



TOWN OF MIDDLEBURY

Planning & Zoning Commission

1212 Whittemore Road

Middlebury, Connecticut 06762

(203) 577-4162 ph

(203) 598-7640 fx

September 7, 2023

REGULAR MEETING

MINUTES

REGULAR MEMBERS PRESENT

Terry Smith, Chairman

William Stowell, Vice Chairman

Erika Carrington

Matthew Robison

Joseph Drauss

REGULAR MEMBERS ABSENT

ALTERNATE MEMBERS PRESENT

Frank Mirovsky

Paul Anderson

ALTERNATE MEMBERS ABSENT

Gerald Lukowski

ALSO PRESENT

John Calabrese, P.E.

Curtis Bosco, Z.E.O.

Attorney Dana D'Angelo

CALL TO ORDER

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

ROLL CALL AND DESIGNATION OF ALTERNATES

Regular Members Chairman Smith, Stowell, Carrington, Robison & Drauss and Alternate Members Mirovsky & Anderson were present. Alternate Member Lukowski was absent.

PUBLIC HEARINGS

1. Jad Harb, JTH Builders, LLC/Washington Drive – Application for an 11-Lot Subdivision on 60.135 acres, Sycamore Place (Application #23-42Z)

Chairman Smith called the public hearing to order at 7:00 p.m. and announced Regular Members Smith, Stowell, Carrington, Robison & Drauss and Alternate Members Mirovsky & Anderson as present. He read the Legal Notice published in Voices on August 23, 2023 & August 30, 2023 for the record.

Luke Sofair, P.E. with John Paul Garcia, P.E. of Garcia & Associates, 190 Fairwood Road, Bethany, CT 06524 spoke on behalf of the applicant and reviewed the plans with the commission. They are proposing an 11-Lot Subdivision on an existing parcel approximately 60 acres in size on the west side of Washington Drive, just north of the airport. The existing property is a rear lot serviced by a 50-foot access way off the west side of Washington Drive. The lot slopes down from Washington Drive toward a band of wetlands that goes through the center of the property. It is bordered by existing open space (4 separate parcels from previous subdivisions). It is bordered by the Hunting Ridge Subdivision to the west and then Washington Drive to the east. It will be serviced by 1,300 feet of new public road. The smallest lot is 1.05 acres, while the largest is 2.7 acres. All are oversized for the R-40 Zone. Conservation Commission approval has been granted and approval has been granted by WPCA for flow on 11 lots. It will be serviced by public sewer off of Washington Drive with a new sewer main to be installed in the street. All residential building lots will be served by well water. Currently, it is sized for a 5-bedroom house. The proposed road will come through the access way and then jogs to the north. The 1,300 feet of road will terminate in a cul-de-sac and is designed according to the town's road and drainage specs. A detention basin will be installed on the rear of lot 3 to attenuate all of the runoff from the road and from any increased runoff that may come from the development. They submitted drainage studies showing that there will be no net increase in runoff from the property as part of the development from the 2-year through 100-year storm. Currently, it is shown as an easement on the rear of lot 3, however, they are unsure if the town wants to accept it as an easement or have it be part of the open space. Should open space be the town's preference, lot 3 has been designed such that they can cut off lot 3 at the easement line and it will still meet all required zoning. Thirty-seven (37) acres of open space (more than ½ of the parcel) are being proposed to be given to the town and will tie into the four (4) existing open space parcels. There is an existing trail network through the property, which will remain, with an access way to the road to encourage trail access and use of the open space. Property transfers are also being proposed out of some of the side areas to some of the adjoiners. All of the lots are frontage lots, grading is straight forward and they do not anticipate any problems with construction. Maximum road grade is under 10% and they did submit the plans to Public Works, however, they have yet to receive any comments. He confirmed receipt of

comments from John Calabrese, P.E. last week and they take no issue with the recommendations. Conservation Commission comments have been incorporated.

Matthew Robison questioned how this proposal is different than the abandoned area of Triangle Blvd.

Luke Sofair, P.E. replied that it is his understanding that the Triangle Blvd. area was purchased by the airport, however, they do not know why as they were not privy to the conversations between the developer and airport. He added that they are approximately ¼ of a mile further north of the airport from Triangle Blvd. and have not had any discussion with representatives of the airport that there would be any seizure or abandonment required.

