

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



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155 Village Street
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
SPECIAL PERMIT
18 BROAD ACRES FARM ROAD

Applicant(s): Justin and Jennifer Smith ("the Applicants")
18 Broad Acres Farm Road
Medway, MA 02053

Location of Property: 18 Broad Acres Farm Road (Assessors' Parcel ID: 19-003)

Approval Requested: Special Permit under Section 8.2 of the Zoning Bylaw for an Accessory Family Dwelling Unit ("AFDU") in a separate structure on the property.

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

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

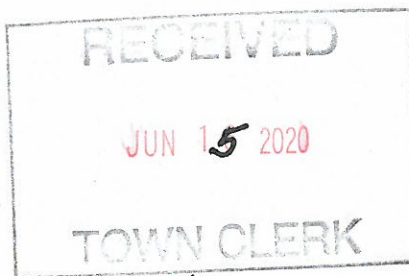
Date Application Filed: May 7, 2020

Hearing Opened: June 3, 2020

Hearing Closed: June 3, 2020

Date of Decision: June 3, 2020

Decision: GRANTED



*Today Appeal
July 6, 2020*

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I. PROCEDURAL HISTORY

1. On May 7, 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 May 20, 2020 and May 27, 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 March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place.
3. The public hearing was opened on June 3, 2020, the hearing was closed the same evening.
4. The property is located in the Agricultural Residential I (AR-I) 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 44,000 sq. ft. and the minimum frontage requirement is 180 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

The public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, was held via Zoom platform and was also broadcast live on Medway Cable Access. All persons participated remotely.

Justin and Jennifer Smith, the applicants, were present and Ms. Smith began by explaining they are applying for the dwelling for her mother, to be able to assist them with childcare while having her own space. Todd Allen, of HIS Construction, the contractor was present and explained the location of the proposed structure. He explained it was designed to fit nicely in the neighborhood and it is similar to recent AFDU's in the neighborhood that were constructed as additions to existing homes. This AFDU structure would be within all setbacks of the property.

Mr. Phenegar questioned the lower level (basement) and what it would be used for. Mr. Allen explained that this would be utilized as office space for the home business (daycare) that is currently run out of the primary dwelling on the property. He explained it will not be used for the daycare and would strictly be used as an office and no other finished living space. They want to have a clean, safe space for office work rather than an unfinished basement.

Ms. Saint Andre spoke about the square footage of the proposed structure. With the added square footage in the basement, the unit would be over 800 square feet and would need approval from the Board under subsection 8. Mr. Allen explained they were targeting the foot print of the main floor, which is less than 800 square feet, and the basement would not be your typical "finished" basement, it would only be utilized as an office. Otherwise, the unit would have only 400 square feet of livable space if the basement and first floor could not exceed a total of 800 square feet. Mr. Emero spoke about the other AFDU's

approved by the Board and he believes this proposed project is consistent with the bylaw intent to limit the size of the AFDU. Mr. Phenegar agreed. Mr. White agreed that the question is whether the mass of this structure is appropriate for the neighborhood and that a basement is not a concern. Mr. Stumpf stated that he does not have a problem with the additional space because it is a lower level. He stated that he does not want to have the basement used as a daycare, though. Mr. Stumpf then invited the public for comment.

Brian McSweeney of 20 Broad Acres Farm Road presented a PowerPoint that he had submitted. He stated that he feels the proposed structure does not meet specific AFDU requirements or special permit requirements. He started specifically with the AFDU criteria section 8.2.C.7, an AFDU shall be designed to preserve the appearance of the single family dwelling (principal dwelling unit) and be compatible with the residential character of the neighborhood, which he does not believe is being met with this application. He equated the separate AFDU to a second detached home, claiming it has a 1300 square foot footprint and 25 foot high roofline. Further, the design of this AFDU, with a farmer's porch and front entrance, he stated does not preserve the appearance of the single family dwelling. He also stated that the entrance should be to the rear or side. He spoke at length in opposition, citing the upscale character of the neighborhood, and stated that a separate structure being constructed as opposed to the AFDU being an addition or within the existing home does not maintain the residential character of the neighborhood as provided in Section 8.2.A.3. He explains there are 3 AFDUs in this specific neighborhood, one being located in his residence.

Mr. McSweeney also expressed the opinion that the AFDU does not meet the general criteria for a special permit under Section 3.4.C.6, because it will adversely affect the surrounding neighborhood or significantly alter the character of the zoning district, for the reasons stated above. He also feels that these are adverse affects which outweigh the beneficial impacts to the town or neighborhood, under Section 3.4.C. Finally, he stated that the AFDU will be detrimental to the adjoining properties due to undesirable visual attributes, see Section 3.4.C.5. Mr. McSweeney stated there have been no other approved separate structure AFDUs in Medway, this application is the first. He was looking for a compromise to be able to resolve what he believes are the non-compliances with the By-law.

Mr. Stumpf then went over the AFDU criteria individually to discuss. He stated if you look at the Zoning Bylaw AFDU provisions the intent is that the principal dwelling unit does not look like a multifamily dwelling. Mr. White stated he drove down the road and that the proposed structure would not be too visible from the road with trees there, and stated that it would look in tune with the neighborhood. Mr. Stumpf clarified the setbacks and that this project is well within the setbacks for the property.

Dave Corbett of 16 Broad Acres Farm Road stated he wanted to give the Board another opinion. He believes there are going to be more of these instances and would be in favor. The AFDU would be on their side of the yard and they do not have any issue with an additional structure.

Alan DiBiasio of 11 Broad Acres Farm Road stated that he agrees with Mr. Corbett about more parents moving in with their children. He does believe that the structure is oversized for the neighborhood and does not believe it is in character within the neighborhood. He also thinks that it looks like two single family homes on one property and he does not think it is in keeping with the intent of the bylaw.

