

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  
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**TOWN OF MEDWAY**  
**COMMONWEALTH OF MASSACHUSETTS**  
**ZONING BOARD OF APPEALS**

**DECISION**  
**SPECIAL PERMIT**  
**7 BARBER STREET**

**Applicant(s):** William Brilmayer  
7 Barber Street  
Medway, MA 02053

**Location of Property:** 7 Barber Street (Assessors' Parcel ID: 60-222)

**Approval Requested:** Special Permit under Section 8.2 of the Zoning Bylaw for an Accessory Family Dwelling Unit ("AFDU") to the existing home on the property.

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

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

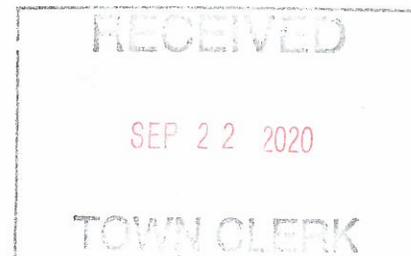
**Date Application Filed:** August 10, 2020

**Hearing Opened:** September 2, 2020

**Hearing Closed:** September 16, 2020

**Date of Decision:** September 16, 2020

**Decision:** GRANTED



*30 day appeal date  
Oct 13, 2020*

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## **I. PROCEDURAL HISTORY**

1. On August 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 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 September 2, 2020, the hearing was continued to September 16, 2020 and was closed that same evening.
4. The property is located in the Village Residential (VR) Zoning District. The front setback requirement is 20 feet and the side and rear setback requirements are 10 feet. The minimum lot area requirement is 22,500 sq. ft. and the minimum frontage requirement is 150 feet. Accessory Family Dwelling Units are allowed by special permit.
5. The Board notified Town departments, boards and committees of this application.
6. Christina Oster was not present at the September 2, 2020 session of the public hearing, but she filed a Certification pursuant to G.L. c. 39, §23D for the September 2, 2020 meeting with the Town Clerk on September 15, 2020, and was present at the September 16, 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. It was noted that this lot is nonconforming as to lot size and lot frontage. There is an existing garage that is also nonconforming as to side setback, however, the garage will be demolished. The proposed addition will comply with all setback requirements and will not increase the height of the pre-existing structure, and therefore complies with Section 5.5.C.3 of the Zoning Bylaw, and the addition is therefore deemed not to increase the nonconforming nature of the structure.

Mr. Brilmayer, the applicant, was present and discussed that he would like to add the AFDU to have his parents come and live with him. They are very independent and would like their own space. It will be attached to the home and it will have an adjoining door into the present home. He intends to have it look like the existing home and blend in with the neighborhood.

Mr. Stumpf inquired about the size of the addition and location in relation to the existing home. Mr. Brilmayer explained that all the work would be in the back of the home and that it will look like the existing home and be attractive to the neighborhood. He also explained that there would be no separate utilities. Mr. Stumpf stated that the proposal will not make the structure more non-conforming. The proposed AFDU will be 936 square feet on the first floor, and have a second bedroom due to his father's sleep cycles. Mr. Phenegar inquired about a second floor, the applicant stated that there would be a loft, however he further explained it would actually be a complete second floor, making the request for a

roughly 1900 square foot AFDU. Mr. Brilmayer explained the proposed second floor would be an open floor plan, but the same size as the proposed footprint of the first floor. Ms. Gould inquired if the second floor would be finished, the applicant agreed the intention is to finish it. Mr. Phenegar inquired about dimensioned floor plans. Mr. Brilmayer stated that he would get plans if the application is approved, but he did not want to incur the expense of having plans prepared if not necessary. Mr. Stumpf, Mr. White, and Mr. Phenegar all agreed that they need more information before moving forward to a decision, due to the size of the requested square footage, the lack of floor plans showing dimensions, and wanting to see the mass of the proposed addition and how it would look.

Ms. Saint Andre inquired about a designated parking space for the AFDU, Mr. Brilmayer stated he is going to use his existing driveway. Mr. Stumpf asked him to mark the proposed spot on the plans for the next meeting. There was a discussion about the driveway and the entrance to the AFDU from the outside. He stated there would only be about 2 cars maximum in the driveway.

Matthew Hayes, 23 North Street, stated that he supports the project and that it meets the intent of the bylaw. Phil Tepfer, 5 Barber Street, stated that he is in support of the project and the second floor does make sense to be more consistent with the current look of the existing home.

The hearing was continued to September 16, 2020, at which time Mr. Brilmayer was present and explained that the existing garage, which has 396 square feet and is only 2 feet from the side lot line, will be razed. In addition, 308 square feet of the existing house will be incorporated into the AFDU. He explained the addition will be in compliance with the 10 foot side setback requirement. He presented a rendering of where the proposed stairs will be up to the loft. The reconfiguration will make the property more conforming. Mr. Stumpf stated he has no issues with the additional square footage requested and the location of the proposed AFDU.

