

TOWN OF MEDWAY
ZONING BOARD OF APPEALS

MINUTES OF MEETING JANUARY 19, 2011

All five members of the Board were present. The Chair called the meeting to order at 7.45 p.m.

By unanimous consent, the Board agreed to hear the application of Metro PCS.

Mr. Squires appeared on behalf of the applicant and stated that the application related to the installation of a 26 inch microwave dish antenna, to be added to the panels previously permitted and already installed. The dish will be added at about the 111 foot level, just above the existing Metro PCS array, which is at the 107 foot level.

At this point, there were no public questions or comments, and the Board agreed unanimously to a ten minute recess so Board members could study the detailed information packet provided at the hearing.

The hearing resumed at 8:05 pm, at which time Mr. Musmanno raised the question of the required FCC statement. His attention was directed to Paragraph 6 of the affidavit provided, which stated that there was 156 feet from the base of the existing tower to the nearest property lines. Mr. Squires stated that the total height of the dish structure would not exceed about four feet, but he could not state with certainty which frequency band the antenna would be using.

Mr. Biocchi noted that noise was a matter of concern to neighbors; Mr. Squires stated that the dish would not cause any additional noise. In response to a question from Mr. Cole, Mr. Squires confirmed that the existing whip antenna would be removed at the same time that the dish was installed.

There were no public questions or comments. On a motion made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously, the hearing was closed.

The Board then consented unanimously to hear the application of Mr. Bryn Smith, who appeared on his own behalf. Mr. Smith stated that there were no records of the history of the house in question but that tax records show that it had long been

taxed as a multi-family house. However, the Zoning Enforcement Officer says that there is no permit for a four family dwelling on file.

After a lengthy and rather inconclusive discussion, during which it was pointed out to the applicant that he might experience difficulty in meeting the criteria for a variance and that it might be in his interests to require a formal decision from the Zoning Enforcement Officer as to whether the subject lot was legally a four family dwelling, which decision could then be appealed to the Board, the applicant requested to withdraw the application without prejudice. A motion to this effect was moved by Mr. Musmanno, seconded by Mr. Cole and passed unanimously.

Mr. Musmanno then made a motion to accept the Minutes of the December 22 meeting but the motion failed for lack of a second. The Board then agreed unanimously to deliberate on the application of Metro PCS.

On a motion made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously, it was found that the applicant had demonstrated compliance with all the stipulations of Section V.S.2 of the Zoning ByLaw. On a motion made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously, it was found that the proposed modification of the existing structure would not cause substantial detriment to the public good. Further, on a motion made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously, it was found that the grant of the requested special permit to the applicant would not be inconsistent with any of the criteria set forth in Section III.J of the Zoning ByLaw. Finally, on a motion made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously, the Board granted a special permit to Metro PCS for the installation of the antenna substantially as shown on the submitted plans.

A motion was made by Mr. Biocchi, seconded by Mr. Gluckler and passed unanimously to accept the minutes of the December 22 meeting.

On a motion made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously, the Board adopted (by a vote of 4-0, with Mr. Gluckler abstaining) the decision on the application of Delphic Associates as submitted by the Clerk. A motion to make certain modifications in the decision was made by Mr. Musmanno, seconded by Mr. Cole and passed by unanimous consent.

The Board proceeded to review the application of Mr. Curley. After some discussion, a motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to reject the application, return the fee paid, and request additional information as to what type of special permit is sought and the reasons why such a special permit is justified.

On a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the Board adjourned at 9:57 pm.

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING MARCH 16, 2011

All five members of the Board were present. The Chair called the meeting to order at 7.45 p.m.

By unanimous consent, the Board agreed to hear the application of Ms. Wojciak, who appeared on her own behalf.

The applicant stated that the dog normally remain inside except that one dog is left outside on a fixed leash for short periods; there were no other outside facilities. No commercial activities were contemplated in relation to the dogs. Sometimes the applicant's sisters brings other dogs over for play dates, and the applicant may keep these other dogs for a couple of days. The applicant has four dogs of her own and may have two more on the premises for short periods. There have been no complaints from neighbors or from the Animal Control Officer.

There were no comments or questions from the public.

A letter from the Animal Control Officer, recommending limiting any permit to five dogs, was read into the record.

On a motion made by Mr. Biocchi, seconded by Mr. Gluckler and passed unanimously, the hearing was closed.

The Board then consented unanimously to hear the application of Ms. Auclair, who appeared on her own behalf.

The applicant stated that she owned four dogs, which were house dogs with a fenced kennel attached to the house. The dogs comprises three miniature pinschers and one Manchester terrier, all being less than 20 lbs each. There have been no complaints from neighbors or from the Animal Control Officer. The dogs are not allowed out in the kennel when the owner is not at home. The applicant would have no problem with a condition barring commercial activities in relation to the dogs. The applicant's lot comprised 10 acres so there was a substantial distance from the kennel to the nearest neighbor's house. The applicant is asking for a permit for five dogs since she occasionally wishes to take in one rescue dog.

There were no public question or comments.

On a motion made by Mr. Biocchi, seconded by Ms. Gould and passed unanimously, the hearing was closed.

There was unanimous consent to begin deliberation on the two applications just heard.

On a motion made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously, it was found that the grant of a suitably conditioned kennel permit would not be a detriment to the public good. On a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, it was found that the application was consistent with the criteria for a special permit set out in Section III.J of the Zoning ByLaw. Accordingly, on a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the requested special permit was granted for 20 Milford Street subject to the following conditions (proposer and seconder of each condition is given in parentheses; all conditions were adopted unanimously):

- (a) There shall not be more than five dogs on the premises at any one time (Musmanno/Biocchi);
- (b) There shall be no commercial activities in connection with the kennel permit (Musmanno/Biocchi); and
- (c) No dogs shall be left outside unattended (Biocchi/Musmanno).

A motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, made the same findings and granted the same permit to Ms. Auclair as to Ms. Wojciak.

New petitions by Messrs. McGowan and Carson were approved unanimously for advertisement and hearing.

A motion was made by Ms. Gould, seconded by Mr. Gluckler and passed unanimously to accept the minutes of the January 19 meeting.

The latest petition by Delphic Associates, and the response made by the Chair, were read into the record. After some discussion, the fee for the petition was set at \$175.00 by unanimous consent. The Chair noted that there is no specific language in Section 40B regarding repetitive petitions, so the Board can hear the new petition, and by unanimous consent the Board granted a hearing to the petitioner.

On a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the Board adjourned at 9:31 pm.

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING MARCH 30, 2011

All five members of the Board were present. The Chair called the meeting to order at 7.53 p.m.

By unanimous consent, the Board agreed to hear the appeal of Mr. Ahmed, on whose behalf Mr. Paul Cusson of Delphic Associates appeared.

Mr. Cusson stated that the issue in this appeal is the refusal of the Building Inspector to issue a building permit for Lot #4 in Fox Run. A basement permit was previously granted for this lot, but a later application for a building permit was refused. According to the applicant, the Building Inspector indicated that he would discuss the application with other Boards, and eventually refused the permit on the grounds of inadequate security for the roads. The applicant then E-mailed the Building Inspector asserting that the Planning Board does not have jurisdiction under Section 40B; all approvals must be pursuant to Massachusetts General Laws, and the Zoning Board of Appeals has authority over all permits. The applicant further pointed out that the situation is governed by Condition #18 of the original Zoning Board of Appeals Decision.

The applicant further explained that it wished the road to be inspected so that it could eventually petition to have them adopted by the Town as a public road. The applicant had had some discussion with the Planning Board regarding procedure since the Zoning Board of Appeals does not have a road inspector. The Planning Board suggested hiring a specific engineering firm to make the necessary inspections, and this has been done.

The Building Inspector stated that he had denied the requested building permit because Town Counsel considered this project a subdivision subject to M.G.L., Chapter 41, Section 81U. The letter from Mr. Musmanno explaining the security arrangement in the Zoning Board of Appeals Decision does not address whether the existing security is inadequate. Mr. Cole raised the question of whether a statute relating to construction of ways was relevant to a building permit for a dwelling.

Mr. Biocchi pointed out that, before issuing a comprehensive permit the Zoning Board of Appeals consults with other Town Boards and seeks their input. In its original Decision, the Zoning Board of Appeals took the view that the best security was holding lots, since the Board does not have regular bonding accounts. Originally, the developer envisioned a private road.

The applicant then argued that the logic of counsel's opinion would allow the Town to demand that the subdivision go through the full subdivision control process, which would negate the intention of Chapter 40B.

Mr. Rodenheiser of the Planning Board stated that the Selectmen have been reviewing the procedure for adopting streets. If any legal issues remain, there will be a caution to purchasers of lots that the road may not be accepted.

Mr. Ahmed pointed out that he had already paid out about \$15,500 for road inspections. Mr. Musmanno discussed previous correspondence with the Planning Board regarding security, acceptance of the road, etc.

There were no questions or comments from the public. A motion to close the hearing was made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously.

The Board then proceeded by unanimous consent to hear the application of Delphic Associates, for whom Mr. Cusson appeared.

Mr. Cusson noted that the applicant could have appealed the Board's earlier Decision refusing a second modification of the Section 40B comprehensive permit to the Housing Appeals Court or the Land Court. The applicant did not do so, and attempted to understand the reasons for the Board's rejection and to overcome them. It is clear from the record that a request for modification was made on February 4, and the Rules state that the Board should make a decision as to whether the proposed change is a substantial one within 20 days. Thus, the applicant can argue that there has been constructive grant of the requested modification. Local rules allow repetitive petitions if the development has at least 10 per cent affordable units, which this development does.

At this point, Mr. Musmanno stated that Board reserves its position regarding procedural matters and the applicability of the local rule on repetitive petitions.

The applicant then drew attention to the differences from the previous petition. The new plan reduces the number of bedrooms; the old approval was for 45

bedrooms, whereas the new plan shows all three bedroom units for a total of 36 bedrooms. The previous plan showed only three affordable units; four are now offered, in conformity with the request of the Affordable Housing Committee. As regards open space, there is now access to a separate lot with benches, swing set etc. on top of the drainage system. Snow removal areas are now made clear on the plan.

The Board's previous Decision stated that there was no evidence on financial matters. Letters from TD Bank and from Radius are now offered regarding the difficulty in financing condominiums, and graphs are provided showing changes in condominium and single family housing prices over the last few years. Mr. Musmanno objected that these materials did not really support the allegations of difficulty in financing condominiums.

The applicant then presented pro formas showing that the previously proposed 15 unit development would not generate sufficient profit to allow financing, whereas the 12 unit development now proposed would allow sufficient profit to allow it to be financed. Mr. Musmanno directed attention to the fact that the applicant appeared to changing the basis of the proposed amendment from the financing of condominiums versus single family homes to the uneconomic nature of the original 15 unit development.

One member of the public questioned whether the applicant was really reducing an approved 15 unit development to 12 units and was assured that this was in fact the case. Mr. Dacier, an abutter, noted that the proposed park area was near his property and questioned whether this lot could in fact accommodate three separate purposes and whether it was suitable for snow storage. He observed that if this is to be a play area the previously agreed screening is inadequate, and would prefer that this corner lot be left open.

