



# TOWN OF HINGHAM

## Board of Appeals

### NOTICE OF DECISION SPECIAL PERMIT

#### **IN THE MATTER OF:**

**Applicant/Owner:** John and Elaine McGillivray  
88 Scotland Street  
Hingham, MA 02043

**Property:** 88 Scotland Street, Hingham, MA 02043

**Deed Reference:** Plymouth County Registry of Deeds Book 37872 Page 95

**Plan References:** Plans entitled, "Plan of Lane, 88 Scotland Street, Hingham, MA," prepared by Hoyt Land Surveying, 1287 Washington Street, Weymouth, MA, revised through August 2, 2021 (1 Sheet) and "McGillivray Residence Addition," prepared by Alan Kearney Architects, 222 North Street, Hingham, MA, dated June 29, 2021 (8 Drawings)

#### **SUMMARY OF PROCEEDINGS:**

This matter came before the Board of Appeals (the "Board") on the application of John and Elaine McGillivray (collectively, the "Applicant") for a Special Permit A1 under §§ III-A, 1.8.9 and V-K of the Zoning By-Law (the "By-Law") and such other relief as necessary to construct an Accessory Dwelling Unit at 88 Scotland Street in Residence District B. Pursuant to the Board's Rules and Regulations, the application was heard by the Zoning Administrator, Emily Wentworth. The Applicant attended to present the request. At the conclusion of the hearing, the Zoning Administrator issued the requested special permit, with conditions as set forth below.

#### **BACKGROUND AND DISCUSSION:**

The subject property consists of 20,000 SF of land located on the west side of Scotland Street. The lot is improved by a single family dwelling (ca. 1960). The proposed plan calls for creation of an Accessory Dwelling Unit ("ADU") within a conforming addition located to the rear of the principal dwelling. The resulting ADU (approximately 725 SF GFA) would include a kitchen with breakfast

nook, living room, one bedroom and bathroom. The current property owners will continue to reside on the property with family members.

During the hearing, the Zoning Administrator reviewed the application in detail to confirm compliance with the eligibility requirements for ADUs. These requirements include the following:

- a. As of the date that the application for a special permit is filed with the Board of Appeals, the total number of accessory dwelling units in the Town shall not exceed two and one-half percent (2.5%) of the total single-family dwelling units in the Town (the “ADU Cap”). The ADU Cap shall be determined by a fraction represented as follows: the numerator shall be the total number of accessory dwelling units allowed by special permit pursuant to this Section V-K plus the number of accessory dwelling unit permit applications pending approval before the Board of Appeals and the denominator shall be the total number of single-family dwelling units existing in the Town as classified in the Hingham assessors’ records. **This is the thirteenth ADU application received by the Board; the Town has not exceeded the ADU Cap of 156 based on the 6,234 single-family dwelling units presently classified in the Hingham assessors’ records.**
- b. The applicant shall, at the time application is made for the special permit, be the owner of the lot and single-family dwelling thereon in which the accessory dwelling unit is proposed and must certify in such application that (i) the owner currently occupies the single-family dwelling or will occupy the principal dwelling or accessory dwelling unit as his or her primary residence immediately upon issuance of the special permit and (ii) that the other unit shall be occupied by a family member. **The applicant owns the property as evidenced by the submitted deed. The applicant also certified pursuant to Section V-K, 3.b that they will continue to reside in the principal dwelling and the ADU will be occupied by family.**
- c. The area of the lot on which the existing single-family dwelling is located shall not be less than five thousand (5,000) square feet or, in the case of new construction, shall comply with the applicable minimum lot size for the single-family zoning district in which the single-family dwelling is proposed. **The lot consists of 20,000 SF of land, in excess of the minimum requirement.**
- d. The application must be accompanied by written confirmation from either (i) the Board of Health that the requirements of the Massachusetts Title 5 septic system regulations and the Hingham Board of Health Supplemental Rules and Regulations for septic systems have been or can be met or (ii) the Sewer Department that there exists available capacity in the applicable sewer district, in either case, to support the total number of bedrooms proposed for the lot inclusive of the accessory dwelling unit. **The Board of Health confirmed that the property has a Disposal Works Construction Permit for a 4-bedroom wastewater disposal system. The Applicant also submitted a**

**Title 5 Inspection Report to verify that the system has capacity to support a total of 4 bedrooms.**

- e. Only one accessory dwelling unit shall be permitted within a single family dwelling and per lot so that the total number of dwelling units per lot shall not exceed two. **The total number of dwelling units on the lot will not exceed two.**
- f. In Residence District D and in Business Districts A and B accessory dwelling units are only permitted in preexisting nonconforming single-family dwellings. **Not applicable. The property is located in Residence District B.**

The By-Law also includes a number of dimensional and design requirements with which the proposed plan complies. These include the following:

- a. The architectural character of a detached single-family dwelling shall be maintained. **The ADU will be located within a single-story addition to the rear of the existing single-family dwelling. The proposed addition will not affect the character of the single-family dwelling.**
- b. All stairways accessing an accessory dwelling unit above the ground floor of a single-family dwelling shall be enclosed within the exterior walls of the single-family dwelling. **Not applicable. The proposed ADU will be located on the ground floor.**
- c. The maximum area of an accessory dwelling unit shall be the lesser of 750 square feet or 30% of the gross floor area of the principal dwelling. For this calculation, the gross floor area shall be as defined in Section VI of this By-Law. **The ADU, at approximately 725 SF, complies with the lesser limitation of 30%.**
- d. An accessory dwelling unit shall not be created by any extension of a nonconforming building dimension, including the front, side or rear yard setback. **The ADU conforms to all dimensional requirements and will remain so following construction of the ADU. In connection with the project, a nonconforming shed will be relocated in compliance with all setbacks.**
- e. Any new entrance for the accessory dwelling unit or principal dwelling shall be located to the side or rear of the single-family dwelling. **An exterior doorway for the ADU will be located on the south side façade.**
- f. Water and sewer utilities serving the accessory dwelling unit shall not be metered separately from the principal dwelling. **There will be shared metering of water and sewer.**

- g. Additional or modified landscaping, fences or other buffers may be required to protect abutting properties from potential negative visual or auditory impacts of the accessory dwelling unit. **There will be no negative visual or auditory impacts resulting from the ADU that would require mitigation. The ADU will be located within a conforming addition to the principal single-family dwelling.**
- h. The parking requirement for an accessory dwelling unit is one space per bedroom in addition to the minimum required parking spaces for a single-family dwelling. **An existing single-car garage and driveway fulfill the combined parking requirement of three spaces, inclusive of the one additional space required for the ADU.**
- i. An accessory dwelling unit may not have more than two (2) bedrooms. **The ADU will have 1-bedroom.**

**FINDINGS:**

Based on the information submitted and presented during the hearing, and discussions with the Applicant during the meetings, the Zoning Administrator made the following findings in accordance with the Special Permit Approval Criteria under Section I-F, 2:

1. **Use of the property is in harmony with the general purpose and intent of the Zoning By-Law.** The proposed Accessory Dwelling Unit is in harmony with the purposes and intent of the By-Law because this is an allowed accessory residential use in a residential district. The proposed secondary unit will not affect the public health, safety, or welfare.
2. **The proposed use complies with the purposes and standards of the relevant sections of the By-Law.** The project, which creates an additional housing unit for family members with diverse housing needs without altering either the character of the principal dwelling or the neighborhood, advances the purposes specified in Section V-K. Additionally, the Accessory Dwelling Unit meets all eligibility, dimensional, and design requirements.
3. **The specific site is an appropriate location for the proposed use and is compatible with the characteristics of the surrounding area.** The exterior of the structure will maintain the appearance of a single-family dwelling, consistent with both the architecture of the existing single-story, single-family dwelling and the character of the neighborhood.
4. **The use as developed and operated will create positive impacts or the potential adverse impacts will be mitigated.** There will be no adverse impacts associated with

the proposed Accessory Dwelling Unit. Additional housing will be created with no impact on the neighborhood.

5. **There will be no nuisance or serious hazard to vehicles or pedestrians.** There is sufficient parking on site, including a garage space, to serve both the principal dwelling and Accessory Dwelling Unit. There will be no nuisance or hazard to vehicles or pedestrians resulting from the creation of an Accessory Dwelling Unit.
6. **Adequate and appropriate facilities exist or will be provided for the proper operation of the proposed use.** Adequate facilities exist to support the proposed use including a 4-bedroom wastewater disposal system.
7. **The proposal meets accepted design standards and criteria for the functional design of facilities, structures, stormwater management, and site construction.** The proposed plan meets accepted standards and includes all customary equipment necessary for construction of an Accessory Dwelling Unit.

## **DECISION**

The application by John and Elaine McGillivray for a Special Permit A1 under §§ III-A, 1.8.9 and V-K of the By-Law to construct an Accessory Dwelling Unit at 88 Scotland Street in Residence District B is hereby granted, subject to the following conditions:

1. The work shall be completed in accordance with the approved plans and representations made during the public hearing.
2. In accordance with Section V-K, 5, this special permit is subject to the following general conditions:
  - a. The owner of the single-family dwelling shall occupy either the principal dwelling or the accessory dwelling unit as the owner's primary residence. Temporary absences of the owner for a period of not more than nine months in the aggregate in any twelve month period and active military service of the owner for any length of time shall not be deemed a violation of this requirement provided that the dwelling units may only be occupied by family members of the owner during the owner's absence.
  - b. The owner shall recertify annually, by submission of a notarized letter to the Building Commissioner that the owner will continue to occupy either the primary dwelling or the accessory dwelling unit as the owner's primary residence, except for a bona fide temporary absence as provided above in subsection 5.a.

- c. Upon the sale or other conveyance or transfer of a single-family dwelling which has been issued a permit for an accessory dwelling unit, if the new owner wishes to maintain the special permit for the accessory dwelling unit use, such new owner must, within thirty (30) days of such transfer, submit a notarized letter to the Building Commissioner certifying that the new owner will occupy one of the dwelling units as the new owner's primary residence and comply with the other conditions of the accessory dwelling unit use.
- d. Neither the principal dwelling nor the accessory dwelling unit may be sold or otherwise conveyed or transferred separately from the other.

This decision shall not take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed since the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded with the Plymouth County Registry of Deeds and/or the Plymouth County Land Court Registry, and indexed in the grantor index under the name of the record owner or is recorded and noted on the owner's certificate of title, as such timeframes are suspended and extended pursuant to Section 17 of Chapter 53 of the Acts of 2020.

For the Board of Appeals,

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Emily Wentworth, Zoning Administrator  
August 6, 2021