

Board Members
Brian White, Chair
Gibb Phenegar, Vice Chair
Christina Oster, Clerk
Joe Barresi, Member
Tom Emero, Member



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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
APPEAL -DENIED
31, 33 & 37 WEST STREET

Applicant(s): Steven Brody

Location of Property: 31, 33, and 37 West Street (Assessor Parcel ID: 66-001, 66-002, 66-003, 65-024).

Approval Requested: The application is an **appeal** under M.G.L chapter 40A section 15 seeking to reverse a decision by the Building Commissioner dated June 7, 2023, issued in response to a request for zoning enforcement from Mr. Brody alleging that the lighting at the Glen Brook Way development violates the zoning bylaw.

Members Participating: Gibb Phenegar, Vice Chair; Christina Oster, Clerk; Joe Barresi, Member; Tom Emero, Member

Members Voting: Gibb Phenegar, Vice Chair; Christina Oster, Clerk; Joe Barresi, Member; Tom Emero, Member

Date of Decision: August 2, 2023

Decision: **Appeal Denied**

I. PROCEDURAL HISTORY

1. On July 7, 2023, the Applicant filed for an **appeal** under M.G.L chapter 40A section 15.
2. Notice of the public hearing was published in the Milford Daily News on July 19, 2023, and July 26, 2023, and notice sent by mail to all parties in interest and posted in Town Hall as required by G.L. c. 40A §11.
3. The public hearing was opened on August 2, 2023. The hearing was closed the same evening.

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RECEIVED TOWN CLERK
AUG 8 '23 PM 2:25

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20 Day Appeal
August 28, 2023

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4. The Property at 31, 33, and 37 West Street is located in the AR-II (Agricultural Residential II) District. It was granted a comprehensive permit under G.L. c. 40B in 2017, with a major modification in 2018. Neither decision was appealed.

5. The Board notified Town departments, boards, and committees of this application.

6. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section IV. of this Decision.

II. TESTIMONY

Steven Brody, 39 West Street, was present to discuss the request. Mr. Brody stated he sent additional materials to the Board earlier that evening, and that he is disputing the comprehensive permit for Glen Brook Way, as well as the decision made by the Building Commissioner, Jonathan Ackley. Mr. Brody stated that there is still light spillage from the development into the street, and that there will be additional light spillage onto his property when the next phase of construction is finished, and the lights are turned on. Mr. Brody stated he has asked the Board for light screening, the Board directed him to Mr. Ackley, and he believes Mr. Ackley's response was inadequate and did not clarify which plans are being used. Mr. Brody stated that the last certified set of plans he could find are from 2018.

Mr. Phenegar stated that in looking at the application, there are three issues addressed in the appeal, which will be discussed: spillage of light from the development onto the road (West Street), excessive construction lighting creating spillage on the applicant's property, and potential violations that may occur when the next phase of construction is completed. Mr. Phenegar stated that, based on the documents provided, Mr. Ackley went to the property to address the concerns, the developer had shielded lights to reduce spillage into the street and screened construction lighting within the building to reduce the brightness, which Mr. Ackley deemed in compliance. With respect to potential light spillage that may occur on Mr. Brody's property after construction is completed, Mr. Phenegar stated that Mr. Ackley and the Board cannot enforce an infraction that has not yet occurred. Ms. Oster clarified that the developer had also turned off two exterior lights to reduce light spillage into the road and agreed that the Board could not rule on violations that have not occurred.

The Town's counsel, Attorney Carolyn Murray of K.P. Law, was present. Attorney Murray noted that she reviewed the materials that Mr. Brody had sent that evening, titled "Statement of the Case," and that it seems to be in a format that may be a prelude to a next appeal. She noted that there is information and grievances that are listed that date back to the comprehensive permit, which has been approved and has not been appealed, as well as modified without appeals. She stated that any information in the statement referring to prior actions, findings, or sufficiency of the plans may not be relevant and is not within the scope of Mr. Brody's present appeal. She stated that the appeal specifically refers to Mr. Ackley's decision dated June 7, 2023, and that the concerns surrounding light spillage into the street and temporary construction lighting have been addressed to Mr. Ackley's satisfaction. Attorney Murray also noted that it is

difficult for any enforcement action to be taken against future illumination for something that has not yet been constructed.

