

**Town of Hopedale**  
**Decision of the Hopedale Zoning Board of Appeals**  
**April 21, 2021**

**Case: 2-2021**

Applicant(s): Jeffrey P. Long and Michelle D. Long

Property: 211 Mendon Street  
Hopedale, MA 01747

Application Filed: May 27, 2021  
Hearing Held: June 30, 2021  
Continuation Hearings: July 28 and September 15, 2021

Relief Sought: Applicants are seeking a special permit to construct an accessory apartment in an existing detached garage at 211 Mendon Street.

Decision: Following a hearing, the Zoning Board of Appeals approved construction of an accessory apartment at 211 Mendon Street under a special permit with the following conditions:

- (1) family member residing in the accessory apartment will be Michelle's brother, Mark Polomarenko;
- (2) applicants will allow the Hopedale Building Inspector to inspect the accessory apartment should it become necessary to assure compliance with the special permit;
- (3) the applicants will continue to occupy the property at 211 Mendon Street;
- (4) upon sale of the property at 211 Mendon Street, the use of the accessory apartment shall terminate, and the apartment shall not be reoccupied unless a new special permit is obtained;
- (5) the design of the property shall be such that the appearance remains that of a single-family residence;
- (6) the accessory apartment shall have only one bedroom;
- (7) the accessory apartment shall not exceed 600 square feet and shall conform to the floor plan submitted by the applicants on September 15, 2021.

**Certification**

This is to certify that the above action was taken in compliance with the statutory requirements as set forth in Chapter 40A of General Laws, and that copies of this decision and plans referred to in this decision, if any, were filed with the Town Clerk on \_\_\_\_\_, 2021.

Special Permit or Variance is not in effect until the decision is recorded with the Worcester County Registry of Deeds and the building permit will not be issued until proof of recording is presented.

**APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PERSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING THIS DECISION IN THE OFFICE OF THE TOWN CLERK.**



**Christopher P. Hodgins, Chairman**

**Record of Proceedings  
Hopedale Zoning Board of Appeals**

**Case: 2-2021**

Applicant(s): Jeffrey P. Long and Michelle D. Long

Property: 211 Mendon Street  
Hopedale, MA 01747

**Hearing Proceedings**

Hearing Date: June 30, 2021

On June 30, 2021, the Hopedale Zoning Board of Appeals (ZBA) held a public hearing on the above application. The hearing, which was convened following publication, posting and notice to parties in interest, pursuant to the provisions of M.G.L. c. 40A, section 11, was opened by the Chairman at 7:00 p.m.

The following Board Members noted as present were in attendance throughout the hearing:

Chairman: Christopher Hodgens

Voting Member: Scott Savage

Voting Member: Lou Costanza

Voting Member: Sandra Biagetti

Alternate Voting Member: Mary Arcudi

Discussion details:

Jeffrey Long addressed the ZBA with the plans to construct an accessory apartment at 211 Mendon Street. Mr. Hodgens detailed the restrictive nature of the Hopedale Zoning By-Laws. In particular, section 6.3, concerning accessory apartments, requires the owner of the dwelling in which the accessory apartment is located to live in the dwelling, the occupant shall be related by blood or occupied by an individual hired to provide medical assistance or child care, the building must maintain the appearance of a single-family residence, the apartment must be clearly secondary and not exceeding 600 square feet, the apartment is limited to one bedroom, and when the property is sold the property reverts to single-family use.

After a detailed discussion regarding the size of the accessory apartment, the applicants requested, and the ZBA agreed, to continue the hearing giving the applicant time to consider reducing the square footage.

Continuation Hearing July 28, 2021

The following Board members noted as present were in attendance throughout the hearing:

Chairman: Christopher Hodgens

Voting Member: Scott Savage

Voting Member: Lou Costanza

Voting Member: Sandra Biagetti

Alternate Voting Member: Mary Arcudi

Under a new floor plan presented, the applicants did not reduce the size of the accessory apartment at this hearing, and Mr. Hodgens reviewed the requirements of the Hopedale Zoning By-Laws once again and discussed some of the conditions this project does not



meet. Scott Savage stated that there have been no changes to the plan based on the suggestions he made at the previous hearing and requested an engineered or CAD drawing instead of a hand drawing.

Mr. Hodgins added that the ZBA was not trying to make this process difficult for the applicants, but was enforcing the relevant by-laws as well as trying to establish a specific and identifiable framework for the building inspector to follow if a special permit issued. A better floor plan would be helpful in this regard.

