

TOWN OF MEDWAY

Planning & Economic Development Board

155 Village Street

Medway, Massachusetts 02053

*Andy Rodenhiser, Chairman
Robert K. Tucker, Vice-Chairman
Thomas A. Gay, Clerk
Matthew J. Hayes, P.E.
Richard Di Iulio*

November 8, 2016

SITE PLAN DECISION **Medway Gardens Site Plan Modification** **34 Summer Street**

You are hereby notified that on November 8, 2016 at a duly called and properly posted meeting, the Medway Planning and Economic Development Board, after reviewing the application and information compiled during the public review process, voted on a motion made by Matthew Hayes and seconded by Richard Di Iulio, by a three (3) in favor and zero (0) opposed vote, to approve with conditions as specified herein, the application of Onilleva Realty, LLC of Medway, MA to modify the previously approved site plan for Medway Gardens from August 2014.

I. PROJECT LOCATION - Medway Gardens is located on a 2.27 acre portion of the 3.6 acre property at 34 Summer Street (Parcel 56-039) in the Commercial V zoning district. The property is owned by Onilleva Realty, LLC of Medway, MA. The site is bounded on the west by Summer Street, on the north by Milford Street, on the east by property owned by Jesse and Teigan Bain at 37 Milford Street and by Madelyn Rivera and Pamela Bellino at 2 Knollwood Road, and on the south by property owned by Richard and Helen Barry at 32 Summer Street. The parcel also includes a Cumberland Farms convenience store/vehicle fuel station constructed in 2014 (41 Milford Street). The Medway Gardens portion of the site also includes a detached single family home constructed in 1985.

II. BACKGROUND - The site plan decision for improvements at Medway Gardens was previously approved by the Medway Planning and Economic Development Board on August 12, 2014. Those improvements were shown on a plan dated August 21, 2014 which the Board endorsed on September 16, 2014. The approved scope of work included:

- construction of a new greenhouse and a wooden pergola; and
- various site improvements including a reorganized and striped parking arrangement, perimeter landscaping/buffering, outside merchandise display, and improved access/egress to the site

all of which were a result of a consolidation of the Medway Gardens operation on the southern portion of the parcel subsequent to the construction of the Cumberland Farms convenience store and vehicle fuel station facility on the northern portion of the property.

The site plan decision specified that work was to be completed within a two (2) year period after plan endorsement. Based on a June 1, 2016 inspection of the site by Tetra Tech Engineering, the Board's consulting engineer, and the resultant punch list dated June 8, 2016, the Board determined that the applicant had not fully completed the approved scope of work. The owner now wishes to modify/reduce the scope of site plan improvements.

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After the public briefing process had commenced, the owner asserted that the use of the property by Medway Gardens is an agricultural use under G.L. c. 40A, §3, and therefore is not subject to site plan review. The applicant, acting through his attorney Marshall Newman in a letter dated and provided to the Board on September 13, 2016, challenged the Board's authority to conduct site plan review of the Medway Gardens project and further that the conditions being imposed by the Board were unreasonable regulations. However, the applicant did not appeal the original site plan approval issued by the Board, and the matter currently before the Board is the owner's own request to modify the existing site plan approval. The Board disputes that the primary use of this property is agricultural as defined in G.L. c. 40A, §3, or that the property is exempt from site plan review. In order to address the pending application, however, the owner worked with the Board to agree upon the conditions listed in this decision, while both parties reserve their positions with respect to whether the primary use of the property is agricultural as defined in G.L. c. 40A, §3.

III. PROJECT DESCRIPTION/PROPOSED MODIFICATION - *The primary purpose of this application for site plan modification is to update the plan to depict the revised scope of improvements the applicant will implement. Pursuant to the application, the applicant proposed a revised scope of work as reflected on the updated site plan dated July 22, 2016.*

Previously approved work to NOT be carried out includes paving 7 parking spaces in the parking area south of the wooden pergola. The owner wishes to be relieved of undertaking this particular site improvement and proposes to provide gravel parking spaces instead.

The previously approved work which the applicant has agreed to install includes the following items as shown on the plan:

- Installation of a bituminous concrete apron and the appurtenant railroad ties at the Summer Street entrance
- Installation of 30 concrete wheel stops in the parking area to clearly designate the parking space locations
- Installation of directional and accessible parking signs
- Installation of a stockade fence and shrubs to enclose the existing dumpster
- Installation of a free-standing sign at the entrance driveway to the site from Summer Street
- Installation of landscaping along the southern and eastern perimeter of the site as a buffer to the adjacent parcels.

IV. PROCEDURAL HISTORY

- A. August 8, 2016 – Application to modify a previously approved site plan was filed with the Medway Planning & Economic Development Board.
- B. August 9, 2016 – Public briefing notice was filed with the Town Clerk, posted to the Town of Medway web site and mailed to abutters via first class mail.
- C. August 23, 2016 – Public briefing commenced. The public briefing was continued to September 13, 27, October 4, and November 8, 2016 when it was concluded and the Board voted its decision.

