



Town of Middletown

TOWN HALL 350 EAST MAIN ROAD
MIDDLETOWN, RHODE ISLAND 02842

Minutes

Of the meeting of Monday, Sept. 10, 2018

Middletown, RI Conservation Commission

Present: Dave Huntoon (Vice Chairman), Bob Johnson, Howard Hall, Jim Gedney, Peter Tarpgaard, Howard Hall, Teri Flynn (Planning Board Liaison)

Absent: Gary Paquette (Chairman)

Guests: ; Shawn Brown, Town Administrator; Warren Hall, Town Engineer; David Martland, Attorney; Nick Giacobbi, principal at Benzine Development; Lyn Small, engineer Northeast Engineers and Consultants. This meeting was videotaped to be viewed on the Town of Middletown, RI website.

The meeting was called to order at 5:34 by Vice Chairman David Huntoon.

A motion was made and passed to accept the minutes of the meeting on July 9, 2018.

The first agenda item was Case 2017-02 which was to permit a gasoline station with a convenience store and drive-up window and a vehicle washing establishment located in a Limited Business Traffic Sensitive Zone (LBA) in Zone 1 of the Watershed Protection District (WPD).

This case had last been presented to the Conservation Commission on April 9, 2018. At that meeting David Martland, Attorney for Benzine Development presented details on the proposed gas station/ convenience store/ car wash. Two land parcels will be combined. These are 1225 Aquidneck Ave which is the current site of the Bay willows Motel and 535 East Main Rd which is a vacant lot that was previously a gas station. The old gas tanks have been removed and clean fill has been added. The car wash will use laser, high pressure washers with no rollers and uses soap made from 100 percent biodegradable materials. All runoff water will be contained and sent to town sewer system.

At the April meeting Lyn Small, a civil engineer for Northeast Engineers and Consultants had presented the technical details of the site engineering to handle storm water runoff and water and soap runoff from the car wash. Small stated that permits for the project have been obtained from DOT (Department of Transportation) and DEM (Department of Environmental Engineering) and environmental precautions have been implemented to deal with all runoff water. One quarter of this site is In Zone 1 of the WPD due to stissing soil; the remainder is in Zone 2. The gas pumps and car washing equipment are located in Zone 2. There are also wetlands on the lot adjacent to back side of the site.

The design to reduce runoff will include oil/water separators, sand filers and detention and catch basins. Models have been run to determine how the design will perform in 1, 2,



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10, 25, and 100 year storms. Improvements to the design were made based on recommendations after review by the State of RI.

Dave Martland presented updates to the status of the project: wetland permits have been obtained from the DEM; Dot has reviewed and approved the design for safety and drainage; the Middletown TRC (Technical Review Committee) has reviewed and approved the design; Grossman Engineering was hired by the town to review the design; the final step is approval by the Zoning Board after obtaining an advisory opinion from the Conservation Commission.

Lyn Small presented updates to the design of the project since the April meeting. Stacking of cars entering the property was modified as requested by the TRC. Drainage was slightly changed to reduce the flow toward Newport Tool & Die and Aquidneck Ave and more toward the wetlands. The Dot request to reduce the flow toward Aquidneck Ave required a bigger retention system.

Teri Flynn asked if the Storm Water Check List form for this project had been filled out. This has not been done because the procedures for this form are still a work in progress and it is a guide for the Commission and is not required to be filled out by the applicant.

Teri also questioned safety problems regarding leakage of gasoline during the filling of the tanks by the delivery trucks. Nick Giacobbi provided a thorough explanation of safety measures utilized in the process.

The Conservation Commission had a site visit at the end of July with Dave Martland and Lyn Small. Jim Gedney and Bob Johnson attended. Observations were that the lot was considerably larger than it appeared from the street and that there was a large portion of the lot which will remain wooded.

Howard Hall of the Conservation Commission stated that in his opinion according to Section 1105 of the Zoning Code car washes and gasoline storage were not allowed in Zone 1 and Zone 2 of the WPD. However Section 1106 states that these uses can be permitted by the Zoning Board with a special use permit after an advisory report has been received from the Planning Board and the Conservation Commission. A long discussion on this apparent conflict ensued between members of the commission and also between the commission and the applicant's lawyer.

A motion was made, seconded and approved by a 3-2 vote by the Conservation Commission to forward a favorable advisory opinion of the petition to the Zoning Board with the provision that the advisory opinion letter contain the typical restrictions about the use storage of chemicals or hazardous substances, the use of lawn chemicals, or use of ice melt chemicals and the provision that the Zoning Board determine the issue of whether a vehicle washing establishment and storage of liquid petroleum products at the proposed site (within a WPD Zone 2 area) should be allowed. Dave Huntoon, Jim Gedney, and Bob Johnson voted in favor. Howard Hall



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and Teri Flynn voted against. Peter Tapgaard had to leave the meeting early and did not vote.

Howard Hall stated that he would submit a dissenting opinion. That memo was received on Sept 12, 2018 and is attached below.

The meeting was adjourned at 7:33 PM.

Respectfully submitted,

Robert Johnson

Dissenting opinion of Howard Hall submitted Sept 12, 2018

Dissenting Opinion for the record on Conservation Commission motion and vote on the Benzine Development LLC Petition for a special use permit to permit a gasoline station ... and vehicle washing establishment ... in Zone 1 of the Watershed Protection District ... :

From the Patriot Petroleum drawing set provided to the Conservation Commission for the proposed gasoline station and carwash facility, it is seen that approximately ¼ of the proposed development resides within Watershed Protection District (WPD) Zone 1 and the rest resides within WPD Zone 2. Storage of liquid petroleum products and the carwash facility resides in Zone 2.

Town Zoning Ordinance Section 1105 states "Uses Permitted in Zone 2 are "Any use permitted in the underlying zoning district by right or by special-use permit in Section 602, with the exception of the following uses: ... item (H) - Vehicle washing establishment, (and) ... item (G) - Storage of bottled gas oil or other liquid petroleum products." It is clearly stated that a vehicle washing component and any kind of storage of liquid petroleum products are not permitted in a WPD Zone 2 area either by right or by a special use permit as proposed in this petition.

Town Zoning Ordinance Section 1106 states "The Zoning Board of Review shall not act upon the granting of a special use permit until the question has been referred to, and an advisory report has been received from, the Planning Board and the Conservation Commission."

The motion made, seconded and approved by a 3-2 vote by the Conservation Commission at the 09/10/2018 meeting was to forward the issue to the Zoning Board referencing Town Ordinance sections 1105 and 1106 requesting that the Zoning Board decide the issue of whether a vehicle washing establishment and storage of liquid petroleum products at the proposed site (within a WPD Zone 2 area) be allowed or not. This was not the proper motion or resulting action of the Conservation Commission that should have been made.



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An "advisory report" based on Town Conservation ordinances and WPD conservation concerns, which is the Conservation Commission's area of responsibility, was not provided in the motion or resulting action of the Commission, rather the Commission motioned and voted to refer the issue to the Zoning Board rather than providing a recommendation (report) based on Town Conservation Ordinance concerns. The motion that should have been voted on should have been based solely on Ordinances 1103 and 1105 (Uses Permitted in Zone 1 and Zone 2), not on Ordinance 1106 (an ordinance applicable to the Zoning Board of Review, not the Conservation Commission). The motion should have been to advise the Zoning Board of Review that the proposed vehicle washing establishment and storage of liquid petroleum products at the proposed site should NOT be allowed as it violates items (G) and (H).