

**Town of Medway
Zoning Board of Appeals Meeting
School Committee Presentation Room
Medway Middle School
45 Holliston St, Medway MA**

MINUTES OF MEETING

October 5, 2016

Present: Chairman David Cole; Clerk Carol Gould; Committee Members: Eric Arbeene, William Kennedy and Brian White; and Associate Member Rori Stumpf.

Also Present: Stephanie Mercandetti, Director, Community and Economic Development and Mackenzie Leahy, Administrative Assistant, Community and Economic Development; Ezra Glenn, Public Planning Research & Implementation, Inc.; Steve Bouley, Tetra Tech, Inc.; Bridget Graziano, Conservation Agent; David Travalini, Chairman, Conservation Commission

David Cole, Chairman, called the meeting to order at 7:37 PM.

Citizen comments:

There were no members of the public that wished to make comments on items other than those already on the agenda.

Correspondence:

Ms. Mercandetti informed the Board that Susan Affleck-Childs, Planning and Economic Development Coordinator, and Andy Rodenhiser, Chairman, Planning and Economic Development Board, would like to come before the Board to discuss the proposed Zoning Articles that were submitted to the Board of Selectmen for the Fall Town Meeting Warrant. The Planning and Economic Development Board proposed to attend the upcoming Board meeting on November 2, 2016, to be the first item on the agenda at 7:30 PM. Ms. Affleck-Childs and Mr. Rodenhiser would need fifteen minute to a half an hour to discuss the proposed zoning amendments. Ms. Mercandetti asked for approval from the Board to schedule the discussion; Chairman Cole stated that he would like that discussion first thing on the November 2, 2016 agenda and to postpone any other items for the agenda to 8:00 PM. Ms. Mercandetti noted that Ms. Leahy would send out the Articles and associated documents to the Board members before the meeting date.

Approval of Minutes:

A motion to accept the minutes of the September 7, 2016 meeting as submitted was made by Ms. Gould, seconded by Mr. Arbeene and approved unanimously.

Upcoming Meeting:

October 19, 2016: Stormwater Management will be the focus topic for discussion.

Public Hearings:

7:45 P.M.- The Applicant, Kevin Goddard, seeks a Variance from Section 6.1 of the Zoning Bylaw to allow for the placement of a prefabricated garage 10 feet from the property line, where a 15 foot side setback is required.

The Board is in receipt of the following documents:

1. A Variance Application submitted September 6, 2016 (*not stamped in with the Clerk, per applicant's request to review and/or revise application*)
2. A Variance Application dated September 12, 2016
3. 54 Main Street Plot Plan, dated 8/17/16, prepared by Applewood Survey LLC of 21 Green Street, Holliston, MA 01746
4. 54 Main Street Revised Plot Plan, dated 9/17/16, prepared by Applewood Survey LLC of 21 Green Street, Holliston, MA 01746
5. 54 Main Street Deed
6. Site Preparation and Foundation for a Prefabricated Garage
7. Dimensions of the Prefabricated Garage
8. Image of Prefabricated Garage
9. Comments submitted by the Building Inspector/Zoning Enforcement Officer

The Board moved to hear this application. The applicant, Kevin Goddard, appeared before the Board to discuss the request for a variance for the property located at 54 Main Street.

Mr. Goddard stated that the size of the lot makes it "hard to work with," and that the house is centered on the lot; the setbacks of the district are also limiting and make finding a placement for a shed or a garage difficult.

Chairman Cole stated that he did not understand why the applicant had shown the garage off-centered from the driveway on the plot plan. Mr. Goddard stated that the intended use of the garage was not for an every-day garage, but rather for the storage of a vehicle.

Chairman Cole noted that the Zoning Board of Appeals should minimize the amount of variance requested, as a variance is an exception to the Zoning Bylaw and the Board should not grant more of a variance than it needs to. Chairman Cole stated that the applicant was asking for the garage to be placed 10.2 feet from the western side lot line and asked that the applicant explain why the garage could not be placed any closer to the existing house as Chairman Cole was skeptical of why the applicant needed 13 feet from the garage to the house. Mr. Goddard explained that at a 15 foot setback, the garage would only be 8 feet from the house. Chairman Cole asked if there was an issue with a 12 foot setback rather than a 10.2 foot setback for the garage. Mr. Goddard answered that there was not an issue, and restated that he was only looking for more room than the side setback of 15 feet required.