Mr. Barresi asked for clarification of which bylaw Mr. Brody believed was being violated, Mr. Brody stated the bylaw is section 7.1.2, which defines the tolerable limit of light spillage, and that he believes that the spillage is currently beyond that limit in the right of way. Mr. Phenegar stated that the Building Commissioner went out to the property to meter the light and found that it does meet the standards of the Zoning Bylaw. Mr. Phenegar stated, regarding lighting, there is direct light and indirect light. He stated that direct light can be controlled via shading, screening, etc., but reflective light is not covered by the Zoning Bylaw, because there is almost no way to control it. Mr. Phenegar stated that the light coming off the property is reflected light, which was found by Mr. Ackley. Mr. Brody stated that he is not aware of any readings made by the Building Commissioner.

Mr. Phenegar reiterated that the Board will be reviewing the three concerns as stated in Mr. Brody's appeals, and that he believes two of the concerns have been addressed by the Building Commissioner, and the third concern relating to future violations cannot be addressed. Mr. Barresi agreed that it is impossible to assume that something will be a violation in the future.

Mr. Brody stated that there could be further issues in the future and referenced the case of Breen v. Weston in his "Statement of the Case" document. Mr. Brody stated that the readings that have been taken are contradictory, and that his request for impartial third-party review from a certified lighting technician was not fulfilled, which he originally requested on February 2, 2022. He stated that the plans that Metro West Collaborative Development, has submitted are not certified and that the data is invalid.

Attorney Paul Haverty of Blatman, Bobrowski, Haverty & Silverstein, LLC, was present, representing Metro West Collaborative Development. Attorney Haverty stated that he agrees with everything Attorney Murray had stated, noting that a majority of the items being brought up in the statement that was submitted, and in some of the official requests, deal with plans that have been approved with appeal periods that have expired. He stated the two current requests have both been addressed. He stated that the construction of the interior construction lighting has been addressed, by the applicant's own admission, to his satisfaction. He also stated that the issue regarding the exterior lighting has been addressed and has been deemed compliant by Mr. Ackley. Attorney Haverty stated that a zoning violation cannot be prospectively found, and that a violation cannot be found based on a set of comprehensive permit plans that were approved by the Board and were not subject to appeal. Attorney Haverty stated that if, at some point, the lighting is constructed and is not consistent with the plans that were approved, that will be addressed, and that Caitlin Madden, Executive Director of Metro West Collaborative Development, mentioned that once the lights are put in place, there will be a dimmer to allow the lights to be turned down. Attorney Haverty further stated that if it is impossible to have lighting there that does not meet the Zoning Bylaw, the lights cannot be operable, and that interior lighting is not covered by the Zoning Bylaw and cannot be the basis for a violation of the Zoning Bylaw.

Mr. Phenegar stated that once the next phase of the project is constructed, and the applicant feels there is an issue with the lighting, that he should seek further zoning enforcement.

Mr. Phenegar stated that his opinion is that the Building Commissioner's decision dated June 7, 2023, is correct, and that the light spillage on the street was addressed, and that the interior light issues were addressed, and that the request for enforcement on a violation that has not yet occurred cannot be addressed. The Board members agreed and had no further comment.

III. FINDINGS

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A, as amended, and by the Medway Zoning Bylaw. The Board also considered evidence and testimony presented at the public hearing.

The Vice-Chair noted that there are three issues addressed in the appeal: 1) spillage of light from the development onto the road; 2) excessive construction lighting creating light spillage on the applicant's property; and 3) potential violations that may occur when the next phase of construction is completed.

