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TOWN OF MIDDLETON

BOARD OF APPEALS

FINDINGS AND DECISION – SPECIAL PERMITS and SITE PLAN APPROVAL

PERMIT NUMBER: 1177

PUBLIC HEARING DATES: March 28, 2024, April 25, 2024, May 23, 2024, June 27, 2024, July 11, 2024, July 25, 2024 and August 22, 2024

APPLICANT/PETITIONER: Villebridge Acquisitions LLC (the “Applicant”)

PROPERTY: A portion of 49 South Main Street (the “Property” or “Site” or “Lot 3”)

OWNER / DEED REFERENCE: 49 South Main St., Middleton, MA – Book 10741, Page 196

ZONING DISTRICT: B – Business Zoning District

RELIEF GRANTED: Pursuant to the Middleton Zoning Bylaws (Chapter 235), amended and restated by Town Meeting on May 12, 2008 with amendments adopted by Town Meeting and approved by the Attorney General through the date hereof (the “Zoning Bylaw”), the Board granted the following relief:

- (1) Site plan approval under Section 9.5.2 to authorize new commercial buildings in a Business District;
- (2) Special permit under Sections 9.4, 3.1.2 and C.14 (Table of Use Regulations) to allow for a restaurant with entertainment;
- (3) Special permit under Sections 9.4, 5.2.7 and subsection 5.2.11.1.e to allow ground signs in excess of 15 feet above ground level;
- (4) Special permit under Sections 9.4, 5.2.7 and subsection 5.2.11.2.e. to allow multi-occupant building wall signs for each occupant/tenant;

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(5) Special permit under Sections 9.4, 5.2.7 and subsection 5.2.11.2.f. to allow for wall signs on more than one side of a building since the Property is a corner lot;

(6) Special permit under Sections 9.4 and 5.3.9. to authorize a reduction in the 10-foot landscaping buffer requirement of Section 5.3.2 to enhance circulation for commercial patrons and to allow for a sidewalk linking the Project to the adjacent residential project if a sidewalk is not otherwise allowed within this landscaping buffer;

(7) Special permit under Sections 9.4 and 3.3.2 to allow for a change or extension of a pre-existing nonconforming use related to Section 4.1.2.3 Open Area for Business Districts which would reduce the nonconformity by increasing the percentage of Open Area when compared to existing conditions; and

(8) Special permit under Sections 9.4 and 3.3.2 to allow for a change of a pre-existing nonconforming use related to the “green and open area” requirement under Section 4.1.2.6 Front Yard for Business Districts, which would reduce the nonconformity by increasing the amount of “green and open area” when compared to existing conditions.

I. PROCEDURAL HISTORY

1. By virtue of its authority under Chapter 40A of the General Laws of the Commonwealth of Massachusetts and the Bylaws, the Board of Appeals of the Town of Middleton (the “Board”) held a public hearing in the Media Center at the Fuller Meadow School at 143 South Main Street, Middleton concerning the above-referenced Application, incorporated herein by reference, and filed by the Applicant.
2. Notice of said hearing concerning the Application and “Project” (as defined below) was duly advertised in a newspaper having general circulation in the Town of Middleton, posted in a conspicuous place in the Town Office Building (Memorial Hall), and mailed, postage prepaid, to all interested parties as certified by the Board of Assessors in conformance with Sections 9 and 11 of MGL Chapter 40A.
3. The Board timely opened the hearing on March 28, 2024, and was continued to the following dates: April 25, 2024, May 23, 2024, June 27, 2024, July 11, 2024, July 25, 2024, and August 22, 2024, on which date the hearing was closed.

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4. On July 26, 2024, the Applicant requested withdrawal of an application for a special permit under Sections 9.4, 3.1.2 and C.15 (Table of Use Regulations) to allow for a restaurant drive-through and/or F.1 (Table of Use Regulations) to allow for a Drive-through or drive-up window or facility. That request for withdrawal was approved, without prejudice as to reapplication, on August 22, 2024.
5. The matter came to be heard before the following Board Members, including Chairperson Richard Benevento, Vice Chairperson; Carolyn Damato-MacPherson; Clerk Ann Cote, Clerk; William Renault, Jr., Member, and Craig Hartwell, Member. During the course of the hearing, Anne LeBlanc-Snyder, Alternate, resigned her position, and Thom McMullen, Alternate, was appointed to the Board. Both Ms. LeBlanc-Snyder and Mr. McMullen participated in several of the hearings but did not vote on this matter.
6. The Board utilized the services of Town Counsel Jason Talerman of Mead, Talerman & Costa, LLC, along with the services of Jared M. Duval, P.E. of TEC Inc., which served as peer review engineer for the Board. Peer review was thorough and cooperative.
7. The Board notified all applicable local boards and commissions of the filing of the Application by sending a copy thereof to such local boards and commissions for their recommendations, all of which have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its Decision.
8. The Applicant was represented by its principal, Lars Unhjem, and was primarily assisted by Atty. John Smolak of Smolak & Vaughan LLP (legal), Joseph Peznola, P.E. of Hancock Associates, Inc. (civil engineering), Jeffrey Dirk, P.E. of Vanasse & Associates, Inc. (traffic), Ed Bradford of The Architectural Team, Inc. (architect), Thom Miner of Hawk Design (landscape architect), and other team members of the Applicant.
9. The Board notified all applicable local boards and commissions of the filing of the Application by sending a copy thereof to such local boards and commissions for their recommendations, all of which have been made a part of the record of these proceedings and have been taken into consideration by the Board in rendering its Decision.
10. During the course of the public hearing, Town staff, boards and commissions; and local residents submitted oral and written testimony with respect to the Application. The Board considered the technical review of an independent site peer reviewer, in regard to matters of public health and safety, environmental health and safety, traffic, site and stormwater management design and plans, and other issues related to the Project.
11. The Applicant provided various materials, reports and revised plans throughout the public hearing on the Application.
12. Abutters and other interested members of the public attended the public hearings and offered commentary and correspondence. These individuals asked a variety of questions and offered commentary and testimony, which the Board and the Applicant's representatives responded to.

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13. While this matter was being heard by the Board, the Applicant was also engaged in discussions and negotiations with the Middleton Select Board on matters pertaining to traffic improvements in the subject area, with a certain Memorandum of Understanding, dated June 18, 2024 ("MOU") ultimately being signed by and between the Select Board and the Applicant.
14. The hearing on the applications described hereunder was held contemporaneously with the Applicant's application for a comprehensive permit for a mixed income residential project on adjacent property known as Lot 2 on the below described Plans. The two projects have some overlapping infrastructure, and the conditions hereunder are generally consistent with the conditions of said Comprehensive Permit.

