



Town of Middletown Planning Department

350 East Main Rd., Middletown RI 02842 (401) 849-4027

PLANNING BOARD MINUTES

MARCH 29, 2017

Town Council Chambers, 350 East Main Rd., Middletown, RI

Board members present:

Paul Croce, Chairman
Matt Sullivan, Vice Chair
Bill Nash, Secretary
Liz Drayton
Terri Flynn
Betty Jane Owen
Jim Williams

Ron Wolanski, Planning Director
Peter Regan, Town Solicitor
Marisa Desautel, Assistant Solicitor

The meeting was called to order by Mr. Sullivan at 5:30pm.

1. Election of Officers

Mr. Sullivan called for nominations for Planning Board officers. Ms. Owen nominated Mr. Croce for chairman, Mr. Sullivan for vice chair, and Mr. Nash for secretary. The nominations were seconded by Ms. Drayton and unanimously approved, 7-0-0.

Mr. Croce conducted the remainder of the meeting.

2. Approval of the minutes of the February 8, 2017 and March 8, 2017 regular Planning Board meetings.

Motion by Ms. Owen, seconded by Mr. Sullivan to approve the minutes of the February 8, 2017 and March 8, 2017 Planning Board meetings. **Vote:** 7-0-0.

3. Correspondence

1. Fax transmittal of attorney John P. Zacchilli, 288 Main St., Milford, MA, received February 21, 2017 with an undated letter of Rose Marie Nunes re: Zoning Relief, KJ's.
2. Letter dated February 24, 2017 from Stephen G. Fagan, 5 Toni Lynn Terrace and Robert Novick, 278 Reservoir Rd. regarding Goldstein Associates, LLC subdivision.
3. Letter dated March 2nd, from John & Heather Cawley regarding KREG, LLC (Bailey Brook Independent Living) application
4. Letter dated March 2nd, from Mary Dennis regarding proposed Oliphant Lane subdivision, Plat 118, Lot 5
5. Letter dated March 1st, from Patrick J. Kerins regarding Vaucluse Estates subdivision
6. Letter dated March 8th, from Robert Schultz, Deputy Utilities Director, Newport Department of Utilities, regarding Bailey Brook Independent Living

7. Letter dated March 23rd, from attorney Jeremiah C. Lynch, III, regarding Bailey Brook Independent Living
8. Memo dated March 8th, from Clean Ocean Access, regarding single-use plastic bag ordinance

Mr. Croce noted that the applicants for several items had requested continuances.

4. **Public Hearing – Request of the Zoning Board of Review pursuant to section 308 of the Middletown Zoning Ordinance for Development Plan Review on a petition of Middletown Self-Storage, LLC for a special use permit to allow construction of a 68,000 sq.ft. addition to an existing commercial building to be used for self-storage, and associated site work on property located in the limited business traffic sensitive (LBA) district. Property located at 875 & 909 Aquidneck Ave., Plat 114, Lots 657 & 758.**

Motion by Mr. Sullivan, seconded by Ms. Owen to continue the matter to the April 12, 2017 Planning Board meeting at 6pm. **Vote:** 7-0-0.

5. **Public Informational Meeting - Request of Trademark Builders, LLC for Master Plan approval, including request for waivers from certain provisions of the subdivision and land development regulations, for a proposed 7-lot major subdivision of property fronting on Vaucluse Ave. The property is identified as 288 Vaucluse Ave, Assessor's Plat 129, Lot 21, and is located approximately 800 feet to the south of the intersection of Vaucluse Ave. and Peckham Ave.**

Motion by Mr. Nash, seconded by Mr. Sullivan to continue the matter to the April 12, 2017 Planning Board meeting at 6pm. **Vote:** 7-0-0.

6. **Request of David Martland, Esq., on behalf of his client for concept review – Proposed major subdivision of land fronting on Oliphant Lane, Plat 118, Lot 5.**

Motion by Ms. Owen, seconded by Mr. Sullivan to continue the matter to the April 12, 2017 Planning Board meeting at 6pm. **Vote:** 7-0-0.

