



TOWN OF MIDDLETON
ZONING BOARD OF APPEALS

MEETING MINUTES

February 25, 2016
Fuller Meadow School
7:00 pm

Members in Attendance: Craig Hartwell, Chairperson, James E. Fox, Ann LeBlanc-Snyder, Anne Cote, Richard Nazzaro, Nicholas Phillip Yebba

Absent: Barbara Piselli

Others Present: John Smolak, Esq., Smokal & Vaughan, LLP.
Philip Henry, Civil Design Group
Heather Monticup, Greenman-Pedersen, Inc
Jill Mann, Esq., Mann & Mann
Carmen Frattaroli, Esq., Carmen Frattaroli & Associates
Susan Gannon
Scott Cameron, The Morin Cameron Group
Leanna Harris, Recording Secretary

Craig Hartwell called the meeting to order at **7:03 pm**.

I. MINUTES

- A. December 17, 2015
- B. January 28, 2016

MOTION: Mr. Hartwell moved to continue the approval of the Minutes from the December 17, 2015 and January 28, 2016 meetings to the next scheduled hearing.

Second by Mr. Nazzaro.

Votes: 5-0 (Nazzaro, Fox, Cote, Hartwell, Yebba)

Motion carries.

II. PUBLIC HEARINGS

- A. 25 Lonergan Road – Five H LLC – Special Permit: Electric Message Board

Application: 1005

Attachments: Application, Planning Board recommendation

Voting Members: Mr. Hartwell, Mr. Yebba, Mr. Fox, Ms. Cote, Ms. LeBlanc-Snyder.
Mr. Nazzaro is the alternate.

Ms. Cote read the application into the record. The abutters have been notified and there is one correspondence.

Jill Mann, Esq. addressed the Board on behalf of Paradise Golf and stated they are requesting a Special Permit to replace a manual reader board with an electronic reader board to increase advertising. The sign is a nonconforming. The new electronic reader board will be easier to maintain. Attorney Mann passed around a picture of the sign showing the existing A-frame structure. The electronic portion of the sign will be 2.1'x5'. Attorney Mann stated they will only use primary colors, there will be no images and the text will not float or flicker. The sign will not be used during off hours. The electronic reader board would be in keeping with the appearance of Route 114 and it would allow the communication of information in an orderly fashion that is not detrimental to Route 114.

Ms. Cote read the letter from Planning Board in favor of the application.

Members expressed concern of an influx of these electronic reader boards taking over that section of Town and not creating an inviting appearance.

MOTION: Mr. Hartwell moved the Board to issue the following Findings, that the property as located is an appropriate location for an electronic board, the electronic board will not adversely affect the surrounding neighborhood or zoning district as there are similar boards along Route 114, the electronic board will improve traffic safety, it will improve the public's ability to receive information, the use of the electronic board will not be a nuisance and will in fact be useful, it will be designed in consonant with the surrounding area with respect to height and illumination. Second by Mr. Yebba.

Votes: 4-1 (Hartwell, Yebba, Fox, Cote)

Opposed: Ms. Snyder

Motion carries.

MOTION: Based on those Findings, Mr. Hartwell moved the Board to issue a Special Permit under Section 5.2.7 pursuant to its authority under Section 9.3 & 9.4 subject to the following conditions, the electronic board will only display general content exclusively text identifying products, services and various offers, the electronic board will not display any motion, video or distracting imagery and will not at any time flash, the board itself will not change more frequently than one time per sixty minutes, the board will only display primary colors, the petitioner will restrict the illumination of the sign from 6am to 11pm. The petitioner agrees to no longer use any temporary signage at the property such as A-frames, banners or temporary signage. Second by Mr. Yebba.

Votes: 4-1 (Hartwell, Yebba, Fox, Cote)

Opposed: Ms. Snyder

Motion carries.

- B.** 10 Essex Street & 81 No Main Street – North Essex Realty Group – Special Permit Modification & Site Plan Modification: 12 Month Extension of Time.

Application: 1006

Attachments: None

Voting members: Mr. Hartwell, Mr. Yebba, Mr. Fox, Ms. Cote, Ms. LeBlanc-Snyder. Mr. Nazzaro is the alternate.

