

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



Medway Town Hall
155 Village Street
Medway, MA 02053
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
SPECIAL PERMIT
65 MAIN STREET

RECEIVED TOWN CLERK
MAY 24 '22 PM 2:47

20 Day Appeal
June 13, 2022

Applicant(s): Shaw's Supermarkets, Inc.
65 Main Street
Medway, MA 02053

Location of Property: 65 Main Street (Assessor Parcel ID: 41-023).

Approval Requested: The application is for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for outdoor display of merchandise.

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

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

Date of Decision: May 18, 2022

Decision: **GRANTED WITH CONDITIONS**

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I. PROCEDURAL HISTORY

1. On April 26, 2022, the Applicant filed for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for outdoor display of merchandise.
2. Notice of the public hearing was published in the MetroWest Daily News on May 4, 2022, and May 11, 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 May 18, 2022. The hearing was closed the same evening.
4. The Property is located in the Central Business (CB) District. The front setback requirement is 10 feet, and the side and rear setback requirements are 25 feet. The minimum lot area requirement is 10,000 sq. ft.
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

Andrea McCarthy, the Applicant's representative, was present to explain the application. Ms. McCarthy explained that the outdoor display is allowed as an accessory use and believes that Shaw's does meet the requirements as laid out in the Medway Zoning Bylaw. Ms. McCarthy explained that the outdoor display will be the same as has been done in the past, having a seasonal display. She noted that the location of the display is against the building and does not interfere with the traffic on the sidewalk, and the display will be brought inside each night.

Mr. Phenegar noted that there is an overhang where the display is located, and it does have sprinklers. Ms. Saint Andre stated that the Board did not receive any comments from the Medway Fire Department regarding this application, Ms. McCarthy stated that Shaw's did speak with the Fire Department, and they did not have an issue with the display.

Ms. Saint Andre noted that the Zoning Bylaw requires 6 feet of clearance on the sidewalks, but the sketches provided to the Board did not include the pillars that are located on the sidewalk. Ms. McCarthy stated that Shaw's understands the clearance requirement and will make sure that the display meets that requirement and takes the pillars into account.

Ms. Saint Andre asked if the display will also be located on the right side of the store as shown in the sketch provided to the Board. Ms. McCarthy stated that there will be a smaller display on the right side of the store, which will also be under the overhang.

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.

A. Section 3.4 Special Permit Decision Criteria

The Board found 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.

The site is used as a retail store in a shopping center and has ample room for the outdoor display. This area has been used in the past with no issues.

2. Adequate and appropriate facilities will be provided for the operation of the proposed use.

The display will be placed against the wall of the store, leaving more than six feet of clearance for pedestrians and access.

3. The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.

The outdoor display area will not interfere with access to or ingress from the store, and will leave more than six feet of sidewalk clearance.

4. The proposed use will not cause undue traffic congestion or conflicts in the immediate area.

The display is located on the sidewalk next to the building, outside of the fire lane.

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 display will not cause any detrimental effects and will be an improvement in the appearance.

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

The outdoor display is an accessory use in a shopping plaza that is in keeping with the commercial character of the district.

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

The outdoor display supports the most appropriate use of land.

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

The special permit promotes the goal of helping to retain businesses in town.

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

The outdoor display will not be detrimental to the public good.

The Board finds that the Applicant has demonstrated through evidence submitted, including the plans, the proposed pictures of the site, review of the square footage and usage of the proposed outdoor display areas, that it has 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, Shaw's Supermarkets, Inc. a **SPECIAL PERMIT** under Section 3.4, Special Permit of the Zoning Bylaw, and Section 5.4, Schedule of Uses, for outside display of merchandise, for the construction of an outdoor display on property located at 65 Main Street (Parcel ID: 41-023), subject to the following **CONDITIONS**

1. 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 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.
2. 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
3. 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.

4. All outdoor display shall be in compliance with the Plans submitted to the Board as listed in Section V of this Decision and attached hereto, provided, however, that the Building Commissioner may approve minor changes 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 display or encroach on the required six feet of clearance may be allowed by the Building Commissioner as field changes.

5. Only products offered for sale by the store may be displayed. The sidewalk space shall not be leased to or used by an outside vendor or include self-contained fixtures such as vending machines, or coin operated amusements.

6. Merchandise must be displayed such that a minimum of 6 feet of sidewalk clearance is maintained at all times for pedestrians and handicap accessibility. Items should be located immediately adjacent to the building and may not extend beyond the subject business’ storefront space. Display items shall not obstruct the normal ingress and egress from the store.

7. Outdoor display racks and shelving shall be:

- a. Constructed of sturdy materials such as wood, iron, steel, clay, canvas, aluminum, or plastic. Prohibited shelving materials are glass, porcelain, and other breakable materials, including any items that may pose a hazard.
- b. Maintained and in good condition at all times. Broken, rusting, degraded, torn, tattered or similar items shall be removed promptly.

8. Displays shall specify that the actual sale of outdoor merchandise shall take place inside the store.

10. No additional business signage beyond pricing and product information is authorized by this special permit.

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 April 25, 2022
2. Plan entitled “Medway Commons, Medway Massachusetts, Route 109 – Main Street”, dated December 9, 2002, prepared by Appledore Engineering, Inc. (the Plot Plan)

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

1. Plan showing Shaw’s Supermarket sidewalk with proposed outdoor display areas, undated (the Sketch Plan).
2. Planning and Economic Development Board comment memo, dated May 16, 2022.

VI. VOTE OF THE BOARD

By a vote of 4 to 0 on a motion made by Brian White and seconded by Christina Oster, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Shaw's Supermarket, Inc. a **SPECIAL PERMIT** under Section 3.4 Special Permit of the Zoning Bylaw for an outdoor display on property located at 65 Main Street (Parcel ID: 41-023), in accordance with the application and Plans provided and subject to the **CONDITIONS** herein. The Plans provided are attached to this decision.

Member:	Vote:	Signature:
Brian White	Aye	_____
Gibb Phenegar	Aye	_____
Christina Oster	Aye	_____
Joe Barresi	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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By a vote of 4 to 0 on a motion made by Brian White and seconded by Christina Oster, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Shaw's Supermarket, Inc. a **SPECIAL PERMIT** under Section 3.4 Special Permit of the Zoning Bylaw for an outdoor display on property located at 65 Main Street (Parcel ID: 41-023), in accordance with the application and Plans provided and subject to the **CONDITIONS** herein. The Plans provided are attached to this decision.

Member:

Vote:

Signature:

Brian White

Aye

Gibb Phenegar


Aye

Christina Oster

Aye

Joe Barresi

Aye



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#1 LEFT SIDE

DISPLAY

25 FT X 5 FEET

Bottle Room

DISPLAY

10 FT X 5 FT

ENTRANCE

↑
11 FT
↓

SIDEWALK

↑
11 FT
↓

PARKING LOT

PARKING LOT

#2 RIGHT SIDE

ENTRANCE

DISPLAY

20 FT X 5 FT

Sprinkler Room

EXIT DOORS

SIDEWALK

SIDEWALK
11 FT

PARKING LOT

PARKING LOT