



TOWN OF MIDDLEBURY

*Planning & Zoning Commission
1212 Whittemore Road
Middlebury, Connecticut 06762
(203) 577-4162 ph
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November 1, 2018 REGULAR MEETING MINUTES

REGULAR MEMBERS PRESENT

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

REGULAR MEMBERS ABSENT

Joseph Drauss

ALTERNATE MEMBERS PRESENT

Jeffrey Grosberg

ALTERNATE MEMBERS ABSENT

ALSO PRESENT

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

CALL TO ORDER

Chairman Smith called the Regular Meeting to order at 7:01 p.m.

ROLL CALL AND DESIGNATION OF ALTERNATES

Chairman Smith announced Regular Members Smith, Stowell, Carrington & Robison and Alternate Member Grosberg as present. Regular Member Drauss was absent. He appointed Alternate Member Grosberg to act in place of absent Regular Member Drauss.

PUBLIC HEARINGS

None

MINUTE APPROVAL

1. Discussion of the Minutes of the Regular Meeting held on October 4, 2018

Motion: to approve the Minutes of the October 4, 2018 Regular Meeting as submitted. Made by Erika Carrington, seconded by William Stowell. Matthew Robison and Jeffrey Grosberg abstained from voting as they were not present at the meeting. Unanimous Approval.

OLD BUSINESS

2. Middlebury Land Development, LLC/North Benson Road – Application for an Excavation & Grading Permit Renewal (Application 2018-9-1)

Attorney Jennifer Yoxall of Carmody, Torrance, Sandak & Hennessey LLP spoke on behalf of Middlebury Land Development with respect to their application for a renewal of their Section 64 Excavation & Grading Permit for the Benson Woods Development. The notices have been sent to Woodbury and Southbury. She provided a proposed Resolution of approval as well as a Legal Notice.

Chairman Smith read the Resolution for the record.

Motion: to approve the attached Resolution. Made by William Stowell, seconded by Matthew Robison. Jeffrey Grosberg recused himself. Unanimous Approval.

Chairman Smith the requested to add the following to the agenda:

Motion: to add Middlebury Land Development – Application for a Site Plan Modification to the agenda. Made by William Stowell, seconded by Erika Carrington. Jeffrey Grosberg recused himself. Unanimous Approval.

Attorney Jennifer Yoxall of Carmody, Torrance, Sandak & Hennessey LLP stated that the applicant is looking to do a minor modification to Unit #67 as per the request of a potential buyer. She submitted an application along with the application fees. Notices will need to be submitted again to Woodbury and Southbury and they will also need to speak with Deborah Seavey, W.E.O.

Mark Riefenhauser, P.E. of Smith & Co. briefly reviewed the plans with the Commission. There is a potential buyer that is interested in Unit #67 on Hemlock Lane, which is part of

Phase III. They are seeking to flip the unit so the deck faces the woods rather than the adjacent unit. The footprint is the same but just mirrored. The driveway will be a bit smaller as than the original driveway.

Chairman Smith confirmed that the application was accepted.

3. David & Kathleen Tramaglio/9 West Lake Road – Application for a Site Plan (Application #2018-9-3)

Scott Meyers, P.E. & L.S. of Meyers Associates P.C., 60 Linden Street, Waterbury, CT spoke on behalf of the applicant. He confirmed that approval was granted from the Association and that the applicant does not need to go before the Conservation Commission as they are over 150 feet from the lake. He was under the impression that Deborah Seavey, W.E.O. provided a letter for the file indicating so. The reconstruction (800 square feet) is less in footprint than what is existing (847 square feet), will remain two (2) stories) and a garage is not being proposed. The parking area will remain gravel so there is no need for storm water infiltrators for the roof. It will be better oriented to face the lake.

John Calabrese, P.E. stated that he had no issues with the application or the datum.

