

**Zoning Board of Appeals Minutes
Selectmen's Room, Middleborough Town Hall
10 Nickerson Avenue, Middleborough, MA 02346
March 8, 2018**

Chairman Darrin DeGrazia, Dr. Edward Braun, Dorothy Pulsifer, Joseph Freitas, Liz Elgosin, Jack Healey and Matthew Maher were present.

7:30 P.M. James Reynolds – 410 Plymouth Street

Chairman Darrin DeGrazia read into the record the legal advertisement and declared the hearing open. The previous hearing was continued so the applicant could bring in a parking plan, which the board now has.

James Reynolds reviewed the parking plan for the board members. Discussion ensued regarding the size of the parking spaces. The board would like to see the parking spaces 10' x 20' as per the requirements of the Bylaw opposed to the 8' x 22' shown on the plan. Chairman Darrin DeGrazia said this will reduce the spaces by approximately two, but they are still well over the requirement for parking.

Jack Healey asked if there will be any new signage for this building. James Reynolds said they currently do not have a plan for new signage. Discussion ensued regarding a possible new sign. James Reynolds said they are showing a sign on the building itself if the board would like to approve that. The board had no objections to the sign on the building.

Chairman Darrin DeGrazia asked if anyone would like to be heard on this matter. Hearing no comments Chairman Darrin DeGrazia closed the hearing and called for a motion.

Upon a motion made by Dr. Edward Braun and seconded by Liz Elgosin, the board

VOTED: to approve the petition of James Reynolds, 410 Plymouth Street, Middleborough, MA 02346 relative to his request to allow for an amendment to special permit #15-23 to allow for the construction of a 21' x 40' building for retail space. The subject property is located at 410 Plymouth Street, Middleborough Assessor's Map 31, lot 6181, and in the Residence "A" District. This is approved subject to the following stipulations:

- 1. The sign shall be limited to six square feet.**
- 2. The parking plan that was submitted and dated March 8, 2018 shall be amended to show the parking spaces as 10' x 20'.**

Chairman Darrin DeGrazia, Dr. Edward Braun, Dorothy Pulsifer, Joseph Freitas and Liz Elgosin were in favor. (5-0)

Upon a motion made by Dr. Edward Braun and seconded by Liz Elgosin, the board

VOTED: to adopt the following findings:

- 1. The proposed site is appropriate for the use and structure;**
- 2. Adequate and appropriate facilities have been provided to insure the proper operation of the use and structure;**
- 3. Traffic flow and safety, including parking and loading are adequate and there will be no nuisance or serious hazard to vehicles or pedestrians. It is noted that the applicant provided a parking plan this evening;**
- 4. Adequate water, sewer, and other utilities as well as other public and private services are available or will be provided;**

**Zoning Board of Appeals Minutes
Selectmen's Room, Middleborough Town Hall
10 Nickerson Avenue, Middleborough, MA 02346
March 8, 2018**

5. The use involved will not be detrimental to the established or future character of the neighborhood and town and is subject to appropriate conditions and safeguards.

Chairman Darrin DeGrazia, Dr. Edward Braun, Dorothy Pulsifer, Joseph Freitas and Liz Elgosin were in favor. (5-0)

7:43 P.M. Joel Scalata - 168 Chestnut Street

Chairman Darrin DeGrazia read into the record the legal advertisement and declared the hearing open.

Joel Scalata informed the board that he would like to construct an accessory apartment for his Mom above the existing garage.

The board reviewed the plans submitted. Dr. Edward Braun asked if it is correct that he is just building up over the existing garage. Joel Scalata said yes.

Chairman Darrin DeGrazia read into the record a letter dated March 6, 2018, from Robert Whalen, Building Commissioner.

Dr. Edward Braun informed the applicant this will be limited to his mom, and in the event they she longer resides there he will have to come back to this board for a name change. Joel Scalata had no objections to that.

Chairman Darrin DeGrazia asked if anyone would like to be heard on this matter. Hearing no comments Chairman Darrin DeGrazia closed the hearing and called for a motion.

