

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING AUGUST 6, 2008

Present were Messrs. Musmanno, Cole, Gluckler and Flotta.

The meeting was called to order at 7:20 p.m.

Since this was the first Meeting of the Board following the recent appointment of members, the Board proceeded to reorganize. Mr. Musmanno was nominated for chairman by Mr. Cole and seconded by Mr. Flotta. There being no other nominations, Mr. Musmanno was elected by a vote of 3-0, with Mr. Musmanno abstaining.

Mr. Cole was nominated for clerk by Mr. Musmanno and seconded by Mr. Gluckler. There being no other nominations, Mr. Cole was elected unanimously.

The Board unanimously adopted the Minutes of the meeting of June 18, 2008 with one minor amendment.

There being no objection from any member, the Board proceeded to hear the application of Mr. and Mrs. DeSimone; Mr. DeSimone appeared on his own behalf. Mr. DeSimone stated that proceeding to divide the lot in accordance with Planning Board regulations would require a road extension and turning circle, construction of which would cost \$40-60K plus a bond which the applicants could not afford, and a lot cannot be released without bond or road construction. When the existing sub-division was constructed, the length of a cul-de-sac was limited to 450 feet, and this distance fixed the location of the existing turning circle. Mr. Musmanno enquired why zoning relief is a proper remedy for a procedural problem, and Mr. DeSimone replied that this was the only relief he could seek without losing his house.

There were no questions or comments from members of the public present, but a letter from the Streifers of 38 Farm Road opposing the Petition was read into the record. Mr. Tom Gay appeared on behalf of the Planning Board and stated that the required 18 feet road width is a safety issue and that the Planning Board is very much opposed to the creation of non-conforming lots.

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

There being no objection from any member, the Board next proceeded to hear the application of Ms. Lorilyn Sallee, who appeared in person. Ms. Sallee stated that the lot to which the application related was a two-family house. For the last four years, one unit had housed three licensed dogs and the other two licensed dogs, but this year upon attempting to renew her dog licenses she had been told that a kennel permit was required for the present number of dogs. The lease of the second unit does not contain any provisions regarding pets. There is a fenced area in the back of the house for the dogs, who are not allowed out when no-one is home. There would be no commercial activities in connection with the dogs. A permit is sought for 5-7 dogs in case the applicant needs to foster one or two extra dogs. Her own dogs included two mutts of about 70 and 40 lbs respectively and an Australian cow dog of 35-40 lbs; the other unit has a similar Australian cow dog and a Chinese crested dog of about 80 lbs. The dogs have been present since 2004 and neither the applicant nor the Animal Control Officer has received any complaints.

Mr. Barry Zyler of 15 Cottage Street enquired whether a kennel license can restrict the number of dogs, and was it transferable to a new owner. Mr. Musmanno replied that the Board could impose control of the number of dogs and the permit is not transferable. Ms. Karen Travers asked why a kennel permit was required if there was no increase in the number of dogs. Mr. Al Goburn enquired if the dogs caused a problem what was the neighbors' recourse. Two members of the public spoke in favor of the application provided the permit was limited to 5 dogs and there was no breeding. No one spoke against the application.

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

There being no objection from any member, the Board next proceeded to hear the application of Mr. and Mrs. Garron; Mr. Garron appeared on their behalf. The applicant stated that the proposed accessory unit would be occupied by his mother-in-law. The Zoning Enforcement Officer states that the Board does not need to consider the front setback problem. The applicant presented plans showing a raised ranch with an auxiliary

family dwelling unit (AFDU) on the first floor, with the main unit on the second floor. This ranch would be on a slab, and there would be a side entrance for the AFDU. There were no public questions or comments except for a letter from the Hoopers of 6 Naumkeag Street in favor of the application.

