

## **Middletown Zoning Board of Review Minutes April 26, 2012**

**The Monthly Meeting of the Middletown Zoning Board of review was held on April 26, 2012 at 7:00 p.m. Present at this meeting were Chairman –Tom Silveira, Vice-Chairman- Peter Van Steeden, Secretary –Lucy Levada- Voting Board members-Charles Vaillincourt and Steve MacGillivary- Alternates-1st James Miller-2nd Nick Pasyanos and 3rd Olin Gambrell. Town Solicitor- Michael Miller and Zoning Official – Jack Kane.**

**A motion was made by Peter Van Steeden and second by Charles Vaillincourt to accept the Secretary’s minutes of March 27, 2012. Motion carried 5-0.**

### **SUMMARY CASE:**

**1. Petition of: George & Karen Sheely- 233 Meadow Lane –Middletown R.I. (owners)- for a Variance from Sections 603, 701, & 803G-to construct a 24’ x 14’ deck with a side yard setback of 42’ where 50’ is required. Said real estate is located at 233 Meadow Lane and further identified as Lot 119 on Tax Assessor’s Plat 118.**

**Lucy Levada recused herself from this petition and 1st Alternate James Miller will vote on this petition.**

**There was no opposition from the abutters and a motion was made by Peter van Steeden and second by Charles Vaillincourt to grant the petition. Petition granted 5-0**

### **FULL HEARING:**

**2. Petition of: Lost Beach Realty Trust LLC.- 183 Eustis Ave. Newport, R.I. (owner) Marc DesJardins- 19 West Main Road –Middletown R.I. –(applicant) for a Variance from Sections 603, 701, & 803G-to allow the construction of two 10'x 18' additions at the rear of the structure with an easterly side yard setback of 32' where 35' is required and a northerly side yard setback of 22.5' where 35' is required. Said real estate is located at 19 West Main Road and further identified as Lot 136 on Tax Assessor's Plat 108 SW.**

**A motion was made by Peter van Steeden and second by Steve MacGillivray to grant the petition with the condition that if the storage dumpster is a problem it can be replaced and screen per code outside edge. Petition Granted 5-0**

**Continuance/Withdrawals:**

**3. Petition of: Old Farm LLC- 1100 Aquidneck Ave. Middletown, R.I.-(owner) –by their Attorney Robert M Silva Esq.-1100 Aquidneck Ave.-Middletown, R.I. –for a Special Use Permit from Sections 605, 602, & 1800 et seq- to allow a shopping center, with building foot prints exceeding 35,000 square feet in the GB Zone . The development will consist of approximately 471,000 square feet of space located in 5 buildings with 3 of the buildings exceeding the 35,000 square foot threshold. Said real estate is located at West Main Rd. and further identified as Lot 55 on Tax Assessor's Plat 106**

**Attorney David Martland from the law office of Robert M. Silva**

submitted a copy of the Zoning Handbook page 138 footnote #98 Specific Limitations on Jurisdiction on the Zoning Board overstepping its authority and does not follow the Town's Zoning Ordinance. The initial plans include three Big Box stores each one larger than 119,000 square feet and stores along the western side to the Wanumetonomy Golf Course. Town Solicitor Michael Miller stated that the Old Farm Application fails to request several necessary dimensional requirements in the Zoning Ordinance. For example, principal buildings in a large scale shopping center must be set back no more than 50 feet from all street right of way. Ordinance 1803 B of the comprehensive plan. Town Solicitor Michael Miller in his conclusion states the Middletown Comprehensive Community Plan prohibits this kind of large scale shopping center with big box stores that are proposed under the Old Farm Plans, of the Middletown Zoning Ordinance that allows such a development in a General Business Zone with special use permits are invalid for this property. They need to get multiple use variances and a number of dimensional variances that they have not asked for. It was the decision of the Town Solicitor that the Zoning Board vote to deny this petition without prejudice.

A motion was made by Steve MacGillivray and second by Charles Vallincourt to agree with the Town Solicitor and dismiss this application without prejudice.

**Petition denied 5-0**

**Election of Officers**

**A motion was made by Charles Vaillincourt and second by Steve MacGillivary to vote Peter Van Steeden to Chairman Motion carried 5-0**

**A motion was made by Lucy Levada and second by Charles Vaillancourt to vote Tom Silveira Vice- Chairman A motion was made by Tom Silveira and second by Steve MacGillivary and a motion was made by Peter Van Steeden to vote Lucy Levada as Secretary Motion carried 5-0 on all Officers.**

**Meeting Adjourned 9:30 p.m.**

**Respectfully Submitted**

**Lucy R. Levada**

**Secretary**