



TOWN OF MIDDLEBURY

*Planning & Zoning Commission
1212 Whittemore Road
Middlebury, Connecticut 06762
(203) 577-4162 ph
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NOVEMBER 5, 2015 REGULAR MEETING MINUTES

MEMBERS PRESENT

Terry Smith, Chairman
William Stowell, Vice Chairman
Matthew Robison
Erika Carrington
Joseph Drauss

MEMBERS ABSENT

ALTERNATES PRESENT

Paul T. Babarik

ALTERNATES ABSENT

Christian Yantorno

ALSO PRESENT

Brian Miller
John Calabrese, P.E.
Curtis Bosco, Z.E.O.

CALL TO ORDER

Chairman Smith called the Regular Meeting of the Middlebury Planning & Zoning Commission to order at 7:31 p.m.

ROLL CALL AND DESIGNATION OF ALTERNATES

Chairman Smith announced Regular Members Smith, Stowell, Robison, Carrington, Drauss and Alternate Member Babarik as present. Alternate Member Yantorno was absent.

PUBLIC HEARING

1. Raymond & Panagiota Albini-Application to amend Zoning Regulations specifically adding Section 42.4.5 (Application #2015-8-2)

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck spoke on behalf of the applicant. He submitted a revised Proposed Amendment To: Article IV (Section 42 – Light Industrial – 200 Zone), Special Exception Uses. He established Section b due to the fact that per the Regulations, cemeteries cannot be on the same parcel that a funeral home is on. The non-denominational chapel has also been eliminated based upon the fact that a funeral home has the ability to funeral services. Therefore, they did not feel it necessary to have that of a specific use. In addition, they included cemetery monument sales and fabrication as an accessory use within the district. “Scattering” was added to the definition of Cremation Garden and Section d.(2.) now includes a reference to funeral service business as defined under § 20-207 of the Connecticut General Statutes and submitted as copy of said statute for the record.

Motion: to close the Public Hearing. Made by Matthew Robison, seconded by Erika Carrington. Unanimous Approval.

2. Middlebury Land Development LLC./North Benson Rd. & Judd Hill Rd. – Application for Excavation & Grading Permit pursuant to Section 64 (Application #2015-9-3)

Chairman Smith called the Public Hearing to order at 7:37 p.m. and read the Legal Notice published in Voices on 10-21-15 & 10-28-15 for the record.

Attorney Jennifer Yoxall of Carmody, Torrance, Sandak, & Hennessey, LLP spoke on behalf of the applicant. The Benson Woods, 79 unit planned residential development includes a 1,200 square foot community building. She stated that this permit has been granted every year since 2002, most recently last year with an effective date of December 26, 2014. She submitted a package of exhibits pertaining to the project.

Mark Reifenhauer, P.E. of Smith & Co., Woodbury, CT reviewed the plans with the Commission. He stated that all but 4 of the 34 units have been constructed in Phase I and most of the units have been sold and all roadways are complete. A portion of the roadways that were built encompass part of Phase III. Phase II & III have yet to be constructed and there has been limited tree clearing.

Attorney Yoxall stated that she submitted a letter requesting that the Commission waive the traffic report requirement due to the fact that one was previously submitted. She also

provided a Resolution of Approval should this Commission choose to approve the application. Lastly, she requested that their Legal Notice be utilized as Benson Woods does not have a clear address.

Motion: to close the Public Hearing. Made by William Stowell, seconded by Joseph Drauss. Unanimous Approval.

3. 642 Watertown Road/Lou Persico-Application for Special Exception (Application #2015-9-2)

Chairman Smith called the Public Hearing to order at 7:44 p.m. and read the Legal Notice published in Voices on 10-21-15 & 10-28-15 for the record.

Eric Strachan of 122 Curtis Lane, Watertown, CT spoke on behalf of the applicant. Mr. Persico purchased the home with an existing in-law setup which he never utilized. He would like to rebuild it on an upper level as opposed to the first floor, utilizing the same footprint. The applicant was made aware of the fact that that the existing in-law setup was not legal. The plans have been submitted and there are no additional bedrooms or separate services.

Chairman Smith reviewed the requirements in Section 21.2.1 of the Regulations.

Eric Strachan stated that Gil Roberts of Torrington Health District is fine with the proposal.

Motion: to close the Public Hearing. Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

Chairman Smith called the Regular portion of the meeting to order at 7:50 p.m.

MINUTE APPROVAL

4. Discussion of the Minutes of the Public Hearing & Regular Meeting held on October 1, 2015

Motion: to approve the Minutes of the Public Hearing & Regular Meeting held on October 1, 2015. Made by William Stowell, seconded by Joseph Drauss. Unanimous Approval.

