

## **TOWN OF MEDWAY**

### **ZONING BOARD OF APPEALS**

#### **MINUTES OF MEETING FEBRUARY 4, 2009**

All members of the Board, including the alternate member, were present.

The meeting was called to order at 7:20 p.m.

There being no objection from any member, the Board proceeded to hear the application of Mr. James Perry, who appeared on his own behalf. Mr. Perry stated that the proposed extension, in which the Accessory Family Dwelling Unit (AFDU) would be located, would be set back 52-54 inches from the existing front of the house to allow for a four foot square porch; the extension would be about 3 feet lower than the existing house. Pushing the extension further back would interfere with an existing window in the house, with disruption of the roof line. The proposed entrance to the extension is presently a window of the existing house; the extension would match the "farm house" appearance of the existing house. Mr. Perry stated that he purchased the property in March 2007, and the extension would require removal of only two trees. Five parking spaces plus two garage spaces are available, so there is no need for additional parking. The addition is approximately 536 square feet.

No members of the public were present, so there were no questions or comments. However, a letter was received from Ms. Mary Knowles opposing the application but not stating her reasons for this opposition.

A motion to close the hearing was made by Mr. Cole, seconded by Mr. Flotta and passed unanimously.

A motion to approve the minutes of the December 3, 2008 meeting with one minor correction was proposed by Mr. Flotta, seconded by Mr. Musmanno and passed unanimously.

A motion to approve the minutes of the January 9, 2009 meeting was proposed by Mr. Flotta, seconded by Mr. Biocchi and passed unanimously.

By unanimous consent, the Board agreed to deliberate on the application of Mr. Perry. Mr. Flotta stated that the proposed addition was small even if laid out in a rather unusual manner, and that the addition would actually make the existing house look

more like a single family house. Mr. Biocchi noted that after the addition the house would still only have one door facing the street. The Board reached a consensus that the proposed structure was a conventional AFDU set back 52" behind the existing house. The Secretary and Mr. Flotta was delegated to write the detailed decision.

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed by a vote of 4-0 (Messrs. Musmanno, Cole, Biocchi and Flotta voting in favor, the other members abstaining since they had not been present at the hearing), the draft Decision on the application of Mr. Bedell was approved in the form presented by the Secretary.

By unanimous consent, three petitions were approved for advertisement.

The Board experienced some difficulty in setting the date of its March meeting in view of doubts as to whether a quorum could be present on the normal date of March 4, and uncertainty as to the availability of a hearing room on dates other than the Board's regular 1st and 3rd Wednesday dates. Finally, it was agreed to leave the choice of meeting date to the chairman, who would enquire as to the availability of a hearing room on various dates.

The Board then agreed unanimously to adjourn.

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING MARCH 12, 2009**

All members of the Board, including the alternate member, were present.

The meeting was called to order at 7:20 p.m.

There being no objection from any member, the Board proceeded to hear the application of Mr. and Mrs. Heaton; Mr. Heaton appeared on his own behalf. Mr. Heaton stated that in the late 1970's and early 1980's he held a ten dog kennel license without restriction. There would be no breeding of dogs. Five dogs lived outside in a 12 by 10 foot shed with an adjoining concrete pad, or else were let out into a fenced-in back yard of about 12,000 square feet. The only complaint regarding to the dogs had come from the house directly behind his lot; a family who had lived there for 30 years had moved out with their dogs and the new neighbor also had a dog. All the dogs are beagles with one litter every eight years or so, and the applicants keep one dog from each litter. Although intact males are present on the lot, all four females are spayed. The applicants' daughter is trying to sell her house and move to New Hampshire; after she leaves, there will only be three dogs on the premises. There would be no boarding of other's dogs.

There were no questions from the public. Ms. Marian Pierre-Louis spoke in support of the application, stating that the dogs were always kept confined, and that she had no problems with the proposed permit. Mr. and Mrs. Strong, of 26 Village Street, spoke in support, stating that the applicants were excellent neighbors who take great care of their pets, and for a long period he did not realize there were so many dogs on the premises. He further stated that the tenant of the house behind the applicants' tends to yell at the dogs excitedly. Mr. Jason Roberts, the owner (not the occupier) of the house behind the applicants', also spoke in support of the application, stating that the barking is not objectionable and that the dogs are friendly; furthermore, his tenant has only been occupying the house for about six months.

No member of the public spoke in opposition to the application.

Five letters were entered into the record, including a 2002 letter regarding a Notification of Complaint regarding noise as early as 4 a.m., a response from Mr.

Heaton, a copy of a complaint to the Animal Control Officer (ACO), and a letter from the ACO to Mr. Heaton, suggesting a limit on the number of dogs in the backyard at one time. Mr. Heaton stated that the dogs were on this occasion chasing a rabbit who had taken up residence in the backyard, and that the dogs are normally out until about 6:30 p.m. and are kenneled after dinner except when house dogs are let out later to relieve themselves.

