

**COMMONWEALTH OF MASSACHUSETTS**

**NORFOLK, SS**

**IN THE MATTER OF:     Calarese Properties, Inc.  
                                  Petitioner**

**PROPERTY OWNER:     Mecoba Properties, Inc.  
                                  70 Main Street  
                                  Medway, MA 02053**

**OPINION OF THE BOARD**

**REQUEST FOR SPECIAL PERMIT  
                                  72 and 74 Main Street**

**Hearing: December 19, 2012  
Decision: January 16, 2013**

**MEMBERS PRESENT:     Joseph Musmanno, Chairman  
                                  David Cole, Clerk  
                                  Anthony Biocchi  
                                  Carol Gould  
                                  Arlene Doherty**

**THE WRITTEN OPINION WAS DELIVERED ON January 16, 2013**

## **OPINION OF THE BOARD**

This is a proceeding of the Zoning Board of Appeals of the Town of Medway, MA (hereinafter the Board) acting under the Zoning By-Law of the Town of Medway, MA, 02053, and Massachusetts General Laws, Chapter 40A, as amended, in which the petitioner, Calarese Properties, Inc. (hereinafter "Calarese"), requests a Special Permit under Section V.G.1.j.6 and .7 of the Zoning By-Law to permit a shopping center with drive-thru at 74 Main Street, Medway. Although the petition relates primarily to 74 Main Street, a small section of the roadway within the development lies with the lot at 72 Main Street (otherwise known as Gould's Plaza).

### **Hearing**

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on December 7 and 14, 2012. Notice also was sent to all "parties in interest" (including the abutters of both 72 and 74 Main Street) and posted in the Town Hall as required by Massachusetts General Laws, Chapter 40A, Section II.

The Public Hearing was held and closed on December 19, 2012.

### **Hearing Summary**

The applicant appeared at the hearing by Mr. Joseph M. Antonellis, their attorney, and other representatives. Mr. Antonellis explained, referring to the plan submitted with the application, that in addition to the 72 Main Street lot, the application also refers to a small portion of the Gould's Plaza property at 74 Main Street. With regard to control of the 74 Main Street lot, Mr. Lester Gould had signed the application on behalf of the owners of the 74 Main Street lot.

Although the plan submitted with the application is preliminary and is subject to change during the major site plan review which this development must later undergo, it was proposed that Building A on the plan, the most westerly building, would have the drive-thru. A new entrance would be created on the 72 Main Street lot, with a traffic light at this entrance (the developer was already in discussions with the

Commonwealth regarding installation of this light, and had offered to pay for its installation if necessary), and with closure of the existing entrance at 74 Main Street, a driveway between the two lots being provided as shown on the plan. The green areas shown on the plan would be landscaped and control traffic flow, the plan meets the required number of parking spaces for the anticipated uses. The developer already has one anchor tenant and is currently in discussion with several others.

Because of traffic on Route 109, there is a need for drive-up business, the applicant stated, and a couple of possible business uses in the area have not been filled. The proposed use of the lot fits in with the traditional retail use of the area; there would be no “honky tonk” businesses and the proposed businesses are largely service oriented. The provision of one signalized entrance to the two lots at 72 and 74 Main Street rather than two would not be detrimental to the public good, and the proposed development will have updated drainage and storm water handling. There will be no glare or vibration affecting neighboring lots. The applicant would not object to a condition regarding a signalized entrance, but indicated that there might be difficulties in timing due to delays by the Commonwealth in approving lights on a state highway.

### **Decision**

In rendering this Decision, the Board is very conscious that the application for a Special Permit is only the first stage of a multi-stage process required to gain all necessary permits from the Town for the proposed shopping center, and specifically that the proposed shopping center will hereafter be subject to a comprehensive Site Plan Review pursuant to Article V.C of the Zoning ByLaw. Accordingly, having regard to the obligations of courtesy and comity which should exist between the various administrative organs of the Town, the Board has eschewed the imposition of any conditions beyond the minimum which it considers necessary to fulfill its obligations in issuing a Special Permit for a shopping center with drive-thru facility under Sections V.G.1.j.6 and 7, and its concomitant obligation to regulate off-street parking requirements under Section V.G.2.g.3, of the Zoning ByLaw. The Board recognizes that it should not bind the hands of other Town bodies regarding issues such as the exact location of the drive-thru facility, and the locations of buildings and driveways associated therewith, which issues are more appropriately addressed during Site Plan Review, where they can be balanced against

related similar issues and decided with the benefit of expert advice not given to the Board during the hearing on this application for a Special Permit.

