



Town of Medway  
**ZONING BOARD OF APPEALS**  
155 Village Street, Medway, MA 02053

Rori Stumpf, Chair  
Brian White, Vice Chair  
Carol Gould, Clerk  
Christina Oster, Member  
Gibb Phenegar, Member

**DECISION  
SPECIAL PERMIT  
2 ALGONQUIN AVE**

**Date Application Filed:** September 24, 2018

**Applicant(s):** Lisa and Richard Zajac ("the Applicants")  
2 Algonquin Ave  
Medway, MA 02053

**Location of Property:** 2 Algonquin Ave (Assessor Parcel ID: 08-034).

**Approval Requested:** Special Permit under Section 8.2 Accessory Family Dwelling Unit ("AFDU") for the construction of an accessory family dwelling unit.

**Members Participating:** Brian White (Vice Chair), Carol Gould, Christina Oster, and Gibb Phenegar

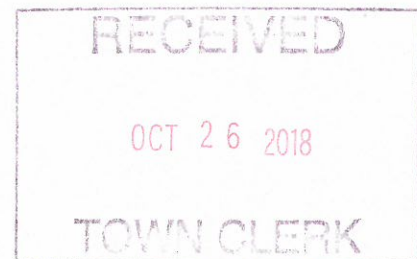
**Members Voting:** Brian White (Vice Chair), Carol Gould, Christina Oster, and Gibb Phenegar

**Hearing Opened:** October 17, 2018

**Hearing Closed:** October 17, 2018

**Date of Decision:** October 17, 2018

**Decision:** GRANTED



*20 day appeal period  
is November 15, 2018*



Town of Medway  
**ZONING BOARD OF APPEALS**  
155 Village Street, Medway, MA 02053

Rori Stumpf, Chair  
Brian White, Vice Chair  
Carol Gould, Clerk  
Christina Oster, Member  
Gibb Phenegar, Member

**DECISION  
SPECIAL PERMIT  
2 ALGONQUIN AVE**

**Date Application Filed:** September 24, 2018

**Applicant(s):** Lisa and Richard Zajac (“the Applicants”)  
2 Algonquin Ave  
Medway, MA 02053

**Location of Property:** 2 Algonquin Ave (Assessor Parcel ID: 08-034).

**Approval Requested:** Special Permit under Section 8.2 Accessory Family Dwelling Unit (“AFDU”) for the construction of an accessory family dwelling unit.

**Members Participating:** Brian White (Vice Chair), Carol Gould, Christina Oster, and Gibb Phenegar

**Members Voting:** Brian White (Vice Chair), Carol Gould, Christina Oster, and Gibb Phenegar

**Hearing Opened:** October 17, 2018

**Hearing Closed:** October 17, 2018

**Date of Decision:** October 17, 2018

**Decision:** GRANTED

## **I. PROCEDURAL HISTORY**

1. On September 24, 2018, the Applicants' Representative 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 3, 2018 and October 10, 2018, 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 October 17, 2018. 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 Applicants were represented by Matt Smith of Serenity Builders.
6. The Board notified Town departments, boards and committees of this application. The Board received comments from the Building Commissioner and Fire Chief.
7. 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**

At the October 17, 2018 meeting, the Board opened the hearing. The applicants were present with their representative, Matt Smith. Mr. Smith provided an overview of the project. He explained that the unit will be used as an accessory family dwelling (AFDU) for the parents of the applicant and has been designed to be ADA compliant with respect to hallway and door widths, and room size for wheelchair access. There are three points of egress and a 20'x 20' driveway space for parking. He stated that the addition could be constructed as of right, except for the full kitchen with a stove which makes it a second dwelling unit. There will be access between the principal house and the AFDU through the basement. There are currently two driveways on the site, one will be used for the AFDU.

The Board was concerned about the usefulness of the unit beyond the current owners if the addition no longer qualifies as an AFDU. Mr. Smith explained that it has been designed so that the wall between the residences could be opened up in the future and link both together. Mr. Smith also stated that the proposed addition is in harmony with the neighborhood, as other houses are of similar size. He showed the Board photographs of some other neighborhood houses. The Applicants are asking for an AFDU in excess of 800 square feet in order to have a

design that is wheelchair ready. He stated there is only one bedroom; the room designated as a den does not meet the definition of a bedroom.

### **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.

#### **A. Section 3.4 Special Permit Decision Criteria**

**On motion made by Christina Oster, seconded by Carol Gould, by a unanimous vote of 4-0 the Board finds 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 Applicants have demonstrated through evidence submitted, including the plot plan, the proposed pictures of the site, review of the square footage and usage of the proposed property, that they have met all The required Special Permit Decision Criteria under Section 3.4 of the Zoning Bylaw.**

#### **B. Section 8.2 Accessory Family Dwelling Unit Criteria**

**On motion made by Christina Oster, seconded by Carol Gould, by a unanimous vote of 4-0 the Board finds the application meets all the required Special Permit Decision 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 an addition to 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 has only one bedroom, as shown on the undated hand drawn plan submitted with the application materials on September 24, 2018.**

4. *An accessory family dwelling unit shall not exceed 800 sq. ft. of gross floor area unless:*
  - a. *there is an existing detached accessory structure larger than 800 sq. ft. located on the same lot as a detached single-family dwelling (principal dwelling unit) and the Board of Appeals determines its use as an accessory family dwelling unit is in character with the neighborhood; or*
  - b. *authorized by the Board of Appeals pursuant to 8.2.C.8.*

