



TOWN OF MIDDLETON  
ZONING BOARD OF APPEALS

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**MEETING MINUTES**

June 26, 2016

Fuller Meadow School

7:00 pm

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

**Absent:** Nicholas Yebba

**Others Present:** Jill Mann, Esq.  
Christopher Sparages, Williams & Sparages LLC  
Paul Lever  
Katrina O'Leary, Town Planner  
Leanna Harris, Recording Secretary

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

**I. MINUTES**

A. May 26, 2016

**MOTION:** Mr. Hartwell moved to approve the May 26, 2016 meeting Minutes.  
Second by Mr. Nazzaro.

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

Motion carries

**II. NEW PUBLIC HEARINGS**

A. 339 North Main St. – Dog 'N It Daycare, Keri Amor – Modification of Site Plan/Special Permit. **Application: #1012**

**Attachments:** 2B1 application & plan, 2B2 North Andover abutters, 2B3 2014 decision

The applicant has requested a continuance of the public hearing so that the Planning Board can make a recommendation.

**MOTION** Mr. Hartwell moved to continue application #1012 to the July meeting.  
Second by Piselli.  
Votes: 5-0 (Nazzaro, Fox, Cote, Hartwell, Piselli)  
Motion carries.

**B. 18 Village Lane – New Meadows –Site Plan Review for granted use variance**

**Application: #1013**

Attachments: 2C1 application & plan, 2C2 PB rec, 2C3 2016 variance decision

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

Ms. Cote read the application and correspondence into record.

Atty. Mann addressed the Board on behalf of New Meadows and stated that the Board approved a Use Variance in May 2015. The applicant provided a Site Plan for approval. Atty. Mann pointed out the rain gardens that will be planted to create attractive entrance way and noted they were also able to retain the tree line. The applicant provided information regarding the storm management system that will manage the water on site. Pursuant to Site Plan approval, they have met all submittal requirements. The project complies with safe pedestrian/vehicle access, there are sufficient utilities, trash removal and lighting. The road itself will be maintained privately by the condominium. A third party will handle trash removal, there is traditional residential lighting, gas is available and snow management locations have been identified. The post office will be delivering mail to each individual home and so there will be no mailbox kiosk. All performance standards have been complied with.

There was no one present to speak in opposition.

Board Discussion

Mr. Nazzaro asked what the start date would be and Atty. Mann stated between July 10<sup>th</sup> – August 10<sup>th</sup>.

Atty. Mann explained where the parking spaces would be and stated that every unit will have a 3-car garage as well as parking out front of each home.

**MOTION:** Mr. Hartwell moved to approve the Site Plan for the Estates on the Green, stamped and dated June 23, 2016, Sheets 1-7 with the conditions as laid out in the application for the Use Variance dated May 11, 2016 and including the additional condition that a building permit will not be approved without written approval of the storm water management system and all bylaws will be followed.

Second by Mr. Nazzaro.

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

Motion carries.

**C. 92 River Street – Special Permit under Section 3.3 (Residential Non-conforming)**

**Application: #1011**

Attachments: 2A1 application & plan, 2A2 GIS image, 2A3 ANR plan, 2A4 Deed

Voting Members: Mr. Hartwell, Ms. Piselli, Ms. Cote, Mr. Fox, Ms. LeBlanc-Snyder  
Ms. Cote read the application into record. The abutters have been notified.

Paul Lever addressed the Board and stated he is looking to add a 20' x 24' addition. Mr. Lever outlined the proposed project and property layout.

There was no one present to speak in opposition.

Board Discussion

Mr. Fox asked what the existing nonconformity is and Mr. Lever responded that the existing house doesn't meet the required 30' side set back.

The Board discussed which Section of the bylaws this application would fall under.

Mr. Hartwell asked the Members if they would like to conduct a Site Walk on the property.

**MOTION:** Ms. Piselli moved the Board to make the following Findings that the extension of the nonconforming use would not be substantially detrimental to the neighborhood than the existing nonconforming use and furthermore there is nothing that the extension would impact on as far as the traffic/pedestrian flow and safety, nor would it impact on utilities or public services, the extension is consonant with the neighborhood character, it would not impact the natural environment and it does not impact on community needs.

