

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
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
SPECIAL PERMIT
21 SUMMER HILL ROAD

Applicant(s): Stephanie Pratt ("the Applicant")
21 Summer Hill Road
Medway, MA 02053

Location of Property: 21 Summer Hill Road (Assessors' Parcel ID: 27-040)

Approval Requested: Special Permit under Section 8.2 of the Zoning Bylaw for an Accessory Family Dwelling Unit ("AFDU").

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

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

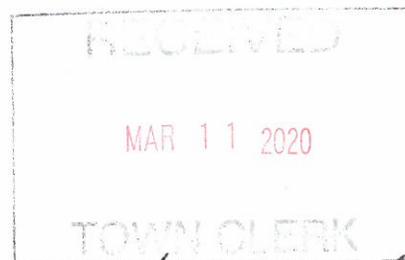
Date Application Filed: February 10, 2020

Hearing Opened: March 4, 2020

Hearing Closed: March 4, 2020

Date of Decision: March 4, 2020

Decision: GRANTED



*20 day appeal
March 31, 2020*

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I. PROCEDURAL HISTORY

1. On February 10, 2020, the Applicant filed an application for a special permit under Section 8.2 of the Medway Zoning Bylaw for a special permit for an Accessory Family Dwelling Unit.
2. Notice of the public hearing was published in the Milford Daily News on February 19, 2020 and February 26, 2020 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 March 4, 2020, the hearing was closed the same evening.
4. The property is located in the Agricultural Residential I (AR-I) Zoning 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.
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

Stephanie Pratt was present and discussed her application She wants to construct an addition to her home which will be used as an AFDU to allow her parents to have somewhere to stay when they are not in Florida and when they stay to assist with childcare.

Mr. Stumpf stated that the proposed addition complies with the setbacks. He reminded the applicant there is a 2-year re-evaluation for AFDU's by the town.

Mr. Stumpf explained the roof runoff would need to be managed on site. Ms. Pratt explained she is working with an engineer to prepare a plan to submit to the Conservation Commission with her application. Mr. Stumpf brought up the storage of commercial vehicles on the property for the home business. Ms. Pratt explained that, once the issue was brought to her attention by Jack Mee, Building Commissioner, the vehicles have been moved and are being stored in Bellingham.

Bridget Graziano, Conservation Agent, went over the comments she submitted to the Board. She stated that the proposed project is within the jurisdiction of the Conservation Commission. There is a shed currently in the 25 foot no disturb zone, which would be required to be removed as part of any permit applied for through the Commission. She stated that when the plan is submitted to the Commission there may be the need for a Notice of Intent to be filed. She went over the conditions she proposed, including the need to infiltrate all roof run-off from the proposed addition on-site, and also to provide for the bottom inspection of the infiltration system to make sure it is in compliance. She then stated that the applicant should respect setbacks and retain as many trees as possible. Mr. Stumpf asked the applicant if she had any objections to the conditions Ms. Graziano stated, Ms. Pratt had no issues.

There were a number of neighbors in attendance at the meeting, some who expressed their concerns and some in support of the application. One of the concerns was in regards to the commercial vehicles being stored on the property in relation to the business being run out of the home. Another concern expressed was the buffer zone and tree and vegetation preservation between the properties of 19 Summer Hill Road

and 21 Summer Hill Road.

David Dejoie of 19 Summer Hill Road stated he has concerns about the commercial trucks, the 15-foot setback which serves as a buffer area between the two properties, and the well on the property of 21 Summer Hill Road. The well appears to be located in the area proposed for the driveway. The Board is in receipt of an email from the Town's Health Director, asking that the applicant contact the Health Department regarding the well.

Mr. Stumpf then proceeded to review the criteria of the Accessory Family Dwelling Unit and Special Permit criteria. The Board members then discussed potential conditions, including:

- a potential condition to require retention of vegetation in the side yard setback between 19 and 21 Summer Hill Road. Mr. Emero was opposed to the condition, as he explained it is hard to restrict someone to not cut down any trees on their own land. The Board members determined not to include this condition.
- Mr. White suggested a condition to require planting additional screening in the buffer zone between the properties. The Board did not favor this requirement.
- Limits on parking of commercial vehicles. Mr. Emero suggested that the Board defer to the existing zoning and other by-law requirements, and the Board members agreed.
- The Board's boilerplate conditions were explained to the applicant, who did not object to any.

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 criteria for an AFDU:

A. Section 8.2 Accessory Family Dwelling Unit Criteria

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)....

The AFDU will be an addition to a detached single family dwelling.

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

The AFDU will be the only AFDU associated with this property.

