

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
zoning@townofmedway.org

TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
SPECIAL PERMIT
35 MILFORD STREET (PARCEL A-1)

Applicant(s): Cameron Bagherpour
83 Lovering Street
Medway, MA 02053

Property Owner(s): Andrea and Colleen Mahan
4 Lilly Street
Medway, MA 02053

Location of Property: 35 Milford Street (Parcel A-1) (Assessors' Parcel ID: 56-032)

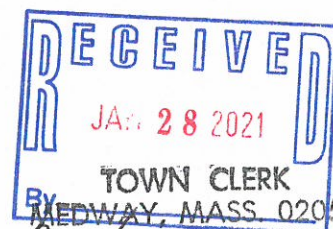
Approval Requested: The application is for the issuance of a **special permit** under Section 3.4, Special Permits, and Section 5.4, Table 1: Schedule of Uses of the Zoning Bylaw to construct a two-family house that has the exterior appearance of a single-family dwelling on the lot.

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 of Decision: January 20, 2021

Decision: GRANTED WITH CONDITIONS



20 day appeal
Feb 17, 2021

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I. PROCEDURAL HISTORY

1. On November 24, 2020, the Applicant filed an application for a special permit under Section 3.4 and Section 5.4 Table 1 Schedule of Uses of the Medway Zoning Bylaw for a special permit to construct a two-family dwelling to have the exterior appearance of a single-family dwelling on the lot.
2. Notice of the public hearing was published in the Milford Daily News on December 2, 2020 and December 9, 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 December 16, 2020, the hearing was continued to January 20, 2021. The public hearing was closed on January 20, 2021. At the public hearing on December 16, 2020, the Chair designated associate member Carol Gould to sit on this application, due to the absence of board member Christina Oster.
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. (30,000 sq. feet required for a two-family) and the minimum frontage requirement is 150 feet. Two-family dwellings 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 Orders 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.

The applicant, Cameron Bagherpour, his attorney Michael Larkin, and Patrick Larkin were present at both sessions of the public hearing. Attorney Larkin explained the property is under contract between the current owners and the applicant. The property was recently split into two lots by an ANR plan endorsed by the Planning and Economic Development Board (PEDB), shown as parcels A-1 and A-2. (ANR plan recorded at Norfolk County Registry of Deeds at Plan Book 698, page 32). At the initial public hearing on December 16, 2020, the Board heard testimony with respect to both lots, as the applicant stated his intent to build a two-family home on each lot, with similar characteristics. At the public hearing on December 16th, the Board heard concerns regarding the proposed two duplexes from neighbors and Town officials. Board members also expressed a number of reservations as to whether the proposed two-family homes met the criteria for special permits under the Zoning By-law. Among the issues raised:

- both of the proposed houses, which are the same design, would have four garage doors facing Milford Street, which some felt did not fulfill the requirement of maintaining the appearance of a single family home;
- there is a stone wall along the frontage of Milford Street, which the Board members felt should be

- preserved from further openings for driveways or other removal of portions of the wall;
- whether this corner lot adjacent to the Rabbit Hill National Historic District is an appropriate location for two large, two-family homes sitting on two adjacent lots, particularly as the lots are on the corner of Knollwood Road;
- whether the proposed two large, two-family homes on the two adjoining lots would adversely affect the surrounding neighborhood;
- whether the proposed two large, two-family homes would have a detrimental effect on adjoining properties due to flooding, lighting, or other detriments.

There was substantial discussion regarding the character of the existing neighborhood, and its location between the historic homes in the Rabbit Hill National Historic District, and the commercial uses further down Milford Street, such as the Cumberland Farms. Members of the Board and the Chair of the PEDB expressed concerns as to the size of the two large buildings being out of scale with the existing homes in the neighborhood. David D'Amico, DPW Director, also addressed his requests that certain conditions be included in the ZBA decision if the applications were granted, related to stormwater runoff and installation of a sidewalk. He explained that Milford Street is scheduled to have a sidewalk constructed as part of the Medway sidewalk plan, to connect to the sidewalk in front of Cumberland Farms. The PEDB requires a sidewalk along the abutting frontage for projects it reviews, or if the applicant does not put a sidewalk in, the applicant would be asked to contribute to a sidewalk fund, so it was suggested that the ZBA should impose a similar condition. Mr. D'Amico then discussed stormwater requirements set forth by the Town. Due to EPA requirements for phosphorous removal, the Town requests that applicants put in infiltration basins on new developments and along the sidewalks on the street for roof drains and stormwater runoff.

