

Town of Middlesex

1216 Route 245
Middlesex, New York 14507

PLANNING BOARD
Wednesday, February 7, 2024 • 7:00 p.m.

The following minutes are the official and permanent record of the actions taken by the Town of Middlesex Planning Board, as recorded by the Planning Board Clerk.

Meeting called by: Case Smeenck, *Chairperson*

Board members present: Gordon Stringer
Nate Duffy
Terry Mott

Alternate: Position vacant

Staff present: Dawn Kane, *Code Enforcement Officer*
Thomas Palumbo, *Town Engineer (Stantec Consulting)*
Beth Altemus, *Planning Board Clerk*

The meeting was called to order at 7:00 p.m. by the Chair.

OLD BUSINESS:

1. Site Plan Review (App. # 083023-SPR)

Timothy O'Connor, owner of property at 1472 South Lake Rd., Middlesex, NY 14507 (Tax Map ID# 31.03-1-1), is seeking a site plan review for construction of a new residence.

Brennan Marks of Marks Engineering, Rick Szkapi (project manager) and Tim Tyskiewicz (architect) were representing. Mr. Marks briefly summarized the project, indicating that the owner would like to rebuild the current house to be a bit smaller, with the first floor level remaining at the same height and the lower level one foot lower to reduce the steepness of the driveway up to it.

Mr. Smeenck indicated that the Board looked at a conceptual plan of the project at a previous meeting and that the plan has since been sent to Stantec Engineering for review. Mr. Palumbo indicated that he has reviewed the project, but has not yet

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received responses to his comments. Mr. Marks indicated that he had not yet received a letter from Stantec.

Mr. Palumbo indicated that the project needs a steep slope application, and proceeded to review his comments of the plan with the project team as follows:

- Mr. Palumbo indicated that a proposed patio will sit on the retaining wall on the north side and requested that statements be made as to the stability and condition of that wall. Mr. Szkapi indicated that there will be all new footers underneath, and Mr. Marks indicated that the wall will be removed. Mr. Palumbo requested that these changes be indicated in the plan.
- Mr. Palumbo referred to a forty-eight inch storm pipe and asked how it would make the proposed bend, and Mr. Szkapi indicated that it would be dug up a bit and a pvc pipe would be added.
- Mr. Palumbo requested that the end of the headwall be given a dimension to reconcile it with the pipe end.
- Mr. Palumbo requested that top and bottom wall elevations be added on the north wall and to those around the patio.
- Mr. Palumbo indicated that the back corner of the house near the existing retaining wall shows a basement elevation of seventeen feet below grade, and he asked how that would work. Mr. Tyskiewicz indicated that it would be only ten feet below the second floor and would not go seventeen feet down. Mr. Palumbo expressed that there should be enough room between the retaining wall and house to get the foundations in, and Mr. Tyskiewicz indicated that the new wall will be eight feet back from the existing wall, and thus will give more room for the foundation.
- Mr. Palumbo requested more grading and drainage spot elevations on the southwest corner.
- Mr. Palumbo asked what height the walls will be, and whether they will all be the same height. He indicated that they should be included in the foundation plan and on the permit. He also asked if the back of the L-shaped wall will be dry stacked, and Mr. Marks indicated that it would be.

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CEO Kane suggested that once the project team addresses the comments discussed above, and on the Stantec letter, the team can bring their revisions to CEO Kane and Mr. Palumbo for review before permitting. She asked the Board if this would be an acceptable course of action, and members of the Board indicated that it would be.

Mr. Duffy indicated that he would also like to see the silt fence extend farther to the north, and Mr. Marks indicated that he will do that. Mr. Mott requested additional silt fence and erosion fabric following the apron of the driveway, with extension of erosion fabric over the culvert pipe opening.

Mr. Mott questioned whether there is a concern about installing the foundation on the steep slopes, and Mr. Palumbo indicated that since there already had been a house there it won't be a problem. CEO Kane indicated that the property is all shale bedrock, and Mr. Smeenck indicated that it is not as steep as other properties.

Mr. Stringer asked whether the driveway from South Lake Road will be stoned to reduce erosion, and the project team indicated that it would be.

Mr. Stringer made a motion to approve the plan with the conditions that 1) the engineer's comments are addressed, and 2) the additional silt fence and erosion control fabric requested be included. Mr. Duffy seconded, there was no public discussion, all Board members voted in favor and the motion passed.

2. Site Plan Review (App. # 051023-SPR)

Scott and Barb Davis, owners of property at 120 East Lake Rd., Middlesex, NY 14507 (Tax Map ID # 02.38-01-08.1), are seeking a site plan review for new construction of a single-family home.

