

TOWN OF MEDWAY
ZONING BOARD OF APPEALS

MINUTES OF MEETING NOVEMBER 5, 2008

Present were Messrs. Musmanno, Cole and Flotta and Ms. Gould.

The meeting was called to order at 7:25 p.m.

Mr. Musmanno reported receiving a letter from the Town Administrator which indicated that Mr. Flotta had not written to request reappointment. Mr. Flotta indicated that this was incorrect and stated that he would advise the Town Administrator to this effect.

There being no objection from any member, the Board proceeded to hear the application of MetroPCS, on whose behalf Mr. Walsh appeared. Mr. Walsh stated that the application related to installing, at the 107 foot level on the existing tower at 61R Milford Street, three antennas, together with a coaxial cable extending down within the tower to a 10 x 16 foot leased area provided with a 9 x 15 concrete pad. There would be no enclosure but four outdoor, self-cooling cabinets would be installed on the pad inside a fenced area. The fact that the antenna panels, which has a total power of 700 W, are on the tower rather than the mast makes no difference to the load analysis. Access to the location is already available and the additional equipment would require about one visit per month for maintenance. A noise analysis was presented showing that the requirements of the Zoning ByLaw were met.

There were no questions or statements from the public.

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

There being no objection from any member, the Board next proceeded to hear the application of Ms. Judith Giovangelo, who appeared in person. The dogs residing on the premises are all Yorkshire terriers. The premises are a two family home, and the present owners use the entire home, there being no tenant. The petitioner is involved in animal rescue. The petitioner only requested a permit for four dogs. The lot is located at the corner of Temple Street and Route 109, and there is a fenced-in area for the dogs at the side, approximately 20 x 50 feet. None of the dogs exceed 20 lb. and there

have been no complaints from neighbors to the applicant or the Animal Control Officer. The house stands a substantial distance away from its neighbors, and the applicant would not have a problem with a permit conditioned on the dogs not being left outside unattended.

In response to a question from Mr. Lester Seal of 4 Temple Street, the Chairman stated that any permit would be personal to the petitioner and would not pass to a subsequent purchaser of the lot, and that the Board could, and usually did, impose conditions on kennel permits. Ms. Karen Carr of 175 Village Street spoke in support of the application; no one spoke in opposition.

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

There being no objection from any member, the Board next proceeded to hear the application of Ms. Charlene Casucci and Ms. Caryn Cantrell, who appeared in person. Ms. Casucci stated that a permit was sought for the raising of Chihuahuas, which were not allowed outside except in a carriage. The subject premises is a two family house (up and down), occupied by two separate families, and owned by Ms. Casucci's son, who does not reside on the premises. Two litters have been raised and sold to date, with 3 and 1 puppies respectively. The puppies are sold by means of a want ad or sign outside the premises, and are sometimes pre-sold. There is at present one breeding female, with a total of six dogs between the two families, plus perhaps three puppies at any one time. A permit limited to seven dogs should suffice, and the applicants would not object to limits on the size of the dogs or to a condition that they not be left outside unattended.

Mr. Steven Kenney, who occupied an adjacent law office, queried whether it would be possible for the Board to impose a limit on sales of dogs per year, perhaps six dogs per year.

The Animal Control Officer (ACO), Ms. Hamlin, spoke in opposition to the application. The ACO stated that Ms. Casucci had been breeding cats for some time. On a casual meeting in the street, Ms. Casucci had advised the ACO that she was over the three dog limit permitted by the Zoning ByLaw. The ACO had previously been led to believe that there was only one adult dog on the premises, and only discovered during the present hearing that there were in fact six rather than four dogs. In the ACO's opinion, Ms. Casucci has not been forthright and truthful with the ACO, and apparently it not able

to detect when dogs come into heat, resulting in one breeding female having two litters too close together. There are also nine cats on the premises. Ms. Casucci has a Board of Health permit for more than six cats, and there are now two unspayed female dogs on the premises. The ACO had no objection to personal pets, say seven dogs, and had no problems with the reality as opposed to her concerns about the applicants' breeding of dogs.

