

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



Medway Town Hall
155 Village Street
Medway, MA 02053
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

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20 Day Appeal
Aug 3, 2021

DECISION
SPECIAL PERMIT
160 MAIN STREET

Applicant(s): Shirley McDaniel
160 Main Street
Medway, MA 02053

Location of Property: 160 Main Street (Assessors' Parcel ID: 48-001).

Approval Requested: The application is for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for a Kennel License for up to 10 dogs.

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

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

Date of Decision: July 7, 2021

Decision: **GRANTED WITH CONDITIONS**

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I. PROCEDURAL HISTORY

1. On June 11, 2021, the Applicant filed for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for a Kennel License for up to 10 dogs.
2. Notice of the public hearing was published in the Milford Daily News on June 23, 2021 and June 30, 2021 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 July 7, 2021. The hearing was closed the same evening.
4. The Property is located in the Agricultural Residential II (AR-II) 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.
5. The Board notified Town departments, boards, and committees of this application. The Board received comments from the Animal Control Officer and the Director of the Department of Public Works.
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.
7. The applicant, Shirley McDaniel was granted a special permit on June 6, 2001 for a kennel on this property, limited to not more than six dogs on the premises at a time.

II. TESTIMONY

The Applicant, Shirley McDaniel, was present and explained the application. She currently has a kennel special permit for six dogs that was issued in 2001. When previously applying in 2001, Ms. McDaniel had asked for a ten-dog license. The Board limited her to six dogs, but stated that if everything went well, she could come back before the Board to add additional dogs to her license. Mr. White stated that based on the previous decision and the favorable comments from the Animal Control Officer this seemed to be a simple case. Mr. White read through the special permit criteria and stated that all the criteria from the previous special permit stand. The members agreed that all the criteria are met.

The Board reviewed the conditions listed in the existing special permit with Ms. McDaniel to determine if the conditions should be included in this special permit. Ms. McDaniel stated that some of the conditions in the 2001 special permit are no longer applicable, because that special permit was for a doggie daycare, but she does not provide this service anymore. She also stated that dogs will occasionally stay over. She also clarified that the condition in the 2001 special permit of having no retail sales referred to the sale of supplies, not dogs, since she occasionally

breeds and sells puppies. Based on her statements, the Board agreed to add certain of the conditions of the 2001 special permit to this permit. The Board then reviewed with the applicant which of the Board's boiler plate conditions are applicable.

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 considered each special permit criterion separately.

A. Section 3.4 Special Permit Decision Criteria

1. *The proposed site is an appropriate location for the proposed use.*
There is currently a special permit for a kennel operation for six dogs, and ten dogs cared for by the applicant could be handled on site.
2. *Adequate and appropriate facilities will be provided for the operation of the proposed use.*
Animal Control comments show that the applicant has adequate facilities.
3. *The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.*
There is already fencing in place to prevent the dogs from leaving the property.
4. *The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*
The use as a kennel is already in place, so there would be minimal added traffic.
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.*
There were no abutter or other comments suggesting that this would be an issue; the site is currently used as a kennel with no ill effects.
6. *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*
Abutters, including the Animal Control Officer, are in support of the use.
7. *The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.*
The zoning by-law allows for kennel operation in this district.
8. *The proposed use is consistent with the goals of the Medway Master Plan.*

The Board believes the kennel will not be detrimental to the goals of the Master Plan.

9. *The proposed use will not be detrimental to the public good.*

There is already a kennel operation in place on this property.

The Board finds that the Applicant has demonstrated through the application and evidence submitted, including the plot plan and review of the proposed usage of the property, that she has met all the required Special Permit Decision Criteria under Section 3.4 of the Zoning Bylaw.

IV. CONDITIONS OF APPROVAL

1. This 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 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. Not more than ten dogs are allowed on the premises at any one time, and all dogs must be kept within a fenced area when outside.
5. This special permit supersedes and replaces the prior special permit for a kennel granted on June 6, 2001.
6. No construction, building or structures shall be built on the premises ancillary to the kennel.
7. The Applicant shall abide by any recommendations made by the Board of Health and the Animal Control Officer.
8. No retail sale of supplies are allowed.
9. An attendant must be on site if there are more than three dogs on the premises.
10. No dog shall be over 50 lbs.

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. "Plan of Land in West Medway, MA" dated July 31, 1968
2. Deed to Shirley A. McDaniel, recorded at Book 6563, page 51.

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

1. Email from Brenda Hamelin, Animal Control Officer on June 23, 2021
2. Emails from Dave Damico, Director of the Department of Public Works on June 21 and June 22, 2021
3. Special permit issued June 6, 2001 to applicant for kennel to be allowed at 160 Main Street
4. "Plot Plan of Land in Medway, MA" dated November 9, 1984, prepared by Guerriere and Halnon, Inc., with hand-drawn outline of fence
5. Letter from Russell and Pamela Sherrill
6. Letter from Paul and Kathleen Yorkis

VI. VOTE OF THE BOARD

By a vote of on a motion made by and seconded by, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Shirley McDaniel, a **SPECIAL PERMIT** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for a Kennel License for up to 10 dogs for the property at 160 Main Street (Assessors' Parcel ID: 48-001), in accordance with the application and subject to the **CONDITIONS** herein.

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

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 certified by the Registry, and notification by the Applicant of the recording, shall be furnished to the Board.

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Member:

Vote:

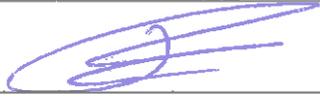
Signature:

Brian White

Tom Emero

Christina Oster

Gibb Phenegar



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