Mackenzie Leahy, Community and Economic Development Department Administrative Assistant, reviewed the application and explained to the Board that the Department had received an initial application from Mr. Goddard on September 6, 2016 but it was not stamped in with the Town Clerk, per the applicant's request. Instead, an application was submitted by Mr. Goddard on September 12, 2016. The Department also received comments from Jack Mee, Building Commissioner, regarding the application; there are issues with the sheds currently existing on the property, not relating to Mr. Goddard's variance request before the Board for the garage. Ms. Leahy continued that the lot is a pre-existing non-conforming lot and the house is nearly centered on the lot. If the garage met the required setback, it would be 8 feet from the house, not including the distance from the existing porch extending outwards from the western portion of the house. Ms. Leahy continued that there did not appear to be another location for the garage that would not be within the setback, not on the middle of the property, or not close to the existing house. Mr. Goddard clarified that the "porch" was not a porch, but rather steps off the house.

Chairman Cole asked if there were any comments received from the public; Ms. Leahy responded that there had not been any comments received from the public. No comments were made by the public during the hearing.

Mr. White asked if there was any precedent to address both the garage setback and the shed, as discussed by Mr. Mee's comments, noting that one shed on the plot plan was pre-existing non-conforming but that the other shed was not pre-existing and did not meet the setback requirements. Mr. Goddard explained that he moved the shed that was not in compliance on the plot plan to become compliant. Chairman Cole noted that the application for a variance was only for the garage and the Board could not grant a variance for something that had not already been included in the application. Chairman Cole noted that if there were issues with existing sheds, it would require a separate application. Ms. Leahy clarified that she had conversations with Mr. Goddard as well as Stephanie Mercandetti, Community and Economic Development Department Director, and Mr. Mee regarding the application. Ms. Leahy noted that the staff recognized that the Board could not address the shed's noncompliance within the current variance application for the garage, however it was necessary to inform the Board of the existing sheds and that the Board would need to determine whether the applicant would need to apply for a second variance or whether the Board would condition within the decision that the shed's noncompliance status was addressed. Ms. Mercandetti explained that Ms. Leahy had done some research on the sheds shown on the plot plan and found that one of the sheds was there at the time of construction of the house but the other was not, however Mr. Goddard noted that he had moved the shed and it could be conditioned that at the time of resubmission for a building permit, the applicant would need to show the new location of the shed. Chairman Cole stated that seemed an appropriate way to conditioning the shed within the variance decision.

Mr. Goddard stated that from his understanding he would still need to submit another plot plan, but that was a cost that could be verified by the Building Department. Chairman Cole explained that the Board was not proposing that Mr. Goddard have the property resurveyed, only that he mark up the current location of the shed that has been moved and that Mr. Goddard demonstrate he is not in need of

another variance. Ms. Mercandetti explained that it would be something that would be verified at the time that Mr. Goddard apply for the building permit. Ms. Mercandetti explained that with the issuance of a variance there would be a modification to the building permit.

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

8:00 P.M. – The Applicant, Timber Crest LLC, seeks a Comprehensive Permit under MGL c. 40B, Sections 20-23 as amended, to allow construction of a 157 unit development to be called “Timber Crest Estates” containing 25% affordable units on 170.36 acres which is comprised of the properties located at 143 Holliston Street, 153R Holliston Street, 177A Holliston Street, 21R Fairway Lane, 13 Ohlson Circle, 102 Winthrop Street, 11 Woodland Road, 0R Woodland Road, and 165 Holliston Street, Medway, MA.

