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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

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DECISION
SPECIAL PERMIT
124 FISHER STREET

20 Day Appeal
November 29, 2022

Applicant(s): Douglas Walton, DLW Carpentry Inc.
36 Grove Street, Bellingham, MA 02019

Owner(s): Keith W.L. Rafal and Teriann S. Rafal, Trustees

Location of Property: 124 Fisher Street (Assessor Parcel ID: 26-016).

Title reference: Book 37434, Page 131

Approval Requested: The application is for the issuance of a **special permit** under Section 8.2 for an Accessory Family Dwelling Unit (AFDU) to be included in the existing dwelling.

Members Participating: Brian White (Chair), Gibb Phenegar (Vice Chair), Christina Oster (Clerk), Joe Barresi (Member)

Members Voting: Brian White (Chair), Gibb Phenegar (Vice Chair), Christina Oster (Clerk), Joe Barresi (Member)

Date of Decision: November 2, 2022

Decision: **Granted with Conditions**

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I. PROCEDURAL HISTORY

1. On October 7, 2022, the Applicant filed for a special permit under Section 8.2 Accessory Family Dwelling Unit for the construction of an accessory family dwelling unit.
2. Notice of the public hearing was published in the Milford Daily News on October 19, 2022, and October 26, 2022, 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 November 2, 2022. The hearing was closed the same evening.
4. The Property is located in the Agricultural Residential I (AR-I) District. 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. and the minimum frontage requirement is 180 feet. Accessory Family Dwelling Units are allowed by special permit.
5. The Board notified Town departments, boards and committees of this application. The Board did not receive any comments.
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 Applicant, Douglas Walton of DLW Carpentry Inc., was present to discuss the application on behalf of the owners Keith and Terriann Rafal. Mr. Walton explained the proposed AFDU will be in the basement, within the existing footprint of the home, and there will be an added egress window scape well. Mr. White stated there were comments from other Boards – the Conservation Agent stated concern that the driveway does not increase in size, Mr. Walton confirmed the existing driveway will be sufficient and remain unchanged. Mr. White stated the Fire Department stated the system in the home will have to be upgraded to include the basement to meet fire code. Mr. White stated the Board of Health has a file on the property, but does not have an as-built, so the application should have the septic system scoped to make sure the septic system is the correct size for a four-bedroom dwelling and comply with Title 5. Ms. Saint Andre clarified in an AFDU the owner must occupy one portion of the home, and a relative must occupy the other.

The Board reviewed the required findings for an AFDU special permit and agreed that all are met. The Board then reviewed the proposed conditions with the applicant, who had no objections. In response to a question from the applicant, it was clarified that the special permit runs with the land.

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 placed in the public record during the course of the hearings.

A. Section 8.2 Accessory Family Dwelling Unit Criteria

The Board found that the application meets all the required criteria for Section 8.2 on the following findings:

1. An accessory family dwelling unit shall be located within:

a. a detached single-family dwelling (principal dwelling unit); or

b. an addition to a detached single-family dwelling (principal dwelling unit); or

c. a separate structure on the same premises as a detached single-family dwelling (principal dwelling unit).

The proposed AFDU is within a detached single-family dwelling (principal dwelling unit).

2. There shall be no more than one accessory family dwelling unit associated with a detached single-family dwelling (principal dwelling unit).

The proposed AFDU is the only AFDU on the premises.

3. No accessory family dwelling unit shall have more than one bedroom, unless a second bedroom is authorized by the Board of Appeals pursuant to 8.2.C. 8.

The proposed AFDU will have only one bedroom as shown on the sketch plan.

4. An accessory family dwelling unit shall not exceed 800 sq. ft. of gross floor area.

The proposed AFDU will be less than 800 sq. ft.

5. There shall be at least one designated off-street parking space for the accessory family dwelling unit in addition to parking for the occupants of the detached single-family (principal dwelling unit). The off-street parking space shall be located in a garage or in the driveway and shall have vehicular access to the driveway. The location, quantity, and adequacy of parking for the accessory family dwelling unit shall be reviewed by the Board of Appeals to ensure its location and appearance are in keeping with the residential character of the neighborhood.

There is at least one designated off-street parking space for the accessory family dwelling unit in the driveway of the subject property.

6. *Occupancy of the single-family dwelling (principal dwelling unit) and accessory family dwelling unit shall be restricted as follows:*

a. The owners of the property shall reside in one of the units as their primary residence, except for bona fide temporary absences due to employment, hospitalization, medical care, vacation, military service, or other comparable absences which would not negate the primary residency standard. For purposes of this Section, "owners" shall mean one or more individuals who hold legal or beneficial title to the premises.