A motion to close the hearing was made by Mr. Biocchi, seconded by Mr. Flotta and passed unanimously.

By unanimous consent, the Board agreed to hear the application of Mr. and Mrs. Grimes. A letter was presented from the neighbors on the side on which the carport would be located stating that they had no objection to the proposed carport; the neighbors have a garage on the other side of their lot. A list of local variations for garages and carports was presented, but the applicants stated they did not know the extent of the variations involved.

There were no questions from the general public. Mrs. Missy Dzicek of Village Street, spoke in favor of the application, and a letter in support was received from Ms. Gloria O'Byck of 8 Lee Lane. The applicants indicated that a conversion of the application to one for a special permit would be acceptable to them.

A motion to close the hearing was made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously.

By unanimous consent, the Board agreed to hear the applications of the Medway Council on Aging, on whose behalf Mrs. Missy Dzicek appeared, and to allow withdrawal without prejudice of the application for a shelter at the intersection of Summer and Milford Streets. The Chairman of the Board asked for consent by the Selectmen to erection of the bus shelter and for a statement that the bus shelter would be part of the roadway system.

By unanimous consent, the Board agreed to deliberate on the application of Mr. Perry. Mr. Flotta stated that the proposed addition was small even if laid out in a rather unusual manner, and that the addition would actually make the existing house look more like a single family house. Mr. Biocchi noted that after the addition the house would still only have one door facing the street. The Board reached a consensus that the

proposed structure was a conventional AFDU set back 52" behind the existing house. The Secretary and Mr. Flotta was delegated to write the detailed decision.

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed by a vote of 4-0 (Messrs. Musmanno, Cole, Biocchi and Flotta voting in favor, the other members abstaining since they had not been present at the hearing), the draft Decision on the application of Mr. Bedell was approved in the form presented by the Secretary.

By unanimous consent, three petitions were approved for advertisement.

The Board experienced some difficulty in setting the date of its March meeting in view of doubts as to whether a quorum could be present on the normal date of March 4, and uncertainty as to the availability of a hearing room on dates other than the Board's regular 1st and 3rd Wednesday dates. Finally, it was agreed to leave the choice of meeting date to the chairman, who would enquire as to the availability of a hearing room on various dates.

The Board then agreed unanimously to adjourn.

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING APRIL 15, 2009**

Ms. Gould and Messrs. Cole, Biocchi and Gluckler were present. In the absence of the Chairman, the Clerk chaired the meeting, which was called to order at 7:32 p.m.

The Board continued with the Hearing on the application of the Medway Council on Aging, on whose behalf Mrs. Missy Dzicek appeared. Mrs. Dzicek stated that the Council had not as yet procured the additional materials requested by the Board at the earlier hearing, and consented to a further extension. The Board agreed unanimously that, in the absence of the additional materials, there was no point in continuing further with the Hearing, and accordingly, on a motion made by Mr. Biocchi, seconded by Mr. Gluckler and passed unanimously, the Hearing was continued to 7:30 pm on May 6, 2009.

The Board then agreed unanimously to adjourn, and the meeting closed at 7:46 pm.

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING MAY 6, 2009**

Messrs. Musmanno, Cole, Biocchi and Gluckler were present. The Chairman called the meeting to order at 7.35 p.m.

On a motion made by Mr. Gluckler and seconded by Mr. Biocchi, the minutes of the April 15 meeting were approved by a vote of 3-0, Mr. Musmanno abstaining since he had not been present at the earlier meeting.

The Chairman reported that the Section 40B permit previously issued for a site on West Street had been abandoned as the developer had elected to proceed under a different type of permit.

The application of Chesmore was reviewed by the Board, who unanimously agreed to proceed with advertising the application. The Board also discussed obtaining a computer for the Secretary to run the new mapping software the Town had recently acquired. The Secretary was requested to investigate this matter and report to the Board's next meeting.

Since no representative of the Council on Aging was present, on a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the application of that body was continued to June 3 at 7.30 pm. On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the Chesmore hearing was set for June 3 at 7.15 pm.

The meeting was closed at 7.58 pm.

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING JUNE 3, 2009**

Messrs. Musmanno, Cole and Biocchi and Ms. Gould were present. The Chairman called the meeting to order at 7.30 p.m.

On a motion made by Ms. Gould and seconded by Mr. Biocchi, the revised minutes of the April 15 meeting were approved by a vote of 3-0, Mr. Musmanno abstaining since he had not been present at the earlier meeting.

On a motion made by Mr. Musmanno and seconded by Mr. Cole, the minutes of the May 6 meeting were approved by a vote of 2-0, Ms. Gould abstaining since she had not been present at the earlier meeting.

