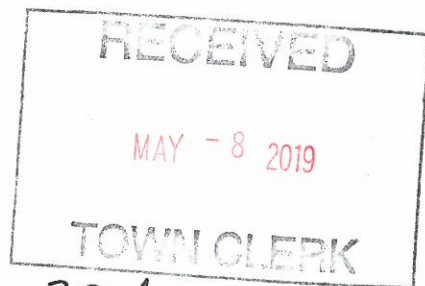


Town of Medway
ZONING BOARD OF APPEALS
155 Village Street, Medway, MA 02053

Rori Stumpf, Chair
Brian White, Vice Chair
Carol Gould, Clerk
Christina Oster, Member
Gibb Phenegar, Member

**DECISION
VARIANCE/FINDING
48 GORWIN DRIVE**



*20 day appeal
period May 28, 2019*

Date Application Filed: March 22, 2019

Applicant(s): Sarah Cabral (the "Applicant")
48 Gorwin Drive
Medway, MA 02053

Location of Property: 48 Gorwin Drive (Assessor Parcel ID: 32-123), AR-II zoning district.

Approval Requested: The application is for the issuance of a **variance** from Section 6.1 of the Zoning Bylaw for proposed addition of a two car garage to west side of the house that will decrease the side yard setback to 8 feet.

Members Participating: Rori Stumpf (Chair), Brian White (Vice Chair), Carol Gould (Clerk) and Gibb Phenegar (Member)

Members Voting: Rori Stumpf (Chair), Brian White (Vice Chair), Carol Gould (Clerk) and Gibb Phenegar (Member)

Hearing Opened: May 1, 2019

Hearing Closed: May 1, 2019

Date of Decision: May 1, 2019

Decision: GRANTED



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Decision: GRANTED

I. PROCEDURAL HISTORY

1. On March 22, 2019, the Applicant filed a variance application, pursuant to Section 6.1 of the Zoning Bylaw for the proposed addition of a two car garage to the west side of the house that will decrease the side yard setback to 8 feet.
2. Notice of the public hearing was published in the Milford Daily News on April 17, 2019 and May 1, 2019, 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 May 1, 2019. The Board closed the public hearing the same evening.
4. The Property is located in the Agricultural Residential II (AR-II) District. The frontage requirement is 150 feet and the minimum lot area requirement is 22,500 sq. ft. The front setback requirement is 35 feet and the side and rear setback requirements are 15 feet. The Property has sufficient frontage, but only 10,557 sq. ft. in area. The existing house is setback less than 31 feet from the frontage, but the proposed garage will be set back 31 feet from the front lot line. The applicant proposes an addition reducing the side yard setback to 8 feet rather than the required 15 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

At the May 1, 2019 meeting, the hearing was opened by the Board. The Applicant is proposing a side setback of 8 feet where the required setback is 15 feet.

Sarah Cabral (DiFlumeri) was present with her husband Giuseppe DiFlumeri, who explained to the Board that they are proposing to add on a two car garage to enhance the quality of living and their home. Mr. DiFlumeri also explained that they have observed other additions in the neighborhood and what they are proposing would be comparable to those in terms of size and setback.

Mr. Stumpf questioned if they had thought of putting the garage anywhere else on the lot. Mr. DiFlumeri stated they considered other places on the property to put the garage but the proposed location would be the best location for the addition. Placing the garage to the rear of the house would eliminate most of the back yard.

Mr. Stumpf questioned what they would use the garage for. Mr. DiFlumeri stated it would be for storing a car and other storage, he stated it would not be used as living space.

Carol Gould asked about the large bushes on that side of the lot, and what they are proposing to do with them. Mr. DiFlumeri stated he spoke with that abutter, and after the proposed garage is built they would take out those existing bushes and put up new, smaller ones. He also mentioned that the lot line was right in the middle of those bushes.

Ms. Saint Andre questioned what the height of the proposed garage would be. Mr. DiFlumeri it would be 1-2 feet shorter than the existing home. He stated he measured his current home from the peak to the ground and it is 17 feet high. Ms. Saint Andre questioned if the variance was granted would they be opposed to having a set condition that the proposed garage be 16 feet or lower. Mr. DiFlumeri stated there would be no issues with that condition. Ms. Saint Andre also questioned the front setback of the property, would the proposed garage be 27 feet or 31 feet back from the street. Mr. DiFlumeri among examining the proposed plot plan agreed that the proposed garage would be 31 feet back from the street.

