

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING APRIL 27, 2011

All members of the Board were present when the Chair called the meeting to order at 7.55 p.m.

The Chair expressed thanks to the Secretary for her 20 years of service to the Board and presented a small gift.

By unanimous consent, the Board proceeded to hear the application of Gerald and Sara Merchant, who appeared on their own behalf. The applicants stated that the dogs in question were miniature dachshunds who live in crates in the house; when outside they remain in the yard. One is 13-14 years old and will not be replaced. In response to a question from the Board, the applicants stated that a term limitation on the proposed permit would be acceptable to the applicants. There had been no complaints to the owners or the Animal Control Officer. The lot in question was about 0.8 acres with woods behind. The dogs were not left outside unattended, the applicants stated.

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 the continuation of the hearing on the application of Mr. Carson. A letter from the Zoning Enforcement Officer, who was present at the hearing, was read into the record. The Zoning Enforcement Officer then stated that he was troubled by the possible precedent set by this application and that the Board might wish to impose conditions; specifically, the Zoning Enforcement Officer was troubled by the presence of the Class II license.

There were no questions or comments from the public.

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

By unanimous consent, the Board then proceeded to deliberate on the application of Gerald and Sara Merchant. An “omnibus” motion was moved by Mr. Musmanno, seconded by Mr. Cole and passed unanimously; the motion:

- (a) Found that the grant of a suitably conditioned kennel permit would not cause substantial detriment to the public good;
- (b) Found that the application was consistent with the criteria for a special permit set out in Section III.J of the Zoning ByLaw; and
- (c) Granted the requested kennel permit subject to the following conditions:
 - 1) All rights and privileges are limited to keeping domestic pets owned by residents;
 - 2) There shall be no more than four dogs on the premises;
 - 3) Dogs shall not be left outdoors unattended;
 - 4) The permit expire five years from its date of issue; and
 - 5) There shall be no commercial activities in connection with the kennel permit.

By unanimous consent, the Board then agreed to deliberate on the application of Mr. Thomas Carson. A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to find that the petitioner's proposed business meets all the standards of Section V.AA.2 of the Zoning ByLaw. A motion was made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously to find that the authority of the Board to issue a special permit is restricted by Section V.AA.3 of the Zoning ByLaw to home based businesses which do not meet the standards fo Section V.AA.2 of that ByLaw. Accordingly, on a made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously the Board decided to dismiss the application based upon the foregoing findings.

The Board then proceeded to deliberate further on the appeal of Delphic Associates. A letter from the Planning Board was read into the record consenting to the hearing of this repetitive petition. The Board agreed by unanimous consent that there was no need for recreation on the south eastern lot; to require recalculation of the drainage capacity; to revoke Condition 18 of the original comprehensive permit and to substitute the security provisions of MGL, Chapter 41, Section 81U; to require a demonstration that sizing and draining in the south eastern lot are adequate to handle snow storage on that lot; to modify Condition 16 of the original comprehensive permit to require four

affordable units; the change Condition 17 to refer to not more than two affordable units; and not to eliminate Condition 19 regarding landscaping. On a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the matter was then tabled until May 4 pending a draft decision by Mr. Gluckler and Mr. Musmanno.

After difficulties experienced with the existing recording equipment during this meeting, on a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the Board authorized the Secretary to purchase a new recording device at a cost of up to \$100.

The Board then decided by unanimous consent to further deliberate on the appeal of Mr. Ahmed. A general consensus was reached that on the facts as they appeared during the Board's previous deliberation, the Board would be compelled to allow the appeal, since the appellant had satisfied all the requirements of MGL Chapter 41, Section 81X, and that any inconsistency between the security provisions of the original comprehensive permit and those of Chapter 41, Section 81U were not grounds for refusing the requested building permit. However, now that it had been proved to the satisfaction of the Board that a recorded covenant was in force regarding the subject lot, issue of the building permit was subject to the provisions of this covenant. A decision as to whether the appellant had satisfied the provisions of the covenant relevant to obtaining a building permit required answers to factual questions on which the Board had not received any information, since the Board was, at its hearing, entirely unaware of the existence of the covenant. Accordingly, the Board should remit the matter to the Building Inspector for further action consistent with the Board's opinion. By unanimous consent, the Board placed the matter on the table until May 4, when Mr. Cole would provide a draft decision.

By unanimous consent, consideration of the Minutes of the April 6 meeting was deferred until the next meeting of the Board.

Finally, a motion to adjourn was made by Mr. Cole, seconded by Mr. Biocchi and passed unanimously. Accordingly, the Board adjourned at 11:05 pm.