

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
Telephone (508) 321-4890
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
SPECIAL PERMIT
15 MERYL STREET

Applicant(s): Michael and Colleen Morin ("the Applicants")
15 Meryl Street
Medway, MA 02053

Location of Property: 15 Meryl Street (Assessors' Parcel ID: 32-092)

Approval Requested: Special Permit under Section 8.2 of the Zoning Bylaw for an Accessory Family Dwelling Unit ("AFDU") to the existing home on the property.

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

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

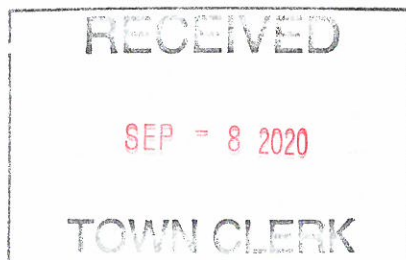
Date Application Filed: August 6, 2020

Hearing Opened: September 2, 2020

Hearing Closed: September 2, 2020

Date of Decision: September 2, 2020

Decision: GRANTED



30 day appeal
Sept 28, 2020

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I. PROCEDURAL HISTORY

1. On August 6, 2020, the Applicant 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 August 19, 2020 and August 26, 2020 and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A, §11. The notices included instructions for participating remotely in the public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place.
3. The public hearing was opened on September 2, 2020, the hearing was closed that same evening.
4. The property is located in the Agricultural Residential II (AR-II) 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 22,500 sq. ft. and the minimum frontage requirement is 150 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

It was noted that this lot is nonconforming as to lot size and lot frontage, and that the existing home is nonconforming as to front setback. The proposed addition, however, will comply with all setback requirements and will not increase the nonconforming nature of the structure.

Jim Rissling, the applicants' representative and Architect was present and discussed the application. The applicants would like to add a unit in order for the Ms. Morin's parents to move in and live with them. Mr. Rissling explained that the existing lot is pre-existing, non-conforming. The proposed AFDU will only be one level with the exterior finishes to match the existing home, additionally, there will be one designated parking space in the existing driveway.

Mr. Stumpf then began a discussion with the Board. Mr. Phenegar inquired about the square footage and if the unit will be one story or two, Mr. Rissling explained it will only be one story and will be 792 square feet. Mr. Stumpf does not think this addition will make the lot more non-conforming, it fits the size and requirements for parking. Mr. Stumpf asked if the applicants are aware of the restrictions of an AFDU, to which they agreed they are aware of the requirements. Mr. Stumpf invited citizen comments, however there were none. Mr. Phenegar stated that it conforms with everything that goes with the Bylaw and that he has no issues. Mr. Stumpf then went over the AFDU criteria, and it was decided that the applicants have met all the criteria.

Mr. Stumpf then went over the special permit criteria, and as well it was decided that the applicants have met all special permit criteria.

Ms. Saint Andre mentioned and inquired about the existing shed, which on the plans will have an addition added to it and be slightly relocated. She recommended that a condition should be added that the shed is to

be built as shown on the revised plan and will comply with the revised plan. She then went over the boiler plate conditions.

Joe Chaves of JFC Pros, the applicants' contractor, explained that the parents want to be independent and would like the utilities (electric) to be separate from the existing home owners. Mr. Stumpf stated that down the road this cannot be made into a rental unit, which the applicants are aware of. The other board members had no issues with this request. Ms. Saint Andre asked what utilities is Mr. Chaves referring to, to which he replied electric. It was stated the water and sewer questions would need to go through the Department of Public Works.

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 each of the criteria for an AFDU:

A. Section 8.2 Accessory Family Dwelling Unit Criteria

1. An accessory family dwelling unit shall be located within: ...
 - b. an addition to a detached single-family dwelling (principal dwelling unit).

The AFDU will be an addition to the home on the right side of the property, which currently contains 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 unless: ...

This AFDU will be approximately 792 square 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 in the existing expanded driveway.

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.

The applicants own and reside in the existing home.

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 Ms. Morin’s parents.

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 AFDU addition will match the existing home in form and materials, access to the unit will be from the side yard and back yard.

The Board found that the Applicants have met all of the required Accessory Family Dwelling Unit decision criteria.

The Board then reviewed each of 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.

The property is zoned to allow for this use. The addition will be on the side and back of the property meeting all setback requirements.

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

The AFDU will have appropriate utilities.

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

The AFDU will not create a hazard.

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

The AFDU will create minimal additional traffic.

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 AFDU is an addition to an existing home that will blend into the neighborhood.

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

The AFDU is an addition that will blend into the neighborhood.

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

The zoning by-law allows AFDU units in this district.

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

The Master Plan encourages a mix of housing types.

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

The AFDU is an addition that will blend into the neighborhood.

The Board found that the Applicants have 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, Michael and Colleen Morin, 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 storm water system for the new structure which infiltrates all roof run-off into the ground. Storm water management systems include but are not limited to dry wells, sub-surface infiltrators, rain gardens, etc. All designed systems shall be signed and 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 be placed in a manner so as not to allow discharge of storm water 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 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. An engineer 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 existing shed shall be re-located to comply with the five foot setback requirement and shall be no larger than 11 feet by 18 feet, as shown on the Revised Plan.

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. “Boundary Survey Report/Proposed Addition Plot Plan”, 15 Meryl Street, Medway, MA dated July 27, 2020, revised August 11, 2020, prepared by Cabco Consult Land and Environmental Consulting Services, P.O. Box 14, Clinton, MA 01510.

2. “15 Meryl Street Medway, MA” architectural drawings, dated July 6, 2020, prepared by LR Designs, 64 Allston St, Suite 3, Cambridge, MA 02139, 12 sheets.

3. “Diagrammatic Site Plan”, 15 Meryl Street Medway, MA, dated July 6, 2020, revised and re-submitted on August 18, 2020, prepared by LR Designs, 64 Allston St. Suite 3, Cambridge, MA 02139 (the “Revised Plan”)

B. During the course of the review, the following materials were submitted to the Board by Town departments and boards:

1. Email from Joanne Russo, Medway Treasurer on August 11, 2020
2. Email from Bridget Graziano, Conservation Agent on August 12, 2020
3. Email from Chief Lynch, Medway Fire Department on August 12, 2020

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VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Brian White and seconded by Gibb Phenegar, the Zoning Board of Appeals hereby **GRANTS** the Applicants, Michael and Colleen Morin, 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	AYE	_____
Brian White	AYE	_____
Gibb Phenegar	AYE	_____
Tom Emero	AYE	_____
Carol Gould	AYE	_____

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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