Attachments: None

Ms. Cote read the application into record. Abutters have been notified. There is no correspondence.

Jill Mann, Esq. addressed the Board. The applicant is seeking an extension of the Special Permit granted.

MOTION: Mr. Hartwell moved to grant a 24 month extension beginning August 1, 2016 on the time limit in which the Petitioner is able to commence the project subject to the Boards approval. Second by Yebba.

Votes: 5-0 (Hartwell, Yebba, Fox, Cote, LeBlanc-Snyder)

Motion carries.

- C.** 2 ½ Debush Avenue - Word, LLC - Special Permit: Earth Removal

Application: 1007

Attachments: Application and plans

Voting Members: Mr. Hartwell, Mr. Yebba, Mr. Fox, Ms. Cote, Mr. Nazzaro.

Ms. LeBlanc-Snyder is the alternate.

Ms. Cote read the application into record. Abutters have been notified.

Scott Cameron, Civil Engineer from The Morin Cameron Group on behalf of Apex Chimney addressed the Board and stated that construction is underway. The Petitioner would like to export the loam to one of two locations The grading and drainage plans have been included in the application.

Ms. Cote read correspondence from the Planning Board, the DPW and the Chief of Police into record.

MOTION: Mr. Hartwell moved to make the following findings that the removal of loam is incidental to the construction of a previously approved industrial building. Second by Mr. Yebba.

Votes: 5-0 (Hartwell, Yebba, Fox, Cote, Nazzaro)

Motion carries.

MOTION: Based on that Finding, Mr. Hartwell moved the board to permit the removal of 5,000 cubic yards of loam between the hours of 6am – 6pm Monday through Saturday and the trucks will only operate on DeBush Avenue, Route 114, and Route 62.

Second by Mr. Yebba.

Votes: 5-0 (Hartwell, Yebba, Fox, Cote, Nazzaro)

Motion carries.

III. CONTINUED PUBLIC HEARINGS

A. 4 So. Main Street – Cumberland Farms, Inc. – Special Permit/Site Plan Application:

Reconstruction of Existing Building & Structures.

Application: 1004

Attachments: Revised plans, additional traffic information, original application and related plans and documents.

Voting Members: Mr. Hartwell, Mr. Fox, Ms. Cote, Mr. Yebba, Mr. Nazzaro.

Ms. Leblanc-Snyder is the alternate.

John Smolak, Esq. addressed the Board and stated they have updated the Board by letter regarding peak/off peak traffic. The Conservation Commission has not yet issued the Order of Conditions but they are expecting it in the next day or two. The Board of Health has issued a Title V.

Philip Henry, Civil Design Group addressed the Board and discussed the changes made with respect to green space and a retaining wall. There will be 9 arborvitaes installed at a height of 8 and they are adding a granite bench at the intersection with some additional sidewalk. Mr. Henry also met with the abutter and walked through her concerns and she was in favor of them adding the additional greenery. They are eliminating the vinyl fence originally planned.

Heather Monticup, Greenman-Pedersen, Inc. stated they conducted a traffic assessment on February 3rd from 7-9am and found that the a.m. does generate the most traffic over p.m. and Saturday traffic. This analysis is documented in the letter they submitted. Ms. Monticup further explained how they are helping to prevent vehicles from cutting through by repositioning the driveways and pumps. There will no longer be a straight shot from Route 114 to Route 62.

Members were happy with the increase in privacy screening.

[2 min recess 8:05pm – 8:10pm]

Attorney Smolak reviewed the signage and electronic message board they are proposing and stated the total wall sign they are proposing will exceed permitted wall signage.

Attorney Smolak also reviewed the general conditions relating to curb cuts, snow removal, outdoor seating, etc.