Mr. James Milk stated that he would prefer 12 single family units over the original plan with 5 duplexes. Mr. Dacier of 1 Higgins Road spoke in opposition to the proposed amendment; the abutters had agreed to 10 building sites whereas there would now be 12. The applicant pointed out that there was less total impervious area on the new plane. Having observed some blockage of catch basins during recent inclement weather, Mr. Dacier questioned when the drainage system would become operational, and was

advised that it is already operational and that the roads would be cleaned during constructions to keep catch basins clear.

The Board then took a 10 minute recess to enable the members to study the various materials provided at the hearing. Upon resuming the hearing at 9:45 pm, the applicant was asked to explain the differences between the prices of the market rate units in the two pro formas. The applicant explained that it believed that a higher price could be obtained for market rate units in a subdivision consisting solely of single family units, and pronounced itself satisfied with the materials presented.

On a motion made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously the hearing was closed. After some informal discussion among the Board members, it was decided to defer deliberations on both matters heard this evening until the Board's next meeting in one week's time.

A motion to accept the minutes of the March 16 meeting as presented by the Clerk was made by Ms. Gould, seconded by Mr. Gluckler and passed unanimously.

Finally, a motion to adjourn was made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously. Accordingly, the Board adjourned at 9:56 pm.

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING APRIL 6, 2011

Messrs. Musmanno, Cole and Gluckler and Ms. Gould were present when the Chair called the meeting to order at 7.46 p.m.

A motion was made by Mr. Gluckler, seconded by Ms. Gould and passed unanimously to approve the minutes of the March 30 meeting as presented by the Clerk. By unanimous consent, the application of Mr. Merchant was approved for advertising and hearing.

By unanimous consent, the Board then proceeded to hear the application of Thomas McGowan, on whose behalf Diane McGowan appeared. Ms. McGowan stated that one dog is 15 years old and in poor health. The applicant would have no objection to a restriction to no business activities in connection with the dogs. The dogs are kept in the house except for brief periods. One dog is Shi Tzu, approximately 15 lbs, a second is Bijon, about 11 lbs, a third is a Pekinese mix of about 9 lbs and the last is a small Pug. The dogs are not left unattended outdoors, but are provided with a fenced run. There have been no complaints to the applicant or to the Animal Control Officer. The dogs have never run loose, and a five year limitation on the kennel permit would be acceptable in view of the age of the oldest dog.

There were no public questions or comments.

A motion to close the hearing was made by Mr. Cole, seconded by Ms. Gould and passed unanimously.

The Board then moved to immediate deliberation on this application. A motion to find that the application was consistent with the criteria for a special permit set out in Section III.J of the Zoning ByLaw was made by Mr. Cole, seconded by Mr. Gluckler and passed unanimously.

A motion to grant the requested special permit was made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously, subject to the following conditions (the names of the proposers and seconders of the various conditions are indicated in parentheses after the conditions; all conditions were adopted unanimously):

- (a) All rights and privileges are limited to keeping domestic pets owned by residents (Musmanno/Cole)
- (b) There shall be no more than four dogs on the premises (Musmanno/Cole)
- (c) Dogs shall not be left outdoors unattended (Musmanno/Gluckler)
- (d) The permit expire five years from its date of issue (Musmanno/Cole)
- (e) There shall be no commercial activities in connection with the kennel permit (Cole/Musmanno).

At this point, Mr. Biocchi joined the meeting.

By unanimous consent, the Board agreed to hear the application of Mr. Thomas Carson, who appeared on his own behalf.

Mr. Carson stated that he was seeking a Class II used car dealers license. He buys only one car at a time and few overall. He has an arrangement with other dealers for long term storage and with an auto repair facility in Millis for repairs; he needs the license to attend auto auctions which are not open to the public.

There were no questions from the public. Mr. Larry Munch of 1 Quail Drive spoke in favor of the application, stating that he was a customer of the applicant, and confirmed the description of the operation given by the applicant. Ms. Carol Burnstein and Mr. Harold Konig, neighbors of the applicant, spoke in favor citing the meticulous appearance of the property. Mr. Michael Powers of 17 Florence Circle also spoke in favor stating that the applicant was a good neighbor and his property impeccable.

The Board then held a general consultation regarding this application, the chief problem troubling the members being what activity of the applicant required the issue of a special permit having regard to the permitted activities of home-based businesses as set out in Section V.AA of the Zoning ByLaw. Finally, on a motion made by Mr. Cole, seconded by Mr. Biocchi and passed 4-1 (Ms. Gould voting against), it was decided to continue the hearing to April 27 at 7:45 pm, and seek clarification from the Building Inspector of the reasons for him requiring a special permit for the applicant's activities.

The Board then decided by unanimous consent to take up the appeal of Mr. Ahmed. Town Counsel appeared before the Board and advised the Board that MGL, Chapter 40, Section 81U sets out four possible methods of providing security in developments subject to the subdivision control regulations; other forms of security are not permitted. Even with a comprehensive permit under Chapter 40B, counsel advised, a road plan must be recorded, which invokes the security provisions of Section 81u. The filing of a subdivision plan is a necessary condition for issue of a building permit. Mr. Musmanno pointed out that a plan had already been recorded. Counsel also referred to the provisions of Section 81X, which sets out the criteria a Building Inspector must use in issuing a building permit.

The Board then proceeded to deliberate on the appeal of Mr. Ahmed. After a general consensus had been reached as to the approach to the decision, on a motion made by Mr. Musmanno and seconded by Ms. Gould the matter was placed on the table until Mr. Cole provided a draft decision.

By unanimous consent, the Merchant application was set for hearing on April 27.

