

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

**MINUTES OF MEETING**

**September 7, 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.

David Cole, Chairman, called the meeting to order at 7:43 PM.

**Citizen comments:**

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

**Approval of Minutes:**

***A motion to accept the minutes of the August 17, 2016 meeting as submitted was made by Mr. White, seconded by Ms. Gould and approved unanimously.***

**Correspondence:**

None.

Ms. Mercandetti informed the Board that the Medway Redevelopment Authority is holding the 2<sup>nd</sup> public forum on the Oak Grove Urban Renewal Plan on Tuesday, September 20, 2016 at 7:00 P.M. at the Thayer Homestead.

**Upcoming Meeting:**

September 21, 2016: no hearings currently scheduled and no new applications received to date.

**Public Hearings:**

**7:45 P.M.- The Applicant, Timothy Newman, seeks a Variance from Section 6.1 of the Zoning Bylaw to allow a relief of 20 feet from the required 35 foot setback, in order to install a pool 15 feet from the property line, for the property located at 18 Delmar Road.**

The Board is in receipt of the following documents:

- A Variance application stamped by the Town Clerk on August 9, 2016

- Certified Plot Plan detailing proposed project
- An email from the Applicant addressing the criteria which must be met in order for a Variance to be granted.

The Board moved to hear this application. The Applicant, Timothy Newman, was present to discuss his request with the Board. Mr. Newman explained that his house is located on a corner lot and he wasn't aware that the setback of 35 feet applied to the backyard when he initially started planning this project. The pool company designed the pool and the land was surveyed; all was originally planned according to a 15 foot setback. Mr. Newman explained that when the plot plan was submitted for the variance request, the plan had instead shown the pool 18 feet from the lot line in order to decrease the amount of relief being requested. There is no sidewalk on this road and Mr. Newman noted that the proposed pool would be about 10 feet from the existing fence. Chairman Cole asked when the house was built and Mr. Newman stated that it was built in 1961. The property is a preexisting nonconforming lot. Chairman Cole explained that one condition for allowing a variance from the setback is that the property meet a condition related to shape, size or topography. Chairman Cole stated that he believed that the property met these conditions, however, he also noted that the Board prefers to grant the minimal variance needed. Mr. Newman said that he has considered different locations for the pool, but feels that the chosen location allows him to retain access to the middle of his yard for recreational use. Chairman Cole clarified that only the northern setback is in question in relation to this request.

There were no questions or comments from the public in regard to this application.

No closing statement was provided by Applicant.

***A motion to close the hearing was made by Mr. Arbeene, seconded by Mr. White, 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 188 unit development to be called “Timber Crest Estates” containing 25% affordable units on 163.07 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, and 0R Woodland Road, Medway, MA.**

The Board is in receipt of the following documents:

- Notice of Project Change, received September 6, 2016

The developer, Mounir Tayara; the developer's 40B consultant, Paul Cusson of Delphic Associates; 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 has been involved in conversations with the Applicant's team. A Notice of Project Change has formally been submitted and an amended plan was submitted by the Applicant to Mass Housing. She noted that project plans will not be discussed at the present meeting as abutters need to be notified and the permit request re-advertised as mandated by the Open Meeting Law. At this meeting, the Board is hoping to receive written approval from the

Applicant's team to extend the 180 day time period in order to review the revised plans. Lastly, Ms. Mercandetti said that all materials have been forwarded to Mr. Glenn and Tetrattech.

Mr. Agostino stated that the Applicant is willing to execute whatever time extension the Board deems necessary for review of new plans. Ms. Mercandetti noted that the 180 day extension starts from the date of October 5<sup>th</sup>, when the first hearing for the amended project is expected to take place. Ms. Mercandetti suggested that the Applicant's team provide an overview of the project at the October 5<sup>th</sup> meeting, allow time for the amended plan to circulate to other town departments, and from there break up into the different subject areas. Chairman Cole noted that a large amount of information that has already been discussed may remain the same, and he would like to proceed through the hearings a little more quickly. He proposed doing an overview plus stormwater on October 5<sup>th</sup> and traffic on October 19<sup>th</sup>. Chairman Cole asked the applicant when they expected traffic study updates to be completed. Mr. Tayara notified the Board that the traffic study had already been initiated and will be submitted as soon as possible. Chairman Cole reiterated that on October 5<sup>th</sup>, at 7:45 PM, the Board will be hearing an overview of revised project as well as stormwater and wetlands and the agenda for following meetings will be laid out.