Jim Smith, Greg McMahon of McMahon LaRue Associates, P.C, and attorneys for the applicants, Ari Goldberg and Sam Haven, were representing. Mr. Smith remarked that his family has owned this property since 1978, and his family has owned property in the area since the early 1900's. He indicated that they are members of the Canandaigua Lake Watershed Association.

Mr. Goldberg indicated that at the August, 2023 meeting of the Planning Board, the Board requested documentation proving the applicants have legal access to the existing road easement. He indicated that Mr. Haven has submitted documents to the Board which he believes prove legal access. Mr. Goldberg also remarked that site plan review requirements focus on construction of a parcel, drainage, water, sewer, etc., but that

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access points are not part of the SPR application. He indicated that his clients intend to maintain the road during construction and to restore the road to pre-construction condition; they would also be willing to agree to these actions as part of an approval for the project.

Mr. Mott remarked that as long as protections for the road are part of the approval the project should be moved along. Mr. Smeenck disagreed, expressing that he believes it is the Planning Board's responsibility to make sure the applicants have access to their property before approving the project.

Mr. Haven indicated that two Smith brothers gained access to the property together via the same driveway and road. Mr. Smeenck asked if Mr. Haven was referring to the pre-existing road referenced in the legal documents he submitted. Mr. Goldberg remarked that access rights to the easement transfer with ownership. Mr. Smeenck indicated that he doesn't believe the Board should not worry about access, that the only property owner at issue is Mr. Thompson, and that he hopes they can work this out independently.

Mr. Haven explained that there are three parcels between the Smith/Davis property and East Lake Road, and that the Smiths bought an additional slice of land in 2004 that conferred to them access rights to the easement. He indicated that the original easement agreement for the road from 1964 didn't spell out maintenance requirements, but that his clients intend to maintain the road. Mr. Haven indicated that his clients did negotiate with the other property owners using the easement to define maintenance requirements for each property, and that Mr. Smith wants to set these down in writing but hasn't been able to come to an agreement with the Thompsons.

There was discussion between Mr. Smeenck and Mr. Haven about the parcel of land purchased by the Smiths in 2004 having pre-existing rights to access the easement, and how that conferred access rights to the Smiths upon their purchase of this parcel. Mr. Haven indicated that this is an implied easement and an accepted way of dealing with older easements.

Mr. Goldberg expressed that the Planning Board is not a forum for deciding legal access to the easement. Mr. Smeenck remarked that the access issue is nevertheless part of making a prudent decision and he would like an attorney for the Town to confirm they have legal access.

CEO Kane indicated that she and the Board have expressed from the beginning that the legal access issue was to be decided between the neighbors, and that they requested

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information regarding the legal access, which Mr. Havens submitted. She indicated that she has kept the neighbors, Mr. Gunderman and the Thompsons, informed on communications regarding this issue, and that it would behoove them to also have legal counsel present, as this is a civil matter.

CEO Kane asked if the Smiths have been accessing their property from down the road across from Roger Byrd's. Mr. Smith indicated that in 1978, when they purchased the property, the driveway didn't go all the way to it, but was later extended, so for a couple of years they walked to the cottage from East Lake Road, however once the driveway was extended they used it to access the property. Mr. Goldberg asked if the access point had ever changed, to which Mr. Smith said no.

CEO Kane expressed that the neighbors have been given plenty of time to get legal counsel, and that Mr. Goldberg and Mr. Haven are licensed New York State attorneys who have issued their findings in the form of letters and maps. She indicated that the Board doesn't have the right to question these legal findings unless the issue goes to civil action. She indicated that she believes the attorneys for the applicants are working in good faith.

Mr. Mott asked Mr. Smeenck to clarify his opinion that further action regarding legal access is needed. Mr. Smeenck indicated that the Board received a letter saying the property is landlocked, but it is not because the property is accessible through other properties on the map.

There was general discussion and analysis of the property/easement map amongst Mr. Smeenck, Mr. Haven and Mr. Duffy. It was reiterated that when the Smiths bought a parcel of land broken off from another parcel that had pre-existing rights to the easement, those rights transferred to the new parcel as well. It was noted that the Smiths now own both that parcel and the original from which it was broken off.

Mr. Smeenck asked whether the Town attorney has commented on the issue, and CEO Kane indicated that she will seek the opinion of the Town attorney regarding documents submitted by the attorneys for the applicants.