The Board then proceeded to deliberate on the appeal of Delphic Associates. After a general consensus had been reached as to the approach to the decision, on a motion made by Mr. Musmanno and seconded by Mr. Cole the matter was placed on the table until Mr. Gluckler provided a draft decision.

The Secretary was dismissed by unanimous consent at 10:55 pm.

Finally, a motion to adjourn was made by Mr. Gluckler, seconded by Ms. Gould and passed unanimously. Accordingly, the Board adjourned at 11:10 pm.

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING APRIL 27, 2011

All members of the Board were present when the Chair called the meeting to order at 7.55 p.m.

The Chair expressed thanks to the Secretary for her 20 years of service to the Board and presented a small gift.

By unanimous consent, the Board proceeded to hear the application of Gerald and Sara Merchant, who appeared on their own behalf. The applicants stated that the dogs in question were miniature dachshunds who live in crates in the house; when outside they remain in the yard. One is 13-14 years old and will not be replaced. In response to a question from the Board, the applicants stated that a term limitation on the proposed permit would be acceptable to the applicants. There had been no complaints to the owners or the Animal Control Officer. The lot in question was about 0.8 acres with woods behind. The dogs were not left outside unattended, the applicants stated.

There were no questions or comments from the public.

A motion to close the hearing was made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously.

The Board then proceeded by unanimous consent to the continuation of the hearing on the application of Mr. Carson. A letter from the Zoning Enforcement Officer, who was present at the hearing, was read into the record. The Zoning Enforcement Officer then stated that he was troubled by the possible precedent set by this application and that the Board might wish to impose conditions; specifically, the Zoning Enforcement Officer was troubled by the presence of the Class II license.

There were no questions or comments from the public.

A motion to close the hearing was made by Mr. Cole, seconded by Mr. Gluckler and passed unanimously.

By unanimous consent, the Board then proceeded to deliberate on the application of Gerald and Sara Merchant. An “omnibus” motion was moved by Mr. Musmanno, seconded by Mr. Cole and passed unanimously; the motion:

- (a) Found that the grant of a suitably conditioned kennel permit would not cause substantial detriment to the public good;
- (b) Found that the application was consistent with the criteria for a special permit set out in Section III.J of the Zoning ByLaw; and
- (c) Granted the requested kennel permit subject to the following conditions:
 - 1) All rights and privileges are limited to keeping domestic pets owned by residents;
 - 2) There shall be no more than four dogs on the premises;
 - 3) Dogs shall not be left outdoors unattended;
 - 4) The permit expire five years from its date of issue; and
 - 5) There shall be no commercial activities in connection with the kennel permit.

By unanimous consent, the Board then agreed to deliberate on the application of Mr. Thomas Carson. A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to find that the petitioner's proposed business meets all the standards of Section V.AA.2 of the Zoning ByLaw. A motion was made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously to find that the authority of the Board to issue a special permit is restricted by Section V.AA.3 of the Zoning ByLaw to home based businesses which do not meet the standards fo Section V.AA.2 of that ByLaw. Accordingly, on a made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously the Board decided to dismiss the application based upon the foregoing findings.

The Board then proceeded to deliberate further on the appeal of Delphic Associates. A letter from the Planning Board was read into the record consenting to the hearing of this repetitive petition. The Board agreed by unanimous consent that there was no need for recreation on the south eastern lot; to require recalculation of the drainage capacity; to revoke Condition 18 of the original comprehensive permit and to substitute the security provisions of MGL, Chapter 41, Section 81U; to require a demonstration that sizing and draining in the south eastern lot are adequate to handle snow storage on that lot; to modify Condition 16 of the original comprehensive permit to require four

affordable units; the change Condition 17 to refer to not more than two affordable units; and not to eliminate Condition 19 regarding landscaping. On a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the matter was then tabled until May 4 pending a draft decision by Mr. Gluckler and Mr. Musmanno.

After difficulties experienced with the existing recording equipment during this meeting, on a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the Board authorized the Secretary to purchase a new recording device at a cost of up to \$100.

The Board then decided by unanimous consent to further deliberate on the appeal of Mr. Ahmed. A general consensus was reached that on the facts as they appeared during the Board's previous deliberation, the Board would be compelled to allow the appeal, since the appellant had satisfied all the requirements of MGL Chapter 41, Section 81X, and that any inconsistency between the security provisions of the original comprehensive permit and those of Chapter 41, Section 81U were not grounds for refusing the requested building permit. However, now that it had been proved to the satisfaction of the Board that a recorded covenant was in force regarding the subject lot, issue of the building permit was subject to the provisions of this covenant. A decision as to whether the appellant had satisfied the provisions of the covenant relevant to obtaining a building permit required answers to factual questions on which the Board had not received any information, since the Board was, at its hearing, entirely unaware of the existence of the covenant. Accordingly, the Board should remit the matter to the Building Inspector for further action consistent with the Board's opinion. By unanimous consent, the Board placed the matter on the table until May 4, when Mr. Cole would provide a draft decision.

By unanimous consent, consideration of the Minutes of the April 6 meeting was deferred until the next meeting of the Board.

Finally, a motion to adjourn was made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously. Accordingly, the Board adjourned at 11:05 pm.

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING MAY 4, 2011

All members of the Board were present when the Chair called the meeting to order at 8:01 p.m.

The Board reviewed the appeal from the Building Inspector by Mr. Bryn Smith regarding 9 Broad Street. After considerable discussion regarding the delay in the Board receiving the appeal and the difficulties arising from the short time to hear the appeal, on a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the appeal was authorized for advertising and a hearing set for May 25, 2011 at 7:45 pm.

