

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
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
SPECIAL PERMIT
1 APPLGATE ROAD

Applicant(s): Sheila Wynter Downer ("the Applicant")
1 Applegate Road
Medway, MA 02053

Location of Property: 1 Applegate Road (Assessors' Parcel ID: 23-066)

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), Tom Emero (Member)

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

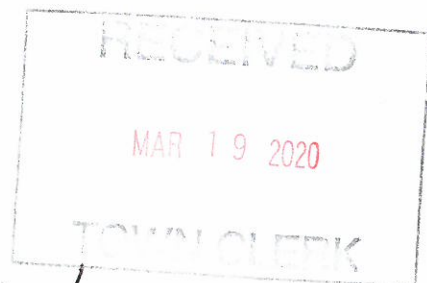
Date Application Filed: February 24, 2020

Hearing Opened: March 18, 2020

Hearing Closed: March 18, 2020

Date of Decision: March 18, 2020

Decision: **GRANTED**



20 day appeal
April 8, 2020

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I. PROCEDURAL HISTORY

1. On February 24, 2020, the applicant's representative Cary Orlandi of Millbrook Modular Homes 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 March 4, 2020 and March 11, 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 March 18, 2020, the hearing was closed that same evening.
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

The public hearing was held remotely via Zoom due to the emergency Order from the Governor. Cary Orlandi and Karen Orlandi of Millbrook Modular Homes, representatives for the property owner Sheila Downer, were present via Zoom and discussed the application which is for an in-law apartment to be added to the existing home for the applicant's mother. Ms. Orlandi explained that water, sewer, gas and electric will be connected to the existing home, no undue traffic will be caused by this proposed addition and that the design of the home will have no impact on the neighborhood. Mr. Orlandi explained the proposed addition will be approximately 741 sq. feet and explained he spoke with Bridget Graziano and she did not have any additional comments to what she has provided the Board. Mr. Phenegar explained that her one recommendation is to have the stormwater management comply and meet with new regulations (NOAA Atlas 14).

Mr. Stumpf had a concern around the front rendering of the home and if it will look out of place for the neighborhood. Mr. Emero stated that there are a lot of larger homes in the neighborhood therefore this home would not stand out too much.

Mr. Stumpf then reviewed the AFDU criteria. He asked the applicant regarding the requirement for a designated parking spot for the unit (criteria #5). Ms. Orlandi explained that the intent is to use a spot in the existing driveway for the unit. The Board collectively decided there is enough room in the driveway for an additional car for the AFDU. Mr. Stumpf then reviewed the criteria for special permits under Section 3.4 of the Zoning Bylaw.

The Board collectively decided that the applicant has met all AFDU and special permit criteria. Ms. Saint Andre then reviewed all of the Board's boilerplate conditions for the special permit. There were no objections to the proposed 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.

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 one bedroom.

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

This AFDU will be approximately 741 sq. feet.

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.

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 AFDU will be occupied by the applicants’ mother.

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 right 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 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, Sheila Wynter Downer, 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. 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 or 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.

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. “‘Site Plan’ Plan of Land for 1 Applegate Drive [sic]” dated February 21, 2020 prepared for Millbrook Homes 2255 Boston Providence Highway Walpole [sic], MA”, prepared by Landmark Site Design, 1267 Glebe Street Taunton, MA 02780.
2. “New Addition Plan” prepared for Millbrook Homes LLC – Walpole/Sheila Wynter Downer prepared by Apex Home of PA, LLC 7172 Route 522 Middleburg, PA 17842 dated February 7, 2020.
3. Photos of 1 Applegate Road, existing home and proposed “in-law”
4. “‘Site Plan’ Plan of Land for 1 Applegate Drive [sic]” dated 03/17/2020, prepared for Millbrook Homes 2255 Boston Providence Highway Walpole [sic], MA” prepared by Landmark Site Design, 1267 Glebe Street Taunton, MA 02780.

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 March 2, 2020.
2. Email from Joanne Russo, Medway Treasurer on March 3, 2020
3. Email from Bridget Graziano, Medway Conservation Agent on March 4, 2020

4. Email from Elizabeth Taglieri, Executive Director, Charles River Pollution Control District on March 9, 2020

I. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Brian White and seconded by Gibb Phenegar, the Zoning Board of Appeals hereby **GRANTS** the Applicants, Sheila Wynter Downer, 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	_____
Tom Emero	YES	_____

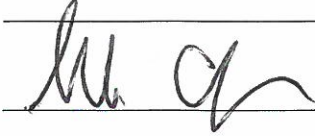
The Board and the Applicant have complied with all statutory requirements for the issuance of this special permit on the terms hereinafter set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided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