A motion to authorize the Secretary to purchase, at a cost of not more than \$750, a laptop for the use of the Board was made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously.

A motion to accept the application of Mr. Crespi of 25 Howe Street was tabled temporarily.

The Board then unanimously agreed to proceed to hear the application of Ms. Chesmore, who appeared on her own behalf. The applicant stated that she was trying to phase out her hairdressing business in favor of her bakery business. Only about five clients per week would visit her house, and hair services would be by appointment only. There would be no physical changes to the premises, no signage and no employees except that her daughter, a resident of the premises, might help out with the business from time to time. No appointments would be made after 6 pm, or before 6 am. The subject premises are on a dead end street with two houses having a driveway which can apparently accommodate three cars. The applicant did not know the area or frontage of the lot; its front setback is approximately three car lengths. A laundry room would be designated for the hairdressing business with a sink and a all-purpose chair. There would be no storage of chemicals other than domestic hair treatment reagents. The applicant has resided on the subject premises for 16 years.



There were no questions from the public. Mr. Richard DeJulio of 7 Massasoit Street spoke in favor of the application; no one spoke in opposition.

A motion to close the hearing leaving the record open was moved by Mr. Biocchi, seconded by Mr. Musmanno and passed unanimously.

The Board then unanimously agreed to proceed to hear the application of Mr. Fasolino, who appeared on his own behalf. The applicant stated that a previous plan to create three lots had been turned down by the Planning Board because of road width problems. The demolition of the existing structures would remove an eyesore. The applicant was still exploring options for building on the adjacent lot. The proposed front elevation shows a one car garage for each side of the duplex with driveway parking for one additional car for each unit. Since no members of the public were present, there were no questions or statements from the public.

A motion to close the hearing was made by Mr. Biocchi, seconded by Mr. Cole and passed unanimously.

After some deliberation on the Chesmore application, Mr. Musmanno stated that he felt the Board members should see the layout of the lot, and accordingly it was unanimously agreed to continue the Chesmore deliberation until July 29. The tabled motion regarding the Crespi application was taken from the table and, by unanimous consent, was scheduled for hearing on the same date.

The Board then agreed to deliberate on the Fasolino application. A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to find that the decision would be made on the plan received at the hearing and dated May 12, 2009, which plan depicts Lot 2 as unbuildable, Lot 2 being additionally understood to be not conveyable under Zoning ByLaw Article V.F.8.

A motion to find that grant of suitably conditioned special permit for a two family dwelling on the subject lot would not cause substantial detriment to the public good was made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously.

A motion to grant a special permit to the applicant for a two family dwelling in accordance with the petition and the plan presented dated May 12, 2009 and subject to the following conditions was made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously (in the following statement of the conditions, the movers and

seconders appear in parentheses after the text of the conditions; both conditions were added by unanimous vote):

(a) There shall not be more than one curb cut on Summer Street (Biocchi/Cole); and

(b) The existing structures shall be completely razed prior to construction of the new dwelling (Musmanno/Biocchi).

A motion to continue the application of the Council on Aging to July 29 at 7:30 pm was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously.

A motion to move to executive session for the purpose of considering pending litigation, without the intent to return to open session, was made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously by roll call vote.

The public part of the meeting was then closed at 9.32 pm.

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING JULY 29, 2009**

Messrs. Musmanno, Cole and Gluckler were present. The Chairman called the meeting to order at 7.25 p.m.

On a motion made by Mr. Musmanno and seconded by Mr. Cole, the minutes of both the open and the executive sessions of the June 3 meeting were approved unanimously.

Since this was the first meeting since the reappointment of certain members, the Board proceeded to elect officers for the coming year. On a motion made by Mr. Cole and seconded by Mr. Gluckler, Mr. Musmanno was nominated for chairman. On a motion made by Mr. Musmanno and seconded by Mr. Gluckler, Mr. Cole was nominated for clerk. There being no other nominations, both officers were elected by unanimous consent.

Since only three members of the Board were present, no hearings could be held. Accordingly, on a motion made by Mr. Cole, seconded by Mr. Gluckler and passed unanimously, the application of the Council on Aging was continued to August 5 at 7:30 pm. Also, on a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the hearing on the application of Mr. and Mrs. Crespi was opened and immediately continued to August 5 at 7:45 pm.

On a motion made Mr. Musmanno, seconded by Mr. Gluckler and passed unanimously, the Board adjourned at 7:55 pm.

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING AUGUST 5, 2009**

Messrs. Musmanno, Cole and Gluckler and Ms. Gould were present. The Chairman called the meeting to order at 8.40 p.m.

