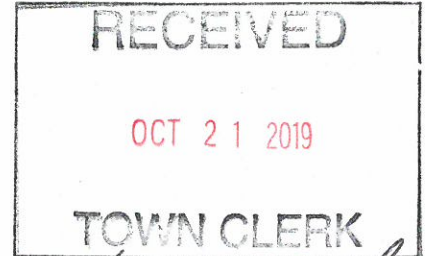




Town of Medway
ZONING BOARD OF APPEALS
155 Village Street, Medway, MA 02053

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
79 LOVERING STREET
(AKA 81 LOVERING STREET LOT 2A)**



Date Application Filed: August 26, 2019

Applicant(s): Medway Meadows, LLC c/o Michael Larkin ("the Applicant")
P.O. Box 129
Medfield, MA 02052

Location of Property: 79 Lovering Street (AKA 81 Lovering Street Lot 2A) (Assessor Parcel ID: 21-057-0002)

Approval Requested: Special Permit under Section 3.4, and Table 1 of the Zoning Bylaw to construct a two-family house that has the exterior appearance of a single-family dwelling on the lot.

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

Members Voting: Brian White (Vice Chair), Gibb Phenegar (Clerk), Tom Emero (Member), Brian Cowan (Associate Member), Carol Gould (Associate Member)

Hearing Opened: September 18, 2019

Hearing Closed: October 16, 2019

Date of Decision: October 16, 2019

Decision: GRANTED



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Hearing Closed: October 16, 2019

Date of Decision: October 16, 2019

Decision: GRANTED

I. PROCEDURAL HISTORY

1. On August 26, 2019, the Applicant filed a special permit application for the issuance of a special permit under Section 3.4, and Table 1 of the Zoning Bylaw to construct a two-family house that has the exterior appearance of a single-family dwelling on the lot.
2. Notice of the public hearing was published in the Milford Daily News on September 4, 2019 and September 11, 2019, 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 September 18, 2019. The public hearing was continued to October 16, 2019 and closed that night. At the public hearing on October 16, 2019, the Vice-Chair, presiding, designated Associate members Brian Cowan and Carol Gould to sit on the application due to the absence of two regular members.
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 for a duplex/two family is 30,000 sq. ft.
5. The Applicant was represented by Paul DeSimone of Colonial Engineering, 11 Awl Street, Medway, MA 02053.
6. The Board notified Town departments, boards and committees of this application. The Board received comments from the Department of Public Works, Fire Chief, Planning and Economic Development Board, Conservation Agent, and Town Treasurer/Collector.
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.
8. Brian Cowan viewed the September 18, 2019 footage and submitted a Mullin Rule Certificate on October 11, 2019 and it was filed with the Town Clerk on October 11, 2019.
9. Carol Gould viewed the September 18, 2019 footage and submitted a Mullin Rule Certificate on October 15, 2019 and it was filed with the Town Clerk on October 15, 2019.

II. TESTIMONY

At the September 18, 2019 meeting, the applicant was present with his representative Paul DeSimone of Colonial Engineering, Inc. Mr. Stumpf noted that this application and the application for 81 Lovering Street (AKA 81 Lovering St. Lot 3A) are related, so there may be some overlap in the discussion. The Applicant, Michael Larkin and Mr. DeSimone provided an overview of the application for 79 Lovering Street. Michael Larkin stated that the proposed

plans meet all the Zoning Bylaw requirements regarding lot size as well as front, side and rear setbacks. He provided a plan with the landscaping that is proposed for the property as well as aerial photos of the neighborhood. He stated there is other multifamily housing within 1,000 feet of the property, for example, Lovering Heights. He discussed that there will be only one driveway to better have the appearance of a single family home from the street.

Mr. Phenegar inquired about the size of the structures and livable space. There was a discussion but ultimately it was agreed the livable space in each structure is around 4,150 square feet. Ms. Oster stated that the size of these buildings does not fit in with the size of the homes in the neighborhood. She also stated that the appearance of the front of the proposed home does not have the appearance of a single family home.

Mr. Stumpf discussed the surrounding streets and neighborhoods. Mr. DeSimone talked about the history of the area and discussed how the proposed home will look from the street with added screening so the structure will not be that noticeable. Mr. Stumpf stated that this building and the one proposed for 81 Lovering are out of scale for the neighborhood but seeing that this building would be set back 200 feet from the street could be a positive factor.

Ms. Ohannesian informed the Board that the Conservation Agent gave a verbal enforcement order earlier in the day on September 18, 2019 to the Applicant for encroachment on the 100-foot buffer zone on this lot. To mitigate, there needs to be erosion controls installed and repairs to any damage done within the buffer zone. There was a discussion regarding Conservation matters and that the Applicant has filed for a Notice of Intent and a land disturbance permit for this property.

Brad Nisbet of 9 Ash Lane, inquired about the empty space on the lot where the frontage is located (to the right of 83 Lovering Street, the existing home) and if it is buildable. Mr. DeSimone explained what they had originally decided to do with the land was a potential subdivision and how they ended up with this plan which they felt made the most sense.