Upon a motion made by Liz Elgosin and seconded by Dorothy Pulsifer, the board

VOTED: to approve the petition of Joel Scalata, 168 Chestnut Street, Middleborough, MA 02346 relative to his request to allow for a special permit for an accessory apartment located above the existing attached garage for the mother of the applicant. The subject property is located at 168 Chestnut Street, Middleborough Assessor's Map 68, Lot 924. This is approved subject to the following stipulations:

- 1. This is limited to Cynthia Scalata. In the event they she no longer reside there the applicant shall come back to this board for a name change.**
- 2. Subject to the plan dated February 5, 2018.**

Chairman Darrin DeGrazia, Dr. Edward Braun, Dorothy Pulsifer, Joseph Freitas and Liz Elgosin were in favor. (5-0)

Upon a motion made by Dr. Edward Braun and seconded Liz Elgosin, by the board

VOTED: to adopt the following findings:

- 1. The proposed site is appropriate for the use and structure. It is noted that this is an existing garage and they are adding a second story;**
- 2. Adequate and appropriate facilities have been provided to insure the proper operation of the use and structure;**
- 3. Traffic flow and safety, including parking and loading are adequate and there will be no nuisance or serious hazard to vehicles or pedestrians;**

**Zoning Board of Appeals Minutes
Selectmen's Room, Middleborough Town Hall
10 Nickerson Avenue, Middleborough, MA 02346
March 8, 2018**

4. Adequate water, sewer, and other utilities as well as other public and private services are available or will be provided;

5. The use involved will not be detrimental to the established or future character of the neighborhood and town and is subject to appropriate conditions and safeguards.

Chairman Darrin DeGrazia, Dr. Edward Braun, Dorothy Pulsifer, Joseph Freitas and Liz Elgosin were in favor. (5-0)

7:52 P.M. Gregory Anderson – 10 Merchant's Way

Chairman Darrin DeGrazia read into the record the legal advertisement and declared the hearing open.

Greg Anderson informed the board that he is present tonight representing Ocean State Job Lot who currently owns the property at Merchant's Way. There is an existing Sign Criteria for this property that is dated April 8, 1989. The Sign Criteria has two items in it that is really restraining tenants with the ability to put signage in. One is the color, having to be red and white, and the other is it having to be a box sign. They are requesting that those two items be removed because it does not allow the tenants to have their own branding.

Greg Anderson submitted a new Sign Criteria dated March 6, 2018, for the board to review. They have removed things such as using certain bulbs, colors, etc.

Liz Elgosin said the only issue she has with the new criteria is they have deleted that the signs shall not include product sold. She does not like the idea of the signs having logos all over them. Discussion ensued regarding this. Greg Anderson said he thought this referred to advertising in the windows as well. The board agreed to leave that in the criteria as it is for the sign specifically.

Jack Healey asked if his issue is the limitation on the color of signs. Greg Anderson said it is one, and the other is the box signs. Jack Healey said it also removes the materials used. Greg Anderson said yes, they are trying to stay with how signs are made today. They want to remove items that say "you can only use this" because technology is very different than it was. Greg Anderson said they still need to follow the building codes for signs. Discussion ensued regarding the sign requirements.

Chairman Darrin DeGrazia asked if anyone would like to be heard on this matter. Hearing no comments Chairman Darrin DeGrazia closed the hearing and called for a motion.

Upon a motion made by Liz Elgosin and seconded by Dorothy Pulsifer, the board

VOTED: to approve the petition of Gregory Anderson, 10 Merchants Way, Middleborough, MA 02346 relative to his request to allow for the amendment of Special Permit #88-06 to update the approved Sign Criteria for Middleborough Crossing, dated April 08, 1989. The subject property is located at 10 Merchants Way, Middleborough Assessor's Map 058, lot 5347, in the General Use District. This is approved subject to the following stipulations:

1. As per the attached Sign Criteria dated March 8, 2018, as amended.

Chairman Darrin DeGrazia, Dr. Edward Braun, Dorothy Pulsifer, Joseph Freitas and Liz Elgosin were in favor. (5-0)

**Zoning Board of Appeals Minutes
Selectmen's Room, Middleborough Town Hall
10 Nickerson Avenue, Middleborough, MA 02346
March 8, 2018**

Upon a motion made by Dr. Edward Braun and seconded by the board

VOTED: ***to adopt the following findings:***

- 1. The proposed site is appropriate for the use or structure;***
- 2. Adequate and appropriate facilities have been provided to insure the proper operation of the use and structure;***
- 3. Traffic flow and safety, including parking and loading are adequate and there will be no nuisance or serious hazard to vehicles or pedestrians;***
- 4. Adequate water, sewer, and other utilities as well as other public and private services are available or will be provided;***
- 5. The use involved will not be detrimental to the established or future character of the neighborhood and town and is subject to appropriate conditions or safeguards if deemed necessary.***

Chairman Darrin DeGrazia, Dr. Edward Braun, Dorothy Pulsifer, Joseph Freitas and Liz Elgosin were in favor. (5-0)

8:13 P.M. Elva Abair by John Scanlon Construction – West Street

Chairman Darrin DeGrazia read into the record the legal advertisement and declared the hearing open.

Attorney Robert Mather said at the previous hearing he gave testimony and the board requested an opinion from Town Counsel. Attorney Robert Mather said the board has received a decision from Town Counsel dated March 1, 2018.