Rich Testa, in attendance at the meeting, commented that from a business standpoint the Thompsons came to him and asked him what the right of way is worth, and indicated that he is representing the Thompsons as a consultant. CEO Kane indicated the need for documentation from the property owner expressing permission for Mr. Testa to represent them. Mr. Testa submitted to the Board a copy of an email sent to

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him by Mr. Thompson, in which the Thompson's requested Mr. Testa represent them, and that he read the following comments to the Board:

- 1) The Thompson's never signed off on an easement for our entrance.
- 2) Liber 679.69 modifying a survey map without a PE or Surveyor license is a crime. I didn't see a stamp on the modifications made to the map showing the easement.
- 3) Gregory Penington's name was crossed off and Robert Willard's was inserted incorrectly since he never owned our property as listed in the survey map.
- 4) No compensation has been exchanged for this easement/ROW.
- 5) A major concern is for an escrow for repair of the road to assure all land owners can access their property during construction. We are requesting a \$25K escrow account be established for any and all road repairs during construction.
- 6) A certified engineer should be hired by Barb Davis/Jim Smith to determine if the road can support the traffic of construction vehicles. The report should be shared to all property owners affected by this.
- 7) Compensation for this ROW, we are requesting \$15K.

Mr. Testa then remarked that if the Davis's agree to all these points they have a deal. Mr Smeenck indicated that the Board will not take the email and comments stated therein into consideration. Mr. Testa handed out another document to the Board, which consisted of printed emails with photographs of the easement. CEO Kane indicated that she had already received these emails from Mr. Gunderman and the Thompsons, and had already sent them to all Board members.

Mr. Smeenck expressed that the discussion would now move to the site plan review. He asked if access to the property to the north will be through the driveway between the breakwall and house; Mr Smith said it would, and Mr. Smeenck asked if the eleven feet width is adequate as an access. Mr. Smith indicated that the property to the north is owned by his brother and that he doesn't believe his brother would build on that lot as he already has a cottage on the beach.

Mr. Smeenck indicated that he's concerned the driveway is not wide enough for construction vehicles, especially if it acts as an easement to the property to the north. Mr. McMahon indicated that he believes eleven feet is wide enough for construction vehicles such as dump, concrete and lumber trucks.

It was indicated that the septic system has received approvals, and Mr. Smeenck commented that he would have liked to see the septic moved. Mr. Palumbo indicated

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that the comments from the Stantec letter were addressed, and he would like to discuss a few of those.

Mr. Smeenck inquired how a potential future fifty percent expansion of the septic will work, if needed, and Mr. Palumbo indicated that they would need to cut a lane down the upper retaining wall to work around the edge of it. Mr. Smeenck inquired whether a variance would be required for the septic as the absorption field encroaches on a fifteen feet setback. CEO Kane indicated that only ten feet are required by code.

Mr. McMahon remarked that Bill Grove of Grove Engineering made the septic plans, which have been approved by the state and the Canandaigua Lake Watershed.

Mr. Smeenck inquired why the structure will be built upon a crawl space instead of a slab, and Mr. McMahon indicated that was an architectural decision and doesn't know the reasons; Mr. Palumbo suggested it could be for the purpose of creating interstitial space for heating and ductwork.

Mr. Smeenck inquired where the spoils from digging out the footers will go, and Mr. McMahon indicated that they will be trucked off site.

Mr. Mott asked whether there is a contractor on board the project, and Mr. Smith indicated that there is not, however they are in conversation with potential candidates.

It was agreed upon that CEO Kane would supply the response from the Town attorney regarding the easement to the applicants' attorneys for consideration and resolution.

Mr. Smeenck inquired if there are any code restrictions on the bunk houses. Mr. Palumbo indicated that this was addressed by the Stantec review and the applicants responded that the existing structures will remain and be converted to storage; it was also noted that no water/sanitary services exist in these structures, and a composting toilet exists in a small shed.

Mr. Smeenck commented that any cars parking at the right of way leading to the property to the north (owned by Mr. Smith's brother) shouldn't block access to that property. Mr. McMahon responded that only two to three cars would be parking there and that it's not a right of way as there is nothing on the property to the north. Mr. Case indicated that nonetheless it is a separate lot, and to avoid future problems and safeguard future owners of the property there should be a legal document stating that the right of way shall be kept open.

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CEO Kane reiterated that from a planning perspective the Board should address the potential for blockage of that access. Mr. Duffy asked if that could become a condition of approval. Mr. Mott asked what the code requires and whether the current plan already has what's required. CEO Kane indicated that if an easement is given for that access it will solve the problem, however the Town attorney needs to be consulted on whether the Board can require an easement; she indicated that it could be a condition, however that condition should be checked for legality.