Once again, the applicants requested, and the ZBA agreed, to continue the hearing to September 15, 2021, and to provide formal plans and total square footage that would comply with section 6.3 of the Hopedale Zoning By-Laws.

Continuation Hearing September 15, 2021

The following Board members noted as present were in attendance throughout the hearing:

Chairman: Christopher Hodgins

Voting Member: Scott Savage

Voting Member: Lou Costanza

Voting Member: Sandra Biagetti

Alternate Voting Member: Mary Arcudi

\*Nick Alexander was present but unable to participate or vote as he was not present at the initial hearing

The applicants provided the ZBA with revised CAD conceptual drawings of the proposed floor plan with the size reduced from 740 square feet to less than 600 square feet. After a review of the new floor plan and discussion among ZBA members and the applicants, Lou Costanza made a motion to deny the special permit request for an accessory apartment at 211 Mendon Street. Mary Arcudi seconded the motion. The roll call vote went as follows:

Lou Costanza            yes

Sandra Biagetti        no

Scott Savage            no

Mary Arcudi            no

Chris Hodgins          no

\*Nick Alexander was present but unable to participate or vote as he was not present at initial hearing

Motion did not pass.

After further discussion among ZBA members and the applicants, Mr. Hodgins invited ZBA members to consider, if inclined to grant a special permit, to incorporate provisions from the Hopedale Zoning By-Laws into conditions of the special permit. That way, all parties would clearly understand what is allowed and what is prohibited. All members agreed that such incorporation into the special permit conditions would be helpful to all concerned and would avoid confusion going forward.

Mr. Savage suggested adding a condition that required re-application for a special permit after a period of years at which time the building inspector would conduct a site visit. Mr. Savage said that such a process would help assure compliance with the special permit conditions. The applicants objected to the idea of repeatedly having to go through the

special permit process. Mr. Hodgins suggested a compromise that would address Mr. Savage's concern without unduly burdening the applicants. Mr. Hodgins proposed the applicants agree to cooperate with the building inspector in the event that there arose a need to assure compliance with the special permit conditions in the future. The applicants expressly agreed to so cooperate and allow inspection if needed in the future. All ZBA members expressed agreement as well.

Mr. Savage then made a motion to approve application for an accessory apartment with the following conditions:

- (1) The size of the accessory apartment cannot exceed 600 square feet and the addition built according to the presented plans.
- (2) Family member residing in the accessory apartment will be Michelle's brother, Mark Polomarenko.
- (3) Applicants will allow the Hopedale Building Inspector to inspect the accessory apartment should it become necessary to assure compliance with the special permit.
- (4) The applicants will abide by all conditions of the 6.3 Hopedale Zoning bylaws which include the owner of the dwelling in which the accessory apartment is located shall occupy one of the units, and the occupant shall be related by blood, marriage, medical assistant, custodial care or child care to one of the individuals in the other unit. When the unit is sold, or when the need ceases, the dwelling shall revert to a single-family use and the accessory apartment may not be reoccupied unless a new special permit is obtained. The design shall be such that the appearance of the building remains that of a one family residence.

Sandra Biagetti seconded the motion and the roll call vote was as follows:

Scott Savage	yes
Lou Costanza	no, based on the existence of the existing finished space located next to the proposed accessory apartment
Sandra Biagetti	yes
Mary Arcudi	yes
Chris Hodgins	yes
*Nick Alexander was present but unable to participate or vote as he was not present at initial hearing	

Motion passes.

#### Summary of Findings and Decision

The subject property consists of a single-family residence and a detached garage. As of the date of the first public hearing, the Tax Assessor's property record card described the property as follows: "This property contains 0.260 acres of land mainly classified as 013 with a(n) CONVENT'NL style building, built about 1900, having VINYL exterior and ASPHAL SH roof cover, with 1 unit(s), 6 room(s), 3 bedroom(s), 1 bath(s), 1 half bath(s)." The property record card does not make any reference to the existing detached garage which is clearly visible on the property. According to the applicants, the detached garage contains a business on the ground/first floor accessed by the garage door. The second floor contains a storage area for the business as well as an unfinished area. The applicants propose to convert the unfinished area into the accessory apartment.

The residence is located on Mendon Street, also known as state route 16, a heavily travelled roadway. Other houses on the street consist of similar single-family residences of roughly the same era, with several newer residences interspersed. The existing detached garage is setback approximately 20 feet from the street, but this condition is not very unusual when considering a housing development across the street where the setback is also minimal.

