



# TOWN OF MIDDLEBURY

*Planning & Zoning Commission  
1212 Whittemore Road  
Middlebury, Connecticut 06762  
(203) 577-4162 ph  
(203) 598-7640 fx*

## MINUTES REGULAR MEETING May 1, 2014

### **MEMBERS PRESENT**

Terry Smith, Chairman  
Erika Carrington  
Matthew Robison  
William Stowell

### **MEMBERS ABSENT**

### **ALTERNATES PRESENT**

Ron Kulpa  
Paul T. Babarik

### **ALTERNATES ABSENT**

### **ALSO PRESENT**

Brian Miller  
Curtis Bosco, ZEO

## **REGULAR MEETING**

### **1. Call to Order**

Chairman Smith called the Regular Meeting of the Middlebury Planning & Zoning Commission to order at 7:30 P.M.

### **2. Roll Call and Designation of Alternates**

Chairman Smith announced all Regular Members and Alternate Members as present. He appointed Paul Babarik to act in place of the Open Seat.

### **3. Discussion of the Minutes of the Regular Meeting held on April 3, 2014**

**Motion:** to approve the minutes of the Regular Meeting held on April 3, 2014. Made by Erika Carrington, seconded by William Stowell. Unanimous Approval.

**OLD BUSINESS**

None

**NEW BUSINESS**

**4. Discussion & possible action on 8-24 referral to Planning & Zoning Commission regarding purchase of +/- 33 Acres on Benson Road owned by Baker Residential Limited Partnership**

Attorney Dana D'Angelo, representing the Town of Middlebury, informed the Commission that at the end of January, Baker Residential sent a letter to the Board of Selectmen. In said letter, Baker Residential offered commercial property on Benson Road containing approximately 33 acres to the Town of Middlebury in lieu of taxes owed. As a result, the Tax Collector calculated the amount of taxes owed through June 30, 2014 which ultimately totals \$75,925.07. Additionally, the Town hired an appraiser, Jonathan P. Kloss, to perform an appraisal. According to his appraisal dated 3-13-14, it is his opinion that the "Market Value" of the subject property is \$200,000.00 (Two Hundred Thousand Dollars). She stated that a land swap cannot occur as proposed as there is a process that needs to be followed. Therefore, the Board of Selectmen sent it to the Commission for an 8-24 report allowing 35 days to act and determine if they believe it would be appropriate for the Town to pursue. If the Commission submits a favorable recommendation, the Board of Selectmen must then schedule it for a Town meeting. She also confirmed that the subject property is not part of the subdivision and that it does contain a significant amount of wetlands.

Chairman Smith read the proposed Resolution for the record.

**Motion:** to approve the attached Resolution. Made by Matthew Robison, seconded by Paul Babarik. Unanimous Approval.

**5. Joseph & Elizabeth Molder/18 West Lake Road – Application for Site Plan Approval (Application #2014-5-1)**

Attorney Curtis V. Titus spoke on behalf of the applicants. He submitted photos of the old cottage, that has since been demolished, for the record. Some issues were raised in Brian Miller's Memorandum dated 4-24-14 and the Engineering Review dated 4-22-14 submitted by John Calabrese. One concern is that the footprint is too large. He stated that the Assessor's Office has different dimensions (780 sf) than the survey. He reviewed a map prepared by Curt Smith of Smith & Co. which indicates that there is 796 square feet.

He also referenced an email dated 4-30-14 issued by Mark Riefenhauser of Smith & Co. In said email, Mr. Riefenhauser confirmed that the entire square footage of the old cottage was 796 square feet which included the 255 square feet area of the enclosed porch.

Brian Miller suggested that all future plans reference all calculations.

Attorney Titus confirmed that Regulation 26.6.1 contains “including the square footage of any enclosed porch or framed and roofed open porch attached to the building”.

Brian Miller questioned if Attorney Titus could submit the actual calculations that show that to address the issue.

John Calabrese stated that Attorney Titus planned on addressing the restrictions on the basement.

Brian Miller also suggested that tables be placed on plans indicating what exists, what is allowed and what is being proposed.

**Motion:** to approve the site plan subject to the following conditions:

1. a table showing existing lot coverage, allowed lot coverage, and proposed lot coverage be added to the plan;
2. no more than 645 square feet of the basement may be allowed to be finished;
3. the engineer will be notified before construction so that he can certify that all construction conforms to the approved plan.

Made by Paul Babarik, seconded by William Stowell. Unanimous Approval.

Chairman Smith confirmed that the required table is for the entire plan.

## **OTHER BUSINESS**

### **6. Any other business added to agenda by 2/3 vote of Commission**

None

## **7. Enforcement Report**

Chairman Smith confirmed with Curtis Bosco, ZEO and Attorney Titus that a Public Hearing will be scheduled for the June meeting regarding the Zone Change Application for 1628 Straits Turnpike.

Curtis Bosco, ZEO stated that he just applied to become a CZET (Certified Zoning Enforcement Technician). He also stated that he received an emergency call from Ridgewood regarding concrete being poured in the incorrect location which ultimately resulted in it being demolished. He reviewed his findings regarding his research into the accuracy of Section 9 and Section 53 of the Regulations. He stated with 100% confidence that what is currently in the book is accurate and submitted a copy of the Amendments list for the Commission members to replace with what they currently have at the beginning of their books.

William Stowell questioned how the new pizza restaurant at 492 Middlebury Road was approved.

Curtis Bosco stated that approximately two months ago, he emailed it to the members.

William Stowell stated that when he received the application, it was his assumption that it was for an accessory use to the gas station replacing the deli along with all other prior uses. The grand opening was occurring on this day and with what is being publicized on social media, it is obvious that a completely separate restaurant is in the back which has nothing to do with the gas station and parking is definitely an issue. It is a change of use but not an accessory to the convenience store.

Curtis Bosco, ZEO stated that it was to replace Brenda's Kitchen which never did open. It is a nonconforming use of a building because takeout has to be subordinate to a sit down restaurant.

Chairman Smith requested that Curtis Bosco investigate the property to which he agreed to do. Chairman Smith also reminded Curtis Bosco that a Zoning Compliance Table will be required of the entire site plan.

## **8. Adjournment**

**Motion:** to adjourn the meeting at 8:20 P.M. Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

Planning & Zoning  
Regular Meeting  
5-1-14

5

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

Original to Edith Salisbury, Town Clerk

cc: P&Z Commission Members  
Thomas Proulx, 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, Deputy Director of Health  
Mary Barton



FOR FILING  
May 5 2014 at 5:40 P.M.  
TOWN CLERK'S OFFICE  
MIDDLEBURY, CT

*Edith Halshung*  
TOWN CLERK

**RESOLUTION**  
**Regarding the purchase of 33+/- acres on Benson Road,**  
**known as Map 7-02-008 by the Town of Middlebury**  
**from Baker Residential Limited Partnership**

After review of the appraisal, tax bill, assessor's card and other supporting documentation, the Planning and Zoning Commission of the Town of Middlebury finds that would be in the Town of Middlebury's best interest to acquire 33+/- acres on Benson Road for the amount of taxes owed to the Town of Middlebury through June 30, 2014 (\$75,925.07). Said transfer shall occur by June 30, 2014. Therefore,

**BE IT RESOLVED:**

That in accordance Connecticut General Statute §8-24, the Planning and Zoning Commission of the Town of Middlebury recommends the purchase of 33+/- acres on Benson Road, known as Map 7-02-008 . Said transfer shall occur by June 30, 2014 and shall be for the amount of taxes owed to the Town of Middlebury through June 30, 2014. This recommendation shall be submitted to the Board of Selectman.