

Board Members
Brian White, Chair
Gibb Phenegar, Vice Chair
Christina Oster, Clerk
Joe Barresi, Member
Tom Emero, Member
Adam Kaufman, Associate
Member



Medway Town Hall
155 Village Street
Medway, MA 02053
Telephone (508) 321-4890
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
VARIANCE AND/OR SPECIAL PERMIT
192 MAIN STREET

Applicant: Magued Barsoum and Mariette Barsoum, Trustees of the Medway Main Nominee Trust, 192 Main Street

Location of Property: 192 Main Street (Assessor Parcel ID: 47-070)

Approval Requested: The application is seeking a Variance and/or Special Permit under Zoning Bylaw Sections 5.6.4D and 5.5 to allow the construction of 4 additional dwelling units (2 duplexes) where only one additional dwelling could be allowed pursuant to Section 5.6.4 of the Bylaw.

Members Voting: Gibb Phenegar, Vice Chair; Christina Oster, Clerk; Joe Barresi, Member; Tom Emero, Member, Adam Kaufman; Associate Member

Date of Decision: May 15, 2024

Decision: GRANTED FOR ONE DUPLEX ONLY WITH CONDITIONS

I. PROCEDURAL HISTORY

1. On March 25, 2024, the Applicant filed for a Variance and/or special permit under Zoning Bylaw Sections 5.6.4.D and 5.5.
2. Notice of the public hearing was published in the Milford Daily News on April 3, 2024, and April 10, 2024, 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 April 17, 2024, and continued to May 15, 2024. The hearing was closed that evening. Associate member Adam Kaufman was designated by the Vice-Chair to sit on this application in the absence of Chair Brian White.

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4. The Property at 192 Main Street is located in the AR-II (Agricultural Residential 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 lot 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 IV of this Decision.

II. SUMMARY OF EVIDENCE AND TESTIMONY

Attorney Steve Kenney and Magued Barsoum, Trustee of Medway Main Nominee Trust represented the applicants. The property is in the Multi-family Housing Overlay District (MHOD) and has less than one acre of land. The site currently has two structures: a detached garage which is in poor condition, and a building with six dwelling units, which is nonconforming under existing zoning because it does not have a special permit. The building dates back to the 1800's and the Board found that it is a pre-existing, protected nonconforming use as a six-family dwelling. Under the MHOD, a maximum of 7 housing units could be allowed on this site by special permit from the Planning and Economic Development Board. The applicants are seeking a variance to allow up to a maximum of ten units, and a special permit for extension of the pre-existing nonconforming use.

Attorney Kenney stated in support of the application that it would provide additional multi-family housing, by adding two new duplexes and remove the dilapidated garage. The shape of the lot is irregular. As to the hardship, Mr. Kenney cited a taking of a portion of the lot in 1921 for the roadway, and stated it is unclear how much of the property was taken. He stated that the property would have more than an acre had a portion not been taken, which under current zoning would allow up to a maximum of 8 housing units by special permit under the MHOD. The owner is also planning to improve the appearance of the property by renovating the exterior of the existing six family dwelling a new exterior. He stated the project would improve the appearance of the structure at 192 Main Street, provide additional housing for the residents of Medway and allow for the proper use of this oversized lot in the multi-family housing overly district as set out in the Zoning Bylaw.

Some board members expressed concern about the substantial elevation change from Slocumb Place to the east side of the lot, where there is a brook, and how the construction and increase in impervious surface will affect stormwater runoff. There were also concerns raised regarding adding two more structures to the site, in an already crowded area. This property is in the Rabbit Hill Historical District, surrounded by several period style houses and the proposal does not seem to fit in with the historical neighborhood. Another member had a different view, stating that stormwater management issues would be addressed at the Planning and Economic Development Board (PEDB) review process.

Abutters expressed concerns about stormwater run-off down to the brook affecting the abutting properties. They indicated that the area of land to the back of the lot is very wet as it is and are very concerned with the substantial elevation change. They also expressed a desire to maintain the historical look of this area.

Board members agreed that just one duplex would be more appropriate for this site. It would provide for additional housing units, and would be built where the dilapidated garage is now located, removing an eyesore.

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 the plans, comments from Town officials and committees, and evidence and testimony presented at the public hearing. The Board considered each variance criterion separately.

A. 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 location.

The Board found that the irregular shape of the lot, the taking of a portion of the lot for the roadway, the placement of the existing structures, the fact that it is also a corner lot, as well as the slope of the lot, are circumstances especially affecting the lot but not affecting generally the zoning district.

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 the costs associated with rehabilitating the existing historical six family house, as well as the existing garage which is in bad shape, would constitute a financial hardship.

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

The Board found that a variance as conditioned that would allow one duplex to built on the lot in the area where the garage is now located would not be substantially detrimental to the public good. Removal of the garage would be an improvement to the property, and the placement of a new building where the garage is now situated would not interfere with stormwater drainage sheeting over the back of the property toward the brook, as it does presently.

