

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING MARCH 30, 2011

All five members of the Board were present. The Chair called the meeting to order at 7.53 p.m.

By unanimous consent, the Board agreed to hear the appeal of Mr. Ahmed, on whose behalf Mr. Paul Cusson of Delphic Associates appeared.

Mr. Cusson stated that the issue in this appeal is the refusal of the Building Inspector to issue a building permit for Lot #4 in Fox Run. A basement permit was previously granted for this lot, but a later application for a building permit was refused. According to the applicant, the Building Inspector indicated that he would discuss the application with other Boards, and eventually refused the permit on the grounds of inadequate security for the roads. The applicant then E-mailed the Building Inspector asserting that the Planning Board does not have jurisdiction under Section 40B; all approvals must be pursuant to Massachusetts General Laws, and the Zoning Board of Appeals has authority over all permits. The applicant further pointed out that the situation is governed by Condition #18 of the original Zoning Board of Appeals Decision.

The applicant further explained that it wished the road to be inspected so that it could eventually petition to have them adopted by the Town as a public road. The applicant had had some discussion with the Planning Board regarding procedure since the Zoning Board of Appeals does not have a road inspector. The Planning Board suggested hiring a specific engineering firm to make the necessary inspections, and this has been done.

The Building Inspector stated that he had denied the requested building permit because Town Counsel considered this project a subdivision subject to M.G.L., Chapter 41, Section 81U. The letter from Mr. Musmanno explaining the security arrangement in the Zoning Board of Appeals Decision does not address whether the existing security is inadequate. Mr. Cole raised the question of whether a statute relating to construction of ways was relevant to a building permit for a dwelling.

Mr. Biocchi pointed out that, before issuing a comprehensive permit the Zoning Board of Appeals consults with other Town Boards and seeks their input. In its original Decision, the Zoning Board of Appeals took the view that the best security was holding lots, since the Board does not have regular bonding accounts. Originally, the developer envisioned a private road.

The applicant then argued that the logic of counsel's opinion would allow the Town to demand that the subdivision go through the full subdivision control process, which would negate the intention of Chapter 40B.

Mr. Rodenheiser of the Planning Board stated that the Selectmen have been reviewing the procedure for adopting streets. If any legal issues remain, there will be a caution to purchasers of lots that the road may not be accepted.

Mr. Ahmed pointed out that he had already paid out about \$15,500 for road inspections. Mr. Musmanno discussed previous correspondence with the Planning Board regarding security, acceptance of the road, etc.

There were no questions or comments from the public. A motion to close the hearing was made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously.

The Board then proceeded by unanimous consent to hear the application of Delphic Associates, for whom Mr. Cusson appeared.

Mr. Cusson noted that the applicant could have appealed the Board's earlier Decision refusing a second modification of the Section 40B comprehensive permit to the Housing Appeals Court or the Land Court. The applicant did not do so, and attempted to understand the reasons for the Board's rejection and to overcome them. It is clear from the record that a request for modification was made on February 4, and the Rules state that the Board should make a decision as to whether the proposed change is a substantial one within 20 days. Thus, the applicant can argue that there has been constructive grant of the requested modification. Local rules allow repetitive petitions if the development has at least 10 per cent affordable units, which this development does.

At this point, Mr. Musmanno stated that Board reserves its position regarding procedural matters and the applicability of the local rule on repetitive petitions.

The applicant then drew attention to the differences from the previous petition. The new plan reduces the number of bedrooms; the old approval was for 45

bedrooms, whereas the new plan shows all three bedroom units for a total of 36 bedrooms. The previous plan showed only three affordable units; four are now offered, in conformity with the request of the Affordable Housing Committee. As regards open space, there is now access to a separate lot with benches, swing set etc. on top of the drainage system. Snow removal areas are now made clear on the plan.

The Board's previous Decision stated that there was no evidence on financial matters. Letters from TD Bank and from Radius are now offered regarding the difficulty in financing condominiums, and graphs are provided showing changes in condominium and single family housing prices over the last few years. Mr. Musmanno objected that these materials did not really support the allegations of difficulty in financing condominiums.

The applicant then presented pro formas showing that the previously proposed 15 unit development would not generate sufficient profit to allow financing, whereas the 12 unit development now proposed would allow sufficient profit to allow it to be financed. Mr. Musmanno directed attention to the fact that the applicant appeared to changing the basis of the proposed amendment from the financing of condominiums versus single family homes to the uneconomic nature of the original 15 unit development.

One member of the public questioned whether the applicant was really reducing an approved 15 unit development to 12 units and was assured that this was in fact the case. Mr. Dacier, an abutter, noted that the proposed park area was near his property and questioned whether this lot could in fact accommodate three separate purposes and whether it was suitable for snow storage. He observed that if this is to be a play area the previously agreed screening is inadequate, and would prefer that this corner lot be left open.

Mr. James Milk stated that he would prefer 12 single family units over the original plan with 5 duplexes. Mr. Dacier of 1 Higgins Road spoke in opposition to the proposed amendment; the abutters had agreed to 10 building sites whereas there would now be 12. The applicant pointed out that there was less total impervious area on the new plane. Having observed some blockage of catch basins during recent inclement weather, Mr. Dacier questioned when the drainage system would become operational, and was

advised that it is already operational and that the roads would be cleaned during constructions to keep catch basins clear.

The Board then took a 10 minute recess to enable the members to study the various materials provided at the hearing. Upon resuming the hearing at 9:45 pm, the applicant was asked to explain the differences between the prices of the market rate units in the two pro formas. The applicant explained that it believed that a higher price could be obtained for market rate units in a subdivision consisting solely of single family units, and pronounced itself satisfied with the materials presented.

On a motion made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously the hearing was closed. After some informal discussion among the Board members, it was decided to defer deliberations on both matters heard this evening until the Board's next meeting in one week's time.

A motion to accept the minutes of the March 16 meeting as presented by the Clerk was made by Ms. Gould, seconded by Mr. Gluckler and passed unanimously.

Finally, a motion to adjourn was made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously. Accordingly, the Board adjourned at 9:56 pm.