7. **Request of the Town Council for review and recommendation on a proposed amendment to Title IX of the Town Code regarding use of plastic carryout bags.**

Mr. Reagan provided a summary of the proposed ordinance, which would prohibit the use of most point of sale single-use plastic shopping bags.

Ms. Flynn asked if the ordinance would apply to Scouting for Food or similar organized activities. Mr. Regan stated that it would not.

Mr. Nash asked if the ordinance was consistent with the ordinance adopted in Newport. Mr. Regan stated that it is.

Mr. Croce opened the discussion for public input.

Students from All Saints Academy and St. Michael's County Day School provided presentations in favor of the ordinance.

Mr. Williams stated that he is favor the ordinance.

Ms. Owen asked if bags used to collect dog waste would still be available. Mr. Reagan stated that they would.

Ms. Drayton commended the students for their presentations.

Dave McLaughlin, Executive Director of Clean Ocean Access, requested the Planning Board's support for the proposed ordinance. A parent of one of the students also requested support.

Motion by Mr. Sullivan, seconded by Mr. Nash, to forward a positive recommendation on the proposed ordinance to the Town Council. **Vote:** 7-0-0.

8. Public Meeting – Request of the Town Council for an advisory recommendation on a petition of Horan Building Company, Inc., for proposed amendments to the Middletown Zoning Ordinance, section 602 regarding uses permitted in the office park (OP) zoning district, and section 702 regarding the allowed number of principal buildings on a lot in the office park (OP) district.

Town Solicitor Peter Regan recused due to a potential conflict of interest. Assistant Solicitor Ms. Desautel sat as solicitor.

The petitioner was represented by attorney Michael Miller, who described the intent of the petition. He stated that his client has no desire to store materials and equipment outdoors. The amendment would allow the contractor's office, and indoor workspace and storage to be located on the OP district.

The petitioner, Mr. Horan, stated that all work, such as cabinet making, and wood and copper working would be conducted indoors.

Mr. Croce asked if there would be a ventilation and filtering system. Mr. Horan stated that there would be.

Mr. Nash asked if there are tenants in the subject building. Mr. Horan stated that there are four tenants.

Ms. Drayton asked if there would be sound insulation. Mr. Horan stated that there would be.

Ms. Flynn asked about the size of the proposed workshop. Mr. Horan stated that it would 4,000-6,000 sq.ft.

There was discussion of potential impacts to tenants of the subject building and surrounding properties.

There was discussion of the petitioner's request to allow more than one principle building per lot. Mr. Horan stated that his property is 3.5 acres and could accommodate another building and comply with lot coverage and setback requirements.

Ms. Drayton asked if the proposed amendments would impact existing uses in the corporate park. Mr. Wolanski stated the that existing uses would not be adversely impacted by the zoning change since it would expand the uses allowed in the park, rather than restrict uses. Any existing contractor uses in the park, that would now be considered non-conforming, would be made conforming because of the change. He was not aware of any such uses, however.

Local commercial real estate broker Steve Kirby, was introduced by Mr. Miller. Mr. Kirby referenced a 2005 analysis of the corporate park which indicated substantial opportunity to expand in the park. The current vacancy rate in the park is 11.4%.

There was discussion of the desire to allow additional buildings on a lot. Mr. Kirby stated that businesses are attracted to smaller buildings where spaces are smaller, with better excess to windows. There is limited interest for large spaces.

Mr. Croce asked if the petitioner could wait to allow the board to consider the use table more comprehensively. That work will be happening soon.

Mr. Miller stated that his client is looking to locate to a building in the park that he owns.

Mr. Croce opened the discussion to the public.

Attorney Robert Silva stated that he represents Brookwood, owner of abutting properties, which is opposed to the proposed zoning ordinance amendments. He introduced planning consultant Joe Lombardo, who stated the town should be concerned with the impact on other tenants in the park. He reviewed the language in the Middletown comprehensive plan regarding the park, which discusses a desire for high tech businesses. There are other districts, such as light industrial, better suited for the proposed use. He reviewed descriptions of corporate parks from other parts of the country.

Mr. Nash suggested that requiring a special use permit for contractors would provide additional oversight. Mr. Lombardo responded that it would still be an allowed use. Special use permit requirements can discourage economic development.

