

TOWN OF MEDWAY
ZONING BOARD OF APPEALS

MINUTES OF MEETING DECEMBER 22, 2010

All five members of the Board were present. The Chair called the meeting to order at 7.48 p.m.

On a motion made by Mr. Musmanno, seconded by Mr. Biocchi, and passed unanimously, the Board accepted the Minutes of its meeting of December 15 as presented by the Clerk with agreed amendments.

By unanimous consent, the Board agreed to resume deliberation on the application of Fox Run Farms.

Mr. Cusson noted that Exhibit ZZ, a copy of which was provided to the applicant at the previous hearing, indicated that a meeting was expected with neighbors to the site at which field conditions relating to plantings on the site could be discussed. Such a meeting between the applicant and the neighbors has now been held, and a plan of plantings (which was shown to the Board) has been agreed; this plan would apply to either the existing approved plan or the plan as proposed to be amended.

Mr. Cole stated that he was troubled by the possible approval of the new plan it had been proposed originally, and the relatively weak justification which had been put forward for the changes, since there appeared to be few differences between the situation at present and that which existed about a year ago at the time of the earlier amendment. Mr. Musmanno noted that the last round of amendments met most problems which were alleged to exist in the original proposal. Mr. Musmanno further noted that the DHCD regulations found at 760 CMR 56 include Rules for how Boards of Appeal are to operate, but it is doubtful if DHCD has the power to prescribed such Rules for Boards of Appeal; the Board has filed its own Rules. Any decision on the present application is appealable on the same grounds as an original Section 40B permit.

Mr. Musmanno further stated that in his opinion little justification had been presented for the further changes now sought. Mr. Biocchi raised the question of the public interest; the Board has already granted a permit for a development containing five affordable units but is now asked to approve an amendment to provide only three

affordable units. Various members questioned whether the *pro forma* presented is realistic given the number of two family units versus single family units and the reduction in the proportion of affordable units. Doubt was expressed whether the proposed sale price of about \$400K for the market rate units is realistic compared to single family houses available in other areas of Medway; the single family units in this development are large for the size of the lots they occupy.

Mr. Cole commented that, upon elementary judicial principles, any change to the existing agreement should be justified regardless of whether the proposed plan would be acceptable in the first instance. Mr. Gluckler commented that, in the absence of any proof of difficulty in financing, there was no real evidence that the existing development was uneconomic. Ms. Gould also wanted to see proof of difficulty in financing.

The Board then proceeded to list issues which they considered to be severable from each other; these included the change in type of units, the increase in the number of buildings, the change in the number of bedrooms and the removal of open space. There was general agreement that changes must be justified as such and not on the basis of whether the proposed form of the project would be acceptable *ab initio*.

Mr. Cole commented that the applicant did not show changes in duplex financing between the first amendment in 2009 and this proposed second amendment in 2010. Both Mr. Biocchi and Ms. Gould noted that other low income projects in town were getting financing for duplexes.

The Board agreed that Mr. Cole would prepare a draft decision embodying the conclusions reached during the preceding discussion, and that further discussion would take place at the Board's meeting set for January 19, 2011.

On a motion made by Mr. Cole seconded by Mr. Gluckler and passed unanimously, the Board adjourned at 9:22 pm.