



Town of Medway
ZONING BOARD OF APPEALS
155 Village Street, Medway, MA 02053

Eric Arbeene, Chair
Brian White, Vice Chair
Carol Gould, Clerk
Bridgette Kelly, Member
Rori Stumpf, Member

**DECISION
SPECIAL PERMIT
12 APPLGATE ROAD**

Date Application Filed: October 18, 2017

Applicant(s): John Vasta (the "Applicant")
44 Noon Hill Ave
Norfolk, MA 02056

Location of Property: The Project is located on a parcel of land in Medway located at 12 Applegate Road (Assessor Parcel ID: 32-008).

Approval Requested: Special Permit under Section 8.2 Accessory Family Dwelling Unit ("AFDU") of the Medway Zoning Bylaw to build an AFDU attached to a proposed single family dwelling at 12 Applegate Road.

Members Participating: Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould (Clerk), Bridgette Kelly, and Rori Stumpf

Members Voting: Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould (Clerk), Bridgette Kelly, and Rori Stumpf

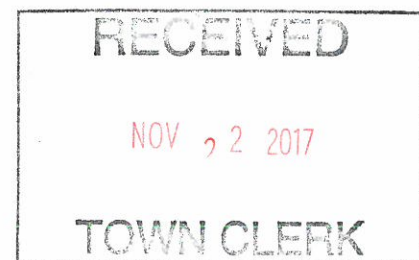
Hearing Opened: November 15, 2017

Hearing Closed: November 15, 2017

Date of Decision: November 15, 2017

Corrected: December 6, 2017

Decision: Granted with Conditions



*20 Day Appeal
December 12, 2017*



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I. PROCEDURAL HISTORY

1. On October 18, 2017, the Applicant filed a Special Permit Application, pursuant to G.L. c. 40A, as amended, and the Medway Zoning Bylaw, for an accessory family dwelling unit attached to a proposed single family dwelling located at 12 Applegate Road.
2. Notice of the public hearing was published in the Milford Daily News on November 1, 2017 and November 8, 2017, 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 November 15, 2017. The Board closed the hearing the same evening.
4. The Property is located in the Agricultural Residential I District. The frontage requirement is 180 feet and the minimum lot area requirement is 44,000 sq. ft. The front setback requirement is 35 feet and the side and rear setback requirements are 15 feet.
5. The Applicant was represented by Kris Menga of Dreamline Modular Homes, 403 Waltham Street, Lexington, MA 02421.
6. The Board notified Town departments, boards and committees of this application. The Board received written comments from the Treasurer/Collector, Fire Department, Department of Public Services, and Conservation Agent.
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

At the November 15, 2017 meeting, the hearing was opened by the Board. The Applicant provided an overview of the proposed AFDU. The proposed AFDU was 1,230 sq. ft. and two bedrooms. The second bedroom was necessary to either provide room for a caretaker or to provide accommodations for his mother. The Applicant's son and family would be living in the primary single family dwelling. The Applicant had provided a document with the application explaining how the criteria for an AFDU under Section 8.2 had been met.

Ms. Leahy explained that in reviewing the application, the Building Department requested another means of egress. The bulkhead door from the basement and door from the unit into the garage connecting to primary dwelling, did not provide a second means of egress that connected more immediately outdoors as required by building code. Mr. Menga explained that the new plans provided egress via the garage. The Applicant presented revised plans to the Board which provided a door from the unit to the garage and a door from the garage to outdoors, in addition to the bulkhead door, connecting door to the primary dwelling, and French doors.

The members of the Board expressed that this application met the goal and intent of the Accessory Family Dwelling Unit special permit—to allow for family members to reside together.

Mr. Stumpf stated that he believed the proposed unit met the requirements of Section 8.2 of the bylaw and that the increase in bedrooms and square feet were justified. The other members of the Board concurred.

There were no abutters or members of the public in attendance at the hearing.

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 hearings and comments submitted by Town departments, boards and committees placed in the public record during the course of the hearings.

A. 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.*
- a. The Board finds that the proposed AFDU is consistent with all of the required criteria under Section 3.4 of the Medway Zoning Bylaw.

B. Section 8.2.C Accessory Family Dwelling Unit Basic Requirements

1. *An accessory family dwelling unit shall be located within a detached single-family dwelling (principal dwelling unit), an addition to a detached single-family dwelling, or a separate structure on the same premises as a detached single-family dwelling:*
 - a. The proposed AFDU unit is proposed to be attached to a single family dwelling which is not yet constructed.
2. *There shall be no more than one accessory family dwelling unit associated with a detached single-family dwelling (principal dwelling unit):*
 - a. The proposed AFDU is the only unit to be associated with the existing single-family dwelling.
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.*
 - a. The proposed AFDU has two bedrooms to accommodate a caregiver or the Applicant's mother.
4. *An accessory family dwelling unit shall not exceed 800 sq. ft. of gross floor area unless there is an existing detached accessory structure larger than 800 sq. ft. located on the same lot as a detached single-family dwelling (principal dwelling unit) and the Board of Appeals determines its use as an accessory family dwelling unit is in character with the neighborhood; or authorized by the Board of Appeals pursuant to 8.2.C.8.*
 - a. The proposed AFDU is 1,230 sq. ft. The proposal of an AFDU larger than 800 sq. ft. is necessary to accommodate the second bedroom and to provide adequate space for the number of people to be living in the unit.
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.*
 - a. The proposed AFDU has a designated parking spot in a proposed garage.
6. *Occupancy of the single-family dwelling (principal dwelling unit) and accessory family dwelling unit shall be restricted as follows: 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; and The accessory dwelling unit and the detached single-family dwelling (principal dwelling unit) shall be occupied by any one or more of the following: the owner(s) of the property, the owner’s family by blood, marriage, adoption, foster care or guardianship, 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.