After discussion, the applicant requested a continuance of the public hearing to consider how he wished to proceed, and the Board voted to continue the public hearing to January 27, 2021.

Prior to the January 27th public hearing, the applicant submitted a revised plot plan ("Revised Plan") and architectural plans ("Revised Architectural Plans") for the proposed two-family house on this lot. The applicant also submitted a request to withdraw the pending special permit for the second, two-family house on parcel A-2 without prejudice. At the public hearing, attorney Larkin explained that the intent in withdrawing the other special permit application was to instead seek a building permit for a single-family house on that lot.

The proposed two-family house on this lot will meet all setbacks and will have a single driveway. To address the concerns raised at the initial public hearing as to the building design, the applicant proposed to build the same style two-family home that was built on property at 79 Lovering Street by the Larkins. This structure has one, two-car garage facing the street, with the second, two-car garage facing the side of the lot. There will be only one driveway coming in from Milford Street, which will use the existing driveway entrance and not require removal of any portion of the stone wall. The building will be set back 65 feet from Milford Street. The dwelling will be 4200 square feet total, approximately 2100 square feet on each side. It will be 72 feet wide; the Board was slightly concerned with the size of the building as viewed from the front. The applicant stated that the intention is to build a 2400 to 2700 square foot single family home on the other lot (Parcel A-2).

The members concurred that the new design was a significant improvement over the prior proposed design, and that it would have more of a single-family home appearance. Further, having only one two-family home, with a single family home on the corner lot of Milford and Knollwood, and with the conditions imposed by the Board's decision, will mitigate potential impacts on the neighborhood and be more in keeping with the character of the neighborhood. The Board members addressed the issue of landscaping to help screen the building from the street. Michael Larkin stated that there will be significant

landscaping in the front to create some screening. Patrick Larkin stated that trees would need to be removed in the front for the driveway, and in the back for the septic system installation. Patrick Larkin stated that the single-family home to be built on lot A-2 will be about 65 feet wide, set back about 45 feet, and there will be substantial screening and landscaping along the front of that lot as well. The Board members discussed the sidewalk issue that Mr. D'Amico raised at the last meeting, as well as landscaping improvements.

The Board discussed the special permit criteria and collectively agreed that the applicant has met all the criteria with the Revised Plan and Revised Architectural Plans, as conditioned.

The Board then the conditions, adding five additional conditions to the Board's boilerplate conditions. These conditions address landscaping and screening, contribution to the sidewalk fund or construction of a sidewalk as part of the Town's sidewalk plan, and utilization of the existing curb cut for the new driveway, among other things.

III. FINDINGS

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A 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 a special permit:

The Board then reviewed each of the general criteria for a special permit under Section 3.4:

A. 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 as conditioned; there is sufficient space and frontage for a two-family house as submitted, which will be set back 65 feet from the road, and the conditions including landscaping and sidewalk will further enhance the site.
2. Adequate and appropriate facilities will be provided for the operation of the proposed use.
The proposed two-family, as conditioned, will have the adequate and appropriate facilities, including on-site septic, stormwater facilities, and other.
3. The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.
The proposed two-family will not create a hazard; it will create limited traffic on a street that is a substantial east-west artery in the town.
4. The proposed use will not cause undue traffic congestion or conflicts in the immediate area.
The proposed two-family dwelling will not cause undue traffic congestion to the area; it will create limited traffic on a street that is a substantial east-west artery in the town.
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 proposed use, as conditioned, will not be more detrimental to the adjoining properties; it must comply with all zoning by-law regulations related to environmental conditions, including a requirement that there be no light spillage onto adjacent properties, and controls are included for dust, noise, and other potential detriments.

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

The proposed two-family, as designed and as sited on the lot in compliance with the revised application, will not adversely affect the surrounding neighborhood or alter the character of the zoning district.

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

The proposed use, as conditioned, is in harmony with the intent of the Zoning Bylaw, including promoting the most appropriate use of land

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 proposed use, as conditioned, will not be detrimental to the public good.

