



TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

Rori Stumpf, Chair
Brian White, Vice Chair
Gibb Phenegar, Clerk
Christina Oster, Member
Tom Emero, Member
Carol Gould, Associate Member
Brian Cowan, Associate Member

DECISION
SPECIAL PERMIT
4 QUAIL DRIVE

Applicant(s): Richard and Joscelyn Catalano ("the Applicants")
4 Quail Drive
Medway, MA 02053

Location of Property: 4 Quail Drive (Assessors' Parcel ID: 37-053)

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), Brian Cowan (Associate Member)

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

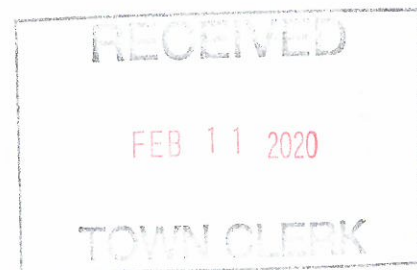
Date Application Filed: January 10, 2020

Hearing Opened: February 5, 2020

Hearing Closed: February 5, 2020

Date of Decision: February 5, 2020

Decision: GRANTED



*20 day appeal period
March 2, 2020*



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I. PROCEDURAL HISTORY

1. On January 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 January 22, 2020 and January 29, 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 February 5, 2020, the hearing was closed the same night.
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

Rick Catalano, the applicant was present. He introduced his carpenter, Mike Chaisson of Carpentry Solutions, along with his family. He began with a presentation of the building of the house in Medway and how their family has grown in the town. He then gave an overview of the location of their home and how other homes in the neighborhood have a similar look to what he is proposing to do. The project consists of an approximate 24 ft. x 24 ft. addition, while also using some of the existing home (formal living room upstairs and the basement of the existing home) as part of the accessory family dwelling unit, making the unit approximately 1,287 sq. ft.

Ms. Oster asked for clarification on how much square footage the proposed AFDU exceeds the allowed 800 sq. ft., and Mr. Catalano explained it is around 400 sq. ft. more. Ms. Oster also asked how close the addition will be to the property line, it will be approximately 22 feet from the line, well outside the 15-foot setback requirement.

Mr. Phenegar clarified the scope of the addition and the existing home, that the addition will be only about 480 square feet, and the rest of the AFDU space will be within the existing dwelling. Ms. Oster inquired about the second curb cut, Mr. Catalano stated he has spoken with DPW regarding the curb cut already. Ms. Oster inquired about any conservation issues. Mr. Catalano stated that the Conservation Agent conducted a site visit and did not find any issues.

Rachel Peterson of 7 Quail Drive stated that her concerns are around water issues. She stated that many parcels in the neighborhood seem to have this issue with water, she is particularly concerned because this water issue is on the same side as the proposed addition. Mr. Catalano

explained that they did have some drainage issues that they dealt with back around 1995. He also explained he has discussed with his contractor drainage options in regards to the new proposed driveway and addition.

Mike Chaisson, the applicant's carpenter, explained that they did not feel as though an infiltration system was necessary, but when they do the grading for the new driveway it will help to improve the water issue.

Mr. Stumpf explained why stormwater management is very important within the town. Ms. Saint Andre stated that there is a boiler plate condition used on most decisions to make it necessary to manage stormwater on site in various different ways as well as making sure that no runoff goes to the street or abutting properties. Mr. Stumpf read the boilerplate condition number 5 and asked if the applicant had any issue with the condition, the applicant did not.

Ms. Peterson expressed concerns around the second driveway and the location. She stated that it is located near the intersection where there is also a bus stop. She inquired if the driveway could be a single driveway or if the addition could be put in the back of the home and not on the side. Mr. Catalano explained that they had a few different options, but they decided to do the second driveway for privacy reasons and to maintain the look of the neighborhood. He explained that the bus stop is closer to the existing driveway than the new proposed driveway.

Ms. Oster inquired about any abutter comments, it was explained there were two letters of support from abutters.

Lauren Aleesi of 6 Quail Drive expressed concerns about trees that would need to be removed for the proposed addition. Mr. Catalano explained that they would only need to take down two trees for protection of the addition to any falling limbs. Mr. Chaisson explained they will be leaving 8-10 feet of trees. Mr. Stumpf explained a potential condition to preserve the trees, and asked if the applicant would agree to a condition that only two trees would be removed. Mr. Chaisson was reluctant to agree to that condition. There was a discussion regarding the side setback in relation to the proposed addition. Mr. Emero stated that no other boards or departments have made any recommendations regarding removal of trees on the property, and he does not feel as though the Board should impose any conditions or take the role away from other boards or departments. Mr. Stumpf stated that the Board can impose conditions if they feel as though it is necessary. Ms. Oster agrees with Mr. Stumpf to make sure the trees remain. Mr. Phenegar stated that, according to the proposed plan, there is about 10 feet from the property line that looks as though it will not be touched for the construction. Mr. Catalano explained there is also a buffer on the abutting property as well, therefore making the buffer close to 25 feet. Mr. Phenegar felt this could be a compromise and he will prepare wording of a proposed condition for the Board's consideration.

Mr. Stumpf reminded the applicant of the requirements of an accessory family dwelling unit certification with the town, Mr. Catalano agreed he is aware of the process with the building department.

The Board then discussed the Accessory Family Dwelling Unit criteria and collectively agreed

that the applicant has met all criteria.

The Board then discussed the Special Permit criteria and collectively agreed that the applicant has met all special permit criteria.

Ms. Saint Andre then read through and explained the potential conditions of approval listed below.

The Board collectively decided that all required criteria had been met and decided to grant the Accessory Family Dwelling Unit Special Permit requested with conditions.

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 (principle 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 as well as utilizing part of the existing home.

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 two bedrooms, which the Board voted to approve pursuant to Section 8.2.C.8.

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

This AFDU will be approximately 1,287 sq. feet of gross floor area, which the Board voted to approve pursuant to Section 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 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 applicants’ daughter and son in law intend to buy 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 AFDU will be occupied by the applicants Rick and Joscelyn Catalano.

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 approved the AFDU to include two bedrooms, and to allow the AFDU to be more than 800 sq. feet, in accordance with the plans submitted.

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 Applicants, Richard and Joscelyn Catalano, 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. Transfer of Ownership. If the new owner(s) desires to continue to exercise the special permit, they must, within 30 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 the parties specified in Section 8.2.C.6.b. of the Zoning Bylaw.

8. No trees or vegetation shall be disturbed or removed within 10 feet of the property line on the south side of the property bordering 6 Quail Drive.

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. “Proposed Addition Plan of Land in Medway, MA.” dated December 19, 2019, Owner: Richard and Joscelyn Catalano, 4 Quail Drive, Medway, MA. 02053, Prepared by Colonial Engineering, Inc., 11 Awl Street, Medway, MA
2. “Catalano Residence Addition” (herein “Building Plans”) 4 Quail Drive, Medway, MA, dated January 7, 2020, prepared by Carpentry Solutions, Milford, MA
3. Aerial photo of 4 Quail Drive, Medway, MA location
4. Photos of surrounding homes of 4 Quail Drive, Medway, MA
5. Letter of support from Gail and Steve Thompson, 13 Pheasant Run Road, Medway, MA dated January 24, 2020
6. Letter of support from Peter and Melissa Soule, 12 Pheasant Run Road, Medway, MA dated February 1, 2020

B. 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 January 13, 2020.
2. Email from Joanne Russo, Medway Treasurer on January 13, 2020.
3. Email from Bridget Graziano, Medway Conservation Agent on January 15, 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 Applicants, Richard and Joscelyn Catalano, 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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