Members of the ZBA had extensive discussions with the applicants during the public hearings and made suggestions designed to bring the proposal within the requirements of the Hopedale Zoning By-Laws pertaining to special permits generally (§§ 10.6(d) and 10.6(d)(1)-(8)) and accessory apartments in particular (§§ 6.3 and 6.3(a)-(h)). Notably, the applicants filed their initial request for relief on March 17, 2021. Following a public hearing on April 21, 2021, (including the extensive discussions referenced above), the application was withdrawn. During that first hearing, two residents living on abutting property sent an email to the ZBA and stated, “we have no conflict with their plans after we saw the blue prints.” As far as the instant application, no abutters, residents, or other interested parties expressed any favorable or unfavorable opinion about the proposed accessory apartment.

At the hearing on September 15, 2021, the applicants returned with a proposed floor plan dated 9/13/21, entitled “Long Residence 211 Mendon Street Hopedale MA” by SO Design Collective, with a scale of  $\frac{1}{4}'' = 1'0''$ . The plan indicates a single bedroom with finished living space under 600 square feet. The applicants indicated that the adjoining storage space will NOT be part of the accessory apartment and will continue as storage space for the business on the ground/first floor.

An applicant does not have “an absolute right to a special permit.” MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 638, 639 (1970). The decision to grant or deny “special permits is within the discretion of the board.” ACW Realty Management, Inc. v. Planning Board of Westfield, 40 Mass. App. Ct. 242, 246 (1996). Based upon the governing standard, the Hopedale Zoning By-Laws, and the facts presented at the hearings in the instant case, the ZBA exercises its discretion in favor of issuing a special permit with conditions.

A special permit may not issue unless the ZBA finds that “all of the requirements” of the Hopedale Zoning special permit criteria under §§ 10.6(d)(1)-(8) are satisfied. Based upon the information available at the public hearings, the ZBA concludes that if the applicants abide by the Hopedale Zoning By-Laws as amplified by the special permit conditions outlined by the ZBA, the special permit criteria will be satisfied. The accessory apartment will not have “detrimental effects which outweigh its benefits to the neighborhood, Town or zoning district in which it is located.” By-Laws § 10.6(1). The accessory apartment will not have a detrimental effect on the neighborhood. The detached garage already exists and will not be altered from the exterior. A paved driveway already exists with a turn area. Given the lack of any exterior changes to the structure, the lack of any changes to the surrounding land, and the presence of only one occupant in the accessory apartment, the ZBA concludes that the accessory apartment will be unobtrusive and virtually unnoticed to an observer. The unobtrusive nature of the accessory apartment and limited use by one occupant will not “materially endanger or be hazardous to the public health and safety” By-Laws § 10.6(3), has sufficient off-street parking, By-Laws § 10.6(4), is adequately served by municipal water and sewer, By-



Laws § 10.6(5), will have no impact on surface water runoff, By-Laws § 10.6(6), will not contaminate ground water, wells, streams, ponds, watercourses, or wetlands, By-Laws § 10.6(7), and will not “create undue traffic congestion or impair pedestrian safety.” By-Laws § 10.6(8). The Master Plan is being developed and is not a factor that militates against a special permit. By-Laws § 10.6(2).

While there are certainly some unique features about the history and development of this property and prior municipal approvals for construction, the ZBA concludes that this fact should not be held against the applicants. Considerations of fundamental fairness have persuaded the ZBA that relief should be granted in this narrow instance. The relief granted herein is entirely consistent with the evident and laudable purpose of the Hopedale Zoning By-Laws at issue – to enable relatives to live in close proximity as family circumstances may dictate. This special permit, however, is not intended as a springboard for any future development, construction, subdivision, rezoning, or other relief regarding the subject property.

