



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

Eric Arbeene, Chair
Brian White, Vice Chair
Carol Gould, Clerk
Bridgette Kelly, Member
Rori Stumpf, Member

**DECISION
SPECIAL PERMIT
3 CHEROKEE LANE**

Date Application Filed: September 25, 2017

Applicant(s): Todd Allen
HIS Corporation, Inc.
3 Cherokee LLC ("the Applicants")
21 Broad Street
Medway, MA 02053

Location of Property: The Project is located on a parcel of land in Medway located at 3 Cherokee Lane (Assessor Parcel ID: 69-058).

Approval Requested: Special Permit under Section 5.5 Nonconforming Uses and Structures of the Medway Zoning Bylaw to replace a single story home with a two story home on a pre-existing nonconforming lot due to insufficient area, substantially in accordance with the plans provided.

Members Participating: Eric Arbeene (Chair), Brian White (Vice Chair), Bridgette Kelly, and Rori Stumpf

Members Voting: Eric Arbeene (Chair), Brian White (Vice Chair), Bridgette Kelly, and Rori Stumpf

Hearing Opened: October 18, 2017

Hearing Closed: October 18, 2017

Date of Decision: October 18, 2017

Decision: Granted



*20 Day Appeal
November 14, 2017*

I. PROCEDURAL HISTORY

1. On September 25, 2017, the Applicants filed a Special Permit application, pursuant to G.L. c. 40A, as amended, and the Medway Zoning Bylaw, in order to replace the existing single story home with a two story home on a pre-existing nonconforming lot.
2. Notice of the public hearing was published in the Milford Daily News on October 4, 2017 and October 11, 2017, 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 October 18, 2017. The Board closed the public hearing the same evening.
4. The Property is located in the Village Residential (VR) District. The front setback requirement is 20 feet and the side and rear setback requirements are 10 feet.
5. The Board notified Town departments, boards and committees of this application. The Board received no comments.
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

At the October 18, 2017 meeting, the hearing was opened by the Board. The Applicants provided an overview of the proposed two story home. They explained that the existing home has no foundation and is a condemned home. The Applicants intend to replace the home and build a two story home. The proposed home has nearly the same footprint and meets the setbacks, but because of the nonconforming nature of the lot and the request to increase the height of the home, the Applicants needed to apply for the Special Permit under Section 5.5 Nonconforming Uses and Structures of the Medway Zoning Bylaw.

Carol Fasulo, 12 Charles View Lane, and Bill Micucci, 7 Charles View Lane, attended the hearing, also speaking for the Charles View Condo Association, and spoke in favor of the application, however, they did have some concerns about construction and maintenance of the emergency access road between Cherokee Lane and Charles View Lane. They explained that they did not want to see construction vehicles driving through the emergency access and also would like it on the record for a potential buyer that they are aware that there is an emergency access road there.

Barbara Ryan, 5 Charles River Road, explained that she was the neighbor of 3 Cherokee Lane spoke in favor of the rehabilitation of the home and lot.

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

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.*
- a. The Board finds that the proposed replacement of the existing single story home with a two story home is consistent with all of the required criteria under Section 3.4 of the Medway Zoning Bylaw.

B. Section 5.5 Nonconforming Uses and Structures

1. The proposed replacement of the single family home with a two story home would result in an increase to the nonconforming nature of the existing home and property.
2. The existing home is a condemned home. The proposed changes would not be more detrimental to the neighborhood than the existing nonconforming use, rather the changes would serve as a benefit to the neighborhood and the public good.
3. The proposed two story home complies with all setback requirements of the VR zoning district.

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 Applicants, Todd Allen, HIS Corporation, Inc., and 3 Cherokee LLC, a Special Permit for 3 Cherokee Lane, under Section 5.5 of the Zoning Bylaw, to replace a single story home with a two story home on a pre-existing nonconforming lot due to insufficient area, substantially in accordance with the plans provided.

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 modification.

Any work or use that deviates from this Decision shall be a violation of the *Medway Zoning Bylaw*.

2. Upon receipt of a written request by the applicant filed at least thirty (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 substantial action is taken, or as may be otherwise specified herein, and may be reestablished only after a new filing, hearing, and decision.

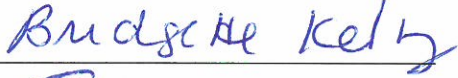
V. INDEX OF DOCUMENTS

A. The Special Permit application for the proposed two-story home included the following plans and information that were provided to the Board at the time the application was filed:

1. 3 Cherokee Lane Plan of Land with existing and proposed conditions, prepared by Colonial Engineering Inc. of 11 Awl Street, Medway, MA, dated August 28, 2017
2. Twelve (12) pages of Plans and Elevations for proposed home at 3 Cherokee Lane, prepared by Chapman Design Service of Uxbridge, MA

VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Brian White and seconded by Rori Stumpf, the Zoning Board of Appeals hereby **GRANTS** the Applicants, Todd Allen & HIS Corporation LLC, a Special Permit for 3 Cherokee Lane, under Section 5.5 of the Zoning Bylaw, to replace a single story home with a two story home on a pre-existing nonconforming lot due to insufficient area, substantially in accordance with the plans provided.

Member:	Vote:	Signature:
Eric Arbeene	Yes	
Brian White	Yes	
Carol Gould	-	
Bridgette Kelly	Yes	
Rori Stumpf	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 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 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.