V. INDEX OF SITE PLAN DOCUMENTS

- A. The application package submitted on August 8, 2016 to modify the previously approved Medway Gardens site plan included the following documents:
 - Application to Modify a Previously Approved Site Plan dated August 8, 2016
 - Project description dated July 12, 2016, received August 4, 2016
 - *Medway Gardens Site Plan*, dated July 22 2014, last revised July 22, 2016 prepared by Civil Design Group, LLC of North Andover, MA.

- Certified abutters list
- B. During the course of the public briefing, the applicant provided the following additional documents to the Board:
- A collection of site photos provided by the applicant during the August 23, 2016 meeting to document completed work.
 - An information sheet regarding a parking lot striping machine Mr. Avellino intends to purchase as provided during the August 23, 2016 meeting
 - A letter dated and provided to the Board on September 13, 2016 from Attorney Marshall Newman representing Onilleva Realty LLC and Medway Gardens, Inc. challenging the Board's site plan review of the property due to the premise that the property is exempt from site plan review due to its use for horticultural purposes and that the conditions being imposed were unreasonable regulations. The letter also alleged that Planning and Economic Development Board Chairman Andy Rodenhiser was biased against Mr. Avellino due to the chairman's involvement with the Medway Lions Club which is a principal competitor to Medway Gardens in the sale of Christmas trees in the Medway area.
 - A written communication to the Board provided by Mr. Avellino at the September 27, 2016 meeting.
- C. Previous minor site plan decision dated August 12, 2014 and the previously approved site plan endorsed by the Board on September 16, 2014.

VI. TESTIMONY - In addition to the site plan application materials submitted and provided by the applicant during the course of its review, the Planning & Economic Development Board received written or verbal testimony as follows:

Written Documents

- Inspection report/punch list dated June 8, 2016 from Steve Bouley, Tetra Tech Engineering
- Site plan modification review letter dated August 16, 2016 from Gino Carlucci, the Town's consulting planner.
- Email communication dated August 21, 2016 from abutter Teigan Bain, 37 Milford Street including site photos
- Email communication dated August 23, 2016 from abutter Pamela Bellino-Rivera of 2 Knollwood Drive
- Confidential email communication dated September 23, 2016 from Town Counsel Barbara Saint Andre to address issues raised by the applicant's attorney Marshall Newman.
- Disclosure of Appearance of Conflict of Interest form prepared by Andy Rodenhiser and filed with the Town Clerk and Board on September 26, 2016
- Summary of property value and land area information for 34 Summer/41 Milford Streets compiled September 26, 2016 by Susan Affleck-Childs, Planning and Economic Development Coordinator
- Summary information about the definition of agriculture and its exempt status under G.L., c. 40A, §3.

Verbal Testimony

- Joe Avellino, owner and applicant
- Gino Carlucci, consulting planner
- Pamela Bellino-Rivera, 2 Knollwood Drive
- Teigan and Jesse Bain, 37 Milford Street

VII. SPECIFIC CONDITIONS OF APPROVAL – The Board's approval of this site plan modification is subject to the following specific conditions which the Board determines are reasonable to protect adjacent property owners.

A. **Plan Revisions** - Prior to endorsement, the site plan titled *Medway Gardens Site Plan*, dated June 22, 2014, last revised July 22, 2016 prepared by Civil Design Group of North Andover, MA shall be further revised to include the following:

1. the location and description/specifications including height and materials for sixteen (16) linear feet of fencing to be installed along the parcel's eastern boundary with property owned by Bellino-Rivera at 2 Knollwood Road as requested as specified in Condition C.
2. the notes regarding perimeter landscaping shall be revised to specify that the evergreen trees to be planted every twenty (20) feet shall be a minimum of four (4) feet in height above finished grade at the time of planting, and the shrubs to be planted in between the trees shall be a minimum of two (2) feet in height above finished grade at the time of planting; the species of evergreen trees and shrubs shall be varied.
3. the location for the outdoor storage area as specified in Condition F.
4. the free-standing sign to be located at the entrance driveway from Summer Street shall be noted as being a "new" sign instead of a "relocated" sign.
5. details for the modification of the swing gate per Condition G.
6. the final plan revision date.

B. **Landscape Installation and Maintenance**

1. All trees and shrubs to be planted on the site shall be species that are certified by a horticulturist as native, drought-resistant and deer proof. Such certification shall be provided to the PEDB prior to endorsement of the site plan.
2. The owner shall regularly water the landscape plantings to be installed on the perimeter of the site as shown on the plan so that they will be maintained and thrive. To accomplish this, the owner has agreed to install soaker hoses for irrigating the plants.
3. The site's landscaping shall be maintained in good condition to the same extent as shown on the endorsed Plan. Any shrubs, trees, bushes or other landscaping features shown on the Plan that die shall be replaced during the next planting season.

C. The owner shall install sixteen (16) linear feet of fencing along the parcel's eastern boundary with property owned by Bellino-Rivera at 2 Knollwood Road as requested. The fencing shall be white vinyl, six (6) feet tall, comparable to the fencing at the adjacent Cumberland Farms development.

