

**STATE OF RHODE ISLAND
PLANNING BOARD**

TOWN OF MIDDLETOWN

DECISION

The within matter came before the Planning Board of the Town of Middletown (“the Planning Board”) on May 8, 2024 on the Petition of Mello Realty, Inc., owner and applicant (“Owner”), for master plan approval of a major land development project for the construction of four (4) 14,400 sq. ft. commercial buildings, each containing twelve (12) tradesman units, with parking and other site improvements, and including requests for waivers from certain provisions of the commercial development design requirements of Section 521 of the Middletown Rules and Regulations Regarding the Subdivision and Development of Land, including sections 521.1.B.3, 521.2.C & D, 521.3.B, D.2, D.3 & F.2. As a Unified Development project, the application included requests for variances from Middletown zoning ordinance sections: 903, 724(B)(2) to allow a 0 ft. vegetated buffer along the east property line where 25 feet is required; 724(B)(4) to allow building setback of 42 feet from the east property line where 50 feet is required; 724(B)(5) to allow a dumpster setback of 5 feet from the east and south property lines where 50 feet is required, 719(A) to allow fewer than the cumulative number of required parking spaces, 1301(C) to allow a 0 ft vegetated buffer along the east property line where 20 feet is required; (D) to allow parking with a 0 ft setback from the east property line where 10 feet is required; (G) to allow noncompliance with landscaping requirements; 1304 to provide 120 parking spaces where 173 spaces are required; and 1307(B) to provide no loading zones where 4 are required. The property located on the south side of Coddington Hwy, approximately 0.2 miles to west of the intersection with Sherman Lane, Tax Assessors Plat 103, Lot 103 (the “Property”).

Mello, represented by Girard A. Galvin, Esq., introduced the project to the board by explaining that in the past year the Middletown Town Council had approved a zone change of the Property to light industry, which allows a miscellaneous special trade contractors use by right. Mr. Galvin described the efforts of the Owner to explain the project to abutters by hosting several meetings with said abutters. Mr. Galvin then explained that the Owners had a preapplication meeting with the Town Planner and Town Zoning Officer on February 29, 2024, and had been reviewed and unanimously approved by the Middletown Technical Review Committee (TRC) on March 27, 2024. The project had also been vetted by the Middletown Tree Commission, members

of the Middletown Conservation Commission. Planning Board members conducted a site visit on April 1, 2024.

Mr. Galvin presented the testimony of John Mello, civil engineer Lyn Small, architect Spencer McCombe, and real estate appraiser and land use expert James Houle.

Mr. Mello, Vice President of Mello Realty, Inc., testified regarding the history of the Property, the current gravel yard use on the Property, and why the family seeks to transition the use from the gravel yard to tradesman's units. Mr. Mello explained that the Owner had owned the Property and the abutting lot to the east which is the Bayview Mobile Home lot, since the late 1970s. Mr. Mello explained that the family is cognizant that the gravel yard caused some issues for abutters and the town such as noise and dust. He further explained that the Owner has been thinking about alternative uses for a long time. The Owner understood that there was a need in the marketplace for small contractors and tradesmen to have space on the island. Mr. Mello testified that the size of the proposed units are consistent with market needs and trends in the industry. Mr. Mello noted the Property sits across from the Navy land, and next to a RIPTA bus depot, with access to the busy Coddington Highway, making it a natural location for the specialty trades use. Mr. Mello testified that he hired his experts to design the project as consistently as possible with the Town of Middletown's design standards. Mr. Mello then testified that if the project is approved and built, that in addition to compliance with Town ordinances, the end-users of these units would have to comply with lease terms or a condominium declaration which would govern usage of the units and the Property. Mr. Mello testified that he envisions the units being used by small businesses such as electricians, plumbers, landscapers, limited retail, as well as for storage use.