Mr. McSweeney does not believe that two single family homes on a property should be allowed. He asked what the intent of adding it to the bylaw. Mr. Stumpf clarified that the Board members follow the

bylaws in place and determine decisions based on the criteria being met.

Mr. Stumpf then reviewed each of the Accessory Family Dwelling Unit criteria and the Board concluded that the applicants have met all the criteria.

Mr. Stumpf then went over each of the special permit criteria. The board members specifically commented on criterion #1 stating that the proposed site is in an appropriate location because it is set back over 100 feet from the street and it does not encroach in setbacks, additionally the trees will help to hide the structure. The members then specifically commented on criterion #2 as it is a standalone unit with all the necessary utilities, therefore having the adequate and appropriate facilities for operation. Ms. Saint Andre stated that the Master Plan supports a variety of different housing options for the Town, therefore it is in compliance with criterion #8. The Board members all agreed upon the remaining criteria being met for this proposed project.

Mr. McSweeney then spoke again in opposition of the separate structure on the property. Mr. Stumpf clarified that the residents of the town voted in favor of this section of the bylaw therefore it is something to be applied for and considered.

Chris and Lisa Dixon of 5 Stable Way shared that they bought into the neighborhood for single family dwellings and did not want a detached accessory dwelling.

Mr. Stumpf stated that he cannot stress enough that this is part of the bylaw as passed by town meeting. The other Board members agreed.

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: ...
 - c. a separate structure on the same premises as a detached single-family dwelling (principal dwelling unit).

The AFDU will be a separate structure located on 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: ...
 - b. authorized by the Board of Appeals pursuant to 8.2.C.8 herein.

This AFDU will be approximately 1,008 square feet, and therefore requires authorization under Section 8.2.C.8.

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 two off street parking space in keeping with the residential character of the neighborhood.

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 applicant owns and resides 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 the Ms. Smith’s 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.

This provision relates primarily to the existing principal dwelling unit, preserving its appearance as a single family dwelling. The Board found that the proposed AFDU will

fit into the character of the neighborhood. The requirement for a rear or side entrance relates to AFDU's added to the principal dwelling unit, not a detached AFDU.

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 necessary 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.

Board members felt that the purpose of the square footage limitation is to limit the size of the structure. The applicant has done that because the AFDU will have less than 800 square feet on the primary floor. The remaining square footage will be in the basement, below ground level, and the members found that it is appropriate to have a basement for the structure.

The Board found that the Applicant has 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 AFDU will not encroach on any setbacks and will be screened by the existing house and the trees. It will be setback 112 feet from the street and 64 feet from the rear property line.
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 little 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 a small, residential building 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 a small, residential building that will blend into the neighborhood. There are other properties in the neighborhood that have separate accessory structures.
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 a small, residential building that will blend into the neighborhood.

The Board found that the Applicant has 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, Justin and Jennifer Smith, 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 stormwater system for the new structure which infiltrates all roof run-off in to the ground. Stormwater 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 not be placed in a manner to allow discharge of stormwater 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 stormwater system from the site, including any drainage sump pump, perimeter drains, roof drains, or any other source.
9. The applicant shall comply with Town Department of Public Works requirements for utilities.
10. There shall be no commercial activity in the AFDU. The home business associated with the property shall not be conducted in the AFDU.

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. “Proposed Structure Plan of Land in Medway, MA”, dated April 23, 2020, Owner: Justin and Jennifer Smith, 18 Broad Acres Farm Road, Medway, MA 02053, prepared by Colonial Engineering, Inc., 11 Awl Street, Medway, MA 02053
2. “Free Standing In-Law 18 Broad Acres Farm Rd, Medway, MA”, “Foundation Plan Revision 1”, dated February 13, 2020, prepared for HIS Corporation
3. 3D Photos of the proposed structure, exterior and interior.
4. “Free Standing In-Law 18 Broad Acres Farm Rd, Medway, MA”, “1st Floor Plan Revision 1”, dated February 13, 2020, prepared for HIS Corporation, Medway, MA 508-533-6269
5. “Free Standing In-Law Unit, 18 Broad Acres Farm Rd, Medway, MA”, “Foundation Plan”, dated April 29, 2020, prepared for HIS Corporation, 12 pages.

B. The following documents were submitted by Town residents:

1. Email in favor from Billy and Kelly Kennedy of 14 Broad Acres Farm Road Medway, MA dated May 19, 2020
2. “Accessory Family Dwelling Unit Special Permit Public Hearing – Smith Residence”, prepared by Brian McSweeney, submitted June 4, 2020

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

1. Email from Chief Lynch, Fire Department on May 8, 2020.
2. Email from Joanne Russo, Medway Treasurer on May 8, 2020
3. Email from David D’Amico, Director of Medway Department of Public Works on June 1, 2020

VI. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Brian White and seconded by Gibb Phenegar, the Zoning Board of Appeals hereby **GRANT** the Applicants, Justin and Jennifer Smith, 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	YES	_____
Brian White	YES	_____
Gibb Phenegar	YES	_____
Tom Emero	YES	_____


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. **Statutory appeal periods, and thus the issuance of Certificates of No Appeal, have been temporarily affected by Court Standing Orders, available at www.mass.gov/guides/court-system-response-to-covid-19. Applicants, abutters and interested parties should consult the Standing Orders to determine their next actions. Any decision by a permit holder to proceed is at their own risk, and the permit holder is urged to consult their own legal counsel.**

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. **Under Section 17 of Chapter 53 of the Acts of 2020, the requirement to record permit decisions with the Registry is suspended for so long as the Registry is "closed or subject to rules and procedures restricting public in-person access." However, such recording will still be required upon the full reopening of the Registry.**

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Member:	Vote:	Signature:
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