

TOWN OF MEDWAY
ZONING BOARD OF APPEALS

MINUTES OF MEETING OCTOBER 16, 2013

The Chairman called the meeting to order at 7.45 p.m. with all five members present.

The Board reopened the hearing on the Petition of GCCF New England, LLC, on whose behalf Mr. Peter Paulousky and Mr. Philip Henry appeared. Mr. Paulousky discussed his revised memorandum on why the Board should grant the requested variances, pointing out that the portion of the height of the sign which exceeded the allowable 8 feet was essentially a “roof” provided to ensure the sign was architecturally consistent with the buildings of the proposed development. Mr. Paulousky further argued that the variance in the area of the sign was justified because the shape of the lot and the adjacent area lying behind the curb but within the right of way, necessitates placing the sign a substantial distance (about 85 feet) from the nearest point on the roadway at the intersection. At this point, a Board member noted that the sign was angled such that it could not be read from this point on the roadway, and that the relevant distance was that perpendicular to the faces of the sign from the sign to the nearest point on the roadway. Mr. Paulousky pointed out that this distance was still in excess of 65 feet so the variance was still justified, and further argued that this long sight distance justified the requested variance for internal illumination to make the sign more easily visible at night.

When questions and comments from the public were requested, the owner of the Dunkin Donuts store across Route 109 from the subject lot pointed out that she had been required to modify proposed signage at her store to conform to the signage requirements in the relevant Zoning District, and suggested that if the requested variances were granted, she, and possibly other commercial businesses within the same Zoning District, might come before the Board to ask for similar variances. Ms. Teresa Stuart, of 21 Lovering Street, introduced a petition, signed by numerous persons living in the area, opposing all variances for the project. Ms. Louise Donalt spoke against the proposed variances, especially the internal illumination of the sign. In addition, as reflected in the

Board's records, numerous letters opposing the proposed variances were read into the record.

After the public comments, various Board members indicated that they felt a need for more information on this application. In particular, since the applicant had argued for the height variance to allow a roof structure in conformity with the buildings in the development, the Board requested information regarding the attitude of the Design Review Committee to the proposed sign. The Board also requested further information regarding the visibility of the sign to passing motorists. The applicant agreed to a continuation of the hearing to 7:45 pm on October 30, 2013 to enable this information to be provided.

The Board then proceeded by unanimous consent to reopen the hearing on the application of Mr. and Mrs. Mele, on whose behalf Mr. Paul Kenney appeared. Mr. Kenney described the history of this matter. A variance was originally granted in 1992 and duly recorded. At that time, most people believed that recording a variance preserved the variance indefinitely. The applicants have since paid property taxes for both lots, which they believe are valued as buildable lots. It was only with the Decision of the Supreme Judicial Court in *Cornell v. Bd. of Appeals of Dracut*, 453 Mass. 888 (2009) that it was determined that it was necessary to either seek a building permit or convey one of the relevant lots within a one year period after the grant of a variance to preserve the variance indefinitely. The applicants were for some time unaware of the change of law and signed a Purchase and Sale Agreement relating to one of the subject lots which required that a valid variance be obtained.

The Board members discussed at length with applicants' attorney the effect of the change in the Zoning By Law relating to lot shape factor since the original variance was granted.

When questions and comments from the public were requested, Mr. Paul Santosuosso of 2 Franklin Street stated that he was not in favor. Mr. Joseph Tunney of 16 Franklin Street (the lot shown as "N/F Mucci" on the plot plan provided with the application) stated that he was against the application because he was concerned about a new house being built 30 feet from his existing house.

A motion to close the hearing was made by Ms. Doherty, seconded by Mr. Biocchi and passed unanimously.

After a brief recess, the Board proceeded to deliberate on the application of Mr. and Mrs. Mele. After a long and rather inconclusive discussion, a straw poll of the Board indicated that all members were in favor of granting the requested variance but did not agree on the exact rationale for such a decision; in particular, it appeared that members were having difficulty with the necessary variance of lot shape factor. Accordingly, in view of the relatively late hour, it was agreed by unanimous consent to postpone further deliberation on this application under the Board's Meeting on October 30, but that members should be free to circulate (but not discuss) draft decisions or part decisions prior to that meeting.

A motion was made by Mr. Biocchi, seconded by Ms. Doherty and passed unanimously to accept the Minutes of the October 2, 2013 meeting as presented by the Chairman.

A motion to adjourn was made by Ms. Gould, seconded by Mr. Biocchi and passed unanimously, and the Board adjourned at about 10.15 p.m.