

TOWN OF MEDWAY
ZONING BOARD OF APPEALS
MINUTES OF MEETING MARCH 6, 2013

The Chairman called the meeting to order at 7.46 p.m. with all five members present.

A motion was made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously to adopt the Minutes of the Board's February 6, 2013 meeting as presented by the Clerk but with three agreed changes.

A motion was made by Mr. Musmanno, seconded by Ms. Doherty and passed by unanimous consent to instruct the Secretary to contact the Town's IT Department to advertise two vacancies on the Board.

The Board then signed routine bills.

By unanimous consent, the Board agreed to resume the hearing on the application of Mr. Symonds, which had been continued at the Board's previous meeting. Mr. John Fernandes, attorney for Mr. Robert Symonds, appeared with Mr. Symonds. Mr. Fernandes explained that the application was essentially one to resume use of the subject property as a five family dwelling, as it had been used for many years. The dwelling was built in 1898 as the Town's Poor House. The present lot size is approximately 3.8 acres but it was formerly larger. After the Town ceased to use it as the Poor House, in the 1950's it was converted to a rooming house. In 1970, Mr. Fernandes continued, a lightning strike destroyed the third floor, and thereafter only two units on the ground floor were used. In 1982, a variance was issued for a four unit dwelling, the applicant apparently believing that he only needed permits for the four additional units. Mr. Symonds took out a building permit and installed mailboxes and electric meters for five units. A periodic inspection by the Town in 2012 revealed the permit for only four units. There has been no suggestion of any annoyance of the neighbors; the present tenants have lived in the units for several years, and at least one tenant would be displaced if the present application is not granted. Twenty five years experience shows that the present use is not detrimental to the neighborhood, and there was no expansion of the building to accommodate the present five units. The applicant argues, Mr. Fernandes continued, that

he is protected against enforcement of the zoning violation under the building permit after the six year limit set by statute.

In response to questions from the Board, the attorney stated that the applicant does not dispute the Building Inspector's interpretation of the earlier variance. The applicant is satisfied with the basis for the earlier variance, although the present hardship may be different. The applicant argued that his demonstrated good faith during construction avoids the rule against self-created hardship being used to obtain a variance; the Town must have been aware of the five units during inspections in the course of construction and later. The area of the lot was reduced in 1983 when a separate lot was created to hold a house built following the lightning strike to accommodate a displaced tenant.

When comments were invited from the public, the Building Inspector stated that the applicant had not tried in any way to mislead the Town regarding the number of units present.

In response to a further question from the Board, applicant's attorney stated that the applicant would not object to the decision on the present application taking the form of an amendment to the earlier variance. At this point, the Board took a five minute recess to enable the attorney to locate a copy of the earlier variance. At the end of this recess, the Board resumed the hearing after the Secretary had located a copy of the earlier variance. There were no further questions or comments from the public. In final submissions, applicant's attorney noted that there were at one time 15 single rooms in the rooming house, and that parking is available for about 15 cars.

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

The Board proceeded by unanimous consent to immediate deliberation on the application of Mr. Symonds. A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to find that the reasons for the grant of the 1983 variance relating to the subject lot, as set forth in the Board's Decision of March 29, 1983, are still valid. A motion was made by Mr. Cole and seconded by Mr. Musmanno to find that the subject premises have been openly and notoriously used as a five family residence since approximately 1985. A motion was made by Ms. Doherty and seconded by Mr. Biocchi to

strike the words “and notoriously” from the previous motion. This motion to amend was defeated 2-3 with only Ms. Doherty and Mr. Biocchi voting in favor. The main motion was then passed unanimously. A further motion was made by Mr. Cole, seconded by Ms. Doherty and passed unanimously to find that continued use of the subject premises as a five family residence would not be detrimental to the public good.

A motion was then made by Mr. Cole and seconded by Mr. Musmanno to amend the Board’s prior Decision of March 29, 1983 relating to the subject premises by striking the antepenultimate paragraph and substituting “There shall be no more than five apartments on the premises.” A motion was made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously to delete only the words “two apartments per floor, be constructed” from the antepenultimate paragraph and add “five apartments on the premises”. The main motion as thus amended was then passed unanimously

The Board then proceeded by unanimous consent to resume deliberation on the applications of Flying Fur. A motion was made by Mr. Musmanno and seconded by Mr. Biocchi to adopt the proposed opinion drafted by the Clerk. A further motion was made by Mr. Musmanno, seconded by Mr. Biocchi and passed unanimously to amend Condition 3 to specify that the hours of operation should be 7 am to 7 pm daily. A further amendment was made by unanimous consent to add the word “floor” after “1058 square feet”. The main motion as thus amended was then passed unanimously.

A motion to adjourn was made by Mr. Cole, seconded by Ms. Doherty and passed unanimously; the Board adjourned at about 9.40 p.m.