Attorney Robert Mather reviewed, in detail, all the information submitted at that previous hearing.

Attorney Robert Mather said no one respects Dan Murray's opinion more than him. However, he thinks he is missing the point in his opinion. What he is relying on, and what he says is this doesn't help because the Statute doesn't pertain to vacant land, it only pertains to structures. Attorney Robert Mather said he is right on that, and he agrees with that. His argument is that they know the statute doesn't cure their problem, but it cures the problem that created their problem. So that if the lots that infected their lots are no longer illegal then they should also not be infected.

Attorney Robert Mather said Dan Murray made an original opinion, and the reason they continued this several times, was because he didn't like the opinion and wanted to talk to him about it. Again, it is an opinion. What Dan Murray did in his second letter was added a paragraph that said "it is of course possible that a court might construe the amendment to cure or eliminate the infections invalidity status of Lots "C" and "D" as well as curing the illegal status of the structures on Lots "A" and "B". What he is saying in essence is that he might be right. There will be a case on this but it will take a minimum of five years for that.

Attorney Robert Mather said the other letter that was received yesterday was from the Building Commissioner, which states this is in the General Use District, meets all the requirements, and building permits could be issued for two commercial uses on this property. Attorney Robert Mather said they

Zoning Board of Appeals Minutes
Selectmen's Room, Middleborough Town Hall
10 Nickerson Avenue, Middleborough, MA 02346
March 8, 2018

do not want to build two commercial lots. If the board has view the property, it is zoned commercial, but these few blocks are all residential dwelling. If you look at the map provided this lot is three times the size of the average lots in the area. They certainly feel this will be compatible with the neighborhood and gives the board the ability to guarantee that there will only be one house lot there.

Attorney Robert Mather said he understands the board is always concerned with setting a precedent but remember what precedent means. It means that if you grant this, and someone comes to the board with the exact, not close, but the exact same circumstances the board should treat them the same. So this is such a unique situation that he would suggest that if someone comes to them with a lot that is in the General Use District, that is usable for commercial, is three times the size of any lot in the area, and is only non-compliant because of infection of a lot this is no longer infected, they the board should treat them the same.

Attorney Robert Mather said his feeling is that the board should grant the petition, again for all the above stated reasons. He feels this meets all the requirements for a special permit to be issued. He would respectfully say it is in the board's hands, and they would like to construct one single family dwelling there.

Chairman Darrin DeGrazia said using Dan Murray's argument that the infection isn't cleanup on lot "C" and "D", how does he proposes that someone could actually build a commercial use on that space, if the infection remains. Attorney Robert Mather said the Building Commissioner and himself respectfully disagree with Dan Murray. The residential part is more complicated, but as far as the commercial use, the Building Commissioner has agreed that he would issue the permits because it meets the requirements.

Chairman Darrin DeGrazia said his own personal view on this he doesn't want to end up complicating a bad situation and making it worse. Attorney Robert Mather said he is not sure how the board could make this worse; they have an opportunity to make it a single family dwelling.

Dr. Edward Braun said this is perhaps one of the most confusing petitions they have had in long time. They have a basic policy that is they ask Town Counsel for an opinion, and he gives an opinion, it's rough to go against that opinion. If the board is not going to listen to his, than why ask. Attorney Robert Mather said they are not asking for this by right, they are asking for a special permit, which the board has the authority to grant.

Chairman Darrin DeGrazia said the question the board had was the interpretation of the Section 7 amendment that was adopted in 2016. He doesn't think, even the way Chapter 40 is written, that this is actually clear. He can respect his argument from the stand point that there needed to be structure, where this is a vacant piece of land there is no structure. Discussion ensued regarding the statue.

Chairman Darrin DeGrazia asked if anyone would like to be heard on this matter. Bill of 85 West Street said he lives directly across the street from this lot. If you look out their kitchen window you see this lot. Obviously, this is a noncommercial street, despite whatever the zone is. Having that lot there they could be adversely affected by commercial uses. That is not right for their neighborhood. Jack Healey asked if it correct that he does not want to see a commercial use there. Bill said that is correct. Jack Healey

**Zoning Board of Appeals Minutes
Selectmen's Room, Middleborough Town Hall
10 Nickerson Avenue, Middleborough, MA 02346
March 8, 2018**

asked if he favors the approval for this special permit for a single family dwelling. Bill said yes, a nice residential dwelling built across the street would be nice for the neighborhood.

Eric Sheppard, 90 West Street said he agrees with Bill that if anything needs to go there it should be residential, not commercial.

Hearing no further comments Chairman Darrin DeGrazia closed the hearing and called for a motion.