MOTION: Mr. Hartwell motioned that the board accept the following findings in regards to the Special Permit for Change of a Pre-existing Lawful Nonconforming Use (retail gas use) -- Sections 3.3.2 and for Parking Reduction and Reconfiguration under Section 5.1.6:

1. The Project involves a complete redesign of the building and overhead gasoline canopy in a more traditional, New England-style design which incorporates design elements from adjacent properties such as the brick windows found at the Flint Library, as well as structural design consistent with other buildings in Middleton Square, all of which is depicted on the Plans for a use which is substantially similar to the current use of the Property;
2. The Project will increase the coverage and diversity of landscaping along both Maple Street and South Main Street in a manner which enhances aesthetics;
3. The projected traffic generated by the proposed retail gasoline use and related improvements will not be substantially more detrimental than the existing use to the neighborhood;
4. Environmental protection will be enhanced by the replacement of existing underground petroleum storage tanks with new underground tanks which will incorporate a state-of-the-art leak prevention and detection system, thereby protecting the environment;
5. The Project will substantially upgrade stormwater management in terms of treatment and management by redesigning the stormwater system to meet the stringent requirements of the MassDEP Stormwater Policy and related guidance as conditioned by an Order of Conditions to be issued by the Middleton Conservation Commission; and,
6. The Project will also serve to protect and enhance wetland resources by restoring previously degraded riverfront area both on-site and off the Property in a manner which enhances the protection of riverfront area in order to improve water quality, while at the same time, meeting the performance standards of the State Wetlands Protection Regulations, all of which shall be subject to an Order of Conditions to be issued by the Middleton Conservation Commission.
7. In connection with the requested parking reduction by two (2) spaces, the board finds that the impact will be minimal regarding pedestrian & vehicular flow and parking requirements;
8. The Traffic Impact Assessment Study, dated December, 2015, prepared by the Petitioner's traffic engineering professionals, Greenman-Pederson, Inc. (the "Traffic

Study”), indicates “the 2-space adjustment will not be detrimental to safety, as the proposed site provides eight (8) parking spaces at the pumps in addition to the fourteen (14) parking spaces depicted on the Plans, providing functioning parking well in excess of the minimum parking required;

9. The closing of one of the curb-cuts onto South Main Street, which is the curb cut currently located closest to the Routes 114/62 signalized intersection, will also increase safety in respect to on-site circulation.

Second by Mr. Nazzaro.

Votes: 5-0 (Hartwell, Nazzaro, Cote, Fox, Yebba)

Motion carries.

MOTION: Mr. Hartwell moved to issue the special permit under Section 3.3.2. (Changes to Non-conforming Uses). Second by Mr. Yebba

Votes: 5-0 (Hartwell, Nazzaro, Cote, Fox, Yebba)

Motion carries.

MOTION: Mr. Hartwell moved to issue the special permit under Section 5.1.6. (Parking Reduction & Reconfiguration). Second by Mr. Yebba.

Votes: 5-0 (Hartwell, Nazzaro, Cote, Fox, Yebba)

Motion carries

MOTION: Mr. Hartwell moved that the board accept the following findings regarding the special permit for Electronic Message Board Ground Sign (Sections 5.2.5.3 & 5.2.7):

1. Appropriate Location. The Board determined that the Property is an appropriate location for the ground sign which incorporates the price and other components which the Building Inspector has determined constitute an Electronic Message Board, and the type of signage requested is customary for ground signs found at comparable gasoline stations;
2. Neighborhood Character. The signs will not adversely affect or be incongruous with the neighborhood or surrounding zoning district in which it is to be located, as the proposed ground sign represents a significant improvement over the existing sign at the Property, and the dispenser signs are substantially similar to what exists at the dispensers today, which, in turn, enhances the Middleton Square neighborhood and surrounding area;
3. No Substantial Negative Effects. There will be no nuisance or serious hazard to vehicular or pedestrian traffic or safety as a result of the proposed sign as the ground sign is similar to the existing ground sign which has been a longstanding fixture at the Property and the wall and gas pump signs are similar to the signage of other service stations and to what exists today; and,
4. Compliance with Dimensional Criteria. The sign satisfies all of the other applicable dimensional and other criteria described in this section 5.2 as depicted on Plan Number CFG13.0 of the Plans

Second by Mr. Yebba

Votes: 5-0 (Hartwell, Nazzaro, Cote, Fox, Yebba)

Motion carries

MOTION: Mr. Hartwell moved to issue the special permit for the Electronic Message Board Ground Sign. Second by Mr. Nazzaro

Votes: 5-0 (Hartwell, Nazzaro, Cote, Fox, Yebba)

Motion carries

MOTION: Mr. Hartwell moved to make the following findings in regards to special permits for wall signs under Sections 5.2.7, 5.2.11, 5.2.2, 5.2.3, and 5.2.9:.

