

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



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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

Wednesday, August 2, 2023, at 7:30 p.m.
Sanford Hall
155 Village Street

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

Members Absent: Brian White, Chair

Also Present: Barbara Saint Andre, Director, Community and Economic Development; Anna Rice, Administrative Assistant, Community and Economic Development

Call to Order

Mr. Phenegar called the meeting to order at 7:35 p.m. and stated that this meeting is being recorded by Medway Cable.

Public hearings

31, 33, and 37 West Street – The application is an **appeal** under M.G.L chapter 40A section 15 seeking to reverse a decision by the Building Commissioner dated June 7, 2023, issued in response to a request for zoning enforcement from Mr. Brody alleging that the lighting at the Glen Brook Way development violates the zoning bylaw.

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

Mr. Phenegar stated that in looking at the application, there are three issues addressed in the appeal, which will be discussed: spillage of light from the development onto the road (West Street), excessive construction lighting creating spillage on the applicant's property, and potential violations that may occur when the next phase of construction is completed. Mr. Phenegar stated that, based on the documents provided, Mr. Ackley went to the property to address the concerns, the developer had shielded lights to reduce spillage into the street and screened construction lighting within the building to reduce the brightness, which Mr. Ackley deemed in compliance. With respect to potential light spillage

that may occur on Mr. Brody's property after construction is completed, Mr. Phenegar stated that Mr. Ackley and the Board cannot enforce an infraction that has not yet occurred. Ms. Oster clarified that the developer had also turned off two exterior lights to reduce light spillage into the road and agreed that the Board could not rule on violations that have not occurred.

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

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

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

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

Attorney Paul Haverty of Blatman, Bobrowski, Haverty & Silverstein, LLC, was present, representing Metro West Collaborative Development. Attorney Haverty stated that he agrees with everything Attorney Murray had stated, noting that a majority of the items being brought up in the statement that was submitted, and in some of the official requests, deal with plans that have been approved with appeal periods that have expired. He stated the two current requests have both been addressed. He stated that the construction of the interior construction lighting has been addressed, by the applicant's

own admission, to his satisfaction. He also stated that the issue regarding the exterior lighting has been addressed by turning off lights to the satisfaction of Mr. Ackley. Attorney Haverty stated that a zoning violation cannot be prospectively found, and that a violation cannot be found based on a set of comprehensive permit plans that were approved by the Board and were not subject to appeal. Attorney Haverty stated that if, at some point, the lighting is constructed and is not consistent with the plans that were approved, that will be addressed, and that Caitlin Madden, Executive Director of Metro West Collaborative Development, mentioned that once the lights are put in place, there will be a dimmer to allow the lights to be turned down. Attorney Haverty further stated that if it is impossible to have lighting there that does not meet the Zoning Bylaw, the lights cannot be operable, and that interior lighting is not covered by the Zoning Bylaw and cannot be the basis for a violation of the Zoning Bylaw.

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

Mr. Phenegar stated that his opinion is that the Building Commissioner's decision dated June 7, 2023, is correct, and that the light spillage on the street was addressed, and that the interior light issues were addressed, and that the request for enforcement on a violation that has not yet occurred cannot be addressed. The Board members agreed and had no further comment. Mr. Phenegar stated that the applicant has presented his case and provided documentation through the original application. Mr. Phenegar noted that if there is a problem going forward, the applicant has the right to appeal. Mr. Brody stated he has more testimony to present, Mr. Phenegar stated that the Board has heard all the testimony pertinent to the three issues identified in the appeal, and that the materials submitted to the Board earlier that evening could not have been reviewed by the Board. Mr. Phenegar stated he read through all the materials originally provided to the Board.

The Board moved to making findings. Ms. Saint Andre noted there are three issues addressed in the request for appeal, and the Board should make a finding on each one.

Motion to find that with respect to the light spillage onto the street, the Building Commissioner investigated and found there was an issue, he contacted the property owner, who turned off two of the lights along the street, and dealt with the others, and the spillage was then deemed ameliorated by the Building Commissioner, made by Tom Emero, seconded by Christina Oster, passed by 4-0.

Motion to find that with respect to light spillage from the interior construction lighting, the Building Commissioner found there was an issue, the Developer dealt with this by turning off lights and shielding some of the lighting, and the Building Commissioner determined this was no longer an issue, made by Joe Barresi, seconded by Christina Oster, passed by 4-0.

Motion to find that with respect to the possibility that there will be a violation when the construction is finished, it is not possible to make a finding on something that has not occurred or ameliorate something that has not occurred zoning enforcement cannot occur for a violation that has not yet occurred, made by Joe Barresi, seconded by Christina Oster, passed by 4-0.

Motion to uphold the Building Commissioner's determination dated June 7, 2023, based on the findings made by the Board, made by Joe Barresi, seconded by Christina Oster, passed by 4-0.

Motion to deny the appeal request for 33 West Street, and to allow any one member of the Board to sign the decision, made by Joe Barresi, seconded by Christina Oster, passed by a vote of 4-0.

Motion to close the public hearing for 33 West Street made by Joe Barresi, seconded by Christina Oster, passed by a vote of 4-0.

3. Other Business

4. Approval of Minutes

- July 19, 2023

Motion to approve the minutes for July 19, 2023, as presented, made by Gibb Phenegar, seconded by Christina Oster, passed by a vote of: 4-0.

5. Upcoming Meetings

- August 16th – no business
- September 6th

6. Adjournment

Motion to adjourn the meeting at 8:09 p.m. made by Gibb Phenegar, seconded by Joe Barresi, passed by a vote of: 4-0.

Respectfully submitted,

Anna Rice

Administrative Assistant, Community and Economic Development