The Board then unanimously agreed to proceed to hear the application of Mr. and Mrs. Crespi, who appeared on their own behalf. The applicants stated that they considered it important to have their family, and specifically Mrs. Crespi's parents, near them, and that they considered they had found a perfect house at their present location. It was clarified by reference to the Zoning Map that the Zoning District of the relevant lot was AR1. There was a rear entrance to the walk-out basement in which the auxiliary family dwelling unit (AFDU) was sought to be created, plus stairs to the main level. The house had a three car garage, plus two parking spaces in the driveway. The house is about 4000 square feet plus about 1500 square feet in the finished basement. If the basement were no longer used as an AFDU, the dwelling would be reconverted to a single family residence.

No members of the public were present, so no questions or comments were made. No correspondence had been received regarding this application.

A motion to close the hearing was moved by Mr. Musmanno , seconded by Mr. Gluckler and passed unanimously.

The Board then re-opened the application of the Council on Aging and, with the applicant's consent, a motion to continue the hearing to August 19 at 7.30 pm was made by Mr. Musmanno , seconded by Mr. Gluckler and passed unanimously.

The Board next discussed the need to continue deliberations on the Chesmore application in view of the 90 day limit for decision, and it was decided to schedule the continued deliberation for August 19.

The Board then agreed to deliberate on the Crespi application. A motion was made by Mr. Cole, seconded by Mr. Gluckler and passed unanimously to find that grant of a special permit for an AFDU substantially in accordance with the plans presented would not cause substantial detriment to the public good.

A motion to grant a special permit to the applicants in accordance with the plans presented and attached to the decision was made by Mr. Cole, seconded by Mr. Gluckler and passed unanimously.

A motion to adopt the minutes of the meeting of July 29 was made by Mr. Musmanno, seconded by Mr. Gluckler and passed 3-0, with Ms. Gould abstaining as she had not been present at the earlier meeting.

The Board then discussed the possibility of increasing the application due to the additional mailings which may be required in view of *Uglietta v City Clerk of Somerville*, 32 Mass. App. Ct. 742 (1992). The Secretary was asked to estimate the added costs and Mr. Cole was asked to review the authorities and make a recommendation at the August 19 meeting.

A motion was then made by Mr. Musmanno, seconded by Mr. Cole, and passed unanimously to request the Town Administrator to (i) appoint Mr. Flotta an associate member of the Board; (ii) appoint Ms. Gould a full member of the Board; and (iii) make all possible efforts to appoint a second alternate member to the Board.

On a motion made by Mr. Musmanno, seconded by Mr. Cole, and passed unanimously, the meeting was adjourned at 9.38 pm.

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING AUGUST 19, 2009**

Messrs. Musmanno, Cole and Gluckler and Ms. Gould were present. The Chairman called the meeting to order at 7.22 p.m.

The Chairman reported that there no communication had been received from the Town Administrator or the Board of Selectmen regarding the changes in Board membership recommended by the Board at the August 5 meeting.

There being no quorum present to enable a decision to be made on the Chesmore application, the Board discussed various possibilities for reaching a decision on the application in view of the approaching statutory deadline for the decision. After considerable discussion, it was agreed by unanimous consent that, since it did not appear likely that Mr. Biocchi would be attending a Board meeting in the near future, Mr. Gluckler would review the tape of the hearing and visit the site, and that the Board will approach the petitioner with a view to securing her agreement to have the application decided by a meeting of the Board with Mr. Gluckler voting on the application. A meeting to deliberate on the application was set for August 24 at 7.30 pm.

The Board then by unanimous consent gave further consideration to the application of the Council on Aging. A letter in favor of the application had been received from the Town Administrator, and the School Committee had given their consent. The Board agree to communicate to the proponent that we lack certain evidence and that we request her presence at the forthcoming hearing. Mr. Cole was appointed to communicate with the applicant. A motion to continue the hearing to August 24 at 7.30 pm was made by Mr. Musmanno, seconded by Mr. Gluckler and passed unanimously.

The Clerk requested that consideration of the minutes of the August 5 meeting be deferred to the next meeting to enable him to correct an error in the minutes which he had observed during the present meeting.

The Board then considered whether they should suggest to the Town any proposed changes in the Zoning ByLaw. Mr. Musmanno moved to recommend repeal of Auxiliary Family Dwelling Unit sections, but there was no second so the motion failed.

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the Board recommended to the Town that the Board hear appeals from any decision granting a special permit. During discussion on this motion, Mr. Musmanno advised the Board that the Chairman of the Planning Board saw no problem with this proposed change.

The Chairman reported that, in the pending Kopacz appeal, the Town's attorney has served Mr. Kopacz with interrogatories and requests to produce documents.

On a motion made by Mr. Musmanno, seconded by Mr. Cole, and passed unanimously, the meeting was adjourned at 8.51 pm.

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING AUGUST 24, 2009**

Messrs. Musmanno, Cole and Gluckler and Ms. Gould were present. The Chairman called the meeting to order at 7.34 p.m.