1. **Appropriate Location.** The Board determined that the site is an appropriate location for the proposed building wall signs, one of which faces the parking along the front of the building, and the other which faces the building's Maple Street frontage. The proposed dispenser screen monitor signs and dispenser price signs are of an appropriate size and location to alert customers to information price and other information inscribed thereon. Such signage is customarily found at a modernized gasoline station developed in Massachusetts today.
2. **Neighborhood Character.** The proposed wall signs will not adversely affect or be incongruous with the neighborhood or surrounding zoning district in which it is to be located, as the proposed wall signs will be of a consistent design as with the building design, and the dispenser signs are substantially similar to what exists at the dispensers today, and all proposed signs will not detract from the Middleton Square neighborhood and surrounding district;
3. **No Substantial Negative Effects.** There will be no nuisance or serious hazard to vehicular or pedestrian traffic or safety as a result of the proposed signs, as the types of signs proposed are similar to signs which exist today, and are similar to the signage of other service stations.
4. **Compliance with Dimensional Criteria.** The signs satisfy all other applicable dimensional and other criteria required by the bylaw.

Second by Mr. Yebba

Votes: 5-0 (Hartwell, Nazzaro, Cote, Fox, Yebba)

Motion carries

MOTION: Mr. Hartwell moved to issue the special permit for wall signs under Sections 5.2.7, 5.2.11, 5.2.2, 5.2.3, and 5.2.9: Second by Mr. Yebba

Votes: 5-0 (Hartwell, Nazzaro, Cote, Fox, Yebba)

Motion carries

MOTION: Mr. Hartwell moved to make the following findings in regards to the special permit for Earth Removal under Section 6.2 of the bylaw:

1. The small volume of earth movement is being undertaken solely to construct the Project.
2. The removal of earth is incidental to the construction and operation of the Project.
3. Since the earth removal is not a proposed primary use of the property, the Board finds the earth removal to be a limited, accessory use.
4. In accordance with Chapter 130 of the General Bylaws, the purpose of the earth movement is to also allow for new building construction.
5. The Petitioner has stated that the removal would be conducted in accordance with best management practices imposed by Conservation Commission which has voted to issue a wetlands order of conditions approving the Project.

MOTION: Mr. Hartwell moved to adopt the above state findings. Second by Mr. Yebba
Votes: 5-0 (Hartwell, Nazzaro, Cote, Fox, Yebba)
Motion carries

MOTION: Mr. Hartwell moved to issue the special permit for Earth Removal. Second by Mr. Yebba.
Votes: 5-0 (Hartwell, Nazzaro, Cote, Fox, Yebba)
Motion carries

MOTION: Mr. Hartwell moved to approve the following Special and General Conditions:

SPECIAL CONDITIONS

1. CHANGES OR REVISIONS

- a. The Petitioner shall not make any substantial changes or revisions to the layout of the Property from conditions and improvements shown on the approved Plans without first applying for and obtaining the approval for any such changes or revisions from the Board, subject to the Paragraph 1.b below.
- b. The following situations may be deemed insubstantial and insignificant changes or revisions by the Town Planner, and require no prior approval of the Board; however, changes must be filed with the Building Inspector, the Department of Public Works, and the Planning Department prior to commencing the following:
 - i. Changes to infrastructure (underground utilities --- water, sewer, electric, drainage) and utility apparatus with written approval by the Department of Public Works or the department responsible for the utility such as the Middleton Electric Light Department;
 - ii. Increase in the type or quantity of landscaping, with written approval of the Town Planner;
 - iii. Façade or elevation changes to structures that do not result in an increase to the building footprint or alteration to the vehicular or pedestrian circulation in and around the structure;
 - iv. Shifting of structures, parking spaces or other site amenities less than one (1) foot in distance; and,

- v. Removal of the entire length of the proposed 8-foot white vinyl fence shown on the southerly boundary of the Property as depicted on Sheet CFG04.0 of the Site Plans.