Matthew Robison questioned if they had any concerns with respect to flight traffic or ability to sell the homes.

Luke Sofair, P.E. responded that they do not.

Chairman Smith acknowledged that approval was granted by Police Chief Patrick Deely and questioned the status of approval from the Fire Chief.

Luke Sofair, P.E. stated that the Fire Department had a minor comment concerning including a fire tank.

Chairman Smith requested that documentation from the Fire Department and WPCA.

Luke Sofair, P.E. agreed to do so and added that they were in front of WPCA in July and approval for capacity was granted for the 11 lots before they moved forward with the project. They plan to return to them to submit the final plans.

Chairman Smith then stated that the commission will continue the public hearing in order to allow the town's consultant, Hiram Peck of Plan Three, LLC, ample time to submit his review and for the members of the commission the opportunity to review the plans.

Motion: to continue the Public Hearing on October 5, 2023. Made by Erika Carrington, seconded by Matthew Robison.

Discussion:

Vincent Anelli of 43 Meredith Road questioned why they would build adjacent to the Triangle Blvd. area.

Chairman Smith stated that he understood his concerns but that this commission has no control over it.

Erika Carrington questioned who they could ask why the Triangle Blvd. homes were acquired.

William Stowell commented that it will be the same group before this commission for Hunting Ridge.

Matthew Robison added that it is the developer's choice.

Charles Couture of 17 Brookside Drive stated that he moved into Middlebury just as they were clearing the Triangle Blvd. area and that part of it is the safety zone established by the FAA. He questioned if the subject area will infringe upon safety zone.

Chairman Smith confirmed that it does not.

Unanimous Approval.

2. James A. Christiano/Nick Road – Application for a 6-Lot Subdivision on 20.45 acres, Trout Estates (Application #23-45Z)

Chairman Smith called the public hearing to order at 7:12 p.m. and announced Regular Members Smith, Stowell, Carrington, Robison & Drauss and Alternate Members Mirovsky & Anderson as present. He read the Legal Notice published in Voices on August 23, 2023 & August 30, 2023 for the record.

Scott Meyers, P.E. of Meyers Associates P.C. spoke on behalf of the applicant, James Christiano, and reviewed the plans with the commission. The subject property is approximately 20.5 acres in size at the end of Nick Road which currently dead ends at Mr. Christiano's house (#72 and proposed lot 6). There is no turnaround or means to turn a vehicle around, therefore, they are proposing to extend the road totaling an estimated 700 feet ending in a cul-de-sac. There will be five (5) new lots. The development will be served by both public sewer and CT Water. The lots range in size. Lots 1 & 2 are approximately 40,000 square feet. Lot 3 will be an interior lot as it lacks the minimum frontage, will have an access area with 50 feet of frontage and is estimated at 2+ acres. Lots 4 & 5 are significantly larger lots. They are proposing open space on the east side; 20% of the land area/4.1 acres and will be adjacent to an existing Town of Middlebury property that was donated as part of the development on Kelly Road. Said piece has the sewer easement at the trump line that runs through it and the access is from Kelly Road. Approval was granted by the Conservation Commission, Fire Department & Police Department. They plan to be before WPCA on September 19, 2023. They are in receipt of comments from the Public Works Department regarding street lighting once the cul-de-sac is built. All will be single-family houses in an R-40 Zone and all of the road and houses comply with the Planning & Zoning Regulations.

Victoria Steponaitis of 288 Kelly Road questioned if blasting will be required, if they will be notified, what will happen if they begin to acquire water on their property from the development and when construction is expected to commence.

Scott Meyers, P.E. replied that there is always the potential for blasting, but all is regulated by the Fire Marshal and the Building Department. He was unsure about notification requirements but shared that they usually do pre-blast surveys if an abutting property owner is close enough. He added that all of the houses will be on the north side of the property, that they are proposing a detention basin and that the developer has five (5) years to develop the property once the mylar is filed.

Diana Anton of 27 Kelly Road inquired about the sequence of construction.

Scott Meyers, P.E. replied that the road will be built and functional prior to permit issuance to build on the lots and that the entire sequence of construction is on the plans. He added that the new road will prove to be a better scenario with respect to safety and traffic.

