

**Town of Middlebury
Development Review Board (DRB)
Town Office Large Conference Room
Minutes of June 12, 2017
Draft**

Members Present: Kevin Newton, Gary Baker (Alt.), Scott Foster, Don Keeler, John MacIntyre, Anne Taylor, Rick Emilo, David Hamilton

Members Absent: None

Staff Present: Jennifer Murray, Victor Sinadinowski Katherine Wheatley (videographer)

Others Present: Chuck Steady, Duncan Rollason, Chris Robbins, Tony Neri, Dustin Simmons, Glenn Lower, David Hall, Rebekah Simmons, Jennifer Sabowin

MEETING AGENDA

- An application by Chuck Steady for conditional use review of a contractor storage yard and setback waiver. This property is located at the corner of Quarry Road and Route 116, parcel ID 6:073 in the AR zoning district.
- An application by Mr. Tony Neri for conditional use review of a proposed miniature golf facility to be located behind the existing A&W drive-in restaurant. This application was reviewed as a sketch plan on 1-25-15. This property is located at 1557 Route 7 South in the PHD zoning district.
- An application by Dustin Simmons for conditional use review to operate a restaurant. This property is located at One Washington Street in the VRC zoning district.

Kevin Newton called the meeting to order at 7:04 pm.

1. Minutes of 5/22/2017

On a **Motion** by Don Keeler, seconded by John MacIntyre, the Development Review Board **voted to approve the minutes of 5/22/2017**. Motion passed 6-0.

2. Procedural Discussion

Kevin proposed a procedural change to make the meeting proceed smoothly. He suggested that the DRB hears all the applications, asks necessary questions of the applicants, and then enter deliberative session to discuss them after hearing all cases. Anne thought it was an excellent idea but mentioned that some cases were so clear that it would be unfortunate to have them potentially wait a while for the DRB to come out of deliberative session. Don agreed with Anne and said that having the discussion in front of the applicant is beneficial because there usually are additional things the DRB thinks of to ask the applicant. Jennifer noted that the DRB and Staff would have the opportunity to ask questions but would break away into deliberative session right before a motion is made. Anne thought the DRB could consider whether it would be necessary to enter deliberative session after each case. John and Rick both agreed with Anne. Kevin stated that the DRB would proceed as normal but with more willingness to enter deliberative session.

3. Hearing for Chuck Steady

Kevin administered the oath to all present.

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Victor summarized the staff notes for the case and Mr. Chuck Steady presented his application. The lot in question is on the southwest corner of Quarry Road and Case Street and is about 1/3 of an acre. Mr. Steady is looking to erect a building, about 42' x 34', to store his landscaping equipment. He would need to create a curb cut and driveway, probably off of Case Street. He would also need a setback waiver from the southern and western property boundary lines.

Mr. Steady noted that most of the trees are dead or there is buckthorn, so he will take all of them down and then level the lot and fill it with gravel. The driveway would come from the southern part of the property off of Case Street. He would plant trees on the north and east side of the property to partly screen the building, and apple trees on the south and west side of the property. There would be no sewer or water needed, and there would be no drains in the building, which would be a half-moon galvanized steel-structure that would sit a 2-3 foot concrete wall.

Don asked if Mr. Steady had approval from the State for the curb cut. Mr. Steady said no but that he was in the process of talking with the State. Rick asked how the lot is currently accessed. Mr. Steady noted that there are too many trees and brush to access it. Anne asked if the applicant knew how many years that lot has been that size. Mr. Steady said that he did not know but that he is looking into it. He had asked the neighbors and they were also not sure how long that property had been there. Don asked if he had bought the property yet and Mr. Steady said that he has not. Anne mentioned that knowing when the lot was split off may let us know if the lot qualifies as a pre-existing small lot. Jennifer said that this type of conversation was best for deliberative session. Anne asked if the owner of the lot was in a hurry to sell. Mr. Steady noted that the owners were waiting on him. Gary said that could be a simple question to the Woods, who are the current owners.