2. PRIOR TO COMMENCEMENT OF CONSTRUCTION:

- a. Prior to any construction or demolition activity of any kind on the site or associated with the Project, a pre-construction meeting shall be conducted which may include representatives from the Petitioner (including principal contractors and/or supervisors), the Town Planner, Conservation Agent, Building Commissioner, and representatives of the Department of Public Works, Electric Light Department, Board of Health, the Police Department and the Fire Department, for purposes of reviewing these conditions and construction sequence schedule.
- b. The hauling route for the import and/or export of earth materials and demolition debris shall be approved by the Inspector of Buildings and the Police Department.
- c. Prior to the commencement of authorized site activity, the Planning Department and Building Commissioner shall be given 24 hour written notice, and the Petitioner shall provide to the Planning Department and Building Commissioner the name, address and business phone number of the individual who shall be responsible for all activities on site and who can be reached 24 hours a day, seven days a week.
- d. Construction traffic associated with this project shall be regulated by the Building Commissioner. Prior to commencing hauling operations, a hauling route shall have been reviewed and approved by the Building Inspector. Any deviation from the approved route and/or scheduling once established shall require proper notification and approval from the Building Commissioner. Construction traffic shall be defined as large trucks hauling earth moving equipment, dump trucks, trucks hauling building materials, cement trucks, and contractors' vehicles larger than panel trucks. It shall be the Petitioner's responsibility to inform all contractors, subcontractors, vendors, and workmen of this restriction.
- e. During construction, Maple Street and South Main Street will be kept clean of all debris, runoff and site materials by street sweeping and other cleaning activities.
- f. All construction activities within the site shall be confined between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, except for earth removal operations which shall be conducted between the hours of 6:00 a.m., and 6:00 p.m., Monday through Saturday, and unless otherwise approved by the Planning Board. Absent an emergency condition, no construction is permitted on Sundays or Federal holidays. Once fully framed, interior construction related activities are allowed on Saturdays between 8:00 a.m. and 6:00 p.m. unless otherwise restricted or prohibited by the Building Inspector in response to complaints.

3. PRIOR TO A CERTIFICATE OF OCCUPANCY

- a. The Petitioner must submit a letter from the architect and engineer of the project stating that the landscaping and site layout substantially complies with the plans referenced at the end of this Decision as endorsed by the Board. Alternatively, the Petitioner and/or property owner may provide a bond, determined by the board, to cover the full amount of

the landscaping materials and installation if weather conditions do not permit the completion of the landscaping prior to the use of the building.

- b. All stormwater structures shall be cleaned, in accordance with the approved Stormwater Operation & Maintenance Plan approved as a part of the Wetlands Order of Conditions issued by the Middleton Conservation Commission.
 - c. The site subsurface septic disposal system shall be upgraded and approved in accordance with State Title V regulations and applicable provisions of the Middleton Board of Health.
 - d. No final Certificate of Occupancy for the Project shall be issued until the improvements, including landscaping improvements, as well as any off-site improvements, are constructed and installed. Notwithstanding this condition, if any improvements described in this Decision are not likely to be completed prior to the issuance of a Certificate of Occupancy, the Board, in its discretion, may allow the Certificate of Occupancy to issue, provided that adequate surety, as determined by the DPW Director and reasonably acceptable to the Zoning Board of Appeals, has been posted prior to the issuance of a Certificate of Occupancy, to ensure such completion in a timely manner.
- 4. PRIOR TO THE FINAL RELEASE OF ALL SECURITY AND/OR ESCROWED FUNDS**
- a. The Town Planner will review the site.
 - b. A final as-built plan showing final topography, the location of all on-site utilities, structures, curb cuts, parking spaces and drainage facilities, including invert elevations of all stormwater structures, must be submitted to the Planning Department. This as-built plan shall be submitted to the Town Planner for approval and must be provided in paper form as well as in electronic PDF format. The Petitioner must also submit a letter from the architect and engineer for the Project stating that the landscaping and site layout substantially comply with the Plans referenced in this decision.
 - c. The Zoning Board of Appeals may, by a majority vote, make a finding that the site is in conformance with the approved decision and conditions.