Vincent Anelli of 43 Meredith Road asked why they have to have six (6) houses, who will manage the property, if it will be another Brookside, if the wetlands will become hunting property, what will happen to the runoff and what the point of the development is.

Chairman Smith expressed his confusion to some of Mr. Anelli's questions, but indicated that Mr. Christiano owns the property, wants to subdivide it and add five (5) lots and in order to do that, he needs to extend the road.

Don Slason of 52 Nick Road questioned if the existing water and sewer would be extended.

Scott Meyers, P.E. confirmed that it would be extended.

Emily Gobstein Slason acknowledged that she understands that Mr. Christiano has to the right to develop his property but spoke in opposition of the proposal and voiced her concerns regarding environmental impacts, traffic and noise. She also questioned what will happen to other dead end roads in town as this one has been in existence for 80 years.

Matthew Robison questioned if it would be public road.

Scott Meyers, P.E. confirmed that it would be.

Chairman Smith then stated that the commission will continue the public hearing in order to allow the town's consultant, Hiram Peck of Plan Three, LLC, ample time to submit his review and for the members of the commission the opportunity to review the plans. He confirmed

receipt of the approvals from the Fire Department, however he requested that approvals be submitted from Police and WPCA.

Scott Meyers, P.E. submitted the letter of approval from Police Chief Patrick Deely for the record.

Mike Gobstein of 62 Nick Road stated that he does not think it is right that their quiet dead end street will be taken from them. He requested to be reassured in writing that they will receive advance notice if blasting will take place.

Chairman Smith expressed his understanding and reiterated that it falls under the purview of the Fire Marshall and Building Department and suggested that he approach them both with his concerns.

Motion: to continue the Public Hearing on October 5, 2023. Made by Joseph Drauss, seconded by William Stowell. Unanimous Approval.

3. Jennifer Mahr/Middlebury Small Town Alliance, LLC/P.O. Box 1073, Middlebury, CT 06762 – Proposed Zoning Regulation Amendment. Moratorium on Distribution Facilities of any size and Warehouses in excess of 100,000 square feet. (Application #23-26Z)(Continued)

Chairman Smith called the public hearing to order at 7:27 p.m. and announced Regular Members Smith, Stowell, Carrington, Robison & Drauss and Alternate Members Mirovsky & Anderson as present. He then proceeded to read the review submitted by Hiram Peck of Plan Three, LLC dated August 26, 2023 for the record.

Attorney Dana D'Angelo summarized her review dated September 6, 2023. She stated that her legal opinion reflects Hiram Peck's review. She agrees that the courts have upheld moratoriums up to nine (9) months and that if this commission decides to grant a moratorium, that nine (9) months by the longest they consider. She also agrees that if a moratorium were to be issued, that public and town meetings take place due to the fact that it was offered by many of the speakers last month and because the regulations are in the process of being revised. She noted that the one area that Hiram Peck did not address due to timing, is the site plan application for Southford Road that was submitted last week. Conn. Gen. Stat. §8-2h states that any application that is filed is subject to the regulations as they exists on that date. She then asked if Chairman Smith had any questions.

Chairman Smith replied that he has many but wanted time to think about how it is all going to work.

Attorney Dana D'Angelo offered to return next month.

Chairman Smith stated that the commission would not take action this evening.

Carol Taylor of 91 Sandy Beach Road asked Attorney Dana D'Angelo to repeat herself as she was unable to hear.

Attorney Dana D'Angelo reiterated her opinion.

Chairman Smith asked Jennifer Mahr, President of Middlebury Small Town Alliance (MSTA), if she wished to add anything.

Jennifer Mahr, President of Middlebury Small Town Alliance (MSTA), asked to let members of the public speak first and then comment after.

Chairman Smith invited members of the public to speak.

Janine Sullivan Wiley of 106 Joy Road asked if the moratorium and the amendment is consistent with state law as it currently exists.

Attorney Dana D'Angelo replied that there is no state law on point, but courts have upheld moratoriums up to nine (9) months.

Janine Sullivan attempted to rephrase her question and asked if the moratorium would be consistent with state the state law (particularly the amendment that just passed) as it currently exists.

Attorney Dana D'Angelo responded that she does not think there is any conflict but asked what the amendment has to do with the moratorium.

Janine Sullivan questioned if the moratorium, as it's proposed, is consistent with the current state law regarding such development.

