

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



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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

Wednesday, February 7, 2024, at 7:30 p.m.
Sanford Hall, Town Hall
155 Village Street

Members Present: Brian White, Chair; Gibb Phenegar, Vice Chair; Christina Oster, Clerk; Joe Barresi, Member; Tom Emero, Member; Adam Kaufman, Associate Member

Members Absent: None

Also Present: Barbara Saint Andre, Director, Community and Economic Development
Shannon Reeve, Administrative Assistant; Legal Counsel Carolyn Murray, KP Law

Call to Order

Mr. White called the meeting to order at 7:30 p.m. and stated that this meeting is being recorded by Medway Cable.

Other Business – Taking out of order

Timber Crest – Approval of surety estimate and agreement for deposit of funds for Phase 3W and approval of release of lots.

The developer, Mounir Tayara, gave a brief update on the status of the project.

With a motion made by Gibb Phenegar, seconded by Christina Oster the Board voted to approve the Agreement for Deposit of Money, for Timber Crest Estates Phase 3W, and to approve the release of Lots 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42 from the amended covenant (Registry book 37846 page 169) contingent upon receipt of the amount of \$710,097.00 surety and fully executed Agreement from the applicant by a vote of: 5-0.

Public Hearings

Mr. White opened the public hearing by reading the following public hearing notice:

Public hearing notice: Steven Brody Appeal #3 with regard to 31, 33, 37 West Street - The application is an appeal under M.G.L. chapter 40A section 15 from a decision of 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.

The applicant, 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

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.

On a motion made by Gibb Phenegar, seconded by Christina Oster, the Board made the following findings by a vote of 5-0:

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.

With a motion made by Gibb Phenegar, seconded by Christina Oster, the Board voted to deny the Appeal by Mr. Brody for a request for enforcement by Commissioner Ackley alleging violations of Section 7.3.D.2 of the Zoning Bylaw (noise standards) with respect to Glen Brook Way Apartments by a vote of: 5-0.

3. Other Business – Taken out of order

Glen Brook request for finding of insubstantial modification of comprehensive permit.

Attorney Paul Haverty and Michael Wolfson, Project Architect, were present on behalf of MetroWest Collaborative/GBW Apartments, asking for a finding that a waiver of Section 7.1.2.E. 3 of the Medway Zoning Bylaw regarding overnight lighting at Glen Brook Way apartments is an insubstantial modification. Attorney Haverty stated they believe this bylaw is intended to limit the lighting regarding commercial uses. The use at Glen Brook Way Apartments is a residential use. They are not looking to increase the lighting prior to 11 p.m. The issue of safety and liability for the residents is at risk if the lighting is lowered from the current lighting. Mr. White asked if the lighting that is currently on now is what they are proposing going forward. Mr. Wolfson replied what you see now is what they are proposing for 11 p.m. to 6 a.m. Mr. Wolfson addressed lighting diagram 22AV-1 to the Board. Attorney Haverty stated they are not looking to increase the lighting from 11 p.m. to 6 a.m., they are looking to continue the lighting and have worked with the Building Commissioner to be compliant. They are

seeking to waive the requirements to meet the .5-foot candle average between 11 p.m. to 6 a.m. for safety reasons. Ms. Saint Andre asked what it is exactly they are proposing, which of the diagrams submitted is the one they are asking to govern this property. Mr. Wolfson replied Lighting Plan 22C is the Plan they are proposing. Mr. White asked the Board if this request is an insubstantial change under chapter 40B. Ms. Saint Andre gave examples of regulations and cited the Rugged Scott Case. The issue is if this request is an insubstantial or substantial change. Mr. Barresi asked if there was an average lighting number prior to the lighting plan. Mr. White then clarified that Mr. Barresi's question would be better addressed in a public hearing. Tom Emero agreed that this is a very data heavy discussion. Town Counsel addressed the issue of the adverse impacts that could be caused to the residents or the abutters of the property, and the issue of the lighting complaint before the Board tonight.

Mr. White asked the public if they have any comments. Mr. Brody stated he interprets the Housing Appeals Committee (HAC) rulings differently. Mr. Brody is questioning how the light on all night is an improvement. Mr. Brody stated the lighting directly impacts him as an abutter by glare and light trespass to his property. He stated even at the limited capacity right now it is affecting him. Mr. White asked the Board Members regarding making a decision of the request by MetroWest Collaborative if the request is an insubstantial or substantial change. Tom Emero stated the request is a substantial change, and with all the changes that have taken place a public hearing should be held for this all to be vetted and for others to have the opportunity to comment. Gibb Phenager agreed with Mr. Emero that there is a lot to digest and this is not an insubstantial change. Mr. Barresi agrees that more information is needed to make a decision and needs to be open up to a public hearing. The hearing will be held within 30 days, on March 6, 2024.

With a motion made by Gibb Phenegar, seconded by Christina Oster, the Board voted that the proposed project changes are substantial, and therefore a public hearing will be held on March 6, 2024, at 7:30 p.m. regarding the requested modification, by a vote of: 5-0.

