



# TOWN OF MIDDLETON

## BOARD OF APPEALS

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### MEETING MINUTES

March 28, 2019

Fuller Meadow School @7:00 pm

**Members in Attendance:** Richard Nazzaro, Ann Cote, Jim Fox, Craig Hartwell

**Absent:** Anne Leblanc-Snyder, Carolyn MacPherson, Nick Yebba

**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 February 28<sup>th</sup> meeting. Ms. Cote motioned, Mr. Fox seconded. All were in favor, minutes were unanimously accepted.

### **Continued Public Hearings**

#### **58 South Main Street – Appeal from the Zoning Administrator's Decision – DeSantis - Permit #1056**

This decision was appealed by the applicant to Land Court and was recently remanded back to the board as a result of a joint statement by both parties. Per the remand order, a new public hearing was advertised and noticed. An opinion from Town Counsel regarding this matter was expected by tonight's meeting.

Attorney Joseph Sano spoke on behalf of the DeSantis's and reiterated the background information regarding the property and the reason for the appeal. Attorney Sano stated that he believes that all the setbacks are in compliance with the 1937 bylaw and would like the board to consider all the circumstances surrounding the decision and consider overturning the Commissioner's ruling and grant a building permit. Mr. Fitzpatrick stated that all of the information from the files was provided to Town Counsel, and after reviewing the 1937 bylaw and all of the documents including the plot plan and the 2010 case including the decision and Mr. Fitzpatrick's interpretation, he did not agree with Attorney Sano that the judge ruled that there doesn't have to be a house on either side. The Zoning Board has the right to interpret the zoning bylaws, and the 1937 bylaw is clear that the proposed dwelling would need a house

on both sides to satisfy the bylaw as written. Town Counsel determined, as did Mr. Fitzpatrick, that while Attorney Sano did provide additional information and the lot is entitled to separate lot protection, their interpretation is that the lot IS NOT in compliance with the 1937 bylaw as written or the current bylaw. Attorney Sano rebutted with the argument that the DeSantis's should not be penalized and denied a building permit because of, in his opinion - a flawed interpretation, and because of circumstances that are out of their control, i.e. that the lot is a corner lot with only one dwelling on one side. Attorney Sano reiterated that he disagreed with the interpretation of the Town Counsel and Mr. Fitzpatrick, stating that his clients have spent a lot of time, effort and money on trying to get approval for a permit and he feels it's unjust to deny them. He again asked the board to reconsider overturning the Commissioner's decision.

Mr. Nazzaro asked if anyone wanted to speak in favor of the petition.

Ms. Diane DeSantis spoke up on behalf of her petition, saying that the property has been in the family since 1971 and has no idea why the town is fighting so hard against having a house built there when it could be an enhancement to the property.

Mr. Nazzaro asked if anyone wanted to speak up in opposition of the petition or if there were any questions from the Board. Mr. Hartwell needed some time to go over his questions so the Board took a 10 minute recess.

Mr. Richard DeSantis spoke up to explain that in the 2010 decision the main issue for the exception was uniformity. The plan is to have the proposed house meet the same setbacks as the houses on Old South Main Street and South Main Street, and Mr. Sano argued that the exception is satisfied because the house is on line with the adjoining property on South Main Street, and the plan proposed complies with all the frontage requirements.

Ms. O'Leary clarified that back in 1937 it was required that structures be 60 ft. back from the street, with the exception that if a house was in-between two other houses, it could be set back the average of those two houses. This exception did not apply to corner lots, where there is a structure on only one side of any given vacant lot. She suggested that the Board needed to think about the reasons why the 1937 bylaw was written that way and what the intent of allowing for certain exceptions was. Mr. Fitzpatrick and Town Counsel both interpreted that the lot does not comply with the 1937 zoning exception.

Mr. Nazzaro asked for a motion based on the board's findings that the decision to uphold the Building Commissioner's building permit denial was based on the applicant's failure to provide the necessary evidence to determine whether the lot has separate lot protection under MGL Ch. 40a, Sec. 6. ;the applicant has now provided the necessary evidence to determine that the lot does have "separate lot status" and to be issued a building permit, the proposed building plans must conform to either the 1937 or current dimensional requirements contained in the zoning bylaw.

Mr. Hartwell motioned that based on the findings that due to the totality of the evidence presented, the board finds that the 1937 zoning bylaw, Part III, Section 6 (1), is controlling as to the zoning set back requirement and based on this section, the proposed plan is not compliant due to the lack of a building on the lot directly abutting the property to the west known as Lot 85. While the Applicant is now entitled to the separate lot exemption, he remains bound to either the 1937 (because the lot was created after 1937) or current day set-back requirements. As proposed, the proposed building cannot comply with either the 60 foot setback required in 1937 or the current zoning bylaw setback requirements. The exceptions included within the 1937 bylaw (which would allow for a reduction in setback to meet the setbacks of buildings on both sides of the lot) don't help the Applicant. While he is entitled to the separate lot exemption, he would have to design the house to comply with either the 1937 setback requirements or today's set back requirements.

Mr. Hartwell then motioned that the board uphold the decision of the Building Commissioner and the

Town Counsel. Ms. Cote seconded the motion, all in favor, motion passed unanimously.

**5 Riverview – Special Permit to Allow Reconstruction of Nonconforming Dwelling – Christopher Deao – Permit #1069**

Ms. Cote read the letter from Greg Bernard into the record in which he asked for a continuance until the next meeting on April 25<sup>th</sup>, 2019.

Mr. Hartwell made the motion to continue and Ms. Cote seconded. All in favor, motion carried unanimously.

**New or Other Business**

Ms. O’Leary explained the new online process for submitting ZBA applications as of April 1<sup>st</sup>. Mr. Nazzaro asked about the logistics of the process and Ms. O’Leary said that it’s a work in progress but so far it’s a fairly simple process for applying online but there are still some bugs to be worked out. She will be evaluating the process over the next month or two and making changes as needed.

**Adjournment:**

The board adjourned the meeting at **8:20pm**.

Minutes respectfully submitted by Lisa Brown.

Minutes accepted at the April 25, 2019 meeting of the board.