

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

**MINUTES OF MEETING DECEMBER 19, 2012**

Messrs. Musmanno and Cole and Ms. Doherty were present when the Chairman called the meeting to order at 7.49 p.m.

A motion was made by Ms. Doherty, seconded by Mr. Musmanno and passed unanimously to accept the Minutes of the June 27, 2012 meeting of the Board as presented by the Clerk. A further motion was made by Ms. Doherty, seconded by Mr. Musmanno and passed unanimously to accept the Minutes of the October 17, 2012 meeting of the Board as presented by the Clerk.

The Board then considered new petitions which had been received. A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to accept the application of McNally and Cooke for a Kennel Permit. The Board experienced some difficulty in determining whether the Herlily application was properly accepted by the Town Clerk, and by unanimous consent agreed to leave it to the Chairman to determine from the Town Clerk whether the Petition had in fact been accepted, and if so the reject it on the grounds that it was not clear from the application that any relief was sought which could be granted by the Board. In regard to the two applications from Flying Fur, the Board again had some difficulty in determining exactly what relief was sought, but finally accepted that a Kennel Permit was sought under Section V.F.c.6 of the Zoning ByLaw, and that no permit under the overlay district was applicable. Accordingly, on a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the Board voted to set these applications for advertisement and hearing.

Ms. Gould and Mr. Biocchi joined the meeting at approximately 8:10 p.m.

The Board then proceeded, by unanimous consent, to hear the application of Calarese Properties, Inc. relating to 72 Main Street, on whose behalf appeared Mr. Joseph M. Antonellis, their attorney, and Mr. Hamilton, of Charles River Bank. 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 and that the abutters for both lots had been notified of the hearing. In response to a question from the Board regarding demonstrating control of the 74 Main Street lot, Mr. Antonellis noted that Mr. Lester Gould had signed the application on behalf of the owners of the 74 Main Street lot.

Mr. Antonellis further explained that 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. With regard to projected tenants, the current leasing environment is formidable, and tenants are reluctant to commit until everything is settled, but Advanced Auto Parts will be the anchor tenant and Camella's are a prospective tenant; three other possible tenants are in negotiation, including retail nails and hair salons. Because of traffic on Route 109, there is a need for drive-up business, Mr. Antonellis continued, 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. In response to a question from the Board, applicant's representative stated that 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. In response to a further question from a Board member regarding the proposed drive-thru layout, which requires drivers to drive through the parking lot of the restaurant to reach the drive-thru, applicant's representative indicated that this layout was chosen to allow good queuing and avoid traffic crossing, and was driven by a request from the restaurant.

The Chairman then opened the floor for questions from the public. Mr. Bob Perella of Charles River Bank (who would be providing a substantial amount of financing for the proposed development) asked whether the development might be held up by delay in the Commonwealth approving the proposed traffic light. In informal comments, Board members indicated that they probably would not condition approval of this application on provision of the traffic light but might condition such approval on closure of the existing entrance to Gould's Plaza. Applicant's representative again noted the applicant's willingness to pay for the proposed light if necessary, and stated that Dunkin Donuts (the exit from which it was proposed to reconfigure slightly so that it would align with the light and be directly opposite the exit from the proposed development) were in agreement with the proposed light.

Public comments for or against the application were then invited. Mr. Perella noted that denial of the requested drive-thru would impose a hardship on the developer in that many restaurant chains will not locate on site which lacks a drive-thru. Ms. Donizella, the owner of Dunkin Donuts stated that in her opinion the proposed traffic light will improve the traffic situation. (One Board member commented that he had personal experience of the difficulties caused when vehicles attempt simultaneous left turns out of Dunkin Donuts and Gould's Plaza.) Ms. Clara Wiel, Medway's Development Director stated that new commercial development was very important to Medway and commended the Board and the developer for their careful presentation and consideration of this application. In response to a query from Board members regarding the designation of certain parking spaces on the plan as compact spaces, Ms. Susan Affleck-Childs, Planning and Economic Development Coordinator, drew attention to page 17 [Section V.B.6.d.2] of the Zoning ByLaw which provides that up to 30 per cent of the parking spaces in certain parking facilities may be compact spaces.

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

After a brief recess, the Board proceeded by unanimous consent to immediate deliberation on the application of Calarese Properties, Inc. During preliminary discussions, the Chairman noted that according to the Town's GIS system, the lot was not subject to an overlay district and there were no wetlands to be considered. The Chairman

also reminded the Board of the limited scope of the present decision, which was not to finally decide the siting of the drive-thru; if the Board desired, more contentious matters could be left to the later Site Plan Review. It should be apparent, the Chairman continued, that the proposed use of the subject lot is consistent with the Master Plan and the expected uses of the Zoning District; there were no obvious objections such as wetlands. Various Board members noted that there were several drive-thrus in the immediate neighborhood, including those at Dunkin Donuts almost directly across Route 109, at the bank adjacent Dunkin Donuts, at the Burger King a short distance west on Route 109 and at the McDonald's a short distance east along Route 109 on the opposed side of Holliston Street from the subject lot.

After these preliminary discussions, a motion was made Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously to find 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. A further motion was made Mr. Musmanno and seconded by Mr. Biocchi to find that the proposed use meets all the criteria for a Special Permit outlined in Section III.J of the Zoning ByLaw. After some discussion, during which Ms. Doherty questioned whether the application properly satisfied the "undue traffic congestion" criterion of Section III.J.5, the motion passed on a vote of 4-1, with Ms. Doherty opposed.

A motion was then made by Mr. Cole and seconded by Mr. Biocchi to grant 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 terms and conditions to follow. Mr. Biocchi moved, and Mr. Musmanno seconded, a motion to add as a first condition that there be not more than one drive-thru facility on the premises. This motion was passed unanimously. Mr. Musmanno then moved, and Mr. Biocchi seconded, a motion to add as a second condition that the required number of parking spaces be not less than 188. Mr. Cole moved, and Mr. Biocchi seconded, a motion to amend this condition by adding at the end thereof "; not more than 40 per cent of these spaces may be compact spaces". This amendment passed by a vote of 4-1, with Mr.

Musmanno opposed. The motion to add the second condition as so amended was then passed unanimously.

Mr. Biocchi then moved to add as a third condition that the applicant apply to the Commonwealth to put a light at this development, with the developer to pay for the light if the Commonwealth does not. After considerable discussion, it was agreed by unanimous consent to direct the writer of the decisions on this application to note that the petitioner offered in writing and in oral testimony to make off-site improvements and would pay for the light if necessary. Mr. Biocchi then withdrew his motion.

The main motion to grant the Special Permit with two conditions as aforesaid was then passed unanimously.

Ms. Susan Affleck-Childs then drew to the Board's attention the proposed forthcoming revision of the Zoning ByLaw and asked if any members of the Board wished to volunteer to assist in this revision. Mr. Biocchi and Ms. Gould volunteered to assist.

By unanimous consent, the next meeting of the Board was fixed for January 16, 2013 at 7.45 p.m. A motion to adjourn was made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously; the Board adjourned at about 10.35 p.m.