Public Hearings

Mr. White opened the public hearing by reading the following public hearing notice:

Public hearing notice: Steven Brody Appeal #2: an appeal from Steven Brody with respect to property located at 31, 33, 37 West Street Assessor Parcel Nos. 66-001, 66-002, 66-003, 65-024, in the Agricultural Residential II (AR-II) Zoning District. The application is an appeal under M.G.L. chapter 40A section 15 from a decision of the Building Commissioner dated November 30, 2023, issued in response to a request for enforcement from Mr. Brody alleging violations of the Zoning Bylaw with respect to the Glen Brook Way apartments.

Mr. Brody gave a brief overview of five points he would like taken under consideration: 1) Need for impartial expert review, 2) Focus on Plan L210-Photometric Plan that needs discussion, 3) Relating to overnight hour lighting complaint; 4) concerning the record and questions he has regarding the record, and 5) requesting clear and responsive answers regarding his concerns. Mr. White addressed Exhibit 1 submitted by Mr. Brody outlining the grievances. Mr. White asked what equipment Boston Light Source used to measure the light as Mr. Brody suggests the equipment was subpar. Mr. White asked if Mr. Brody has hired an independent light expert, to which Mr. Brody stated he has not. Mr. White addressed the statement from Mr. Brody that he believes an Independent third-party light expert should be hired. Mr. White asked about Tetra Tech's visit to the site with Commission Ackley. Ms. Saint Andre clarified the interpretation of the Bylaw is, if the property is residential, the .01 standard does not apply. The issue is whether there is light trespass, which you do not need a light meter for. Mr. Brody feels a lighting expert or consultant should be hired to determine whether or not there is direct glare and what the impacts are. Mr. Brody asked what the approved lighting plan is, Mr. White replied L210-Plan. Ms.

Saint Andre addressed the issue that the L210 Plan, which was submitted 5-6 years ago, is not relevant at this point, it was only a projection as to the lighting. The issue is whether there is a violation of the current bylaw at this point. Mr. White asked if Board members had any questions. Mr. Emero asked if the Town has funding from the construction observation account to have an expert who reviews what has been built and how it complies with what was approved. Mr. White replied yes, the applicant provides funds to the Town for this and the Town of Medway contracts Tetra Tech to provide any engineering services we see fit and use them within the scope of the permit. Mr. White clarified that with the Comprehensive Permit that is issued, what is on the permit has to be met before the final certificate of occupancy can be given. Ms. Saint Andre mentioned Tetra Tech has been reviewing the project on-going.

Mr. White asked Town Counsel if the Board is to make findings regarding the complaint regarding Mr. Ackley's decision dated November 30, 2023. Town Counsel stated to go through each request for enforcement and make some type of determination.

Mr. White asked if anyone from the public had any additional questions or comments. Paul Haverty, attorney for MetroWest Collaborative/GBW Apartments came forward. He wanted to point out that a lot of the requests Mr. Brody is making are regarding plans that were already approved by this Board. Those decisions are past any applicable appeal period and cannot be challenged. Mr. White asked Town Counsel if this statement is true, Town Counsel stated it is true. Mr. Haverty noted that a request for modification from his client (MetroWest Collaborative/GBW) dated June 29, 2022, that came to the Board and was approved as an insubstantial change on July 7, 2022. Part of that request was to conform the Comprehensive Permit to the final plans as submitted and approved by this Board. The plans that are in the record are deemed modified as part of that decision by this Board, is the applicable set of plans to review concerning this complaint.

Mr. Brody inquired where the plans that Mr. Haverty is speaking of are located. Ms. Saint Andre suggested this be continued to March 6, 2024, when we will be addressing the insubstantial waiver which could affect this appeal. Gibb Phenager agreed. Mr. Emero addressed the question from Mr. Brody where the plans and modifications are. Ms. Saint Andre mentioned all the changes were part of the insubstantial modification back in 2022 and the plans are in the Town office. Mr. White mentioned if this is going to continue to March 6, 2024, he is asking for our Code Enforcement Officer to be here as well to speak about field changes, etc. we may not be aware of.

With a motion made by Gibb Phenegar, seconded by Christina Oster, the Board voted to continue the hearing Mr. Brody's appeal to March 6, 2024, at 7:30 p.m. by a vote of: 5-0.

3. Other Business

- Ms. Saint Andre asked the Board if the members if they would like to discuss Town Meeting Article for Outdoor Displays, the Board asks for the Planning & Economic Development Board to use the original warrant article wording.

4. Approval of Minutes

Motion to approve the minutes of January 17, 2024, by Brian White, seconded by Christina Oster, passed by a vote of: 5-0.

5. Upcoming Meetings

- March 6, 2024
- March 20, 2024

6. Adjournment

Motion to adjourn the meeting at 9:36 p.m. made by Brian White, seconded by Christina Oster, passed by a vote of: 5-0.

Respectfully submitted,
Shannon Reeve Administrative Assistant, Community and Economic Development

Edited by
Barbara J. Saint Andre
Director, Community and Economic Development

Documents reviewed at this meeting:

- Lighting Plan titled: "GBW Insubstantial Modification Request-Final" dated January 29, 2024, prepared by Michael Wolfson, Project Architect; Plan 22AV-1, Plan 22C