

22, 2009

The regular monthly meeting of the Middletown Zoning Board of Review was held on September 22, 2009 at 7:00 p.m..Present at this meeting were- Vice Chairman Peter Van Steeden, Secretary Lucy Levada , Tom Newman and Steve MacGillvary,- Alternates,- Greg Schultz ,and Michael Potter. Zoning Officer- Jack Kane and Town Solicitor Turner Scott. Due to the absence of Chairman-Tom Silveira Vice Chairman-Peter Van Steeden will be acting as Chairman and Tom Newman will be vice Chairman, due to the absence of 1st alternate1 Frank Flanagan 2nd Alternate Greg Schultz will be a voting board member.

A motion was made by Greg Schultz to amend the August 25 ,2009 minutes to read : Alternates Greg Schultz and Michael Potter stating they were voting members at that meeting A motion was made by Tom Newman and second by Steve MacGillvary to accept the Secretary's amended minutes of August 25,2009 Motion carried.

**Continuances /Withdrawals:**

1. Petition of: Bancroft Partners LLC (2 petitions Special Meeting  
-----October 13, 2009

2. Petition of: WM Hotel  
Group-----October 27, 2009.

3. Bay Ridge Development  
Appeal-----October 27, 2009

A motion was made by Tom Newman and second by Greg Schultz to continue the Bancroft petition at a special meeting on October 13th, 2009 and Steve MacGillvary recuse himself on the Bancroft petition

Motion carried.

1. Petition of: Bay Ridge Development Corp: (2) Petitions-64 Ferry Landing Circle- Portsmouth, R.I.(owner) by their Attorney William R. Landry- Bliss & Cavanagh, LLP-30 Exchange Terrace. -Providence R.I. for a modification of a previously granted Special Use Permit from Section 602,Table 6-1, Article 22 Section 902. The approved Declaration of Restrictions for Bay Ridge be modified as set forth in Article 22 of the Middletown Zoning Ordinance, as amended, purports to require, all in accordance with the attached Explanation of Application for Modification. Said real estate is located at Forest Ave. and further identified as Lot 3 on tax assessor's plat 113.

Attorney William R. Landry represented Bay Ridge Development and Assistant Town Solicitor Turner

Scott represented the town of Middletown.

Now the new owners Bay Ridge are making the claim that it was

**against the law to have all occupants 55 and older in a unit.**

**In 2005 the Middletown Zoning Board voted to grant the previous owners of Fox Wood Commons a Special Use Permit for a Strictly Senior Development. The Zoning Board Granted the Special Use Permit with restriction that all occupants in this development would be a senior 55 year and older**

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**community. Building Office Jack Kane had stopped the building on that development until this is resolved. The Petitioner Bay Ridge filed an appeal against the Building Officer's decision Solicitor Turner Scott stated that the town made an error in the town ordinance by only allowing Senior 's 55 years and older living in the condo units.**

**This was brought to the Town Council to be review and to comply with the State and Federal Law. The Council now amended the Zoning Ordinance to comply with the State Law- to read only one (1) Senior being 55 years old or older has to be living in the Condo Unit.**

**Abutter comments:**

**Mrs. Alice Curran - Forest Ave. Middletown, R.I.- Stated - This case was first brought to the Zoning Board in February 2004 and was represented by Attorney Patrick Hays Jr. For a senior 55 and older**

living facility. The developer stated in the Proposed Finding of Facts September 28,2005 that 55 and older housing is more advantageous to the Town than the standard 34 single family subdivision which could be used at this site. They never proved a hardship.

Mr. Mederios- It's seems very strange that this has been going on back and forth to the Town Solicitor of the Planning Board and Zoning Board and Town Council since 2004 and no one ever heard or read of this State Law.

Mr. Eric Johnston and Mr. Poon-also spoke on how this change stating only one (1) senior has to be 55 or older in a unit and that would increase more school children ,more water usage and most of all more traffic especially when they make the access road way through Bay Ridge Development to Buck Rd, . This would definitely increase the traffic problems that already exist on Forest Ave.