D. The owner will arrange for the regular spray painting of striping to outline the 9' x 18' parking spaces on the gravel parking areas where no wheel stops are installed. Such spray painting shall be performed as often as needed to provide for clearly demarcated parking locations.

- E. A new free-standing, two sided Medway Garden Center sign shall be installed near the entrance driveway from Summer Street in conformance with the Zoning Bylaw.
- F. A specific, organized outdoor storage area shall be established and maintained north of the house on the premises and west of the access road for the purpose of storing vehicles, equipment, unused shipping materials, the Conex type container/trailer and any other such items on the premises. Plant materials need not be stored within the designated outdoor storage area.
- G. The owner shall modify the existing swing barrier gate at the northern edge of the internal driveway to Milford Street by attaching six (6) foot high white vinyl panels to screen the back of the Medway Gardens site from the Cumberland Farms development and Route 109/Milford Street.
- H. The height of the dumpster enclosure shall fully screen the height of the dumpster inside. The enclosure shall screen all four (4) sides of the dumpster.
- I. **Schedule for Project Completion** – The Planning and Economic Development Board's approval of this site plan modification shall lapse after June 30, 2017 of the grant thereof if substantial work has not commenced except for good cause. All site improvements shown on the endorsed plan shall be completed by the applicant or its assignees by December 31, 2017.

Upon receipt of a written request by the applicant filed at least thirty (30) days prior to the date of expiration, the Planning & Economic Development Board may grant an extension for good cause. The request shall state the reasons for the extension and also the length of time requested. If no request for extension is filed and approved, the site plan approval shall lapse and may be reestablished only after a new filing and public briefing have been held by the Board.

VIII. GENERAL CONDITIONS OF APPROVAL

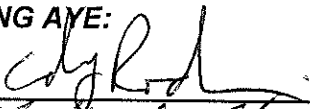
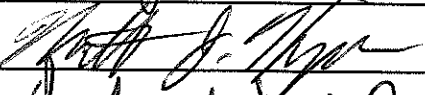
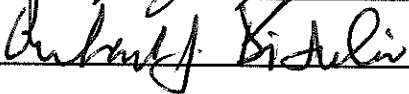
- A. **Appeal** – Any person aggrieved by the Planning & Economic Development Board's Decision may appeal such to the court within twenty (20) days of the date the Decision is filed with the Town Clerk.
- B. **Plan Endorsement** - Within thirty (30) days after the Planning & Economic Development Board has filed its *Decision* with the Town Clerk, the Applicant shall submit a final site plan modification drawing reflecting all required revisions, if any, to the Planning and Economic Development Board to review for compliance with the Board's *Decision* before plan endorsement.
- C. **Fees/Taxes** - Prior to endorsement of the modified site plan by the Planning & Economic Development Board, the Applicant shall pay the balance of any outstanding plan review fees owed to the Town for review of the site plan by the Town's engineering and planning consultants, and any other outstanding expenses or obligations due the Town of Medway, including real estate and personal property taxes and business licenses. The Applicant's failure to pay these fees in their entirety shall be reason for the Planning & Economic Development Board to withhold plan endorsement.
- D. **Construction Standards** - All construction shall be in full compliance with all applicable local, state and federal laws, including but not limited to the Americans with Disabilities Act and the regulations of the Massachusetts Architectural Access Board for handicap accessibility.

- E. **Plan Revisions** – Any change to the approved site plan modification shall necessitate a further modification of the site plan requiring Planning & Economic Development Board approval pursuant to Section 3.5 of the Medway Zoning Bylaw. Whenever additional reviews by the Planning & Economic Development Board, its staff or consultants are necessary due to proposed site plan modifications, the Applicant shall be billed and be responsible for all supplemental costs including filing fees, plan review fees and all costs associated with another public hearing if required including legal notice and abutter notification. If the proposed revisions affect only very limited aspects of the site, the Planning & Economic Development Board may reduce the scope of the required review, public notice and waive part of the filing and review fees.
- F. **Project Completion** – At the conclusion of the installation/construction of the site plan improvements, the applicant shall provide the Board with a written certification of a professional engineer registered in the Commonwealth of Massachusetts that all construction work has been completed in strict compliance with the decision and the endorsed site plan.

Approved by the Medway Planning & Economic Development Board: November 8, 2016

BOARD MEMBERS:

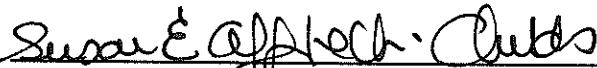
VOTING AYE:

VOTING NAY:

VOTING TO ABSTAIN:

ATTEST:



Susan E. Affleck-Childs
Planning & Economic Development Coordinator

11-8-16
Date

COPIES TO: Michael Boynton, Town Administrator
Bridget Graziano, Conservation Agent
Donna Greenwood, Assessor
Thomas Holder, DPS Director
Jeff Lynch, Fire Department
Jack Mee, Building Commissioner/Zoning Enforcement Officer
Stephanie Mercandetti, Director of Community and Economic Development
Joanne Russo, Treasurer/Collector
Jeff Watson, Police Department
Steve Bouley, Tetra Tech
Gino Carlucci, PGC Associates
Joe Avellino