



TOWN OF MIDDLETON

BOARD OF APPEALS

195 North Main Street
Middleton, MA 01949
Ph: 978-777-8917
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MEETING MINUTES

May 5, 2016
Fuller Meadow School
7:00 pm

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

Absent: Nicholas Phillip Yebba, Barbara Piselli

Others Present: Katrina O'Leary, Town Planner
Jill Mann, Esq.
Douglas Earp
Phil Leiss
Michael Mack
Michael Magnifico
Kelly Mower
Chris Sparages
Amy Becker, Recording Secretary

Craig Hartwell called the meeting to order at **7:07 pm.**

MINUTES

A. March 24, 2016

MOTION: Mr. Hartwell moved to approve the March 24, 2016 Minutes. Second by Mr. Nazzaro.

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

Motion carries.

CONTINUED PUBLIC HEARINGS

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

Application: #1003

Attachments: Update Memo, Original application and exhibits, Letter dated April 13, 2016 requesting a continuance.

Voting Members: Mr. Hartwell, Mr. Fox, Ms. Cote, Mr. Nazzaro, Ms. LeBlac-Snyder

Thomas Moore approached the Board. Mr. Moore indicated they have contacted the abutters and are currently working with one of them to acquire additional land.

MOTION: Mr. Hartwell moved to accept the request for a continuance to the May 26, 2016 meeting. Second by Mr. Nazzaro.

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

Motion carries.

B. 73 East Street, Douglas R. Earp – Dimensional Variance for side yard setback

Application: #1008

Attachments: Application, plan, variance findings

Voting Members: Mr. Hartwell, Mr. Fox, Ms. Cote, Mr. Nazzaro, Ms. LeBlac-Snyder

Mr. Fox had requested a letter from abutter which was provided at the meeting. Ms. Cote read the letter dated April 18, 2016 from David Weber.

Douglas Earp approached the Board to answer their questions. Mr. Earp is seeking to reduce the side yard setback from the required 30 ft to allow for an overhang from the garage to house his propane tank. The propane tank will be located between the garage and side wall. It needs to be moved to this location for accessibility.

MOTION: Mr. Hartwell moved to make the following findings: that due to the unique soil, topography, and grade on this parcel and their effect on the location of the wastewater treatment system, in addition to the need to provide safe and adequate access to the heating fuel receptacle on this parcel, a literal enforcement of the bylaw would involve substantial hardship, financial or otherwise. Additionally, the variance can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such bylaw. Second by Mr. Nazzaro.

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

Motion carries

MOTION: Based on those findings, Mr. Hartwell moved to approve the variance application. Seconded by Mr. Nazzaro.

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

Motion carries

C. 10 Village Road – New Meadows Development LLC – Use Variance to allow Condominium Complex in the R1b zone

Application: #1009

Attachments: Application, Exhibit F, Exhibit G, Variance Finding & Excerpt re: variances

Voting Members: Mr. Hartwell, Mr. Fox, Ms. Cote, Mr. Nazzaro, Ms. LeBlac-Snyder

Jill Mann approached the Board to discuss the comparison between the By Right plan and the Use Variance plan. Ms. Mann explained that as per the concerns expressed by the abutters they have moved the back building further back from the golf course.

Michael Mack, 4 Country Club Lane. Mr. Mack stated that he is not opposed to the development but the back building appears to be 75' closer to the abutters than the original plan. He would request that the building moved back to its original location.

Chris Sparages responded and showed on the plan that the building has been moved 50' from the control box for the existing irrigation system so it will not sit on top of the knoll vs. the bottom of the knoll. Mr. Mack indicated that he would be happy with that location. Mr. Mack will meet with Mr. Sparages to review onsite.

Mr. Nazzaro asked about the sewer system plan. Ms. Mann responded that the plan is to hook into the line already in use by the country club. Mr. Sparages added that each home will have a holding tank which will feed into the existing sewer line.

MOTION: Mr. Hartwell moved that the Board make the following findings make the following findings:

- a. Due to the size and shape and unique topographical features of the Property the proposed development as shown on the Use Variance Plan is more beneficial than the as right development shown on the Conventional Plan.
- b. The Property has a peculiar shape and geology.
- c. Because of the aforementioned conditions that affect the Property, the literal enforcement of the use limitations of the R-1B District would cause substantial hardship to the neighborhood and Petitioner
- d. The Use Variance is being granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purposes of the Bylaw. The Property will remain residential and by granting the Use Variance the Board will support the development plan that reduces the amount of impervious area.

