

**Board Members**

Brian White, Chair  
Gibb Phenegar, Vice Chair  
Christina Oster, Clerk  
Joe Barresi, Member  
Tom Emero, Member  
Carol Gould, Associate 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**

**DECISION**  
**SPECIAL PERMIT**  
**12 WALKER STREET**

**Applicant(s):** Daniel J. Lewis, DNO Real Estate LLC  
12 Walker Street  
Medway, MA 02053

**Location of Property:** 12 Walker Street (Assessors' Parcel ID: 71-006).

**Approval Requested:** The application is for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and 5.4 Schedule of Uses to construct a two-family home on a 30,000 square foot lot in AR-II.

**Members Participating:** Brian White, Chair; Gibb Phenegar, Vice Chair; Joe Barresi, Member; Tom Emero, Member

**Members Voting:** Brian White, Chair; Gibb Phenegar, Vice Chair; Joe Barresi, Member; Tom Emero, Member

**Date of Decision:** January 5, 2022

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

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20 Day Appeal  
February 2<sup>nd</sup>, 2022

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## I. PROCEDURAL HISTORY

1. On November 14, 2021, the Applicant filed for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, of the Zoning Bylaw to construct a two-family home with the exterior appearance of a single family home on a 30,000 square foot lot in AR-II.
2. Notice of the public hearing was published in the Milford Daily News on December 22, 2021 and December 29, 2021 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 January 5, 2022. The hearing was closed the same evening.
4. The Property is located in the Agricultural Residential II (AR-II) District. The front setback requirement is 35 feet, and the side and rear setback requirements are 15 feet. For a two-family home, the minimum lot area requirement is 30,000 sq. ft. and the minimum frontage requirement is 150 feet.
5. The Board notified Town departments, boards, and committees of this application. The Board received comments from Water/Sewer, Conservation Commission, and Planning and Economic Development Board.
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 Applicant, Daniel Lewis, and Engineer Jim Pavlik were present and explained the application. The applicant is seeking a special permit for the construction of a two-family home on a 30,000 square foot lot at 12 Walker Street at the corner of Pearl Street in AR-II. The lot is currently a hill, which will be leveled off, while keeping some of the elevation. The lots on Pearl Street are vacant land, and behind the property is a former gravel pit that is also vacant. The area of the lot to be disturbed will be 19,700 square feet, which is less than the 20,000 square foot threshold that would require a permit under the Town's Land Disturbance By-law. Mr. Pavlik stated that stormwater will be managed on site by means of roof drains for the two units, and the installation of two rain gardens near the front of the lot. The details for the construction of the rain gardens is shown on the Plans, along with details as to planting species and locations. Mr. Pavlik noted that only one sewer line is shown on the Plans, but he is aware that the DPW requires each unit to have its own sewer line and this will be corrected.

It was noted that the Conservation Agent asked that the limit of work be staked out and verified before construction begins in order to keep the land disturbance under 20,000 square feet, particularly where the proposed area of land disturbance is close to the threshold in the Land Disturbance By-law.

Tyrone Pinkham of 10 Walker Street requested, and the applicant agreed, to construct a fence between the new construction and his property. Mr. Pavlik stated there will also be a 15 to 25-foot tree buffer left between the properties. Bill Conlon of 5 Walker Street noted that there is a rainwater divert next to the street, and voiced concerns that the groundwater absorption may be interrupted by the new structure. Mr. Pavlik noted that there will be no change to the current stormwater conditions in place, and that there will still be some elevation on the lot to keep conditions the same. It was pointed out that Walker Street is a scenic road, and therefore, trees and stone walls in the public right of way cannot be altered without permission. Mr. Pavlik confirmed that the trees to be removed are contained to the lot, and not in the public right of way.

### **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 considered each special permit criterion separately.

#### **A. Section 3.4 Special Permit Decision Criteria**

**The Board found that the application does meet 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.*
- 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 this 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 finds that the Applicant has demonstrated through evidence submitted, including the Plans, the Architectural Plans, grading and utilities plans and landscape**

**plans, as well as testimony from the Applicant, that they have met all the required Special Permit Decision Criteria under Section 3.4 of the Zoning Bylaw.**

#### **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 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.

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 into the ground as shown on the Plans. 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 and Architectural 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.

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 and 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.

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. Applicant shall have the limit of work staked in the field, and clearly demarcated to the satisfaction of the Conservation Agent prior to the commencement of work. The limit of work shall be confirmed by the Conservation Agent in order to confirm the limit of work being under 20,000 square feet prior to the issuance of a Building Permit. No clearing or land disturbance is allowed beyond the limit of work as staked, demarcated, and confirmed by the Conservation Agent.

10. The applicant shall comply with all Department of Public Works regulations and requirements for construction of the two-family house, including but not limited to the requirement that each dwelling unit has a separate water connection and water meter, and that each dwelling unit has a separate sewer connection; and shall obtain any necessary permits from the Department of Public Works for a two-family house.

11. The applicant shall, as agreed at the public hearing, install a solid, six foot high stockade fence between the new two-family house and the property at 10 Walker Street prior to obtaining any occupancy permit. The fence will run from within 20 feet of the public right of way to within 20 feet of the rear property line.

## **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. Plans prepared by Outback Engineering for 12 Walker Street in Medway, Massachusetts, dated November 12, 2021, consisting of the five sheets (collectively referred to herein as “the Plans”):

A. Cover Sheet

- B. Existing Conditions Plan
- C. Grading & Utilities Plan
- D. Landscape Plan
- E. Detail Sheet

2. Architectural Plans prepared by HPA Design, Inc. dated May 5, 2021 consisting of four sheets: First Floor Plan, Second Floor Plan, and two sheets showing elevations (collectively referred to herein as “the Architectural Plans”)

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

1. Emails from Bridget Graziano, Conservation Agent, dated December 8, 2021, and December 20, 2021.
2. Email from Barry Smith, Water/Sewer Superintendent, dated December 9, 2021.
3. Email from Attorney David A. Carey containing the following files:
  - Correspondence letter dated December 20, 2021.
  - Nancy P. Russell signed power of attorney, dated December 17, 2021.
  - Susan J. Pavlik signed power of attorney, dated December 21, 2021.
  - Thomas F. Pavlik signed power of attorney, dated December 17, 2021.
4. Memo from Planning and Economic Development Board, dated January 4, 2022.

## VI. VOTE OF THE BOARD

By a vote of 4 to 0 on a motion made by Gibb Phenegar and seconded by Tom Emero, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Daniel J. Lewis, a **SPECIAL PERMIT** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for the construction of a two-family home located at 12 Walker Street (Assessors' Parcel ID: 71-0061), in accordance with the application, the Plans, and the Architectural Plans, and subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Brian White	Aye	_____
Tom Emero	Aye	_____
Gibb Phenegar	Aye	_____
Joe Barresi	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.



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Tom Emero	Aye	_____
Gibb Phenegar	Aye	_____
Joe Barresi	Aye	<u>Joseph S. Barresi</u>

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