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 one bedroom.

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

This AFDU will be approximately 650 sq. feet.

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.

The proposed AFDU has at least two off street parking space in keeping with the residential character of the neighborhood.

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 applicant owns and resides in the existing home.

- 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 AFDU will be occupied by the applicant’s parents.

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 proposed AFDU is located to left side of the existing home and will maintain the appearance of a single-family dwelling.

The Board found that the Applicant has met all of the required Accessory Family Dwelling Unit decision criteria.

The Board then reviewed the general criteria for a special permit under Section 3.4:

B. Section 3.4 Special Permit Decision Criteria

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 found that the Applicant has met all of the required special permit criteria under Section 3.4.

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 **GRANTS** the Applicant, Stephanie Pratt, a **SPECIAL PERMIT** under Section 8.2 of the Zoning Bylaw for an Accessory Family Dwelling Unit, to be constructed in accordance with the plans submitted to the Board (as listed below in Section V), subject to the conditions herein.

1. Smoke detectors and carbon monoxide detectors must be installed in accordance with the Massachusetts Fire and Building Codes.
2. 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.
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. The applicant shall install an approved stormwater system for the addition which infiltrates all roof run-off in to the ground. Stormwater management systems include but are not limited to dry wells, sub-surface infiltrators, rain gardens, etc. All designed systems shall be signed/stamped by a Professional Engineer and shall be approved by the Building Department prior to installation. The system shall be designed to handle a 100-year storm as defined under NOAA Atlas 14 precipitation rates. 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.
6. The AFDU 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.
7. There shall be no tracking of construction materials onto any public way. Daily sweeping of roadways adjacent to the site shall be done to ensure that any loose gravel and dirt is removed from the roadways and does not create hazardous or deleterious conditions for vehicles, pedestrians or abutting residents. 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 applicant or property owner(s) shall obtain any and all required state and local permits for the construction of work allowed under this Decision, prior to the issuance of a Building Permit.
9. Building Permit shall not be issued to any applicant or property owner or work approved under this Decision, if applicant or property owner has any outstanding violations (related to the property of 21 Summer Hill Road) with any Town board, committee, commission, or department including the Zoning Board of Appeals.
10. The unpermitted shed on the property shall be moved out of the 25-foot buffer zone or as permitted by the Conservation Commission prior to issuance of building permit.
11. The applicant shall contact the Board of Health and/or Health Director in regards to the current well on the property prior to issuance of building permit.
12. The storage of commercial vehicles must be in compliance with the Medway Zoning Bylaw and all other applicable town by-laws.
13. The property owner shall ensure that all personal property bills are paid for the home business related to the property prior to issuance of the building permit.

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. "Plot Plan" for 21 Summer Hill Road, Medway, MA dated February 10, 2020, prepared by Christopher M. Kirby, P.E.
2. "650 SF Accessory Apartment Addition to an Existing Single Family Home" for 21 Summer Hill Road Medway, MA dated February 4, 2020 prepared by CM Kirby Engineering PO Box 291 Norwood, MA 02062, ten sheets.

B. The following were submitted by town residents:

1. "Questions regarding the project" packet from abutters Dave and Cindy DeJoie of 19 Summer Hill Road, Medway, MA 02053

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, Fire Department on February 11, 2020.
2. Email from Joanne Russo, Medway Treasurer on February 11, 2020.
3. Email from David D'Amico, Medway Dept. of Public Works on February 11, 2020.
4. Email from Bridget Graziano, Medway Conservation Agent on March 3, 2020.
5. Letter from Beth Hallal, Medway Health Director dated March 4, 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 **GRANTS** the Applicant, Stephanie Pratt, a **SPECIAL PERMIT** under Section 8.2 of the Zoning Bylaw for an Accessory Family Dwelling Unit, to be constructed in accordance with the plans submitted to the Board, and subject to the conditions herein.

| Member: | Vote: | Signature: |
|-----------------|--------------|-------------------|
| Rori Stumpf | YES | _____ |
| Brian White | YES | _____ |
| Gibb Phenegar | YES | _____ |
| Christina Oster | YES | _____ |
| Tom Emero | YES | _____ |

The Board and the Applicant have complied with all statutory requirements for the issuance of this special permit on the terms hereinafter 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 Massachusetts 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, §17, which shall be filed within twenty days after the filing of this decision 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 20 days have elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed 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: |
|-----------------|--------------|--|
| Rori Stumpf | YES | _____ |
| Brian White | YES | _____ |
| Gibb Phenegar | YES | _____ |
| Christina Oster | YES | _____ |
| Tom Emero | YES |  |

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