Motion: to approve the attached Resolution. Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

NEW BUSINESS

4. 891 Straits Turnpike, LLC/891 Straits Turnpike – Application for a Site Plan Revision (Application #2018-10-1)

Attorney Michael McVerry of 30 Porter Avenue, Naugatuck, CT 06770 spoke on behalf of the applicant. In July of 2014 this Commission approved a 7,500 square foot law office which has been up and operating. They now are seeking to finish the upper level (2,607 square feet) to expand the office that exists as well as possibly 2 windows on the ends of the building. The building itself will remain the same. In 2014, 38 parking spaces were required although 41 were provided and have yet to be totally utilized. Per the Regulations, 9 additional spaces would be required. They are being shown on the map, however, they are requesting that they be deferred based per zoning section 62.4.2, and will be installed based on any future demand. The following documentation was submitted for the record:

1. A copy of a letter dated 10-24-18 from Deborah Seavey, W.E.O. stating that a wetlands permit is not required;
2. A copy of an email dated 10-31-18 from Fire Chief Tony Bruno indicating his approval;
3. A copy of a letter dated 10-24-18 from Police Chief Francis Dabbo indicating he has no issues with the proposal.

Garrett Moore stated that they are not expanding the amount of employees. The proposed floor plan consists of three (3) offices to accommodate for arbitration and mediations that often take place within the building. He also added that they will be utilizing the same builder.

Motion: to approve the attached Resolution. Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

OTHER BUSINESS

5. Gregory Barnes/Tranquility Road & Spring Road – Informal discussion

Chairman Smith stated that he did look into Mr. Barnes request. He went back to the petition that Mr. Barnes circulated and brought before this Commission on October 6, 2001. In the petition, there was no mention of the twenty (20) foot wide road in the petition so the twenty (20) foot wide designation wasn't considered for Spring Road being a scenic road. The Scenic Road Ordinance states that prior to designating a highway or portion thereof as a Scenic Road, the Planning & Zoning Commission must first specifically find that at least one of the criteria is met. Chairman Smith went on to say, "not all".

Gregory Barnes stated that from the original designation, the road continues to get widened.

Chairman Smith read a portion of Mr. Barnes letter dated 7-23-18:

The Public Works Commission, by and through the Director of Public Works has repeatedly and continuously ignored the requirements set forth in the Town of Middlebury Ordinance - SCENIC ROAD ORDINANCE. He added that he feels that this is a very strong statement and asked Mr. Barnes if he could provide more information such as before and after photos or other evidence to back up his statement. He continued to say that he himself has driven up and down the road for the last 20 years by vehicle

and bicycle and has not noticed any widening of the road as claimed by Mr. Barnes. As far as not following the ordinance, the Public Works Director or his designee comes before this Commission every time something is done on a scenic road. They were before this Commission on 7-6-17 to talk about improvements to Spring Road, in this instance regarding curbing. Although curbing was never installed, the road was milled on 9-14-17 and paved on 9-27-17. He did speak with Director Norton and Mr. Norton stated that he did notice that when the road was being prepped that people were driving off the road. Therefore, he prepped the road approximately six (6) inches wider. Mr. Barnes complained at that time and apparently there was a meeting and the two agreed where the line should be, and a white line was drawn.

Mr. Barnes stated that the line was ignored.

Chairman Smith continued to say that the contractor came and put an orange line over the white line then paved to the orange line. It covered the orange line. Mr. Norton says the road is approximately three (3) inches wider than what it was. Chairman Smith got an independent opinion and spoke to the Public Works Superintendent in Wallingford. He relayed that three (3) inches is margin of error for a paving box. Chairman Smith then questioned Mr. Norton if the three (3) inches could be saw cut out. He replied that given the fact that people are still going off the road on that inside corner, it would unravel the road and the road would start falling apart from the edges in. Given the the information he just explained to Mr. Barnes, Chairman Smith stated that he **STRONGLY** disagrees with Mr. Barnes letter. Chairman Smith also commented that he wanted to be sure that the members of the Commission express their opinions as well.

Mr. Barnes stated that when they milled it, they also extended the cleaning portion another 6-7 inches that was all dirt. At that time, he claims Mr. Norton agreed with him and painted some lines that were in further. The next day, the paving people came, paved the whole thing on the exact same spot where Mr. Norton put the line. He approached the driver, who he says was paving past the line, and told him he was paving over them. Mr. Barnes then called Mr. Norton to which he received no response. He added that he has had problems trying to get the road swept and damage to the corner by the plow repaired despite being assured that it would be done. He requested that this informal discussion be turned into a formal complaint with regard to it and added that he stands by his letter. At this point in time Mr. Barnes left the meeting.

William Stowell added that since Chairman Smith asked for comments from the Commission, he wanted it noted that he did drive to the location after last month's meeting and still believes it to be a scenic road, it still meets the criteria and that the road is not very wide.

