

Board Members
Brian White, Chair
Gibb Phenegar, Vice Chair
Christina Oster, Clerk
Tom Emero, Member
Rori Stumpf, 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

RECEIVED TOWN CLERK
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DECISION
SPECIAL PERMIT
114 MAIN STREET

20 Day Appeal
November 2, 2021

Applicant(s): Ocean State Job Lot of Medway, Inc dba Ocean State Job Lot #207
114 Main Street
Medway, MA 02053

Location of Property: 114 Main Street (Assessor Parcel ID: 40-057).

Approval Requested: The application is for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for outdoor display of merchandise.

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

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

Date of Decision: October 6, 2021

Decision: **GRANTED WITH CONDITIONS**

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I. PROCEDURAL HISTORY

1. On August 5, 2021, the Applicants filed for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for outdoor display of merchandise.
2. Notice of the public hearing was published in the Milford Daily News on September 8, 2021 and September 15, 2021, and notice sent by mail to all parties in interest and posted in Town Hall as required by G.L. c. 40A §11.
3. The public hearing was opened on September 22, 2021, without hearing any testimony, and continued to October 6, 2021. The hearing was closed on October 6, 2021.
4. The Property is located in the Central Business (CB) District. The front setback requirement is 10 feet, and the side and rear setback requirements are 25 feet. The minimum lot area requirement is 10,000 sq. ft.
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

Lisa Adelman, Corporate Counsel for Ocean State Job Lot, introduced herself and Jen Cole, the store Team Leader who manages Ocean State Job Lot at 114 Main Street; both participated in the public hearing via Zoom. Ms. Adelman gave an outline of the application, stating that Ocean State is requesting a special permit for outdoor displays, which will primarily hold flowers, plants, and seasonal items such as wreaths in the winter. Ms. Adelman noted that the plan that was sent to the Board earlier in the day more accurately reflects the dimensions of the displays. The location would be using metal racks for the displays, with a height just over 6 feet, width of 2 feet, and length just under 5 feet. The primary location would be along the entire length of the storefront, but leaving all fire exits clear. The width of the sidewalk between the building and the parking lot is 9 feet, and due to the display only coming 2 feet out from the building, there is enough room in front of the display as per the Zoning Bylaw. The items will be kept on the display overnight. Ms. Adelman stated that there will be no other vendors, other than the Blue Rhino propane tank display that is already existing.

Gibb Phenegar noted that the sidewalk has 9 feet of width, and the shelving looks to be 1-1.5 feet deep, which meets the bylaw requirement of having 6 feet clearance on the sidewalk.

There was discussion regarding the Fire Chief's email, which requires the roof overhanging the display area to be of noncombustible materials. Ms. Adelman stated she believes that it is not a combustible material, but she was not able to get confirmation on this. The Board discussed adding a condition to address the Fire Chief's comments.

Mr. White read through the special permit requirements. There was discussion regarding the

requirement that outdoor displays are limited to the hours that the store is open. Ms. Cole stated that the items outside can be taken inside at night if needed.

Mr. White stated and it was agreed by the members that the application and proposed use meets the requirements of the special permit and Zoning Bylaw requirements, based on the application, testimony, and the information in the documents provided.

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.

A. Section 3.4 Special Permit Decision Criteria

The Board found the application meets all the required Special Permit Decision Criteria for Section 3.4 on the following findings:

1. The proposed site is an appropriate location for the proposed use.

The site is used as a retail store in a shopping center and has ample room for the outdoor display.

2. Adequate and appropriate facilities will be provided for the operation of the proposed use.

The display will be placed against the wall of the store, leaving more than six feet of clearance for pedestrians and access.

3. The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.

The outdoor display area will not interfere with access to or ingress from the store or other establishments, and will leave more than six feet of sidewalk clearance.

4. The proposed use will not cause undue traffic congestion or conflicts in the immediate area.

The display is located on the sidewalk next to the building.

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 display will not cause any detrimental effects.

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

The outdoor display is an accessory use that is in keeping with the commercial character of the district.

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

The outdoor display supports the most appropriate use of land.