Don felt that the DRB could not do much with the applicant's proposal until he could get a curb-cut approval from the State. Jennifer noted that it is okay to review the plan as such and come to a preliminary decision. The applicant would have to come back again if he did get cur-cut approval. Scott asked if the DRB would give the applicant a preliminary approval, and Gary and Anne both agreed that it would depend on how long the lot has been in existence.

Anne asked if there would be any outdoor storage. Mr. Steady noted there would be a typical trailer attached to his truck that would store landscaping materials. It would be on the property mostly in the summer and then he could store it on his property during the winter. Anne asked the applicant to think about the types and size of trees on Quarry Road.

Don made a **motion** to enter deliberative session after the DRB hears the other two applicants and Rick **seconded** the motion. There was some discussion on the motion. Kevin described four possible ways the DRB could proceed on this application. Gary mentioned that the DRB needs to determine how long that lot has been in existence. Rick **took back** his second of the motion. Anne then **seconded** the motion. The DRB **voted 5-2** to enter deliberative session, with Rick and John opposing.

4. Tony Neri Mini-Golf Course

Kevin administered the oath to all present.

Jennifer presented the staff notes for Mr. Neri's application. The DRB heard this application in 2012 and the DRB approved it. But the approval lapsed because the engineered final plans were not produced and submitted prior to the expiration date of the permit. The DRB then heard the

94 application again in January of 2016 and the DRB's main concerns were about access to the golf
95 course facility behind the A&W. Mr. Neri is now back again for final approval of that application
96 and has brought along engineered plans showing that essentially everything from the 2016
97 application is the same except for the access road to Foote Street that has been removed. Mr. Neri
98 explained that he moved a parking lane on the A&W portion of the property further south on the
99 property so that a clear drive lane could be established to the mini-golf course portion of the
100 property in the rear.

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102 Kevin asked if the applicant would be doing any work in the right-of-way. Mr. Neri said that not
103 for creating a curb-cut. Rick asked if the water and sewer would be attached to the A&W building
104 and Mr. Neri said no. Rick asked about the difference between the parked cars by the A&W
105 building and the cars parked in the new spots moved to the south. Don said according to the map it
106 is about 22 feet or maybe a little more.

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108 David asked if the Design Advisory Committee reviewed the application. Jennifer said they had
109 reviewed it during the previous application. Mr. Neri stated that he is going to change the color
110 from a yellow to a dark green. Anne asked about the exterior lighting situation on the lot. Mr. Neri
111 said there are no plans to keep the business open after dark. He said there would be lighting in the
112 parking lot and at the entrance/exits. Kevin asked if there would be any lighting on the mini-golf
113 course itself. Mr. Neri said no.

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115 Chris Robbins from the public noted that water issues should be addressed. The wetlands on Mr.
116 Neri's property are classified as Class 3 wetlands. While the State doesn't not regulate such
117 wetlands, the Town does. Mr. Neri said he addressed those issues by putting in a 24-inch culvert
118 per the recommendations of the highway department. He started from the north end near Duncan
119 Rollason's property that takes the water to the line on the south side of the property. Regarding
120 wetlands, Mr. Neri said it has always been farmland and has always been hayed. Ms. Robbins said
121 that the State also requires a permit to disturb one acre of land or to put in one acre of impervious
122 surface.

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124 Anne asked if the applicant had an estimate of the number of people that would be using the mini-
125 golf course. Mr. Neri does not know but he thinks he has more than enough proposed parking to
126 handle the maximum number of people. Jennifer asked what was decided about exterior lighting.
127 Mr. Neri said there is a pole on the lot behind the A&W that he would plan on using. He would
128 also put a pole on the south side, and perhaps a couple of small lights on the building. Rick asked
129 if the golf-course would be open during seasons that the A&W is closed. Mr. Neri said he doesn't
130 have such plans, yet. Jennifer asked if there would be a gate

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132 On a **Motion** by Don Keeler:

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134 I move that the Middlebury Development Review Board, having reviewed the application
135 submitted and having heard and duly considered the testimony presented at the public hearing of
136 June 12, 2017, **approve** this conditional use review to operate a miniature golf facility behind the
137 A&W. Scott Foster **seconded**. Motion **passed**, 7-0.

138 139 5. **Dustin Simmons Coriander Restaurant**

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141 Kevin administered the oath to all present.

