

Middletown Zoning Board Minutes

JULY 28, 2015

Administrative: Roll Call Present to vote- T. Silveira, O. Gambrell, C. Sousa, H. Pine, J. Peixinho

Adoption of Minutes-A vote was not taken to adopt the minutes of Meeting on June 23rd.

Minutes for June 23rd and July 28th will be adopted at the August 25th meeting.

Continuances/Withdrawals:

Petition of: Cumberland Farms, Inc. & VSH Realty Inc. & John J. Moitoza Revocable Trust (owners) First Hartford Realty Corporation (applicant)- by their attorney Robert M Silva, Esq.- for a Variance from Sections 603, 701 & Article 13- to allow the expansion and renovation of the existing convenience store and gasoline dispensing facility with a south side yard setback of 4.9' where 20' is required; a front yard setback of 8.3' where 10' is required; a rear yard setback of 25.8' where 50' is required; 8 parking spaces where 14 parking spaces are required, and from the landscaping requirements set forth in the Middletown Planning Board's Rules and Regulations regarding the Subdivision and Development of Land, pursuant to plans filed herewith and prepared by Vanasse, Hangen, Brustlin, Inc. Said real estate located at 94 and 106 Aquidneck Ave and further identified as

Lot 132, 133 & 134 on Tax Assessor's Plat 115SE.

Continuance granted to August 25, 2015 Awaiting DPR.

Petition of: Cumberland Farms, Inc. & VSH Realty Inc. & John J. Moitoza Revocable Trust (owners) First Hartford Realty Corporation (applicant)- by their attorney Robert M Silva, Esq.- for a Special Use Permit from Sections 602 and Article 11- to allow the expansion and renovation of the existing convenience store and gasoline dispensing facility as presently located in a Traffic Sensitive Limited Business Zone (LBA) and in Zone 1 of the Watershed Protection District (WPD). Said real estate located at 94 and 106 Aquidneck Ave and further identified as Lot 132, 133 & 134 on Tax Assessor's Plat 115SE.

Continuance granted to August 25, 2015 Awaiting DPR.

Petition of: D'Angelo Inc. c/o their attorney Vernon L. Gorton, Esq.- for a Special Use Permit from Sections 717 & 1200- to allow a drive up teller area and also to allow 2 additional building mounted signs for the proposed 2,500 sqft. TD Bank facility. Said real estate located at 553 West Main Rd and further identified as Lot 59 on Tax Assessor's Plat 107SE.

Continuance granted to August 25, 2015 Awaiting DPR.

Petition of: D'Angelo Inc. c/o their attorney Vernon L. Gorton, Esq.- for a Variance from Section 1301B- to allow a 10' landscaped buffer where 20' is required for the off street parking facility for the proposed 2,500 sqft. TD Bank facility. Said real estate located at 553

West Main Rd and further identified as Lot 59 on Tax Assessor's Plat 107SE.

Continuance granted to August 25, 2015 Awaiting DPR.

Petition of: Mello Realty, Inc. (owner) New Cingular Wireless PCS, LLC by AT&T Mobility Corp. (applicant) c/o their attorney Edward D. Pare, Jr., Esq. and Co-Counsel Robert M. Silva, Esq.- for a Special Use Permit from Sections 602, 902(A) Article 25 Sections 2501(C) & 2502(A) and to the extent required, all rights reserved, any other required relief, pursuant to RIGL, Title 45, Ch. 45-24 as well as the Federal Telecommunications Act of 1996. To allow the construction of a Wireless Communication Services Facility consisting of a 125' monopole tower with an enclosed equipment shelter. Said real estate located at Coddington Highway and further identified as Lot 103 on Tax Assessor's Plat 103.

Continuance granted to August 25, 2015 Awaiting DPR.

