

TOWN OF MEDWAY
ZONING BOARD OF APPEALS

MINUTES OF MEETING SEPTEMBER 2, 2009

Messrs. Musmanno, Cole, Biocchi and Gluckler and Ms. Gould were present. The Chairman called the meeting to order at 7.36 p.m.

A motion was then made by Mr. Musmanno, seconded by Mr. Gluckler and passed unanimously to accept the Minutes of the August 24 meeting as presented by the Clerk.

The Board then proceeded by unanimous consent to continue the hearing on the application of the Medway Council on aging, on whose behalf Ms. Missy Dzicek appeared. It was stated that the proposed location of the shelter would be in the corner of the parking lot, whereas placing the shelter in accordance with the required front setback would take up some parking spaces. The applicant would be willing to accept a condition regarding approval of the proposed location by the Safety Officer. The Board raised the possibility of moving the shelter to the other side of the driveway, but it was pointed out that this would place the door on the offside of the vehicle and might lead to more blocking of sightlines.

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

The Board then considered to deliberate on this application. During a preliminary general discussion, it was noted that the proposed structure was really part of the roadway, and the owner of the proposed lot consents to its placement on the lot. The Town would be justified in putting it within the public way, but the question was raised as why it could not be placed 35 feet back from the public way in accordance with the required front setback.

A motion was made by Mr. Musmanno and seconded by Mr. Cole to find that the proposed structure is not strictly appurtenant to the use of the lot; by use and intent it is instead appurtenant to the public way. As such, the intent of the setback should not apply in typical fashion. Mr. Cole, seconded by Mr. Musmanno, moved to amend the motion to add the words "a bus shelter is a structure of a peculiar character such that it

could, in some circumstances, be located closely adjacent to a public way or ways. Hence" before "the proposed structure". The amendment was passed 4-0 with Mr. Biocchi abstaining. The main motion as amended was then passed 4-0 with Mr. Biocchi abstaining.

A motion was made by Mr. Musmanno and seconded by Ms. Gould to find that, other than traffic and pedestrian movement and sight line considerations, grant of the requested relief would not cause substantial detriment to the public good. After some discussion, a motion to table this motion was made by Mr. Musmanno, seconded by Mr. Cole and passed by unanimous consent.

A motion was made by Mr. Gluckler, seconded by Mr. Cole, to find that no conditions exist relating to shape, topography and soil conditions of the subject lot which do not generally affect other land in the Zoning District. This motion passed by a vote of 3-1, with Mr. Cole voting against and Mr. Biocchi abstaining.

A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed by unanimous consent to record the second finding first.

A motion to take from the table the motion tabled earlier was made by Mr. Musmanno, seconded by Mr. Cole and passed by a vote of 4-0, with Mr. Biocchi abstaining.

A ten minute recess was then taken by unanimous consent. After the Board resumed at 9.23 pm, the Chairman drew attention to M.G.L., Chapter 40A, Section 3, second paragraph, latter half. A motion was then made by Mr. Gluckler and seconded by Mr. Cole to dismiss the petition. A motion to amend to state that the Board determined that the failure to find special conditions relating to site supercedes the other findings and therefore dismisses the petition was made by Mr. Musmanno, seconded by Mr. Gluckler and accepted as a friendly amendment.

After a somewhat lengthy and inconclusive discussion, it appeared that two members of the Board (Mr. Cole and Ms. Gould) were in favor of granting the requested relief, two members (Mr. Musmanno and Mr. Gluckler) were opposed to granting relief, while Mr. Biocchi intended to abstain on the final decision. Although no formal motion was made, there appeared to be a general consensus that the Zoning ByLaw failed to give clear guidance regarding the type of structures to which the present

petition related, and that some amendment of the ByLaw to give explicit guidelines regarding such structures was desirable. The view was also expressed that preparation of detailed reasons for the Board's decision in this case might be helpful to the Town in formulating appropriate changes to the ByLaw. Accordingly, Mr. Musmanno agreed to write a draft opinion as to why relief should not be granted on the present application, and Mr. Cole agreed to write a draft opinion as to why relief should be granted. The Board agreed by unanimous consent to reconvene at 7.30 pm on September 30 for further deliberations on this application.

There being no further business before the Board, on a motion made by Mr. Musmanno, seconded by Mr. Cole, and passed unanimously, the meeting was adjourned at 10:00 pm.