Gary DeVita of 78 Lovering Street stated that a two-family dwelling would not be a good idea for the location due to the existing structures being single family homes in the neighborhood, as well as the concerns he has around the current conservation issues such as the stormwater and runoff to the street.

Mr. Stumpf stated that he would like to continue the hearing due to the current issues with conservation, the other members of the Board agreed.

Michael Larkin inquired about feedback on what can potentially be done to change the appearance of the proposed home and the access to the lot to make it have more of a single family home appearance. The intent is to take that feedback and provide redesigned updated plans of the proposed home if needed.

Mr. Stumpf stated that the size of the proposed home does not fit in with the neighborhood, along with the fact that with the other application for 81 Lovering Street, there are two proposed two-family dwellings that would if granted be right next to each other.

Patrick Larkin stated that if they proposed a single family home on 81 Lovering Street and a different driveway configuration as a whole, would the Board be amenable to that idea. Mr. Emero provided a comment about the proposed two-family entry way. Currently there are two separate doors that are close to together on the provided design plan. He referred to the photo provided in the application of a two door entry; he stated that it does not look like that photo on the proposed floor plan and how would they make this entry way work. Mr. Michael Larkin stated they have an alternative idea for the entry and that will be forthcoming in updated plans.

The public hearing was continued to October 16, 2016 where Michael and Patrick Larkin were present and briefly discussed the updates they submitted to the Board regarding the proposed two-family structure. Michael Larkin explained how the appearance was modified to make the exterior look like a single family home and how the added “a-frame” breaks up the roof line. Mr. White asked about the Conservation issues brought forth at the last meeting. Michael Larkin responded to the email that was submitted from Bridget Graziano, Conservation Agent. He stated they anticipate submitting the land disturbance permit application by Friday, October 18, 2019.

Ms. Ohannesian gave a quick overview of the updated drawings submitted. Ms. Gould asked for clarification on the total living space for each unit and Patrick Larkin clarified each dwelling unit would be around 2,000 sq. feet. Mr. White stated he appreciates the efforts made to improve the look.

Gary DeVita of 78 Lovering Street stated he does not want the Board to forget that the whole street is zoned for single family homes and there is no hardship for the builder to build a single family home. He is concerned about the proposed construction creating three new driveways that would cause for safety concerns and congestion due to an increase in cars to the street.

David Langille of 16 Priscilla Road, who also owns 17 Priscilla Road which directly abuts the wetlands of 79 Lovering Street, is concerned about how close the construction will be to the wetlands. His second concern is that Lovering Street is a narrow road and this would create safety concerns due to increased traffic. He also asked whether the lot is a legitimate lot. It was explained the lot is a separate lot and can be built on. He asked if the two-family would be individually owned condominiums, or common owner and rented. Patrick Larkin answered that they would be two individually owned condominiums.

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.*

The Board discussed each criterion; they found that criteria 1-3, 5, 8 and 9 were met. There was a discussion of criteria 4 as to whether this proposed two-family dwelling would cause undue traffic congestion to the area. Mr. Cowan expressed concern as to the number of vehicles coming in and out of the driveway for two dwelling units in close proximity to other driveways. Mr. Emero felt that the concerns as to traffic are only anecdotal. Mr. White noted that a single family home on the lot could also generate similar traffic. The members also discussed criteria 6 and 7 and if the two-family would adversely affect the surrounding neighborhood, and whether it is in harmony or not with the general purpose and intent of the Zoning Bylaw. Mr. Phenegar expressed concerns regarding the large size of the proposed two-family, and that it was not in keeping with the intent of the bylaw because this area is comprised of single-family houses and farm land. Other members stated that the house will be set back from the road, and has the appearance of a single family house and therefore is acceptable. It was also noted that a single family home of the same size could be built.

The Board found that the Applicant has provided sufficient evidence through documentation in the special permit general application form submitted with this application, other documents submitted during the public hearing process, and as explained during the public hearing, to satisfy all special permit criteria with a vote of 4-1.

B. Table 1.C Schedule of Uses – Residential Uses criteria

1. Two family house/duplex provided that the exterior of the dwelling has the appearance of a single-family dwelling.

The Board discussed whether the proposed structure met the criteria for two-family home per the Bylaw, and collectively decided that it does.

The Board found that the Applicant has met all of the required two-family criteria by a unanimous vote of 5-0.

