

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
zoning@townofmedway.org

TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
SPECIAL PERMIT
62 ADAMS STREET

Applicant(s): Theresa Lawrence
62 Adams Street
Medway, MA 02053

Location of Property: 62 Adams Street (Assessors' Parcel ID: 28-015)

Approval Requested: Special Permit under Section 8.2 of the Zoning Bylaw for an Accessory Family Dwelling Unit ("AFDU") within the existing barn attached to the existing dwelling.

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

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

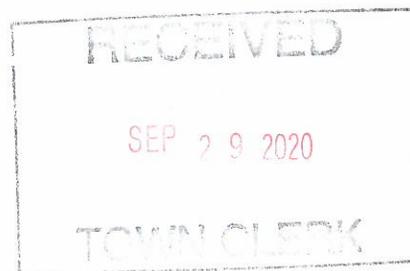
Date Application Filed: September 14, 2020

Hearing Opened: October 7, 2020

Hearing Closed: October 21, 2020

Date of Decision: October 21, 2020

Decision: GRANTED



*20 day appeal
November 18, 2020*

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I. PROCEDURAL HISTORY

1. On September 14, 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 August 19, 2020 and August 26, 2020 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 October 7, 2020, the hearing was continued to October 21, 2020 and closed that same evening.
4. The Property is located in the Agricultural Residential I District. The minimum lot size is 44,000 square feet, frontage requirement is 180 feet, the front setback requirement is 35 feet and side and rear setback requirement is 15 feet.
5. The Board notified Town departments, boards and committees of this application.
6. Tom Emero and Gibb Phenegar were not present at the October 7, 2020 session of the public hearing, but Mr. Phenegar filed a Certification pursuant to G.L. c. 39, §23D for the October 7, 2020 meeting with the Town Clerk on October 16, 2020, and Mr. Emero filed a Certification pursuant to G.L. c. 39, §23D for the October 7, 2020 meeting with the Town Clerk on October 21, 2020, and both were present at the October 21, 2020 public hearing session.
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

All persons participated remotely for this public hearing. Mr. Stumpf opened the public hearing on October 7th and stated that there were not enough Board members present to make a decision, and there may be members of the public not having an opportunity to participate due to the storm and many power outages in the area. As a result, this hearing will need to continue at the Board's next meeting.

Theresa Lawrence, the applicant was present and stated she submitted a photo of the barn as it currently exists today, and explained the layout of the proposed AFDU. The proposed AFDU will be accessed through a connecting mud room from the main house to the barn. She stated the only exterior change is that the AFDU needs a second means of egress, and that is why they are adding a deck on the back of the barn. She stated the deck will not be visible from the street. Mr. Stumpf inquired about the size of the AFDU, which would be around 967 square feet. Ms. Lawrence stated they are not changing the footprint of the existing barn. It was discussed that an additional parking space will be provided for the AFDU.

An email from Francis Panechelli of 116 Summer Street opposed to a second residence, but agreeable to having a family member stay there was read into the record. Mr. Stumpf then went on to discuss that there is a recertification process every two years for an AFDU, as well as requirements that a family member needs to reside there. There was then a discussion about the Conservation Commission

requirements and process.

Mr. Stumpf re-opened the hearing on October 21, 2020, and invited any questions or comments from the Board. Mr. Phenegar stated he has no issues with this proposal as it is an existing structure and it is within the same footprint. Ms. Oster agreed with Mr. Phenegar; she then asked about Conservation issues in relation to the deck. Mr. Stumpf stated those issues will be addressed when the building permit is applied for. He stated he agreed with the other Board members that because the AFDU is proposed within an existing structure, although it will be a little over 800 sq. feet he had no issue with that either. The Board then decided to go through the criteria, and it was decided that the applicant has met all AFDU and special permit criteria.

III. FINDINGS

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A 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 each of the criteria for an AFDU:

A. Section 8.2 Accessory Family Dwelling Unit Criteria

1. An accessory family dwelling unit shall be located within: ...
 - b. an addition to a detached single-family dwelling (principal dwelling unit).

The AFDU will be in the existing attached barn on the second floor.

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

This will be the only AFDU associated with the 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: ...
 - b. authorized by the Board of Appeals pursuant to 8.2.C.8 herein.

The proposed AFDU will be approximately 967 square feet of gross floor area.

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 will be at least one designated parking spot available 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.
 - 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 applicant will reside in the AFDU; she is the mother of one of the other home owners.

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 will match the existing 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 necessary 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.

There will only be one bedroom in the AFDU. The AFDU will exceed 800 square feet, but the Board finds that this is appropriate because it will be within an existing barn attached to the house.

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

The Board voted to allow the AFDU to be more than 800 square feet in accordance with the plan submitted.

The Board then reviewed each of 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.

The property is zoned to allow for this use. The AFDU will be located on the second floor of the existing barn, which is attached to the house.

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 is located on the second floor of the existing barn, which is attached to the house.

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 in an existing structure that already blends into the neighborhood.

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

The zoning by-law 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 is located on the second floor of the existing barn, which is attached to the house.

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, Theresa Lawrence, 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 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.

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. An engineer 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.

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. "Plan of Land in Medway, MA", showing Lot 1 and Lot 2, Adams Street, dated March, 2020 prepared by O'Driscoll Land Surveying, Inc., 46 Cottage Street, Medway, MA 02053

2. “Lawrence Barn In-Law Suite House Design” dated September 3, 2020 prepared by Wicked Builders, LLC (consisting of 8 sheets)

B. Additional information submitted for the public hearing:

1. “Plan of Land in Medway, MA”, showing Lot 1, Adams Street, dated September 17, 2020 prepared by O’Driscoll Land Surveying, Inc., 46 Cottage Street, Medway, MA 02053

2. Email from Teri Lawrence, then applicant with current photo of barn on October 1, 2020

3. Email from Francis Panechelli, 116 Summer Street on October 7, 2020

B. During the course of the review, the following materials were submitted to the Board by Town departments and boards:

1. Email from Barry Smith, Medway Water Superintendent, on September 21, 2020

2. Email from Bridget Graziano, Conservation Agent on September 21, 2020

3. Email from Chief Lynch, Medway Fire Department on September 21, 2020

4. Email from Joanne Russo, Medway Treasurer on September 22, 2020

5. Email from Bridget Graziano, Conservation Agent on October 14, 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, Theresa Lawrence, a **SPECIAL PERMIT** under Section 8.2 of the Zoning Bylaw for an Accessory Family Dwelling Unit, to be constructed in accordance with the Plan and application submitted to the Board, and subject to the conditions herein.

Member:	Vote:	Signature:
Rori Stumpf	Aye	_____
Brian White	Aye	_____
Gibb Phenegar	Aye	_____
Tom Emero	Aye	_____
Christina Oster	Aye	_____

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	Aye	_____
Brian White	Aye	_____
Gibb Phenegar	Aye	_____
Tom Emero	Aye	_____
Christina Oster	Aye	

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