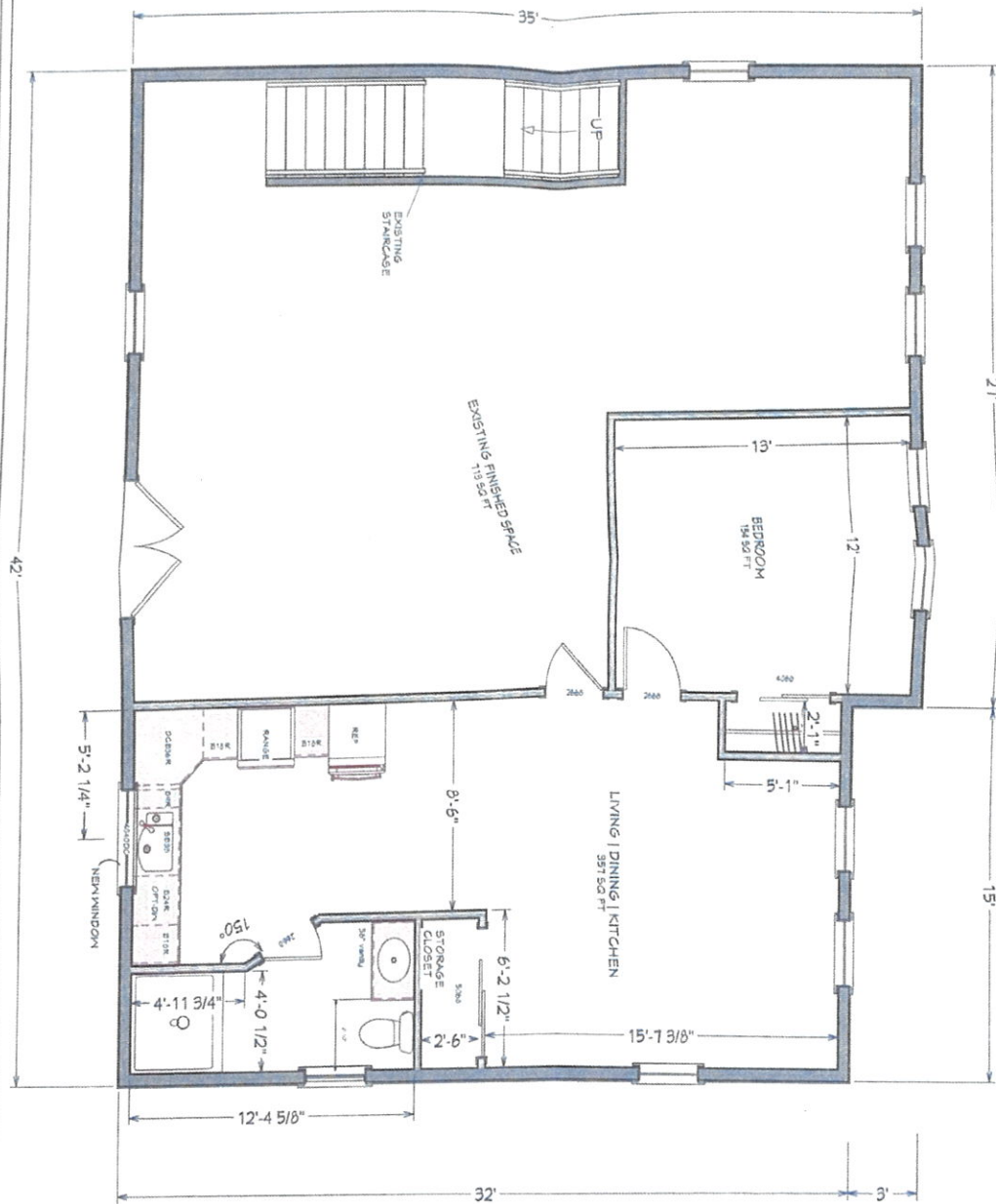
Based upon the foregoing, the ZBA hereby allows the application for a special permit with the following conditions noted:

- (1) family member residing in the accessory apartment will be Michelle’s brother, Mark Polomarenko;
- (2) applicants will allow the Hopedale Building Inspector to inspect the accessory apartment should it become necessary to assure compliance with the special permit;
- (3) the applicants will continue to occupy the property at 211 Mendon Street;
- (4) upon sale of the property at 211 Mendon Street, the use of the accessory apartment shall terminate, and the apartment shall not be reoccupied unless a new special permit is obtained;
- (5) the design of the property shall be such that the appearance remains that of a single-family residence;
- (6) the accessory apartment shall have only one bedroom;
- (7) the accessory apartment shall not exceed 600 square feet and shall conform to the floor plan submitted by the applicants on September 15, 2021.

Copies of this decision will be filed with the Town Clerk and sent to the applicants, abutters, building inspector, and Tax Assessor.

These proceedings are concluded.

PROPOSED  
FLOOR PLAN



PROPOSED FLOOR PLAN

LONG RESIDENCE  
211 Mendon Street Hopdale MA

CONCEPTUAL DRAWINGS  
(for town approval)



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SCALE 1/4" = 1'-0"  
DATE 9/13/21