

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



Medway Town Hall
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

RECEIVED TOWN CLERK
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DECISION
SPECIAL PERMIT
6 SPRING STREET

20 Day Appeal

10/19/2021

October 19, 2021

Applicant(s): John and Lesley Kinney
6 Spring St.
Medway, MA 02053

Location of Property: 6 Spring Street (Assessor Parcel ID: 19-022).

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), Tom Emero (Member), Rori Stumpf (Member)

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

Date of Decision: September 22, 2021

Decision: **GRANTED WITH CONDITIONS**

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I. PROCEDURAL HISTORY

1. On August 23, 2021, the Applicants 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 September 8, 2021, and September 15, 2021, 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 September 22, 2021. The hearing was closed the same evening.
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 received comments from the Conservation Agent, Department of Public Works and Planning and Economic Development Board.
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 Lesley and John Kinney were present and explained the application. The applicants are seeking a special permit for an addition to their main house, an Accessory Family Dwelling Unit (AFDU), as well as a 2-car garage that will face Stanley Road. The AFDU is 791 square feet, and the addition is 616 square feet. The Applicants' designer, Ann Hurwitz, addressed a few questions that the Planning and Economic Development Board had submitted to the ZBA. Ms. Hurwitz stated that the porch and the ramp included on the AFDU would be beyond the 35-foot setback, and nothing would be encroaching on the setback. Ms. Hurwitz also stated that though there will be two entrances on the building, the AFDU entrance is concealed by trees, so it would not encourage people to think it is the front, main entrance, which will remain on Spring Street. The AFDU entrance will be covered to ensure safety when it comes to ice and weather issues. Ms. Hurwitz stated that there is a ramp due to the grade change, as the grade slopes, and a ramp is needed to get up to the six-inch difference between the ground and the first floor. Gibb Phenegar noted that the AFDU is just under 800 square feet, so it falls under the guidelines of the Zoning By-laws. Ms. Saint Andre asked which plan should be used for the decision, as multiple plans were submitted, and Ms. Kinney confirmed that the plan with the sewer line revised September 20, 2021, is the most current and accurate.

Ms. Kinney stated that the AFDU will be for her father, and the addition to the existing dwelling will aid their needs when it comes to working from home, as she is working from home full time due to COVID, and Mr. Kinney is working from home 50% of the time. Ms. Oster commented that the architectural plans look very well done.

Joel Cutler of 3 Spring Street asked if the current driveway will be used for the existing house as well as the AFDU. Ms. Kinney stated that there will be a new driveway that will be accessed from Stanley Road, and that the current driveway on Spring Street will not be altered. Mr. Cutler asked if this plan is a 2-level addition, to which Ms. Kinney stated it is a single-level addition. Ms. Kinney stated that one of the spaces in the new garage will be for the AFDU. Ms. Saint Andre noted that the AFDU Bylaw requires the AFDU entrance to be on the side or rear of the building, not the lot. Where this is a corner lot with two front setbacks, the Board could find that the entrance to the AFDU will be on the side of the building, which faces Spring Street.

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 does not exceed 800 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 is a parking space provided in the garage; there is also room for parking in the proposed new 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 owners, John and Lesley Kinney, live in the existing single-family home as their primary residence.

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 unit will be occupied by Ms. Kinney's father.

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 new, separate entrance will be located on the side of the building, concealed from the road by trees. The architectural plans are well thought-out and compatible with the residential character of the neighborhood.

B. Section 3.4 Special Permit Decision Criteria

The Board found that the application meets/does not meet 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 Applicants have demonstrated through evidence submitted, including the plot plans, 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 Applicants, John and Lesley Kinney 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 at 6 Spring Street (Parcel ID:19-022), 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.

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.

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 August 23, 2021
2. Plan entitled “Certified Plot Plan, 6 Spring Street, Medway Massachusetts”, dated July 16, 2021, by O’Driscoll Land Surveying, Inc., consisting of two sheets, one showing existing conditions, and one showing the proposed addition.
3. “Existing Floor Plan”, dated 8.23.2021, by AE Hurwitz Design
4. Proposed First Floor Plan and Elevations for 6 Spring St, dated August 23, 2021, prepared by AE Hurwitz Design, 14 Countryside Rd, Natick, MA, 5 sheets (the “Architectural Plans”).
5. Photos of existing dwelling.

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

1. Email from Bridget Graziano, Conservation Agent dated August 31, 2021
2. Email from Peter Pelletier, DPW Director, dated September 1, 2021
3. Email from Barry Smith, Water and Sewer Superintendent, dated September 1, 2021
4. Email from Mike Fasolino, Deputy Fire Chief, dated August 31. 2021
5. Planning and Economic Development comment memo, dated September 22, 2021
6. Plan entitled “Certified Plot Plan, 6 Spring Street, Medway Massachusetts”, dated July 16, 2021, by O’Driscoll Land Surveying, Inc., last revision, September 20, 2021 (“the Plan”)
7. Email from Ann Hurwitz dated September 22, 2021.

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision 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 G.L. c. 40A §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 twenty days (20) after the filing of this notice in the Office of the Medway Town Clerk.

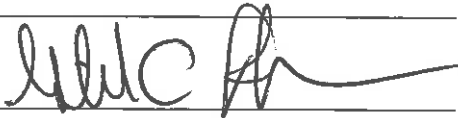
In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title, 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 that any duly filed appeal has been dismissed or denied. 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.

The next page provides the signatures of the Board.

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VI. VOTE OF THE BOARD

By a vote of 5-0 on a motion made by Gibb Phenegar and seconded by Christina Oster, the Zoning Board of Appeals hereby **GRANTS** the Applicants, John and Lesley Kinney, a **SPECIAL PERMIT** under Section 8.2 Accessory Family Dwelling Unit for the construction of an accessory family dwelling unit at 6 Spring Street. (Parcel ID: 19-022), 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	
Rori Stumpf	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.