

RECEIVED

JAN 26 2024

Town Clerk  
Hingham, MA



# TOWN OF HINGHAM

## Board of Appeals

### NOTICE OF DECISION SPECIAL PERMIT

#### IN THE MATTER OF:

**Applicant:** Raymond and Jennifer Estes  
92 Fort Hill Street  
Hingham, MA 02043

**Property:** 92 Fort Hill Street, Hingham, MA 02043

**Deed Reference:** Plymouth County Registry of Deeds Book 31756, Page 45 and Book 49378, Page 80

**Plan References:** Floor Plans of the detached ADU located at 92 Fort Hill Street, Hingham MA prepared by Gene S. Raymond, Registered Architect, dated January 8, 2024 (1 sheet)

#### SUMMARY OF PROCEEDINGS:

This matter came before the Board of Appeals (the "Board") on the application of Raymond and Jennifer Estes (the "Applicants") for a Special Permit A1 under § V-K of the Zoning By-Law (the "By-Law") and such other relief as necessary to create a Detached Accessory Dwelling Unit ("ADU") at 92 Fort Hill Street in Residence District A.

The Board heard the application at a duly advertised and noticed public hearing on Tuesday, January 16, 2024, during a meeting held remotely via Zoom as an alternate means of public access pursuant to Chapter 2 of the Acts of 2023 and all other applicable laws temporarily amending certain provisions of the Open Meeting Law. The Board of Appeals panel consisted of its regular members Robyn S. Maguire, Chair, Paul K. Healey and Jed Ruccio. At the conclusion of the hearing, the Board voted unanimously to grant the requested special permit, subject to the conditions set forth below.

Throughout the hearing, the Board has been mindful of the statements of the Applicant and the comments of the general public, all as made or received at the public hearing.

## **BACKGROUND AND DISCUSSION:**

The subject property consists of approximately 30,927 SF of land, is located in the Residence A District and has 125' of frontage on Fort Hill Street. The lot is improved by a single-family dwelling (ca. 1935), and a separate detached structure (ca. unknown). The proposed ADU of 853 square feet will be located in the existing detached structure and consist of a living room, kitchen area, an office/bedroom and a full-bath on the first floor, and a bedroom on the lower

**During the hearing, the Board 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 eighteenth ADU application received by the Board; the Town has not exceeded the ADU Cap of 156 based on the 6,245 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 where the accessory dwelling unit is proposed and must certify in such application that 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. **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 pre-existing single family home which is the principal dwelling.**
- 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 for an accessory dwelling unit within the principal structure or ten thousand (10,000) square feet for an accessory dwelling unit in a detached accessory structure. In the case of new construction, the area of the lot shall comply with the applicable minimum lot size for the single-family zoning district in which the single family dwelling is proposed. **The lot is located in Residence District A where 20,000 SF is required. The lot consists of approximately 30,927 SF, and therefore complies with the required minimum lot size.**

- 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 ADU has its own 2 bedroom Septic System as confirmed by the Health Department via an email dated December 12, 2023. The Applicants also submitted a passing Title-V Report dated November 30, 2023.**
- 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 A.**

**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 existing structure in which the ADU is proposed looks like a smaller single-family home, thus meeting the character of both the neighborhood and of the principal structure on the lot.**
- b. All stairways accessing an accessory dwelling unit above the ground floor of a single-family dwelling or detached accessory structure shall be enclosed with the exterior walls of the single-family dwelling; provided, however, that the Board of Appeals may waive this requirement for an unenclosed stairway on the rear of a structure to access an accessory dwelling unit located on the rear of a structure to access an accessory dwelling unit located on the second floor of an existing building. **All stairways are located within the ADU structure.**
- c. The maximum area of an accessory dwelling unit shall be the lesser of 875 square feet or 35% 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 proposed ADU, at 863 SF, complies with this section of the By-Law. (Based on the application, the gross floor area of the principle dwelling is 3,261± SF. Thirty-five percent of that area would be 1,141± SF, so the 875 SF limitation applies to this property.) An amended plan submitted by the applicants verified the square footage.**

- d. Notwithstanding the provisions of Section III-I, 2 of the Zoning By-Law, no accessory dwelling unit shall be created by any extension of a non-conforming building dimension, including the front, side or rear yard setback. **The ADU is being created within an existing conforming detached structure located on the lot. The applicants submitted a recorded 2005 ANR Plan that shows the setbacks of the structure conform to the required 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 or detached accessory structure. **The way the existing structure is positioned on the lot, the door is located on the side facade.**
- f. Water and sewer utilities serving the accessory dwelling unit shall not be metered separately from the principal dwelling; provided, however, that the Board may waive this requirement for an accessory dwelling unit with a lawfully existing structure which already maintains separately metered utilities, if the request is accompanied by the written approval of the appropriate utility, upon a finding that a waiver advances the purposes of this bylaw. **The Applicant submitted a waiver request with the application to allow for separate water service for the accessory dwelling unit from the principal single-family dwelling. The request was accompanied by a letter, dated November 17, 2023, from the Weir River Water System confirming water availability.**
- 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 structure has existed on site since the 1940s and is located in excess of 100' from single-family dwellings on adjoining properties.**
- 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. **The existing single-family home requires 2 parking spaces. As the proposed ADU will have 2 bedrooms, an additional 2 parking spaces are required. Based on the plans of land provided with this application, the driveway is sufficient in size to support the combined total of 4 parking spaces needed.**

