



TOWN OF MIDDLETON
ZONING BOARD OF APPEALS

MEETING MINUTES

May 26, 2016

Fuller Meadow School

7:00 pm

Members in Attendance: Craig Hartwell, Chairperson, James E. Fox, Anne Cote, Richard Nazzaro, Nicholas Yebba, Anne LeBlanc-Snyder (7:39PM arrival)

Absent: Barbara Piselli

Others Present: Katrina O'Leary, Town Planner
Jill Mann, Esq.
Philip Cottone
Martin Ford
Jayme Fishman
Janet Cuilla
Tom Moore
Chris Sparages
Leanna Harris, Recording Secretary

Craig Hartwell called the meeting to order at **7:09 pm**.

I. MINUTES

A. May 5, 2016

MOTION: Mr. Hartwell moved to approve the May 5, 2016 meeting Minutes.

Second by Mr. Yebba.

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

Motion carries

II. CONTINUED PUBLIC HEARINGS

A. 1 School St. – Susan Gannon – Appeal of Building Commissioner's Decision.

Application: #1003

Attachments:

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

Tom Moore addressed the Board and provided the Board with an update. They are moving forward with purchasing land from an abutter.

MOTION: Mr. Harwell moved to continue this appeal to the November 2016 meeting with the condition that either the Town or the appellant party can give 30 day written notice to the other party to appear at the next scheduled ZBA meeting.

Second by Mr. Nazzaro.

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

Motion carries.

B. 161-163R No. Main Street – Industrial Park under Section 6.6 – Site Plan Review – Bay Property Mgt. LLC. #1010

Attachments: Historical Zoning Amendments, letters from DPW Supt. and Health Director

Voting members: Nazzaro, Fox, Cote, Hartwell, Yebba

Mr. Yebba signed the Mullins form indicating he reviewed the minutes from the last meeting and is able to vote on this application.

Ms. Cote read into record correspondence dated May 26, 2016 from R. Labossiere. The Health Director also submitted correspondence dated May 26, 2016.

Mr. Hartwell asked Ms. O’Leary to provide an overview of zoning on the property and changes in that zoning. O’Leary explains that the only way to determine how one’s property is zoned is to refer to the official zoning map at Town Hall.

The members had conducted a site walk on May 17, 2016.

[2 minute recess]

Ms. LeBlanc joined the Board at 7:39 pm.

Ron Trottier, 26 Dixey Drive addressed the Board and suggested there are a couple of corrections on the zoning map and stated the Subdivision Phases shown on the map were reversed. Mr. Trottier asked the Board to increase the buffer by relocating the building to utilize more of the natural berm. Atty. Mann stated it was a plan they had considered but it was the least favorable.

Vic Castro, 15 Dixey Drive stated moving the building, as his neighbor suggested, would actually make things worse for his property. Castro lives the closest to the proposed project.

The owner of 7 Dixey Drive stated both he and Mr. Castro are direct abutters and he feels the Builder is putting the best plan for the neighbors forward.

Martin Ford, Dixey Drive addressed the Board and asked for clarification that the stake indicating the corner of the building is on the natural berm.

Mr. Hartwell asked Mr. Sparages to show the current topography and the proposed topography relating to the “corner” in question.

Mr. Yebba asked Mr. Sparages to explain what the residents will see once the project is complete.

The Conservation Commission was concerned with the wetlands in that area and Atty. Mann stated their concerns were alleviated during the Site Walk.

Teresa Buono, 25 Dixey Drive addressed the Board and asked if there are any other offices the ZBA takes recommendations from when they make a decision.