Erika Carrington also stated that she drove down it and agrees with Mr. Stowell.

6. Industrial Development Group, LLC/corner of Park Rd. & Straits Turnpike – Informal discussion

Attorney Gail McTaggart of Secor, Cassidy & McPartland, P.C. reviewed a google satellite map with the members of the Commission. In 2005 there had been an approval which has since expired. There was also approval from the Conservation Commission and that approval allowed development on the lower 2 acres of the property (up against Park Rd.). At the northern end, there is approximately five (5) acres of really good land that could be developed. The central part of it has wetlands. Of the estimated fifteen (15) acres, approximately 7.5 acres is good developable land. Regardless of how it is zoned, the central portion would be preserved and protected through wetlands approvals. Her client is interested in coming in with a rezoning and welcomed any comments from this Commission. It is a residential pocket in the middle of commercial land. Her client confirmed that there are homes in the northern part that would need to be rezoned CA all the way up to the industrial section.

Chairman Smith suggested that they contact the home owners and get their approval and added that it would only increase their property value.

Attorney McTaggart agreed that it would be best to do so but wanted the input from this Commission prior to contacting them.

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

See Middlebury Land Development above.

8. Enforcement Report

Curtis Bosco, Z.E.O. informed this Commission that a proposal was made by Mr. Moore to the Conservation Commission to restore all of Tyler Cove and to remove the lily pads. Mr. Moore intends to finance the entire project. He reminded the Commission about a complaint he received against Sandy Beach Club approximately one year ago, to which there has been no resolution. He wanted the members to know that Mr. Anderson has since filed a counter complaint which consists of zoning and conservation issues.

9. Adjournment

Motion: to adjourn the meeting at 8:01 p.m. Made by Erika Carrington, seconded by William Stowell. Unanimous Approval.

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

Original to Edith Salisbury, 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
Larry S. Hutvagner, CFO
Rob Rubbo, Director of Health

RESOLUTION
(SECTION 64 EXCAVATION & GRADING PERMIT TWO-YEAR RENEWAL)

WHEREAS, the Commission has received the application of Middlebury Land Development LLC for a two-year renewal of its permit for excavation and filling incident to construction of the approved planned residential development, Benson Woods; and

WHEREAS, this Commission previously granted a permit for such activity each year from 2002 through 2016, with the most recent permit approved on August 4, 2016, which permit was effective December 26, 2016; and

WHEREAS, the Commission finds that the work already completed complies with the plan of operation, as approved, and other applicable requirements of Section 64 of the Zoning Regulations have been carried out.

NOW THEREFORE, it is

RESOLVED, this Commission does hereby approve the application of Middlebury Land Development LLC for a two-year renewal of the excavation and grading permit granted on August 4, 2016 under Section 64 of the Zoning Regulations, 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.

This approval shall be effective December 26, 2018, and legal notice of this decision shall be published prior to that date.

SITE PLAN RESOLUTION

Upon motion by Commissioner Carrington, seconded by Commissioner Robison, it was voted unanimously to approve the application of Kathleen B. & David D. Tramaglio for a SITE PLAN located on 9 West Lake Road as shown on Record Subdivision Map entitled Plot Plan Unit D-18 showing reconstruction of cottage prepared for Kathleen B. & David D. Tramaglio and prepared by Meyers Associates and dated September 14, 2018.

The Commission specifically finds The Application:

1. is in compliance with the requirements of the Panning & Zoning Regulation 51.3.1;

The Application is subject to the following conditions/modifications:

- a) signing of the Map by the First Selectman;
- b) signing of the Map by the Conservation Officers;

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.

November 1, 2018

SITE PLAN RESOLUTION

Upon motion by Commissioner Carrington, seconded by Commissioner Robison, it was voted unanimously to approve the application of Garrett Moore for a SITE PLAN MODIFICATION located on 891 Straits Turnpike as shown on Record Subdivision Map entitled Final As Built Zoning Location Survey and prepared by Riordan Land Surveying and dated July 2, 2014 Rev.

The Commission specifically finds The Application:

1. is in compliance with the requirements of the Panning & Zoning Regulations 51.3.1 & 62.4.2;

The Application is subject to the following conditions/modifications:

- c) signing of the Map by the First Selectman;
- d) signing of the Map by the Conservation Officers;
- e) adding the latest revision date.

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.

November 1, 2018