

Town of Middlesex

1216 Route 245
Middlesex, New York 14507

PLANNING BOARD
Wednesday, October 4, 2023 • 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 and Zoning Board of Appeals Clerk*

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

NEW BUSINESS:

1. Conceptual Site Plan Review

Jeremy Fields, owner of property at 766 Newago Avenue, Middlesex, NY, 14507 (Tax Map ID # 11.66-1-13.0 / 11.74-1-1), is seeking a conceptual site plan review for replacement of a pre-existing structure.

Anthony Venezia of Venezia & Associates was representing Mr. Fields.

Mr. Venezia explained to the Board that Mr. Fields is intending to tear down an existing trailer and additions to it as they are in disrepair and currently positioned over a waterway. He indicated that Mr. Fields would like to build a new structure using the same footprint, however would like to move the new structure 6 ft. to the north to avoid building over the waterway.

There was general discussion about whether the trailer is grandfathered in as a permanent structure, and therefore whether the replacement structure can be considered a rebuild. Mr. Smeenk asked what will be the intended purpose of the new structure, and Mr. Venezia indicated that he believed it would be used for rental or storage.

Mr. Smeenk asked if the existing trailer has water and septic, and Mr. Venezia indicated that it has a holding tank. There was discussion about how moving the structure north will result in the new build falling on a property line, however Mr. Fields owns both parcels and combining these parcels may be necessary.

Mr. Smeenk expressed concern about the new structure being built on a property line, the need for septic and water plans to be indicated on a final site plan, and believes that the trailer should not be considered a permanent structure, and therefore the new structure should not be considered a rebuild.

There was general discussion and agreement that more information is needed about the intended usage of the new structure, septic and water plans, whether this would be considered a new build or a rebuild, and the need for the two parcels to be combined. Mr. Venezia indicated that he would ask Mr. Fields for a letter of intent for the usage of the new structure and that he will gather information regarding septic and water plans.

CEO Kane indicated that even if the two lots are combined the lot will still be non-conforming as it does not meet the 20,000 square feet code requirement and will therefore incur setback issues. She also indicated that this parcel has a grandfathered OGS Small Marina permit. There was discussion about whether this lot is considered part of the campground, and it was indicated that although users of the campground access the lake through these parcels they are still considered stand-alone parcels and are separate from the campground.

The review was tabled until the Planning Board receives further information from Mr. Fields.

OLD BUSINESS:

1. 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.

Greg McMahon of McMahon-LaRue Associates, P.C., was representing Mr. and Mrs. Davis.

Mr. McMahon presented to the Board a packet containing site plans for the project. Mr. Smeenck indicated that because the property contains steep slopes the topographic contours must be shown for the entire site, including to the road and lake. He also indicated that there is dispute over access to the site via an existing shared driveway easement, and Mr. McMahon indicated that the property is not accessible by any other means than said shared driveway.

Mr. Stringer asked for clarification on where the new house will be positioned on the lot, and it was indicated that it will be 250 ft. above the lakeshore.

Mr. Smeenck asked how the vacant property to the north at 118 East Lake Rd., also owned by Mr. and Mrs. Davis, is accessed. James Smith, speaking on behalf of Mr. and Mrs. Davis, indicated that the current driveway goes through the property at 120 East Lake Rd. and ends at 118 East Lake Rd. Mr. Smeenck asked if an easement exists to cross the property at 120 East Lake Rd. to access the parcel to the north, and Mr. Smith indicated that there is.

Mr. Smeenck asked about the placement of the well and whether there are codes regarding setbacks from property lines. Mr. McMahon indicated that per the Health Department wells must be a minimum of 100 feet from septic systems, but there are no requirements for distances between wells and property lines. There is currently no well at the site. Mr. McMahon indicated that the septic system will be 200 feet from the mean high-water line of the lake.

Mr. Smith indicated that the driveway to his property from East Lake Rd. passes through three properties; at the September meeting of the Planning Board he provided the Board with copies of easement agreements made between him and two of these property owners. He indicated that he is currently working with the third property owner, Mr. Rich Thompson, to procure an easement agreement for that property as well.