Philip Cottone, 155 North Main Street asked the members if during their site walk they walked to a specific area. Mr. Cottone stated the stone retention pond will affect the wetlands and further affect property values. He would like restrictions imposed to try and help protect the few homes on the North Main Street side. Mr. Sparages addressed Mr. Cottone’s drainage concern. Mr. Cottone would like a construction fence around the site with a debris net. Mr. Cottone asked what the size and ages of the green screening will be and Mr. Sparages stated the trees that will be planted will be 8-10 feet in height. Mr. Cottone asked what the hours of construction would be and Atty. Mann stated they will agree to only have construction Monday through Saturday 6am to 7pm. Mr. Cottone requested 6am – 5pm and no work on Sundays or federal holidays. Atty. Mann said they cannot agree to 5pm. Mr. Cottone stated he is requesting dust control and Atty. Mann responded that they will be using water trucks. Mr. Cottone would like them to come back to the board if ledge is discovered and blasting or drilling is required. Atty. Hartwell stated there is ledge and blasting and drilling will be limited to 10am – 5pm

Jayme Fishman, 18 Dixey Drive addressed the Board and stated he had proposed conditions he would like to request. Mr. Fishman gave a brief presentation relating to good faith purchasers and materials they rely on.

Janet Ciulla asked for clarification regarding the zoning being R-1b back in 1983. Ms. Ciulla stated that the Plan of Land Mr. McKenley bought shows it’s residential.

Mr. Hartwell asked if any area of the property is outside of the commercial zone and Atty. Mann showed that the building itself is set back but the vegetation screen proposed spills over into residential.

[2 minute recess]

Mr. Hartwell reviewed a list of proposed conditions.

MOTION: Mr. Hartwell moved to have the Board make the following Findings:

1. Submittal Requirements. In compliance with §9.5.5 of the Bylaw, the following have been provided to the Board:
 1. The Site Plans that contain the following information: (a) layout of the Property showing the boundaries of the Property, all drives, parking fences, walls, outdoor lighting and areas for snow storage (Sheets 4, 5, and 6); (b) locus map with a scale of 1" equals 100' (Sheet 1); (b) the topography showing existing and proposed conditions (Sheets 2 and 3); (c) drainage report and calculations (see, Existing and Proposed Watershed Map); (c) utility and grading plans (Sheets 3 and 4); photometric plan (Sheet 6) and (d) landscape plan (Sheet 7).
 2. Architectural Plans containing: (a) elevations of the Buildings and (b) renderings of the Buildings.
 3. The Petitioner estimates that it will complete construction as described on the attached estimated construction schedule, which is subject to adjustment based on weather conditions and the availability of materials and labor. The cost of such construction is dependent upon securing quotes based on the Approved Plans and is proprietary to the Petitioner.
2. Approval Requirements. In compliance with §9.5.11, the Approved Plans meet the objectives set forth under §9.5.11(1) of the Bylaw as follows:
 1. Compliance. §9.5.11(1) and the Table of Dimensional Requirements.
 1. Minimum Area – the Property contains 646,186 square feet, which exceeds the minimum lot area in the M-1 District, which is 60,000 square feet and the minimum lot area for an industrial park under §6.6 of the Bylaw, which is 320,000 square feet.
 2. Minimum Frontage – the Property has in excess of 300 feet of frontage along North Main Street, which exceeds the minimum lot frontage for the M-1 District, which is 150 feet.
 3. Minimum Lot Width – the Property has in excess of 300 feet of width going through each of the Buildings which exceeds the minimum lot width for the M-1 District, which is 150 feet.
 4. Minimum Front Setback from North Main – the Buildings that are located along North Main Street are all set back in excess of 100 feet

from the centerline of North Main Street, which the minimum front setback.