The owners of the property shall reside in one of the units as their primary residence.

b. The accessory dwelling unit and the detached single-family dwelling (principal dwelling unit) shall be occupied by any one or more of the following:

i. the owner(s) of the property;

ii. the owner's family by blood, marriage, adoption, foster care or guardianship;

iii. an unrelated caregiver for an occupant of the detached single-family dwelling or the accessory family dwelling unit, who is an elder, a person with a disability, handicap or chronic disease/medical condition, or a child.

The accessory family dwelling unit will be occupied by the owner's relative.

7. *An accessory family dwelling unit shall be designed so as to preserve the appearance of the single-family dwelling (principal dwelling unit) and be compatible with the residential character of the neighborhood. Any new separate outside entrance serving an accessory family dwelling unit shall be located on the side or in the rear of the building.*

The accessory family dwelling unit is within the existing dwelling and is compatible with the residential character of the neighborhood. There will be no new outside entrance.

B. Section 3.4 Special Permit Decision Criteria

The Board found that the application meets all the required Special Permit Decision Criteria for Section 3.4 on the following findings:

1. The proposed site is an appropriate location for the proposed use.

2. Adequate and appropriate facilities will be provided for the operation of the proposed use.

3. The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.

4. *The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*
5. *The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials, or other undesirable visual, site, or operational attributes of the proposed use.*
6. *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*
7. *The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.*
8. *The proposed use is consistent with the goals of the Medway Master Plan.*
9. *The proposed use will not be detrimental to the public good.*

The Board finds that the Applicant has demonstrated through evidence submitted, including the Plot Plan, the Floor Plans, review of the square footage and usage of the AFDU, that it has met all the required Special Permit Decision Criteria under Section 3.4 of the Zoning Bylaw, including that the any adverse effects will not outweigh its beneficial impact to the town.

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 hereby **GRANTS** the Applicant, Douglas Walton, DLW Carpentry, Inc., a **SPECIAL PERMIT** under Section 8.2 Accessory Family Dwelling Unit of the Zoning Bylaw for the construction of an accessory family dwelling unit on property located 124 Fisher Street (Parcel ID: 26-016) subject to the **CONDITIONS** herein:

1. Smoke, heat and carbon monoxide detectors must be installed in accordance with the Massachusetts Fire and Building Codes. As noted in the Fire Department's comments, the fire detection in the rest of the home must also meet current code in connection with the new construction.
2. This special permit and 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.
3. 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

4. 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.

5. There will be no expansion of the house or increase in impervious surface of the driveway as part of this project.

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 sketch 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, except that minor changes in dimension that do not increase the size of the addition or encroach on any required setback may be allowed by the Building Commissioner as field changes.

7. There shall be no tracking of construction materials onto any public way. 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.

8. 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.

9. This special permit shall be recorded with the Registry of Deeds prior to issuance of an occupancy permit for the accessory family dwelling unit.

10. Upon transfer of ownership of the property, if the new owners desire to continue to exercise the special permit, they must, within thirty days of the conveyance, submit a notarized letter to the

Building Commissioner stating that they will occupy one of the dwelling units on the premises as their primary residence, except for bona fide temporary absences, and that the accessory family dwelling unit is to be occupied by one of the parties specified in Section 8.2.C.6.b. of the Zoning Bylaw.

11. The owner of the property shall provide a bi-annual certification to the Building Commissioner verifying that the unit not occupied by the owner is occupied by one of the parties specified in Section 8.2.C.6.b. of the Zoning Bylaw, or that the space is being used for another lawfully allowed use pursuant to the Zoning Bylaw.

12. All work shall be in compliance with the Board of Health and Conservation Commission requirements, as applicable.

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 October 7, 2022.
2. Sketch floor plan for proposed AFDU in the existing basement, undated.
4. Statement of use by property owners, dated October 6, 2022.

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

1. Email from Bridget Graziano, Conservation Agent, dated October 12, 2022
2. Email from Craig Vinton, Deputy Fire Chief, dated October 12, 2022
3. Email from Derek Kwok, Board of Health, dated October 12, 2022

VI. VOTE OF THE BOARD

By a vote of 4-0 on a motion made by Gibb Phenegar and seconded by Christina Oster, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Douglas Walton, DLW Carpentry Inc., a **SPECIAL PERMIT** under Section 8.2 Accessory Family Dwelling Unit for the construction of an accessory family dwelling unit at 124 Fisher Street (Parcel ID: 26-016), to be constructed in accordance with the application, the Plot Plan, and the Floor Plans, and subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Brian White	AYE	_____
Gibb Phenegar	AYE	_____
Christina Oster	AYE	_____
Joe Barresi	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 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 20 days after the filing of this notice in the office of the Medway Town Clerk.

In accordance with General Laws chapter 40A, section 11, no 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 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, and notification by the Applicant of the recording, shall be furnished to the Board.

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