A motion was made by Greg Schultz and second by Steve MacGillvary-to grant the petition for a Special Use Permit. The Town has violated the law and if any change to the Covenant arises that would turn this into or do something different has to come to the Zoning Board for approval. Lucy Levada stated that now, 4 years later (2004 ) the New development Co. comes before this board and quotes a State Law that has been in effect before anyone knew of the state law she would not have voted for this petition. We have no choice but to go with the Law, Tom Newman also stated the same.  
Petition Granted 5-0

**2. Petition of: Bay Ridge Development Corp.-64 Ferry Landing Circle-Portsmouth. R.I.(owner) by their Attorney William Landry-Bliss & Cavanagh LLP; 30 Exchange St. Providence R.I. for an appeal from section 205A. 311, 901 & 902- reversing the decision on the basis that the subject project bay ridge does not require a special use permit and is already subject to vested rights under the special use permit granted on September 2005. Said real estate including but not limited to 28, 52 &38 Sanderling Way and further identified as lot3 on Tax Assessor's plat 113**

**This will be continued at the October 27, 2009 meeting.**

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**Petition of : Duncan & Barbara Chapman- 566 Paradise Ave. -Middletown, R.I.(Owners)-By their Attorney David Martland Esq.-1100 Aquidneck Ave.- Middletown, R.I.-for a Variance from Sections 603,701,& 803G- to construct an addition to a single family residential structure with a left side yard setback of 10' where 20' is required pursuant to certain plans filed herewith and to amend a previously granted variance by increasing the front yard setback of 20' where 40' is required.. Said real estate is located at 566 Paradise Ave. and**

**further identified as Lot 3-C on Tax Assessor's Plat 127.**

**On the Chapman Petition Greg Schultz had to leave and 3rd alternate Michael Potter will be the 5th voting member.**

**Attorney Martland presented # Exhibit A- Statement of facts dated November 28, 2009 for a petition for a Variance and Special Use Permit. # Exhibit B- Modified site plan- Exhibit C- Revised Permit from DEM dated August 24,2009 stating that this revised plan does not remove your obligation to obtain any local, state, or federal approvals or permits required by ordinance or law and does not relieve you from any duties owed to adjacent landowners with specific reference to any changes in drainage. # Exhibit D-Shows proposed floor plan.**

**Abutter- John Lutz opposing the petition because of where the driveway will be because of car headlights.**

**A motion was made by Steve MacGillvary and second by Michael Potter and stated that he heard all testimony and only Mr. Lutz's only concern was about what may happen when they put the driveway in.**

**And Mr. Chapman meets 903 and now he has less of a variance.  
Motion carried 5-0**

**4. Petition of: Richard Nobert-749 Jepson Lane- Middletown, R.I,- (owner) -for a variance from Section 603.701,803G- to construct a 16x39' one story attached garage with a left side yard setback of 14' where 20' is required and a rear yard setback of 29.1, where 50' is required. Said real estate is located at 749 Jepson Ln. and further**

**identified as lot 64 on Tax Assessor's plat 111.**

**A motion was made by Lucy Levada and second by Steve MacGillvary as the relief is necessary for a full enjoyment. Of a permitted use and insistence upon strict compliance with the Zoning Ordinance would result in something more than a mere inconvenience to the petitioner.**

**Petition granted 5-0**

**5. Petition of: Christopher Bouzaid- PO Box 609- Newport, R.I.-(owner)-MetroPCS,**

**LLC-285 Billerica Rd.-Chelmsford, Ma.(applicant)- by their Attorney Jackie Slaga, Esq.-95 Indian Trail Saunderstown, R.I.- for a Special use Permit from Article 25- to allow a disguise wireless telecommunication facility on an existing rooftop in the LB zoning district. Said real estate located at 747 Aquidneck Ave. And further identified as Lot 511 on Tax Assessor's Plat 114**

**#Exhibit B-A letter from the Planning Board dated September 16,2009 forwarding a positive recommendation to the Zoning Board# Exhibit A- Metro's proposed site plan-# Exhibit C- Site Type Roof Top**

**A motion was made by Michael Potter and second by Steve MacGillvary to grant the petition. Chairman Peter Van Steeden stated that it is a very good idea for hiding the facility.**

**Petition granted 5-0**

**6. Petition of: - 2 Corporate Place Assoc., L.P.-32 Almar Ln.- Katonah, NY MI Wireless, LLC- by their Attorney Ricardo M. Sousa, Esq.- Prince**

**Lobel Glovsky & Tye, LLP- 100 Cambridge , St. Suite 2200- Boston, Ma.(applicant)-for a Special Use Permit from Article 25- to allow a disguised wireless telecommunication facility on an existing roof top in the OB zoning district. Said real Estate is located at 2 Corporate Place and further identified as Lot 171 on Tax Assessor's Plat 106**

**A letter in file dated September 16, 2009 from the Planning Board voted to forward a positive recommendation on the above petition.**

**A motion was made by Michael Potter and second by Steve MacGillvary to grant the petition**

**Petition granted 5-0**

**A Motion was made by Tom Newman and Second by Michael Potter to Adjourned 9:35**

**Respectfully Submitted**

**Lucy Levada**

**Secretary**