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 Applicant, Cameron Bagherpour, a **SPECIAL PERMIT** under Section 3.4 of the Zoning Bylaw for a Two-Family dwelling with the appearance of a single-family dwelling, to be constructed in accordance with the plans submitted to the Board (the Revised Plan and Revised Architectural Plans, as specified 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 proposed structure or addition 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 proposed structure shall be built in compliance with the documents submitted to the Board, including but not limited to the Revised Plan and Revised Architectural Plans as specified 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. This special permit shall be recorded with the Registry of Deeds prior to issuance of a building permit.

10. New separate water services will be provided for each unit running from the street water main to the units. Each unit will have a separate curb stop valve at the property line and separate meter. The existing service to the home shall be cut and capped at the water main. All work will be performed in accordance with DPW water and sewer regulations under a separate permit issued by the DPW.

11. The proposed driveway will service both units. The existing curb cut will be used for the property. Street Opening permit issued by the DPW is required for any change in the driveway to street connection.

12. An asphalt sidewalk 5 feet wide with a 6-inch asphalt curb will be required to be installed along the entire frontage of the property in accordance with MassDOT and Town specifications. Work will be approved and inspected by the Medway DPW. The applicant may elect to pay \$15,000 to the DPW

sidewalk fund in lieu of construction, allowing sufficient space and construction easements for later construction by others.

13. The applicant shall install sub-surface stormwater infiltration tanks along the frontage on Milford Street to allow for the infiltration of a minimum of a 2 inch rain event from the street gutter along the property frontage (150 feet) to the tank. Should soils not allow for this installation to be effective, the applicant may propose alternate infiltration strategies along Milford Street and/or Knollwood Street to the DPW. The Medway DPW Director shall review and accept the final installation or alternate proposed. Easements shall be granted to the Town for proper maintenance of the installation.

14. The applicant shall plant no less than fifteen Arborvitae, 7 to 10 feet tall when planted, across the frontage (except for the driveway), located seven to ten feet from the stone wall to help screen the dwelling from the street.

15. The applicant shall utilize the existing curb cut and opening in the stone wall for the property as the new driveway and shall not disturb the stone wall already in existence.

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. "Plan of Land in Medway, MA" (Parcel A-1) dated November 2020, prepared by Colonial Engineering Inc., 11 Awl Street, Medway, MA
2. "33 Milford Street" Floor Plans dated October 26, 2020, prepared by Damon McQuaid Architect, 49 Brookview Terr., Lunenburg, MA 01462
3. Property Owner Authorization Form

B. Materials submitting throughout the hearing process:

1. Letter dated January 19, 2021 from Cameron Bagherpour
2. "Milford Street Duplex" plans dated 11-20-2019, prepared by Damon McQuaid Architect, 49 Brookview Terr., Lunenburg, MA 01462, two sheets (herein "Revised Architectural Plans")
3. "Proposed Structure in Medway, MA" dated January 19, 2021, Owner: Andrew and Colleen Mahan, 35 Milford Street, Medway, MA, prepared by Colonial Engineering, Inc., 11 Awl Street, Medway, MA (herein "Revised Plan")

C. 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 November 30, 2020
2. Breakdown of taxes owed by property owner from Joanne Russo on December 1, 2020
3. Letter to applicant and property owner from Barbara Saint Andre, Director, Community and Economic Development on December 1, 2020

4. Confirmation taxes were paid in full from Treasurer's office on December 3, 2020
5. Email from Barbara Saint Andre to applicant and property owner re: information gathered from Town Counsel on December 11, 2020
6. Letter from the Medway Planning and Economic Development Board dated December 14, 2020
7. Email from David D'Amico, DPW Director on December 14, 2020
8. Email from Bridget Graziano, Medway Conservation Agent on December 14, 2020
9. Email from Mike Fasolino, Medway Deputy Fire Chief on December 15, 2020

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 Applicant, Cameron Bagherpour, a **SPECIAL PERMIT** under Section 3.4 of the Zoning Bylaw for a Two-Family dwelling to have the appearance of a single-family dwelling, to be constructed in accordance with the Revised Plan and Revised Architectural Plans and application 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	_____

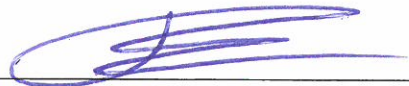
The Board and the Applicant have complied with all statutory requirements for the issuance of this special permit on the terms hereinafter set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided 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 appeal 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 from the Registry, and notification by the Applicant of the recording, shall be furnished to the Board.

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