



TOWN OF MIDDLETON

BOARD OF APPEALS

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MEETING MINUTES

April 25, 2019

Fuller Meadow School @7:00 pm

Members in Attendance: Richard Nazzaro, Ann Cote, Jim Fox, Craig Hartwell, Carolyn MacPherson, Anne Leblanc-Snyder, Nick Yebba

Absent:

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 March 28th meeting. Ms. Cote motioned, Mr. Fox seconded. All in favor, minutes were unanimously accepted.

Continued Public Hearings

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

Mr. Nazzaro asked for a motion to continue this application until the May 23rd, 2019 meeting.

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

59 South Main Street – Use Variance to allow 66 Townhouse Units for ages 55+ in the R-1A Zone – Fairway Estates LLC – Permit #1074

Ms. Cote read the letter from Attorney Jill Mann requesting a continuance to the May 23rd meeting.

Mr. Nazzaro asked for a motion to continue. Ms. Cote made the motion and Mr. Fox seconded. All in favor, motion carried unanimously.

11 Highland Road – Special Permit to Reconstruct a Non-Conforming Dwelling – John P. Merriam – Permit #1071

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

Mr. Greg Bernard spoke on behalf of the applicant, John Merriam. The applicant is proposing to demolish the existing nonconforming dwelling located at 11 Highland Road and replace it with a new dwelling on a new footprint and with a greater volume. Mr. Bernard stated that the new home will be less non-conforming than the current home.

Mr. Nazzaro asked if there was anyone to speak in favor of or in opposition to the application. As no one spoke up, Mr. Nazzaro asked for a motion to make the necessary findings. Ms. McPherson motioned that the reconstruction shall not be substantially more detrimental than the existing non-conforming structure to the neighborhood. Mr. Yebba seconded, all in favor, motion carried unanimously.

Mr. Nazzaro then asked for a motion to accept the special permit based on the findings. Ms. MacPherson motioned, and Mr. Fox seconded. All in favor, motion carried unanimously.

2 Birch Road –Special Permits to Demolish and Reconstruct a Non-Conforming Structure and to allow a Contracting Business Use – Two Birch Place LLC – Permit #1073

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

Ms. Cote also read the following comments from the ICDRC, Planning Board and the Conservation Commission into the record:

Conservation Commission:

The Commission is concerned about storage of materials in such close proximity to the adjacent wetlands.

The Commission would prefer to see the storage area be paved. Previous pavers will allow leaking fluids to infiltrate into the ground.

Any equipment stored in the storage area should be in good repair (no leaks). A spill kit should be maintained on site in the event of a fuel/oil/fluids spill. No storage of gasoline, oil, or other fluids should be permitted in the storage area.

Planning Board: Voted 5-0 in favor of a positive recommendation of the project.

ICDRC: Commented that the building and lot are a complete disaster. After a lot of discussion, the board voted for the site plan with the following stipulation: the building inspector will not give an occupancy permit to the new building until the entire lot is cleaned up and the only outside storage in the future is the 1800 sq.ft. storage area on the site plan.

Attorney Jill Mann spoke on behalf of the applicants who are seeking site plan modification and a special permit to rebuild a nonconforming portion of the building and a special permit for a contract or landscaping business and equipment storage. Land is located in the M-1 (Light Industry) zoning district.

Attorney Mann stated that the building is a legally existing, non-conforming building about which the owners met with Mr. Fitzpatrick, Building Commissioner, and Lt. Dan Kessel, Fire Prevention, to discuss what repairs need to be made to bring the building up to code. A sprinkler installer was also consulted. The building is in bad condition, and the proposal calls for a rebuild of a portion of the 186,000 sq.ft. building. The building uses Bixby road as a means of access, and they are planning to clean up the pavement and put in a stormwater management system.

The non-conforming structure will be less non-conforming because the addition will not be built in the same footprint so the encroachment will not increase. Attorney Mann stated that adding this new portion of the building will bring in more revenue to the town because the property tax will go up as the new layout is improved, the owners are modernizing the building and increasing parking by decreasing the building size.

Mr. Nazzaro asked if there was anyone to speak in favor of or in opposition to the application. Mr. Fitzpatrick mentioned that the new owners have taken full responsibility for the building and are making sure that the tenants are complying and doing their due diligence. No permits have been issued yet, and none will be issued until the owners comply with the requests of the Fire Department and Building Department regarding the fire alarm, sprinklers and the unsafe structure.

Ms. O'Leary asked if the lot is being repaved, why would they use pervious pavers in the storage area? The Conservation Commission would prefer that asphalt be used in the storage area in case of leaking fluids and the owner, Matt Dillon, stated that he would be happy to comply with any requests.