The Secretary reported that she had received an E-mail from Ms. Missy Dzicek, the representative of the Council on Aging stating that the representative would not be able to be present at this meeting. A motion to continue the hearing on this application to September 2 at 7.30 pm was made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously.

A motion was then made by Mr. Musmanno, seconded by Mr. Gluckler and passed unanimously to accept the Minutes of the August 5 meeting as presented by the Clerk. Also, a motion was made by Mr. Musmanno, seconded by Ms. Gould and passed unanimously to accept the Minutes of the August 19 meeting as presented by the Clerk.

The Board then proceeded by unanimous consent to deliberate on the application of Ms. Chesmore, Mr. Gluckler having determined that after reviewing the tapes of the hearing, he felt able to participate in the deliberations. A motion was made by Mr. Gluckler, seconded by Mr. Cole and passed unanimously to find that grant of a suitably conditioned special permit for a hair salon on the subject premises would not cause substantial detriment to the public good. During the discussion on this motion, Mr. Cole stated that in view of the site the conditions would be important. Mr. Musmanno discussed typical conditions for this type of special permit, such as hours of operations, employees being restricted to occupants of the premises, operation by appointments only, number of clients, and requirements regarding chemical storage.

A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to find that the use described in the application was similar to one or more uses specified in Zoning ByLaw Section V.F.1(c).

By unanimous consent, it was agreed that the second finding should be listed first.



A motion was made by Mr. Cole, and seconded by Mr. Musmanno to grant the applicant a special permit for a hair salon, subject to conditions to be specified. An amendment to add the condition that all employees of the business be residents of the premises was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously. An amendment to add the condition that operating hours be by appointment only and not outside the hours of 9 am to 8 pm was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously. An amendment to add the condition that there not be more than one client at any one time was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously. A motion to add the condition that one off-street parking space be made available to customers during operating hours was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously. A motion to add the condition that there be no on-street parking associated with the business was made by Mr. Cole, seconded by Mr. Gluckler and passed unanimously. A motion to add the condition that there be no exterior modifications to the building was made by Mr. Musmanno and seconded by Mr. Cole. Mr. Gluckler, seconded by Mr. Musmanno, moved to amend this motion to state that no modifications be allowed not in keeping with a single family residence. This amendment failed by a vote of 1 in favor (Mr. Gluckler) and 3 against. The main motion passed 3-1, with Mr. Gluckler dissenting.

The main motion to grant the special permit with the aforementioned conditions was then passed unanimously.

The Board then discussed Mr. Cole's recommendations regarding the *Uglietta* case. There was no objection to retiring this matter without further consideration.

There being no further business before the Board, on a motion made by Mr. Musmanno, seconded by Mr. Cole, and passed unanimously, the meeting was adjourned at 8.42 pm.

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**

**MINUTES OF MEETING SEPTEMBER 2, 2009**

Messrs. Musmanno, Cole, Biocchi and Gluckler and Ms. Gould were present. The Chairman called the meeting to order at 7.36 p.m.

A motion was then made by Mr. Musmanno, seconded by Mr. Gluckler and passed unanimously to accept the Minutes of the August 24 meeting as presented by the Clerk.

The Board then proceeded by unanimous consent to continue the hearing on the application of the Medway Council on aging, on whose behalf Ms. Missy Dzicek appeared. It was stated that the proposed location of the shelter would be in the corner of the parking lot, whereas placing the shelter in accordance with the required front setback would take up some parking spaces. The applicant would be willing to accept a condition regarding approval of the proposed location by the Safety Officer. The Board raised the possibility of moving the shelter to the other side of the driveway, but it was pointed out that this would place the door on the offside of the vehicle and might lead to more blocking of sightlines.

A motion to close the hearing was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously.

The Board then considered to deliberate on this application. During a preliminary general discussion, it was noted that the proposed structure was really part of the roadway, and the owner of the proposed lot consents to its placement on the lot. The Town would be justified in putting it within the public way, but the question was raised as why it could not be placed 35 feet back from the public way in accordance with the required front setback.

A motion was made by Mr. Musmanno and seconded by Mr. Cole to find that the proposed structure is not strictly appurtenant to the use of the lot; by use and intent it is instead appurtenant to the public way. As such, the intent of the setback should not apply in typical fashion. Mr. Cole, seconded by Mr. Musmanno, moved to amend the motion to add the words "a bus shelter is a structure of a peculiar character such that it

could, in some circumstances, be located closely adjacent to a public way or ways. Hence" before "the proposed structure". The amendment was passed 4-0 with Mr. Biocchi abstaining. The main motion as amended was then passed 4-0 with Mr. Biocchi abstaining.