The Board is in receipt of the following documents:

- Notice of Project Change submitted to MassHousing
- MassHousing Notice of Project Change response, reaffirming eligibility status
- Revised Comments from the Conservation Agent, dated October 3, 2016
- Revised Comments from the Board of Health, dated October 3, 2016
- Revised Comments from the Department of Public Services, dated October 3, 2016
- Revised Comments from the Fire Department, dated October 4, 2016
- Revised Wetlands Peer Review from Tetra Tech, dated October 4, 2016
- Revised Plan Set, dated September 26, 2016
- Revised Preliminary Drainage Report
- Revised Pre & Post Development Drainage Plans

The developer, Mounir Tayara; the developer’s 40B consultant, Paul Cusson of Delphic Associates; the developer’s engineer, Jim Pavlik of Outback Engineering; the developer’s wetland, vernal pool and rare species consultant, Scott Goddard of Goddard Consulting, LLC; and the developer’s attorney, Christopher Agostino, were present to discuss their application with the Board.

Ms. Mercandetti provided an updated on this application for the purpose of informing the public. She explained that since the last Board meeting, staff had received the necessary documents requested by the Board for the proper Notice of Project Change and response reaffirming eligibility from MassHousing. Staff has fulfilled the notice requirements under Chapter 40A Section 11 for the legal advertisement, notice of abutters, and posting of the hearing in the Town Hall as well as on the Town website. New information regarding the hearing can be accessed via the Town website as well as in the Community and Economic Development Department.

Ms. Mercandetti noted that the Conservation Agent, Bridget Graziano, and Conservation Commission Chairman, David Travalini, would be providing comments on behalf of the Conservation Commission after the applicant’s presentation on Wetlands; Steve Bouley of Tetra Tech was also present to provide peer review comments on the presentation if necessary.

Mr. Glenn stated that he is a consultant provided through the MassHousing process at no expense to the Town. Mr. Glenn summarized that the application was for a Comprehensive Permit under Massachusetts General Law Chapter 40B; the Board is acting in a local capacity under a state law, and on behalf of all other local boards. The application was received in March (2016), with all information circulated to necessary boards and departments for comments. The first hearing was in May (2016) and many topics have since been discussed. The Town has a peer review consultant, Tetra Tech, to review submissions by the applicant, at the expense of the applicant. The hearings were intended to flag and address some of the issues. The applicant recognized that there was potential for change and presented a proposed project change, which eventually led to the revised submission with a number of changes that will later be presented by the applicant. Under Massachusetts General Law, the Board was obligated to notify the new, and current, abutters. Many topics were already discussed, but the applicant will provide an overview and then re-cover topics as the Board had previously planned. The goal is to complete the public work in a transparent setting.

Mr. Glenn explained that a Comprehensive Permit requires that the Board act within 180 days, however, the Board requested that the applicant allow for an extension of time. The revised application's timeline would essentially restart (on October 5, 2016).

Mr. Agostino explained (Massachusetts General Law) Chapter 40B further: it allows eligible projects proposed by eligible developers to bypass local bylaws and regulations in Massachusetts. Eligible projects limit the developers total profit to 20%, anything over that would go to the town; 25% of the units are reserved for affordability, meaning they are reserved to someone earning 80% of the area median income. Eligible projects may ask for local bylaws and regulations to be waived. Where local bylaws and regulations are more stringent, the applicant is asking for those bylaws and regulations to be waived. However, if there is a local concern unique and critical to Medway, the Board may determine the ability to waive the local regulations and ask that the applicant provide revisions to the proposed project. There is a high standard in order to uphold a more stringent local regulation; it requires a unique or critical need, a deficient proposal, or something in the proposal could imperil health and safety. The project must comply to state regulations.

Mr. Agostino stated that the changes to the Eastern portion of the proposed project were made to address some of the local concerns; as the hearing continues, there are likely to be more changes to the project. The plans are preliminary and there is subsequent information that will be provided during the permitting from other boards.

Mr. Tayara presented a brief overview of the proposed project: The West side of the project has 72 single family homes, the East side is modified from 116 duplexes into 87 single family homes; the roadway was changes from private to public, it is widened and will be constructed to Town standards. The new property (165 Holliston Street) was added, the roadway egress and layout was changed accordingly. Mr. Tayara provided a 3D rendered elevation walk-through of the development, as well as floorplans. The homes range from 1,500 sq. ft. to 2,800 sq. ft., 2 bedrooms up to 4 bedrooms. The density has reduced by 16%, there is less wetland fill by 2,500 sq. ft., or about 20%, there is no more thru-traffic. On the East side, all homes have two-car garages instead of one; the homes are all ownership; multi-generational homes with first floor master-bedrooms.