Petition of: Mello Realty, Inc. (owner) New Cingular Wireless PCS, LLC by AT&T Mobility Corp. (applicant) c/o their attorney Edward D. Pare, Jr., Esq. and Co-Counsel Robert M. Silva, Esq.- for a Variance from Sections 2504(B), 2504(G) & 2504(I)(1) and to the extent required, all rights reserved, any other required relief, pursuant to RIGL, Title 45, Ch. 45-24 as well as the Federal Telecommunications Act of 1996 including, to the extent required all rights reserved, a Federal Preemptive Variance. To allow the construction of a Wireless

Communication Services Facility consisting of a 125' monopole tower with a rear yard setback 93' and a side yard setback of 105' where 157' is required and closer than the required 10' from the compound fencing. Also to allow the equipment shelter with a height of 10.5' where 8' is allowed. Said real estate located at Coddington Highway and further identified as Lot 103 on Tax Assessor's Plat 103.

Continuance granted to August 25, 2015 Awaiting DPR

Petition of: Smudge Co., LLC- by their attorney Brian Bardorf- for a Variance from Sections 1301(B), 1302 & 1304- to allow an off-site parking lot with 13 spaces where 17 are required and a 10.5' wide landscaped buffer along the westerly property line where 20' is required. Said real estate located at 5 Hart St and further identified as Lot 87 on Tax Assessor's Plat 107SW.

Continuance granted to August 25, 2015 Awaiting DPR

Summary Cases:

Petition of: Amy H. Davis- for a Variance from Sections 603, 701 & 803G- to allow a 24' x 25' deck addition with a left side yard setback of 10' where 15' is required. Said real estate located at 35 Rosa Rd and further identified as Lot 36 on Tax Assessor's Plat 108NW.

After the presentation Olin Gambrell moves to approve the Variance and John Peixinho seconds. Chairman Tom Silveira also comments and votes in favor.

Granted 5-0

Full Hearings:

Petition of: Jan & Michelle Eckhart- for a Special Use Permit from Article 16- to allow an accessory family dwelling unit. Said real estate located at 190 Wyndham Hill Rd and further identified as Lot 916 on Tax Assessor's Plat 125.

The Petitioners Jan & Michelle Eckhart present their case to provide an accessory dwelling unit for an aging parent. Olin Gambrell comments on the necessity and caring aspect of taking care of family members, Tom Silveira reiterates to importance of accessory family dwelling units and refers to specific provisions enforceable by zoning.

Olin Gambrell moves for the approval for the Special use permit, John Peixinho seconds.

Granted 5-0

Petition of: John J & Jane F Parrillo- for a Special Use Permit from Section 602- to allow a two-family dwelling in an R-10 zoning district. Said real estate located at 53 Newport Ave and further identified as Lot 181 on Tax Assessor's Plat 115SE.

The Petitioners John J & Jane F. Parrillo present their case to construct an addition to their home which will result in turning a single family into a two family home, to accommodate their daughter and the her soon-to-arrive triplets. The board discusses and agrees that the there is sufficient land area 20,000 square feet in an R-10 and

the addition does not create a disruption to the neighborhood.

Olin Gambrell moves for the approval for the Special use permit, John Peixinho seconds.

Granted 5-0

Petition of: Helen A. Minkes, Trustee by her attorney Jeremiah C. Lynch, III- for a Variance from Sections 603, 701 & 802(B) – to allow the demolition of a nonconforming single family dwelling and construction of a new single family dwelling with an attached garage and decks with a front yard setback of 30.3' where 40' is required, a rear yard setback of 42.9' where 60' is required. Said real estate located at 444 Purgatory Rd and further identified as Lot 45 on Tax Assessor's Plat 121.

Attorney Jeremiah C. Lynch III explains that the Minkes are aging and want to demolish the existing home to construct a new home that is more conducive to first floor living and provide the possibility for wheelchair access and living. The lot is undersized in the R-40 neighborhood but was originally in an R-20 neighborhood therefore creating a hardship for a modern rebuild. Additionally, the current structure is not conforming to today's side setback guidelines and the new home will have conforming setbacks to the side. The variances to the front and rear are reasonable given the size constraints of the lot.

