



## **TOWN OF MIDDLEBURY**

*Planning & Zoning Commission*

*1212 Whittemore Road*

*Middlebury, Connecticut 06762*

*(203) 577-4162 ph*

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**June 3, 2021**

**REGULAR MEETING**

**MINUTES**

**Via Zoom Meeting #848-8185-5835**

**REGULAR MEMBERS PRESENT**

Terry Smith, Chairman

William Stowell, Vice Chairman

Erika Carrington

Joseph Drauss

Matthew Robison

**REGULAR MEMBERS ABSENT**

**ALTERNATE MEMBERS PRESENT**

**ALTERNATE MEMBERS ABSENT**

Jeffrey Grosberg

**ALSO PRESENT**

Curtis Bosco, Z.E.O.

**CALL TO ORDER**

Chairman Smith called the Regular Meeting to order at 7:00 p.m.

**ROLL CALL AND DESIGNATION OF ALTERNATES**

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

## **PUBLIC HEARINGS**

### **1. Arthur H. Howland Assoc./99 Benson Rd.-Application for Site Plan Modification (Application #2021-3-4)(Continued)**

Paul Szymanski spoke on behalf of Benson Road Investors. He is proposing a modification to the site plan based on the 3<sup>rd</sup> party feasibility that was required as part of the financing for the project. He went on to review the plans with the Commission highlighting the following:

<b><u>Previously Approved Application</u></b>	<b><u>Proposed Modification</u></b>
Building #1 – 7,900 square feet	Connect the front and rear of the building to create 1 building; Additional 830 square feet to footprint = 5% increase
Building #2 – 7,000 square feet	
External Staircase facing I-84	Removed and incorporated within structure
Opening between buildings	Buildings connected creating minor changes in door locations
Faux brick	Light gray and dark gray metal color scheme
Pole mounted lighting	Removed pole mounted lighting around perimeter of parking lot with the exception of 1 on the south end; additional building mounted lighting with less intensity; Reduction of 3 lights

Chairman Smith stated that he preferred the look of the faux brick.

**Motion:** to close the Public Hearing at 7:11 P.M. Made by Joseph Drauss, seconded by Matthew Robison. Unanimous Approval.

### **2. 1365, LLC/1365 West Street-Application to amend Sections 31.4.2, 34.4.3 & 52.10.8 of the Regulations (Application #2021-5-1)**

Chairman Smith called the Public Hearing to order at 7:12 P.M. and read the Legal Notice published in Voices on 5-19-2021 & 5-26-2021 for the record.

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT 06770 spoke on behalf of the applicant who is interested in putting a bar outside on the patio which would require a roof or permanent covering on it. The attached proposed amendment will take

the outdoor dining from a special exception use to a site plan use. It would still give the Commission the discretion to deal with it and approve it. It would not be an automatic use. They are proposing a permanent roof covering over the patio or a fabric awning or tables shaded by umbrellas, which is currently the case. He suspects that the proposed section 31.1.7 B. should state “30 inches” as opposed to “30 feet”. A copy of the attached proposal was sent to the Police Chief and Fire Chief and to date, he only received a response from Chief Dabbo. His only concern was that it must be able to withstand a substantial impact which Attorney McVerry believes this Commission can address during a site plan approval.

Chairman Smith stated that he wanted to hear from members of the Commission prior to members of the public. He wants this to be a one and done so that they can accommodate as many restaurants as possible once the governor’s executive orders expire. He questioned if “Alcoholic beverage may only be served with meals.” was already removed from the Regulations. He requested that “The asphalt may not be utilized.” remain as he feels that it is a health issue. He also agrees with taking it out of the special exception use and thinks that it should be a right in the zone.

Joseph Drauss agreed with Chairman Smith.

Erika Carrington voiced her preference of it being more of a permanent structure rather than a tent. She also stated that she does not recall removing “Alcoholic beverage may only be served with meals.”

William Stowell questioned if the town consultant looked at the proposal and added that Vyne Restaurant has a nice layout, however, he would like to see the others have the same opportunity.

Chairman Smith replied that Hiram Peck has yet to review the application and agreed that it was a good idea. He also stressed that safety is priority.

Matthew Robison voiced concerns over using parking spots to put up tables. There could be full capacity inside and then be serving people outside and wonders about meeting the parking regulations.

Curtis Bosco, Z.E.O. confirmed that a year ago, the governor declared by executive order that outdoor dining would be allowed during the pandemic but the legislature in recent months, passed a bill that extended outdoor dining until spring of 2022. They also gave a mandate to local zoning authorities to encourage outdoor dining in the state and to take the year to devise a set of rules that would be outdoor dining friendly, but still give the local authority the final say.

Chairman Smith added that they want to satisfy as many people as possible while doing this once. However, he does not want to hold up the applicant either.

Attorney McVerry assured the Commission that the proposed changes are from the current Regulations and nothing is specifically tailored to his client.

Dean Yimoyines added that he believes the state has waived or changed their requirement that in order to sit at a bar and have a drink, you have to have food. He would be in favor of removing it from the Regulations.