II. PROJECT, PROPERTY DESCRIPTION, AND EVIDENCE

A. PROJECT AND PROPERTY DESCRIPTION

1. The real property upon which the Project is proposed consists of a 2.86±-acre portion of Land currently known and numbered as 49 South Main Street and is a portion of the parcel depicted on the Middleton Assessors Maps as Map 25, Lot 65, and is shown as Lot 3 on the below-described Plans (the "Property" or "Site" or "Lot 3").
2. The Project includes the redevelopment of the Property into a new neighborhood convenience commercial center to be known as Middleton Corner, and which consists of a total of 18,796 square feet of neighborhood convenience commercial space contained within two multi-tenanted buildings, along with parking, landscaping and associated improvements as shown on the Plans. The Project represents an approximate 28% reduction in building square footage when compared to the square footage of the former Angelica's restaurant that currently exists.
3. The Property is located in the Town's Business (B) Zoning District and is a portion of the Property on which is currently located a restaurant and function hall known as Angelica's. The Property contains no notable natural vegetation and is typified by paved or formerly paved areas. The Property is relatively flat.
4. The Project Site is not located within the Town's Water Resource Protection Overlay District, Zone II for a public water supply, NHESP estimated habitats of rare wildlife or rare species, or a FEMA mapped flood zone. The Project is not located within wetlands or wetland resource areas as defined under federal, state and local requirements.
5. Access to the Site is proposed via South Main Street, a two-way street, and emergency access to and from 10 Boston Street (Lot 2), which has access via Boston Street, via a locked emergency access gate. Both Boston Street and South Main Street are busy, heavily used commuter roadways.

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6. The design of the proposed buildings has been modified several times by the Applicant based upon input from the Board and the public. The Applicant was very cooperative in this manner and the resulting modifications improved the function and appearance of the Project.
7. The Applicant proposes a total of one hundred fifteen (115) surface parking spaces.
8. The Project is proposed to be serviced by a municipal water system that is managed by the Town of Danvers pursuant to an intermunicipal agreement with the Town of Middleton, an on-site Title V wastewater system, and an underground stormwater management system.
9. All utilities are to be below-ground, provided however, pedestals, light fixtures, and electrical transformers will be above ground.

B. EVIDENCE

The following relevant materials were submitted to the Board along with the Application and are incorporated herein by reference:

1. Application and Memorandum dated February 27, 2024.
2. Project Plans, Elevations and Renderings: The Project is described and shown on: civil plans entitled “Permit Site Plan for Middleton Corner, Middleton, MA, Commercial Retail Development,” as most recently revised on July 16, 2024, prepared by Hancock Associates; architectural plans entitled “Middleton Corner, 49 South Main Street, Middleton, MA,” as most recently revised on July 16, 2024, prepared by The Architectural Team, Inc.; landscape architecture plans and signage renderings entitled “Middleton Corner, 18 Boston Street & [sic] 49 South Main Street, Middleton, Massachusetts, Landscape Permit Submission Set,” as most recently revised on July 9, 2024, prepared by Hawk Design, Inc.; and, an existing conditions survey entitled “Existing Conditions Plan of Land in Middleton, MA,” as most recently revised on February 22, 2024, prepared by Hancock Associates, Inc. These plans and other ancillary plans submitted to the Board are hereinafter collectively referred to as the “Plans.” As of the closure of the hearing, the Plans include a design for drive-through facilities, the application for the use of which for drive-through purposes by special permit has been withdrawn as noted above.
3. A Traffic Study entitled “Transportation Impact Assessment, Middleton Corner” as most recently revised February 2024, prepared by Vanasse & Associates, Inc.
4. A Ground Sign Plan entitled “Exhibit D – Ground Sign” as most recently revised on February 27, 2024, prepared by the Applicant.
5. The Stormwater Management Report entitled “Stormwater Report in Support of Special Permit Filing for Middleton Corner” as most recently revised on June 14, 2024, prepared by Hancock Associates, Inc.

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6. The Tenant Waste O&M Manual entitled “Middleton Corner Tenant Waste Operations & Maintenance (O&M) Manual” as most recently revised April 2024, prepared by the Applicant.
7. A Summary of Requested Special Permits entitled “Summary of Requested Special Permits” as most recently revised on May 23, 2024, prepared by the Applicant.
8. Town Board Recommendations and Correspondence:
 - a. Letter from the Industrial Commercial Design Review Committee dated March 18, 2024;
 - b. Planning Board recommendation dated April 10, 2024;
 - c. Correspondence from the Board’s peer review engineer, TEC, with a final cumulative civil engineering report dated June 26, 2024, and a final cumulative traffic engineering report dated May 14, 2024.

III. FINDINGS AND DECISIONS

At the conclusion of the public hearing, and pursuant to its authority under the Zoning Bylaw, and: (i) having reviewed all the plans and reports filed by the Petitioner and its representatives; (ii) considered the correspondence from various Departments, Boards and Committees within the Town of Middleton that have reviewed the Project; and, (iii) considered the reports and testimony from the public and comments from Board members, the Zoning Board of Appeals determined that the Application complies with all applicable provisions of the Zoning Bylaw by making the following findings.

A. SITE PLAN APPROVAL

Based upon all of the Evidence provided, and the testimony presented during the public hearing, the Board concluded that the layout of the Property, as shown on the Plans, ensures the most advantageous use of the Property, protects the legitimate interests of adjoining property owners, and provides benefits to the Town and neighborhood which outweigh any adverse effects. In particular, the Board makes the following findings (the "SPA Findings"):

1. Submittal Requirements: The Applicant has satisfied the submittal requirements under Section 9.5.5. of the Zoning Bylaws.
2. Approval Requirements: Pursuant to Section 9.5.11 of the Zoning Bylaws, the Evidence provided demonstrates that Site Plans comply with each of the following objectives and the performance standards set forth in Section 5.4 of the Zoning Bylaws as follows:

- a. Compliance with all density and dimensional requirements applicable to developments and structures within the Business District, as well as the requirements for parking and loading spaces, and all other provisions of the Zoning Bylaws;
- b. The proposed Project provides for improved access with the sole direct access entering into and exiting from South Main Street with adequate sight clearances and distances for both vehicular and pedestrian access which ensures convenience and safety of vehicular and pedestrian movement on the site and for the location of driveway openings in relation to street traffic;
- c. The layout and design of the traveled ways and driveways within the Property have been peer reviewed and found to be acceptable as depicted on the Plans;
- d. The Project provides more than sufficient parking for the proposed uses as a total of 115 parking spaces are provided where 102 parking spaces are required;
- e. The arrangement and appearance of proposed buildings are attractive and been designed to blend into the neighborhood architectural design, and freestanding and attached signs, screening and landscaping design meet the objectives of the Zoning Bylaw;
- f. The Project design as depicted on the Plans has been peer reviewed and provides for adequate lighting, proper surface and subsurface drainage, and will incorporate a compliant Title 5 disposal system.

