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



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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

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DECISION
SPECIAL PERMIT
21 HOOKSETT CIRCLE

20 Day Appeal
March 14, 2022

Applicant(s): Erica Morse
21 Hooksett Circle
Medway, MA 02053

Location of Property: 21 Hooksett Circle (Assessor Parcel ID: 37-048).

Approval Requested: The application is for the issuance of a **special permit** under Section 8.2 for an Accessory Family Dwelling Unit (AFDU) to be included in a proposed addition to the existing dwelling.

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

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

Date of Decision: February 16, 2022

Decision: **GRANTED WITH CONDITIONS**

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I. PROCEDURAL HISTORY

1. On January 18, 2022, the Applicant filed for a special permit under Section 8.2 Accessory Family Dwelling Unit for the construction of an accessory family dwelling unit.
2. Notice of the public hearing was published in the Milford Daily News on February 2, 2022, and February 9, 2022, and notice sent by mail to all parties in interest and posted in Town Hall as required by G.L. c. 40A, §11.
3. The public hearing was opened on February 16, 2022. The hearing was closed the same evening. Member Joe Barresi arrived after the public hearing had been opened, and therefore did not vote.
4. The Property is located in the Agricultural Residential I (AR-I) 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. The Board did not receive any comments.
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 Applicants, Erica and Jeffery Morse, were present, and their contractor, Mike Chaisson, participated via Zoom. Ms. Morse stated that they will be adding a single-car garage as well as an apartment that is 784 square feet, which will connect to the principal dwelling through an additional space to be added during construction. She noted that since the AFDU will be on the back of the principal dwelling unit, it will not be seen from the street, giving the appearance that has always been there. Ms. Morse also noted that there was a question from an abutter that they answered through email. The abutter stated that when they were constructing a pool in their own yard, their contractor discovered ledge, causing them to have to work around this. Ms. Morse stated that they have a plan in place if this were to happen during their construction and that there will not be any blasting.

Mr. Phenegar stated that he has no issue with the application, especially since the proposal is under 800 square feet, therefore meeting the requirements of constructing an AFDU under Section 8.2 of the Zoning Bylaw. Ms. Oster stated that the design is well done and noted that it is nice that it will not be visible from the street. Mr. White stated that he feels the application meets the criteria under Section 8.2 to construct an AFDU.

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.

A. Section 8.2 Accessory Family Dwelling Unit Criteria

The Board found that the application meets all the required Special Permit Decision Criteria for Section 8.2 on the following findings:

1. An accessory family dwelling unit shall be located within:

- a. a detached single-family dwelling (principal dwelling unit); or
- b. an addition to a detached single-family dwelling (principal dwelling unit); or
- c. a separate structure on the same premises as a detached single-family dwelling (principal dwelling unit).

The proposed AFDU is an addition to a detached single-family dwelling (principal dwelling unit).

2. There shall be no more than one accessory family dwelling unit associated with a detached single-family dwelling (principal dwelling unit).

The proposed AFDU is the only AFDU on the premises.

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 only one bedroom as shown on the plan.

4. An accessory family dwelling unit shall not exceed 800 sq. ft. of gross floor area.

The proposed AFDU will be 784 square feet of gross floor area.

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.

There will be an additional garage added to the principal dwelling unit, along with an additional space in the driveway; the appearance will be 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 owners, Erica and Jeffery Morse, will live in the principal dwelling.

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 accessory family dwelling unit will be occupied by Erica Morse'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.

The design of the accessory family dwelling unit was designed to preserve the appearance of the single-family dwelling and is compatible with the residential character of the neighborhood. The new separate outside entrance will be located on the side/rear of the building.

B. Section 3.4 Special Permit Decision Criteria

The Board found that the application meets 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 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.*

The Board finds that the Applicant has demonstrated through evidence submitted, including the plot Plan, the Architectural plans, review of the square footage and usage of the proposed addition and AFDU, that they have met all the required Special Permit Decision Criteria under Section 3.4 of the Zoning Bylaw.

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 hereby **GRANTS** the Applicant, Erica Morse, a **SPECIAL PERMIT** under Section 8.2 Accessory Family Dwelling Unit of the Zoning Bylaw for the construction of an accessory family dwelling unit on property located 21 Hooksett Circle (Parcel ID:37-048), subject to the **CONDITIONS** herein.

1. Smoke, heat and carbon monoxide detectors must be installed in accordance with the Massachusetts Fire and Building Codes.
2. This special permit and 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 for the proposed addition which infiltrates all roof run off into the ground. 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 Plot Plan 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, except that minor changes in dimension that do not increase the size of the addition or encroach on any required setback may be allowed by the Building Commissioner as field changes.

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. This special permit shall be recorded with the Registry of Deeds prior to issuance of an occupancy permit for the accessory family dwelling unit.

10. Upon transfer of ownership of the property, if the new owners desire to continue to exercise the special permit, they must, within thirty days of the conveyance, submit a notarized letter to the Building Commissioner 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 the parties specified in Section 8.2.C.6.b. of the Zoning Bylaw.

11. The owner of the property shall provide a bi-annual certification to the Building Commissioner verifying that the unit not occupied by the owner is occupied by one of the parties specified in Section 8.2.C.6.b. of the Zoning Bylaw, or that the space is being used for another lawfully allowed use pursuant to the Zoning Bylaw.

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. Application dated January 13, 2022.
2. Aerial view image of the property.
3. Floor plans for the Accessory Family Dwelling Unit, undated, and current and proposed elevations, undated (the Architectural Plans)
4. "Proposed Addition Plan of Land in Medway, MA" for 21 Hooksett Circle, by Colonial Engineering, Inc., dated January 11, 2022 (the Plan).
5. Current and proposed elevations, undated.

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

1. Email correspondence between abutter Karen Martello, 1 Hooksett Circle, regarding potential ledge underground in the neighborhood, dated February 9, 2022, and subsequent responsive email from applicant same date; further response from Ms. Martello on February 10, 2022.

VI. VOTE OF THE BOARD

By a vote of 4-0 on a motion made by Gibb Phenegar and seconded by Christina Oster, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Erica Morse, a **SPECIAL PERMIT** under Section 8.2 Accessory Family Dwelling Unit for the construction of an accessory family dwelling unit at 21 Hooksett Circle (Parcel ID: 37-048), to be constructed in accordance with the application, the Plan and the Architectural Plans, and subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Brian White	AYE	_____
Gibb Phenegar	AYE	_____
Christina Oster	AYE	_____
Tom Emero	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.

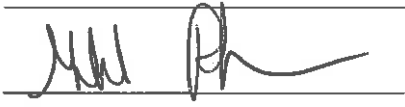



Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, chapter 40A, section 17, and shall be filed within 20 days after the filing of this notice in the office of the Medway Town Clerk.

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, and notification by the Applicant of the recording, shall be furnished to the Board.

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