Accordingly, the Board recognizes that, in limiting the issues considered in arriving at the present Decision, the Board is leaving related issues for consideration by other Town bodies in later proceedings. Therefore, the Board considers that the aforementioned obligations of courtesy and comity require it to set out these “deferred” issues in order that they be fully considered by other Town bodies during later proceedings relating to this development.

During the hearing on this application, considerable discussion took place regarding the traffic issues associated with the proposed development. The applicant stated that it was already engaged in discussions with the Commonwealth regarding the provision of a traffic light at the proposed exit (as shown on the plan accompanying this Decision) which would serve both the proposed development and the existing Gould’s Plaza, with the existing exit from Gould’s Plaza being closed. Also, it was stated that it was proposed to alter slightly the exit from the Dunkin Donuts on the opposed (South) side of Route 109 so that this Dunkin Donut exit would face the proposed light. The Board specifically notes for the record that the petitioner offered in writing and in oral testimony to make off-site improvements and would pay for the light if necessary. However, the petitioner recognized that the delays which are often experienced by the Commonwealth in approving traffic lights, it may be difficult to secure the provision of a working traffic light at the time the proposed development is ready for occupancy. Accordingly, the Board respectfully suggests that the Town bodies hereafter responsible for Site Plan Review and other reviews of the proposed development give detailed consideration to the following questions:

(a) Will the proposed provision of a common entrance/exit for the proposed development and Gould’s Plaza, with provision of a traffic light at this common entrance/exit, closure of the existing entrance/exit from Gould’s Plaza, and realignment of the Dunkin Donuts exit to face the traffic light, offer a satisfactory solution to traffic problems in the immediate area having regard to factors such as (i) the relatively short distance between the proposed light and the existing light at the junction of Route 109 and Holliston Street; (ii) the relatively sharp grade for westbound traffic approaching the

proposed light; (iii) the numerous other exits and entrances on Route 109 in the immediate vicinity, including the right-turn-only exit from Charles River Bank into the westbound lane of Route 109 between the proposed and existing lights; and (iv) the termination, a short distance East of the proposed light, of the center lane of Route 109, and the commencement of the left turn lane from Route 109 East to Holliston Street North?;

(b) If it proves impossible to secure the provision of a working traffic light at the proposed common entrance/exit at the time the proposed development is ready for occupancy, what provisions may be needed to ensure that the proposed development does not cause undue traffic congestion in the immediate area, contrary to Section III.J of the Zoning ByLaw.

The Board makes the following specific finding and determination. The Board *finds* that the proposed use, specifically a shopping center with a drive-thru, is in harmony with the general intent of the Zoning ByLaw for the applicable Zoning District, and with the uses of near-by parcels, and that the grant of a Special Permit for the same would not cause substantial detriment to the public good. (Motion by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously.) The Board further *finds* that the proposed use meets all the criteria for a Special Permit outlined in Section III.J of the Zoning ByLaw. (Motion by Mr. Musmanno, seconded by Mr. Biocchi passed on a vote of 4-1, with Ms. Doherty opposed.)

The Board hereby *grants* to the applicant a special permit in accordance with Zoning ByLaw Section V.G.1.j.6 and .7 for a shopping center with drive-thru facility subject to the following terms and conditions:

- (1) there be no more than one drive-thru facility on the premises; and
- (2) the required number of parking spaces be no less than 188; not more than 40 per cent of these spaces may be compact spaces.

(The motion was originally made by Mr. Cole and seconded by Mr. Biocchi in a form without explicit conditions. Mr. Musmanno moved, Mr. Biocchi seconded, and the Board passed unanimously a motion to amend by adding the first condition. Mr. Musmanno moved and Mr. Biocchi seconded, a motion to amend by adding the portion of the second condition prior to the semi-colon. Mr. Cole moved and

Mr. Biocchi seconded a motion to further amend by adding to the second condition the semi-colon and the text following this semi-colon; this motion to further amend passed 4-1, with Mr. Musmanno opposed. The votes on the motion to add the second condition, and on the main motion to grant the Special Permit with the two conditions aforementioned, were both unanimous.)

The Board hereby makes a detailed record of its findings and proceedings relative to this petition, sets forth its reasons for its findings and decision, incorporates by reference the plan received by it, directs that this decision be filed in the office of the Town Clerk and be made a public record and that notice and copies of its decision be made forthwith to all parties or persons interested.

***IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAW, CHAPTER 40A, SECTION 11 NO VARIANCE, SPECIAL PERMIT OR CONSTRUCTIVE GRANT OF A VARIANCE TAKES EFFECT UNTIL RECORDED IN THE REGISTRY OF DEEDS.***

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Joseph F. Musmanno, Chairman

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David J. Cole

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Anthony Biocchi

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Carol Gould

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Arlene Doherty