APPROVAL OF THE SITE PLANS: Based upon the foregoing Site Plan Approval Findings and the Board's authority to grant such relief under Section 9.5 of the Zoning Bylaws, Chairperson Benevento called for a motion. Member Hartwell made a motion that the Board grant Site Plan Approval, subject to the conditions described in Section IV below. Seconded by Member Renault. Chairperson Benevento asked for any further discussion, hearing none he called for a vote. The members of the Board voted unanimously in favor of the motion.

B. SPECIAL PERMIT FOR USE

Based upon all of the Evidence provided, and the testimony presented during the public hearing, the Board concluded that the adverse effects of allowing a restaurant use with entertainment (Sections 9.4, 3.1.2 and C.14 (Table of Use Regulations)) of the Zoning Bylaw do not outweigh their beneficial impacts to the Town and neighborhood as provided under Section 9.4.2. of the Zoning Bylaw, as further described below.

The Board makes the following findings (the "Use SP Findings"), to be considered along with the SPA Findings:

1. Community needs which are served by the proposal. It is beneficial to encourage the redevelopment of vacant, underutilized properties and convert them to viable, productive and attractive businesses. The Project, including restaurant facilities, is designed to

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attract and maintain desirable tenants designed to both return a restaurant use and other food uses to the Property, and to introduce a variety of smaller, complementary commercial and retail uses.

2. Traffic and pedestrian flow and safety, including parking and loading. The redevelopment of the Property including the Special Permit Uses, creates no public safety concerns; and ensures convenient and safe ingress and egress for both pedestrian and vehicular traffic, including emergency vehicles without adding material peak trips to the Project, all of which has been confirmed by the Applicant's and Board's traffic peer review professionals. Of significant benefit is the Applicant's proposed dedication, at no cost to the Town, of future access easements both along Boston Street and South Main Street which presents a unique and vital opportunity to enable the Town to facilitate implementation of both the "Critical Infrastructure Improvements" and the "Long-Term Corridor Improvement Project" as identified in the "Corridor Improvement Study" described in the MOU, which would improve a longstanding traffic bottleneck area within Middleton Center corridor.
3. Adequacy of utilities and other public services. The Property layout and all proposed improvements are more than sufficient to meet the needs of the Special Permit Uses as well as other uses of the Project, the Town and all abutters.
4. Neighborhood character. The Special Permit Uses do not negatively impact the neighborhood character as safe and convenient access is provided throughout the Property, and while there are similar uses within the South Main Street Corridor, the Special Permit Uses are designed to provide another walkable and drivable retail option to residents in the surrounding neighborhood.
5. Impacts on the natural environment. The Special Permit uses do not negatively impact the natural environment as the existing site is almost entirely paved or occupied with structures, and the Project will include landscaping, lighting and screening enhancements designed to create an attractive retail option for the Town which complements the surrounding neighborhood.
6. Potential economic and fiscal impact. The redevelopment of the Property and the Special Permit Uses will result in the fiscal benefit of converting a vacant and dilapidated structure into a first-class retail complex that will generate real estate sales and personal property tax revenue for the Town. In addition to the direct fiscal impact, the redevelopment with Special Permit Uses will add to the local economy by bringing new businesses to Middleton and increasing job opportunities within Middleton.

APPROVAL OF SPECIAL PERMITS FOR USE: Based upon the foregoing, the Board finds that the proposed Project is in harmony with the general purpose and intent of the Zoning Bylaw, as required under Section 9 of M.G.L. c. 40A, and that the Petitioner has demonstrated compliance with the Use Special Permit criteria under Section 9.4 noted above Chairperson Benevento called for a motion. Member Hartwell made a motion that the Board

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approve the foregoing special permit under Section 3.1.2 and the Table of Use Regulations to allow the C. Commercial 14 Restaurant with entertainment – for the purpose of allowing a restaurant use with entertainment, subject to the conditions described in Section IV below.

C. SPECIAL PERMIT FOR SIGNS

Based upon all of the Evidence provided, and the testimony presented during the public hearing, the Board makes the following findings (the “Sign SP Findings”):

1. Submittal Requirements: The Applicant has satisfied the submittal requirements under Section 5.2.7. and 9.4 of the Zoning Bylaws.
2. The signs are in harmony with the general purposes of Section 5.2.
3. Approval Requirements: The Evidence provided demonstrates that Special Permits relief pursuant to Section 5.2.7 and 9.4 of the Zoning Bylaws is warranted as the signs comply with each of the following special permit objectives and the performance standards set forth in the Zoning Bylaws as follows:
 - a. **For ground signs in excess of 15 feet above ground level (Section 5.2.11.1.e.).** The Applicant proposes a ground sign that is 18.75 feet tall to be located at the northeast corner of the site, as depicted on the Plans.
 - b. **To allow for multi-occupant building wall signs for each occupant/tenant (Section 5.2.11.2.e).** As a multi-tenant Property, the Project will require adequate signage for each tenant in order to provide efficient and effective messaging. To this end, a total of one wall sign for each “inline” tenant and three wall signs for each “end-unit” tenant, are as depicted in the Plans. As it is premature to identify specific tenants, the dimensions of each of the signs are shown, with the content intended as placeholders.
 - c. **To allow for wall signs on more than one side of a building since the Property is a corner lot (Section 5.2.11.2.f.)** The provision of clear, identifying signage is a critical factor in attracting and securing higher end commercial tenants to a space located at the corner of the intersection of Boston Street and South Main Street. To this end, the proposed signage will provide clear messaging and blend in with the architectural style of the buildings in an attractive manner, consistent with the purposes of the Zoning Bylaw.

The signs noted above satisfy all of the following criteria pursuant to Section 5.2.7, and such signs are in harmony with, and do not derogate from, the general purposes of this regulation as described above for the following reasons as provided under Section 5.2.7.2. of the Zoning Bylaw:

1. Appropriate Location. The Property is an appropriate location for the proposed signs for the reasons described, and the unique conditions as a corner lot are different from other

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similarly situated retail/commercial properties located in the district and require special relief.

2. No Adverse Effects on the Neighborhood. The signs will not adversely affect or be incongruous with the neighborhood or surrounding zoning district in which it is to be located, given that the design of the signs complement the architecture on the Property and surrounding neighborhood.
3. No Safety Hazard. The locations of the signs are in areas that will not block sight distance or create a visual hazard, and as a result, there will be no nuisance or serious hazard to vehicular or pedestrian traffic or safety as a result of the signs.
4. Compliance with Sign Criteria. The signs satisfy all of the applicable dimensional and other criteria described in Section 5.2 unless otherwise waived or approved as provided herein.

