



TOWN OF HINGHAM

Board of Appeals

NOTICE OF DECISION SPECIAL PERMIT

IN THE MATTER OF:

Applicant/Owner: Marie and Justin Vogel
4 Knoll Road
Hingham, MA 02043

Property: 4 Knoll Road, Hingham, MA 02043

Deed Reference: Plymouth County Registry of Deeds Book 35058, Page 124

Plan References: Existing conditions site plan entitled, "Plot Plan, 4 Knoll Road, Hingham, MA," prepared by James E. McGrath, PLS, dated March 25, 2019 (1 Sheet)

Proposed conditions site plan entitled, "Plot Plan, 4 Knoll Road, Hingham, MA," prepared by James E. McGrath, PLS, dated June 6, 2019 (1 Sheet)

Architectural plans entitled, "Vogel Residence, Project No. 19007 Inlaw Addition," prepared by Designs by Marshall LLC, dated July 20, 2019 (5 Drawings)

SUMMARY OF PROCEEDINGS:

This matter came before the Board of Appeals (the "Board") on the application of Marie and Justin Vogel (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 4 Knoll Road in Residence District B.

The Board opened a duly noticed public hearing on the matter on August 20, 2019 in Hingham Town Hall, 210 Central Street. The Board panel consisted of its regular members Robyn S. Maguire, Chair, and Paul K. Healey and associate member Joseph Ruccio. Attorney Adam Brodsky, Drohan Tocchio & Morgan, P.C., appeared to represent the application to the Board. At the conclusion of the hearing, the Board voted unanimously to grant the requested Special Permit, with conditions as set forth below.

Throughout its deliberations, 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 20,645 SF of land located on the west side of Knoll Road, which is itself off of Whiting Street/Rt. 53 between Cushing and Gardner Streets. The lot is improved by a single family dwelling (ca. 1965). The proposed plan calls construction of an addition to the front of the existing dwelling. The addition would include a new, two-car garage at the basement level and a one bedroom Accessory Dwelling Unit (“ADU”), consisting of 579 SF GFA, located on the first floor.

Site work associated with the proposed garage/ADU addition falls within the 50’ buffer zone to a wetland resource area. Specifically, proposed work in the buffer zone, which includes a portion of the redesigned driveway, retaining wall, and swale and related fill, totals approximately 530 SF. The Applicant proposed a 2:1 mitigation plan, with native shrubs and trees. Additionally, an existing shed will be relocated outside of the 50’ buffer zone. The Conservation Commission heard a Notice of Intent application related to all jurisdictional work on the property and voted to issue an Order of Conditions on August 19, 2019.

During the hearing, the Board reviewed the application in detail to confirm compliance with the eligibility requirements for ADUs specified in the By-Law. 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 ninth ADU application received by the Board; the Town has not exceeded the ADU Cap of 156 based on the 6,227 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 applicants own 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 approximately 20,645 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 property includes a 4-bedroom septic system. At the Health Department's request, the applicants agreed to record a deed restriction limiting the number of bedrooms to 4. As a result, the Executive Health Director provided written comments, dated August 19, 2019, verifying that the requirements of Title 5 and the local regulations can be met.**
- 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 proposed addition, which includes both a basement level garage and ground floor ADU, will not alter the architectural character 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. **The 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 will be approximately 579 SF, which complies with the requirement as this dimension is less than 30% of the 2,486 SF principal dwelling.**
- 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 proposed ADU meets all building setbacks applicable in Residence District B.**

- 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. **Access to the ADU will be gained from a proposed front porch, though the doorway is located on the side elevation of the addition.**
- 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 utilities.**
- 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. The design of the addition is consistent with that of the existing dwelling and surrounding neighborhood.**
- 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 proposed two-car garage and expanded driveway will provide sufficient parking to fulfill the combined 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 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-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 to enable the owners to share space and the burdens of homeownership with family members, 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 appearance of the structure will remain

that of a single-family, consistent with both the existing 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 ADU. Additional housing will be created without significant increases in required infrastructure, traffic, noise, or other potential adverse effects.
5. **There will be no nuisance or serious hazard to vehicles or pedestrians.** The existing curb cut on Knoll Road will remain substantially in its current location, and will not pose any additional hazard to motorists or pedestrians.
6. **Adequate and appropriate facilities exist or will be provided for the proper operation of the proposed use.** The existing onsite wastewater disposal system accommodates 4 bedrooms. The project will result in the conversion of the single-family dwelling to a 3-bedroom and the ADU will include 1-bedroom. The Health Department verified that the proposed plan can comply with all applicable state and local regulations.
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 all functional design requirements for an ADU. Additionally, the plan was approved by the Hingham Conservation Commission on August 19, 2019.

DECISION

Upon a motion made by Paul K. Healey and seconded by Joseph Ruccio, the Board voted unanimously to **GRANT** the request by Marie and Justin Vogel 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 4 Knoll Road Street in Residence District B, 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.
3. In accordance with Board of Health requirements, the Applicant shall record a deed restriction limiting the number of bedrooms on the property to four, prior to issuance of a building permit.

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 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.

For the Board of Appeals,

Robyn S. Maguire, Chair
November 15, 2019