

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
Medway, MA 02053
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
SPECIAL PERMIT AND VARIANCE
201 VILLAGE STREET

Applicant(s): Reardon Family Irrevocable Trust
201 Village Street
Medway, MA 02053

Location of Property: 201 Village Street (Assessors' Parcel ID: 60-106).

Approval Requested: The application is for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and/or a **variance** from Section 6.1 to convert a pre-existing nonconforming building from office space and single-bedroom apartment to a two-family/duplex with the appearance of a single-family house.

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

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

Date of Decision: April 21, 2021

Decision: **GRANTED WITH CONDITIONS**

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20 Day Appeal
May 19, 2021

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I. PROCEDURAL HISTORY

1. On March 23, 2021, the Applicant's Representative filed for a special permit under Section 3.4 of the Zoning Bylaw and/or a variance from Section 6.1 for lot size and lot frontage to convert a pre-existing nonconforming building from office space and single-bedroom apartment to a two-family/duplex with the appearance of a single-family house.
2. Notice of the public hearing was published in the Milford Daily News on April 7, 2021 and April 14, 2021 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 April 21, 2021. 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. The minimum lot area requirement is 22,500 sq. ft. and the minimum frontage requirement is 150 feet.
5. The Applicant was represented by Stephen Kenney of Kenney & Kenney Law.
6. The Board notified Town departments, boards, and committees of this application. The Board received comments from the Building Commissioner and Fire Chief.
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

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, was held via Zoom platform. All persons participated remotely.

The representative for the applicant, attorney Stephen Kenney of Kenney and Kenney Law, was present and explained the application. The applicant is looking to convert the structure, which consists of an office space and a one-bedroom apartment, to a two-family home with the appearance of a single-family. The structure is on a preexisting, nonconforming lot that is only 9,000 square feet with only 100 feet of frontage. He stated that the structure has been there since 1960 and that all other zoning requirements are met. Currently, the majority of the lot is a paved

parking area, a large portion of which will be converted to lawn if the application is granted. An additional kitchen, and possibly a new bathroom, will be installed. Mr. Kenney noted that the conversion would create less traffic with residential use than the current office use. It would also be more conforming to the zoning district, which primarily consists of one- and two-family homes. It is consistent with the goals of the Master Plan, which encourages more variety in housing. Mr. Kenney stated that it is not clear if a variance is required because the lot is preexisting nonconforming, but stated that they have applied for a variance and meet the criteria for a variance from lot size and lot frontage. He noted that the lot is preexisting nonconforming and much smaller than other lots in the area. The topographical conditions are such that the land slopes down sharply in the back towards the Charles River with a retaining wall in place. The small size, lack of frontage, and slope would create a financial hardship as it could not be converted to a two-family based on current zoning. Mr. Kenney stated that there would be no detriment to the public good, and that it will not nullify the intent of the zoning by-law because it will create a residential use. Mr. Kenney was not aware of the square footage of the house, but Mr. White noted that it would probably be around 600 square feet per floor, for a total of 1200 square feet.

Mr. Phenegar noted that the building is similar to the structure next door, and he did not have an issue with the permit as long as no exterior changes were made except to increase the lawn. He also noted that it would provide relatively inexpensive two-family housing. Mr. Kenney confirmed that no exterior changes would be made, except to the parking area which is currently large and unsightly. There was discussion surrounding conditions for the special permit, including that the exterior remain the same and that any unnecessary impervious surface be removed. Mr. White noted the large curb cuts that are currently on the property, stating that the applicant will have to work with the Department of Public Works to make changes to the curb cuts. Mr. Emero had concerns over whether the parking condition would be too restrictive, stating that there should be enough room for cars to turn around in the driveway to avoid backing out onto Village Street.

Ms. Saint Andre was asked about the issue surrounding whether a variance is required or not. The nonconforming structure is not being altered, and the nonconforming use is being eliminated in favor of a use allowed by the special permit, so Section 5.5 of the Bylaw does not seem to apply. The protection for a preexisting nonconforming lot does not apply because the lot has an existing building. If the Board grants the special permit, it seems prudent to also require the variance. The minimum lot size for AR-II is 22,500, but for a two-family home is 30,000 square feet, so converting the structure to a two-family home could be seen as increasing the nonconformity and requiring a variance.

Mr. and Ms. Luciano of 201 Village Street were present and expressed concern over where the driveway would be placed. They stated that they would prefer the driveway be on the left (east) side of the building. Mr. Kenney confirmed that they will not be paving any areas that are currently lawn, so the driveway will not be on the right side of the building, and agreed that the Board could place a condition on the special permit and variance that prohibits the use of that portion of the lot for driveway or paving.