On a motion made by Mr. Gluckler, seconded by Ms. Gould, and passed unanimously, the Minutes of the April 6, 2011 meeting as presented by the Clerk were accepted. Similarly, on a motion made by Mr. Biocchi, seconded by Ms. Gould, and passed unanimously, the Minutes of the April 27, 2011 meeting as presented by the Clerk were accepted with three amendments.

On a motion made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously, the draft decision on the appeal by Mr. Ahmed was adopted with amendments (the amendments were individually adopted by unanimous consent).

On a motion made by Mr. Musmanno , seconded by Mr. Cole and passed unanimously, the draft decision on the application of Delphic Associates was adopted with amendments (the amendments were individually adopted by unanimous consent).

On a motion made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously the Board adjourned at 9:26 pm.

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING MAY 25, 2011

Messrs. Musmanno, Cole, Gluckler and Biocchi were present when the Chair called the meeting to order at 7:54 p.m.

By unanimous consent, the Board proceeded to hear the appeal of Mr. Bryn Smith regarding 9 Broad Street. Mr. Smith appeared on his own behalf, and the Building Inspector also appeared. Mr. Smith stated that he did not wish to present any additional documents. He based his case largely upon the Building Permits issued in 1985 and 2003, and the tax records. All material in the package presented to the Board was also presented to the Building Inspector before or after the denial of the requested permit.

The Building Inspector stated, in issuing the earlier Building Permits, his predecessor would not necessarily have looked at all the records and might have assumed that the subject building was a pre-existing non-conforming building. Research shows that this building was a single family dwelling when zoning was adopted around 1950. The assessors' 1975 tax rating does not necessarily reflect Town Zoning.

There were no questions from the public. Mr. Gregory of 33 Broad Street spoke in favor of the appeal. There are numerous multi-family dwellings in the area, including his own, and by the standards being applied in this appeal he might have difficulty establishing that his own dwelling was a legitimate multi-family dwelling. The Board should consider the effect this decision might have on other lots in the neighborhood. Mr. Roy Young of 7 Church Street also spoke in favor of the appeal stating that the subject dwelling had always been a five-family dwelling since he had lived in the area, and thus for at least 20 years. Ms. Arlene Doherty (speaking as a member of the public) stated that she knew the subject dwelling to have been multi-family since at least 1972. Mr. Heavy stated that his family moved out of the dwelling in the middle of the Second World War and that it was a single family dwelling at the time. Mr. Biocchi (speaking as a member of the public, not of the Board) stated that from his personal knowledge in 1974 the subject dwelling was multi-family.

No one spoke in opposition to the appeal.

A motion was made by Mr. Cole, seconded by Biocchi and passed unanimously to close the hearing.

On a motion made by Mr. Musmanno, seconded by Mr. Biocchi, and passed unanimously, the Minutes of the May 4, 2011 meeting as presented by the Clerk were accepted with minor amendments.

By unanimous consent, the Board proceeded to immediate deliberation of the appeal of Mr. Bryn Smith. On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the Board found that it was satisfied that multi-family use was established by July 8, 1975. After some further discussion in which certain members expressed a desire to conduct further research into the history of zoning in Medway, a motion was made by Mr. Biocchi, seconded by Mr. Gluckler and passed unanimously to table further deliberation until the next meeting of the Board on June 15, 2011.

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the new petition by Sia Family Realty Trust was set for advertising and hearing on June 15, 2011 at 7:45 pm.

Mr. Ahmed appeared before the Board requesting that plans relating to Fox Run Farms be signed by the Board. However, the Board declined to do so pointing out that certain provisions of its recent decision regarding amendment of the comprehensive permit were not reflected on the plans presented.

On a motion made by Mr. Gluckler, seconded by Mr. Biocchi and passed unanimously the Board adjourned at 9:15 pm.

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING JUNE 15, 2011

Messrs. Musmanno, Cole, and Gluckler and Ms. Gould were present when the Chair called the meeting to order at 7:50 p.m.

On a motion made by Mr. Musmanno, seconded by Mr. Glucker, and passed unanimously, the Minutes of the May 25, 2011 meeting as presented by the Clerk were accepted.

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the new application of Jay Abend was approved for advertizing and hearing at a date to be determined later in the meeting. Mr. Biocchi then joined the meeting.

By unanimous consent, the Board proceeded to hear the application of The Julia F. Sia Family Trust, on whose behalf Attorney Cannon appeared. Mr. Cannon argued that the subject lot would be suitable for an ARII lot but is zoned ARI. Its uniqueness lies in its situation. ARI lots are typically less congested than ARII. The proposed development would fit in nicely with the surrounding area. The petitioner has been unable to sell the lot under the existing zoning. The applicant could build a single family house but it would not be economical to do so. The siting of the lot on Main Street also affects its saleability. "Soil conditions, shape or topography" has been interpreted by case law to include location relative to other zoning districts. Mr. Gary Bursett also appeared for the applicant and testified that in view of the aforementioned factors the value of the lot is very much reduced. Mr. Cannon further stated that the current asking price is \$150,000 and that it might be possible to sell the lot for \$75,000 for single family construction.

There were no questions or statements from the public. A motion was made by Mr. Cole, seconded by Mr. Gluckler and passed unanimously to close the hearing.

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the Board decided to make up the application of Mr. Smith and to

immediately table the application pending deliberations on the appeal of the same applicant.

After a two minute recess, the Secretary reported that her research into the history of the Zoning ByLaw revealed that there was no restriction on multi-family use prior to 1968, and that Town Census data for the period 1951-1972 revealed that the subject lot was used as a multi-family residence as least as early as the early 1960's. On a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the Board found that the current multi-family use was established prior to 1968. On a motion made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously, the Board found that the current multi-family use is pre-existing non-conforming. Accordingly, on a motion made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously, the Board upheld the appeal, reversed the decision of the Building Inspector that the building must remain a single family dwelling, and remanded the matter to the Building Inspector for further proceedings consistent with this opinion.