5. Minimum Side and Rear Setback– the Buildings are all set back in excess of 35' from all residential districts and uses, which exceeds the required 35' minimum setback.
 6. Lot Coverage. The Buildings cover less than the maximum permitted coverage of 30%.
 7. Minimum Open Space. The open space at the Property equals 46.5% of its total area, which is close to double the minimum requirement of 25% open space.
 8. Maximum Building Height and Number of Stories. The Buildings are all under the maximum allowable height of 35' and have no more than two (2) stories.
 9. Parking and Loading Areas. The Approved Plans show sufficient parking and loading areas to satisfy the minimum requirements under the Bylaw.
2. Adequacy and Safety of Vehicular and Pedestrian Movement. The Public Access and ROW and the associated traffic circulation within the Property have been designed to ensure safe pedestrian and vehicular travel within the Property and for traffic entering and exiting the Property.
 3. Adequacy and Arrangement of Parking. The Complex has been designed to provide ample parking to meet the standards set forth in the Bylaw.
 4. Adequacy and Appearance of Buildings, Signs and Landscaping. As shown on Approved Plans, the overall design of the Property and the architectural features of each of the Buildings have been carefully designed to take into account the topography of the Property and the neighboring properties. The signage is appropriate and complies with all setback requirements. The landscape design, lighting, signage, screening, and architectural features of the Complex have been reviewed and approval has been recommended by the ICDRC.
 5. Adequacy of Site Improvements. The design reflected on the Approved Plans provides for adequate lighting requirements, proper surface and subsurface drainage, and waste disposal.
 6. Phasing. The Petitioner or its successors and assigns shall complete the Complex in accordance with the Phasing Schedule, which may be amended by the Petitioner or its successors and assigns subject to approval by the Board, which shall not be unreasonably withheld or delayed.

3. Performance Standards. The Approved Plans have incorporated design features, landscaping, construction methods and other conditions in order to meet certain performance standards set forth in §5.4 of the Bylaw as follows:
 1. Lighting (§5.4.2). Based on the information contained in the Photometric Plan, (Sheet 6) the lighting for the Complex shall avoid light trespass and glare and shall ensure that the lighting from the Complex will not interfere with the use and enjoyment of abutting properties. In addition, the lighting for the Complex shall not involve search lights or any flickering or flashing lights.
 2. Noise (§5.4.3). The siting of the Buildings and all accessory equipment within the Complex and the locations of loading docks, dumpsters and main parking areas and entrances have been located away from abutting residential properties. The topography of the Property and the existence and supplementing of surface features and plantings provides natural buffering for noise. In addition, the Buildings shall be constructed using insulated paneling and doors to mitigate the effect of noise being transmitted outside of the Buildings.
 3. Site Development Standards. (§5.4.4). The design of the Complex retains a large open space in the middle of the Property and has been designed in compliance with all of the dimensional, density and open space requirements of the Bylaw. The Approved Plans provide for more than 46% of the Property to remain as open space. The Complex is being designed in phases, as described in the Phasing Schedule.
 4. Pedestrian and Vehicular Access. (§5.4.5). The Complex does not abut Dixey Drive and will not involve the installation or construction of a roadway for the occupants of the Complex. The Public Access has been designed to satisfy the requirements of all local and state agencies. The opening for the Public Access is 24' wide and provides level entrance and exist lanes to ensure that traffic exiting and entering the Property will have a sufficient area for queueing. The site distance, based on the location of the Public Access is acceptable and provides pedestrian and vehicles with sufficient reaction time when accessing or exiting the Property.

Mr. Yebba seconded the motion to issue the Findings.

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

Motion carries.

Based on those Findings,

MOTION: Mr. Hartwell moved to approve the Site Plan with the following conditions:

- 1.
2. General Conditions: These conditions shall be applicable to the Petitioner or its successors and assigns:
 - k. Compliance with Approved Plans and Local Rules and Regulations. Except as otherwise provided, all work associated with this Approval, including architecture and landscaping, shall be in substantial compliance with the Approved Plans. Petitioner or its successors and assigns shall comply with all local, state and federal rules, regulations applicable to the construction of the Complex.
 - l. Snow Storage. Petitioner or its successors and assigns shall store snow in the areas designated on the Approved Plans.
 - m. Maintain the Property and the Façade of each of the Buildings. Petitioner or its successors and assigns shall keep the exterior of the Property reasonably free of all debris and rubbish on a regular basis and shall maintain the parking areas, landscaping and façade of the Buildings in good condition and in compliance with the performance standards set forth in this Decision. Petitioner or its successors and assigns shall undertake any and all repairs or replacements of plantings or other site improvements necessary to comply with this condition.
 - n. Storm Water Management Systems. The stormwater management systems shall be maintained in perpetuity by the Petitioner or its successors and assigns in accordance with the Operation and Maintenance.
 - o. Landscaping. Petitioner or its successors and assigns shall maintain the landscaping at the Property in good condition and shall undertake to replace any dead or dying plants.
 - p. Lighting. Petitioner or its successors and assigns shall use lighting that projects light downward to avoid glare onto abutting properties, except for two (2) colonial style lights recommended by the ICDRC and located at the entrance.
 - q. Public Access and ROW. Petitioner or its successors and assigns shall maintain the Public Access and ROW in perpetuity and at no time will the Town of Middleton be responsible for any snow or ice removal or any repairs, replacement or maintenance of any of the ways within the Property.
 - r. Trash Disposal. Petitioner or its successors and assigns shall provide for sufficient onsite trash disposal and shall ensure that the two (2) dumpsters located adjacent to Building B are emptied between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday.
 - s. Outdoor Equipment and Material Storage. Other than loading, deliveries, snow

and ice removal, landscaping and general maintenance, no activities involving the use of heavy equipment and tools is allowed outside of the Buildings at the Property, . Petitioner or its successors and assigns shall not permit any outdoor storage of equipment or materials without securing all necessary approvals.

- t. Deliveries. Deliveries to the Property are limited to the hours between 6:00 a.m. and 9:00 p.m. Monday through Saturday, except in the event of an emergency or other unforeseen issue regarding any delivery.
- u. Pre and Post Construction Access over Dixey Drive. Until the home located at 12 Dixey Drive is vacated, Dixey Drive and the driveway for the home may continue to be used as access to and from 12 Dixey Drive. Once the home is vacated, the Petitioner shall only be allowed to use Dixey Drive for the purpose of installing utilities for the Complex, demolishing the existing home and accessory structures, and re-grading the Property and installing various landscaping and other improvements as shown on the Approved Plans. In no event will Dixey Drive be used as general access for the Complex.

3. Specific Conditions:

- k. Prior to Commencement of Construction or any Demolition:
 - i. The Superintendent of the Department of Public Works has issued a written statement that all comments relative to the drainage system have been resolved to the Superintendent's full satisfaction.
 - ii. The Petitioner shall hold a pre-construction meeting with the Superintendent of the Department of Public Works, Conservation Agent, Building Commissioner, Board of Health Agent, and if available the Planner.
 - iii. Petitioner shall give the DPW, Conservation Agent, and Building Commissioner forty-eight (48) hours advance notice that work will commence at the Property. Petitioner also shall provide written notice to all residents of Dixey Drive as well as all abutters to the Property at least forty-eight (48) hours advance notice that work will commence at the Property.
 - iv. The Petitioner shall maintain and undertake all service upkeep as required by the operations and maintenance plans for all stormwater structures and for each of the septic disposal systems approved by the Conservation Commission and Board of Health.
 - v. As presented during the hearing, Petitioner shall use wall panels that mitigate for noise within the Buildings.
 - vi. Petitioner install a construction fence around the perimeter of the Property

during the construction of the Public Access, all associated infrastructure and the grading of the Property and will retain construction fencing around each Building as it is being constructed. A portion of the construction fence along the south border of the Property adjacent to Building B and shall also have debris screening. To the extent Petitioner needs to undertake any blasting, it will conform to all local, state and federal regulations regarding notice, insurance and safety.

