

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

MINUTES OF MEETING

August 3, 2016

Present: Chairman David Cole; Committee Members: Eric Arbeene and Brian White; and Associate Member Rori Stumpf.

Also Present: Stephanie Mercandetti Director, Community and Economic Development; Mackenzie Leahy, Administrative Assistant, Community and Economic Development; Ezra Glenn (left at 9:00 PM), Public Planning Research & Implementation, Inc.

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.

Approval of Minutes:

No changes were suggested by the Board to the draft meeting minutes for July 6, 2016.

A motion to accept the minutes of the July 6, 2016 meeting as submitted was made by Mr. White, seconded by Mr. Arbeene and approved unanimously.

No changes were suggested by the Board to the draft meeting minutes for July 20, 2016.

A motion to accept the minutes of the July 20, 2016 meeting as submitted was made by Mr. White, seconded by Mr. Arbeene and approved unanimously.

Correspondence:

None.

Public Hearings:

7:45 P.M. – (Continued without testimony from July 20, 2016) 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.

[Focus areas: Stormwater Management, Wetlands, Water & Sewer, and Access]

The developer, Mounir Tayara, and his 40B consultant, Paul Cusson of Delphic Associates, were present to discuss the application with the Board.

The Board is in receipt of a letter submitted by Mr. Cusson highlighting an alternative subdivision plan. The applicant has purchased an additional parcel on Holliston Street allowing for different access points to the proposed development and the alternative plan would also eliminate the 116 condo units in favor of 88 single family homes.

Chairman Cole asked which plan the applicant wished to proceed with as the new plan would require a new path forward and presents certain legal complications that would need to be addressed.

Mr. Cusson stated that the new plan for the development is a result of the applicant trying to address concerns that have been raised by the Board and abutters during previous hearings. The applicant's attorney, Michael Kelly, has also submitted a letter in response to the legal matters surrounding access to Fern Path. Ms. Mercandetti noted that the letter has been forwarded to the Board and to Town Counsel for evaluation. Mr. Cusson further stated that Scott Goddard of Goddard Consulting, LLC and Jim Pavlik of Outback Engineering submitted responses to the Board upon receipt of comments from Tetra Tech. Additionally, Mr. Cusson said that updated architectural plans have been submitted. Ms. Mercandetti noted that the architectural renderings have not been received and Mr. Tayara ensured the Board that they would be resubmitted.

The applicant wished to discuss the new design, which integrates the recently acquired parcel on Holliston Street, but Chairman Cole interjected by stating that while changes to the plan are typical and expected for these types of projects, he has been advised by both Town Counsel and staff that the new plans constitute a change to the land area to which the application relates and there is no provision in the 40B that permits this mid process. Chairman Cole went on to state that the new plan also changes the list of abutters that need to be notified.

Mr. White echoed the chairman's position.

Mr. Glenn advised that the clearest path forward would be for the applicant to withdraw without prejudice and resubmit with new plans.

Chairman Cole noted that the entire record of the case up to this point would be preserved, and part of the traffic study would need to be updated.

Mr. Cusson stated that the applicant fully understands the Board's position, but would like some time to consult with their legal team to figure out the best way to move forward while preserving some rights from the current application. The applicant is particularly concerned

with payment of new filing fees. Ms. Mercandetti noted that the portion that was set aside for peer review fees would need to be replenished by the applicant if needed and reminded the applicant that the assessor's list is only valid for 90 days. Mr. Glenn said that in his opinion the town has shown that they are not trying to make a profit from 40B applications and suggested that the applicant may request a waiver of filing fees for the new application. That decision would then be made by the Board.

Chairman Cole stated that the Board accepts that the applicant will not make the decision tonight as to whether he will proceed with the original or revised plan.

Mr. Cusson asked for a continuance until the August 17, 2016 meeting.

Chairman Cole pointed out that if the applicant plans to withdraw without prejudice, the Board can hear that request at the next meeting. Ms. Mercandetti added that a written request would need to be received, the Board would then be able to vote on that request and determine when the hearing would begin.

Chairman Cole stated that the Board would not be able to proceed any further at this time.