Mr. Pavlik outlined the new plans: Part of the roadway connecting Fairway Lane to Fern Path was eliminated to preserve wetlands, instead with the new parcel, there is a new entrance from Holliston

Street. There are three wetlands crossings. The applicant has provided a drainage analysis. The project is proposed to be served by town water and sewer; water connections would be off of Fairway Lane, Holliston Street, Winthrop Street, and Olson Circle; there would be a gravity sewer connection for the West side, off of the existing sewer, and an E-1 sewage pump for the remaining homes; there would be a gravity sewer connection for the East side that would flow to a sewer pump station near Holliston Street and a sewer force main near Fern Path.

Mr. Goddard explained that the dark green on the plans represent Wetland Resource Areas, including Bordering Vegetative Wetlands (BVWs) and other features interior to the BVWs, including a network of streams, certified vernal pools, and potential vernal pools. A large portion of the property was reviewed by the Conservation Commission under an Abbreviated Notice of Resource Area Delineation (ANRAD). The applicant has an Order of Resource Area Delineation (ORAD) which is a binding determination for three years that there is an accurate representation of delineation. The new 165 Holliston Street property was delineated by the applicant and is before the Conservation Commission for a new ANRAD. The Wetlands Protection Act requires that the applicant minimize impact to resource areas, however, this project cannot be completed without some impact to the resource areas. The revised plans have approximately 9,800 sq. ft. of altered resource areas; a Notice of Intent (NOI) will be filed under the State Act. A project altering over 5,000 sq. ft. of resource areas does not meet the normal performance standards but may be filed as a limited project due to the lack of alternate means of access to the locations of the project. The project will include 1:1 mitigation. Some changes that meet the Wetlands Protection Act or wildlife preservation are not necessarily included as wetlands preservation; the location of the roadway off of Fairway Lane was moved South in order to comply with the 100-foot buffer around certified vernal pools; there is a stream crossing for the roadway off of Holliston Street that will need to meet the MassDEP Stream Crossing Standards. This project has proper mitigation and information in order to file for a NOI and meet the necessary requirements to be permitted either with an Order of Conditions (OoC) at the local or state level. The Army Corp of Engineers will be required to review the project due to the size of impact to the resource areas.

Mr. Travalini, Chairman, Conservation Commission, explained that the applicant has previously had access to the current parcel(s) in question for the proposed project but developed other means of access to the land. When applying for a limited project, the applicant must provide evidence that the current proposed access is necessary for the project; Mr. Travalini does not believe that there is proper evidence supporting a limited project due to the fact that the applicant has made a self-created hardship due to previous developments surrounding the property, and therefore the wetlands crossings are not justified.

Ms. Graziano, Conservation Agent, referenced her comment letter noting that the wetland flag numbers should be listed on the plans to ensure that the flags match what was approved under the ORAD; Mr. Goddard had previously promised to include that information on a letter dated from July. The Conservation Commission reviewed and approved the August 26, 2016 plans, but not the revised September plans. There is a wetlands delineation line on plan 3, but a detention basin beyond that line where wetlands would need to be delineated but that has not been requested to be included in the new ORAD that will be before the Conservation Commission in October. The plans show an intermittent stream, however the USGS considers that stream perennial, and under the DEP regulations the Conservation Commission cannot issue a decision during a drought. The Commission has concerns about the number of alterations within the buffer zone; all alternations will be subject to review under

the Wetlands Protection Act. The vernal pools have been flagged in the field but are not being requested review at this time; there are concerns regarding the number of vernal pools and the community of wildlife that interacts between the vernal pools. The Commission is concerned with a Wetland Crossing on the South-Western portion of the project for three housing units out of 157 units. Chairman Cole asked for clarification on the wetlands crossing. Mr. Pavlik explained that it was Wetlands Fill and not a Crossing. Ms. Graziano continued that the Commission regulates the type of fill brought into a project under state regulations. Mr. Glenn stated that the Commission should address conditions under local bylaw that are not necessarily required under state law. Ms. Graziano noted that in the original comment letter, the Commission asked that the local bylaw for a 0-25 foot no touch for vernal pools not be waived due to the overall concerns of the impact for that specific location. Mr. Travilini explained that the state regulation might not be “strong” enough for the area. Vernal pools are present in the Spring, but not necessarily in other seasons and changes surrounding the vernal pools often impact how they function. Ms. Graziano also explained that the applicant should be providing some sort of standard plans where information is included on some plans but not others and the limit of work is not explicitly outlined on the plans; the 1:1 mitigation seems to be corrected on the new September plans. Information is not provided for the overall erosion controls on the project.