Olin Gambrell moves for the approval of the variances, John Peixinho seconds.

Granted 5-0

Petition of: Middle Creek Farm, LLC- by their attorney Neil P. Galvin- for a Special Use Permit from Sections 902, 1103(b) & 1106- to allow development in Zone 1 of the Middletown Watershed Protection District as part of the Middle Creek Farm, LLC subdivision due to the presence of hydric soils relating to Lots 3, 4, and 5 of the proposed subdivision. Said real estate located at 114 Cornelius Drive/ Old Mill Lane and further identified as Lot 73 on Tax Assessor's Plat 128.

Neil P. Galvin calls witness Lyn Small of Northeast Engineers to provide information about the subdivision. Small explains that the developer desires large home lots with a feeling of nature and privacy. She explains that storm water and drainage management for all lots and subdivision will be based on a 4000 square foot home.

The board asks Small various questions pertaining to drainage. Small explains rain gardens to the board per Tom Silveira's request. She also identifies the town line between Portsmouth and Middletown and explains the different soil types found on the land.

It is also discussed how different regulatory agencies will have final approval of the subdivision.

Olin Gambrell moves for the approval of the Special use permit, John Peixinho seconds.

Granted 5-0 w/condition to incorporate the recommendations of the Planning Board and Conservation Commission

Petition of: Middle Creek Farm, LLC- by their attorney Neil P. Galvin- for a Variance from Sections 603 & 903- Petitioner seeks a regulatory variance for Lots 1, 2, 4 & 5 of the proposed subdivision to allow said lots where there is no frontage located in Middletown due to lots straddling the Town Line in Portsmouth but where the required frontage (150') exists partially in Middletown and/or partially or wholly in Portsmouth and for lots 1 & 5 where the actual square footage of the land located in Middletown is less than required but when combined with the Portsmouth land it meets all requirements. Said real estate located at 114 Cornelius Drive/ Old Mill Lane and further identified as Lot 73 on Tax Assessor's Plat 128.

Neil P. Galvin calls witness and real estate Appraiser/Broker James A. Houle to provide expert testimony in support of the variance.

A variety of issues are discussed by the board including how the homes will be serviced with water, fire dept. service, road plowing etc. It is discussed and agreed that other regulatory agencies will be giving final approval for subdivision.

Olin Gambrell moves for the approval of variances, John Peixinho seconds.

Granted 5-0 w/condition to incorporate the conditions proposed by the applicant Exhibit "C"

Petition of: RK Middletown Village, LLC- by their attorney Matthew H. Leys- for a Special Use Permit from Sections 1212(D) (1), 1212(A) & 902- for permission to replace an existing freestanding plaza sign with a freestanding plaza post sign that has 150 sq. ft. of sign area where 98 sq. ft. is allowed and a height of 21'- 10.50" where 10' is allowed. Said real estate located at 1313 West Main Rd and further identified as Lot 707 on Tax Assessor's Plat 112.

This is a resubmit of a petition heard on June 23rd. Attorney Matthew H. Leys first presents the board with a comparison of the June 23rd petition vs. the July 28th petition. Leys demonstrates a less intense sign with significant improvement in sign type, height, sign area, square footage per panel, set-back from road, and addition of stonework.

Board members vote 5-0 that the new petition is significantly different and that the new petition could be presented to the board.

Attorney Matthew H. Leys calls RK Middletown Village, LLC employee (Kenneth Frids??). Frids presents a variety of fact based information comparing sign sizes with those of other plazas and provides testimony on how sign size relates to public safety while driving and trying to locate stores. The witness also testifies that only the lettering on the sign will be backlit at night.

Chairman Tom Silveira questions why the address is not included on the new sign, and the applicant's representative agrees to include the address.

Olin Gambrell moves for the approval for the Special use permit, John Peixinho seconds. Tom Silveira reiterates the necessity to include the address on the new sign as a provision of the approval.

GRANTED 5-0 with the condition to include the address of the plaza on the new sign.

The meeting is adjourned at approximately 8:50 PM