Mr. Glenn commented on the impressive turnout of residents and apologized for the fact that the hearing would not be able to be continued, but stressed the importance of following the correct process for handling these matters.

Ms. Mercandetti offered to answer any questions.

Public Comments:

Daniel Strachan of 11 Fairway Lane asked if the applicant was proceeding with a revision to the original plan or starting over. He expressed concern with wetland delineation of the recently acquired parcel. Mr. Tayara stated that a wetland assessment has already been done with the seller's permission. Mr. Glenn added that if withdrawn and resubmitted, it would be considered a new application and the Board would be able to ask for any information deemed necessary. Mr. Cusson noted that just the new parcel would require delineation, not the entire plot of land.

Lori Mackay of 106 Winthrop wanted to note that the traffic impact study would need to be revised.

Cindy Maliniak of 14 Fairway Lane asked for clarification on the 180 day time frame should the applicant withdraw and resubmit. Mr. Glenn stated that a new application would warrant a new 180 day timeline. Ms. Maliniak also asked if new abutters would be given the opportunity to voice their concerns to Mass Housing. Ms. Mercandetti and Mr. Glenn stated that they had already reached out to Mass Housing and were told that there was no need for additional review as they would have the opportunity to review the final plan. Mr. Cusson noted that Mass Housing did a finding at the initial stage and would then conduct a final review for approval of the application.

Gary Neubauer of 4 Ohlson Circle commented that the number of people present at the meeting represent an obvious concern. He expressed frustration in the slow progression of the application process and lack of information given by the applicant at each meeting. In addition, he doesn't see why the town would consider waiving fees for a new application. Chairman Cole explained that the town has not spent all the money provided by the applicant for peer review services. Mr. Neubauer asked to see visuals of the revised plan, but the Board noted that the new plan has not formally been submitted and therefore cannot be discussed at the present meeting. Mr. Arbeene further explained that when it comes to the fees, even if the application is withdrawn and resubmitted, one side of the plan is staying the same, and all the work for that is done and has been peer reviewed. The fee for that therefore would not require repayment. Chairman Cole added that likewise, the wetlands in the middle of the development need to be considered for both sides of the project and that assessment has already been completed.

Mr. Arbeene stated that the Board appreciates everyone coming out and acknowledges that the process is certainly bureaucratic, but points out that some of the issues that have been brought up need to be addressed.

Mr. Stumpf noted that the public needs opportunity to discuss and voice their concerns.

Daniel Strachan of 11 Fairway Lane asked if wetland delineation of the new property can be done at any time during the year. Mr. Tayara stated that to his knowledge, wetlands delineation can be done anytime, however vernal pool assessments must be done in the spring. The Board noted that the town's environmental consultant would address all issues pertaining to wetlands and noted that the Conservation Commission would conduct a completely separate review. Mr. Cusson stated that the applicant is aware that the approval by the Conservation Commission is required. Ms. Mercandetti further added that any new submittals get circulated to all the different town departments.

Dennis Crowley of 6 Hill Street asked when the clock starts ticking on the 180 day timeline and what has to be included on the new submission. Mr. Glenn stated that the timeline starts at the opening of the public hearing. Ms. Mercandetti noted that once the application is received, it is reviewed to ensure that the submission is complete enough to open the hearing. Once the application is stamped, the town has 30 days to open up the hearing. Mr. Crowley asked the Chairman to ask the applicant when they plan on submitting the new application to the Board. Chairman Cole reminded Mr. Crowley that the applicant has not indicated that they would be submitting a new application. Mr. Cusson said that the goal is to get the process moving as quickly as possible.

Rachel Walsh of 168 Holliston Street stated that as a potential new abutter, she is not ok with having her rights waived in regard to having her concerns heard by Mass Housing. Mr. Glenn urged her to voice her concerns to the Board and explained that the state leaves much of these matters to be address by local boards and committees. He noted that Ms. Walsh is welcome to

contact Mass Housing in order to voice her concerns, but Ms. Walsh does not feel that contacting the state separately would have the same impact. Chairman Cole added that the Board does not have the authority to force Mass Housing to re-review the application. Mr. White reiterated that Ms. Mercandetti and Mr. Glenn had already contacted Mass Housing and were told that no further review was needed at this time. Mr. Glenn noted that Town Counsel has not yet reviewed the Mass Housing decision. Ms. Mercandetti agreed to contact Mass Housing and request a letter confirming that a review of the application is not necessary at this time.

