

Town of Middlebury
Development Review Board (DRB)
Town Office Large Conference Room
Minutes of December 10, 2018
Approved as presented 2/11/2019

Members Present: Kevin Newton, chair, Gary Baker, Rick Emilo, Donald Keeler, John MacIntyre and Anne Taylor

Members Absent: David Hamilton

Staff Present: Jennifer Murray, Katherine Wheatley (videographer) and Dave Wetmore

Others Present: Anthony Neri, Gail Daha and Jonathon Ashley

MEETING AGENDA

- a. Continued from 11/26/2018- Application (file # 2018-24:199/24:201) request by Anthony Neri for final conditional use approval of his proposal to resume the retail grocery store/deli/café use on the property formerly known as Greg's Market. The property is located at 3 Elm Street and 30 MacIntyre Lane in the Village Residential Commercial (VRC) District, parcel ID #24:199 and 24:201.

I. Call to Order- Meeting was delayed due to technical issues.

Kevin Newton, DRB Chair, called the meeting to order at 7:30 pm, reviewed tonight's agenda, and asked for any non-agenda items/public communications. None expressed.

II. Approval of Minutes-

Motion by Don Keeler- moved to approve the minutes of 11/26/2018 as presented, Rick 2nds. No changes or discussion. **Motion passed 6-yes, 0-no.**

III. DRB public hearings:

1. Continued from 11/26/2018-Application (file # 2018-24:199/24:201) request by Anthony Neri for final conditional use approval of his proposal to resume the retail grocery store/deli/café use on the property formerly known as Greg's Market. The property is located at 3 Elm Street and 30 MacIntyre Lane in the Village Residential Commercial (VRC) District, parcel ID #24:199 and 24:201.

Kevin Newton reconvened the hearing, read the warning and administered the Oath to those present who intend to submit testimony. Kevin cautioned folks that if they did not take the oath that they would not be allowed to participate.

Kevin asked about conflicts of interest and ex-parte communication? None expressed

Kevin asked Applicant to present an overview of the changes made since the 11/26/2018.

Jonathon Ashley- project engineer- outlined the changes requested by DRB on 11/26/2018 after consultation with Staff. The following is the list of changes to revised site plan.

1. Parking shown in front, along Elm Street, has been removed. Outside café seating is no longer shown, due to the grade in that area.
2. The plan is to use the existing door fronting on Elm Street as the primary entrance. This entrance is now shown on the plan. The west side entrance is a secondary entrance used mainly for deli customers. Cart storage will be near Elm Street entrance.
3. Four planters have been shown along Elm Street which will block vehicles from using the previous parking and improve aesthetics in front. Additionally, a planter is shown along the west side. A mix of

42 trees, shrubs and grass swale landscaping is shown along the edges of the rear parking lot. Tree species
43 proposed (Serviceberry and Hackberry) are hardy and salt-tolerant. The grassed drainage swale between
44 MacIntyre Lane and the parking lot is approximately 5-ft wide. The northern 2/3 of parking lot drainage
45 will drain to the catch basin on the north end of the parking lot.

46 4. Locations of exterior building mounted and parking lot lighting is shown on plan. Six (6) existing wall
47 fixtures on the west side of the building will illuminate the parking at the west entrance. The application
48 includes lighting specifications for the fixtures proposed. Two (2) pole-mounted fixtures are proposed
49 at the east side of the rear parking lot. All exterior lighting will be compliant with Section 769.

50 5. A painted pedestrian access from the Market to the rear parking lot is shown.

51 6. A privacy fence is shown along eastern boundary of the rear parking lot. Proposed dimensions for the
52 fence are a mounting height of 2-ft off ground and total height of 8-ft.

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54 In the interest of opening Greg's Market as soon as possible, allowing it to generate some revenue before
55 performing the additional demolition and site work that would open up the additional rear parking lot, the
56 Applicants proposed phasing-in the completion of some of the elements shown on the site plan by June 1, 2019.

57 1. Applicants propose removing the Pool World building before June 1, 2019

58 2. Applicants propose completing final grading and installation of drainage swale before June 1, 2019

59 3. Applicants propose completion of landscaping and lighting before June 1, 2019

60 According to the testimony submitted, rear parking would be available to customers prior to June 1st. Staff and
61 DRB counted spaces shown on the site plan and were able to confirm that the application meets the requisite
62 number of spaces with the Pool World building in place. Users would need to drive or walk around the Pool
63 World building to access them between now and June.

64 DRB questions-

65 Will parking lot drainage change once the Pool World building is removed? No, it will continue to drain in the
66 same direction(s).

67 Will the driveway/access on the east side of the Pool World building be restricted for pedestrian access to
68 parking lot only, and can it be improved for safety? Tony thought that would be acceptable. Tony stressed that
69 their business model will not require as much parking as before. It will be a "grab and go" more like a
70 convenience market. They will focus on the deli, and offer fresh meat and produce. Other staples will be
71 available, but the grocery product selection will be limited.

72 How many parking spaces are in front of Pool World? Seven, they are not shown on plan. DRB asked Staff
73 what is required. Dave shared that Lister records show that Pool World's retail area is about retail 1,050 sf
74 which requires 7 spaces.

75 How do you propose to keep customers from crossing the grass swale? Concrete bumpers will be placed on
76 both the east and west side of parking lot to identify each parking spot which would restrict people from
77 crossing the swale. DRB asks that a pedestrian crosswalk be installed across the swale, nearer to the south end
78 of the parking lot once Pool World is building is removed. Final site plan should show this.