Second by Ms. Cote.

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

Motion carries.

Based on those Findings,

**MOTION:** Ms. Piselli moved the Board to issue the Special Permit based on those Findings. Second by Ms. LeBlanc-Snyder.

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

Motion carries.

**D. 30 Log Bridge Rd – North Shore Business Center LLC – Use variance to allow a restaurant in M-1 zone. Application: #1014**

Attachments: 2D1 application & plans, 2D2 2015 decision, 2D3 2014 decision, 2D4 plans

Voting members: Hartwell, Piselli, Fox, Cote, Nazzaro.

Ms. Cote read the application into record. The abutters have been notified and there is no correspondence.

Atty. Mann addressed the Board. The applicant is requesting a Use Variance to allow a restaurant with entertainment. The former building did have a restaurant use within its educational facility.

The Applicant believes it satisfies the Use Variance requirements. They are visible from Route 114 and they have direct access from Route 114 except for a sliver of land that prevents the Applicant from having frontage directly located on Route 114, which is a requirement to have that Use. The Applicant alleged they are experiencing an economic detriment due to this bylaw. There is about 200,000 square feet of space and having a restaurant on this property would benefit those working in the building.

Floor plans have been provided with the application. The “entertainment” request on the application refers only to televisions.

There was no one present to speak in opposition.

#### Board Discussion

Ms. LeBlanc-Snyder asked what type of signage would be used to advertise the restaurant and Atty. Mann described an example and stated it would not be an electronic sign. Members of the Board discussed their concerns with deviating from the Uses permitted in the M1 district. The amount of parking spaces and public bathrooms required per Use was also discussed. Operation hours and traffic impact was discussed.

Ms. Cote asked how long the Use Variance, if granted, would be good for. Atty. Mann stated Use Variances do not expire, unless there is an expiration date specifically stated in the permit. Ms. Piselli stated that a use variances is an extraordinary form of relief and should be granted sparingly. The legal standard has not been met. She does not find the hardship compelling, the property is a complex with multiple other uses available to the petitioner.

**MOTION:** Mr. Hartwell moved the Board to except the following findings:

The Property is unique in that it is located in close proximity to Route 114 and is visible there from but does not have legal frontage on Route 114. While there is an abundance of properties that are located the M-1 District. This M-1 zoned Property is unique and can be differentiated from those other properties because of its location relative to Route 114.

The literal enforcement of the use limitation and the restriction against allowing a restaurant to open at the Property would involve substantial financial and other hardship to the Petitioner. The unique conditions of the Property identified above make the development of the Property in accordance with a strict interpretation of the Bylaw impracticable and economically untenable. The enforcement of the use limitations would create a large difference in the value between the Property and any other the parcel of land directly abutting the Property that is visible from Route 114 and has legal frontage.

The economic impact of the use limitations and the resulting value disparity could be avoided by waiving the limitation to allow the Property to be developed and used as a full-service restaurant without any detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaws. Any use of vacant

commercial space adds to the growing vitality of Middleton's growing commercial tax base thereby promoting the general welfare of the Town.

Second by Ms. Cote.

Votes: 3 Opposed (Nazzaro, Cote, Piselli)

Votes: 1 in favor (Hartwell)

Abstain: Fox

Motion failed

### **III. TOWN PLANNER UPDATE**

Ms. O'Leary provided a brief update regarding several developments in process (Log Bridge Road, Apex Chimney, Dog 'n It, the Seafood store, dental office at East/Maple, daycare located at 225 Maple Street).

Ms. O'Leary discussed the Town allowing Use Variances.

### **ADJOURNMENT**

**MOTION:** Mr. Hartwell moved to adjourn at **8:50 pm**. Second by Mr. Nazzaro

All in favor.

Motion carries.

Minutes submitted by Leanna Harris, Recording Secretary, and accepted at the July 28, 2016 meeting of the board.