**The proposed AFDU has a total of 1000 square feet, as shown on the undated hand drawn plans and the plans “1<sup>st</sup> Floor & Second Floor/Lower Ceiling for 2 Algonquin Ave” dated July 31, 2018. The applicant states that the additional square footage is for 1000 square feet and was designed to American Disabilities Act handicap specifications for wheel chair accessibility and a bathroom of suitable size for a wheelchair patient and another person/aid to assist the handicapped person with bathing etc., and that the specifications do require added space. The Board authorized the square footage pursuant to 8.2.c.8.**

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 one off-street parking space as shown in the picture submitted at the meeting on October 17, 2018 and on the plan “Proposed Addition Plan 2 Algonquin Avenue” prepared by GLM Engineering Consultants, Inc. of 19 Exchange Street, Holliston, MA 01746 dated September 7, 2018 and received by the ZBA on September 24, 2018..**

*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, Lisa and Richard Zajac, live in the existing single family home 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 proposed AFDU will be occupied by the homeowner, Lisa Zajac’s, parents, as indicated in the email dated September 27, 2018 and as stated at the hearing.**

*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 the side of the existing single, with an entrance from the street frontage, as shown on the hand drawn plan received by the ZBA on September 24, 2018. It meets the massing standard for the neighborhood as presented and is compatible with the rest of the character of the neighborhood.**

*8. In order to encourage the development of housing units for disabled and handicapped individuals and persons with limited mobility or a chronic medical condition, the Board of Appeals may allow reasonable deviations from the Basic Requirements where necessary to install features in the accessory family dwelling unit to facilitate the care of, and access and mobility for, disabled and handicapped individuals and persons with limited mobility or a chronic medical condition. This may include, but is not limited to, authorizing a second bedroom in the accessory family dwelling unit.*

**The Board finds that the additional square footage is for 1000 square feet and was designed to American Disabilities Act handicap specifications for wheelchair accessibility and a bathroom of suitable size for a wheelchair patient and another person/aid to assist the handicapped person with bathing etc., and that the specifications do require added space.**

#### **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 Applicants, Lisa and Richard Zajac, 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 at 2 Algonquin Ave (Parcel ID: 08-034), subject to the **CONDITIONS** herein.

1. The 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 modification.
2. Any work or use that deviates from this Decision shall be a violation of the Medway Zoning Bylaw.
3. 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. If no request for extension is filed and approved, the special permit shall lapse two years from the date of Decision, unless action is taken, or as may be otherwise specified herein, and may be reestablished only after a new filing, hearing, and decision.
4. Prior to the Town's issuance of a certificate of occupancy for the accessory family dwelling unit, the property owner shall submit to the Building Commissioner a notarized statement of the property owner's relationship to the occupant of the dwelling unit not occupied by the property owner.
5. 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 do not affect the wheelchair adaptability and are of such a nature as are usually approved as “field changes” that do not require further review by the Board. The plans incorporate dimensions intended to make the AFDU wheelchair adaptable, including doorway widths, size of rooms, etc. These dimensions shall not be changed without Board approval.

## **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 September 24, 2018
2. “Proposed Addition Plan 2 Algonquin Avenue Medway, Massachusetts” dated September 7, 2018, prepared by GLM Engineering Consultants, Inc. of 19 Exchange, Street Holliston, MA 01746
3. Hand drawn floor plan not dated.
4. Framing Plans for 2 Algonquin Ave, dated July 31, 2018, prepared by Arlington Coal and Lumber – Sudbury Lumber – Wilmington Builders Supply – Chelmsford Lumber of 41 Park Avenue, Arlington, MA 02476
5. Plans showing front façade, rear façade, and side elevations

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

1. Email from Matt Smith dated September 27, 2018
2. Email from Building Commissioner dated September 25, 2018
3. Email from Fire Chief dated October 1, 2018
4. Photos of the property and neighboring properties submitted at the meeting on October 17, 2018.



The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision 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 G.L. c. 40A §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 twenty days (20) after the filing of this notice in the Office of the Medway Town Clerk.

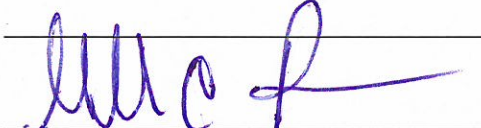
In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title, 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 that any duly filed appeal has been dismissed or denied. 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.

The next page provides the signatures of the Board.

[Intentionally Blank]

## VI. VOTE OF THE BOARD

By a vote of 4 to 0 on a motion made by Gibb Phenegar and seconded by Christina Oster, the Zoning Board of Appeals hereby **GRANTS** the Applicants, Lisa and Richard Zajac, a **SPECIAL PERMIT** under Section 8.2 Accessory Family Dwelling Unit for the construction of an accessory family dwelling unit at 2 Algonquin Ave. (Parcel ID: 08-034), subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Rori Stumpf	Absent	_____
Brian White	Yes	_____
Carol Gould	Yes	_____
Christina Oster	Yes	
Gibb Phenegar	Yes	_____

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision 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 G.L. c. 40A §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 MGL c. 40A, Section 11, no variance or 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 that any duly filed appeal has been dismissed or denied. 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.