I. Immediately following the Commencement of Construction or any Demolition:

- i. Petitioner shall undertake reasonable efforts to ensure that no debris from the construction at the Property will make its way onto any abutting public ways or any abutting properties. In the event any debris makes it way off the Property, the Petitioner shall immediately clean all debris and or runoff by street sweeping and other cleaning activities, as may be required to remedy the situation. In addition, Petitioner shall use best practices for reducing dust, including but not limited to spraying water within any of the areas being disturbed.
- ii. Outdoor construction activities (site work, demolition, paving, and other activities requiring the use of heavy equipment, power tools, or other activities involving banging and other loud noises) within the Property shall be confined to the hours of 7:00 a.m. through 7:00 p.m. Monday through Friday and the hours of 7:30 a.m. through 7:00 p.m. on Saturdays; however, deliveries of raw materials, and engine idling will be allowed at the Property during construction as early as 6:00 a.m. Monday through Friday and 7:00 a.m. on Saturdays, provided during the months of June, July and August, deliveries and idling shall not begin until after 6:30 a.m. Monday through Friday and 7:00 a.m. on Saturdays. Absent an emergency condition, no outdoor construction is permitted on Sundays or Federal holidays.
- m. Prior to Securing Building Permits for any of the Buildings. The septic disposal system for the applicable Building shall have approved in accordance with Massachusetts Title 5 Regulations and applicable provisions of the Middleton Board of Health.
- n. Prior to Securing a Building Permit for Building A. Petitioner or its successors or assigns shall install the berm and all landscaping along Dixey Drive in front of 12 Dixey Drive.
- o. Certificate of Occupancy. Prior to obtaining a Certificate of Occupancy for the last Building to be constructed at the Property Petitioner or its successors and assigns must submit a letter to the Town Planner from the professional engineer stating that the Property (including all on-site utilities, parking areas and storm water management facilities), have been completed in substantial compliance with the Approved Plans and this Approval. Alternatively, if all infrastructure has not been

completed the Petitioner or its successors and assigns may provide a bond, in an amount to be determined by the Superintendent of the Department of Public Works and approved by the Board, which approval shall not be unreasonably withheld or delayed, to cover the incomplete work. The failure to construct one or more the Buildings shall not trigger the requirement of any security.

- p. Release of Bond. In the event the Petitioner or its successors and assigns elected to post a bond in order to obtain an occupancy permit for the last Building being constructed at the Complex, the Superintendent of the Department of Public Works will report to the Board regarding the status of the Complex and any incomplete work. To the extent the Superintendent signs off that all work has been completed to his satisfaction, the Board immediately shall direct the Town to release the Bond to the Petitioner or its successor or assign.

4. Changes or Revisions. 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 following:

- a. The following situations may be deemed insubstantial and insignificant changes or revisions and require no action by the Board:
 - 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; and
 - ii. Increases in the type or quantity of landscaping.
- b. The following situations may be deemed insubstantial and insignificant changes or revisions and require no action by the Board but require action by the Building Inspector:
 - i. Shifting of structures, parking spaces or other site amenities less than one (1) foot in distance, provided the change does not result in any violations of any setbacks, buffers, or open space requirements; and
 - ii. 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.

Second by Mr. Yebba

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

Motion carries.

Other Business

Request for Release of Performance Bond – 225 Maple Street, Bay Development

Jill Mann, Esq. addressed the Board and stated the Applicant has finished building and landscaping at Magical Beginnings and are requesting the release of the \$3,000 bond. Ms. O’Leary stated she went by the property today and it is complete and the developer did a wonderful and thorough job with the landscaping.

MOTION: Mr. Hartwell moved to release the performance bond for 225 Main Street.

Second Mr. Yebba.

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

Motion carries.

Adjournment

MOTION: Mr. Hartwell moved to adjourn at **10:40 pm.**

All in favor.

Motion carries.

Minutes submitted by Leanna Harris, Recording Secretary, and accepted at the June 23, 2016 meeting of the board.