

MINUTES 03/27/2018

ZONING BOARD OF REVIEW

LOCATION: 350 EAST MAIN ROAD, MIDDLETOWN, RHODE ISLAND

Administrative: Roll Call/Adoption of Minutes February 27th, 2018

Roll Call: Chairman Jim Miller (present), Vice Chair Stephen MacGillvray (present), Olin Gambrell (absent) Secretary Chris Sousa (present), Thomas Heaney (present), Eric Kirton (present), Henry Pine (present), Mark Nuytkens (present).

Adoption of minutes February 27th Tom Heaney 1sts, Chris Sousa 2nds 5-0

Continuances/Withdrawals:

Petition of: John R. Gullison & Bonnie F. Zimble (owners) by their attorney Jeremiah C. Lynch, III - for a Variance from Sections 603, 1301(b), 1301(d), 1304, 1404 & 1406- Construct an 18 room hotel on a lot with 17,533 sqft. where 18,000 sq. ft. is required with an elevated parking structure with less than the required landscape buffer area on the south, east and west property lines resulting in lot coverage of 53% where 35% is allowed and increasing the number of spaces to 40 where 35 are allowed. Provide a loading space and service drive on the north side with less than the required landscape buffer. Said real estate located at 59 Aquidneck Ave and further identified as Lot 169 on Tax Assessor's Plat 115SE. Continued June 26th

Petition of: John R. Gullison & Bonnie F. Zimble (owners) by their

attorney Jeremiah C. Lynch, III - for a Special Use Permit from Sections 602 & 1400- to allow the construction of a hotel (18 rooms), with an accessory restaurant. Said real estate located at 59 Aquidneck Ave and further identified as Lot 169 on Tax Assessor's Plat 115SE. Continued June 26th.

Petition of: St. Lucy's Church Middletown Corp. (owner)- 825 West Main LLC (applicant)- by their attorney Jeremiah C. Lynch, III - for a Special Use Permit from Sections 602, 803(g) & 1103- to permit the construction of an addition to the existing non-conforming self-storage facility on lot 15C (22,500 sq. ft. of Lot 11 will be merged with lot 15C by administrative subdivision). Said property is also located within the Zone 1 Watershed Protection District. Said real estate located at 825 West Main Rd. & portion of 911 West Main Rd and further identified as Lots 15C & portion of lot 11 on Tax Assessor's Plat 107NE. Continued April 24th

Petition of: St. Lucy's Church Middletown Corp. (owner)- 825 West Main LLC (applicant)- by their attorney Jeremiah C. Lynch, III- for a Variance from Section 603- to permit the construction of an addition to the existing self-storage facility. Said addition will be in excess of the permitted lot coverage (35% permitted). The proposed addition will result in lot coverage of 49% (current lot coverage is 56%). Said real estate located at 825 West Main Rd. & portion of 911 West Main Rd and further identified as Lots 15C & portion of lot 11 on Tax Assessor's Plat 107NE. Continued April 24th.

Petition of: Stanfield Corporation (owners) Benzine Development, LLC (applicant)- by their attorney David P. Martland, Esq.- for a

Special Use Permit from Sections 602, 717 and Article 11- to permit a gasoline station with convenience store and drive-up window and a vehicle washing establishment located in a Limited Business- Traffic Sensitive Zone (LBA) and in Zone 1 of the Watershed Protection District (WPD). Said real estate located at 533 East Main Rd and 1225 Aquidneck Ave and further identified as Lots 190, 191, 192, 193, 195 & 197 on Tax Assessor's Plat 113. Continued April 24th.

Petition of: DOJO LLC (owners) Newport Hotel Group (Applicant) by their attorney David P. Martland Esq. for a Special Use Permit from Section 602 & Article 14 to allow a 13 unit hotel in a Limited Business (LBA) zone. Said real estate located at 38 Purgatory Road and further identified as lot 13 on tax assessor's plat 116NW. Continued April 24th.

Petition of: DOJO LLC (owners) Newport Hotel Group (Applicant) by their attorney David P. Martland Esq. for a Variance from section 603 to allow a hotel structure 43'-2" in height to accommodate an elevator penthouse where 40' height is allowed. Said real estate located at 38 Purgatory Road and further identified as lot 13 on tax assessor's plat 116NW. Continued April 24th.

