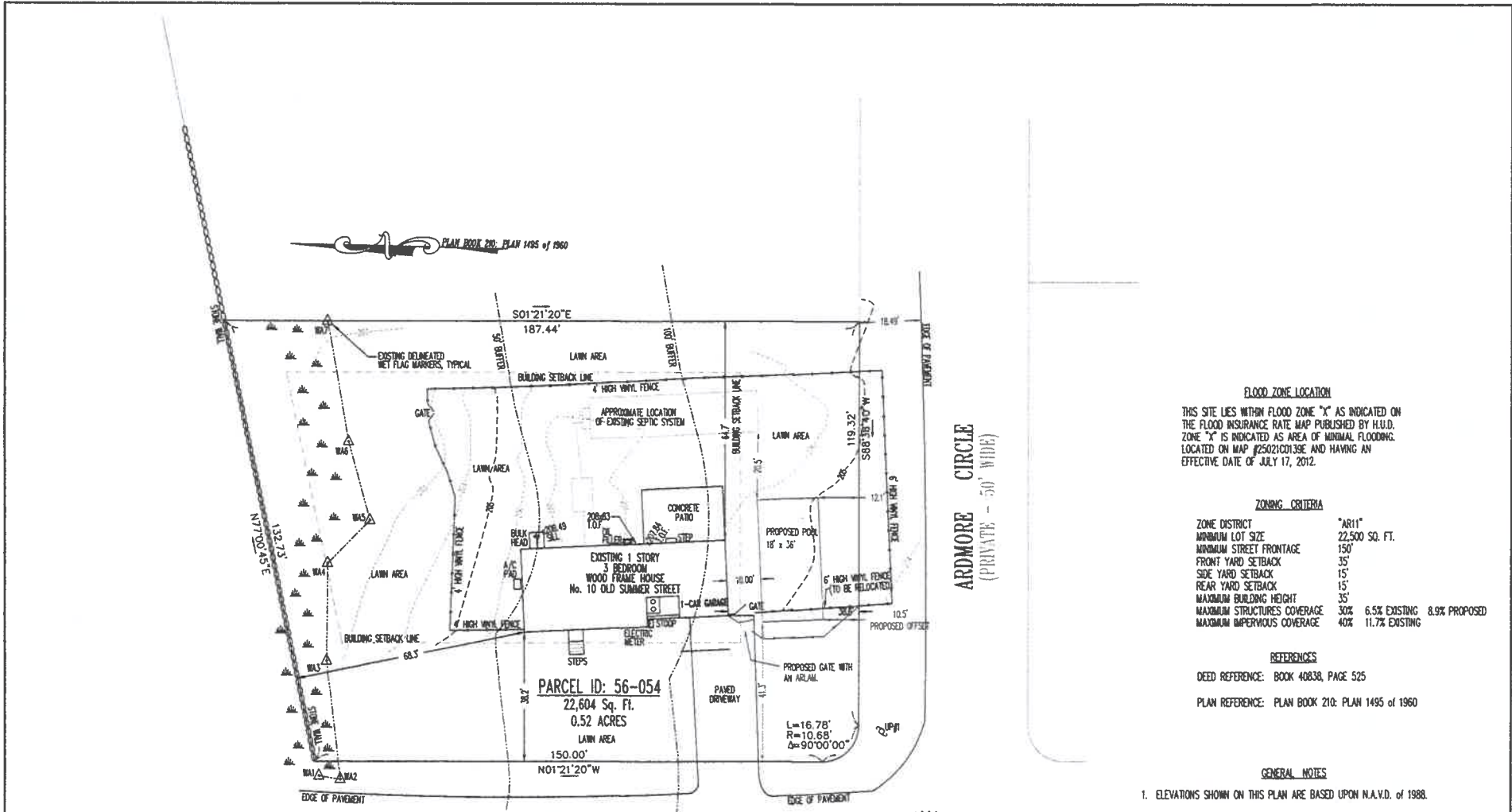
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\\NTSESERVER\cmm\mckenzie - GOOD\p\in\c\jbas\6926\6926\dwg\6926 PROPOSED #00, PLAT.DWG, CERTIFIED PLOT PLAN, 11/15/2022 3:18:19 PM



FLOOD ZONE LOCATION
 THIS SITE LIES WITHIN FLOOD ZONE "X" AS INDICATED ON THE FLOOD INSURANCE RATE MAP PUBLISHED BY H.U.D. ZONE "X" IS INDICATED AS AREA OF MINIMAL FLOODING. LOCATED ON MAP #25021C0139E AND HAVING AN EFFECTIVE DATE OF JULY 17, 2012.

ZONING CRITERIA

ZONE DISTRICT	"AR11"
MINIMUM LOT SIZE	22,500 SQ. FT.
MINIMUM STREET FRONTAGE	150'
FRONT YARD SETBACK	35'
SIDE YARD SETBACK	15'
REAR YARD SETBACK	15'
MAXIMUM BUILDING HEIGHT	35'
MAXIMUM STRUCTURES COVERAGE	30% 6.5% EXISTING 8.9% PROPOSED
MAXIMUM IMPERVIOUS COVERAGE	40% 11.7% EXISTING

REFERENCES

DEED REFERENCE: BOOK 40838, PAGE 525
 PLAN REFERENCE: PLAN BOOK 210: PLAN 1495 OF 1960

GENERAL NOTES

1. ELEVATIONS SHOWN ON THIS PLAN ARE BASED UPON N.A.V.D. OF 1988.

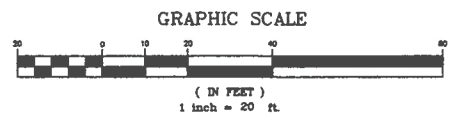
I CERTIFY THAT THE EXISTING DWELLING IS LOCATED AS SHOWN HEREON AND THAT THE EXISTING DWELLING MEETS THE APPLICABLE SETBACK REQUIREMENTS OF THE ZONING BY-LAWS FOR THE TOWN OF MEDWAY, MASSACHUSETTS.



OLD SUMMER STREET
 (PUBLIC - 33' WIDE)

ARDMORE CIRCLE
 (PRIVATE - 50' WIDE)

Dunn · McKenzie, Inc.
 LAND SURVEYING AND CIVIL ENGINEERING
 206 DEDHAM STREET, Rt.1A at Rt.115
 NORFOLK, MASSACHUSETTS 02056
 (508) 384-3990 - FAX (508) 384-3905
 jimmy@dunnmckenzie.com



PROJECT LOCATION:
 10 OLD SUMMER STREET
 MEDWAY, MASSACHUSETTS 02053

PREPARED FOR AND OWNED BY:
 CHRISTOPHER MIKOLZYK
 10 OLD SUMMER STREET
 MEDWAY, MASSACHUSETTS 02053
 TELEPHONE #(508) 493-2417

PROPOSED POOL PLAN
 Of Land In
MEDWAY, MASSACHUSETTS

SHEET NO.	DATE	JOB NO.
1 of 1	NOVEMBER 15, 2022	6926