Mr. Kenny then expressed concerns about enforcement of any permit granted; was there any reporting requirement? The ACO pointed out that under M. G. L., Chapter 140, a kennel permit requires the ACO authority to check the premises once per year, or upon receipt of a complaint or concern. The ACO further noted that if the buyers acquire papers for the dogs, as they would usually do, the American Kennel Club records provide a check on the number of litters sold by any breeder each year.

Ms. Casucci stated that the breeding female did have an accident so that she had two litters this year. The premises had undergone a Board of Health inspection in February 2005 with the ACO present. The applicants may wish to get out of breeding in about two years and get into fostering dogs.

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

On a motion by Mr. Musmanno seconded by Ms. Gould, the Board approved the Minutes of its October 1, 2008 meeting as presented by the Clerk, with two minor corrections; the vote to approve was 3-0 with Mr. Flotta abstaining as he was not present at the earlier meeting.

The Board agreed unanimously to deliberate on the application of Metro PCS. A motion was made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously to find that the applicants met all the requirements of Article V-S-2 of the Zoning ByLaw. A second motion was made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously to find that grant of a suitably conditioned permit would not cause substantial detriment to the public good. Accordingly, a motion was made by Mr. Cole, seconded by Mr. Musmanno, and passed unanimously to grant Metro PCS a special permit to add antennas and ground equipment in accordance with the plans presented, subject to the following condition:

(a) the petitioner shall provide a certification from a professional engineer that the tower can accept the increased structural loadings of the proposed modification; (condition proposed by Mr. Cole, seconded by Mr. Flotta and passed unanimously).

The Board proceeded to deliberate on the application of Ms. Giovangelo. A motion was made by Mr. Cole, seconded by Mr. Flotta and passed unanimously to find that the grant of a suitably conditioned kennel permit would not cause substantial detriment to the public good. A second motion was made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously to grant Ms. Giovangelo a kennel license subject to the following conditions (the proposers and seconders of each condition appear after the condition; all conditions were agreed unanimously):

(a) the privileges of this license are limited to keeping domestic pets owned by residents (Musmanno/Flotta).

(b) dogs shall not to be left outdoors unattended (Musmanno/Flotta); and

(c) not more than 4 dogs, each weighing not more than 20 lb., shall reside on the premises (Musmanno/Flotta).

The Board then unanimously agreed to deliberate on the application of Ms. Casucci and Ms. Cantrell. A motion was made by Mr. Flotta, seconded by Mr. Cole and passed unanimously to find that the petitioner failed to demonstrate that proposed breeding operation would not cause substantial detriment to the public good. A second motion was made by Mr. Flotta, seconded by Mr. Musmanno and passed unanimously to find that grant of a suitably conditioned special permit for a limited kennel license would not cause substantial detriment to the public good. Accordingly, a motion was made by Mr. Flotta, seconded by Mr. Musmanno and passed unanimously to grant a special permit for a kennel license to the petitioners located at 175 Village Street subject to the following conditions (the proposers and seconders of each condition appear after the condition; all conditions were agreed unanimously):

(a) not more than seven dogs of any age shall reside on the premises (Flotta/Gould);

(b) no dogs are to be left outside unattended (Flotta/Gould);

(c) the privileges of this license are limited to keeping domestic pets owned by residents (Flotta/Gould);

(d) the petitioners shall be permitted to raise and sell one litter of puppies provided that any dogs in excess of the seven permitted must be removed from the premises by the time they reach the age of six months, and further provided that the petitioners notify the Animal Control Officer within ten days of the birth of the litter (Flotta/Cole); and

(e) none of the dogs shall weigh more than 10 lb (Flotta/Cole).

By unanimous consent, the application of Cellco was approved for advertising, and the next meeting of the Board was set for December 3, 2008 at 7:15 pm.

A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed by a vote of 3-0 (Mr. Flotta abstaining), to recommend to the Town Administrator that Mr. Flotta be reappointed as a member of the Board. A second motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to recommend to the Town Administrator that Ms. Gould be appointed a full member of the Board.

The Board then agreed unanimously to adjourn.