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

The Board found that a variance as conditioned that would allow one duplex to built on the lot in the area where the garage is now located would not nullify or substantially derogate from the intent or purpose of the Zoning Bylaw. The property has 42,222 square feet, a little less than an acre, and is located in the Multi-Family Housing Overlay District, which would allow up to 7 multi-family housing units with a special permit from the PEDB. Under the MHOD, a property with at least one acre of land is allowed a density of up to 8 units if allowed by the PEDB under a special permit. Allowing up to one additional unit by special permit from the PEDB will help advance one of the goals of the MHOD, to help preserve existing historical structures, as well as providing a variety of types of housing.

The Board finds that the Applicant has demonstrated through evidence submitted, including the plans, that it has met all the required variance decision criteria under G.L. c. 40A, section 10, for one additional two-family unit located in the same area as the existing garage.

B. Special Permit under Section 5.5 to extend, alter, or change a nonconforming use.

The Board found that the applicant has established a legally pre-existing, nonconforming use of the property as six-unit, multi-family housing.

Special Permit Decision Criteria for Section 5.5: that the alteration, extension or change of the pre-existing, nonconforming use will not be substantially more detrimental to the neighborhood.

The Board found that the extension of the nonconforming use from six multi-family units to allow up to a maximum of eight multi-family dwelling units as conditioned herein, will not be substantially more detrimental to the neighborhood, for the reasons set forth above.

It was determined that the applicant met the requirements for the variance, and the extension of a legally pre-existing nonconforming use under Section 5.5, only as subject to the Board's conditions, including the requirement that no more than one duplex be added to the site, and that the applicant obtain an MHOD special permit, and any site plan approval that is needed, from the PEDB.

IV. CONDITIONS OF APPROVAL

1. Smoke, heat and carbon monoxide detectors must be installed in accordance with the Massachusetts Fire and Building Codes.
2. This variance and special permit is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the variance or

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.

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 19 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. Pursuant to G.L. c. 40A Section 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 the 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."

5. 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.

6. The applicant shall meet all requirements for improved storm water system which may be imposed by the Planning and Economic Development Board under the Multi-Family Housing special permit, per site plan regulations. 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.

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. The applicant shall comply with all Department of Public Works (DPW) regulations and requirements for any street opening permits, utility connections, or other work within DPW jurisdiction.

10. This special permit and variance from the Zoning Board of Appeals is expressly conditioned upon the owner obtaining site plan approval and a Multi-family Housing special permit from the Planning and Economic Development Board. All conditions of the PEDB special permit and site plan approval must be adhered to.

11. This variance and special permit is limited to a maximum of two additional dwelling units being added to the property, for a total number of units not to exceed eight. The two additional dwelling units if granted by the PEDB are to be contained in a building to be located as shown on the Plan in the area where the existing garage is now located. This condition is imposed to mitigate the stormwater runoff concerns that would be created by a large increase in impervious surface on the site.

12. The applicant is responsible for obtaining any required demolition permit, including any required approval from the Historical Commission, for removal of the existing garage.

V. INDEX OF DOCUMENTS

A. The application included the following information that was provided to the Board at the time the application was filed:

1. Application dated March 25, 2024.
2. Plan entitled "Existing Conditions Plot Plan of Land in Medway, MA" prepared by RealMapInfo, LLC dated March 14, 2024
3. Plans entitled "Interior Renovations and Addition" prepared by Rise Architecture dated March 14, 2024, 9 sheets
4. Plans entitled "New Townhouse, 192-198 Main St., Medway MA 02052", prepared by Rise Architecture dated March 14, 2024, 7 sheets including Site Use Plan
5. Deed – 2024
6. Plans entitled "New Townhouse, 192-198 Main St., Medway MA 02052", prepared by Rise Architecture dated April 23, 2024, 7 sheets including Site Use Plan (referred to herein as "the Plans")

B. Other documents received by the Board:

1. Email Nolan Lynch, Superintendent of Highway, dated March 28, 2024
2. Email from Jeremy Thompson, Planning and Economic Development Coordinator, dated March 28, 2024
3. Email from Derek Kwok, Board of Health Director, dated March 27, 2024
4. Email from Bridget Graziano, Conservation Agent, dated March 28, 2024
5. Email from Craig Vinton, Deputy Chief Fire Department, dated April 9, 2024
6. Email from Claire Elaine MacGregor, Abutter of 190 Main Street, dated April 16, 2024

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VI. VOTE OF THE BOARD

By a vote of 5 to 0, the Zoning Board of Appeals hereby GRANTS the Applicant, Magued Barsoum and Mariette Barsoum, a **Variance and Special Permit** under G.L. c. 40A §§9 and 10, and Zoning Bylaw Sections 3.2 and 5.5 to allow the construction of up to 2 additional dwelling units (one two-family building) where only one additional dwelling could be allowed pursuant to Section 5.6.4 of the Bylaw, subject to the Plan and the CONDITIONS contained in this decision.

Member:	Vote:	Signature:
Gibb Phenegar, Vice-Chair	Aye	_____
Christina Oster, Clerk	Aye	_____
Joe Barresi, Member	Aye	_____
Tom Emero, Member	Aye	_____
Adam Kaufman, Associate member	Aye	_____

The Board and the Applicant have complied with all statutory requirements for the issuance of this appeal 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 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.

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

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Member:	Vote:	Signature:
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Joe Barresi, Member	Aye	
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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.