

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
12 CHARLES RIVER ROAD

Applicant(s): Richard and Cheryl Goodspeed (“the Applicant”)
12 Charles River Road
Medway, MA 02053

Location of Property: 12 Charles River Road (Assessors’ Parcel ID: 69-036)

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 24’) within 2 feet of the rear lot line 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 of Decision: December 2, 2020

Decision: **VARIANCE GRANTED; SPECIAL PERMIT DENIED**



30 day appeal date Dec 28, 2020

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Date of Decision: December 2, 2020

Decision: **VARIANCE GRANTED; SPECIAL PERMIT DENIED**

I. PROCEDURAL HISTORY

1. On November 6, 2020, the Applicant's representative, Guaranteed Builders, LLC, filed an application for a special permit under Section 5.5.E nonconforming structure, 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 24') within 2 feet of the rear lot line of the property.
2. Notice of the public hearing was published in the Milford Daily News on November 18, 2020 and November 25, 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 December 2, 2020, the hearing was closed the same evening.
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. 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.

Rick Goodspeed, the applicant and property owner was present and discussed his application. He explained that the garage is about 80 years old or more with no foundation, it was built on the dirt and suffers substantial termite damage. He explained that they are afraid to park their cars in it and have not been able to use it in quite some time. The proposed garage will be about the same size, but about six inches shorter in height. Mr. Stumpf stated the proposed garage is in the same footprint and location as the existing garage. Mr. Goodspeed explained the neighborhood used to be all cottages which have slowly changed to residences over the years as the neighborhood evolved. The lot is a double wide lot, approximately 50 feet by 200 feet, with streets on three sides, and if they move the garage forward to conform to current zoning, there would be no room for parking.

Mr. Phenegar said this proposed garage is essentially the same as the existing one and is moved back a bit from the lot line. The other board members agreed. Mr. Phenegar stated it does not further derogate from the neighborhood and there is an existing safety concern. Ms. Saint Andre explained that this proposal will need to either comply with Section 5.5.E. for a special permit, or will need to meet variance criteria in order to be allowed. It does not meet the criteria of Section 5.5.E because the proposed garage will not comply with setback requirements.

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 would be 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 Board found that the lot is unique in that it is a long, narrow shape having frontage on three streets, which is different from other lots in the district. All board members agree that the shape of the lot being the qualifying factor for this criterion, as well as the placement of the existing house on the lot.

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

The Board found that due to the shape of the lot and where the house sits on the existing lot, there would be no spot to put the garage that would comply with the setbacks, and the only other option would be to remove the garage entirely, which would cause a financial hardship by reducing the value of the lot, and any owner would have the same hardship.

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

The Board found that that the current existing nonconforming structure and the proposed garage are essentially the same in size and location, therefore it will not cause substantial detriment to the public good.

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 existing structure as it is, is not better than what is being proposed and the proposed garage will not substantially derogate from the Zoning Bylaw.

The Board found that the Applicant has met all variance criteria.

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 applicant shall install a dry well or other approved stormwater system for the proposed structure which infiltrates all roof run off into the ground. Any and all gutters and downspouts shall not be placed in a manner to allow discharge of stormwater to the street or toward abutting properties.

5. The proposed structure 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.

6. There shall be no tracking of construction materials onto any public way. Sweeping of roadways adjacent to the site shall be done as needed to ensure that any loose gravel and dirt is removed from the roadways. 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.

7. Owner must confirm in writing that there is no connection to the Town's stormwater system, direct or indirect, such as sump pumps, perimeter drains, roof drains, or site drainage.

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. Description of Special Permit Request dated October 26, 2020 from Karen Keegan of Guaranteed Builders and Developers, Inc.
2. Deed for Richard and Cheryl Goodspeed of 12 Charles River Road recorded at Norfolk County Registry of Deeds Book 9252, Page 63
3. "Plot Plan" 12 Charles River Road, Medway, MA dated September 15, 2020 prepared by Guaranteed Builders and Developers, Inc., 14 West Street, Douglas, MA 01516
4. "24 x 24 Standard Garage" dated September 8, 2020 prepared by GBI, Guaranteed Builders & Developers, Inc., 14 West Street, Douglas, MA 01516 (5 sheets)
5. Six photos of current conditions of existing garage at 12 Charles River Road
6. "Re: 12 Charles River Road Special Permit Application" abutter letter dated October 26, 2020 from Joe Tomaso of 3 Massasoit Street, Medway, MA.

B. Additional materials submitted throughout the application process:

1. "Re: 12 Charles River Road Special Permit Application" abutter letter dated October 29, 2020 from Judith Agopovich 2A King Phillips Street, Medway, MA
2. "Re: 12 Charles River Road Special Permit Application" abutter letter dated October 29, 2020 from Jonathan Redfield of 10 Charles River Road, Medway, MA
3. "Re: 12 Charles River Road Special Permit Application" abutter letter dated October 29, 2020 from Edward Harvey of 14 Charles River Road, Medway, MA

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

1. Email from Chief Lynch, Medway Fire Department dated November 12, 2020
2. Email from Joanne Russo, Medway Treasurer dated November 12, 2020
3. Email from Barry Smith, Medway Water and Sewer Superintendent dated November 12, 2020
4. Email from Bridget Graziano, Medway Conservation Agent dated November 12, 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 **DENIES** the Applicant, Richard and Cheryl Goodspeed, 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 5 to 0, on a motion made by Brian White and seconded by Gibb Phenegar, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Richard and Cheryl Goodspeed, a **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 24') within 2 feet of the rear lot line of the property, to be constructed in accordance with the plans 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	_____

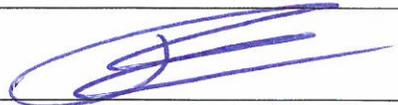
The Board and the Applicant have complied with all statutory requirements for the issuance of this variance on the terms herein set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

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 **DENIES** the Applicant, Richard and Cheryl Goodspeed, a **SPECIAL PERMIT** under Section 5.5.E. of the Zoning Bylaw for a Nonconforming Structure, for not meeting applicable criteria.

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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.