GENERAL CONDITIONS

5. Except as otherwise provided for in these conditions, all work associated with the Project, including architecture and landscaping, shall be in strict conformance with the Plans.
6. The site owner shall comply with all Town bylaws, rules, restrictions, regulations, and any other requirements properly enumerated by any local, state or federal agency having proper jurisdiction.
7. A copy of this Decision with Plans shall be kept on the Property.
8. Prior to the commencement of business operations at the Property, the site owner shall provide the Building Commissioner and Town Planner with a list of contact persons within their respective entities, including contact persons who can be contacted 24 hours a day, seven days a week during construction as well as contact persons who can be contacted post-construction who can be reached, to whom compliance and enforcement issues may be addressed.
9. The Project shall comply with all applicable federal, state and local laws, regulations, and bylaws governing the Project.
10. All public ways are to be kept clean and free of any dirt or debris associated with hauling activities.

11. Hours of operation of the store and related retail fuel sales may extend between 5:00 am through 12:00 am, seven days per week.
12. Snow shall not be stored in any landscaped areas, except for snow storage areas designated by the Conservation Commission, and shall not be stored in any manner which affects visibility for pedestrians and vehicles.
13. The clearing of snow must commence when stockpiled snow either accumulates and impedes sidewalk or parking space access, at which time, the Petitioner would be expected to remove the snow within 24 hours.
14. The site owner shall keep the exterior of the Property reasonably free of all debris and rubbish on a regular basis.
15. The dumpster and dumpster enclosure shall remain closed and locked except when trash deposit, removal and pickup operations are being conducted.
16. The site owner shall be responsible for maintaining the drainage system in a clean and well-functioning condition in accordance with the Operation and Maintenance Plan approved by the Middleton Conservation Commission.
17. The site owner shall maintain the landscaping in accordance with the final Landscape Plan (Sheet CFG 8.0) submitted to the Board, and shall maintain the landscaping on the Property in good condition.
18. This Decision shall specifically allow the sale of non-packaged food products, and no seating is allowed on the Property other than in the designated outdoor patio area and proposed bench at intersection of South Main and Maple Streets as shown on the Plans, and those conditions contained within the March 19, 1997 Decision issued to Exxon Corporation (the "Exxon Decision") which are inconsistent with the conditions described in this Condition No. 18 are hereby superseded by this Decision, but except as provided above, the other conditions contained within the Exxon Decision shall remain in full force and effect.
19. The portion of the ground sign consisting of an electronic sign shall only display text relating to the fuel pricing.

Second by Mr. Yebba

Votes: 5-0 (Hartwell, Nazzaro, Cote, Fox, Yebba)

Motion carries

Based on all the previous approved findings and special permits,

MOTION: Mr. Hartwell motions to approve the overall special permit under Section 9.4. Second by Mr. Nazzaro

Votes: 5-0 (Hartwell, Nazzaro, Cote, Fox, Yebba)

Motion carries

B. 1 School St. – Susan Gannon – Appeal of Building Commissioner’s Decision.

Application 1003

Attachments: Update Memo, Original application and exhibits

Voting Members: Mr. Hartwell, Mr. Yebba, Mr. Fox, Ms. Cote, Ms. LeBlanc-Snyder.

Alternate is Mr. Nazzaro.

Carmen Frattaroli, Esq. addressed the Board on behalf of Susan Gannon. Attorney Frattaroli reviewed the *Marblehead v. Deery* case for the Board regarding detrimental reliance. Attorney Frattaroli distributed to the Board a document that outlines Ms. Gannon character and stated that Ms. Gannon purchased the property in good faith and was unaware of the Variance denial for 30 years. The house was listed, brokered and purchased and refinanced as a two family and it was well known that it was a two family for decades. Ms. Gannon has been paying taxes as a two family for thirty years. They are seeking a continuance because they are looking into acquiring adjacent parcels to add to the size of their parcel.

MOTION: Mr. Hartwell moved to grant the request to continue to the next meeting.
Second by Mr. Nazzaro.

Votes: 5-0 (Hartwell, Fox, Cote, Nazzaro, Leblanc-Snyder)
Motion carries.

Adjournment

MOTION: Mr. Nazzaro moved to adjourn at **9:43 pm**. Second by Mr. Fox. All in favor.
Motion carries.

Minutes submitted by Leanna Harris, Recording Secretary, and accepted at the March 24, 2016 meeting of the board.