Upon a motion made by Joseph Freitas and seconded by Dorothy Pulsifer, the board

VOTED: to approve the petition of Elva Abair by John Scanlon Construction, Fernway Street, Middleborough, MA 02346 relative to his request to allow for a special permit to determine lots "C" and "D" taken together as one lot are considered to be a legally, non-conforming buildable lot for purpose of a single family dwelling. The subject property is located at West Street, Middleborough Assessor's Map 58A, and Lot 971. This is approved subject to the following stipulations:

- 1. The construction of the house shall comply with the front, side and rear yard setback, and upland circle requirements for the construction of a single family dwelling in the General Use Zoning District.**
- 2. The lot shall not be further subdivided.**
- 3. No construction shall commence until such time as the Building Commissioner has issued a valid building permit.**

Chairman Darrin DeGrazia, Dr. Edward Braun, Dorothy Pulsifer, Joseph Freitas and Liz Elgosin were in favor. (5-0)

Discussion ensued regarding the motion. Joseph Freitas said there has been a change in law and in this particular situation where the lot is three times larger than the surrounding lots, he thinks there is more than enough reason to say this is a good choice to approve this. This is being built by a reputable builder in town, and he doesn't think the board could ask for anything more. This is a good project and he hopes it goes forward. Dr. Edward Braun said he is going to support Joseph Freitas's comments. He thinks the practical thing is what's good for the neighbors, and the neighbors that have come here this evening, have expressed what he would express in this situation. He does not know if he is on sound legal ground in approving this or not but he is going to vote in favor of this.

Upon a motion made by Joseph Freitas and seconded by Liz Elgosin, the board

VOTED: to adopt the following findings:

- 1. The proposed site is appropriate for the use and structure;**
- 2. Adequate and appropriate facilities have been provided to insure the proper operation of the use and structure;**
- 3. Traffic flow and safety, including parking and loading are adequate and there will be no nuisance or serious hazard to vehicles or pedestrians;**
- 4. Adequate water, sewer, and other utilities as well as other public and private services are available or will be provided;**
- 5. The use involved will not be detrimental to the established or future character of the neighborhood and town and is subject to appropriate conditions or safeguards if deemed necessary.**

Zoning Board of Appeals Minutes
Selectmen's Room, Middleborough Town Hall
10 Nickerson Avenue, Middleborough, MA 02346
March 8, 2018

Chairman Darrin DeGrazia, Dr. Edward Braun, Dorothy Pulsifer, Joseph Freitas and Liz Elgosin were in favor. (5-0)

8:45 P.M. Matt Swansburg, Borrego Solar Systems – Chestnut Street - informal discussion regarding Middleborough solar project on Chestnut Street, Middleborough Assessors Map 52, lot 2926, with access from Sonia Drive

Matt Swansburg, Borrego Solar informed the board that they were selected to lease land from the Town of Middleborough for the solar project on Chestnut Street. Matt Swansburg said this is a preliminary meeting so they could review the proposed project with the board before they formally submit for a special permit.

Matt Swansburg said they just want to cover their entire basis before they apply for the special permit. They have a very basic layout for the board to review tonight to give them a sense of the location.

Jack Healey asked if they will be coming in off of Short Street during the construction. Matt Swansburg said from what they have understood the best access during construction would be Sonia Drive. Jack Healey asked if he is aware that Sonia Drive is a private way. Matt Swansburg said they are aware of that. Jack Healey asked if he is aware that the owner of Sonia Drive is also the owner of the first lot in at the end of Sonia Drive, before you get to the Town property. So therefore, you will be traveling across private property all the way from Short Street till you get to the town property. Jack Healey asked if they have talked to the owner of that property about that. Matt Swansburg said they have not yet. It was his understanding, talking with the town, that the town actually has an easement with the private land owner to access the back lot.

Jack Healey said he does not believe that is the case. He has spoken with the land owner, who lives in Virginia, and he knew nothing of this. In fact he is in the process of selling this property and so he doesn't want this to interfere with that. He would like to see the project go forward, it's a good project, but this needs to be resolved.

Chairman Darrin DeGrazia asked if he is sure there is no easement. Jack Healey said there is not. There is a gas and electric utility easement there. Discussion ensued regarding the access to this property.

Matt Swansburg said he appreciates this being brought to his attention. He will reach out to that land owner. Jack Healey said he could provide him with the contact information. Joseph Freitas said that is a very important part of the process and you would have to have access in order to put the project there.

Discussion ensued regarding adequate buffer areas, fencing, and landscaping.

Upon a motion made by Liz Elgosin and seconded by Dorothy Pulsifer, the board

VOTED: to adjourn at 9:00 P.M.

Unanimous Vote.