Petition of: 47 Valley Road LLC (owner)- Christopher Tunnah (applicant) for a Special Use Permit from Section 602-to allow a restaurant including service of alcoholic beverages in a Limited Business (LBA) zone. Said real estate located at 47 Valley Rd and further identified as Lot 88 on Tax Assessor's Plat 107SE. Continued April 24th.

Petition of: Sherwin Baghai & Elizabeth Merkel-Baghai (owners)- for a

Variance from Sections 603, 701 & 803G- to allow a 2nd floor covered deck over existing front porch with a front yard setback on Allston Ave of 11'-11" where 25' is required and a left side yard setback of 9'-11" where 15' is required and an 8' x 10' covered rear deck entry platform with a front yard setback on Allston Ave of 11'-6" where 25' is required. Said real estate located at 215 Purgatory Rd and further identified as Lot 181A on Tax Assessor's Plat 116NE. Continued April 24th

Petition of: Austin Holdings Corp (owners) by their attorney Sean M. Bouchard, Esq. for a Special Use permit from section 602 to allow the construction of a two-family dwelling. Said real estate located at 255 Oliphant Lane and further identified as Lot 29A on Tax Assessor's Plat 112. Withdrawn without prejudice. Sousa/Heaney motion.

Petition of: Austin Holdings Corp (owners) by their attorney Sean M. Bouchard, Esq. for a Variance from section 603 to allow the construction of a two-family dwelling with a lot area consisting of 10,968 square feet where 40,000 square feet is required. Said real estate located at 255 Oliphant Lane and further identified as Lot 29A on Tax Assessor's Plat 112. Withdrawn without prejudice. Sousa/Heaney motion.

Petition of: On the Pond, LLC (owners) and Diego's Middletown, LLC (applicant) by their attorney David P. Martland, Esq. for a Special Use permit from section 602 and 803A to permit the expansion of an existing restaurant with a liquor license by expanding the existing deck and adding a second floor deck to the rear of the structure while reducing the overall capacity. Said real estate located at 116

Aquidneck Avenue and further identified as Lots 135 & 136 on Tax Assessor's Plat 115SE. Continued April 24th

Petition of: On the Pond, LLC (owners) and Diego's Middletown, LLC (applicant) by their attorney David P. Martland, Esq. for a Variance from section 603 and 803G to grant a variance from the right side yard setback allowing a deck with a 13.2' setback where 20' is required. Said real estate located at 116 Aquidneck Avenue and further identified as Lots 135 & 136 on Tax Assessor's Plat 115SE. Continued April 24th

Petition of: Robert Peck (owner) for a Variance to construct a second floor addition above garage and a two story addition connecting to a covered sun porch with a right side yard setback of 5.5' where 20' is required and a rear setback of 45.7' where 50' is required. Also to allow a separate entrance at the front for an accessory family dwelling use. Said real estate is located on 6 O'Donnell Road and further identified as lot 15 on tax assessor's plat 122. Continued April 24th

Full Hearings:

Petition of: Austin Holdings Corp (owners) by their attorney Sean M. Bouchard, Esq. for a Special Use permit from section 602 to allow the construction of a two-family dwelling. Said real estate located at 255 Oliphant Lane and further identified as Lot 64 on Tax Assessor's Plat 112.

Martland explains that the new petition (updated from last month) includes a 60000 square foot lot and desires a 2 family with no frontage. The application had been heard last month, the use is

permitted by special use. The neighbors have been provided info about the updated plan. The easement already exists and the building will be placed in a conforming building envelope.

Claudio Cavalero testifies she abuts both properties. She is concerned about runoff of storm water, impact on her quality well water, and further development of additional homes on the same parcel. She is also concerned about the existing trees.

Mike Russell engineer is called as a witness in civil engineering. He explains that drainage and runoff is part of the building permit process.

Nuytkens questions potential impacts on the existing well water of neighboring houses and voices concern about maintaining existing trees.

Miller explains to Cavalero that no further development could happen on the parcel without board approval, and it would be very unlikely do to the nature of the lot and the current development.

Dakota Cowell realtor testifies trees will not come down.

Richard Silvia, neighbor testifies. He has concern about the slope and water runoff. The issue has already been addressed by Russell.

Board decides that the application meets the criterion for a Special Use. Board approves with the stipulation that no mature trees on the property line are to be removed.