In addition to the special permit criteria described immediately above, and the special permit criteria described in Section 9.4 herein, the following additional special permit criteria are met for the following signs:

1. **Additional Findings Concerning Multi-Occupant Buildings (Section 5.2.11.2.e).** In addition to the findings under Sections 9.4 and 5.2.7, the Applicant demonstrates the following criteria have been satisfied:
 - a. Combined Sign Area. The combined sign area will not exceed the sign area as determined under Subsection 2.a of Section 5.2.11. See Plans.
 - b. No Combination of Wall and Roof Signs. The multi-occupant buildings will only have wall signs and will not have a combination of wall and roof signs.
 - c. Uniformity of Design. The wall signs will be consistent in size, color, and character which provide for a uniform design.
2. **Additional Findings Concerning Wall Signs on More Than One Side of Buildings (Section 5.2.11.2.f.).** In addition to the findings under Sections 9.4 and 5.2.7 described herein, the following criteria have been satisfied:
 - a. Corner Lot. The buildings are located on a corner lot with legal frontage on both sides for the Business (B) District.
 - b. Signage Orientation. The signs are to be placed on the side of the building with legal frontage or that faces its parking lot; and,
 - c. Signage Area. The combined sign area of all such signs shall not exceed sign area as determined under Subsection 2.a above.

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APPROVAL OF THE SIGN SPECIAL PERMITS: Based upon the foregoing Special Permit Findings in addition to the General SP Findings below, and the Board's authority to grant such relief under Sections 5.2 and 9.4 of the Zoning Bylaws, Chairperson Benevento called for a motion. Member Hartwell made a motion that the Board approve, subject to the conditions stated herein, the foregoing special permits under Sections 5.2.7 and 9.4 of the Zoning Bylaw to allow the following:

1. To allow a ground sign which is 18.75 feet in height where a sign height of 15 above ground level is allowed under Section 5.2.11.1.e., with the ground sign to be located at the northeast corner of the site, as depicted on the Plans;
2. To allow for multi-occupant building wall signs for each occupant/tenant as allowed under Section 5.2.11.2.e, for a total of one wall sign for each “inline” tenant and three wall signs for each “end-unit” tenant, are as depicted in the Plans; and,
3. To allow for wall signs on more than one side of a building since the Property is a corner lot (Section 5.2.11.2.f.), to be located at the corner of the intersection of Boston Street and South Main Street as shown on the Plans,

Member Renault seconded the motion. Chairperson Benevento asked for any further discussion, hearing none he called for a vote. The voting Members of the Board voted unanimously in favor of the motion.

D. SPECIAL PERMIT FINDINGS FOR LANDSCAPE BUFFER

Based upon all of the Evidence provided, and the testimony presented during the public hearing, the Board makes the following findings (the “Landscape Buffer Special Permit Findings”):

1. The Applicant has requested approval to incorporate a sidewalk within the 10-foot landscape buffer required under Section 5.3.2, which may be reduced by the Board by special permit pursuant to Section 5.3.9. upon a finding that such reduction will not result in substantial detriment.
2. While Section 5.3.2 provides that “planted buffer areas along property lines with residential districts or uses shall be at least 10 feet in depth,” and adds that “no part of any building or structure or paved space intended for or used as a parking area may be located within the buffer area,” the proposed location of the sidewalk within the Project landscape buffer area is located along the northerly boundary of the Property between the Property’s parking lot (on Lot 3) and the boundary to the abutting multifamily residential lot (Lot 2), as depicted on Sheet C-3 of the Plans.
3. Since the purpose of locating the sidewalk in this area is to provide enhanced circulation for commercial patrons and improved pedestrian connections with the abutting multifamily residential project currently before the Board, the Board finds that the

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location of the pedestrian sidewalk connection will not result in substantial detriment, within the meaning of Section 5.3.9., and will in fact improve safety and pedestrian connections throughout the site.

APPROVAL OF LANDSCAPE BUFFER SPECIAL PERMIT: Based upon the foregoing Special Permit Findings in addition to the General SP Findings below, and the Board's authority to grant such relief under Sections 5.2 and 9.4 of the Zoning Bylaws, Chairperson Benevento called for a motion. Member Hartwell made a motion to approve the Landscape Buffer Special Permits, subject to the conditions described in Section IV below. Member Renault seconded the motion. Chairperson Benevento asked for any further discussion, hearing none he called for a vote. The voting Members of the Board voted unanimously in favor of the motion.

E. SPECIAL PERMIT FINDINGS FOR A CHANGE OR EXTENSION OF PRE-EXISTING NONCONFORMING USE

Based upon all of the Evidence provided, and the testimony presented during the public hearing, the Board makes the following findings (the "Nonconforming Use Special Permit Findings"):

1. In accordance with Section 3.3.2. of the Zoning Bylaw, the Board may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals: 1. Change or substantial extension of the use; or, 2. Change from one nonconforming use to another, less detrimental, nonconforming use.
2. The construction of the Project and the proposed site improvements will not create any new nonconformities. The Town and the Applicant have entered into an MOU to transfer certain easement rights along the Property's frontage on Boston Street and South Main Street to the Town (the Commercial Project Easement) in connection with the Town's desire to improve the existing intersection at the corner of Boston Street and South Main Street.
3. The transfer of the Commercial Project Easement represents a width along the Boston Street frontage of approximately 12 feet, and a width along the South Main Street frontage of approximately 24 feet, to allow for future widening to accommodate Town traffic improvements. See Plans.
4. The Project as proposed, without the transfer of the Commercial Project Easement, would comply with Zoning Bylaw requirements. But with the transfer of the Commercial Project Easement, there will be a need for the Board to grant additional Zoning Bylaw relief for the Project to accommodate the Town's future efforts to improve longstanding traffic issues associated with the Boston Street /South Main Street intersection in the form of a request for special permits to change a pre-existing non-

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conforming use or condition with respect to both Open Area for Business Districts (Section 4.1.2.3) and “green and open” area within the Front Yard (Section 4.1.2.6).

