



# TOWN OF MIDDLETON

## BOARD OF APPEALS

195 North Main Street  
Middleton, MA 01949  
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### MEETING MINUTES

January 24, 2019

Fuller Meadow School @7:00 pm

**Members in Attendance:** Richard Nazzaro, Craig Hartwell, Anne Leblanc-Snyder, Jim Fox, Carolyn MacPherson

**Absent:** Nick Yebba, Ann Cote

**Others Present:** Scott Fitzpatrick, Building Commissioner  
Katrina O'Leary, Town Planner

Mr. Nazzaro called the meeting to order at **7:00 pm**.

### Minutes

Mr. Nazzaro asked for a motion to accept the minutes from the December 27<sup>th</sup> meeting. Ms. MacPherson motioned, Mr. Fox seconded - all were in favor and the minutes were unanimously accepted.

Ms. MacPherson then read the withdrawal letter from Warren Kelly asking the board to withdraw his previous application for the ground sign at 221 South Main Street. Mr. Nazzaro asked for a motion to dismiss the application without prejudice. Mr. Hartwell motioned, Ms. MacPherson seconded - all were in favor and the motion carried.

### **Other Business**

Mr. Nazzaro introduced Andy Sheehan, Town Administrator, so he could speak about the special Town Meeting happening on March 19, 2019 regarding the proposed acquisition of the 50 acre Middleton Golf Course and the plan to build a facility to house the Fire and Police departments, the Town offices, and potentially the Council on Aging at a later date. Cost of the acreage is \$3.8 million and the cost of the master development plan is \$325,000. The project is projected to break ground in late 2020 with the plan to open the Fire Station in 2022. A short term loan will be obtained initially and then will convert to a permanent loan to run for 30 years. Total per year in loan payments will be approximately \$250,000.

Mr. Fox asked if the facility would take up the entire acreage of the golf course, but Mr. Sheehan stated that only 15 acres will be utilized with the rest remaining open space, per the request of the owners of the property. Ms. MacPherson asked what will become of the property that the current Fire Station is located on. Mr. Sheehan suggested that it could possibly become a municipal parking lot.

### **221 South Main Street - Site Plan Modification – 7 River Street LLC – Permit #1068**

Ms. MacPherson read the public notice into the record, abutters were notified.

The board has determined that this application is a “major modification” and is being asked to grant the requested modification. According to the “Reciprocal Easement Agreement” referred to in the variance granted to the Richardsons last February, Mr. Kelly agreed to grant Richardson Green the rights to the easement now located underneath the parking spaces.

Comments were read from the other boards and are as follows:

The ICDRC felt it was not within their scope to validate the legal aspects of the easement agreement but did state that if the site plan change was presented before the work was performed they would have questioned the constraints of the easement. They defer to the Board of Appeals whether to address the abutters’ complaint that their easement agreement has been violated.

The Planning Board voted 4 in favor and 1 opposed to recommend that the additional parking spaces be allowed to remain until the easement is actively used-at which time the owner will remove the parking spaces at his own expense. Additionally, the owner should be required to file a confirmatory deed of the previously granted easement to all parties to the easement at the Registry of Deeds

Conservation Commission had no comments.

Mr. Warren Kelly, owner of the property spoke up about his application and apologized to the board and to the Richardsons for his agitation at the last meeting. His argument was that he only wanted to enhance the site and has agreed to include on the deed that if and when the Richardsons want/need to use the land he will remove the parking spaces at his expense which he never striped in order to maintain the aesthetics of the landscaping. Mr. Kelly maintained that the septic is not on the easement, however Mr. Nazzaro commented that last February Mr. Kelly was well aware of the easement when he presented the site plan.

Mr. Hartwell asked who drafted the easement agreement and Mr. Kelly confirmed that it was Jill Mann, who was representing the Richardsons at that time. Mr. Kelly stated that it was his mistake not hiring another lawyer to read the agreement, as he was interpreting the agreement on his own and misread what was stated in that agreement.

Ms. Leblanc-Snyder commented that her interpretation of the situation is that Mr. Kelly wants the board to interpret the easement for him and she doesn’t feel that she herself is qualified to do that. She stated that she felt that both parties agreed to something that doesn’t involve parking spaces.

Mr. Nazzaro asked for the opposition to speak. Both Peter Richardson and Chris Richardson spoke on behalf of Richardson Green and stated that they have no issue with the building itself, the problem is with Mr. Kelly controlling their right over the reciprocal easement. Mr. Kelly gave the Richardson’s the right to be in a reciprocal easement agreement and by doing that he gave up his sole right to control the easement.

Mr. Hartwell asked for clarification on what the board is being asked to do. The Board is being asked to approve a modified site plan. The problem with approving the modified plan is that the modification specifically encroaches on an easement. There is a legal easement on the original site plan that has been agreed upon and needs to be used by both parties in the easement agreement. Mr. Kelly is asking for the easement to be left alone until such time that the Richardsons want to use it, and at that point in time Mr.

Kelly would rip up the parking spaces in question. Mr. Hartwell insisted that Mr. Kelly is asking the town to change the site plan and override what was presented in the original site plan.

Mr. Nazzaro asked for a motion, and Mr. Hartwell motioned to deny the application to modify the site plan for 221 South Main Street by changing the location and number of parking spaces. Ms. MacPherson seconded the motion. Mr. Nazzaro called for a vote. The members of the Board voted unanimously 5-0 in favor of the motion; therefore the motion carried and the Site Plan Modification was denied.

**Adjournment:**

The board adjourned the meeting at **8:42pm**. Minutes respectfully submitted by Lisa Brown.

Minutes accepted at the February 28, 2019 meeting of the board.