- a. The Applicant’s son and family shall reside in the principal single-family dwelling and the proposed AFDU is intended for the applicant, his wife, and a caregiver or his 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.*
 - a. The proposed AFDU does not alter the appearance for the single-family dwelling, as the unit is concealed behind a garage. The proposed AFDU provides two means of egress, French doors and a door through the garage to outdoors. The proposed AFDU also provides a bulkhead door from the basement.
 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 accessory 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.*
 - a. The Board finds that a second bedroom is necessary to accommodate a caregiver or the Applicant’s mother, depending on their needs.

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 Applicant, John Vasta, a Special Permit under Section 8.2 of the Zoning Bylaw to build an Accessory Family Dwelling Unit attached to a proposed single family dwelling at 12 Applegate Road.

1. The AFDU shall be constructed substantially in accordance with the plan provided at the hearing.
2. The AFDU shall be less than 1250 sq. ft. and have no more than two bedrooms.
3. The AFDU shall be constructed with smoke detectors and/or fire system interconnected to the primary single family dwelling.
4. The basement between the AFDU and the primary dwelling shall be connected with no separation of a wall or door between the basement space under the AFDU and the primary dwelling and shall be maintained as such for as long as the AFDU is legally occupied.
5. The applicant shall provide for additional stormwater measures for any additional lot coverage which exceeds the building footprint provided on the definitive subdivision plans.
6. Recording. The special permit shall be recorded with the Registry of Deeds prior to issuance of an occupancy permit for the accessory family dwelling unit.
7. Transfer of Ownership. If the new owner(s) desires to continue to exercise the special permit, they must, within thirty (30) days of the conveyance, submit a notarized letter to the Building Inspector stating that they will occupy one of the dwelling units on the premises as their primary residence, except for bona fide temporary absences, and that the accessory family dwelling unit is to be occupied by one of parties specified in Section 8.2 C. 6. b.
8. Bi-Annual Certification. The owner of the property shall provide a bi-annual certification to the Building Inspector verifying that the unit not occupied by the owner is occupied by one of the parties specified in Section 8.2 C. 6. b. or that the space is being used for another lawfully allowed use pursuant to this Bylaw.
9. 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 modification.

Any work or use that deviates from this Decision shall be a violation of the *Medway Zoning Bylaw*.

10. Upon receipt of a written request by the applicant filed at least thirty (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. If no request for extension is filed and approved, the Special Permit shall lapse two years from the date of Decision, unless substantial action is taken, or as may be otherwise specified herein, and may be reestablished only after a new filing, hearing, and decision.

V. INDEX OF DOCUMENTS

A. The Special Permit application for the proposed AFDU included the following plans and information that were provided to the Board at the time the application was filed:

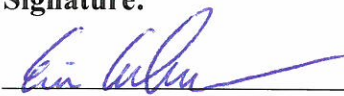


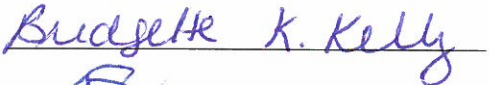
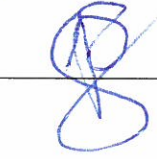
1. Elevations and Floor Plans, “Vasta: Dreamline Modular,” by Excel Homes
2. Crop of “Lot 9B” from Subdivision Plans showing proposed single family dwelling and AFDU location
3. Addendum of “Addition Information: 8.2.C requirements”

B. During the course of the review, the following materials were submitted to the Board by Town Departments/Boards:

1. Comments: Conservation Agent, Bridget Graziano, received October 23, 2017
2. Comments: Treasurer/Collector, received October 23, 2017
3. Comments: Fire Department, Chief Lynch, received October 26, 2017
4. Comments: Treasurer/Collector, received November 1, 2017
5. Comments: Department of Public Services, received November 6, 2017

VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Brian White and seconded by Rori Stumpf, the Zoning Board of Appeals hereby **GRANTS** the Applicant, John Vasta, a Special Permit under Section 8.2 of the Zoning Bylaw to build an Accessory Family Dwelling Unit attached to a proposed single family dwelling at 12 Applegate Road, subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Eric Arbeene	Yes	
Brian White	Yes	
Carol Gould	Yes	
Bridgette Kelly	Yes	
Rori Stumpf	Yes	

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision 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 G.L. c. 40A §15.

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

In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds 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 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.