Charles Myers of 9 Curtis Lane stated that in his opinion, starting the hearings for the amended project at the beginning of October will not allow the Conservation Commission enough time to flag wetlands in the newly acquired area. He asked the Board consider to allow more time so that other town boards can review the plans and hold their meetings, and asked that the appropriate staff from each board be present at the Zoning Board hearings instead of just providing written memos. Ms. Mercandetti noted that information is forwarded to other town boards as it becomes available. Mr. Meyers said that he thinks the schedule is too aggressive, but the Chairman and Ms. Mercandetti assured him that the subject areas are just starting points and discussions will be ongoing. No subject will be closed out until sufficient information is provided.

Laurie Mackay of 106 Winthrop Street asked that Board proceed slowly as there have already been problems with wrong information being provided. Chairman Cole noted that the Board will hold as many meetings as needed throughout the 180 day timeline in order to conduct a thorough review and offer opportunities for public concerns to be heard and addressed.

Mr. Agostino stated that his role as the Applicant's Counsel is to help navigate procedural issues and noted that the plan will evolve as time goes on. The new parcel that has been added to the site only implicates project eligibility (from Mass Housing) and new abutters notice. These things are being addressed before the public hearings proceed. Mr. Agostino said that he appreciates the need for additional review and comments.

The Applicant's Counsel signed the appropriate form granting the Board the extension on the 180 day timeline.

Gary Neubauer of 4 Ohlson Circle asked if the new plan would be available on the Town of Medway site. Ms. Mercandetti said it will be posted the following day and that all documents regarding the hearing have been and will be posted.

Chairman Cole stated that he had before him an extension up to and including April 3, 2017.

***Chairman Cole moved that the Board accept this request and grant him the authority to complete the form as Chairman and as a representative of the Board.***

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

***Chairman Cole moved that the Board continues review of this application on October 5, 2016 at 7:45 P.M., subject to the approval from Mass Housing.***

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

Mr. Agostino noted that he expects an affirmative decision from Mass Housing.

**Deliberations:**

The Board moved to deliberate on the application for Mr. Newman.

Mr. Stumpf stated that he was inclined to vote in favor of the variance because the Applicant has demonstrated that the shape of the property presents a hardship.

Mr. White was in agreement and noted that the shape of the property deems consideration.

Mr. Arbeene tended to agree given the layout of the backyard. He noted that the proposed plan presents the most advantageous placement of the pool.

Ms. Gould is also in agreement based on the shape of the lot.

***Chairman Cole moved to find that the Applicant demonstrated that there are circumstances relating to the shape of the subject lot especially affecting this lot, but not generally affecting the zoning district in which it is located; and in particular the limited size of the subject lot which is approximately 14,900 square feet, substantially less than the 22,500 square feet required by the AR-II zoning district, the location of the lot on a bend on Delmar Road, which requires a 35 foot setback along both the north and west sides of the subject lot, and the placement of the existing buildings on the lot all render construction of additional structures within the restrictions of the Zoning Bylaw difficult.***

***Motion was seconded by Mr. White, and approved unanimously.***

***Chairman Cole moved to find that the Applicant demonstrated that in view of the limited size of the subject lot and the location of the existing buildings thereon, the proposed location for the swimming pool represents essentially the only practicable location for that pool; and that any attempt to increase the setback substantially by moving the pool in a southerly direction would place the pool too close to the existing house.***

***Motion was seconded by Mr. White, and approved unanimously.***

***Chairman Cole moved to find that a literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship to the Applicant by precluding building of the proposed pool and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the Bylaw.***

***Motion was seconded by Mr. White, and approved unanimously.***

***Chairman Cole moved to grant to the applicant, Timothy Newman, a Variance from the requirements from Section 6 of the Medway Zoning Bylaw for construction of a 40 feet x20 feet pool at 18 Delmar Road, Medway subject to the following terms and conditions:***

- A. The pool shall be constructed substantially at the location shown on the plan submitted with the application.***
- B. The setback along the northern lot line shall be reduced from 35 feet to 17 feet.***
- C. For the avoidance of doubt, no relief is granted in respect to the setback along the eastern lot line.***
- D. Motion was seconded by Mr. White, and approved unanimously.***

***Variance granted.***

**Other business:**

Ms. Leahy recapped that in July the Board approved having applicants pay for advertisement fees associated with their ZBA applications. Ms. Leahy has drafted a legal form to be included with the ZBA application packet which notifies the applicant of the additional cost.

***Chairman Cole made a motion to adopt the legal notice billing agreement form.***

***Motion was seconded by Mr. White and approved unanimously.***

**Adjournment:**

A motion to adjourn the meeting was made by Mr. White, seconded by Ms. Gould and approved unanimously. The Board adjourned at 8:58 PM.

Respectfully submitted,

Filipa LeClair  
Meeting Recording Secretary