Bob Gunderman, a neighbor in attendance, expressed his concern that the easement for the shared driveway access was defined in 1930 across nine cottage lots, and he believes that Mr. and Mrs. Davis should be required to get easement access agreements from owners of the original nine cottage lots, not just the three through which the Davis property is accessed. He expressed that Mr. and Mrs. Davis should pay for use of the driveway if all said easements are not procured.

Mr. Smeenck indicated that the Board has receipts for payments made by Mr. Smith for repairs of the shared access road since he has been using it.

There was general discussion that the matter of the contested driveway access is a civil matter and the legality of the easements must be determined by attorneys for the applicant and any concerned neighbors, not by the Town attorney. There was also

discussion that maintenance of the shared access during construction could be a condition of approval of the site plan, and that the Planning Board also has the ability to request a bond on the road to involve all property owners using it. Mr. Smith indicated that he would ensure the road is passable and maintained during construction of the new home.

CEO Kane asked Mr. Gunderman and Mr. Smith for permission to copy both on email communications between her and/or their attorneys to ensure each party receives all information regarding the driveway access.

Mr. Smeenk indicated to Mr. Smith that he should obtain a letter of approval for easement access from Mr. Thompson, and Mr. McMahon shall present LIDAR contours for the whole property and address comments made by the Town Engineer. Mr. Palumbo indicated that he would like to see grading on the site plan, with spot elevations added around the foundation, and clarification on whether an architectural element will be considered a deck or a porch.

It was agreed that the review would be tabled until the Board receives this information. Mr. Mott added that the site plans should also include the location of the entire shared driveway access from East Lake Rd. to the parcel.

Mr. Gunderman asked why a new driveway down from East Lake Rd. can't be constructed to access the Davis property, and there was discussion that the slope is too steep and constructing a driveway on that steep slope would be impractical and not environmentally sound.

NEW BUSINESS:

2. App. # 092023-SPR

Harold Muncy, owner of property at 672 Fisher Rd., Rushville, NY, 14544 (Tax Map ID # 11.50-1-7), is seeking a Site Plan Review for construction of a garage.

Mr. Muncy represented himself.

Mr. Muncy explained to the Board that he owns two parcels and built a house several years ago. He now intends to demolish an old garage and build a new one. Mr. Mott indicated that he would like to see a stamped site plan, and Mr. Muncy presented an embossed, full size map. Mr. Mott was satisfied with the map.

Mr. Duffy asked what the use of the garage will be, and Mr. Muncy indicated that it will be for storage of his personal boat and property and does not intend to offer rental storage space.

Mr. Mott asked if the foundation walls will be poured concrete or concrete block, and Mr. Muncy indicated that they will be poured with cast footers. Mr. Stringer asked whether excavation will be required, and Mr. Muncy indicated that there will be excavation. He further indicated that the back foundation wall will act as a retaining wall and the excavated topsoil will be filled back in around the new garage. Any unused topsoil will be trucked away. He also indicated that the old garage will be demolished and the debris hauled away, and that silt fences would be in place.

The Board had a general discussion about how the foundation and walls will be poured and reviewed the maps submitted by Mr. Muncy. CEO Kane indicated that all setbacks are met and Mr. Palumbo indicated that he approves of the foundation details.

Mr. Mott made a motion to approve the garage according to the provided foundation and map details, Mr. Duffy seconded, Mr. Stringer recognized that drainage will not be an issue as the site is not on a steep slope, all Board members voted in favor and the motion passed.

Mr. Muncy shall now proceed to CEO Kane for the necessary permits.

3. App. # 092923-SPR

Brian Giordano, owner of property at 1147 South Lake Rd., Middlesex, NY, 14507 (Tax Map ID # 21.56-1-1), is seeking a Site Plan Review for construction of a dock.

Anthony Venezia of Venezia & Associates represented Mr. Giordano.

Mr. Smeenk indicated that per the site plan a dock pier will be repaired, which requires a DEC permit, which the owners are working to procure. He also indicated that the dock meets all setback requirements. CEO Kane indicated that the proposed dock size is below the maximum allowed square footage.