Heaney 1sts, Sousa 2nds. Board approves 5-0

Petition of: Aimee D. Phelps (owner) by her attorney Richard P. D'Addario, Esq. for a Special Use permit from section 803(A) to allow

the expansion of a nonconforming use by the demolition and reconstruction of a portion of the first floor and the addition to the second floor with no increase in the lot coverage. Said real estate located at 17-19-21 Warren Avenue and further identified as Lot 170 on Tax Assessor's Plat 115SE.

Petition of: Amiee Phelps (owner)- for a Variance from Section 603, 701, 802(b) & 803(g)-demolish and replace a portion of the non-conforming one story single-family dwelling with a 2 story addition with a left side yard setback of 3.5' where 15' is required and a front yard setback of 11' where 25' is required. Said real estate located at 17+19+21 Warren Ave and further identified as Lot 170 on Tax Assessor's Plat 115SE

Sousa recuses himself from the hearing. Kirton will be voting in his place.

D'Addario explains this is a simple application where a small "Sears Kit" cottage will be demolished and replaced with another small cottage on the exact same footprint with the addition of a 2nd story resulting in an 800 Square ft+ home.

Amy Dugal Phelps, owner, testifies. She explains she purchased the cottage 10 years ago. She explains that the cottage was a Sears kit house, and there are 3 buildings (residences) presently on the property. Two of the buildings are rentals, and the rebuilt home will be for her/mother. Daddario presents exhibit 1 (Survey) to the board. He explains the cottage has been unoccupied since October 2017 due to deteriorating conditions. D'Addario introduces exhibit 2 pictures of existing building. D'Addario presents exhibit 3 new proposed new

building. D'Addario presents elevation certificate exhibit 4 and floorplan of the new structure exhibit 5.

Daddario explains his client is not asking to expand the building. Building will conform to the existing 3+ feet side, 11+ feet to front setback. Phelps testifies that her contractors have explained that the house is unstable (Jackson asks board to strike contractor as witness b/c he is not expert).

Russell Jackson (representing abutting neighbors Denophrios) cross examines Phelps. He asks her a variety of questions about her intended use for the property and questions her about the rental value of the house.

D'Addario then calls Christopher Dunan, architect of the new home to testify. The architect explains he made the proposed building same size, same location. He recommended to keep the small bathroom in the rear but the rest of the house is not feasible to save.

Exhibit 6 introduced. Architect explains the new design for the home has a building height as short as possible so as to still have a functional 2nd floor.

Jackson cross examines the architect, mainly inquiring about liveable space.

Jackson then calls Patricia Denophrio (abutting neighbor) 3 pictures (exhibit a,b,c) owns a 2 family and a cottage next door. She lived there for 7 years. she intends to occupy someday. She explains how close the two structures are, and the 2nd floor bedroom window will be an invasion of her privacy.

James Houle testifies on behalf of Denophrio. Exhibit D. He testifies

lot is non-conforming. Not compatible with comp plan, impacts property values.

Daddario cross examines Houle

Jackson then calls Mr. Denophrio (abutting neighbor). Mr. Denophrio explains he does not want to lose his clean air on the 2nd floor, and the new structure will impact the air in his home.

Daddario closes stressing this is the least amount of relief.

Jackson closes arguing there is no hardship. This is a non-conforming use and is being expanded and intensified, increasing extent of non-conformity.

Terry Flynn testifies about her concerns.

MacGillvray comments hardship least relief necessary for variance.

Kirton and Heaney move to approve.

Variance granted 5-0.

Kirton and Heaney move to approve special use.

MacGillvray votes against special use saying the request fails to meet 802, 803 standards in the Zoning Code. He agrees with Jackson that the current non-conforming use is being intensified.

Board grants Special use permit 4-1.

Petition of: Seaview Inn, LLC (owner) by their attorney, David P. Martland, Esq. for a Special Use Permit to maintain a tent in the same location for a period not to exceed nine months. Said real estate located at 240 Aquidneck Ave. and further identified as Lot 54 (aka Lot 5) on Tax Assessor's Plat 115.

Martland explains that the tent will be used to provide a space to serve cocktails and other post reception activities. He explains that

approving the tent for nine months will provide the owner the convenience of not having to take the tent down every 30 days (the normal renewal time), and then have the burden of setting the tent back up multiple times during a single season.

The board sees Martland's request as reasonable and moves to approve to the special use permit provided it doesn't result in a net increase in the amount of events per day (the venue currently has the ability to have 2 events simultaneously).

Heaney motions to approve. Sousa seconds.

Board approves 5-0

Meeting Adjourned 9:13PM