A motion was made by Mr. Musmanno and seconded by Ms. Gould to find that, other than traffic and pedestrian movement and sight line considerations, grant of the requested relief would not cause substantial detriment to the public good. After some discussion, a motion to table this motion was made by Mr. Musmanno, seconded by Mr. Cole and passed by unanimous consent.

A motion was made by Mr. Gluckler, seconded by Mr. Cole, to find that no conditions exist relating to shape, topography and soil conditions of the subject lot which do not generally affect other land in the Zoning District. This motion passed by a vote of 3-1, with Mr. Cole voting against and Mr. Biocchi abstaining.

A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed by unanimous consent to record the second finding first.

A motion to take from the table the motion tabled earlier was made by Mr. Musmanno, seconded by Mr. Cole and passed by a vote of 4-0, with Mr. Biocchi abstaining.

A ten minute recess was then taken by unanimous consent. After the Board resumed at 9.23 pm, the Chairman drew attention to M.G.L., Chapter 40A, Section 3, second paragraph, latter half. A motion was then made by Mr. Gluckler and seconded by Mr. Cole to dismiss the petition. A motion to amend to state that the Board determined that the failure to find special conditions relating to site supercedes the other findings and therefore dismisses the petition was made by Mr. Musmanno, seconded by Mr. Gluckler and accepted as a friendly amendment.

After a somewhat lengthy and inconclusive discussion, it appeared that two members of the Board (Mr. Cole and Ms. Gould) were in favor of granting the requested relief, two members (Mr. Musmanno and Mr. Gluckler) were opposed to granting relief, while Mr. Biocchi intended to abstain on the final decision. Although no formal motion was made, there appeared to be a general consensus that the Zoning ByLaw failed to give clear guidance regarding the type of structures to which the present

petition related, and that some amendment of the ByLaw to give explicit guidelines regarding such structures was desirable. The view was also expressed that preparation of detailed reasons for the Board's decision in this case might be helpful to the Town in formulating appropriate changes to the ByLaw. Accordingly, Mr. Musmanno agreed to write a draft opinion as to why relief should not be granted on the present application, and Mr. Cole agreed to write a draft opinion as to why relief should be granted. The Board agreed by unanimous consent to reconvene at 7.30 pm on September 30 for further deliberations on this application.

There being no further business before the Board, on a motion made by Mr. Musmanno, seconded by Mr. Cole, and passed unanimously, the meeting was adjourned at 10:00 pm.

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**

**MINUTES OF MEETING SEPTEMBER 30, 2009**

Messrs. Musmanno, Cole, Biocchi and Biocchi and Ms. Gould were present. The Chairman called the meeting to order at 7.52 p.m.

A motion was then made by Ms. Gould, seconded by Mr. Musmanno and passed unanimously to accept the Minutes of the September 2 meeting as presented by the Clerk, but with two minor amendments.

The Board then reviewed the two new applications received. With regard to the application by Mr. Revell, the Board noted that the proposed construction was apparently allowable under Zoning ByLaw Article V.D.4(b), and, on a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, rejected the application without prejudice and suggested that the applicant consult with the Building Inspector or an attorney with a view to allowing the proposed construction to proceed without action by the Board. The application of Mr. Bain was reviewed, and on a motion made by Mr. Biocchi, seconded by Mr. Musmanno and passed by unanimous consent, a hearing was set for October 21 at 7.30 pm.

The Board reviewed the draft decision on the application of the Medway Council on Aging previously circulated to Board members, and, by unanimous consent, made some minor changes in the language thereof. The Board then recessed for 15 minutes to allow Mr. Gluckler to join them. After this recess, and with Mr. Gluckler now present, the Board proceeded to further deliberation on the application of the Medway Council on Aging. A motion made by Mr. Cole and seconded by Ms. Gould was defeated by a vote of 1 in favor (Mr. Cole), three against (Ms. Gould, Mr. Musmanno and Mr. Gluckler) and 1 abstention (Mr. Biocchi). A motion to dismiss made by Mr. Gluckler and seconded by Mr. Musmanno was passed unanimously except that Mr. Biocchi abstained. The Board then adopted the draft decision considered earlier as the final Decision of the Board.

There being no further business before the Board, on a motion made by Mr. Musmanno, seconded by Mr. Cole, and passed unanimously, the meeting was adjourned at 9.03 pm.

## **TOWN OF MEDWAY**

### **ZONING BOARD OF APPEALS**

#### **MINUTES OF MEETING OCTOBER 21, 2009**

Messrs. Cole and Gluckler and Ms. Gould were present. The Chairman called the meeting to order at 7.52 p.m.

Since only three members were present, the hearing on the application by Ms. Bain was postponed to November 4 at 7:30 pm.

Ms. Susan Affleck-Childs, Mr. Tom Gay of the Planning Board and Mr. John Emidy, Building Inspector, came before the Board to discuss proposed changes in the Zoning ByLaw relating to home-based businesses.