Mr. Smeenk asked how the well will be drilled and lined across the ravine. Mr. Smith indicated that the well will be towards the road side, to the northeast of the cottage. There was general discussion of the well placement on the map. Mr. McMahon indicated that he will review the well placement to be sure it's correct and is the right distance from the septic. He indicated that the well will be upland of the septic absorption field.

Mr. Stringer asked for clarification about terminology regarding two, 2x2 connections. It was noted that these refer to catch basins.

Mr. Palumbo indicated that he and CEO Kane will review together the comments from Stantec.

There was general discussion about whether to make a legal access agreement to the easement in dispute with the neighbors a condition of approval, and that the Board can address maintenance of the easement as a condition as well.

Mr. Mott made a motion to approve the site plan with the following conditions:

- The existing driveway shall be maintained, protected, and restored to the existing condition or better after construction. The applicant will have the whole responsibility financially for this maintenance.
- It was agreed that a construction bond for the road will be put in place with the amount to be determined by the Town engineer.
- The applicants shall provide an additional easement to the property to the north.
- The updates to the changes required by the Town engineer shall be included.
- The response from the Town attorney regarding easements and access will be presented to the applicants' attorneys for further review.

Mr. Testa remarked that if there were a washout and one couldn't access their property, what financial ramifications are there if no escrow account is set up. He commented that construction vehicles are damaging South Lake Road, that it's precarious at the

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Davis driveway, and without an escrow if someone goes bankrupt it affects property values. He indicated that he believes there is a need for an escrow account of twenty-five thousand dollars minimum in case anything needs to be done. Mr. Goldberg indicated that Mr. Testa's clients' attorneys should discuss this with them.

CEO Kane remarked that this is good to consider and they could have someone look at the road or do a maintenance bond so everyone would be covered. Mr. Smith commented that they will establish an escrow account and, as stated, put the road back to its original condition. Mr. Testa commented that it is important to have an engineering study of the road with weight criteria. Mr. Smith indicated that all of the neighbors should pay for such a study. CEO Kane reiterated that the neighbors could all do a study and collectively protect and bond the road. Mr. Goldberg and Mr. Haven suggested adding a maintenance bond, with the value determined by the Town engineer, as a condition of approval.

Mr. Duffy seconded the motion, Mr. Stringer and Mr. Mott voted in favor, Mr. Smeenk opposed, and the motion passed.

NEW BUSINESS:

1. Site Plan Review (App. # 020124 - SPR)

Walter Robarge, owner of property at 1265 Main St., Middlesex, NY 14507 (Tax Map ID # 22.76-1-7), is seeking site plan review for construction of a pole barn.

Mr. Robarge, Andrea Robarge, and Brennan Marks of Marks Engineering were representing. Mr. Robarge indicated that he would like to build another pole barn on his property, and that previously there had been several other sheds and barns on his property.

Mr. Smeenk asked Mr. Robarge whether he intends to build a house on the property at some point, to which Mr. Robarge indicated he likely would not, though he has the room to.

CEO Kane indicated that the pole barn will be for personal use only.

Mr. Duffy made a motion to approve the plans, Mr. Stringer seconded, there was no public discussion, all Board members voted in favor and the motion passed.

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2. Site Plan Review (App. # 122623 - SPR)

Joshua and Laurie Steiner, owners of property at 1099 South Lake Rd., Middlesex, NY 14507 (Tax Map ID # 21.48-1-4.11), are seeking a site plan review for construction of a new dock.

No representatives for the project were in attendance.

CEO Kane indicated that the plans meet all UDML requirements.

Mr. Smeenck indicated that the project will entail removal of some of the existing breakwall and some new timber framing, with decking to cover the breakwall. He indicated that the existing breakwall is in poor condition and shouldn't be built upon.

There was a brief discussion and review of the map and condition of the existing walls, and it was determined that Mr. Steiner should come to a future meeting to discuss the project with the Board.

3. Preliminary Site Plan Review

Justin and Caitlin Jones, owners of property at 1288 South Lake Rd., Middlesex, NY 14507 (Tax Map ID # 21.71-1-6.000) are seeking a preliminary site plan review for new construction of a residence.

Mr. Jones, and Kyle Barber and Lauren DeVaney of New Energy Works were representing.

Mr. Jones indicated that he had come before the Board in the spring of 2022 seeking to renovate the old cottage on the site, but upon further investigation he determined that rebuilding would be best. He indicated that the existing cottage of two by six construction is in disrepair, and through conversation with CEO Kane decided to explore a new build. He indicated that he would like to get a sense from the Board what's possible since he cannot have two buildings on one lot.