The Board voted to make the following findings with respect to the three items in the Building Commissioner's determination that is the subject matter of this appeal:

1. On the first item, the Board found that the Building Commissioner visited the site and determined that there was an issue with light spillage onto the street, the Commissioner contacted the developer to address it; the developer turned off two of its lights adjacent to the street and addressed the others, and it was then deemed compliant by the Building Commissioner.

2. On the second item, the Board found that the Building Commissioner determined there was an issue with the interior construction lighting, the Commissioner contacted the developer to address it; it was addressed and adjusted by the Developer by shielding the lights, and then deemed compliant by the Building Commissioner.

3. On the third item, the Board found that zoning enforcement cannot be obtained for a possible violation that has not yet occurred.

Based on its findings, the Board determined that the Building Commissioner's determination should be affirmed, and the appeal denied.

IV. INDEX OF DOCUMENTS

A. The application included the following information that was provided to the Board at the time the application was filed:

1. Application dated July 7, 2023.

2. Letter from Jonathan Ackley, Building Commissioner, to Steven Brody, dated June 7, 2023.
3. Memorandum from Steven Brody to the Building Commissioner, dated May 25, 2023.
4. Memorandum from Meander Studio Collaborative Design, dated June 9, 2022.
5. Confirmatory plan set titled “Apartments at Glen Brook Way – Phase 2,” by Meander Studio Collaborative Design dated June 29, 2022.
6. Construction plan set titled “Apartments at Glen Brook Way – Phase 1,” by Meander Studio Collaborative Design dated June 1, 2020.
7. Plan set titled “Apartment at Glen Brook Way – Phase 1 & Phase 2,” by Meander Studio Collaborative Design dated July 5, 2018.
8. Village Limited Sheet Set titled “Calculated Impact and Field Data” – Reading and Photometric Calculations by Steve Brody.
9. FLIR Systems Inc. Declaration of Conformity.
10. DRM Owner’s Manual
11. ISO/CIE 19476

B. Other documents received by the Board:

1. Email from Jonathan Ackley, Building Commissioner, dated July 11, 2023, with attachments:
 - Photos showing light spillage into the Town right of way dated June 6, 2023.
 - Email from Steven Brody to Jonathan Ackley dated May 7, 2023, with image dated May 7, 2023.
 - Email from Moses Cordeiro, Dellbrook, dated May 8, 2023.
 - Email thread titled “Glenbrook Lighting Request,” dated July 11, 2023.
2. Letter from Paul Haverly, esq. dated July 28, 2023, on behalf of Metro West Collaborative Development, LLC.
3. “Statement of the Case” received on August 2, 2023, at approximately 6:50 p.m. from Steven Brody.

VI. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Joe Barresi and seconded by Christina Oster, the Zoning Board of Appeals hereby **DENIES** the Applicant, Steven Brody, an **APPEAL** under M.G.L chapter 40A section 15 seeking to reverse a decision by the Building Commissioner dated June 7, 2023.

Member:	Vote:	Signature:
Gibb Phenegar	Aye	_____
Christina Oster	Aye	_____
Joe Barresi	Aye	_____
Tom Emero	Aye	_____

The Board and the Applicant have complied with all statutory requirements for the issuance of this appeal on the terms herein set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in General Laws, chapter 40A, section 15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, chapter 40A, section 17, and shall be filed within twenty days after the filing of this notice in the office of the Medway Town Clerk.

VI. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Joe Barresi and seconded by Christina Oster, the Zoning Board of Appeals hereby **DENIES** the Applicant, Steven Brody, an **APPEAL** under M.G.L chapter 40A section 15 seeking to reverse a decision by the Building Commissioner dated June 7, 2023.

Member:	Vote:	Signature:
Gibb Phenegar	Aye	 _____
Christina Oster	Aye	_____
Joe Barresi	Aye	_____
Tom Emero	Aye	_____

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