Mr. Goddard explained that an ANRAD is not required at this time and that it does not hinder the application that some flag locations are not yet verified. Mr. Goddard understands that the stream cannot be determined until Medway is out of a drought. Every vernal pool is being protected on the plan, certified vernal pools are meeting the state standards, and the Army Corp of Engineers will review all impacted vernal pools and the surrounding 500 feet. The DEP reviews all work in buffer zones and reviews each impact area as more than a general distance of no-touch. Mr. Agostino explained that Mr. Goddard has provided more studies than necessary at this time, but the applicant is willing to provide more information should the Board request it. Regarding erosion controls, the applicant can provide a draft of erosions controls or a more detailed limit of work if a particular request is made.

Mr. White noted that the applicant has said they are willing to work with the Town and provide information as requested, however, members of the applicant team have taken the time to point out that the plans are preliminary and some of the work done is discretionary and not required at the time. Mr. Agostino said that if a specific request is made, the applicant team is willing to provide the information. Mr. Cusson explained that Mr. Goddard’s work is not preliminary (wetlands delineation), the plans and the information provided on the plans are preliminary. Mr. Goddard stated that the plans are modified to meet state standards and continue to be sensitive to the resource areas overall design. Mr. Agostino explained that the project can comply with state standards at the preliminary level, but the applicant team has gone “above and beyond” so that the Board is provided the information to make a decision on the waivers at the local level.

Mr. Glenn explained that the applicant team will need to go before the Conservation Commission regarding the state law, and hopefully there are no discrepancies between the information the applicant team is providing and what is feasible, as there is no waiving the state law. On the other hand, the Board may use this time to determine what local bylaws and regulations should and should not be waived.

Mr. Travilini restated the importance of not waiving the local bylaw regarding vernal pools.

Mr. Bouley, Tetra Tech, noted that his comments were addressed by Mr. Travilini and Ms. Graziano. Mr. Bouley asked the applicant team if they have looked at alternatives to the street location of the wetlands crossing off of Fairway Lane. Mr. Pavlik noted that the applicant team was trying to limit the length of the dead end road. Chairman Cole noted that the Fire Department would most likely disapprove of any such elimination of a second entry and connecting roadway. Mr. Bouley noted that eliminating the crossing would maintain the connection of all the vernal pools.

Ms. Graziano stated that she had issues with the perennial stream being labeled intermittent without the proper documentation. Mr. Goddard has documentation of a nearby area which constitutes the stream as intermittent but does not have documentation of the specific site, otherwise the finding must be delayed until after a draft period. Ms. Graziano explained that 165 Holliston Street was not yet acquired and there are specific observations that need to be made at those specific locations that has not been provided to the Commission yet. Mr. Glenn noted that the Commission will enforce that (stream label and regulations) under the state level.

Mr. Glenn noted that the 100-foot buffer and the local buffer requirement seemed like a key issue that the Conservation Commission would request not to be waived. Mr. Travilini noted that there is a significant amount of vernal pools that have uplands nearby that have housing units on them that would eliminate the breeding grounds for the wildlife. Mr. Agostino noted that protecting vernal pools generally is not required under legislation unless there is a specific local concern.

Mr. Bouley asked if there was a calculation was provided for how many housing units are within the 100-foot buffer zone. Mr. Pavlik stated that the calculations could be made. Mr. Glenn stated that the plans and the conversations that the applicant and Board have made imply that the information for the 100-foot buffer zones as required at the local level, so the information is there, the town is just asking for the applicant to provide the information. Mr. Agostino stated that he still has not heard any specific local concern for maintaining the local bylaw where providing that information is necessary.

Lauri McKay of 106 Winthrop Street stated that she was concerned about the land in that area and that there was a little brook and that the land behind her house and abutters is very wet (out of a drought). Ms. McKay is concerned because it looks like there are wetlands that are not necessarily shown on the plans.