79 Is there access to Exchange Street along the north end of the building? No, presently this area houses the trash
80 and recycling area. These features should be shown on final site plan. Exterior grocery cart storage as well.

81 Prior to Pool World demolition, how would parking spaces be marked? Applicants state they would use the
82 concrete bumpers.

83 Is the front entrance illuminated? Yes- there is an existing light beneath the canopy. This should be shown on
84 the final plan.

85 How can the DRB be assured that the Pool World building will be removed and related parking lot site work
86 and improvements completed by June 1, 2019? Applicant expressed that Pool World tenants are important and
87 he is working to find them a new space. Applicant encouraged the DRB to trust him that those improvements
88 will be completed by June 1st. DRB asked the Applicant about providing a letter of credit or posting a bond to

89 guarantee completion of the required work. Applicant responded that these cost money and did not feel it was
90 necessary. DRB stressed that Applicant is asking to open the Store before completing many of the
91 improvements proposed, and they would prefer not to create a condition that would be difficult to enforce once
92 Store is open. Gail and Mr. Neri spoke outside, then came back to propose an agreement imposing a \$500/day
93 fine if the improvements are not complete by June 1st in lieu of letter of credit.

94 Staff noted that the zoning affords no provisions for a private agreement, but the Regulations do allow the DRB
95 to require a letter of credit or something similar approved by Selectboard. She stressed that legally speaking,
96 the DRB is not authorized to make deals with individual applicants the way a Selectboard would. The zoning
97 does allow the board to require a bond or letter of credit to guarantee an improvement, based on real project
98 costs. The DRB wondered would the cost of the improvement be the cost of demolition of the Pool World
99 building, and asked the Applicant how much that would cost. The Applicant did not know. Staff suggested if a
100 letter of credit was considered, the value could be calculated based on the cost of purchasing 21 spaces of off-
101 street parking from the town according to the parking impact fee waiver provision in the zoning. 21 is the
102 number of spaces required by the project but located behind the Pool World building. That would mean a letter
103 of credit for approx. \$5,000. If the improvements were not completed and the letter needed to be called, then in
104 effect the applicant would have purchased off street parking. Anne said she wouldn't be comfortable with that
105 because there isn't that amount of off street parking available in the immediate area. The board will discuss this
106 topic further in deliberative session.

107 Staff- asked further about pedestrian safety and access to parking behind Pool World. Would the Applicant
108 agree to restrict vehicles from the east side of Pool World and make improvements for pedestrian access and
109 safety prior to removing Pool World building? Yes this could be accomplished.

110 - Are planters along Elm Street shown on the site plan located on Applicants property? Jon stated yes.

111 -Noted some handicapped identified parking appears to be located off property, is this the case? John stated yes,
112 a portion of this parking is located in the public right-of-way, but it could be moved forward and confined to
113 Applicants property. Final plan should reflect this revision.

114 -Staff noted that the proposed store and existing Pool World use requires 40 parking spaces. The Regulations
115 state that applicants are required to provide off-street parking. Based on Staff review it appears the applicant has
116 the required number of parking spaces even if the Pool World building were not removed. Admittedly a parking
117 lot behind Pool World would not be convenient for customer use.

118 Public questions- no public present.

119 Kevin surveyed the Board for other questions- none presented.

120 **Motion by Gary Baker-** moved to enter deliberative session at 8:30 PM, Anne 2nds. Motion carries, 6-yes and
121 0-no. Kevin invited Applicants to wait, suggesting that the Board may come to a decision shortly. The hearing
122 remained open.

123 **Motion by Gary Baker-** move to exit deliberative session at 9:20 PM, Rick 2nds. Motion carries 6-yes and 0-
124 no.

125 **Motion by John MacIntyre-** I move that the Middlebury Development Review Board, having reviewed the
126 application submitted and having heard and duly considered the testimony presented at the public hearing of
127 November 26, 2018 **APPROVE** this request for final conditional use approval to resume a grocery store/deli
128 use (formerly Greg's Market) located on parcels # 24:199 and 24:201, at 3 Elm Street and 30 MacIntyre
129 Lane subject to all conditions, including:

- 130 1. Prior to issuance of a conditional CO and store opening, the Applicant shall:
- 131 • Make improvements satisfactory to Staff on the east side of Pool World building for pedestrian
132 access and safety. Vehicular access through this area will be restricted/discouraged.
 - 133 • Grade, improve and place curb bumpers to identify temporary parking spaces in the parking lot
134 behind Pool World.
 - 135 • Move ADA accessible parking toward the building, such that it is entirely located on Applicants
136 property and not in public right-of-way.
 - 137 • Provide final plan showing the modifications discussed tonight

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2. On or before June 1, 2019 the Applicant shall;
 - Remove the Pool World building
 - Complete permeant improvements to parking lot and pedestrian access (between store and lot and across drainage swale) as shown on final site plan
 - Install all proposed landscaping, including drainage swale
 - Install all exterior lighting compliant with Section 769, and
 - Install privacy fence along east side of parking lot.

2nd by Rick Emilo- Motion passed -6-yes and 0-no

IV. Other business

Next meeting- No meeting scheduled at this time

VI. Adjournment

Motion by Gary Baker- moved the DRB to adjourn at 9:30 PM, 2nd by Don Keeler. **Motion passed, 6-yes -0-no.**

Meeting adjourned at 9:30 PM

Minutes Submitted by Dave Wetmore