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

There being no objection from any member, the Board next proceeded to hear the application of Mr. and Mrs. Tetrault, on whose behalf Mr. Thomas McLaughlin appeared. Mr. McLaughlin noted that when the existing two-family special permit was granted in 1994, there was no provision for an AFDU petition. In 2003, the Zoning ByLaw was amended to provide for such a petition. The existing unit conforms to all AFDU requirements. There is no change to the addition or to the character of the building. Entry to the auxiliary unit is through the garage of the main dwelling. The owners have no desire to mislead potential purchasers and are willing to have the existing two-family special permit of 1994 voided. There was no purchase-and-sale agreement existing.

The occupants of 19 Guernsey Street spoke in favor of the petition; no one spoke against.

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

After a brief recess, the Board agreed unanimously to deliberate on the application of Mr. and Mrs. DeSimone. A motion was made by Mr. Musmanno, seconded by Mr. Flotta and passed unanimously to find that the petitioner has demonstrated that the parcel could be divided into two conforming lots. A second motion was made by Mr. Cole and seconded by Mr. Flotta to find that the petitioner failed to demonstrate hardship due to shape, topography and soil conditions on the lot. Mr. Musmanno, seconded by Mr. Cole, then moved that the previous motion to placed on the table moved to find that the hardship petitioner described related to his personal condition, not to the conditions of the lot. This motion was passed unanimously. Mr. Musmanno then moved to take the previous motion from the table and it was passed unanimously. Finally, a motion was

made by Mr. Cole, seconded by Mr. Flotta and passed unanimously that, in view of the foregoing findings, the petition be dismissed with prejudice.

The Board then proceeded to deliberate on the application of Ms. Sallee. A motion was made by Mr. Musmanno, seconded by Mr. Flotta and passed unanimously to find that an adequately limited kennel license would not be detrimental to the public good. A motion was made by Mr. Cole and seconded by Mr. Musmanno to grant a kennel license subject to conditions, which were agreed as follows:

1. There shall not be more than five dogs total in all residences on the premises at any one time (made by Mr. Musmanno, seconded by Mr. Cole and agreed unanimously);

2. The privileges of the license shall be limited to the keeping of domestic pets owned by residents (made by Mr. Cole, seconded by Mr. Flotta and agreed unanimously); and

3. No dogs shall be left outside unattended (made by Mr. Flotta, seconded by Mr. Gluckler and agreed unanimously).

The final vote to grant the permit with these conditions was made unanimously.

The Board then unanimously agreed to deliberate on the application of Mr. and Mrs. Garron. A motion was made by Mr. Cole, seconded by Mr. Musmanno and agreed unanimously to find that grant of an auxiliary family dwelling unit special permit to the applicants substantially in accordance with plans presented would not cause substantial detriment to the public good. A further motion was then made by Mr. Cole, seconded by Mr. Gluckler and passed unanimously to grant an auxiliary family dwelling unit special permit to the applicants subject to the conditions that the dwelling entrances, room arrangements and approximate dimensions be substantially in accordance with the plans provided, and that the portion of the building facing Mishawam Street substantially conform to the front elevation provided.

The Board then unanimously agreed to deliberate on the application of Mr. and Mrs. Tetrault. A motion was made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously to find that grant of an auxiliary family dwelling unit special permit to the applicants substantially in accordance with the application would not cause

substantial detriment to public good. A further motion was made by Mr. Cole, seconded by Mr. Musmanno and passed unanimously to find that the use of the premises since about 1994 under the existing two family special permit has been substantially that of a main dwelling unit with an auxiliary family dwelling unit attached thereto. A motion was then made by Mr. Musmanno, seconded by Mr. Flotta and passed unanimously to find that grant of a permit in accordance with the petition does not contradict the action of this Board taken on December 7, 1994. Finally, a motion was made by Mr. Musmanno, seconded by Mr. Flotta and passed unanimously to vacate the special permit issued by this Board on December 7, 1994 and issue special permit to petitioners for an auxiliary family dwelling unit in accordance with the petition.

The Board then reviewed petitions received and determined to reject the application of Chesmore unless more information was supplied which, at the discretion of the Chairman, would render the information sufficient. The applications of Kevin and Donna O'Connor and Mr. Jordon were accepted. It was noted that the Army Point Communications application had been withdrawn.

The Board set its next meeting for September 3, and then agreed unanimously to adjourn.