Attorney Dana D'Angelo replied that it is a state law that can affect any town and this moratorium is just for the town of Middlebury.

Janine Sullivan agreed that it does affect the town of Middlebury and again asked if this moratorium is consistent with that law.

Attorney Dana D'Angelo stated that she does not think it conflicts.

Bob Nerney of 414 Long Meadow Rd. agreed with Attorney D'Angelo's comment that the filing of an application would be subject to the regulations that exist as of the date of the filing. He then proceeded to state that the regulations do not exist as warehouses are not allowed and that per Section 6.1.4, the use or occupancy of a lot as a trucking terminal shall be prohibited. He feels that the application that was recently submitted is rebranding this and calling it an Industrial Flex Use, which is also not in the zoning regulations and that there are no provisions governing this type of operation.

Jennifer Mahr, President of Middlebury Small Town Alliance (MSTA) stated that they filed their application on behalf of the hundreds of Middlebury residents who have shared their collective opinion about distribution facilities in town. It was their hope that it would be a thoughtful, collaborative, transparent and research-based process that would bridge the gap between what residents have been saying and what town officials appear to want. However, the site plan for 764 Southford Road that was rushed in last week to beat a moratorium decision has deprived them of this opportunity. Attorney D'Angelo confirmed that the new site application would not be subject to the moratorium, which ultimately makes her question what the point is. It would relegate the time and effort spent on a good faith conversation between members of the public and this commission. She feels it would relegate it to an irrelevant sideshow. It was their intention to tighten the regulations so that it would very clear that distribution facilities to conform to the regulations and do not belong in Middlebury. She feared that the application process could be hijacked as an excuse to rewrite the regulations to give an applicant/developer exactly what does not exist in the regulations at the present time. She pointed out that Attorney D'Angelo used the definition of warehouse found in the Cambridge Dictionary as opposed to the definition in the zoning regulations and that Hiram Peck recommended only a 6-9 month moratorium as opposed to a year. She placed emphasis on his following comment: "The party/parties who expect to participate in the process need to fund the effort". She then expressed her opinion that it is not a consultant or town planner's job to worry about costs and stated that this is the second time within a week that it has been suggested that the Middlebury Small Town Alliance pay for costs that it is not legally responsible for. She added that last week they were asked to cover the \$2,600.00 bill for AV fees associated with the town hosting a public meeting. Now she feels they are being asked to pay for a Planning & Zoning review process which is the preview of the Planning & Zoning Commission and the town. She acknowledged that MSTA suggested that a POCD review should occur at the same time due to the fact that it needs to happen regardless, however, she believes that process is clearly the town's responsibility to pay for the costs. She feels that a moratorium is not a good idea for the town because of the possibility of the process being abused and that what Middlebury residents do not want to see could ultimately be used against them. In conclusion, she stated that it was because of those factors, they would not stand by and let the process be hijacked, that there are too many hard-working and taxpaying citizens that have stood up and lent their voice to this process and that they were choosing to withdraw their application. She stressed that they were not surrendering but rather choosing to fight in the arena the applicant has chosen. She thanked everybody who

provided their support and submitted her letter of withdrawal, dated September 7, 2023, for the record.

Chairman Smith addressed Mrs. Mahr and expressed his disappointment in her decision to withdraw their application. He shared that he was in favor of the moratorium, that they are still in the process of redoing the regulations and the commission would like their input before they are finalized. The town's consultant, Hiram Peck of Plan Three, LLC, did offer to sit down with members of the MSTA and listen to their ideas. He stressed the importance of doing so, expressed his hope that they choose to work with the town and declared that there is no effort to try and hijack anything. He suggested having Hiram Peck call Jennifer Mahr to see if something could be worked out.

Timothy Mahr asked Chairman Smith what the point would be in having a discussion about the regulations since a site plan application was already submitted by Southford Park, LLC.

Chairman Smith confirmed that it would not affect the application, but that there are other properties in town that may fit and future applications. He added that truck routes, landscaping and sound/noise are things to consider and be put in the regulations.

Ken Kalberer of 110 Ridgewood Drive questioned what the alternate truck routes are.

Chairman Smith reiterated that he is offering to work with them as they develop the regulations.