Mr. Smith then indicated that he wished to withdraw the request for a special permit. On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the Board allowed the applicant to withdraw the application for a special permit without prejudice. On a motion made by Mr. Biocchi and seconded by Mr. Gluckler, the Board determined to return the applicant's check for the special permit application fee.

Mr. Pavlik appeared on behalf of Mr. Ahmed. Two letters from Mr. Rizzo to TetraTech, the Town's consulting engineer were read into the record and the Board members then signed plans for Fox Run Farms.

Two new petitions by New Cingular Wireless LLC relating to cell phone tower special permits were approved by unanimous consent and on a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed by unanimous consent these two petitions and the petition by Mr. Abend previously accepted were set for hearing on July 20, 2011 beginning at 7:45 pm.

On a motion made Mr. Musmanno, seconded by Mr. Cole and passed by unanimous consent, the Board took up deliberation on the application of Sia Realty Trust. On a motion made Mr. Musmanno, seconded by Mr. Cole and passed by a vote of 4-1

(Mr. Biocchi dissenting), the Board found that the petitioner failed to demonstrate conditions relating shape, topography or soil conditions of the subject premises that do not generally affect land in the zoning district. Then, on a motion made by Mr. Cole, seconded by Ms. Gould and passed on a vote of 4-1 (Mr. Biocchi dissenting), the Board voted to deny the requested variance based upon the foregoing finding.

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously the Board adjourned at 9:38 pm.

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING JULY 20, 2011

Messrs. Musmanno, Cole, and Biocchi and Ms. Gould were present when the Chair called the meeting to order at 7:53 p.m.

By unanimous consent, the Board proceeded to hear the application of Village Realty Trust, on whose behalf Mr. Jay Abend appeared. Mr. Abend stated that the internet sales business which had previously occupied the premises moved out about a year ago, and since efforts to sell the property had failed, it was now leased to two businesses. Mr. Abend argued that the general nature of the business for which the violation was alleged was similar to that (a painting business) which previously occupied the site, both being industrial, so that no special permit should be required. Gardening tools are presently stored in an outside tent.

At this point, the Board invited the Building Inspector to state has objections. The Building Inspector argued that this was a new use which required a special permit. There was some rather inconclusive discussion between members of the Board and the Building Inspector regarding what criteria should be used to determine whether any new use is sufficiently similar to a previous use that no special permit should be required, the Building Inspector in effect stating that this should be left to his judgment.

When questions were invited from members of the public, Mr. David Stockton of 73 Village Street and Ms. Helen Kelley of 72 Village Street raised concerns about the number of vehicles parked at the site (especially outside normal working hours) and environmental problems. The applicant pointed out that the tenant does not operate heavy equipment. Mr. Chris Rogers of 7 Populatic Street noted that the building is in the 100 year flood zone of the Charles River.

There were no statement by the public in favor of the application. Mr. Rogers spoke against the application and submitted photographs showing flood waters inundating a trailer and a truck on the subject lot. Ms. Helen Kelley submitted a letter

expressing various concerns. Mr. David Stockton, Mr. Robert Kelly and Mr. Jim Farnsworth also spoke against the application.

In response to further questioning by the Board, Mr. Abend stated that if a special permit were granted, he would not object to the Board limiting the hours of operation of the business, and would not object to limitations on signs. There would also be no objection to limiting the number of employees to (say) 15. The applicant would not object to a limitation of one unregistered vehicle on the lot, and there should be no vehicle repairing. The building should not be used as a showroom but the applicant felt that banning all sales on the premises would be going too far.

A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to close the hearing.

By unanimous consent, the Board then proceeded to hear the application of New Cingular Wireless LLC relating to 113R Main Street. Mr. Gerry Squires appeared on behalf of the applicant and stated that there is an existing facility at the 95 foot level which presently has six antennae. It is proposed to add three additional antennae and a surge resistor at about the 91 foot level. The output power will not be increased and there will be no increase in cooling of the existing shelter; an additional internal rack will be added to the shelter but there will be no external modifications.

There were no questions or statements from the public. On a motion made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously, the hearing was closed.

The Board then proceeded to hearing the application from the same applicant relating to 61R Milford Street. The applicant stated that this application only related to swapping in a larger antenna; other equipment would be accommodated in the existing shelter. Again, there were no questions or statements from the public. On a motion made by Mr. Biocchi, seconded by Mr. Cole and passed unanimously, the hearing was closed.

The Board then unanimously agreed to hear the application of Ms. Beth MacLeod, who appeared on her own behalf. Ms. MacLeod stated that she was seeking a kennel permit to acquire a fourth dog, a puppy. She presently owned two Pekinese and one golden retriever. All the dogs are pets and normally live within her house, which is approximately 4000 square feet. There is also a 3500 square foot barn on the premises.

The dogs do not leave the yard and are not left outside unattended. There have been no complaints from neighbors or from the Animal Control Officer. The dogs are not let outside before about 8 am. In response to questions from the Board, the applicant stated that she would have no objection to limiting the permit to four dogs, or to a condition that there be no commercial operations.

Three letters, one from the Animal Control Officer, were read into the record. The Animal Control Officer stated that there had be no problems at the subject lot. The residents of 53 Fisher Street and Mr. and Mrs. Price of 52/54 Fisher Street opposed the application on various grounds. The applicant noted that the house is set back about 100 yards from the road so that the dogs are never on the street.