Mr. Silva introduced Alden Anderson, a commercial real estate broker with C.B. Richard Ellis. Mr. Anderson stated that predominant use in the corporate park is office use. Tenants want to maintain a compatible environment. Lease rates are already low and the change could adversely impact ability to attract tenants.

Mr. Silva stated that Mr. Horan is a reputable business man, but the use is not appropriate in the corporate park, and is not consistent with the Middletown Comprehensive Community Plan.

Mr. Miller stated, in response to the testimony, that it is not appropriate to compare the Aquidneck Corporate Park to other parks across the country. Brookwood is only one of the property owners in the park. Other property owners have not expressed concern. He requested the board's support for the petition.

Ms. Flynn expressed concern over consistency with the comprehensive plan, and the health safety and welfare of the community.

Ms. Owen stated concern over setting a precedent.

Mr. Nash suggested that there could be compromise.

Motion by Mr. Nash, seconded by Mr. Sullivan, to forward positive recommendation to the Town Council subject to modification to the petition to require a special use permit to allow contractors without outdoor storage in the OP district, and recommendation against the amendment to allow more than one principal building on a lot. **Vote:** 5-2-0, with Ms. Flynn and Mr. Croce voting in opposition.

9. **Request of the Zoning Board of Review for an advisory recommendation on a petition of William & Elizabeth Gill & David Lawrence on an application for a special use permit to allow proposed development of a 36-unit Senior Independent Living Facility in Zone 1 of the Watershed Protection District pursuant to sections 1106 and 2202 of the Middletown Zoning Ordinance. Property located at 1 Thelma Lane, Plat 111, Lots 14, 23 & 23B.**
10. **Public Hearing - Request of the Zoning Board of Review for an advisory recommendation on an application for Development Plan Review, KREG, LLC (William & Elizabeth Gill & David Lawrence, owners) for a special use permit to allow proposed development of a 36-unit Senior Independent Living Facility in Zone 1 of the Watershed Protection District pursuant to sections 1106 and 2202 of the Middletown Zoning Ordinance. Property located at 1 Thelma Lane, Plat 111, Lots 14, 23 & 23B.**

Mr. Croce stated that items 9 & 10 would be discussed together.

Motion by Mr. Sullivan, seconded by Ms. Owen, to open the public hearing. Vote: 7-0-0.

The applicant was represented by attorney Jay Lynch. He introduced Chris Duhamel of DiPrete Engineering who reviewed the plans. He discussed the 2015 zoning change for the property to R-10, subject to development of 55+ project. He stated that the project is consistent with the town's comprehensive plan. He discussed the density calculations. 43 units would be possible, where 36 units are proposed. The project would generate 10 peak-hour trips, where West Main Rd. handles approx. 30,000 vehicles per day. Public water and sewer is available. He provided letters from RIDOT and Middletown Fire Dept. indicating their approval of the proposed design.

Mr. Duhamel addressed concerns regarding impact on the watershed. The proposed stormwater drainage design has a high level of treatment of stormwater compared to other options. RIDEM has approved the design. Concerns raised by the town's consulting engineer, Mr. Cabral, have been addressed. Kevin Demers, of DiPrete Engineering described the design of the stormwater treatment and the operation and maintenance plan.

There was discussion that the town will have the ability to enforce maintenance provisions. Quarterly inspection reports should be provided to the town for review.

Mr. Sullivan requested that the proposed use of fertilizers be eliminated. Mr. Duhamel agreed.

Ms. Owen asked about the number of units located in Zone 1 of the watershed protection district. Mr. Duhamel stated that there are approximately 19 units in Zone 1. He noted that evidence will be provided to the Zoning Board of Review to demonstrate that some soils on the property identified as hydric are not, reducing the number of units considered to be in Zone 1.

There was discussion of the town's 100 foot wetland buffer requirement. Mr. Duhamel stated that the Planning Board has discretion over the buffer requirement. There currently is no natural buffer. A 50 foot buffer will be restored in accordance with the RIDEM approved plan.

Ms. Owen asked if there had been filling of wetlands on the property. Mr. Duhamel stated that he found no evidence of wetland filling on the property.