5. Section 4.1.2.3 of the Zoning Bylaw (Open Area for Business Districts) requires that at least 25% of “the lot area shall be free of structures, paving, storage areas or other elements which preclude vegetation” (“Open Area”). The pre-existing non-conforming conditions at the Property indicate that only 12.3±% of the lot area meets this Open Area requirement that “the lot area shall be free of structures, paving, storage areas or other elements which preclude vegetation.” If the proposed Project did not include the transfer of the Commercial Project Easement, the lot Open Area would be 25.3±%, which complies with the Zoning Bylaw. To assist the Town in its efforts to correct longstanding traffic issues associated with the Boston Street/South Main Street intersection, the transfer the Commercial Property Easement to the Town would result the reduction of Open Area to 18.6±%, which is an improvement over (and would reduce the nonconformity of the existing condition of 12.3±% Open Area).
6. This change to a pre-existing nonconforming use would not be substantially more detrimental than the existing nonconforming use to the neighborhood within the meaning of 3.3.2(1) since the resulting change will increase Open Area from existing conditions and enable substantially enhanced traffic flow within the area when the Town implements the traffic improvements within the Commercial Property Easement and beyond.
7. Similarly, Section 4.1.2.6. (Front yard; Business District) provides that “front yards shall be green and open, be suitably landscaped, be unbuilt upon, be unpaved and not parked on. Adequate entrances and exits shall be allowed in this front yard” (“Green and Open Area”).
8. The existing condition at the Property along South Main Street has a variable depth of as little as 4 feet of Green and Open Area, and the existing condition along Boston Street has a variable depth of as little as 0 feet of Green and Open Area. If the proposed Project did not include the transfer of the Commercial Project Easement, the lot Green and Open Area would be 30 feet in depth, which complies with the Zoning Bylaw.
9. To assist the Town in its efforts to correct longstanding traffic issues associated with the Boston Street / South Main Street intersection, however, the Applicant has offered to transfer the Commercial Property Easement to the Town pursuant to the terms of the MOU.
10. The result of the Commercial Property Easement transfer would reduce the Green and Open Area in the front yard to as little as 6 feet along South Main Street, and would reduce the Green and Open Area in the front yard to as little as 18 feet along Boston Street, which is below the 30-foot-deep Green and Open Area required under the Zoning Bylaw. But this change will still be an improvement over the existing condition as it would reduce the preexisting nonconforming use of the Green and Open Area from existing conditions of 4 feet to the proposed 6 feet along the South Main Street and from

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existing conditions of 0 feet to the proposed 18 feet along Boston Street under existing conditions.

11. The Board finds this change to a pre-existing nonconforming use would not be substantially more detrimental than the existing nonconforming use to the neighborhood within the meaning of 3.3.2(1) since the resulting change will increase the Green and Open Area on both streets, reduce the nonconformity, and enable substantially enhanced traffic flow within the area upon the Town's implementation of the traffic improvements within the Commercial Property Easement and beyond.

APPROVAL OF SPECIAL PERMIT FOR A CHANGE OR EXTENSION OF PRE-EXISTING NONCONFORMING USE: Based upon the foregoing Special Permit Findings in addition to the General SP Findings below, and the Board's authority to grant such relief under Section 3.3.2 of the Zoning Bylaws, Chairperson Benevento called for a motion. Member Hartwell made a motion that the Board approve the foregoing special permit under Section 3.3.2. of the Zoning Bylaw to allow for a change or extension of a preexisting nonconforming use with respect to the requirements of Section 4.1.2.3 (Open Area for Business Districts), and with respect to Section 4.1.2.3 ("green and open" area within the Front Yard), subject to the conditions described in Section IV below. Member Renault seconded the motion. Chairperson Benevento asked for any further discussion, hearing none he called for a vote. The voting Members of the Board voted unanimously in favor of the motion.

F. GENERAL SPECIAL PERMIT CRITERIA

Based upon all of the Evidence provided, and the testimony presented during the public hearing, the Board concluded that the adverse effects of the uses associated with the grant of all of the special permits identified above will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to the specific factors and related findings for each of the special permits described above as set forth in this Zoning Bylaw, the Board's determination included consideration of each of the following matters described below. In support of the Board's determination above, Member Hartwell made a motion that the Board make the following findings (the "General SP Findings"):

1. Community needs which are served by the proposal. It is beneficial to encourage the redevelopment of vacant, underutilized properties and convert them to viable, productive and attractive businesses. The Project design including signage, landscaping, enhanced Green and Open Areas particularly along the Property frontage is designed to attract and maintain strong tenants designed to introduce a variety of smaller, complementary commercial and retail uses with enhanced pedestrian connectivity.
2. Traffic and pedestrian flow and safety, including parking and loading. The redevelopment of the Property creates no public safety concerns and ensures convenient and safe access for both pedestrian and vehicular traffic, which has been confirmed by

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the Applicant's and Board's traffic peer review professionals. Of significant benefit is the Applicant's proposed dedication, at no cost to the Town, of future access easements both along Boston Street and South Main Street which presents a unique opportunity to enable the Town to facilitate implementation of both the "Critical Infrastructure Improvements" and the "Long-Term Corridor Improvement Project" as identified in the "Corridor Improvement Study" described in the MOU, which would improve a longstanding traffic bottleneck area within Middleton Center corridor. In addition, such traffic improvements will result in the increase of Green and Open Areas around the Property frontage area above existing conditions in addition to these traffic improvements. The use of a portion of the Landscape Buffer as a sidewalk area will further enhance pedestrian connectivity.

3. Adequacy of utilities and other public services. The Property layout and all proposed improvements are more than sufficient to meet the needs of the Project as well as the Town and all abutters.
4. Neighborhood character. The Project does not negatively impact the neighborhood character as safe and convenient access is provided throughout the Property. Attractive signage designed to aid communication, orientation, identify activities have been incorporated into the design, and previously paved areas will be converted to Green and Open Areas along the Property frontage where none currently exist. The Project has also been designed to provide enhanced walkability to residents in the surrounding neighborhood.
5. Impacts on the natural environment. The Project does not negatively impact the natural environment as the existing site is almost entirely paved or occupied with structures, and currently paved areas will be converted to Open Areas and Green Areas along the Property frontage. The Project will also include landscaping, signage, lighting and screening enhancements designed to create an attractive retail option for the Town which complements the surrounding neighborhood.
6. Potential economic and fiscal impact. The redevelopment of the Property will result in the fiscal benefit of converting a vacant and dilapidated structure into a first-class retail complex that will generate real estate sales and personal property tax revenue for the Town. In addition to the direct fiscal impact, the redevelopment with Special Permit Uses will add to the local economy by bringing new businesses to Middleton and increasing job opportunities within Middleton.

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APPROVAL OF GENERAL SPECIAL PERMIT CRITERIA: Based upon the foregoing, the Board finds that the proposed Project is in harmony with the general purpose and intent of the Zoning Bylaw, as required under Section 9 of M.G.L. c. 40A, and based upon the foregoing Special Permit Findings and the Board's authority to grant such relief under Section 9.4 of the Zoning Bylaws, Chairperson Benevento called for a motion. Member Hartwell made a motion to approve the Special Permits as described above, subject to the conditions described in Section IV below. Member Renault seconded the motion.