Second by Ms. LeBlanc-Snyder.

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

Motion carries

MOTION: Based on these findings, Mr. Hartwell moved to approve the use variance with the following conditions:

- a. Petitioner shall ensure that the documents creating the Condominium will include provisions mandating the maintenance of the storm water management systems, lighting, trash removal, access way (which will include snow and ice removal), sewer connections and landscaping of the open space areas.
- b. The access to the Condominium shall remain private in perpetuity and shall be maintained at the sole cost and expense of the residents of the Property.
- c. The Petitioner shall submit to the Board an application for site plan approval showing the proposed development of the Property consistent with the Use Variance Plan. In the event the Petitioner fails to apply for or secure Site Plan Approval from the Board within six (6) months of the issuance of this Decision, the Use Variance will lapse.
- d. The Petitioner shall develop the Property in full compliance with the Approved Site Plan.
- e. Following the completion of all improvements, the Petitioner shall deliver to the Town Planner or Chairman of the Board an as-built plan, stamped by a licensed engineer, certifying that all improvements have been completed in substantial compliance with the Approved Site Plan. The Petitioner's right to receive an occupancy permit for the last sale of a dwelling constructed at the Property shall be conditioned upon Petitioner satisfying this stated condition. Petitioner shall be deemed to be in compliance with this condition provided the as-built plan confirms that the Property has been completed in substantial compliance with the terms and conditions of this decision and the conditions of the Approved Site Plan.

Seconded by Mr. Nazarro.

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

Motion carries.

NEW PUBLIC HEARINGS

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

Application: #1010

Attachments: Application, plan, stormwater plans, noise concerns, DRG minutes, PB recommendations, FHWA Noise Reduction Article, performance standards

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

Ms. Cote read the legal advertisement into the record along with correspondence.

Ms. Mann reviewed the Site Plan for the Board. The industrial park consists of 14.8 acres of land. The proposed plan has 5 buildings on the site; plans include selling the two (2) 'anchor' buildings and maintaining ownership of the other three (3). The only public access to the property is from Route 114. There is an easement along the far right side of the property which would be for emergency vehicles and

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for any tenants to access the parking lot to Building B. This site plan has been reviewed by all of the Town department heads.

Mr. Ron Trottier, 26 Dixey Drive. Mr. Trottier expressed some concerns regarding the proposed location of Building A as being too close to Dixey Drive and the impact it will have on the residents. Also, was questioning how this petitioner could purchase a couple of the lots on Dixey Drive and have this industrial park property so close; questioning the location of the zoning line and why the residents were unaware of this. Mr. Trottier presented some plans from lots on Dixey Drive where it simply indicates the lot listed as residential, no mention of of light business or industrial.

Mr. Bill Fallon, BWK Construction. Mr. Fallon asked if there would be any truck traffic along the easement.

Matt Wilson, 155 N. Main Street on behalf of the Cotone Family. Mr. Wilson expressed concern regarding what is being provided between the buildings and the residential properties as buffer.

Mr. Jayme Fishman, 18 Dixey Drive. Mr. Fishman expresses all of the same concerns that have already been raised. Mr. Fishman is also concerned regarding the existing berm along the back edge of a couple of the lots on Dixey Drive between the residences and the proposed Building A. It had been expressed to the residents that the berm would be extended to help add additional buffer.

Mr. Scott Villemure, 8 Dixey Drive. Mr. Villemure has dealt with other developers and after his conversations with Mr. McKenelley he is supportive and feels that Mr. McKenelley is more open and willing to talk and work with the abutters.

Mr. Martin Forde, 17 Dixey Drive. Mr. Forde expressed concerns that due to the topography of the location it will be difficult to shield the residential homes from the proposed Building A. Mr. Forde is requesting that Building A be moved further away from Dixey Drive.