The applicant requested a 14 day continuance to consult with their own counsel.

A motion to accept the applicant's request to continue the hearing on August 17, 2016 at 7:45 PM was made by Chairman Cole, seconded by Mr. White, and approved unanimously.

Chairman Cole called for a 5 minute recess.

Deliberations:

- a. Philip Anza of Alder Street Realty LLC- 51 Alder Street

Mr. Arbeene stated that he had no major concerns and highlighted that the applicant is presently in the industrial park and the location is in an isolated area.

Mr. White noted that the proposed business is the best usage for that particular plot.

Chairman Cole moved to find that the applicant demonstrated that the limited size of the subject lot, and the presence of substantial amounts of wetlands thereon, render the subject lot essentially ill fitted for the industrial uses prescribed by the Zoning Bylaw and that a small commercial use represents an effective use of the subject lot.

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

Chairman Cole moved to find that the applicant has previously conducted a similar business within the same industrial zoning district for a number of years without objection from his present neighbors and that the owners and/or occupiers of the lots adjacent to the subject lot have raised no objections to the proposed use.

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

Chairman Cole moved to find that the proposed use, although not permitted under the Zoning Bylaw, is not of a type which would be disruptive to permitted uses in the zoning district and hence that the requested relief can be granted without substantial detriment to the public good or excessive deviation from the intent of Zoning Bylaw.

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

Chairman Cole moved to find that the location of the wetlands on the subject lot, and the desirability of maintaining a substantial separation between the wetlands and the construction needed for the proposed automotive sales and service building, render it desirable to place the building significantly closer to the front lot line than permitted by current zoning.

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

Chairman Cole moved to grant to the applicant, Philip Anza of Alder Street Realty LLC, variances from the requirements of Sections 5.4 and 6.1 of the Medway Zoning Bylaw as follows: a.) to permit the carrying on of an automotive sales and service building in the Industrial III zoning district at 50 Alder Street (Assessor's parcel 63-001-0001) and b.) to permit construction to a front setback of 24 ft. instead of the 30 ft. prescribed by the Zoning Bylaw subject to the condition that the building shall be constructed substantially in accordance to the plan submitted.

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

Variance granted.

b. Paul LaPerriere of Medway Realty LLC- 98, 108, & 114 Main Street

Chairman Cole moved that the Board reaffirm its findings and grant of variances in its decision of July 22, 2015 in respect of the subject lots, which variances shall remain in full force and effect.

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

Chairman Cole moved to find that applicant demonstrated both during the hearing on the previous decision and at the hearing on the present application that the proposed locations of the signs were optimal for purposes of viewing the signs from traffic along Route 109 and for traffic flow within the parking lot.

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

Chairman Cole moved to find that, in view of the substantial distance between the existing curb of Route 109 and the front lot lines of the subject lots, the required reduction in front setback can be granted while still leaving sufficient clearance between the front entrances and the front edges of the signs and to permit good sight lines for traffic exiting the subject lots.

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

Chairman Cole moved to grant to the applicant, Paul LaPerriere of Medway Realty LLC, 63 Atlantic Avenue, Boston, MA, variances from Section 7.2.5 of the Medway Zoning Bylaw for the property located at 98, 108 and 114 Main Street as follows:

A. The front setback for the primary sign shall be reduced from 15 ft. to 10 ft; and

B. The front setback for the secondary sign shall be reduced from 10 ft. to 4 ft.

The motion was seconded by Mr. Arbeene and approved unanimously.

Variance granted.

Upcoming Meeting:

The next meeting of the Board will be August 17, 2016 which includes the continuance of the public hearing for Timber Crest Estates.

Adjournment:

A motion to adjourn the meeting was made by Mr. Arbeene, seconded by Mr. White and approved unanimously. The Board adjourned at 9:25 PM.