

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
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Medway, MA 02053
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
SPECIAL PERMIT AND FINDING
28 MILFORD STREET

RECEIVED TOWN CLERK
MAY 24 '21 PM 3:06
20 Day Appeal
June 15, 2021

Applicant(s): Karl and Amanda Boczanowski
28 Milford Street
Medway, MA 02053

Location of Property: 28 Milford Street (Assessors' Parcels ID: 47-116 and 47-131).

Approval Requested: The application is for the issuance of a **special permit** under Section 5.5 of the Zoning Bylaw to demolish the existing nonconforming one-family structure and reconstruct a new one-family structure, and for a **special permit** under Section 8.2 for an Accessory Family Dwelling Unit (AFDU) within the new structure.

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

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

Date of Decision: May 19, 2021

Decision: **GRANTED WITH CONDITIONS**

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I. PROCEDURAL HISTORY

1. On April 21, 2021, the Applicants filed for a special permit under Section 5.5 of the Zoning Bylaw to demolish the existing nonconforming one-family structure and reconstruct a new one-family structure, and for a special permit under Section 8.2 for an Accessory Family Dwelling Unit (AFDU) within the new structure.
2. Notice of the public hearing was published in the Milford Daily News on May 5, 2021 and May 12, 2021 and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A, §11. The notices included instructions for participating remotely in the public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place.
3. The public hearing was opened on May 19, 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 Conservation Agent, Fire Chief, and 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.

II. TESTIMONY

The public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place, was held via Zoom platform. All persons participated remotely.

The applicants, Mr. and Ms. Boczanowski, were present and explained the application. The applicants own two abutting properties, 28 Milford Street and an abutting lot in the back that has no frontage, that have been combined into one lot by deed recorded at the Norfolk County Registry of Deeds at Book 39375, page 37. Currently, there is a small single-family house and two sheds on the lot, all located near Milford Street. The applicants intend to remove the existing house and the sheds and build a new, larger single-family home with an Accessory Family Dwelling Unit. The new house will conform to all setback and height requirements in the zoning by-law.

Mr. Boczanowski explained that there is plenty of room behind the current house for a new house to be built, and the new house will be much better placed on the lot. The existing house will be demolished before an occupancy permit for the new house is issued. Mr. White asked the applicant to speak more to the existing setbacks vs. what the planned setbacks will be. Mr. Boczanowski stated that the house will be more than 15 feet from all lot lines. It will be 30 feet by 40 feet with a garage attached through a breezeway. The existing house is 7 feet from the side lot line. The new house will be 16.6 feet from the lot line at the closest point. The existing house is about 60 feet from the road. The lot is nonconforming because it only has 80 feet of frontage. Mr. Boczanowski clarified that the two sheds on the property will also be torn down, but they hope to reuse the septic system. He also would like a special permit for an AFDU above the garage. Mr. Boczanowski stated that this AFDU would be occupied by his mother and would be less than 800 square feet.

Mr. Phenegar summarized that there are two decisions to be made: one regarding the nonconforming structure and one regarding the AFDU. He stated that the new house would meet the setbacks, and that the design would not derogate the neighborhood but improve it. Mr. Boczanowski pointed out the number of new houses recently built in the neighborhood. Ms. Oster added that the new houses have improved the area, with Mr. White agreeing that the design will fit nicely with the location. The Board agreed that the nonconforming nature of the structure will not be increased and that the proposed structure is entirely appropriate for the area.

With respect to the AFDU, Mr. Phenegar noted that it was nice to see an AFDU that meets the Zoning requirement of being under 800 square feet. He also stated that the design conforms with the rest of the house. Ms. Oster stated that it was beautifully structured and looks like a single-family home from the front. Mr. Phenegar stated that having an AFDU fits well with the neighborhood, there were no abutters comments, no added traffic, no detrimental lighting or odor, and that the AFDU fits with the purpose of the Zoning Bylaw and the Master Plan. Mr. Emero had suggestions to add to the boilerplate conditions, including that the sheds be torn down before occupancy and that the lots be combined prior to a building permit being issued.

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 Zoning Bylaw. The Board also considered the application materials, evidence and testimony presented at the public hearing, and comments submitted and placed in the public record during the course of the hearing.

A. Section 5.5.C Nonconforming Single Family Structure Decision Criteria

1. Section 5.5.C.1

The Board found that the current single-family structure on the premises is a pre-existing, nonconforming single-family structure, nonconforming as to lot frontage and side setback.

