

**Board Members**  
Brian White, Chair  
Gibb Phenegar, Vice Chair  
Christina Oster, Clerk  
Joe Barresi, Member  
Tom Emero, 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**

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**DECISION**  
**VARIANCE AND SPECIAL PERMIT**  
**7 SANFORD STREET**

*20 Day Appeal*  
*April 12, 2023*

**Applicant:** 7 Sanford St., LLC

**Location of Property:** 7 Sanford Street (Assessors' Parcel ID: 60-088).

**Approval Requested:** The application is for the issuance of a **variance, and special permit** Section 5.5 of the Zoning Bylaw, to convert the use of the existing barn and adjoining area into 4 additional dwelling units, on a lot that already has 2 dwelling units in the existing house.

**Members Participating:** Brian White (Chair), Gibb Phenegar (Vice Chair), Christina Oster (Clerk), Joe Barresi (Member); Tom Emero (Member)

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

**Date of Decision:** March 15, 2023

**Decision:** **GRANTED WITH CONDITIONS**

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## I. PROCEDURAL HISTORY

1. On February 15, 2023, the Applicant filed for the issuance of a **variance**, and a **special permit determination** under Section 5.5 of the Zoning Bylaw to convert the use of the existing barn and adjoining area into 4 additional dwelling units, on a lot that already has 2 dwelling units in the existing house, which would result in a total of six dwelling units on the property.
2. Notice of the public hearing was published in the Milford Daily News on March 1, 2023, and March 8, 2023, 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 March 15, 2023. The hearing was closed the same evening.
4. The Property is located in the Village Commercial (VC) District and the Multi-family Housing Overlay District (MHOD). In the VC district, the front setback requirement is 20 feet, and the side and rear setback requirements are 10 feet. The minimum lot area requirement is 10,000 square feet and the front setback requirement is 20 feet. Under the MHOD, the minimum lot size is 30,000 square feet, and the maximum number of dwelling units that could be allowed on this parcel based on the density requirements of the MHOD is 4.
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.
7. The owner has also filed an application for a MHOD special permit with the Planning and Economic Development Board (PEDB). The PEDB has opened its public hearing on that application; the PEDB public hearing is still open.

## II. TESTIMONY

Danielle Justo, Esq., was present to discuss the application. The owners of the property were present in the audience, and Brian Donahue, the architect for the project, was present via Zoom. Attorney Justo explained that the applicant, 7 Sanford St., LLC, intends to maintain the original home's two units, and convert the barn and adjoining area into 4 additional dwelling units, for a total of 6 dwelling units. The structure is currently a two-family dwelling on a 0.53-acre lot in the Village Commercial district, as well as the Multifamily Housing Overlay District. Attorney Justo stated they have also presented to the PEDB on February 28, 2023, for a special permit under the MHOD. They are also on the Historical Commission's agenda for March 22, 2023 and have already presented to the Design Review Committee.

Attorney Justo stated the applicant is asking for variance relief from the 30,000 sq. ft. minimum lot size requirement for multi-family housing under Section 5.6.4.C.5 of the MHOD bylaw. She

stated that a hardship results because the property is bounded by four streets, making it extremely difficult to expand the size of the lot. She also noted that extensive slope of the lot, and the placement of the existing buildings as a hardship. She noted that the proposed use will not be a substantial detriment, and is in keeping with the intent of the bylaw. The applicant is also seeking a determination under Section 5.5D for a change in a pre-existing nonconforming use from two-family use to multi-family use of up to six units. The MHOD bylaw states that for lots under one acre, the density for a multi-family building “shall not exceed its relative portion of an acre of Land Available for Development,” limiting the site, which has only 0.53-acres, to no more than 4 dwelling units. Attorney Justo stated the lot and existing structure both predate zoning (1951), but there are no town assessor records prior to 1982.

Mr. Donahue went through the existing conditions and the proposed plans for the project. Mr. Donahue showed the topographic map of the existing conditions and explained that the plan is to keep the existing footprint of the building and square off the adjoining area between the home and the barn. He stated that the existing building is 2.5 stories, with the highest point of the structure being 30 feet from the grade. Mr. Donahue showed the site plan for the proposed addition, as well as the proposed driveways with a total of 15 parking spaces on the lot, 5 spaces on the western side of the building and 8 spaces on the eastern side. Mr. Donahue showed the landscaping plan for the lot, which includes a proposed 4- to 5-foot-tall hedge along the eastern side of the lot, to prevent headlights in the driveway from shining into Mansion Street and the dwellings across the road. Mr. Donahue explained that they are proposing to raise the pitch of the roof to make the top floor livable, as it is currently an attic. Mr. Donahue also showed the architectural renderings, as well as the surveyed plot plan.

Attorney Justo stated the proposed changes would not be detrimental to the neighborhood as the footprint of the building will not be much larger, they will be providing off-street parking, and there will be no additional egresses from the parking areas to the streets; the driveways will remain where they currently are.

Mr. White stated the Board’s options for reviewing the application, stating the ZBA could grant a variance and send the project back to the PEDB, grant a variance and complete the site plan as a Board, or deny the application. The members agreed that the proposed development would be an improvement, but that there are a number of details that need to be addressed in detail by the PEDB as part of its MHOD special permit, and site plan review process, such as landscaping, parking areas, stormwater, etc.

### **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 the plans,

comments from Town officials and committees, and evidence and testimony presented at the public hearing. The Board considered each variance criterion separately.

#### **A. Variance Criteria**

1. Whether there are circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is location.

**The Board found that the lot and structure are unusual. The property is surrounded by streets on all sides, which is unique. In addition, the slope of the property and the placement of the existing house and large attached barn are unique.**

2. A literal enforcement of the provisions of the zoning by-law would as a result of said circumstances involve substantial hardship, financial or otherwise, to the applicant.