Chairperson Benevento asked for any further discussion, hearing none he called for a vote. The voting Members of the Board voted unanimously in favor of the motion.

IV. CONDITIONS

Pursuant to Chapter 40A and the Zoning Bylaw, the Board, after public hearings and findings of fact, upon motion by Member Hartwell, and seconded by Member Renault (voted 5 to 0) grants Site Plan Approval and Special Permits to the Applicant for the Project as described and conditioned herein:

1. Except as otherwise required by the conditions imposed by this Decision, the Project shall be developed, constructed and completed in substantial conformance with the Plans provided that it is acknowledged that no drive-through use shall be made in the proposed building unless subsequently approved by the Board as required under the Zoning Bylaw. It is understood that minor variations in design shall be permitted but any material variations, whether insubstantial or substantial, shall be submitted for the Board's review, as set forth herein.
2. The Project may have no more than twenty thousand (20,000) square feet of commercial space.
3. No building permits may be issued unless and until the Applicant provides the Board with evidence that the Application for a Mass DOT Access Permit has been filed with the Mass DOT.

A. PRE-CONSTRUCTION

4. The storm water management plan shall comply with applicable best management practices and/or any applicable Stormwater Management Guidelines promulgated by the DEP or the Commonwealth of Massachusetts.
5. The Construction Mitigation Plan ("CMP") shall address all aspects of construction mitigation, including, but not limited to: (i) any blasting; (ii) reasonable provisions that meet the prior approval of the Fire Department and Police Department for traffic flow, emergency vehicle ingress/egress and off-site traffic management; (iii) stockpiling of materials; (iv) trucking routes that meet the prior reasonable approval of the Police Department; (v) a concise construction mitigation and sequencing plan; and (vi) an erosion control plan. The CMP shall also include preconstruction, construction and post construction best management practices and which shall include, at a minimum, days of the week and hours for construction activities (including interior and exterior work and/or site preparation, drilling, blasting, etc.), Best Management Practices which address pre-development site preparation, construction control during development, and post-development and which shall, at a minimum, include provisions for infrastructure repair and cleaning (on and off-site as may be reasonably appropriate) as well as erosion and sediment controls, dust controls, noise, odor, emissions, vehicle idling, vibration,

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trash or debris, and/or any other condition which may constitute a nuisance by virtue of litter, vermin or bird hazards. The CMP shall attempt to minimize the area(s) left exposed at any given time to the extent reasonably possible. The terms of that CMP are incorporated herein as if restated in this Decision. To the extent applicable and as deemed reasonably appropriate by the Board's engineer, the Project Stormwater Pollution Prevention Plan (SWPPP) may be substituted for certain sections, and incorporated by reference into, the CMP. Provisions for water/fire suppression and safe, uninterrupted and convenient access to adjacent properties/homes shall be provided at all times. The CMP shall include a narrative of the construction sequencing for the Project, including provisions required by MassDOT.

6. The Applicant shall follow and effectuate all reasonable recommendations of the Fire Chief as to building layout and emergency vehicle access, which are incorporated into the Plans. The Project shall demonstrate adequate fire flow for fire protection purposes, as confirmed by the Fire Chief and DPW.
7. The Applicant shall perform a flow test in coordination with the Town's DPW and shall confirm with the Fire Department and DPW that, based upon the testing results, the flow rate is sufficient for the Project. This Decision is explicitly conditioned on the Applicant securing sufficient flow prior to construction.
8. The approval hereunder is contingent upon the Applicant obtaining approval from the Town of Danvers for a connection to the Danvers water supply. Except as to note Middleton's assent to such connection, nothing herein shall constitute an approval to the Danvers water supply.
9. To the extent that the Town may reasonably require any access or utility easement to any water lines or water infrastructure on the Property, the Applicant shall provide the same to the Town for review by its counsel and acceptance and, upon acceptance, such instruments shall be recorded by the Applicant with proof of same being provided to the Town immediately thereafter.
10. As outlined in the cumulative civil engineering report of TEC, dated June 26, 2024, and the cumulative traffic engineering report of TEC, dated May 14, 2024, as well as within other TEC correspondence coincident with the abutting 40B residential project, the Applicant and the Project shall be subject to the following conditions:
 - a. All necessary access easements will be established in a form reasonably acceptable to Town Counsel and recorded prior to receipt of occupancy permits.
 - b. All subsurface infiltration systems shall be adjusted accordingly following additional soil testing and determination of subsoil infiltration rates to confirm compliance with water quality pre-treatment and depth/volume requirements.
 - c. Any required easements relating to the storm water systems, access, and other utilities shall be provided and recorded prior to receipt of occupancy permits.

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- d. A copy of the MassDOT Access Permit application for connection to the South Main Street drainage network shall be provided to the Board prior to construction, and any changes to the proposed stormwater management system required by the MassDOT Access Permit process will be provided to the Board.
- e. The Applicant's engineer shall inspect and certify the installation of the impervious barrier of the detention system before any system stone is added to ensure the barrier is watertight.
- f. Any signs or landscaping to be installed within the sight triangle areas of the Project site driveways will be designed and maintained so as to not restrict lines of sight. In addition, snow accumulation within the sight triangle areas shall be removed where such accumulations would impede sight lines.

11. Traffic Conditions. The following conditions shall be implemented, based upon the scenarios described below, to mitigate traffic impacts.

Various obligations for traffic improvements are described in the MOU and 40B Comprehensive Permit. Nothing herein may be construed to abridge such obligations. There are varying scenarios under which certain traffic improvements shall be undertaken. Specifically, subparagraph a. of this Paragraph identifies the traffic improvements which shall be completed by the Applicant under all scenarios. Subparagraph b. lists those traffic improvements which may or may not be completed by the Applicant, depending on whether the Select Board's pending Community One-Stop for Growth Grant Application under the Housing Works Grant Program is awarded in full to the Town (the "Grant"), including any conditions to the award of such Grant. Subparagraph b. also includes a breakdown and allocation of work between the Applicant and the Town depending on the outcome of, and compliance with, the Grant, and also establishes the "not to exceed" dollar amount and conditions associated with each scenario.