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, Medway Meadows, LLC c/o Michael Larkin, a **SPECIAL PERMIT** for a **TWO FAMILY HOUSE/DUPLEX** under Section 3.4, and Table 1 of the Zoning Bylaw for the property located at 79 Lovering Street, (AKA 81 Lovering Street Lot 2A) (Parcel ID: 21-057-0002), subject to the following conditions:

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.
2. Any work or use that deviates from this Decision may be a violation of the Medway Zoning Bylaw.
3. 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.
4. The Applicant shall install roof drains on the new two-family dwelling to be infiltrated into the ground using a type of infiltration unit, such as but not limited to dry well, subsurface infiltrators, etc. Gutters and downspouts are not allowed to be placed in a manner to allow discharge of stormwater to the street.
5. Smoke detectors and carbon monoxide detectors must be installed in accordance with the Massachusetts Fire and Building Codes.
6. If the units are to be connected to town water and/or sewer, separate taps are required for each dwelling unit such that each dwelling unit has independent service with separate accounts, meters, and curb shut-offs.
7. No building permit shall be issued until the Applicant receives a land disturbance permit from the Medway Conservation Commission.
8. The two-family dwelling is to be constructed in accordance with the following plans: “Proposed Structure Plan of Land in Medway, MA” dated July 27, 2019 Owner: Medway Meadows, LLC, prepared by Colonial Engineering Inc. 11 Awl Street Medway, MA 02053; “Lovering Street Duplex Exterior Views” dated September 27, 2019 prepared by Damon McQuaid Architect 49 Brookveiw Terrace Lunenburg, MA 01462 submitted

October 8, 2019; “Landscape Plan Composite” dated September 12, 2019 for Medway Meadows, LLC prepared by Kattman Corporation Landscape Architects 24 Water Street Holliston, MA 01746.

V. INDEX OF DOCUMENTS

A. The special permit application for the proposed two family house/duplex included the following plans and information that were provided to the Board at the time the application was filed and throughout the public hearing:

1. “Proposed Structure Plan of Land in Medway, MA” dated July 27, 2019 Owner: Medway Meadows, LLC, prepared by Colonial Engineering Inc. 11 Awl Street Medway, MA 02053
2. Renderings, Elevations and Floor Plans prepared by Packert Design 266 Park Street North Attleboro, MA 02760
3. Revised Renderings, Elevations and Floor Plans prepared by Packert Design 266 Park Street North Attleboro, MA 02760 received August 29, 2019
4. Photo of a double front door received August 29, 2019
5. Recorded ANR “Plan of Land in Medway, MA” dated July 27, 2019 Owner: Medway Meadows, LLC, prepared by Colonial Engineering Inc. 11 Awl Street Medway, MA 02053. Plan Book 684 Page 91 recorded September 6, 2019.
6. “Plan of Land in Medway, MA” dated September 11, 2019 Owner: Lenore B. Wilson Revocable Trust prepared by Colonial Engineering, Inc. 11 Awl Street Medway, MA 02053
7. “Landscape Plan Composite” dated September 12, 2019 for Medway Meadows, LLC prepared by Kattman Corporation Landscape Architects 24 Water Street Holliston, MA 01746
8. Aerial photos of 81 Lovering Street neighborhood submitted September 18, 2019
9. “Lovering Street Duplex Exterior Views” dated September 27, 2019 prepared by Damon McQuaid Architect 49 Brookveiw Terrace Lunenburg, MA 01462 submitted October 8, 2019

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, Medway Fire Department on September 3, 2019.
2. Email from David D’Amico, Medway DPW Director on September 3, 2019.
3. Email from Joanne Russo, Town Treasurer/Collector September 3, 2019.
4. Letter from Andy Rodenhiser, Medway Planning and Economic Development Board on September 16, 2019.
5. Email from Joanne Russo, Town Treasurer/Collector September 16, 2019.

6. Email from Bridget Graziano, Medway Conservation Agent September 16, 2019.
7. Email from Bridget Graziano, Medway Conservation Agent October 16, 2019.

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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, Medway Meadows, LLC c/o Michael Larkin, a **SPECIAL PERMIT** for a **TWO FAMILY HOUSE/DUPLEX** under Section 3.4, and Table 1 of the Zoning Bylaw for the property located at 79 Lovering Street (AKA 81 Lovering Street Lot 2A) (Parcel ID: 21-057-0002), in accordance with the conditions stated herein.

Member:	Vote:	Signature:
Brian White	YES	_____
Gibb Phenegar	YES	_____
Tom Emero	YES	_____
Brian Cowan	YES	_____
Carol Gould	YES	_____


The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms set forth herein. 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 after the filing of this notice in the office of the Medway Town Clerk.

In accordance with G.L. c. 40A, §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 that an appeal has been filed. 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, and notification by the Applicant of the recording, shall be furnished to the Board.

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, Medway Meadows, LLC c/o Michael Larkin, a **SPECIAL PERMIT** for a **TWO FAMILY HOUSE/DUPLEX** under Section 3.4, and Table 1 of the Zoning Bylaw for the property located at 79 Lovering Street (AKA 81 Lovering Street Lot 2A) (Parcel ID: 21-057-0002), in accordance with the conditions stated herein.

Member:	Vote:	Signature:
Brian White	YES	_____
Gibb Phenegar	YES	_____
Tom Emero	YES	_____ 
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