Ms. Flynn asked if RIDEM has approved both wetlands and drainage by a single letter. Mr. Duhamel stated that it had.

Ms. Owen asked about traffic impacts. Mr. Duhamel stated that the property would have access to an existing traffic signal. There would be 10 peak-hour trips and approx. 230 trips per day generated by the project.

Mr. Lynch noted that the plans will be modified to include required street trees to avoid need for a waiver request.

Mr. Lynch introduced wetland biologist Scott Rabideau, who stated that he was recently hired to review the site, including impacts on wildlife habitat. He reviewed aerial photos of the site.

Ms. Owen asked if wetlands on the site had been altered. Mr. Rabideau stated that they had not been altered.

Mr. Rabideau discussed the RIDEM wetlands application review process. He stated that the new vegetated wetland buffer that would be provided as a result of the project would provide valuable wildlife habitat.

Ms. Flynn noted language in the RIDEM permit that states that the approval is subject to proper installation of the proposed improvements. Mr. Duhamel stated that the language is included in all permits and it is ultimately the design engineer who is responsible for proper functioning of stormwater treatment and other aspects of the project.

Mr. Croce invited public input.

Anthony Rego, an abutter to the project, stated that his relative owned the property and had placed fill on the property and was cited by RIDEM. He showed photos to the board members of past conditions. Items were buried on the property. He discussed a culvert and stream along the northerly property boundary.

Mr. Duhamel and Mr. Rabideau discussed the historical aerial photos and stated that the plans identify the area subject to storm flowage along the northerly property line referenced by Mr. Rego.

Mike Murphy of 1647 West Main Rd. stated that he is opposed to the project due to impacts on wildlife and traffic impacts. He stated that he mows a portion of the applicant's property.

Dave McLaughlin of Clean Ocean Access asked if there would be a decrease in stormwater flow to Bailey Brook, which could impact water quality down stream.

Mr. Demers stated that there would be reductions in peak flow rates. The total volume of water reaching the brook would remain stable.

Ian Scott of Crystal Springs water company questioned the proposed stormwater treatment system which proposes pervious pavement and infiltration. Contaminants could enter the groundwater. Mr. Duhamel stated that infiltration and treatment in the underlying sand layer and soils is the preferred method of treatment. He noted that septic systems incorporate the same type of treatment, including on properties with wells that supply drinking water.

Mr. Sullivan asked the applicant to respond to concerns raised by Newport Water. Mr. Duhamel stated that the primary concern appears to be over maintenance of the stormwater treatment system. Maintenance is the responsibility of the homeowners and can be enforced by the town.

Ms. Flynn asked about the selling points for the development.

Mr. Lynch stated that the project is permitted by the town's zoning ordinance. Mr. Duhamel stated that the proposed 55+ development would have less overall impact on town services compared to a development that is not age restricted.

Ms. Owen asked the applicant to respond to concerns raised by the RI Airport Corporation. Won't residents be impacted by noise from planes? Mr. Lynch stated that the RIAC letter was issued to address the proposed zoning change for the property. The zone change was ultimately approved by the town.

Mr. Williams asked about noise from planes. Mr. Kent, the developer, stated that he would not proceed with the project if he thought it would be an issue. He stated that the Bay Ridge condos off Forest Ave. have similar noise impacts and there has not been an issue.

Ms. Flynn also questioned marketability and concerns raised by RIAC.

Mr. Regan stated that RIAC has no jurisdiction over the project and would have to purchase the property if it wishes that the property remain undeveloped.

The town's consulting engineer Steven Cabral stated that issue he had raised about the project have been addressed.

There being no other members of the public wishing to speak, **motion** by Ms. Flynn seconded by Ms. Owen, to close the public hearing. **Vote:** 7-0-0.

Mr. Williams stated that he had another question for the applicant.

Motion by Ms. Flynn, seconded by Ms. Owen to reopen the public hearing. **Vote:** 7-0-0.

Mr. Williams asked the applicant to address concerns expressed by Newport Water. Mr. Duhamel stated that the stormwater system is the best possible design. Restricting development in Zone 1 does not necessarily improve water quality.