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 Zoning Bylaw. The Board also considered the application materials, evidence and testimony presented at the public hearing, and comments submitted and placed in the public record during the course of the hearing. The Board considered each special permit and variance criterion separately.

A. Section 3.4 Special Permit Decision Criteria

The Board found that the application meets all the required Special Permit Decision Criteria under Section 3.4 for the requested two-family/duplex with the appearance of a single-family home on the following findings:

1. *The proposed site is an appropriate location for the proposed use.*
The surrounding properties have one- and two-family homes, and the site has an existing building that will be used without exterior alterations.
2. *Adequate and appropriate facilities will be provided for the operation of the proposed use.*
A kitchen will be added and other interior changes made to create two individual units within the building.
3. *The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.*
The use as a two-family home will not create any hazards, there will be less traffic than with the current use as an insurance office.
4. *The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*
The two-family house will create less traffic than the current use as an insurance office.
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 use as a two-family residence will not be detrimental to the adjoining properties; it will be less intrusive than the current use as an insurance office and apartment.
6. *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*
The AR-II district is zoned for single and two-family residential use and the two-family home will be more in conformity with the zoning and the neighborhood.
7. *The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.*

The use is in harmony because the Zoning Bylaw allows for two-family homes with the appearance of a single-family in the AR-II district by special permit, while “professional or business office” is prohibited in the AR-II.

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

The use is consistent with the goals of the Master Plan, one of which is to create a wider variety of housing.

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

There will be no detriment to the public good; the nonconforming insurance business use will be removed and a two-family use established.

B. Section 6.1 Variance Criteria

The Board then considered the criteria for a variance for lot size and lot frontage.

1. Whether owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;

The Board found that there are conditions relating to the topography of the land, in particular the fact that the back of the lot slopes steeply down to the Charles River, requiring the use of a retaining wall, that do not generally affect the AR-II district, as well as the size of the lot, such that the structure could not be built on this land today.

2. A literal enforcement of the provisions of the zoning by-law would involve substantial hardship, financial or otherwise, to the applicant, and

The Board found that literal enforcement would create a hardship for the applicant, because without the variance, the existing structure could not be used as a two-family house.

3. Desirable relief may be granted without substantial detriment to the public good.

The Board found that there would be no detriment to the public good because the proposed use aligns with the Zoning Bylaw and would replace a use that is prohibited in the AR-II.

4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law.

The Board found that the proposed use aligns with the purpose of the Zoning Bylaw because it would replace a use that is prohibited in the AR-II.

The Board found that the application meets all of the required criteria for a variance.

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 and variance 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 variance 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. Pursuant to G.L. c. 40A, §10: "If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one-year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section."

5. 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.

6. All site work shall be 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. 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. A driveway and parking area sufficient for a two-family dwelling will be provided. Any existing impervious surface not used for the driveway and parking will be removed and replaced with landscaping and lawn.

10. To address the concerns raised by the abutter, the applicant agreed that no driveway, parking, or paving is allowed in the western area of the lot that is currently unpaved. This prohibition includes the rectangular area shown on the Plot Plan as bounded on the west by the property line; on the south, by the line from the back west corner of the building to the property line on the west with the notation 27.3’; on the east, by the west side of the building and a straight line from the front west corner of the building to Village Street, which includes the notation 38.3’; and on the north by Village Street.

10. No exterior changes to the building will be made other than what is required by building code, fire code or other code for two-family use.

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: “Plan Showing Proposed Deck 201 Village Street” dated June 20, 2018 prepared by D. O’Brien Land Surveying (the Plot Plan).

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

1. Email from Michael Fasolino, Medway Deputy Fire Chief on April 5, 2021.

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VI. VOTE OF THE BOARD

By a vote of 4 to 0 on a motion made by Gibb Phenegar and seconded by Christina Oster, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Reardon Family Irrevocable Trust, a **SPECIAL PERMIT** under Section 3.4 of the Zoning Bylaw and a **VARIANCE** from Section 6.1 for lot size and lot frontage to convert a pre-existing nonconforming building from office space and single-bedroom apartment to a two-family/duplex with the appearance of a single-family house , in accordance with the application submitted and subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Brian White	AYE	_____
Tom Emero	AYE	_____
Christina Oster	AYE	_____
Gibb Phenegar	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, §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 variance 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 that any duly filed appeal has been dismissed or denied.





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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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