**The Board found that the hardship is that the lot is not buildable for a 6-unit multi-family dwelling due to dimensional regulations, though it is in the Multifamily Housing Overlay District, therefore, the Applicant would not be able to apply for a multi-family special permit with the Planning and Economic Development Board.**

3. Desirable relief may be granted without substantial detriment to the public good.

**The existing footprint is only being expanded by 270 sq. ft. and will not substantially alter the size of the structure. The developer will make improvements to the building and landscaping, and it will not be a substantial detriment, as conditioned herein.**

4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning bylaw.

**The lot is in the Multifamily Housing Overlay District, so the use will not nullify or substantially derogate from the intent or purpose of the zoning by-law, as conditioned herein.**

#### **C. Special Permit under Section 5.5 to change a nonconforming use.**

**The Board found that the applicant has established a legally pre-existing, nonconforming use of the property as a 2-family dwelling.**

Special Permit Decision Criteria for Section 5.5: that the change of the pre-existing, nonconforming use will not be substantially detrimental to the neighborhood.

**The Board found that the change of the nonconforming use from two-family to multi-family of up to a maximum of 6 dwelling units is not substantially detrimental to the neighborhood, as conditioned herein.**

It was agreed that the applicant met the requirements for the variance, and the change of a legally pre-existing nonconforming use under Section 5.5, only as subject to the Board's conditions, including the requirement that the applicant obtain the MHOD special permit, and any site plan approval that is needed, from the PEDB.

#### IV. CONDITIONS OF APPROVAL

1. Smoke, heat and carbon monoxide detectors must be installed in accordance with the Massachusetts Fire and Building Codes.

2. This variance and special permit is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the variance or 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. Pursuant to G.L. c. 40A Section 10: "If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not the exceed six months; and provided; further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one-year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section."

5. 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.

6. The applicant shall meet all requirements for improved storm water system which may be imposed by the Planning and Economic Development Board under the Multi-Family Housing special permit, per site plan regulations, or other approved stormwater system which infiltrates all roof run off from this building into the ground. 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.

7. All site work shall be in compliance with the final plans submitted to the Planning and Economic Development Board, including the Plans, 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.

8. There shall be no tracking of construction materials onto any public way. 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.

9. The owner 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.

10. The applicant shall comply with all Department of Public Works (DPW) regulations and requirements for any street opening permits, utility connections, or other work within DPW jurisdiction.

11. This special permit and variance from the Zoning Board of Appeals is subject to the owner obtaining site plan approval and a Multi-family Housing special permit from the Planning and Economic Development Board. All conditions of the PEDB special permit and site plan approval must be adhered to.

12. This variance and special permit is limited to a maximum of six dwelling units on the property.

## **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 showing existing conditions, by D. O’Brien Land Surveying, dated 3/17/2022, revised 1/19/2023.

2. Plan set titled “Apartment Renovations,” by Donahue Architects, Inc., consisting of the following documents:

- Site Plan dated 10.7.2022
- Photos of the existing structure dated 2/6/2023
- Architectural Site Plan dated 1/25/2023
- Existing Elevations dated 1/23/2023
- Floor plans dated 10/7/2022
- Proposed exterior elevations dated 2/6/2023
- Rendered Views dated 10/7/2022

**B.** During the course of the review, the following materials were submitted to the Board:

1. General Site Plan Review letter from Tetra Tech to the Planning and Economic Development Board, dated February 20, 2023.
2. Applicant response to Tetra Tech’s Plan Review letter, from Danielle Justo, Esq., dated March 14, 2023.
3. Additional plans:
  - Plans Showing Existing Conditions for 7 Sanford Street, by D. O’Brien Land Surveying, revised dated 2/10/2023.
  - Site plan, revised dated 2/23/2023 (herein the Plot Plan)
  - 7 Sanford Street Landscaping Plan by Hawk Design, Inc., dated 2/23/2023
  - Revised floor plan, and existing elevations, dated 2/23/2023 (herein along with the Architectural site plan and rendered views, the Architectural Plans)

**C.** Comments from Town officials:

1. Email from Joanne Russo, Treasurer/Collector, dated February 21, 2023.
2. Email from Craig Vinton, Deputy Fire Chief, dated March 7, 2023.
3. Email from Nolan Lynch, Superintendent of Highway, providing comments to the Planning and Economic Development Board, dated February 16, 2023.
4. Letter from the Design Review Committee, provided to the Planning and Economic Development Board, dated February 13, 2023.

**VI. VOTE OF THE BOARD**

By a vote of 5 to 0, the Zoning Board of Appeals hereby **GRANTS** the Applicant 7 Sanford St., LLC, a **VARIANCE** from Section 5.6.4.C.5 and a **SPECIAL PERMIT** under Section 5.5 of the Zoning Bylaw for a change of a pre-existing, nonconforming use, to convert the use of the existing barn and adjoining area into 4 dwelling units, on a lot that already has 2 dwelling units in the existing home, at 7 Sanford Street (Assessors' Parcel ID: 60-088), in accordance with the application, and the Plot Plan and Architectural Plans, and subject to the **CONDITIONS** herein.

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

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms 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 General Laws, chapter 40A, section 15.

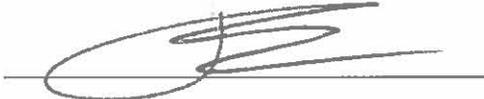
Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, chapter 40A, section 17, and shall be filed within 20 days after the filing of this notice in the office of the Medway Town Clerk.

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 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 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.

In accordance with Massachusetts General Laws, chapter 40A, section 11, no variance 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

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Christina Oster	Aye	_____
Joe Barresi	Aye	_____
Tom Emero	Aye	

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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.