- a. The Applicant shall implement the following Transportation Demand Management (TDM) measures:
 - i. Transportation coordinators (TCs) will be assigned for the Project and adjacent residential project, who may also have other duties, to coordinate the TDM program;
 - ii. Information regarding public transportation services, maps, schedules and fare information will be made available to employees of the Project and residents and employees of the adjacent residential project;
 - iii. A "welcome packet" will be provided to employees that will include the contact information for the TCs and detailing available public transportation services, bicycle and walking alternatives, and other commuter options, including the services provided by the Middleton Council on Aging (COA);

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- iv. Commercial tenants will be encouraged to offer specific amenities to discourage off-site trips, which may include one or more of the following: providing a breakroom equipped with a microwave and refrigerator; offering direct deposit of paychecks; coordinating with a dry-cleaning service for on-site pick-up and delivery; allowing telecommuting or flexible work schedules; and other such measures to reduce overall traffic volumes and travel during peak traffic volume periods; and
- v. Secure bicycle parking will be provided at appropriate locations within the Project and adjacent residential project.

b. Subject to the conditions outlined in this section IV.A.11.b., the Applicant shall fund and implement improvements up to the stated scopes and amounts, as may be applicable, as follows:

- i. The Town of Middleton has applied for a Massachusetts Community OneStop for Growth HousingWorks (“HousingWorks”) grant in the amount of \$2.5 million to expand the South Main Street / Boston Street intersection and implement an Adaptive Traffic Control System (ATCS) at the Boston St. / S. Main St., Maple St. / S. Main St., and Central St. / Lake St. / S. Main St. / N. Main St. intersections (the “Three Intersections”), and the notification of Grant award will occur no later than December 31, 2024 or shall be deemed not received;
- ii. In the event the Town of Middleton receives the full Grant, the Applicant shall do as follows, provided MassDOT agrees that, upon the completion of the applicable work described in Paragraphs IV.A.11.a. and IV.A.11.b.ii.(a), the Applicant may open and operate the Project, and the Applicant will have no further transportation improvement obligations under this Section IV.A.11.b.:
 - (a) Subject to MassDOT approval, fund and implement the first round of signal timing and phasing at the Three Intersections, as specified in the TIA, prior to initial occupancy;
 - (b) Make a cash contribution of \$60,000 toward the HousingWorks “cash match” requirement, said contribution comprising the following components, subject to the conditions specified in this section IV.A.11.b.:
 - Third round of signal timing and phasing at the Three Intersections upon receiving occupancy permits for the earlier of the coffee shop or the first 12,000 square feet of commercial space, with a value of \$24,000; and
 - Design and construct the short-term, low-cost improvements for the South Main Street / Maple Street intersection that are recommended as an outcome of the RSA that include sign, pavement marking and traffic signal timing, with a value of \$36,000.

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iii. In the event the Town of Middleton does not receive the full HousingWorks Grant, the Applicant shall do as follows, and the Applicant will have no further transportation improvement obligations under this Section IV.A.11.b.:

- (a) Design and construct the short-term, low-cost improvements for the South Main Street / Maple Street intersection that are recommended as an outcome of the RSA that include sign, pavement marking and traffic signal timing.

iv. Additional conditions precedent to the mitigation described in this section:

- (a) MassDOT Access Permit does not require any other substantially material (i.e. costly) improvements;
- (b) In such case that the MassDOT Access Permit conditions do require any other substantially material improvements, the cash contribution specified in this section IV.A.11.b. will be reduced on a dollar for dollar basis;
- (c) The Project and adjacent residential project receive any and all final approvals and provided that such final approvals do not require any other substantially material (i.e., costly) improvements or mitigation excepting the obligations and commitments outlined in this Decision and further that such final approvals are otherwise in a form that is "reasonably satisfactory" to the Applicant, as such term is defined in the MOU between the Town and the Applicant;
- (d) As such, submission of the cash contribution specified in this section IV.A.11.b. will not occur until after the MassDOT Access Permit has been issued, with all appeal periods having expired; and,
- (e) At such time of making the cash contribution as specified in this section IV.A.11.b., the Town is in compliance with the conditions of the Grant, such that the Grant is not at risk of being rescinded.

12. Prior to the issuance of a building permit for the Project, the Applicant shall submit the following to the Board and the Building Commissioner:

- a. a signage/monument plan, including signs/monuments, if any, to be used during the marketing of the Project or any component thereof and permanent signage/monuments, if any, shall be submitted to the Board for its administrative approval, and to any other Town official, board or body if also required, prior to the installation, erection or construction of any such sign, such approval not to be unreasonably denied.
- b. the name, address and phone number of the contact person for construction management of the project. Said contact person shall be available 24 hours per day, seven days per week throughout construction. Such information shall be provided to

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the Board, Planning Board, Select Board, DPW, Building Commissioner, the Board's engineer and the Police Department.

B. CONSTRUCTION

13. The Applicant shall be responsible for scheduling a pre-construction meeting with the Building Commissioner thirty (30) days before the commencement of work on the Project. During the construction of the Project's infrastructure, the Applicant shall be responsible for the scheduling of a meeting with the Building Commissioner at least once every three months to discuss the progress of construction, unless otherwise agreed by the parties to accommodate scheduling. The Applicant's failure to schedule and attend such a meeting may be grounds for a stop work order. The conference shall be requested at least fourteen (14) days prior to commencing construction, by contacting the Building Commissioner in writing or via email. A schedule of inspections shall be established at the initial conference. In the event that any third-party inspections are reasonably required by the Town, the Applicant shall bear the cost thereof, pursuant to the procedures under G.L. c. 44, §53G.
14. Before any site clearing, grading, demolition, or construction may begin on the Site, the Applicant shall provide to the Board a municipal lien certificate that shows all outstanding assessments and betterments have been paid in full and there are no outstanding municipal liens on the Property.
15. The Applicant shall be responsible for securing and paying for police details that may be necessary for traffic control throughout the construction process as reasonably required by the Police Chief.
16. The Applicant shall be responsible for repairing any damage to public ways and public property caused by any construction vehicles traveling to or from the Site. All repair work shall be done prior to the issuance of the final certificate of occupancy for the Project, unless DPW determines either: (a) that the damage to the public is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public safety. In such cases, the repair work must be initiated within one month of such determination, shall be conducted consistent with Town standards, and shall be completed within an appropriate time frame as determined by DPW.
17. Clean up of tracked materials and debris on local roads as a result of the Applicant's construction activities shall be completed daily.
18. The Applicant shall provide a Stormwater Pollution Prevention Plan (SWPPP) as required under the NPDES Construction General Permit to the Board and the Applicant shall adhere to said SWPPP during all construction activities.
19. During construction, the Applicant shall maintain all feasible and reasonable means of dust control and shall collect all debris on a daily basis. No construction, deliveries or any other activities may occur on New Year's Day, Memorial Day, July 4th, Labor Day,

TOPIC INDEX

Thanksgiving, Christmas Eve or Christmas Day. No construction or deliveries may begin before 7:00 a.m. nor continue past 6:00 p.m., unless approved in advance by the Board. Notwithstanding the foregoing, interior construction that doesn't generate excessive noise may occur on weekday evenings, until 8:00 p.m. Deliveries may be made after 6:00 a.m., until 6:00 p.m., provided, however, that access to the Site by excavators, skidders, bulldozers, or other heavy equipment, tractor trailers, flatbeds or any other oversized trucks and/or construction vehicles hauling earth moving equipment, trusses, modular wall panels, and other building materials that require either "wide-load" vehicles and/or are scheduled to be delivered within or by a convoy, may occur between 9:00 a.m. and 4:00 p.m. Trucks and other equipment may not idle or warm up until 6:30 a.m. on approved construction days.