There were no comments or objections from any of the neighbors.

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 Town departments, boards and committees placed in the public record during the course of the hearing. In order to be granted a variance, the Applicant must prove that the application satisfies all of the following four criteria.

A. 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.*

Mr. White moved, seconded by Mr. Phenegar, that the Board find that there are circumstances related to the unusual shape of the lot, in the shape of the lot as a corner lot with a radius formed by Lee Lane, and with the placement of the existing structure and surface area, there would be no other place to put the garage without creating other setback dimension issues, and these conditions do not generally affect other land in the zoning district; motion passed with a vote of 4-0-0.

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

Mr. White moved, seconded by Mr. Phenegard that the Board find that the conditions as found above cause a substantial hardship due to where the house sits on the existing lot; motion passed with a vote of 4-0-0.

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

Mr. White moved, seconded by Mr. Phenegar that the Board find that based on no objection from any abutters, and that there are other additions with similar setback encroachment in the neighborhood that the addition would not cause substantial detriment to the public good; passed with a unanimous vote of 4-0-0.

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

Mr. White moved, seconded by Mr. Phenegar that the Board find that the relief can be granted without nullifying or substantially derogating from the zoning bylaw due to the fact that there are other additions with similar setback encroachment in the neighborhood; passed by a unanimous vote of 4-0-0.

B. Section 5.5.C Findings

Mr. White moved, seconded by Mr. Phenegar that the Board find that the existing single family home at 48 Gorwin Drive is a legally existing, nonconforming structure. The Board found that the existing single family home is nonconforming in the following respects: The lot does not meet the minimum lot size for the AR-II District, and the existing house does not comply with the required 35-foot front setback; passed with a unanimous vote of 4-0-0.

*Mr. White moved, seconded by Mr. Phenegar that the Board further determined that the application to add a two car garage **does not** increase the nonconforming nature of the structure; passed with a unanimous vote of 4-0-0.*

IV. CONDITIONS OF APPROVAL

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board **GRANTED** the Applicant, Sarah Cabral, a Variance under Section 6.1 of the Zoning Bylaw from the side yard setback requirement, to construct a two car garage addition onto the existing home which would not comply with the required 15-foot side yard setback, being setback only eight feet from the side lot line, in accordance with the Plan received.

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.
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 side setback shall be reduced from the required setback of 15 feet to eight feet only for the construction of the garage addition as shown on the plans submitted. The garage shall be a single story, with the roof peak not to exceed 16 feet in height.
5. All other setbacks shall be as shown on the Plan.

IV. INDEX OF DOCUMENTS

A. This variance application includes the following plans and information that were provided to the Board at the time the application was filed:

1. “Proposed Garage Plan of Land in Medway, MA, Owner: Sarah M. Cabral, 48 Gorwin Drive Medway, Ma 02053” prepared by Colonial Engineering, Inc. dated February 2, 2019 (the Plan).
2. Renderings of Proposed Addition drafted by Applicant

B. During the course of the review, the following materials were submitted to the Board by Town Departments/Boards, Applicant/Representatives, and Residents:

1. Email from Medway Water and Sewer Superintendent Barry Smith received on April 8, 2019
2. Email Comments from Medway Conservation Agent, Bridget Graziano received on April 9, 2019
3. Email from Medway Town Treasurer, Joanne Russo received on April 11, 2019
4. Email from Medway Fire Chief Jeff Lynch received on April 18, 2019

(Intentionally left blank)

V. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Brian White and seconded by Gibb Phenegar the Zoning Board of Appeals hereby **GRANTED** the Applicant, Sarah Cabral (DiFlumeri), a **variance** under Section 6.1 from the side setback requirement of the Zoning Bylaw to construct a garage addition onto the existing single family home located at 48 Gorwin Drive to within eight feet of the side lot line, in accordance with the Plan received, subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Rori Stumpf	Yes	_____
Brian White	Yes	_____
Carol Gould	Yes	_____
Christina Oster	Not Present	_____
Gibb Phenegar	Yes	_____

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.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §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 MGL c. 40A, Section 11, no variance or special permit 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.

V. VOTE OF THE BOARD

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