The Board then agreed to deliberate on the application relating to 113R Main Street. A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to find that the petitioner has demonstrated general satisfaction of the pertinent requirements listed in Section V.F.2 of the Zoning ByLaw. A second motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to find that the grant of the requested relief would not cause substantial detriment to the public good. Finally, a motion was made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously to grant to the applicant a special permit to modify the existing wireless communication facility in accordance with the application and supporting materials as submitted dated June 3.

The Board then agreed to deliberate on the application relating to 61R Milford Street. A motion was made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously to make the same three findings as on the preceding application. A further motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to grant the same relief as one the previous application.

The Board then discussed a letter received from the Norfolk County Register of Deeds regarding the difficulties of indexing Board decisions in view of the lack of reference to preceding recorded deeds. The Board agreed to modify the front page of future decisions to incorporate a reference to the current property owner recorded in the Register.

On a motion made by Mr. Biocchi, seconded by Mr. Cole and passed unanimously the Board adjourned at about 10:15 pm.

TOWN OF MEDWAY
ZONING BOARD OF APPEALS

MINUTES OF MEETING SEPTEMBER 21, 2011

Messrs. Musmanno, Cole, and Biocchi and Ms. Gould were present when the Chair called the meeting to order at 7:50 p.m.

By unanimous consent, the Board agreed to hear the application of Gregory Amante, who appeared on his own behalf together with his wife. Mr. Amante stated that the proposed auxiliary dwelling unit would be occupied by an *au pair*. This led to some questions from members of the Board as to whether the Board had the power to issue the auxiliary family dwelling unit (AFDU) permit in such a case; it was noted that although the Building Inspector actually checks the occupant of the AFDU when issuing an occupancy permit, it is doubtful whether the Board can issued a permit for persons other than those listed in the Zoning ByLaw.

In response to a question from the Board, Mr. Amante confirmed that the subject lot is presently listed as having the status of a single family residence, and the Building Inspector confirmed that modest changes could be made to restore the single family status.

On a motion made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously, the hearing was closed.

The Board then agreed by unanimous consent to hear the application of Holly Parent, who appeared on her own behalf. The applicant explained that the present, essentially derelict, garage is about 20 x 20 feet and is not on a flood plain. The applicant seeks to demolish the existing garage, construct a new foundation, and build a new, somewhat larger garage, which would be slightly further from the side lot line than the existing garage. There was considerable discussion among the Board members as to whether the application should be treated as one for a variance, or under the provisions relating to pre-existing non-conforming uses, but it was ultimately decided that because the existing structure was to be completely razed and an entirely new building constructed in a different location, this must be treated as a petition for a variance. Board members then enquired about moving the location of the new garage northwards, away

from the adjacent side lot line. The applicant explained that the garage had to be kept a proper distance from the house, per the Building Code, and she also wished to maintain truck access to the rear part of the lot, which was occasionally necessary to remove trees etc. Also, moving the garage northwards would entail removal of additional trees, which the applicant hoped to avoid.

It was noted that the neighbor to the north has a garage/barn about 16 feet from their lot line; on other side of the subject lot, a driveway comes up to the property line, and the house on this side is separated from the side lot line only by the width of the driveway. The front setbacks of other houses on the street are about the same as the house on this lot. The proposed garage is typical for the area; a neighbor has a two-story barn about 16 feet from the north lot line of the subject lot roughly level with the back of the house on the subject lot.

No members of the public were present, so there were no questions or comments from the public.

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the hearing was closed.

Mr. Cole then presented his draft decision on the application of Village Realty Trust. After certain amendments were made by unanimous consent, on a motion made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously, the decision was adopted.

On a motion made by Ms. Gould, seconded by Mr. Biocchi and passed unanimously, the minutes of the August 3 meeting as presented by the Clerk were approved.

By unanimous consent, the Board agreed to deliberate on the application of Ms. Parent. A motion moved by Mr. Cole and seconded by Mr. Biocchi to treat this application as a request for variance resulted in a tie vote of 2-2, with Mr. Musmanno and Ms. Gould voting against. A further motion moved by Mr. Cole and seconded by Mr. Biocchi to table further deliberations passed by a vote of 3-1, with Mr. Musmanno dissenting.

By unanimous consent, the Board agreed to deliberate on the application of Mr. Amante. A motion made by Mr. Cole, seconded by Mr. Biocchi and passed

unanimously found that that the applicant has stated that the AFDU would be occupied by an *au pair*, a non-family member. A further motion made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously found that that the Board was not authorized by the Zoning ByLaw to grant a permit for an AFDU to be occupied by any person other than those listed in the ByLaw. Based upon the foregoing findings, on a motion made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously, the petition was dismissed without prejudice to re-presentation on change of the proposed occupant.

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the Board recommended to the Board of Selectman the appointment of Ms. Arlene Doherty as a regular member of the Board.

By unanimous consent, the Board authorized the Chairman to remind the Town Administrator that the Board was in urgent need of a new secretary.

By unanimous consent, the Board agreed that its next meeting should be set for October 5 at 7:30 p.m.

Following a motion to adjourn made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously, the meeting was closed at 9:58 pm.

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING OCTOBER 5, 2011

All five members of the Board were present when the Chair called the meeting to order at 7:55 p.m.; it was noted that Ms. Doherty had been appointed by had not yet been sworn in. The Chairman announced by Ms. Sandra Trufant has been appointed as the new Board secretary but was not present at this meeting.

The Board then, by unanimous consent, resumed deliberation on the application of Ms. Parent. The Board first considered whether this application should be treated as one for a variance or a special permit, and whether the fact that the proposed garage was a separate structure was relevant to this issue. After considerable discussion, the Board reached a consensus that this application should be treated as one for a special permit under Section V.F.7 of the ByLaw.