Matthew Robison conveyed his desire to see the residents attend and be involved on a voluntary basis in other meetings of Middlebury's numerous commissions/boards. He emphasized that they can make a difference every day and not only when it involves something in their backyard.

Chairman Smith concluded by stating their attendance was appreciated.

Motion: to close the Public Hearing at 7:57 p.m. Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

MINUTE APPROVAL

4. Discussion of the Minutes of the Regular Meeting held on August 3, 2023

Chairman Smith inadvertently passed over this agenda item but addressed it later in the meeting. See page 11.

OLD BUSINESS

5. **Jad Harb, JTH Builders, LLC/Washington Drive – Application for an 11-Lot Subdivision on 60.135 acres, Sycamore Place (Application #23-42Z)**

No discussion

6. **James A. Christiano/Nick Road – Application for a 6-Lot Subdivision on 20.45 acres, Trout Estates (Application #23-45Z)**

No discussion.

7. **Jennifer Mahr/Middlebury Small Town Alliance, LLC/P.O. Box 1073, Middlebury, CT 06762 – Proposed Zoning Regulation Amendment. Moratorium on Distribution Facilities of any size and Warehouses in excess of 100,000 square feet. (Application #23-26Z)**

Application was withdrawn per the request of the applicant. See item #3.

NEW BUSINESS

8. **Attorney Edward G. Fitzpatrick for Southford Park, LLC/764 Southford Road, Middlebury, CT 06762 – Application for a Text Change regarding Height in LI-200 Zone pursuant to Sec. 42.2 of the Regulations (Application #23-58Z)**
9. **Attorney Edward G. Fitzpatrick for Southford Park, LLC/764 Southford Road, Middlebury, CT 06762 – Application for Site Plan Approval (Application #23-59Z)**
10. **Attorney Edward G. Fitzpatrick for Southford Park, LLC/764 Southford Road, Middlebury, CT 06762 – Application for a Special Exception for an Excavation and Grading Permit pursuant to Sec. 64 of the Regulations (Application #23-60Z)**

Attorney Edward (Ned) Fitzpatrick of 203 Church Street, Suite 4, Naugatuck, CT 06770 spoke on behalf of the applicant, Southford Park, LLC, concerning the above three (3) applications. The application for the text amendment pursuant to Section 42 is to increase the height from 35' to 44' and is what they find to be the current engineering and acceptable standards for permitted uses within Section 42 of the regulations and does include warehousing, pharmaceutical uses and other uses. He confirmed that the fees associated with the application have been paid and was filed with the Town Clerk's Office on August 29, 2023 at 3:52 p.m. in accordance with the

statute requirements. With respect to the Excavation & Grading Permit pursuant to Section 64 of the regulations, the appropriate fees associated with said application have also been paid. The Site Plan application pursuant to Section 51 of the regulations involves two (2) structures, 539,500 square feet & 130,000 square feet in size. He noted that approval was granted by the Conservation Commission and while it is under appeal, it is still a valid permit. He requested that this commission accept the applications and set a public hearing date as required by law. Lastly, he confirmed that their engineering and architectural experts will be present for all public hearings.

Motion: to schedule Public Hearings for the above applications for October 5, 2023. Made by Joseph Drauss, seconded by Matthew Robison. Unanimous Approval.

MINUTE APPROVAL

4. Discussion of the Minutes of the Regular Meeting held on August 3, 2023

Motion: to approve the Minutes as submitted. Made by Erika Carrington, seconded by Joseph Drauss.

Discussion:

William Stowell stated that he did listen to and view the audio and video of last month's meeting.

Matthew Robison stated that he wanted to cite the same as he was also absent from said meeting but did have a chance to listen to the video.

Unanimous Approval.

OTHER BUSINESS

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

None

12. Enforcement Report

No discussion.

13. Adjournment

Motion: to adjourn the meeting at 8:03 p.m. Made by Matthew Robison, seconded by William Stowell. Unanimous Approval.

***All documentation is available for public inspection in the Land Use Office.**

***The next Regular Meeting of the Planning & Zoning Commission is scheduled for
October 5, 2023 at 7:00 p.m.**

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
Mark Lubus, Building Official
Curtis Bosco, Z.E.O.
Ken Long, Chairman, Z.B.A.
Attorney Dana D'Angelo
Rob Rubbo, Director of Health