The Board found that the proposed single-family structure will be nonconforming as to lot frontage, but will conform to all setbacks, and be less nonconforming in that respect. The proposed single-family structure will be larger and taller than the existing single-family structure. The Board found that the proposed single-family structure will not increase the nonconforming nature of the existing single-family structure. Because the Board found that the proposed reconstruction will not increase the nonconforming nature of the pre-existing nonconforming single-family structure, the reconstruction is allowed by right, and no finding or special permit is required under Section 5.5.C.2.

2. Section 5.5.C.2

Because the Board found that the proposed reconstruction will not increase the nonconforming nature of the pre-existing nonconforming single-family structure, no finding or special permit is required under Section 5.5.C.2.

B. 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);...

The AFDU will be within the proposed 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 AFDU will have only one bedroom

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

The AFDU will be approximately 798 square 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.

There is at least one parking space in the driveway for the AFDU.

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 will live in the single-family dwelling as 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.

Applicant's mother will occupy the AFDU.

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 AFDU and primary dwelling unit have the appearance of a single-family home.

The Board considered each special permit criterion separately.

A. Section 3.4 Special Permit Decision Criteria

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

- 1. *The proposed site is an appropriate location for the proposed use.*
The property is zoned to allow for this use, has plenty of lot area, and is surrounded by single family homes.
- 2. *Adequate and appropriate facilities will be provided for the operation of the proposed use.*
The AFDU will have appropriate utilities.
- 3. *The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.*
The AFDU will not create a hazard.

4. *The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*

The AFDU will create minimal additional 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.*

The AFDU will be within a new home that will blend into the neighborhood. The new home will be set back further than the existing home.

6. *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*

The AFDU will be within a new home with the appearance of a single-family dwelling.

7. *The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.*

The zoning Bylaw allows AFDU units in this district.

8. *The proposed use is consistent with the goals of the Medway Master Plan.*

The Master Plan encourages a mix of housing types.

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

The AFDU will blend into the neighborhood. The new home will also be further back from the road with less of a visual impact.

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 special permit and special permit for an AFDU 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 special permit for an AFDU 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. All site work shall be in compliance with the documents submitted to the Board as listed in Section V of this Decision, including the Plot Plan and Architectural Plans, 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.

6. 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.

7. 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.

8. This special permit shall be recorded with the Registry of Deeds prior to issuance of a building permit for the accessory family dwelling unit.

9. 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 parties specified in Section 8.2.C. 6. b. of the Zoning Bylaw.

10. 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.

11. The two lots, Assessors' Parcels 47-116 and 47-131, must be combined into one lot prior to the issuance of a building permit.

12. The remaining sheds on the property and the current existing house must be demolished prior to the issuance of an occupancy permit for the new house.

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: "Proposed Single Family Structure" dated December 9, 2019 prepared by Colonial Engineering, Inc.
2. Building Plans: "Boczanowski Residence 28 Milford Street" dated March 11, 2021 prepared by MDA Design (the "Architectural Plans")

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

1. Email from Jeffrey Lynch, Medway Fire Chief on April 27, 2021.
2. Email from Bridget Graziano, Medway Conservation Agent on April 27, 2021
3. Email from Dave D'Amico, Medway Department of Public Works Director on May 17, 2021
4. Memo from Barbara Saint Andre, Director of Community and Economic Development, dated May 14, 2021
5. Copy of Application to Demolish a Building 75 or More Years Old Dated April 21, 2021 with photographs
6. Copy of Application to Demolish a Building 75 or More Years Old with determination by Medway Historical Commission of no historical significance
7. Plot Plan: "Proposed Single Family Structure" dated December 9, 2019, latest revision January 10, 2020, prepared by Colonial Engineering, Inc. (the "Plot Plan")

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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 finds that the pre-existing nonconforming single family structure may be removed and reconstructed as shown on the Plot Plan and Architectural plans, and such reconstruction will not increase the nonconforming nature of the structure. Further, 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 Applicants, Karl and Amanda Boczanowski, a **SPECIAL PERMIT** under Section 8.2 for an Accessory Family Dwelling Unit (AFDU) within the new structure, in accordance with the application submitted, the Plot Plan, and the Architectural Plans, and subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Brian White	AYE	_____
Tom Emero	AYE	_____
Christina Oster	AYE	_____
Gibb Phenegar	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, §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.

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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.