Ms. Jill Mann's rebuttal to the expressed concerns:

- The area has always been zoned as is currently indicated on the zoning maps. A couple of the lots on Dixey Drive were always straddling two zones; originally it was residential and light business.
- There are no plans to remove the berm
- The Doherty property is not being affected – it will remain as a residential property
- Two of the other lots were purchased by Mr. McKenelley and they have plans to join the lots to help add buffer and not to allow any access to the industrial park from Dixey Drive

Ms. Mann also pointed out that the proposed industrial park will benefit the Town by providing additional business and is expected to generate approximately \$400,000+ in tax revenue.

Mr. Jayme Fishman, 18 Dixey Drive. Mr. Fishman clarified that he wasn't indicating that the berm was being removed, but was asking if it was going to be extended as it was his belief. Mr. Fishman also expressed concern regarding what the affect would be on their home values having this industrial park so close to their homes.

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----- Mr. Hartwell requested a 5 minute recess.

Board Discussion

Regarding the proximity of the building to Dixey Drive, the site plan in front of the Board has no frontage on Dixey Drive. Any deed restrictions would only be subject to enforcement in private legal dealings, it is not subject to zoning or public decisions. Mr. Hartwell asked Ms. Mann the following questions to determine if the site plan before the Board conforms with all of the By Laws:

Traffic concerns – Ms. Mann indicated that this would have low impact. There will not be any retail establishments. They expect a total of 90-100 total employees, most of whom will arrive in the morning and leave late afternoon.

Parking – with the expected 90-100 employees, the total required parking spaces would be 249. They are providing 262 parking spaces.

Lot size – the industrial park has a total of 14.8 acres.

Frontage – more than 350' on No. Main Street

Shortest setback – 36.7'

Lot coverage percentage by buildings – 29.4%

Open space – 46.5%

Height of building – 28.6'

Access for fire equipment – all approved

Hours of operation – they can operate 24 hours a day. All deliveries or access to dumpsters would only be during normal business hours.

There is currently a site walk scheduled with the Conservation Committee for May 17, 2016 at 5:30 pm.

Mr. Jayme Fishman, 18 Dixey Drive. Mr. Fishman asked how any zoning changes would be made since there was discussion regarding the zoning area being changed from light business to light industrial – these changes would have been voted on by the Town at a Town Meeting. Again, reiterated the residents' concerns about what is indicated on their deeds and plans – 'shouldn't a homeowner be able to rely on the plan filed with the Registry'. Mr. Fishman expressed his concern that the berm be enhanced. Mr. Fishman also voiced an objection to Mr. Fox being a voting member regarding this issue since he has had business dealings with Mr. McKenelley.

MOTION: Mr. Hartwell moved that the Board conduct a sitewalk visit along with the Conservation Committee on May 17, 2016 at 5:30 pm. Seconded by Mr. Nazarro.

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

Motion carries.

MOTION: Mr. Hartwell moved that this discussion be continued to the next Zoning Board of Appeals meeting on May 26, 2016. Seconded by Mr. Nazarro.

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

Motion carries.

OTHER BUSINESS

A. Special Permit Decision – 25 Lonergan Rd – Correction scrivener's error

Voting Members: Mr. Hartwell, Mr. Fox, Ms. Cote, Mr. Nazzaro, Ms. LeBlac-Snyder

Ms. Jill Mann explained to the Board that there was an error in the size of the sign being proposed for Paradise Mini Golf; which is to be a 10 sq ft sign. No objections.

MOTION: Mr. Hartwell proposed to approve and correct the error. Seconded by Mr. Nazarro.

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

Motion carries.

B. Site Plan Modification – 339 No. Main Street – Dog'N'It Daycare – Kerri Amor

Voting Members: Mr. Hartwell, Mr. Fox, Ms. Cote, Mr. Nazzaro, Ms. LeBlac-Snyder

Ms. Amor is requesting to create a fenced-in area for the dogs to be able to go outside. The fenced-in area would be along the backside of the building and would be 13' x 80' made of 6' chain link fencing. The question for the Board is if this is a minor or major modification.

MOTION: Mr. Hartwell moved that the requested fenced-in area is not a minor modification and therefore, will require a full application. Seconded by Mr. Nazarro.

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

Motion carries.

Adjournment

MOTION: Mr. Hartwell moved to adjourn at **9:39 pm**.

All in favor.

Motion carries.

Minutes submitted by Amy Becker, Recording Secretary, and accepted at the May 26, 2016 meeting of the board.