William Stowell affirmed that he does not want them to turn into outdoor bars. This is concerning outdoor dining, not outdoor bars.

Joseph Drauss agreed with Bill Stowell.

Chairman Smith also agreed and stated that it would stay in.

Sue Cumming of Meet Me Here declared that having the outdoor dining saved her business. She also added that there are still many people that do not want to dine inside.

Chairman Smith questioned if she would be able to extend the wall around the corner to envelop her outdoor dining from cars.

Sue Cumming said that she would have to discuss that with her landlord. If an extension of the wall is not doable, perhaps some barriers on the corner.

Arturo of Senor Pancho's stressed the importance of every restaurant owner expressing their needs.

William Stowell acknowledged that the 3 wall rule is one that needs to be looked at and emphasized that safety is his main concern. He does not consider a sand filled pot a barrier.

Dean Yimoyines agreed that the 3-sided wall does not make sense, that it will be different for every restaurant and that he does not want to become the victim of this and have his application held up.

**Motion:** to continue the Public Hearing on July 1, 2021. Made by Joseph Drauss, seconded by William Stowell. Unanimous Approval.

Attorney McVerry added that he would gladly speak with Hiram Peck.

### **MINUTE APPROVAL**

#### **3. Discussion of the Minutes of the Regular Meeting held on May 6, 2021**

**Motion:** to approve the Minutes as submitted. Made by Matthew Robison, seconded by Erika Carrington. Unanimous Approval.

### **OLD BUSINESS**

#### **4. Peter Amara/1582 Straits Turnpike-Application for Site Plan Approval per Sections 31.1 & 52 (Application #2021-3-2)**

Chairman Smith thanked Scott Meyers of Meyers Associates P.C. for making the adjustments. The Architectural Review did not have a quorum so they did not give a decision, however, it is advisory only and he does not want to hold up the applicant.

**Motion:** to approve the application per the attached Resolution. Made by William Stowell, seconded by Joseph Drauss. Unanimous Approval.

#### **5. Peter Amara/1582 Straits Turnpike-Application for a Special Exception for an Excavation & Grading Permit per Section 64 (Application #2021-3-3)**

**Motion:** to approve the application per the attached Resolution. Made by William Stowell, seconded by Erika Carrington. Unanimous Approval.

#### **6. Arthur H. Howland Assoc./99 Benson Rd.-Application for Site Plan Modification (Application #2021-3-4)**

**Motion:** to approve the application. Made by Matthew Robison, seconded by William Stowell. Unanimous Approval.

#### **7. 1365, LLC/1365 West Street-Application to amend Sections 31.4.2, 34.4.3 & 52.10.8 of the Regulations (Application #2021-5-1)**

Discussion was tabled.

## **NEW BUSINESS**

### **8. Ter-Geo, LLC/Russell Antonacci/896 Middlebury Rd.-Application for a Special Exception for Property Management Companies pursuant to Section 35.5.2 of the Regulations (Residential Transition District) (Application #2021-6-1)**

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT 06770 spoke on behalf of the applicant who intends to convert the building to office space, put on a 3,700 square foot second floor, remove the loading docks in the back and put 2 garages up in the rear of the building.

**Motion:** to schedule a Public Hearing for July 1, 2021. Made by Erika Carrington, seconded by William Stowell. Unanimous Approval.

Curtis Bosco, Z.E.O. requested 8 color copies of the lighting plan.

## **OTHER BUSINESS**

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

None

### **10. Enforcement Report**

Chairman Smith informed the Commission that he invited Hiram Peck to the August meeting to discuss the affordable housing changes that are occurring and the required attainment report. Additionally, the Regulations will be ready for distribution.

Curtis Bosco, Z.E.O. briefly reviewed his report which included 5 building permits, 2 pool permits, 2 deck permits, 1 landscape bond, 2 Certificates of Occupancy and payments to Voices and Hiram Peck. Under the Planning Commission, Middlebury has 5 roads have been designated scenic roads which come with constraints. He would like to work with the same designer that did the COVID signs for the restaurants and come up with signage for the scenic roads. He also feels that other roads should be considered for scenic road designation.

Chairman Smith agreed with Curtis Bosco and expressed the need to discuss state requirements with Dan Norton, Director of Public Works.

Curtis Bosco, Z.E.O. added that the manager of Alltown Fresh has 2 tire stops in front of the store that people have been tripping over and he feels they should be removed for safety reasons.

William Stowell suggested that they be replaced with bollards.

Chairman Smith and Joseph Drauss concurred.

Curtis Bosco, Z.E.O added that he plans to contact the owners of Sunoco and Citgo regarding the need for mowing.

Chairman Smith declared that as it stands of this day, the July 1, 2021 meeting will be an in-person meeting.