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

4. App. #092823-SPR

Sarah Utter, owner of property at 966 South Lake Road, Middlesex, NY, 14507 (Tax Map ID # 21.33-1-3.0) is seeking a Plan Review for construction of a garage.

Anthony Venezia of Venezia & Associates represented Mrs. Utter.

Mr. Venezia explained that Mrs. Utter intends to tear down an existing garage that is currently in disrepair and build a new garage. Her application for a variance for the front setback on the proposed garage was approved by the Town of Middlesex Zoning Board of Appeals, however a proposed carport on the north side has been removed from the plans as the ZBA did not approve that setback. Mr. Venezia also indicated that a swale above the building will be rerouted to direct water into an existing ditch to the south, that more drainage will be installed behind the foundation knee wall, and that a 12 inch culvert pipe in front of the driveway will divert water to the existing road ditch.

CEO Kane requested that Mr. Venezia coordinate with the Town Highway Department regarding connecting the culvert pipe with the existing road drainage.

Mr. Mott asked about the property lines and Mr. Venezia indicated that a gore exists between Mrs. Utter's property and the adjacent property. He indicated that no deeds exist to resolve this gore and that it is unowned land.

There was discussion that the plans include a paved parking area with a slight up-slope for drainage, and whether adding an extra 40 feet of asphalt to the existing driveway would go over the coverage allowance for the property. CEO Kane indicated that it would not.

Mr. Smeenk requested that a check dam be installed behind the garage during construction and Mr. Venezia agreed to add this to the plans.

There was brief discussion about a storage container currently on the property and whether a provision should be made to ensure its removal. It was agreed that it's a temporary storage unit which will likely be removed.

Mr. Duffy expressed concern that the swale will be diverted onto the adjacent unclaimed property and suggested the possibility of Mrs. Utter signing an agreement that, should a party claim the adjacent property in the future, she would reroute the drainage of the swale onto her property.

Mr. Venezia explained that the swale will be diverted into an existing drainage ditch on this unclaimed property that already drains water from the hill above. He indicated that multiple prior attempts to find a deed and/or owner of this property have been unsuccessful and the gore is the result of an old survey discrepancy. He also indicated that the gore is on record with Yates County tax maps.

CEO Kane indicated that Mr. Venezia, as a licensed surveyor, can accept liability for the stamped survey of the Utter property and adjacent gore. She indicated that the Town Assessor can be consulted to ensure the Town has done due diligence to confirm the existence of a gore at this location.

There was general discussion and agreement that Mr. Venezia's stamped survey and the approval of the Town Assessor can serve as proof of the gore, and that as the

unclaimed property already contains a drainage ditch the impact of routing a new swale to it will be minimal.

Mr. Venezia indicated that he will provide a full architectural set for the footers of the proposed garage, and add check dams and silt fences for inlet protection to the site plan.

Mr. Mott made a motion to approve the application based on the above discussion, Mr. Smeenck seconded, Mr. Duffy agreed to yield to the conclusion of Mr. Venezia's stamped land survey and to the opinions of other Board members not to require an agreement by Mrs. Utter to reroute the swale drainage, should a party claim the gore in the future, all Board members voted in favor and the motion passed.

OTHER BUSINESS:

Mr. Smeenck asked for any corrections to the August and September draft minutes, none were recommended. Mr. Smeenck made a motion to approve the August minutes, all Board members voted in favor and the motion passed. Mr. Smeenck made a motion to approve the September minutes, all board members voted in favor and the motion passed.

Mr. Smeenck made a motion to adjourn the meeting at 8:45, Mr. Mott asked when the next work session of the Planning Board would occur and it was determined that it would be held on November 1st at 5:00. CEO Kane requested that the members of the Board review a draft solar moratorium law composed by the Town attorney and email her with any comments, which she will compile to serve as a Planning Board report on the draft law. Mr. Stringer seconded the motion to adjourn, all Board members voted in favor and the motion passed.