



# **TOWN OF MIDDLEBURY**

## *Zoning Board of Appeals*

### **MINUTES**

### **ZONING BOARD OF APPEALS REGULAR MEETING**

### **Wednesday, January 5, 2022 – 7:30 p.m.**

### **Shepardson Community Center**

### **Room 26**

**Present:** Linda Herrmann  
Joe Mancini  
Brian Proulx  
Gerald Lukowski  
Bryan Ferrucci, Alternate (arrived at  
7:35 PM)

**Also** Curt Bosco, ZEO  
**Present:** Rachel Primus, Recording Clerk

#### **Excused**

**Absent:** Candice Graziano  
Ray Caruso, Alternate

#### **Call to Order with the Pledge of Allegiance**

The meeting was called to order by Linda Herrmann at 7:30 P.M.

#### **Seating with Regular Members**

The regular members present were seated. Linda appointed Bryan Ferrucci as a regular voting member in place of Candice Graziano.

#### **Approval of December 1, 2021 Regular Meeting Minutes**

**VOTED:** Unanimously on a motion by Brian Proulx and seconded by Joe Mancini to  
**APPROVE** the December 1, 2021 regular meeting minutes as presented.

#### **Public Hearing:**

**Application #3193** – Kyle Fuchs, 124 Lake Shore Drive – Seeking a variances from Section 7 and 11 concerning Minimum Lot Area, Square, Frontage, Setback and Coverage of the Middlebury Zoning Regulations.

Linda Herrmann read the public notice into the record. She opened the public hearing at 7:35 PM.

James Dimeo, the engineer for both applicants, explained to the board he was initially hired by Mr. Searles to conduct a survey of his land to construct a garage. In doing so, it was determined that the neighbor's house was over the property line, as well as additional utilities. He noted that these are waterfront properties which never are normal or easy. He stated there is a row of trees between the two properties that could have been mistaken for a property line, which is most likely why no one caught this error. Brian Proulx asked if the property line was pinned. James said there are only a few pins. One on Mr. Fuchs's property and one on Mr. Searles' property.

He pointed out on the plans where the actual monuments were found and used to determine the property lines. He stated that 124 Lake Shore Drive is under 1500 sq ft, and because of its size, makes it non-conforming. He said he is trying to eliminate as many non-conformities as he can. The main issue is the house and the utilities and he is trying to maintain a 1 to 1 property swap, which is why there are some jogs in the proposed property lines. James noted he had color coded the plans to show the changes and the non-conformity for the board. He said he would be making the frontage on Mr. Searles' property better and on Mr. Fuchs's property he will reduce the frontage and fix the building being over the property line. He noted there is not even 50 ft between the 2 houses. Mr. Searles' house was built in the 1990's and Mr. Fuchs's house was built in the 1940's. James said he has spoken with the Health Department and they are ok with everything he is proposing. He stated that the sanitary for property 124 is on the property of 118-122. If his septic fails he will have to tie in to city sewer. James noted that all the properties are "T" lots. Joe Mancini asked how far the proposed property line is from the house. James answered 9.2 ft.

**VOTED:** Unanimously on a motion by Joe Mancini and seconded by Gerald Lukowski to **CLOSE** the PUBLIC HEARING for Appeal #3193 at 8:28 PM.

**Application #3194** – Raymond Searles, 118-122 Lake Shore Drive – Seeking a variances from Section 7 and 11 concerning Minimum Setback of the Middlebury Zoning Regulations.

Linda Herrmann read the public notice into the record.

James Dimeo, engineer for both properties, stated assuming approval of Appeal #3193, Mr. Searles would like to add a garage and needs to request a side yard setback variance. After the lot line adjustment, his 28.2 side yard will be 21.1 and will require a variance. He is looking to build a single car garage. Curt Bosco noted the garage would need to be attached to the existing house, which then it can qualify to be in the front yard. James is requesting a 3ft variance to construct a 14x26 garage. He will be removing the existing shed that is currently on the property. Currently they have a conceptual plan, but anything constructed would be less than a 3 foot variance. Brian Proulx asked what the hardship was for the garage. James answered it is an undersized lot, the lot area, frontage, width and size of the lot. He said the neighbor does not have an issue with it. He noted he is trying to reduce the other non-conformities with the 2 properties. James also said the topography and land on the lot is a hardship. There is nowhere else to put the garage. He noted the land swap is forcing this variance. Curt said these are pre-existing non-conforming legal lots, but they need to address the non-conforming lots under this Commission. He said the variance is required because of the change in frontage and because of the mechanicals in the ground. Linda said it makes sense to fix this issue for both homeowners. James said they are requesting to variances: Searles' property is minimum lot and gaining frontage, and Fuchs's property is reducing frontage and increasing the side yard setbacks. Curt said minimum square footage on Searles' property and frontage on Fuchs's.

At this time, Linda asked that the 2 applicants state their name and address into the record.

Raymond Searles, 118-122 Lake Shore Drive, Middlebury and Kyle Fuchs, 124 Lake Shore Drive, Middlebury.

Gerald Lukowski stated he had looked on the GIS and there was a property transaction done a few years ago. James said that was a "T" lot strip purchase by Mr. Searles.