## **11. Adjournment**

**Motion:** to adjourn the meeting at 8:07 p.m. Made by Joseph Drauss, seconded by Matthew Robison. Unanimous Approval.

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

Original to Brigitte Bessette, Town Clerk

cc: P&Z Commission Members  
Paul Bowler, Chairman, Conservation Commission  
Ollie LeDuc, Building Official  
Curtis Bosco, Z.E.O.  
Ken Long, Chairman, Z.B.A.  
Attorney Dana D'Angelo  
Rob Rubbo, Director of Health

## MIDDLEBURY ZONING REGULATIONS

### PROPOSED AMENDMENT TO:

#### Article III (Section 31 – CA-40 Zone)

#### **Delete current § 31.4.2 Special Exception Use, and insert the following under Permitted Uses:**

- 31.1.7 An outdoor dining area as an accessory use to a full-service restaurant described above as a permitted use under this Section and which, as to said outdoor area, meets the following special criteria:
- A. The area **may be allowed to have a permanent roof covering**, a fabric awning or tables shaded by umbrellas;
  - B. Outdoor dining shall be in an area adjacent to an existing building and surrounded on **at least** three sides by a building, a wall not more than 30 feet in height **or a barrier not less than 42 inches in height**;
  - C. The outdoor dining area shall not be located in any required front, rear or side yard setback areas;
  - D. The outdoor dining area shall not be located **remotely in a parking area**;
  - E. **Any outdoor dining area adjacent to any parking area and/or travel way shall be safeguarded by protective barriers to be appropriate as determined by the Commission**;
  - F. The outdoor dining area shall not interfere with any required means of egress or ingress to the adjacent building;
  - G. The outdoor dining area shall have a floor surface of impervious material including but not limited to concrete or brick pavers, that may be washed and swept easily and such floor shall be maintained daily; ~~asphalt may not be utilized~~;
  - H. Food and beverages shall be served by **wait staff** and the area shall not be utilized **as a takeout area**;
  - I. Alcoholic beverages may only be served with meals;
  - J. All waste material emanating from usage of the outdoor dining area shall be picked and disposed on by the **wait staff** at the end of each seating and disposed of with the interior dining service. In no event shall waste material be deposited or stored at anytime in outdoor receptacles;
  - K. Disposable dishes, cups, glasses, **napkins** and tableware shall not be used. All such items shall be of materials designed for repeated use indefinitely;
  - ~~L. The seating capacity shall any outdoor dining area shall not exceed 50% of the seating capacity of the indoor customer of the restaurant;~~
  - L. Adequate parking for the outdoor dining area determined in accordance with the standard for restaurants under Section 62 of these regulations shall be available during those hours of the day when the outdoor dining area is to be in operation;
  - M. **The Commission may in its discretion, designate hours of operation or other conditions as part of the Site Plan Approval.**

**Delete current Sections 34.4.3 and 52.10.8 Special Exception Uses.**



## SITE PLAN RESOLUTION

Upon motion by Commissioner Stowell, seconded by Commissioner Drauss, it was voted unanimously to approve the application of Peter Amara for a SITE PLAN located on 1570 & 1582 Straits Turnpike and as shown on Record Subdivision Map entitled Plans Prepared for Peter Amara 1570 & 1582 Straits Turnpike (CT. Rt. 63) and prepared by Meyers Associates P.C. and dated March 19, 2021, Rev. to May 28, 2021.

The Commission specifically finds The Application:

1. is in compliance with the requirements of the Planning & Zoning Regulations Section 51.3.1;

The Application is subject to the following conditions/modifications:

- a) Providing bond satisfactory to the Commission and the Board of Selectmen;
- b) Posting of a landscape bond as determined by the Board of Selectmen;
- c) Signing of the Map by the First Selectman;
- d) Signing of the Map by the Conservation Officer;

If the above conditions and or modifications are complied with within 90 days of this decision, the Chairman is authorized to sign the Map. Otherwise, the application is to be considered disapproved and denied.

June 3, 2021

## RESOLUTION

Upon motion by Commissioner Stowell, seconded by Commissioner Carrington, it was voted unanimously to approve the application of Peter Amara for an Excavation & Grading Permit located on 1570 & 1582 Straits Turnpike and as shown on Record Subdivision Map entitled Plans Prepared for Peter Amara 1570 & 1582 Straits Turnpike (CT. Rt. 63) and prepared by Meyers Associates P.C. and dated March 21, 2021, Rev. to May 28, 2021.

The Commission specifically finds The Application:

1. is in compliance with the requirements of the Planning & Zoning Regulations Section 64;

The Application is subject to the following conditions/modifications:

- a) Providing bond satisfactory to the Commission and the Board of Selectmen;
- b) Posting of a landscape bond as determined by the Board of Selectmen;
- c) Signing of the Map by the First Selectman;
- d) Signing of the Map by the Conservation Officer;
- e) Recommendations in report by Calabrese Engineering, dated April 28, 2021;
- f) Truck route shall not be through residential areas.

If the above conditions and or modifications are complied with within 90 days of this decision, the Chairman is authorized to sign the Map. Otherwise, the application is to be considered disapproved and denied.

June 3, 2021