

TOWN OF MEDWAY
ZONING BOARD OF APPEALS

MINUTES OF MEETING FEBRUARY 6, 2013

Messrs. Musmanno, Cole and Biocchi, and Ms. Doherty were present when the Clerk called the meeting to order at 7.46 p.m. Ms. Gould joined the meeting immediately thereafter.

Mr. John Fernandes, attorney for Mr. Robert Symonds, appeared and requested a continuance of Mr. Symonds application to March 6, 2013. A motion to continue the application to 7:45 pm on that date was made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously.

A motion was made by Mr. Musmanno, seconded by Ms. Doherty to accept the Minutes of the January 16, 2013 meeting of the Board as presented by the Clerk. Ms. Doherty observed that the reference in the Minutes to “20 Broken Tree Road” must be erroneous because #20 would lie on the opposite side of Broken Tree Road from the lot in question and therefore could not be the nearest neighbor. It was agreed that the Minutes should reflect what was actually said at the hearing, even if erroneous, so by unanimous consent “[sic]” was inserted after the reference to “20 Broken Tree Road”, and the Minutes as thus amended were accepted unanimously.

The Chairman noted receipt of a letter from Calarese Properties enquiring whether the reference to “188 parking spaces” in the Decision recently issued by the Board was correct, and asked for authority to reply indicating that this portion of the Decision was deliberate. A motion to this effect was moved by Mr. Cole, seconded by Ms. Doherty and passed unanimously. A motion to authorize the Chairman to submit a report to the Town in the same terms as last year’s report was made by Ms. Doherty, seconded by Mr. Biocchi and passed unanimously.

The Chairman noted receipt of the annual report from CHAPA, and the Board signed the Decision on the application McNally and Cooke.

The Board then proceeded, by unanimous consent, to hear the application of Mr. Marcel, who appeared with his attorney, Mr, Russell J. Hallisey.

Mr. Hallisey stated that the present use of the subject lot was light manufacturing pursuant to a 1985 variance granted by the Board and a special permit. This application relates to the addition of 100 x 40 foot building to provide additional space for the present use. The new construction does not have a side setback problem because of the irregular shape of the lot. The addition will be used for the existing radon testing business and there will be no additional employees; the existing business simply needs more space than is available in its present cramped building. In response to questions from the Board, Mr. Hallisey stated that the corner of the lot was 20 feet from the new construction. In response to an invitation from the Board to show why the application would not be detrimental to the public good, Mr. Hallisey pointed out that there would not be an addition of any new use and that the existing use was not detrimental to the neighborhood; the proposed addition would get away from the existing look of a long building resembling a factory and would make the building look more like a house. He added that the proposed future parking area shown on the plan is now open.

There were no questions or comments from the public. A motion to close the hearing was made by Mr. Cole, seconded by Ms. Doherty and passed unanimously.

The Board proceeded by unanimous consent to immediate deliberation on the application of Mr. Marcel. A motion was made by Mr. Musmanno, seconded by Ms. Doherty and passed unanimously to find that there was no outward indication that the conditions imposed in the 1985 Decision are being violated. A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to find that the proposed modification is in accordance with, and does not increase the non-conformity of, the 1985 permit. A further motion was made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously to find that the proposed change is not substantially more detrimental to the neighborhood or the public good than the present conditions. A motion was then made by Ms. Doherty, seconded by Mr. Biocchi and passed unanimously to find that the proposed change is consistent with the criteria set forth in Section III.J of the Zoning ByLaw. Accordingly, a motion was made by Mr. Musmanno, seconded by Ms. Doherty and passed unanimously to grant a special permit to petitioners in accordance with Zoning ByLaw Section V.D.4.a in general accordance with the plans provided.

The Board then proceeded by unanimous consent to resume deliberation on the applications of Flying Fur. A motion was made by Mr. Cole and seconded by Mr. Musmanno to find that the proposed change in use does increase the impact on the neighborhood and thus the relative detriment to the public good. This motion was defeated by a vote of 2-3, with only Mr. Cole and Mr. Musmanno voting in favor. A motion was made by Mr. Biocchi and seconded by Ms. Gould to find that the proposed change in use is not substantially more detrimental to the public good than the current use. This motion passed by a vote of 4-1, with only Mr. Musmanno voting against.

The Board then took note that the reference in the application to a special permit under Zoning ByLaw Section V.A should be to Section V.F.1.c.6.

A motion was then made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously to find that the proposed use is consistent with the special permit criteria set forth in sub-Sections III.J.1-3 and 6 of the Zoning ByLaw. A further motion was made by Mr. Musmanno and seconded by Ms. Doherty to find that the proposed use is consistent with the special permit criterion set forth in sub-Section III.J.4 of the Zoning ByLaw. This motion passed by a vote of 4-1, with only Mr. Musmanno voting against. A further motion was made by Mr. Musmanno and seconded by Ms. Doherty to find that the proposed use is consistent with the special permit criterion set forth in sub-Section III.J.5 of the Zoning ByLaw. This motion failed on a vote of 2-3 with Ms. Doherty and Mr. Biocchi voting in favor.

A motion was then made by Mr. Biocchi, seconded by Mr. Musmanno and passed unanimously to find that a suitably conditioned special permit would enable this proposal to comply with the provisions of sub-Section III.J.5 of the Zoning ByLaw. Accordingly, a motion was made by Mr. Cole and seconded by Mr. Musmanno to grant to the applicants a special permit under Section V.D.1 and a special permit for a kennel under Section V.F.1.c.6 of the Zoning ByLaw subject to terms and conditions to follow. A motion was made by Mr. Cole and seconded by Ms. Gould to add a condition that there not be more than 30 dogs on the premises at any one time.

At this point, a motion was made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously to lay the previous motion and amendment on the table, and to amend the prior finding regarding sub-Section III.J.4 of the Zoning ByLaw by

inserting the phrase “A suitably conditioned special permit would enable this proposal to be”, so that the entire finding would read “A suitably conditioned special permit would enable this proposal to be consistent with the special permit criterion set forth in sub-Section III.J.4 of the Zoning ByLaw.”

The Board then by unanimous consent agreed to take the tabled motion and amendment from the table. A motion was then made by Mr. Biocchi and seconded by Mr. Musmanno to amend the number of dogs in the proposed condition to 20.

The hour now being rather late, the Board agreed by unanimous consent to table the pending motion and amendments and to leave the drafting of proposed decisions on this application to any members who wished to volunteer to do so, with the understanding that the matter would be further considered at the Board’s next meeting.

A motion to adjourn was made by Mr. Cole, seconded by Ms. Doherty and passed unanimously; the Board adjourned at 10.40 p.m.