

**MINUTES 04/24/2018**

**ZONING BOARD OF REVIEW**

**LOCATION: 350 EAST MAIN ROAD, MIDDLETOWN, RHODE ISLAND**

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

**Roll Call: Chairman Jim Miller (present), Vice Chair Stephen MacGillvray**

**(present), Olin Gambrell (present), Secretary Chris Sousa (present), Thomas**

**Heaney (present), Eric Kirton (present), Henry Pine (present), Mark Nuytkens**

**(present).**

**Adoption of minutes March 27th Tom Heaney 1sts, MacGillvray 2nds**

**Continuances/Withdrawals:**

**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 Lots15C & portion of lot 11 on Tax Assessor's Plat 107NE. Continued May 22nd.**

**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 May 22nd.**

**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 May 22nd.**

**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 May 22nd.**

**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 May 22nd.

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 May 22nd.

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 May 22nd

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 May 22nd.

**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 June 26th**

**Petition of: Atlantic Beach Suites II, LLC (owner) by their attorney, David P. Martland, Esq. for a Special Use Permit from Section 602, Articles 11 & 14 to permit a 23 unit hotel in the Limited Business (LB)zone and Zone I of the Watershed Protection District. Said real estate is located at 42-44 & 56 Wave**

**Avenue and further identified as lots 4,5 & 6 on tax assessor's plat 116NW. Continued May 22nd.**

**Petition of: Atlantic Beach suites II, LLC (owner) by their attorney David P. Martland, Esq for a Variance from Section 603 to allow a 4'8" height variance for a portion of the proposed building to accommodate an elevator shaft. Said real estate is located at 42- 44 & 56 Wave Avenue and further identified as lots 4,5 & 6 on tax assessor's plat 116NW. Continued May 22nd.**

**Full Hearings:**

**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. Robert Silva Esq. presents the case. Owner Elizabeth Merkel-Baghai is present, and her designer engineer (brother David Merkel). Silva explains that the applicant desires a new rear entrance with a deck and a new front entrance with a deck above. The updated rear entrance will have a 10'x8' deck that will encroach an additional approximate 6" from the existing rear entrance. The front entrance will be enhanced directly above the existing coverage. Silva presents exhibits A thru J showing different iterations of the existing and planned renovation. Silva then calls his applicant Elizabeth Merkel-Baghai. She explains she desires to upgrade the home and create a safe space and environment for her family when they utilize the home. Silva then calls David Merkel to explain the renovation. Gerard Galvin Esq. is then introduced as council for an opposing neighbor, Mr. Pete. Galvin focuses his initial testimony on the parking situation at Mrs Merkel's property, and how it is being potentially utilized by her engineer/designer brother's Airbnb rental. Galvin then introduces 4 exhibits showing various existing conditions showing different angles of view from Mr. Pete's abutting yard. He calls Mr. Pete and it is established that Mr. Pete is concerned about

his view and his solar benefit and air rights. He is concerned he is losing a great deal of sunlight, and is also concerned that the new addition looks directly down upon his bedroom. The two lawyers cross examine each others clients and the case is closed after various exchanges. Kenneth Galliston (another abutting neighbor) speaks about his concerns about possible drainage issues. The board then considers the application. Steve MacGillvray lays out all of the considerations

necessary to grant a variance, and how the applicant has met these conditions. Board members have a short discussion and agree with MacGillvray's explanation.

Sousa moves to approve MacGillvray seconds. Board approves 5-0.

Petition of: John A. Moson, Jr. (owner) for a Variance from Section 603, 701 & 803G to construct a 55 square foot addition to the front of the existing garage and convert the garage to living space with a right side yard setback of 3.5' where 15' is required resulting in lot coverage of 37% where 25% is allowed.

Said real estate is located on 23 Livingston Place and further identified as lot 187 on tax assessor's plat 108SW. Moson presents his own case. He explains that he has two daughters and desires to give them their own living space by converting a portion of his garage into bedrooms and additional living space.

He explains that the conversion will remain within the existing footprint.

The board has a brief discussion and Grants the applicant his Variance.

**Steve MacGillvray moves to approve the application. Sousa 2nds. Board approves 5-0.**

**Petition of: James and Erin Berard (owners) by their attorney Sean M. Bouchard, Esq. for a Variance from Sections 603, 701 & 802(B) to allow the demolition of the nonconforming single family dwelling and to construct a single family dwelling with a northerly side yard setback of 9.97' and a southerly side**

**yard setback of 12.42' where 15' is required. Said real estate is located on 29 Crest Street and further identified as lot 130 on tax assessor's plat 116NE.**

**Sean Bouchard presents his case. He explains that the new home will be occupied by owners that are currently active duty Marines in San Diego, soon to retire back to Middletown. Nathan Godfried (real estate expert) testifies that the existing home is fully depreciated, needs to be razed and rebuilt, and that the applicant satisfies all criterion for variance. He notes in particular that**

**the lot is long and narrow, the side variances needed are no different than those of the abutting neighbors, and that the value of the lot dictates a larger build out. The board begins discussion and Sousa and MacGillvray vote. The board has many questions and several members take issue with size of the house on the small lot. Bouchard requests to call additional witnesses at the next meeting on May 22nd. Sousa and MacGillvray agree to rescind their initial votes until further testimony is given on May 22nd. No Vote. Continued May 22nd.**

**Petition of: Carl & Elaine Albanese (owners) for a Variance from**

**Sections 603, 701 & 803G to demolish the existing garage, mudroom and deck and to construct a one story addition with front yard setback of 23' where 25' is required, a left side yard setback of 12' where 15' is required. Said real estate is located on 7 Longmeadow Avenue and further identified as lot 9 on tax assessor's plat 114. The owner presents his case. The board agrees that this is a relatively straightforward variance request. There is a brief amount of discussion. MacGillvray moves to approve the application and Heaney seconds. Board approves the variance 5-0.**

**Meeting Adjourned 8:45PM**