The Public Hearing was closed at 9:27 PM

### **Old Business**

None

### **New Business**

**Discussion of Appeal #3193 and Appeal #3194**

A discussion ensued regarding the approval of both appeals tonight.

**VOTED:** Unanimously on a motion by Joe Mancini and seconded by Gerald Lukowski:

**Whereas** the Middlebury Zoning Board of Appeals has received an application #3193 from Kyle Fuchs for a variance on 124 Lake Shore Drive, Middlebury, Connecticut seeking a variances from Section 7 and 11 of the Middlebury Zoning Regulations in conjunction with a land swap with the adjacent property located at 118-122 Lake Shore Drive to have all improvements on the current lot. Specifically, the Applicant for the Minimum Frontage currently 100 feet to 94.03 feet in comparison to the required 150 feet to minimize the existing non-conformities.

**Whereas** On Wednesday January 5, 2022 at the Shepardson Community Center, 1172 Whittemore Road, Middlebury CT at 7:30 PM a properly noticed Public Hearing was held to receive and consider information from the public.

**Whereas** the ZBA considered the proposed activity, application and all documents submitted by the applicant.

**Whereas** the Board Members conducted field inspections.

**Whereas** the ZBA finds that a feasible and viable alternative does not exist and therefore meets the statutory definition of a Hardship.

**Now, therefore be it resolved,** that the Middlebury Zoning Board of Appeals **APPROVES** the above Application #3193 with the following conditions:

1. The applicant shall notify the Zoning Enforcement Officer forty-eight (48) hours prior to the commencement of work and upon substantial completion.
2. Any field changes that are necessary are immediately reported to the Zoning Enforcement Officer.
3. The Applicant shall file a Certificate of Variance with the Middlebury Town Clerk prior to the commencement of work.

A discussion ensued regarding the 2 applications and fixing the lot lines and the approval of the proposed garage.

James noted the Mr. Searles is doing this in good faith for his neighbor. Linda stated the hardship is that someone was misinformed in the initial purchase of their property. They are trying to solve the problem, and she does not see where a garage would be a problem. They are only asking for a few feet and she does not feel they need to see the design of the garage to make a decision. Brian Proulx said that if the setback is approved they will not be looking at the end game of construction. He felt the paperwork filed with the town was wrong and he feels that something got missed and they are throwing the garage in in order to get the application passed. Linda felt both parties involved are doing their best to make something positive out of this situation. Joe Mancini said he was ok with the garage. Gerald Lukowski is happy with the conversation and is ok with the garage. Bryan Ferrucci said they have previously required details from other applicants. He doesn't care about the garage being built, but he does not think it is fair to ask other applicants for more details. Curt said that most applicants do not provide architectural designs. Brian Proulx said he feels that something is off, even though it is only 3 ft. He feels they shouldn't have surprises like they had tonight with a discussion during the meeting as to whether the garage can be detached or attached. He felt that was a red flag. He felt the board needs to clear up the clerical side of things.

**VOTED:** Unanimously on a motion by Gerald Lukowski and seconded by Brian Proulx:

**Whereas** the Middlebury Zoning Board of Appeals has received an application #3194 from Raymond Searles for a variance on 118-122 Lake Shore Drive, Middlebury, Connecticut seeking a variances from Section 7 and 11 (Setback from property line and square of the lot) of the Middlebury Zoning Regulations to allow for the addition of a garage at 118-122 Lake Shore Drive with a resulting 22.1 foot setback from the property line in comparison to the required

twenty five (25) foot setback and minimum square from 94.0 existing to 85.0.

**Whereas** On Wednesday January 5, 2022 at the Shepardson Community Center, 1172 Whittemore road, Middlebury CT at 7:30 PM a properly noticed Public Hearing was held to receive and consider information from the public.

**Whereas** the ZBA considered the proposed activity, application and all documents submitted by the applicant.

**Whereas** the Board Members conducted field inspections.

**Whereas** the ZBA finds that a feasible and viable alternative does not exist and therefore meets the statutory definition of a Hardship.

**Now, therefore be it resolved**, that the Middlebury Zoning Board of Appeals **APPROVES** the above Application #3194 with the following conditions:

4. The applicant shall notify the Zoning Enforcement Officer forty-eight (48) hours prior to the commencement of work and upon substantial completion.
5. Any field changes that are necessary are immediately reported to the Zoning Enforcement Officer.
6. The Applicant shall file a Certificate of Variance with the Middlebury Town Clerk prior to the commencement of work.

Bryan Ferrucci asked for a clearer format on applications moving forward and to have some consistency. Curt said that the ZBA can make their own rules. Brian Proulx said they need to have a checklist with every application. A discussion ensued regarding applications and the application process.

Curt told the board he had spoken with land use expert Chris Smith, who will present a power point presentation to the board sometime in March.

### **Correspondence**

None

### **Adjournment**

**VOTED:** Unanimously on a motion by Joe Mancini and seconded by Brian Proulx to **ADJOURN** the meeting at 9:40 P.M.

These minutes are submitted subject to approval.

Respectfully submitted,

Rachel Primus

Recording Clerk

ZBA Members

CC: Town Clerk, Barbara Whitaker, Z.E.O.