A motion was then made by Mr. Gluckler, seconded by Ms. Gould, and passed unanimously to accept the Minutes of the September 30 meeting as presented by the Clerk.

The Board then proceeded to consider the application for variation of a Section 40(b) permit filed by Mr. Pavlik relating to the Fox Run Farm project. The Board determined that the contemplated change did not appear to be a major one, requested the applicant to attend a hearing on November 4 at 7:45 pm and the Secretary send the applicant an E-mail setting out matters on which more information was needed at the hearing.

There being no further business before the Board, on a motion made by Mr. Gluckler, seconded by Mr. Cole, and passed unanimously, the meeting was adjourned at 8:55 pm.

# **TOWN OF MEDWAY**

## **ZONING BOARD OF APPEALS**

### **MINUTES OF MEETING NOVEMBER 4, 2009**

Messrs. Cole, Biocchi and Gluckler and Ms. Gould were present. In the absence of the Chairman, the Clerk chaired the meeting. The Chair called the meeting to order at 7.35 p.m.

By unanimous consent, the Board proceeded to hear the application of Mrs. Bain, who appeared on her own behalf. Mrs. Bain explained that the relevant lot is approximately 2.5 acres, and that there are numerous two family dwellings and apartment buildings in the immediate neighborhood. Permission was sought for a one bedroom apartment by reconfiguring the existing basement; there would be no external construction or change to the exterior of the building. There were no questions from the general public. Ms. Diana Swanson of Bellingham spoke in favor of the petition; no one spoke in opposition. A move to close the hearing was made by Mr. Biocchi, seconded by Mr. Gluckler and passed unanimously.

The Board then proceeded to hear the Request by Fox Run Development Group LLC for modification of the Section 40B Comprehensive Permit for Fox Run Farm. Mr. James Pavlik and Mr. Paul Cusson of Delphic Associates appeared on behalf of the petitioner. Mr. Pavlik explained that financing the original condominium development for which the original Permit was granted was, in view of present conditions, virtually impossible. Accordingly, the petitioner desired to convert the original exclusive use zones into lots, thereby enabling the individual buildings to be financed independently. Except for a request to vary the width of the green belt to 25 feet to permit some slight flexibility in positioning the buildings, there would be no physical change in the layout of the development. The Board and the petitioner went item-by-item through the list of variances provided by the petitioner.

At the conclusion of the petitioner's presentation, the Board held an informal consultation, as a result of which it appeared that the Board members were all of the opinion that, except for the proposed variation in the width of the green belt, the changes sought were not significant, but various members were troubled by the proposed



variation in the width of the green belt. After considerable discussion, the petitioner suggested a compromise whereby no portion of any of the buildings should be less than 30 ft from the project's outer property lines, but decks, stairs and other ancillary structures associated with the building should not approach any closer than 25 ft to the project's outer property lines. This appeared to be acceptable to the Board members.

Accordingly, on a motion finally made by Mr. Cole, seconded by Mr. Biocchi (after various inputs from all Board members present), and passed unanimously, the Board decided as follows:

Subject to the conditions hereinafter set forth, the modification to the Comprehensive Permit proposed in the Applicant's letter of October 9, 2009, and stamped by the Town Clerk on October 15, 2009, and in the preliminary waiver list dated November 4, 2009 is determined to be not a significant change:

1 The second paragraph of Section 4.1.1 of the Board's decision dated October 21, 2005 is amended to read as follows: A waiver is granted from Standard #4, which requires a 30 ft wide (minimum) greenbelt adjacent to project outer property lines, to the extent that no portion of any of the buildings shall be less than 30 ft from the project outer property lines, but decks, stairs and other ancillary structures associated with the building shall not approach any closer than 25 ft to the project outer property lines.

2 The third paragraph of Section 4.1.1. of the Board's decision dated October 21, 2005 is deleted.

3. Each individual deed required by the project shall make reference to a recorded Homeowner's Association document.

4. The waivers in the Preliminary Waiver List dated November 4, 2009 submitted by Applicant are granted except that in Zoning waiver #3, "ARII" is corrected to "ARI".

5. The construction shall be substantially completed in accordance with the Comprehensive Permit plan "Fox Run Farm" dated August 15, 2005, revised September 21, 2009

The Board then moved to deliberate the application of Mrs. Bain. There was a general consensus among the Board members present that in view of the size of the lot and the general character of the neighborhood, there was no reason to deny the requested special permit for a two family dwelling. Accordingly, on a motion moved by Mr. Biocchi, seconded by Mr. Cole and passed unanimously, it was found that grant of the requested special permit for alteration of a single family dwelling to a two family dwelling would not be detrimental to the public good. Furthermore, on a motion moved by Mr. Biocchi, seconded by Mr. Cole and passed unanimously, it was determined to grant the requested special permit to convert the relevant single family dwelling to a two family dwelling substantially in accordance with the plan presented.