OLD BUSINESS

5. Raymond & Panagiota Albini-Application to amend Zoning Regulations specifically adding Section 42.4.5 (Application #2015-8-2)

Motion: to approve Application #2015-8-2 as it conforms with the Plan of Conservation & Development with an effective date of November 27, 2015. Made by Erika Carrington, seconded by William Stowell. Unanimous Approval.

6. Middlebury Land Development LLC./North Benson Rd. & Judd Hill Rd. – Application for Excavation & Grading Permit pursuant to Section 64 (Application #2015-9-3)

Chairman Smith read the Resolution for the record.

Attorney Jennifer Yoxall of Carmody, Torrance, Sandak, & Hennessey, LLP

Motion: to approve the Resolution (see attached). Made by William Stowell, seconded by Matthew Robison. Unanimous Approval.

Motion: to waive the traffic report requirement. Made by William Stowell, seconded by Erika Carrington. Unanimous Approval.

NEW BUSINESS

7. 642 Watertown Road/Lou Persico-Application for Special Exception (Application #2015-9-2)

Motion: to approve application 642 Watertown Road, #2015-9-2. Made by Erika Carrington, seconded by Joseph Drauss. Unanimous Approval.

8. Ridgewood at Middlebury-informal discussion (Application #2015-10-2)

Steve, project manager for Ridgewood at Middlebury/Toll Brothers, stated that he was before this Commission just over a year ago requesting permission to construct an additional parking lot which is in the bottom right hand corner of Milone & MacBroom map dated 5-8-14. This Commission granted said request and the initial phase is nearly complete. It has now come to their attention that there were some parking areas that

GDC had constructed that don't contain the exact number of spaces that were shown on the plan. In addition, the footprints for some of the Toll Brothers' buildings are slightly larger than those of GDC's buildings and because of that, there wasn't enough space to put all of the spots that were on the plan. However, the net result is that they are offering more parking (8 spaces) than what was originally proposed on the approved plan. He also pointed out 2 spaces that were planned for a particular location which only resulted in one space. A resident has asked that said space be removed, although he wishes to leave the space. He questioned the Commission if a revised site plan is required.

Brian Miller suggested that a site plan amendment be submitted.

Chairman Smith confirmed to Mr. Sullivan of 22 Winding Trail that the project manager wanted to know if they should revise the Mylar, which is the official record.

The Commission agreed that a revised site plan needs to be submitted.

9. Robert J. & Kerrie M. Ford & Mir Sabbir Ahmed-informal discussion
(Application #2015-10-3)

Mr. Sabbir is seeking to reconstruct the old Ford/Sunoco Repair Shop into a convenience store with the same footprint.

Chairman Smith stated that he must apply for Site Plan approval as it is a change of use. The site plan must include parking, architectural renderings, landscaping and lighting. In addition, he suggested a front sidewalk to encourage pedestrian traffic. In addition, it would need to be submitted to the Architectural Review Board.

Matthew Robison questioned if the applicant plans on serving takeout food or food distribution other than convenience store food.

Mr. Sabbir stated that he doesn't know how that rumor started.

John Calabrese, P.E. stated that Mr. Sabbir would need Conservation Commission approval prior to receiving a decision from this Commission.

OTHER BUSINESS

10. Any other business added to the agenda by 2/3 vote of the Commission

None

11. Enforcement Report

Curtis Bosco, Z.E.O. stated that he and Deb Seavey, W.E.O., co-authored a Cease & Desist for approximately 3 weeks for Ridgewood at Middlebury due to their non-compliance in addressing dust control. The Cease & Desist has since been lifted and he visits the site once a week.

12. Adjournment

Motion: to adjourn the meeting at 8:35 p.m. Made by Erika Carrington, seconded by Joseph Drauss. Unanimous Approval.

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

Original to Edith Salisbury, Town Clerk

cc: P&Z Commission Members
Vincent LoRusso, Chairman, Conservation Commission
Ollie LeDuc, Building Official
Curtis Bosco, Z.E.O.
David Alley, Chairman, Z.B.A.
Attorney Dana D'Angelo
Larry S. Hutvagner, CFO
Rob Rubbo, Director of Health
Mary Barton

RESOLUTION
(SECTION 64 EXCAVATION & GRADING PERMIT)

WHEREAS, the Commission has conducted a public hearing on the application of Middlebury Land Development LLC for a permit for excavation and filling incident to construction of the approved planned residential development, Benson Woods, for which a permit was originally granted in the name of Timex Corporation; and

WHEREAS, this Commission previously granted: a Section 64 Excavation and Grading permit on September 5, 2002 and approved modified plans on December 5, 2002, which approval was effective as of December 26, 2002; a subsequent permit for the same or similar activities on November 6, 2003, which permit was effective December 26, 2003; and permits for the same or similar activities in each subsequent year thereafter, which permits were effective on December 26th of the applicable year, with the most recent permit approved on November 6, 2014, which permit was effective December 26, 2014.

