

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING JUNE 15, 2011

Messrs. Musmanno, Cole, and Gluckler and Ms. Gould were present when the Chair called the meeting to order at 7:50 p.m.

On a motion made by Mr. Musmanno, seconded by Mr. Glucker, and passed unanimously, the Minutes of the May 25, 2011 meeting as presented by the Clerk were accepted.

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the new application of Jay Abend was approved for advertizing and hearing at a date to be determined later in the meeting. Mr. Biocchi then joined the meeting.

By unanimous consent, the Board proceeded to hear the application of The Julia F. Sia Family Trust, on whose behalf Attorney Cannon appeared. Mr. Cannon argued that the subject lot would be suitable for an ARII lot but is zoned ARI. Its uniqueness lies in its situation. ARI lots are typically less congested than ARII. The proposed development would fit in nicely with the surrounding area. The petitioner has been unable to sell the lot under the existing zoning. The applicant could build a single family house but it would not be economical to do so. The siting of the lot on Main Street also affects its saleability. "Soil conditions, shape or topography" has been interpreted by case law to include location relative to other zoning districts. Mr. Gary Bursett also appeared for the applicant and testified that in view of the aforementioned factors the value of the lot is very much reduced. Mr. Cannon further stated that the current asking price is \$150,000 and that it might be possible to sell the lot for \$75,000 for single family construction.

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

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the Board decided to make up the application of Mr. Smith and to

immediately table the application pending deliberations on the appeal of the same applicant.

After a two minute recess, the Secretary reported that her research into the history of the Zoning ByLaw revealed that there was no restriction on multi-family use prior to 1968, and that Town Census data for the period 1951-1972 revealed that the subject lot was used as a multi-family residence as least as early as the early 1960's. On a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously, the Board found that the current multi-family use was established prior to 1968. On a motion made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously, the Board found that the current multi-family use is pre-existing non-conforming. Accordingly, on a motion made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously, the Board upheld the appeal, reversed the decision of the Building Inspector that the building must remain a single family dwelling, and remanded the matter to the Building Inspector for further proceedings consistent with this opinion.

Mr. Smith then indicated that he wished to withdraw the request for a special permit. On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the Board allowed the applicant to withdraw the application for a special permit without prejudice. On a motion made by Mr. Biocchi and seconded by Mr. Gluckler, the Board determined to return the applicant's check for the special permit application fee.

Mr. Pavlik appeared on behalf of Mr. Ahmed. Two letters from Mr. Rizzo to TetraTech, the Town's consulting engineer were read into the record and the Board members then signed plans for Fox Run Farms.

Two new petitions by New Cingular Wireless LLC relating to cell phone tower special permits were approved by unanimous consent and on a motion made by Mr. Musmanno, seconded by Mr. Biocchi and passed by unanimous consent these two petitions and the petition by Mr. Abend previously accepted were set for hearing on July 20, 2011 beginning at 7:45 pm.

On a motion made Mr. Musmanno, seconded by Mr. Cole and passed by unanimous consent, the Board took up deliberation on the application of Sia Realty Trust. On a motion made Mr. Musmanno, seconded by Mr. Cole and passed by a vote of 4-1

(Mr. Biocchi dissenting), the Board found that the petitioner failed to demonstrate conditions relating shape, topography or soil conditions of the subject premises that do not generally affect land in the zoning district. Then, on a motion made by Mr. Cole, seconded by Ms. Gould and passed on a vote of 4-1 (Mr. Biocchi dissenting), the Board voted to deny the requested variance based upon the foregoing finding.

On a motion made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously the Board adjourned at 9:38 pm.