Cindy Maliniak of 14 Fairway Lane noted that a large number of the lots have some wetlands on the property; an owner must meet the buffer requirements. Ms. Maliniak asked if there will be any information provided to an owner to show where those wetlands are located and where the buffer is. There is a large vernal pool that located on an abutting property and its barriers should also be respected. Ms. Maliniak also noted the issue with access of Fern Path, but questioned the sewer and water connections down through wetlands to connect to the units off of Fern Path. Ms. Maliniak noted that she did not believe the intermittent stream shown on the plan was intermittent and is indeed perineal.

Dave Johnson of 163 Holliston Street noted that the stream does run year round (out of a drought). Mr. Johnson noted that running the water and sewer through the wetlands would require mitigation. Mr. Johnson noted that he believed Massachusetts also determines wetlands through soil tests and hadn't heard that previously mentioned.

Charles Myers of 9 Curtis Lane stated that he would like to have the wetlands replication better explained. Mr. Myers asked the Board if the Army Corp of Engineers could be able to provide the report and attend a meeting to explain their report.

Dave Dahlheimer of 21 Fairway Lane noted that it appeared on the plans that the roadway off of Fairway Lane appears to be touching or very close to a certified vernal pool.

Joe Martino of 169 Holliston Street is concerned with the “push back” of drainage and the effect of that the building and drainage will have on the property and his property.

Scott Lafferty of 2 Woodland Road is concerned about how much time the new abutters will have to voice their comments versus the amount of time the old abutters have had. Chairman Cole explained that the Board will be re-discussing all topics that were previously discussed and the new abutters will have equal opportunities to voice their concerns. Mr. Glenn noted that abutters can also provide written comments.

Chairman Cole asked if the water and sewer connections would be considered wetland crossings. Mr. Bouley stated that they would be temporary impact areas, it would be replicated following the project.

Mike McNeil of 103 Winthrop Street stated that the intersection and roadway is dangerous and there is a large population of children in the area. Mr. McNeil also questioned how the project would affect his utilities.

David Blackwell of 2 Milford Street re-voiced the concern of the intermittent stream on the plan.

William Bresnahan of 166-R Holliston Street voiced his safety concerns of the roadway off of Holliston Street and the impact it would have on residents. Mr. Bresnahan, and other families along Holliston Street, sons or daughters with disabilities. He is also concerned with the amount of time that residents have to safely enter Holliston Street.

Ms. Mercandetti discussed with the Board potential focus areas for the following hearing dates. Mr. Pavlik noted that the applicant is waiting on DPW regarding sewer capacity. Mr. Agostino noted that it makes sense to discuss stormwater for the next hearing and that the applicant wouldn't mind having time to address general comments. Mr. Agostino noted that since the applicant has been waiting on DPW, the applicant is recommending that the Board, as the permit granting authority, determine the applicability for DPW permitting. Chairman Cole asked when the Board would be receiving the traffic study. Mr. Cusson stated that it would be provided to the board within 10 days to 2 weeks.

Dan Strachan of 11 Fairway Lane commented on the the Town sewer moratorium and the capabilities to lift the moratorium. Mr. Glenn stated that it is local bylaw by that he suggests the Board speak to town counsel.

Mr. Goddard clarified on the comments that the sewer and water connections to Fern Path will wetlands replication and it will be identified as a temporary impact area. With respect to offsite vernal pools, should the owners grant access to investigate the land, the applicant is willing.

Ms. Mercandetti interrupted, noting that a Board member had an emergency. Mr. Glenn explained that the Board should move to continue the hearing.

Mr. Goddard asked if he could submit a response in writing, Chairman Cole replied yes.

Chairman Cole moved that the Board continues review of this application on October 19, 2016 at 7:45 P.M.

The motion was seconded by Mr. White, and approved unanimously.

The Board set a Special Zoning Board of Appeals meeting for October 12, 2016, in the Medway Town Hall, to deliberate on the decision for 54 Main Street.

Adjournment:

A motion to adjourn the meeting was made by Mr. White, seconded by Ms. Gould and approved unanimously. The Board adjourned at 10:48 PM.