A motion was then made by Mr. Gluckler, seconded by Ms. Gould, and passed unanimously to accept the Minutes of the October 21 meeting as presented by the Clerk with one minor correction.

There being no further business before the Board, on a motion made by Mr. Gluckler, seconded by Ms. Gould, and passed unanimously, the meeting was adjourned at 10:35 pm.

## **TOWN OF MEDWAY**

### **ZONING BOARD OF APPEALS**

#### **MINUTES OF MEETING DECEMBER 2, 2009**

Messrs. Cole, Biocchi and Gluckler and Ms. Gould were present. In the absence of the Chairman, the Clerk chaired the meeting. The Chair called the meeting to order at 7.30 p.m.

By unanimous consent, the Board proceeded to hear the application of John and Jennifer Giovanella, who appeared with their attorney Deborah E. Batog, Esq. The attorney stated that the lot consisted of approximately three acres, and was formed long prior to the adoption of the Zoning ByLaw; the legal description of the lot can be traced back to at least 1854. The lot has no frontage on any public way but has access via a 25 foot wide easement over an adjacent lot. This easement is shared with several adjacent lots, one of which (44 Fisher Street) also has no street frontage but for which a variance has already been granted by the Board. Although the lot has sufficient area for several single family homes, the applicants seek only construction of one single family home with a detached garage. The lot is completely undevelopable without the requested variance, and there are several similar lots in Medway for which variances have previously been granted.

There were no questions from the public. Three people spoke in favor of the application, no one spoke against it.

The hearing was closed by a motion moved by Mr. Cole, seconded by Ms. Gould and passed unanimously.

By unanimous consent, the Board next proceeded to hear the application of Step by Step Studio of Dance, on whose behalf it principal Gloria Gonzalez appeared. Ms. Gonzalez stated that the dance studio had operating at this site for many years occupying about 2000 square feet. A neighboring tenant has vacated space adjacent the dance studio and the Special Permit was sought to allow expansion of the dance studio into this vacated space by the removal of a non-load bearing wall, thus approximately doubling the size of the dance studio to about 4,000 square feet. There are about 15-17 parking spaces for the building. The dance studio is a drop-off, pick-up type of business,

and the parking situation would be better with the enlarged dance studio than when a separate business occupied the other part of the building.

There were no questions from the public, and no one spoke for or against the application.

The hearing was closed by a motion moved by Mr. Cole, seconded by Mr. Gluckler and passed unanimously.

The Board then proceeded to deliberate the application of John and Jennifer Giovanella. There was a general consensus by the Board members present that the applicant had presented a strong case for use of a large lot, whose present form long preceded adoption of Zoning in the Town, and which could not be used in any way without a variance. Accordingly, on motions made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously, the Board made the following findings:

(a) The subject lot is a pre-existing, nonconforming lot.

(b) The subject lot has no frontage on any public way, but has a 25 ft. right of way for access.

(c) The requested relief would not cause substantial detriment to the public good and does not nullify, or derogate from the intent and purpose of the Zoning By-law; and

(d) The subject lot is subject to conditions relating to shape which affect the subject lot, but do not generally affect other lots in the zoning district, namely that the subject lot does not lie adjacent to any public right of way, and that the present form of the subject lot long preceded the existence of the Zoning-By-Law; and further that literal enforcement of the provisions of the Zoning By-law would involve substantial hardship to the petitioner by precluding any development whatever on the subject lot.

In accordance with the preceding findings, and on a motion made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously, the Board granted a variance of frontage from 180 ft to 0 ft, to allow the construction of one single-family home on the subject lot, subject to the condition that only one-single family dwelling be erected on this lot, and no additional dwellings be erected now or in the future, since the hardship relating to this lot has now been relieved by this variance.

The Board proceeded to deliberate on the application of Step by Step Dance Studio. On a motion by Mr. Cole, seconded by Mr. Gluckler and passed unanimously, the Board found that expansion of the area occupied by the dance studio would not be substantially detrimental to the public good and would not contradict any of the special permit criteria in Section III.J of the Zoning ByLaw. Accordingly, again on a motion by Mr. Cole, seconded by Mr. Gluckler and passed unanimously, the Board granted a Special Permit pursuant to Section V.D.4.a to the applicant for the alteration and expansion of the subject dance studio.

A motion was then made by Mr. Gluckler, seconded by Ms. Gould, and passed unanimously to accept the Minutes of the November 4 meeting as presented by the Clerk with two minor corrections.

There being no further business before the Board, on a motion made by Mr. Gluckler, seconded by Ms. Gould, and passed unanimously, the meeting was adjourned at approximately 9:00 pm.