Ms. MacPherson made a motion to issue the following findings:

1. The Building and all improvements to the property are legally existing but non-conforming pursuant to the Bylaw and M.G.L. c. 40A, §§6 and 7.
2. As shown on the Site Plans, the changes being proposed by the Petitioner do not increase any nonconformities related to the dimensional and density requirements applicable in the M-1 District.
3. Contractors offices and indoor and outdoor storage are permitted by special permit and are subject to site plan approval.
4. As demonstrated by the Evidence, Petitioner complied with the submittal and approval requirements of §9.4 and §9.5.5 the Bylaw.
5. It is in the best interests of the Town and neighboring property owners that the Petitioner undertake to improve the Property and to complete the demolition to the Demolished Areas and the reconstruction of the Addition.
6. As shown on the Site Plans, the improvements to the layout of the access ways and parking areas ensure the safe flow of vehicular and pedestrian traffic within the Property and for traffic entering and exiting the Property.
7. There are adequate parking and loading areas to accommodate the uses of the Building and Addition.
8. The Site Plans and Renderings incorporate all required site amenities, including the landscape design, adequate lighting, necessary and essential utilities, signage, screening, surface and subsurface drainage, and waste disposal.
9. The Addition and placement Outdoor Storage Area, as shown on the Site Plans and Architectural Plans, are consonant with the neighborhood character.

10. The construction of the Addition and Outdoor Storage Area will not negatively impact the natural environment.

11. The Town will receive a fiscal benefit from the additional property tax revenue generated by the Addition as well as the economic benefit of bringing new businesses to Town and increasing the number of jobs available within the Town.

Mr. Yebba seconded the motion, all in favor, motion carried unanimously.

Ms. MacPherson then motioned to approve the Special Permit to reconstruct the non-conforming structure based on the findings. Mr. Yebba seconded, all in favor, motion carried unanimously.

Ms. MacPherson motioned to grant the Special Permit for the offices and outdoor storage area based on the findings. Mr. Yebba seconded the motion, all in favor, motion carried unanimously.

Ms. MacPherson motioned for site plan approval based on the findings. Mr. Yebba seconded, all in favor, motion carried unanimously.

221 South Main Street – Modifications to special Permit and Site Plan and new Special Permit to allow a new building and related uses – 7 River Street LLC – Permit #1072

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

Ms. Cote also read the following comments from the ICDRC and Planning Board into the record.

Planning Board: Voted 5-0 in favor of a positive recommendation of the project.

ICDRC: The Committee members voted to approve the plans without change. Agreed that the new building design will be consistent with the new design of the front building and that there will be an even flow of traffic around both buildings. Landscape and lighting proposals consistent with current standards.

Attorney Jill Mann is representing the applicant, Mr. Warren Kelly, who is applying for a modification of the 2017 site plan approval to reconfigure the parking layout and add a new building and 39 additional parking to the rear of the new plaza just built. A special permit is necessary for the proposed “contracting/landscaping business and equipment storage use.” A request to modify the 2017 special permit approval for the boat sales with accessory storage of boats use is also before the board.

Mr. Nazzaro asked if there was anyone to speak in favor of or in opposition to the proposal. There was no one to speak up in opposition, however the owner of Sol Bean, Danielle Penneton-Zenga spoke up about the additional parking. She mentioned that it would be advantageous to have more parking so that employees could park there and free up the spaces for their customers.

Mr. Yebba brought up his concern about the traffic in the parking lot, stating that getting in and out of there is already a problem and having an additional building at the back of the lot could cause even more congestion, especially if people are moving in and out with their boats.

Mr. Nazzaro brought up the issue with the right of way and the mutual agreement back in 2017 that Mr. Kelly had with the Richardsons. At this point, in Mr. Nazzaro’s opinion, it doesn’t seem that Mr. Kelly is adhering to the vote of the board requesting him to rip up the parking spaces on the easement, so that no one will continue to park there. Mr. Kelly stated he did rip up the spaces and added gravel, which does not solve the problem of people parking there. It was suggested that Mr. Kelly add grass to that spot as was proposed on the original site plan. Attorney Mann stated that she understands that more landscaping needs

to be done and the easement needs to be fixed and her client will put up a bituminous curb to prohibit parking in the easement.

Ms. MacPherson brought up her concern that the gravel area behind Sol Bean is being used for parking as well, and people are crossing over the drive-through lane from there which is dangerous. Mr. Yebba stated that since there is not enough parking behind the building that people are starting to park in area's that are not designated for parking and it is becoming a real problem. Mr. Hartwell suggested that maybe a traffic study should be done before any additional parking is added to the lot.

After much back and forth discussion regarding the easement issue, Ms. O'Leary suggested that it sounded like the board wanted to concentrate on the original project and amend the site plan to accommodate the board's suggestions to alleviate the parking problem. The board took a 5 minute recess to consult with each other.

After reconvening, Attorney Mann suggested that the board continue Mr. Kelly's petition to the next meeting so that they could share exactly what is going to be proposed. Mr. Nazzaro asked for a motion to continue until next meeting. Ms. MacPherson motioned and Ms. Leblanc-Snyder seconded. All in favor, motion carried unanimously.

Adjournment:

Mr. Yebba motioned to adjourn the meeting at **9:10pm.**

Minutes respectfully submitted by Lisa Brown.

Minutes accepted at the May 23, 2019 meeting of the board.