8. The proposed use is consistent with the goals of the Medway Master Plan.

The special permit promotes the goal of helping to retain businesses in town.

9. The proposed use will not be detrimental to the public good.

The modest outdoor display will not be detrimental to the public good.

The Board finds that the Applicant has demonstrated through evidence submitted, including the plot plan, the proposed pictures of the site, review of the square footage and usage of the proposed property, that it has met all the required Special Permit Decision Criteria under Section 3.4 of the Zoning Bylaw.

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 hereby GRANTS the Applicant, Ocean State Job Lot of Medway, Inc. a ***SPECIAL PERMIT*** under Section 3.4, Special Permit of the Zoning Bylaw, and Section 5.4, Schedule of Uses, for outside display of merchandise, for the construction of an outdoor display on property located at 114 Main Street (Parcel ID: 40-057), 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 and 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.

2. 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

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. All outdoor display shall be in compliance with the Plan submitted to the Board as listed in Section V of this Decision, provided, however, that the Building Commissioner may approve minor changes 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.

5. Only products offered for sale by the store may be displayed. The sidewalk space shall not be leased to or used by an outside vendor or include self-contained fixtures such as vending machines, or coin operated amusements.

6. Merchandise must be displayed such that a minimum of 6 feet of sidewalk clearance is maintained at all times for pedestrians and handicap accessibility. Items should be located immediately adjacent to the building and may not extend beyond the subject business' storefront space. Display items shall not obstruct the normal ingress and egress from the subject business or other nearby businesses.

7. Outdoor display racks and shelving shall be:

a. Constructed of sturdy materials such as wood, iron, steel, clay, canvas, aluminum, or plastic. Prohibited shelving materials are glass, porcelain, and other breakable materials, including any items that may pose a hazard.

b. Maintained and in good condition at all times. Broken, rusting, degraded, torn, tattered or similar items shall be removed promptly.

8. Displayed merchandise shall not pose any health or safety hazard.

9. Displays shall specify that the actual sale of outdoor merchandise shall take place inside the store.
10. No additional business signage beyond pricing and product information is authorized by this special permit.
11. The display is subject to the determination by the fire department that the overhang above the display area is of noncombustible material, or if it is combustible, subject to a fire protection plan approved by the fire department.

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. Application dated August 23, 2021
2. Plan entitled “Medway Place, 98, 108-114 Main Street (Route 109), Medway, MA 02053,” dated 4/22/2021, prepared by Howard Stein Hudson, 11 Beacon Street, Suite 1010, Boston, MA 02108, consisting of three sheets.

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

1. Plan showing Ocean State Job Lot building and sidewalk, undated, referred to as updated plot plan with measurements, received from applicant August 30, 2021.
2. Planning and Economic Development Board comment memo, dated September 22, 2021.
3. Photos of examples of outdoor displays at other Ocean State Job Lot locations, undated, received from applicant October 6, 2021
4. Email from Fire Chief Jeff Lynch dated October 5, 2021
5. Plan showing Ocean State Job Lot building and sidewalk, undated, referred to as updated plot plan, received from applicant October 6, 2021 (the Plan).
6. Medway Store Map dated August 20, 2020.

VI. VOTE OF THE BOARD

By a vote of 5 to 0 on a motion made by Gibb Phenegar and seconded by Christina Oster, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Ocean State Job Lot of Medway, Inc. a **SPECIAL PERMIT** under Section 3.4 Special Permit of the Zoning Bylaw for an outdoor display on property located at 114 Main Street (Parcel ID: 40-057), in accordance with the application and Plan provided and subject to the **CONDITIONS** herein.

| Member: | Vote: | Signature: |
|-----------------|-------|------------|
| Brian White | AYE | _____ |
| Gibb Phenegar | AYE | _____ |
| Christina Oster | AYE | _____ |
| Tom Emero | AYE | _____ |
| Carol Gould | 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.

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.

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| Member: | Vote: | Signature: |
|-----------------|-------|--|
| Brian White | AYE | |
| Gibb Phenegar | AYE |  |
| Christina Oster | AYE | |
| Tom Emero | AYE | |
| Carol Gould | AYE | |

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