WHEREAS, the site plans submitted by the applicant are as listed in Exhibit 1 attached to this resolution; and

WHEREAS, the Commission has received and considered testimony, reports, and other information regarding the access and parking, traffic, landscaping, topography of the site and surrounding areas, the proposed buildings, storm drainage systems, and other aspects of site development; and

WHEREAS, this Commission has considered all applicable regulations regarding excavation, grading and filling, the standards of the applicable zone and all other applicable regulations and finds the proposal complies with those regulations; and

WHEREAS, the Commission specifically finds that the proposed filling, excavation and removal of material would not be detrimental to the purposes set forth in Section 64.1 of the Zoning Regulations and will be consistent with such purposes; and

WHEREAS, the Commission has determined that the proposed use of land, buildings and structures will be established and conducted in accordance with the performance standards under the Zoning Regulations and other sections of the Zoning Regulations and with the standards in other relevant town, state and federal codes, ordinances or regulations; and

WHEREAS, when the filling, excavation, grading or removal is in direct connection with the improvements shown on the Final Development Plan, the Commission finds that the applicant should be exempt from Subsection 64.6.3 of the Zoning Regulations; and

WHEREAS, a traffic report has been previously submitted in connection with the Benson Woods Development such that a separate traffic report pursuant to Section 52.3.16C for the Section 64 Grading and Excavation permit is not reasonably necessary to a proper disposition of the application; and

WHEREAS, the Commission also specifically finds that the proposed excavation and filling incident to construction which may occur below the elevation of any abutting street or property line within 50 feet of such line would not involve or create a substantial risk of damage to the abutting property.

NOW THEREFORE, it is

RESOLVED, this Commission does hereby approve the application of Middlebury Land Development LLC for an excavation and grading permit under Section 64 of the Zoning Regulations, and the proposed sedimentation and erosion control plan, subject to the same conditions as under the existing permit:

1. That the applicant continue to provide a certificate of insurance with respect to the activities permitted under Section 64 naming the Town of Middlebury as a named insured in amounts required under Section 64 of the Zoning Regulations.

2. That prior to the commencement of each of the three Phases the applicant provide a performance bond or irrevocable letter of credit in amounts set by the Board of Selectmen to secure the completion of the proposed excavation and grading work associated with such Phase, which performance bond or irrevocable letter of credit may be the same as that provided for the related Final Development Plan. The Commission acknowledges that such a letter of credit has already been provided for Phase 1.

This approval shall be effective December 26, 2015, and legal notice of this decision shall be published prior to that date.

EXHIBIT 1

[One copy of each of the following plans is included with this application. All are previously on file in connection with prior applications]

| <u>Document</u> | <u>Date (or latest revision)</u> | <u>Prepared By:</u> |
|---|----------------------------------|-------------------------|
| Cover Sheet, Final Development Plan – CS-1 | April 4, 2007 | Bradford E. Smith & Son |
| 200 Scale Compilation Plan – S-1 | April 4, 2007 | Bradford E. Smith & Son |
| 100 Scale Compilation Plan – S-2 | April 4, 2007 | Bradford E. Smith & Son |
| Property Survey – S-3 | April 4, 2007 | Bradford E. Smith & Son |
| Common Open Space – S-4 | April 4, 2007 | Bradford E. Smith & Son |
| Site Development Plan Sheets SP 1-4, Final Development Plan | April 4, 2007 | Bradford E. Smith & Son |
| Plan/Profile Sheets Final Development Plan – P1 – P4 | April 4, 2007 | Bradford E. Smith & Son |
| Site Development Plan Engineer’s Notes and Standard Details, N1, N2, and N3 | April 4, 2007 | Bradford E. Smith & Son |
| Three Bedroom Parking Design | April 4, 2007 | Bradford E. Smith & Son |
| Sediment and Erosion Control Plan SE1-SE4 | April 4, 2007 | Bradford E. Smith & Son |
| Excavation Progress Plan (also referred to as the “Construction Progress Plan”) | August 7, 2009 | Bradford E. Smith & Son |

[The following plans are already on file]

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|-----------------------------------|-------------------|--------------------------|
| Landscape Plans - LA1 - LA5 | September 5, 2002 | Jack Curtis & Associates |
| Landscape Enlargement Plans - LA6 | June 25, 2002 | Jack Curtis & Associates |
| Planting Details - LA7 | April 23, 2002 | Jack Curtis & Associates |
| Wetland Mitigation Plan - LA8 | September 5, 2002 | Jack Curtis & Associates |
| Site Lighting | August 1, 2002 | Jack Curtis & Associates |