Mr. Sullivan asked about the number of single-family houses that could be built on the property if the proposed project does not proceed. Mr. Duhamel stated that under R-20 zoning (Zoning will revert to R-20 unless a senior independent living project is built), 17 house lots could be developed, and with much less control over impacts on the watershed, such as from individuals clearing wetland buffers or using fertilizer on lawns.

Ms. Flynn expressed concern over conformance with the comprehensive plan, and impacts on the watershed.

Mr. Lynch cited sections of the comprehensive plan where the project is consistent.

Motion by Mr. Nash, seconded by Ms. Owen, to close the public hearing. **Vote:** 7-0-0.

Motion by Ms. Flynn, seconded by Mr. Sullivan, to forward to the Zoning Board of Review a positive recommendation on the application for special use permit to allow development in Zone 1 of the Watershed Protection District subject to the conditions recommended by the Town Planner. **Vote:** 3-4-0, with Ms. Flynn, Ms. Owen, Ms. Drayton, and Mr. Williams voting in opposition. Motion fails.

Motion by Mr. Sullivan, seconded by Mr. Nash, to make the required positive findings and forward to the Zoning Board of Review a positive recommendation on the development plan review application subject to a waiver to allow reduction of the required 100 foot wetland buffer, and subject to the following conditions:

1. Prior to issuance of the special use permit the applicant must provide for approval by the DPW Director and Town Engineer a cross-section detail of the proposed emergency vehicle access road to the site from Arruda Terrace.
2. Prior to issuance of the special use permit, the DPW director must confirm that the proposed sewer connection design is acceptable.
3. Prior to permitting the stormwater management plan and calculations must be reviewed and approved by the Town Engineer.
4. Prior to permitting, a copy of the RIDOT physical alteration permit, if required, must be provided.
5. Required maintenance of storm water treatment facilities, including the pervious pavement, and sewer and storm water lines/tanks shall be performed on an ongoing basis in accordance with the approved storm water management plan. A stormwater maintenance easement must be provided that identifies the homeowners as being responsible for maintaining the stormwater management systems and allow the town access to perform maintenance at the homeowners' expense should they fail to do so. The easement shall also stipulate that the homeowner's shall provide for review by the Town Engineer, quarterly inspection and maintenance reports on the storm water treatment system, including the monitoring wells.

6. Prior to issuance of the special use permit, plans shall be revised to include street trees within the development in accordance with the requirements of section 521.3.F. of the Middletown Rules and Regulations Regarding the Subdivision and Development of Land.

Vote: 4-3-0, with Ms. Flynn, Ms. Owen, and Mr. Williams voting in opposition.

11. Request of the Town Council for review and recommendation on a proposed amendment to Zoning Ordinance, Article 7 regarding donation collection boxes.

Mr. Regan reviewed the proposed zoning ordinance amendment to regulated placement of donation collection boxes.

Mr. Croce suggested that the ordinance require removal of boxes once the permit is no longer valid. Mr. Regan agreed to make this change.

Motion by Ms. Owen, seconded by Ms. Drayton, to make the required findings and forward a positive recommendation to the Town Council. **Vote:** 7-0-0.

12. Discussion of potential amendments to the Zoning Ordinance and Rules and Regulations Regarding the Subdivision and Development of Land regarding density limitations for conservation development.

By consensus of the board, this matter was continued to the April 12, 2017 Planning Board meeting.

13. Updates

1. **Agricultural overlay district**
2. **Mixed-Use Zoning**
3. **Residential bulk zoning**
4. **Update on activities of the Aquidneck Island Planning Commission.**
5. **Update on BRAC Navy Surplus Land reuse planning process.**

By consensus of the board discussion of the above matters was continued to the April 12, 2017 Planning Board meeting.

Committee reports –

Mr. Croce noted the need to make appointments to certain committees.

By consensus of the board the following appointments were made:

- Mr. Sullivan to serve on the Open Space and Fields Committee
- Ms. Owen to serve on the Tree Commission
- Ms. Flynn to serve on the Conservation Commission

Motion to adjourn, duly seconded. Vote: 7-0-0.

Meeting adjourned at 10:50 pm.

Respectfully submitted:

Ronald Wolanski
Planning Director