

Board Members

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



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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

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DECISION
SPECIAL PERMIT
119 VILLAGE STREET

20 Day Appeal
March 14, 2023

Applicant(s):	Elaine Ohnemus/Borek Block Realty, LLC
Location of Property:	119 Village Street (Assessors' Parcel ID: 60-085).
Approval Requested:	The application is for the issuance of a variance /and or special permit under Section 5.4, Table 1: Schedule of Uses and Section 5.5 of the Zoning Bylaw to change the use of the existing garage and storage building to a 2-bedroom apartment, on a lot that already has 5 dwelling units.
Members Participating:	Brian White (Chair), Gibb Phenegar (Vice Chair), Christina Oster (Clerk), Tom Emero (Member)
Members Voting:	Brian White (Chair), Gibb Phenegar (Vice Chair), Christina Oster (Clerk), Tom Emero (Member)
Date of Decision:	February 15, 2023
Decision:	SPECIAL PERMIT GRANTED WITH CONDITIONS

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Date of Decision: February 15, 2023

Decision: **SPECIAL PERMIT GRANTED WITH CONDITIONS**

I. PROCEDURAL HISTORY

1. On January 20, 2023, the Applicant filed for the issuance of a **variance** under Section 5.4, Table 1: Schedule of Uses, and/or a **special permit determination** under Section 5.5 of the Zoning Bylaw to change the use of the existing garage and storage building to a 2-bedroom apartment, on a lot that already has 5 dwelling units.
2. Notice of the public hearing was published in the Milford Daily News on February 1, 2023, and February 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 February 15, 2023. The hearing was closed the same evening.
4. The Property is located in the Village Commercial (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.
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

Elaine Ohemus, owner of 119 Village Street, was present to discuss the application. She explained that they are applying to change the existing garage and storage building to a two-bedroom apartment, and that there would not be external alterations to the structure. Mr. White asked when the building was built, Ms. Ohemus explained it was built in 2005 on the same footprint where an existing building was demolished, and it was suggested they leave it as a storage space, as designating it as an apartment would increase the taxes on the property. Mr. Phenegar asked how large the total lot is, Ms. Ohemus stated it is 0.7 acres. There are three existing buildings on the site. Mr. Phenegar confirmed that the other two buildings on the property are also rental units. Ms. Ohemus stated there are 4 units in the building at the north of the property, and a single unit in the building at the west of the property.

Mr. Emero asked if the building is connected to town sewer and water, Ms. Ohemus confirmed that the connections are existing and are capped in the building, they just need to be turned on.

Ms. Saint Andre asked if the existing garage will be used for parking for the 2-bedroom unit. Ms. Ohemus stated the garage is used as storage, and only the owners have access to it. Ms. Ohemus' son will be the tenant of the apartment, so he is able to use the garage for parking, but in the future if a new tenant moves in, they will not have access to the garage. Ms. Saint Andre asked how many parking spots there are for the entire property, Ms. Ohemus said she believes there are

12 total, not counting the garage. Ms. Saint Andre stated that there should be no outdoor construction done to the property unless required by the building code.

Mr. White stated that his inclination is that it seems the intention for the building was always for it to become a living space and believes that it is a pre-existing non-conforming structure and does not derogate from the neighborhood, the Board members agreed. Mr. Emero stated that he believes that converting the building to a dwelling unit would be the best use of this property, and that it would positively contribute to the need for housing.

There was discussion regarding the Department of Public Works (DPW) suggestion that the unused curb cut in the middle of the lot be raised to meet the sidewalk so it can not be used as an entrance to the property. Mr. Emero noted that the property will have a condition that no additional impervious surface will be added, and therefore a future owner could not put in a driveway at the curb cut. Mr. White stated that if the DPW reconstructs the sidewalks in that area, the extra curb cut would be eliminated, so the owner and any future owner should be aware of this.

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. The Board considered each special permit criterion separately.

A. Section 5.5 Special Permit Decision Criteria

The Board found that the property currently contains a legally pre-existing, nonconforming use as a multi-family with five dwelling units. There are four dwelling units in the main (north) building, plus one dwelling unit in the small building to the west of the main building. The Board further found that the application does meet the required Special Permit Decision Criteria for Section 5.5, that the extension of the nonconforming use by adding an additional dwelling unit in the existing building to the east of the main building will not be substantially more detrimental than the existing nonconforming use to the neighborhood. There will be no addition to or exterior changes to the building in order to convert it to a residence. There is ample parking, and there will be no increase in impervious surface. The building has sewer and water service already provided to it.

The Board finds that the Applicant has demonstrated through evidence submitted, including the Plans, as well as testimony from the Applicant, that they have met the required Special Permit Decision Criteria under Section 5.5 of the Zoning Bylaw.

B. Variance

The Board did not make any findings to support the issuance of a variance, because a variance is not needed in light of the Board's determination to grant the special permit under Section 5.5. Therefore, the variance was deemed moot, and was not granted.

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 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 a dry well 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.

6. All site work shall be in compliance with the documents submitted to the Board as listed in Section V of this Decision, 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.

7. 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.

8. 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.

9. 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.

10. There shall be no additional impervious surface added to the property. There will be no alterations to the outside of the building except those required by building or other codes. Any maintenance to the existing impervious surface shall be reviewed by the Conservation Commission.

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. Plot plan showing existing conditions
2. Photos of the property.

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

C. Comments from Town officials:

1. Email from Derek Kwok, Health Director, dated January 23, 2023.
2. Email from Bridget Graziano, Conservation Agent, dated January 24, 2023.
3. Email from Nolan Lynch, Superintendent of Highway, dated January 26, 2023.

VI. VOTE OF THE BOARD

By a vote of on a motion made by Gibb Phenegar and seconded by Christina Oster, the Zoning Board of Appeals hereby **GRANTS** the Applicants Elain Ohnemus and Borek Block Realty a **SPECIAL PERMIT** under Section 5.5 of the Zoning Bylaw to change the use of the existing garage and storage building to a 2-bedroom apartment, on a lot that already has 5 dwelling units at 119 Village Street (Assessors' Parcel ID: 60-085), in accordance with the application, and the Plot Plan, all of which plans are attached hereto and made part of this decision, and subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Brian White	Aye	_____
Gibb Phenegar	Aye	_____
Christina Oster	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.

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 on a motion made by Gibb Phenegar and seconded by Christina Oster, the Zoning Board of Appeals hereby **GRANTS** the Applicants Elain Ohnemus and Borek Block Realty a **SPECIAL PERMIT** under Section 5.5 of the Zoning Bylaw to change the use of the existing garage and storage building to a 2-bedroom apartment, on a lot that already has 5 dwelling units at 119 Village Street (Assessors' Parcel ID: 60-085), in accordance with the application, and the Plot Plan, all of which plans are attached hereto and made part of this decision, and subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Brian White	Aye	_____
Gibb Phenegar	Aye	_____
Christina Oster	Aye	_____
Tom Emero	Aye	_____

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