

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



Medway Town Hall  
155 Village Street  
Medway, MA 02053  
Telephone (508) 321-4890  
zoning@townofmedway.org

**TOWN OF MEDWAY**  
**COMMONWEALTH OF MASSACHUSETTS**  
**ZONING BOARD OF APPEALS**

**DECISION**  
**APPEAL - DENIED**  
**31, 33 & 37 WEST STREET**

RECEIVED TOWN CLERK  
FEB 14 '24 PM 1:23

20 day appeal  
March 6, 2024

**Applicant:** Steven Brody, 39 West Street

**Location of Property:** 31, 33, and 37 West Street (Assessor Parcel ID: 66-001, 66-002, 66-003, 65-024).

**Approval Requested:** The application is an **appeal** under M.G.L chapter 40A section 15 seeking to reverse a decision by the Building Commissioner dated January 9, 2024, issued in response to a request for enforcement from Mr. Brody alleging violations of Section 7.3.D.2 of the Zoning Bylaw (noise standards) with respect to the Glen Brook Way apartments.

**Members Participating:** Brian White, Chair, Gibb Phenegar, Vice Chair; Christina Oster, Clerk; Joe Barresi, Member; Tom Emero, Member

**Members Voting:** Brian White, Chair; Gibb Phenegar, Vice Chair; Christina Oster, Clerk; Joe Barresi, Member; Tom Emero, Member

**Date of Decision:** February 7, 2024

**Decision:** APPEAL DENIED

**I. PROCEDURAL HISTORY**

1. On January 16, 2024, the Applicant filed for an **appeal** under M.G.L chapter 40A section 15.
2. Notice of the public hearing was published in the Milford Daily News on January 24, 2024 and January 31, 2024, and notice sent by mail to all parties in interest and posted in Town Hall as required by G.L. c. 40A §11.
3. The public hearing was opened on February 7, 2024. The hearing was closed the same evening.

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4. The Property at 31, 33, and 37 West Street is located in the AR-II (Agricultural Residential II) District. It was granted a comprehensive permit under G.L. c. 40B in 2017, with a major modification in 2018. Neither decision was appealed.

5. The Board notified Town departments, boards, and committees of this application.

6. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section IV of this Decision.

## **II. SUMMARY OF EVIDENCE AND TESTIMONY**

Steven Brody discussed the issue of the noise coming from the Glen Brook Way apartments when HVAC units are turning on at various times throughout the day. Mr. Brody is appealing the Building Commissioner's determination that the Glen Brook Way apartments is a residential use, and therefore the noise standards in Section 7.3.D.2.a do not apply and there is no zoning violation. The Building Commissioner cited the provision of Section 7.3.D.2.a that "continuous noise restrictions apply to permanent non-residential uses and home-based businesses". Mr. Brody argues that the bylaw does apply, and that he would like the Board to overturn the interpretation and have the Building Commissioner investigate his noise complaint.

Mr. White opened the dialog to the Board asking if Commissioner Ackley made the correct determination. Mr. Phenegar stated that he believed that the Glen Brook apartments are a residential use under the Zoning Bylaw. Mr. White cited the definitions in the Zoning Bylaw for residential uses, and Schedule of Uses in the Zoning Bylaw, and agreed that the apartments fit into the residential use category. Mr. Brody cited the language in Section 7.3.D.2.a regarding unreasonable interference with the use of property to support his claim. Attorney Paul Haverty for MetroWest Collaborative addressed the Board and noted that the Zoning Bylaw sets standards for noise impacts from industrial and commercial zoned properties to other properties, none of which apply to the Glen Brook Way apartments, which is zoned residential. He agrees with Commissioner Ackley's decision that the Glen Brook apartments are a residential use not a commercial use. Mr. Emero asked Town Counsel if the zoning bylaw provision means that noise from a large residential development is treated the same as living next to a single family home. Town Counsel Carolyn Murray explained the provisions of the noise standards in the Zoning Bylaw, which does not have standards for noise impacts between residential properties. Mr. Emero was concerned that under the interpretation, the HVAC units could make unlimited noise and there is no remedy. Barbara J. Saint Andre, Director of Community and Economic Development, noted that, although there may not be a zoning standard, the state Department of Environmental Protection (DEP) has a noise standard, which is enforced by the Board of Health.

The Board made the determination that this request is not in the Building Commissioner's purview and Mr. Brody should follow up with the Board of Health Director. The Board agreed with Building Commissioner Ackley's Decision dated January 9, 2024.

### **III. FINDINGS**

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A, as amended, and by the Medway Zoning Bylaw. The Board also considered the documents listed below, as well as the evidence and testimony presented at the public hearing. The Board voted to make the following findings with respect to the items in the Building Commissioner's determination that is the subject matter of this appeal:

Section 7.3.D.2 of the Zoning Bylaw provides the standards for noise disturbance. The property at 31, 33, and 37 West Street, the Glen Brook Way apartments, does not constitute a "permanent non-residential use or home-based business" as provided in Section 7.3.D.2. Therefore, the Board agreed with the Building Commissioner's decision that there is no zoning violation. The merits of Building Commissioner Ackley's decision is supported by the Zoning Bylaw.

### **IV. INDEX OF DOCUMENTS**

A. The application included the following information that was provided to the Board at the time the application was filed:

1. Application dated January 16, 2024.
2. Email from Jonathan Ackley, Building Commissioner, to Steven Brody, dated January 9, 2024.

B. Other documents received by the Board:

1. Email from Derek Kwok, Health Director, dated January 19, 2024
2. Email from Derek Kwok, Health Director, dated February 5, 2024
3. 310 CMR 7.10 and 7.52
4. Acentech Noise Compliance Study dated February 6, 2024
5. Technical Sheets from Steven Brody
6. Email from Steven Brody dated January 25, 2024

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**VI. VOTE OF THE BOARD**

By a vote of 5 to 0, the Zoning Board of Appeals hereby **DENIES** the Applicant, Steven Brody, an **APPEAL** under M.G.L chapter 40A section 15 seeking to reverse a decision by the Building Commissioner dated January 9, 2024.





Member:	Vote:	Signature:
Brian White, Chair	Aye	<hr/>
Gibb Phenegar	Aye	<hr/>
Christina Oster	Aye	<hr/>
Joe Barresi	Aye	<hr/>
Tom Emero	Aye	<hr/>

The Board and the Applicant have complied with all statutory requirements for the issuance of this appeal on the terms herein set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in General Laws, chapter 40A, section 15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, chapter 40A, section 17, and shall be filed within twenty days after the filing of this notice in the office of the Medway Town Clerk.

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