Mr. Phenegar stated that it is very difficult to see what will be built without engineered plans. Mr. Brilmayer stated that the proposed open loft would be about 400 square feet of usable area with a steep roof line. Ms. Gould stated that the size of the structure is concerning. Mr. Brilmayer stated that he would like adequate space for his parents, and that there are other properties nearby with buildings that are significantly larger. Mr. Emero inquired about the lot coverage and if he did not remove the garage, would the lot coverage be exceeded. Mr. Brilmayer explained that he would not be able to do this addition if the garage remained, therefore he does not intend to keep the garage.

Mr. Stumpf stated that this proposed AFDU will be more conforming to the lot and that although it is larger, the location will be hiding most of the mass as it is behind the current structure. Currently, this structure could be built without any additional variance needed because it complies with all setbacks. There is also a lot of abutter support which is an important factor.

Mr. Phenegar stated that he is in favor of AFDU's, but in the past other projects have been built where the Board was not given complete information on what was to be constructed. He has concerns about the size, and would not be in favor if the second floor was the same size as the first floor (almost 1,000 square feet), but that concern has been addressed by the applicant's statement that the loft would be only about 400 square feet of usable space.

Phil Tepfer 5 Barber Street stated he is a direct abutter and is in strong support of this project. He stated the razed garage will be more beneficial to his property as well as the second floor.

The boiler plate conditions were reviewed with the applicant. Ms. Saint Andre suggested a condition to make it clear that the garage be razed at the start of construction. There was discussion as to the

dimensions of the first floor foot print as well as how to describe the loft area. Mr. Phenegar suggested a condition similar to “before construction on the AFDU the garage will need to be taken down”. It was decided to condition approval on the revised plan submitted by Colonial Engineering.

### 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 an addition to the rear of the existing detached single-family dwelling.**

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, and therefore requires authorization under Section 8.2.C.8.**

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

**This AFDU footprint will be approximately 936 square feet, and will also include a second floor loft.**

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 in keeping with the residential character of the neighborhood in the existing driveway.**

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 applicant owns and resides in the existing home.**

- 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 Mr. Brilmayer’s parents.**

- 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 addition will match the existing home in form and materials, and access to the unit will be from the side yard and back yard.**

- 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.

**The AFDU will need a second bedroom to accommodate sleep cycles and a sleep apnea machine for the Applicant’s father.**

**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 a second bedroom and 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 addition will be on the back of the existing house meeting all setback requirements.**
- 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 an addition to an existing home that will blend into the neighborhood.**

6. The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.

**The AFDU is an addition that will blend 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 an addition that will blend into the neighborhood.**

**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 **GRANTED** the Applicant, William Brilmayer, 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 storm water system for the new addition which infiltrates all roof run-off into the ground. Storm water management systems include but are not limited to dry wells, sub-surface infiltrators, rain gardens, etc. All designed systems shall be signed and 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 be placed in a manner so as not to allow discharge of storm water 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. 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.

8. 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.

9. The existing garage shall be razed prior to construction beginning on the AFDU.

10. The first floor footprint shall be no greater than 26 feet x 36 feet, with a second floor loft to be built in conformance with the submitted Revised Plan, and the 3D digital renderings of the proposed addition and floor plans submitted to the Board on September 14, 2020.

## **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 June 4, 2020. Owner: William Brilmayer & Kirstie Baker, 7 Barber Street, Medway, MA 02053. Prepared by Colonial Engineering, Inc., 11 Awl Street, Medway, MA 02053
2. 3D digital renderings of proposed addition and floor plan

The following additional documents were provided by the Applicant during the course of the public hearing:

3. “Proposed Addition Plan of Land in Medway, MA” revised August 31, 2020. Owner: William Brilmayer & Kirstie Baker, 7 Barber Street, Medway, MA 02053. Prepared by Colonial Engineering, Inc., 11 Awl Street, Medway, MA 02053 (the “Revised Plan”)
4. Email from Applicant with photo of proposed second floor/loft area dated September 2, 2020
5. Additional 3D digital renderings of proposed addition and floor plans on September 14, 2020
6. Three drawings of renderings of the proposed addition and floor plans on September 16, 2020

**B.** The following documents were submitted by Town residents:

1. Abutter support letter from Jenn McKeown, 9 Barber Street, Medway, MA dated September 1, 2020

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

1. Email from Joanne Russo, Medway Treasurer on August 11, 2020
2. Email from Bridget Graziano, Conservation Agent on August 12, 2020
3. Email from Chief Lynch, Medway Fire Department on August 12, 2020
4. Email from Joanne Russo, Medway Treasurer on August 19, 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, William Brilmayer, a **SPECIAL PERMIT** under Section 8.2 of the Zoning Bylaw for an Accessory Family Dwelling Unit, to be constructed in accordance with the Revised Plan and application submitted to the Board, and subject to the conditions herein.

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

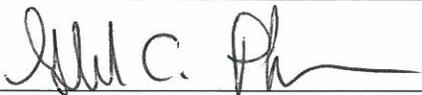
The Board and the Applicant have complied with all statutory requirements for the issuance of this special permit on the terms hereinafter set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided 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.

**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, William Brilmayer, a **SPECIAL PERMIT** under Section 8.2 of the Zoning Bylaw for an Accessory Family Dwelling Unit, to be constructed in accordance with the Revised Plan and application submitted to the Board, and subject to the conditions herein.

<b>Member:</b>	<b>Vote:</b>	<b>Signature:</b>
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.

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