**The By-Law also includes dimensional and design requirements for a detached accessory unit with which the proposed plan complies. These include the following:**

- a. The detached accessory dwelling unit shall comply with all building dimensions, including the front, side or rear yard setback and height limitations. Notwithstanding the foregoing, the Permit Granting Authority may waive the preceding requirements for an accessory dwelling unit within a lawfully existing nonconforming detached accessory structure to no less than 10' from a side or rear property line upon a finding that there will be no potential negative visual or auditory impacts associated with the accessory dwelling unit that cannot be mitigated. **The proposed ADU meets all dimensional standards under Section IV-A of the By-Law, as shown on the submitted plans. With 31,085 SF of land, the property contains more than three times the minimum area required to be eligible to locate a detached ADU.**
- b. The detached accessory dwelling unit shall be located a minimum of 10' from the principal dwelling and (i) to the rear of the principal single-family dwelling or (ii) to the side of the single-family dwelling at a minimum position 10' further back from the front plane of the single-family dwelling. **The proposed ADU in the existing detached structure meets all of the required dimensions of this design requirement, as shown on the submitted plans.**

**FINDINGS:**

Based on the information submitted and presented during the hearing, and the deliberations and discussions of the Board during the hearing, the Board made the following findings in accordance with the Special Permit Approval Criteria under Section I-H, 2 and Section V-K.4.f:

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 general purposes and intent of the By-Law as it provides additional housing that is adequately served by utilities without substantially altering the appearance of this residential property. There will be no harm to public health, safety, or welfare resulting from the creation of the ADU.**
2. The proposed use complies with the purposes and standards of the relevant sections of the By-Law. **The project creates an additional housing unit within an existing detached accessory structure and without altering either the character of the principal dwelling or the neighborhood, which advances the purposes specified in Section V-K. Except for the requested waiver to allow a separate water line to the accessory dwelling unit, the proposed accessory dwelling units complies with all of the dimensional and design requirements of the applicable provisions of the Zoning By-Law.**

3. The specific site is an appropriate location for the proposed use and is compatible with the characteristics of the surrounding area. **The ADU is being proposed in an existing structure that meets all required building setbacks under Section IV-A of the By-Law. In addition, the ADU complies with the additional requirements applicable to detached ADUs under Section V-K,5. of the By-Law: it is located in the rear of the single-family home; is more than 10' away from the single-family structure; and is located more than 10' back from the front plane of the single-family dwelling.**
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 in an existing structure with no impact on the neighborhood as the ADU is sited in excess of 100' from single-family dwellings on adjoining lots.**
5. There will be no nuisance or serious hazard to vehicles or pedestrians. **There is sufficient parking available on site within the shared driveway to serve both the principal dwelling and accessory dwelling unit. The width of the existing driveway allows for safe vehicular and pedestrian access to the ADU.**
6. Adequate and appropriate facilities exist or will be provided for the proper operation of the proposed use. **The applicants have provided confirmation from the Weir River Water System and Board of Health that the property has adequate water service and septic capacity for both the principal dwelling and the ADU.**
7. The proposal meets accepted design standards and criteria for the functional design of facilities, structures, stormwater management, and site construction. **The proposed ADU will be located in an existing structure. Each structure has its own septic system that has passed Title V and has approvals from the Board of Health. They will be running new water line that will be separately metered and have a letter was provided from the Weir River Water System that there was availability to support these separate water lines. No additional stormwater structures are required by the proposed use.**

**V-K.4.f - Finding:** Water and sewer facilities serving the accessory dwelling unit shall not be metered separately from the principal dwelling; provided, however, that the Board of Appeals may waive this requirement for an accessory dwelling unit within a lawfully existing structure which already maintains separately metered utilities and if the requires is accompanied by the written approval of the appropriate utility, upon a finding that a waiver advances the purposes of this bylaw. **The proposed accessory dwelling will be located in a lawfully existing structure which already maintains a separate septic system. The Weir River Water system has confirmed there is capacity for the ADU and the principal structure to have separately metered water lines. Granting of this waiver will advance the purposes**

**of the bylaw by allowing for the use of an existing structure for an accessory dwelling unit in a location and manner that does not alter the appearance of the residential property.**

## **DECISION**

Upon a motion made by Paul K. Healey and seconded by Jed Ruccio, the Board voted unanimously as follows:

To approve the application by Raymond and Jennifer Estes for a Special Permit A1 under § V-K of the Zoning By-Law to create an Accessory Dwelling Unit (ADU) at 92 Fort Hill Street located in the Residence District A, and to grant a waiver of Section V-K.4.f of the Zoning By-Law to allow separately metered water lines and a separate septic system, subject to the following conditions:

1. The work shall be completed in accordance with the approved plans, the requirements of Section V-K, and representations made during the public hearing.
2. In accordance with Section V-K, 6, 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 six 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.
  - 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 6.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.

- e. The accessory dwelling unit or the principal dwelling, whichever is not owner-occupied, shall have a minimum occupancy or rental term of 6 months.

For the Board of Appeals,



---

Robyn S. Maguire, Chair  
January 26, 2023

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.