143 Victor presented the staff notes. Mr. Simmons and his partner, David Hall, are looking to operate a
144 restaurant out of the former Sweet Marie's restaurant located at 1 Washington Street. Sweet
145 Marie's was only given permission to operate from 5pm to 10pm on Thursday, Friday and
146 Saturday. Mr. Simmons would like to operate for lunch and dinner, seven days per week. The
147 applicant believes that lunch hours will focus more on delivery and take-out rather than just sit-
148 down eating. There is seating for 24 customers and there will be a total of six employees, including
149 the applicant and his partner. The applicant has six parking spaces guaranteed to him through an
150 agreement with the Middlebury Natural Foods Cooperative. After 5pm, Foley law firm will let the
151 applicant use his parking spots, and the bank across the street will let him use its parking spaces on
152 the weekend. Middlebury's zoning regulations require that a restaurant have 1 parking space per 3
153 customer seats. The applicant would need a total of 8 parking spaces.

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155 Mr. Hall indicated that he painted the outside of the building and believe that it adds to aesthetics
156 of the area and that he has heard positive feedback from many people. Regarding parking, none of
157 the employees will be using those parking spaces and the restaurant will only have seven tables,
158 and he believes that many people will also walk to the restaurant. He and Mr. Simmons have
159 already obtained the necessary State and Town permits and the DRB approval is the last approval
160 needed.

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162 Anne asked the applicants to have another conversation with the Foley law office to confirm the
163 number of parking spaces available, as one of the partners left and there may be a change in
164 circumstances. Don had some concerns about whether there was a change of parking availability
165 due to the MNFC renovations. Jennifer stated that Staff reviewed the parking with the applicant
166 and the MNFC and that the number of spots will stay the same. Don wants to make sure that
167 parking spaces were not double counted. Anne said that the pertinent issue is that the applicant has
168 six parking spaces but need a total of eight.

169 The DRB and Staff noted that the three options available to the applicant were to find two more
170 parking spots, obtain a parking waiver for a fee, or reduce the number of seats in the restaurant.
171 Mr. Hall stated that there are generally plenty of on-street parking spaces available with a few
172 minutes walking distance of the restaurant location. Anne stated that even though that may be the
173 case, the regulations require the applicant to have eight parking spaces or to pay a parking fee. The
174 applicant asked what such a fee would look like, and Jennifer explained that it would be best for
175 the DRB to discuss the issue in deliberative session to determine if there is adequate parking in the
176 area. Glenn Lower, manager of the MNFC, noted that while there are 6 parking spaces guaranteed
177 for the applicant's restaurant, those spaces are not assigned.

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179 David made a **motion** to enter deliberative session at 8:45 pm. Anne **seconded** the motion. Motion
180 passed, 7-0.

181 Scott made a **motion** to exit deliberative session at 9:23 pm. David seconded the motion. Motion
182 passed, 7-0.

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184 On a **motion** by Anne Taylor:

185 I move that the Middlebury Development Review Board, having reviewed the application
186 submitted and having heard and duly considered the testimony presented at the public hearing of
187 June 12, 2017, **approve** this conditional use review to operate a restaurant on One Washington

188 Street subject to the payment of two parking-waiver fees. Rick Emilo **seconded**. Motion **passed**, 7-
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191 On a **motion** by David Hamilton:

192 I move that the Middlebury Development Review Board, having reviewed the application
193 submitted and having heard and duly considered the testimony presented at the public hearing of
194 June 12, 2017, **approve** this preliminary conditional use review to establish a contractor storage
195 yard on parcel #06:073 pending the submittal of the following information: 1) a determination of
196 how long the lot has been in existence; 2) a plan that shows the location of the right-of-way and
197 utilities on the property; 3) neighbor's comments on project; and 4) State approval of the proposed
198 curb-cut on Route 116. Scott Foster **seconded**. Motion **passed**, 7-0.
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200 **Adjournment:**

201 On a **Motion** by David Hamilton, seconded by Rick Emilo, the DRB **voted to adjourn**. Motion
202 passed, 7-0.

203 Meeting adjourned at 9:43 pm.

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205 Minutes Submitted by Victor Sinadinowski