20. Upon completion of construction of the stormwater management system, the Applicant's engineer shall provide a report to the Board, certifying that the stormwater management system was installed in accordance with the approved plans. Such report shall include a certification that the excavations of the proposed infiltration systems were inspected by the Applicant's consultants prior to backfilling. An as-built plan of the stormwater management system shall be provided with the report.
21. Unless permission to close a public street or way is received in writing from the proper authority, vehicular and pedestrian traffic shall be maintained at all times. Should the Local or State Police deem it necessary, uniformed officers will be assigned to direct traffic at the Applicant's expense.
22. When necessary, detours or lane closures around construction will be subject to the approval of the Police Department and MassDOT, as may be applicable. Where detours are permitted, the Applicant shall provide all necessary barricades and signs of the size and configuration as required to divert the flow of traffic. While traffic is detoured the Applicant shall expedite construction operations.
23. The Applicant shall take precautions to prevent injury to the public due to open excavations. The Applicant shall be fully responsible for damage or injuries whether or not police protection has been provided.

C. MISCELLANEOUS

24. Following installation of the final coat of asphalt on the driveway and parking for the Project, if any, but in no event later than one (1) year following the issuance of the final certificate of occupancy in said phase, if any, the Applicant shall provide an as-built plan of the building foundation, impervious features, and subsurface utilities to the Board for the Project, which shall be approved by the Board or its engineer.
25. The Board may institute an enforcement action in order to compel the completion of any infrastructure not adequately completed by the Applicant in accordance with this Decision, provided, however, that prior to the Board instituting such enforcement action, it shall provide the Applicant with 30 days prior written notice of alleged violation (excepting emergencies), and the Applicant shall be afforded a right to cure the same.

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26. The paved areas, open space, landscaping and infrastructure depicted on the Plans shall be maintained by the Applicant. The Applicant and/or any management company engaged by the Applicant shall be responsible for the installation, operation, maintenance, repair and replacement of the above aspects of the Project. If a management company is engaged for fulfilling these obligations, the Applicant shall provide the Board with the name and contact information for the management company.
27. Snow and ice removal shall be the responsibility of the Applicant. Snow and ice removal shall be undertaken as soon as is practicable after snowfall and shall not impede or obstruct the driveways or the sight lines thereon and so as not to impede or obstruct the hydrants. Accumulated ice on the ways shall be promptly removed or sanded such that vehicles may pass safely. To the extent practical, use of sodium-based deicers shall not be utilized. Snow shall be deposited and stored in the areas designated on the Plans.
28. The Applicant shall be responsible at its sole cost for trash and recycling disposal for the Project.
29. This permit shall not be valid until recorded with the Southern Essex Registry of Deeds and evidence of such recording is provided to the Building Inspector and the Board.
30. Any and all easements that may be necessary to complete and occupy the Project shall be in a form approved by the Town's legal counsel, such approval not to be unreasonably withheld, delayed or denied.
31. This Permit shall run with the land and be binding on the Applicant and any of its assignees and successors in interest at the Property or with respect to the Project.
32. Prior to any site preparation activities or the commencement of construction, the Applicant shall provide a point of contact to the Board and Building Commissioner along with that individual's name and direct telephone number and that person shall be someone with the authority and ability to receive notifications and communication relating to the Project on behalf of the Applicant from the Town at any and all times. That point of contact shall also serve as a neighborhood liaison to communicate via email with the neighborhood, all property owners and businesses within 300 feet of the Site. The substance of the communication shall include updates related to key construction activities and the Project timeline and shall facilitate an open line of communication between the general contractor/Applicant, Town and the neighborhood.
33. Any finding, by any court of competent jurisdiction, that any condition hereof is unenforceable shall not otherwise affect the enforceability of the remainder of the conditions hereof.
34. Appeals of this permit shall be made pursuant to G.L. c. 40A.

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D. ADDITIONAL CONDITIONS

35. This Decision is subject to the General Conditions attached hereto as Exhibit A.

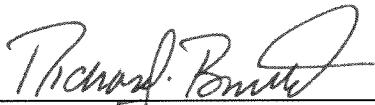
36. To calm internal customer traffic headed toward the drive-through lane, the Applicant shall install a raised crosswalk between the north and south retail buildings and install traffic signage and pavement markings to remind drivers of safe operating speeds within the site.

37. The restaurant with entertainment special permit shall be limited to televisions and associated audio. Any other forms of entertainment require approval of the Board.

38. All commercial and retail tenants shall comply with the Tenant Waste Operations and Maintenance (O&M) Manual.

Board of Appeals of the Town of Middleton

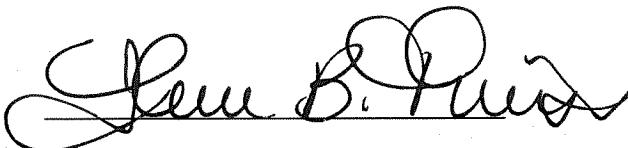
Date: September 3, 2024


Richard J. Benevento, Chairman

Filed with the Town Clerk:

September 5, 2024

DATE


Steve B. Ruiz

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ATTACHMENT "A" - GENERAL CONDITIONS

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*****APPEAL NOTICE*****

Appeals of this decision shall be made in accordance with Massachusetts General Laws Chapter 40A, Section 17 and shall be filed within twenty (20) days of the date of filing of this decision in the Office of the Middleton Town Clerk.

This decision shall not take effect until a copy of this decision bearing the certification of the Middleton Town Clerk that twenty (20) days have elapsed after the decision was filed in the Office of the Middleton Town Clerk and no appeal was filed (or that if such appeal was filed, that it was dismissed or denied) is recorded in the Essex Southern District Registry of Deeds and is indexed in the grantors index of title under the name of the owner of record. (Reference MGL Chapter 40A, Section 11). The fee for recording or registering this decision shall be paid by the owner or petitioner.

*******NOTE*******

Recording this decision as described above is the responsibility of the owner or petitioner. It will not be done by the Board of Appeals or the Town Clerk.

*******LAPSE DATE*******

This Decision granting the Special Permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, § 17, from the grant thereof) with the Town Clerk in accordance with Section 9.4.8 of the Zoning Bylaw.

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