Mr. Smeenck asked Mr. Jones to clarify what he meant by two houses on one lot. Mr. Jones explained that the previous owners of his property had proposed subdividing the lot into three separate lots, but he purchased all three proposed lots as one parcel. He indicated that there are currently three structures on his property: A boat house, a cottage and a main house. In order to build a new house, he indicated that he would like to subdivide the portion where a new house would be built as a separate lot, so that it would not be considered a second residence on the existing lot. Mr. Jones indicated

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that the new residence would be higher than the pre-existing home, and would not overhang the lake.

Mr. Smeenck indicated that the DEC would need to be contacted before installing footers in the water. Mr. Jones indicated that the new construction would be sealed off, and the new house would be moved back from the water. Mr. Barber indicated that the conceptual drawings presented are not to scale; whereas the current cottage overhangs the lake by three feet, the new construction would be pulled back three feet, seven inches, and therefore would not extend beyond the breakwall.

Mr. Smeenck indicated that the project would need DEC approval to install the breakwall, and asked whether the proposed house would encroach on the South Lake Road right of way. Mr. Barber indicated that the proposed house would still be out of the right of way, though by pulling the house back it would move it closer to the right of way.

Mr. Jones indicated that parking for the residence will be across the road, but he owns that property, so there is no concern about blocking views.

Mr. Palumbo indicated that variances for setbacks from the water and road will be needed. Mr. Jones indicated that the subdivision will be the minimum size allowable.

Mr. Palumbo indicated an estuarine access from the north side, and Mr. Jones indicated that they will adjust the build to accommodate that.

CEO Kane asked what the rear setback from the road would be; Mr. Barber indicated that it would be five feet, three inches from the right of way on the corner, and the proposed retaining wall would be on the right of way.

Mr. Palumbo asked if the retaining wall would be large like the current wall, and Mr. Barber indicated that it would be a new poured wall buried on the lake side. Mr. Jones indicated that the footprint of the residence would not increase and that it would sleep six people, the same number as the current residence. He indicated that Bill Grove of Grove Engineering designed the septic system, which has been approved by the Canandaigua Lake Watershed.

Mr. Smeenck indicated that if a house didn't already exist at the location, the proposed project wouldn't be approved.

Mr. Mott requested clarification of the proposed subdivision size and necessity. CEO Kane indicated that it would have one hundred feet of frontage and that a minimum of

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twenty-thousand square feet is needed for subdivision. It was discussed that subdividing would allow a new residence to be built and would avoid the existence of two dwellings on one lot. CEO Kane indicated that the current residence is a pre-existing, non-conforming structure, and that the proposed build would be more conforming. She also indicated that the current septic system cannot be shared with the proposed new build, so beginning with a clean lot would make construction of a new residence and new septic system more reasonable.

Mr. Mott asked if variances from the Zoning Board of Appeals would need to be granted, and CEO Kane indicated that variances will be needed, however the proposed project will be more conforming than the existing and the new septic system will be better for the environment.

Mr. Smeenk indicated that DEC approval will be needed for the retaining wall, variances will be needed, and he would like to see the proposed subdivided lot line moved. He also indicated that the subdivision will need to be approved before the project could be reviewed. CEO Kane indicated that the course of action should be first to complete the subdivision, then obtain the necessary variances from the ZBA, and then to work on approvals for the building plans.

Mr. Palumbo asked if there are any concerns about adding parking on South Lake Road. Mr. Jones indicated that a culvert would need to be installed in the ditch, and that parking wouldn't need to go too far back into the hillside. Mr. Palumbo indicated that there would need to be a retaining wall on the parking side of the road.

CEO Kane indicated the need for an agreement that should the Town damage the proposed retaining wall that falls on the right of way the Town cannot be held responsible. Mr. Barber indicated that there will be a substantial footing for the wall on the right of way. There was discussion that the footing will be structurally helpful to the road, and that stabilizing the slope will be important. CEO Kane indicated that she can work in tandem with project engineers to work out these details.

It was also discussed that a Steep Slope application will be required.

OTHER BUSINESS:

Mr. Smeenk asked members of the Board if they have reviewed the Draft minutes from the October, November and December meetings. Board members indicated that they had, Mr. Smeenk asked if there were any comments, and there were none.

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Mr. Mott made a motion to approve the October, November and December draft meeting minutes, Mr. Stringer seconded, all Board members voted in favor and the motion passed.

There was agreement that the Board will meet an hour prior to the March meeting for a work session.

Mr. Mott made a motion to adjourn the meeting at 8:57 p.m., Mr Stringer seconded, all Board members voted in favor and the meeting was adjourned.