A motion was made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously to find that the side setbacks of buildings on adjacent lots deviate significantly from the side setback requirements of the relevant Zoning District. A further motion was made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously to find that the grant of relief in this instance would be consistent with the criteria for special permits set out in Section II.J of the ByLaw.

Finally, on a motion made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously, the Board granted a special permit to Holly Parent in accordance with Section V.F.7 of the Zoning ByLaw for the construction of a garage as described in the petition but subject to the condition that the garage shall be placed no nearer than five feet from the south side lot line.

There were no new petitions requiring consideration by the Board.

Following a motion to adjourn made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the meeting was closed at 9:15 pm.

**TOWN OF MEDWAY
ZONING BOARD OF APPEALS**

MINUTES OF MEETING DECEMBER 7, 2011

Messrs. Musmanno, Cole and Biocchi, and Ms. Doherty were present when the Chair called the meeting to order at 7:45 p.m.

The Board, by unanimous consent, agreed to hear the application of Sprint Spectrum LP., on whose behalf Ms. Carmen DeMarco of C-Davis Associates appeared. Ms. DeMarco stated that if the requested Special Permit were granted there would be no increase in height of the existing structure, nor would there be any increase in equipment area; the application was for the removal of six 3G antennas and their replacement with six 4G antennas, with the addition of some equipment to an existing cabinet and the addition of four cables on an existing bridge. There would be no significant esthetic impact, no change in water runoff or in noise levels. There would be no modification to air conditioning equipment, no new power facilities and no changes to lighting or signage.

In response to questions from the Board, Ms. DeMarco stated that he was uncertain regarding the total change in radiated power, which would not be large and that the frequencies being used would not change substantially.

There were no questions or comments from the public. A motion was made by Mr. Biocchi, seconded by Ms. Doherty and passed unanimously to close the hearing.

The Board then proceeded, by unanimous consent, to hear the application of Mr. Russell Santoro, who appeared on his own behalf. The applicant pointed out that the lot substantially exceeded the area and frontage requirements for a two family dwelling, that there were several two families in the area, and that the lot sat next to the Nautilus Fitness Center, a commercial lot. In response to a question from the Board, the applicant stated that he would not object to limiting the dwelling to a footprint of 40' by 80'.

Mr. Wayne Brundage, an abutter at 268 Village Street, objected to the proposed placement of the two family dwelling, preferring that it be moved over further from his dwelling. He also offered the opinion that we do not need a two family dwelling in this location and that duplexes run the neighborhood. He

further asked why is a duplex appropriate; the builder already lives in a two family dwelling at 372 Village Street.

Mr. Vinny Sia, of 18 Main Street, spoke in favor of the application, stating that he valued the type of design the applicant had previously erected in Medway.

On a motion made by Mr. Cole, seconded by Ms. Doherty and passed unanimously, the hearing was closed but the record left open for receipt of correspondence from the Planning Board dated prior to the hearing.

By unanimous consent of the Board, Mr. Barry Roth, the owner of Medway Imports, 16 Main Street, appeared before the Board to seek clarification of the Board's Decision of February 3, 1999, which granted an increase from 12 to 24 in the number of vehicles for sale on the lot at 16 Main Street. Mr. Roth stated that he had always interpreted Condition 2 of that Decision (which reads "No on site repairs") as barring body repairs, not mechanical ones. After some discussion, the Board interpreted the Decision as barring all repairs, and suggested that if the applicant needed to carry out mechanical repairs on the lot, he should file for a new Special Permit.

The Board reviewed the application of Mr. and Mrs. Hynes relating to 100 Summer Street, found it in good order and, on a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, set it for hearing on January 4, 2012 at 7:45 pm.

On a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the Minutes of the September 21, 2011 Meeting were approved as presented by the Clerk.

On a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the Minutes of the October 5, 2011 Meeting were approved with agreed corrections.

By unanimous consent, the Board then agreed to deliberate the application of Sprint Spectrum LP. A motion was made by Ms. Doherty, seconded by Mr. Musmanno and passed unanimously to find that the petitioner demonstrated substantial compliance the requirements of Section V.S.2 of the Zoning ByLaw. A further motion was made by Ms. Doherty, seconded by Mr. Musmanno and passed unanimously to find that the site is the preferred location under Section V.S.3.a of the Zoning ByLaw. A third motion was made by Ms.

Doherty, seconded by Mr. Musmanno and passed unanimously to find that the grant of the requested Special Permit would not cause substantial detriment to the public good. A further motion was made by Ms. Doherty, seconded by Mr. Musmanno and passed unanimously to find that the grant of the requested Special Permit to the applicant would not be inconsistent with any of the criteria set out in Section III.J of the Zoning ByLaw. Accordingly, on a motion made by Ms. Doherty, seconded by Mr. Musmanno and passed unanimously, the Board granted a Special Permit to the applicant for replacement of antennas and ancillary equipment at 113R Main Street substantially in accordance with the plans presented.

The Board then proceeded to deliberate on the application of Mr. Santoro. A motion was made by Ms. Doherty, seconded by Mr. Musmanno and passed unanimously to find that the grant of a suitably conditioned Special Permit for a two family dwelling would not cause substantial detriment to the public good. A motion was then made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously to grant a Special Permit to the applicant, Russell Santoro, to construct a two family dwelling at 272 Village Street subject to terms and conditions to follow (proposer and seconder of each condition follow its text; both conditions were adopted unanimously):

- (a) In accordance with the plans presented, the sum of the area coverages of all permanent structures shall not exceed 3200 square feet (Musmanno/Biocchi); and
- (b) This special permit shall not take effect until a relevant definitive subdivision plan has been recorded with the Norfolk County Register of Deeds (Cole/Biocchi).

The final motion was adopted unanimously.

Following a motion to adjourn made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the meeting was closed at 9:30 pm.