Mr. Galvin then called Lyn Small, Professional Engineer employed by Northeast Engineers, to the stand. Small was sworn in and accepted as an expert in civil engineering by the Planning Board. Small described the site plan to the Planning Board. Small made special note of the hardships that burden the Property from an engineering and topographical perspective. Small noted that the Property is burdened by a Town Sewer Easement which essentially bisects the property from north to south. The existence of and placement of this easement placed a serious development impediment to the Property. It essentially forced any potential use to be broken up and to sit on either side of the Town easement. Ms. Small further explained that the Property is a long and narrow lot, with a natural grade flowing from south to north, so the proposed buildings

are stepped down from south to north. Small further explained the buildings had to be placed where they were to avoid the easements. The placement of the buildings and the parking safety requirements therefore caused encroachments on the setbacks and vegetative buffering requirements of the Town. But for the easement hardships, it is likely that the proposed buildings would be placed differently. Small explained that the 20' buffering requirement in sections 521.3.D.2, 521.3.D.3 cannot be achieved because of the hardships. This particular project requires access to each unit along the entirety of the buildings, so there is no opportunity for buffering around the buildings.

Small then discussed the landscaping plan for the property and cited waiver requests 521.3.B and 521.3.F.2. She explained that the Property currently had 0% landscaping, and the project as proposed would have approximately 17.8% landscaping. She also testified that the landscaping plan called for 15 deciduous trees, where 26 are required. Ms. Small explained that there is the opportunity to provide additional vegetative screening on the adjacent mobile home park.

Mr. Galvin and Ms. Small then described the parking requirements imposed on the Property as part of the project. Ms. Small testified regarding 521.1.B.3 which requires pedestrian safety into and throughout the site, and that this project is not designed to really be location that is driving pedestrian traffic. Ms. Small testified that the idea for this use is for occupants to park in front of their unit and walk into their unit. It is not expected to generate pedestrian traffic.

Small explained that literal enforcement of the Town's design standards was impractical and would impose undue hardship on the Owner because of the existing hardships on the Property. She further testified that it is in the interest of good engineering practice to grant the waivers requested.

Ms. Small then testified to the required findings for master plan approval. She described how the water treatment system would work, and how it would be a significant improvement to what existed currently for water quality and runoff. She testified that there were no negative environmental impacts created by the project proposal, only improvements. She explained that RI DEM would be reviewing grading and stormwater plans. She explained the project would be tied into Town water and sewer, has sufficient access to a public road in the form of Coddington Highway, and would not create any negative effects to the health and safety of residents in the community. Ms. Small testified the proposed use would actually be a huge environmental

improvement from what currently exists on the Property. Ms. Small testified there is sufficient access for all emergency vehicular access. She also testified that the project is consistent with the comprehensive plan and zoning code. Small noted that there the project does not propose to create a new lot, so there is no development constraint created.

Mr. Galvin then called Spencer McCombe to the stand. Mr. McCombe was sworn in and recognized by the Planning Board as an expert in architecture. Mr. McCombe explained how he designed the proposed buildings, and how he tried to comply with the Town's design standards. He specifically explained how he tried to give the buildings a New England design as to the portion of the building facing Coddington Highway. He explained that he met the Town's requirements for materials used on the Coddington-facing portion of the buildings, but not in the back of the buildings. The buildings are metal-framed, which is more appropriate for the industrial zone and it is better for maintenance. The metal is actually the material required for the construction. He explained that the roof-pitch is slightly different than town standard, but it is proposed in order to give the building a more "New England" look than a standard metal building. So, the request for the waiver in roof-pitch is required to achieve a more compliant appearance.

Mr. McCombe testified it is good architectural practice to design the buildings in this way, and literal enforcement of the Town's standards would impose an undue hardship on the Owner. Mr. McCombe's testimony satisfied the criteria for granting waivers from sections 521.2.C and 521.2.D.

Mr. Galvin then called James Houle who was sworn in was accepted as a real estate and land use expert. Mr. Houle's report was accepted as a Full Exhibit (Applicant's Exhibit 1). Through his report and at the hearing Mr. Houle testified as follows as to the request for the variances, waivers, and required findings for master plan approval.

Houle began by testifying about his review of the property through the lens of zoning code section 903 which outlines the criteria for regulatory relief. Houle explained that part of his review included reviewing how similar structures and uses on the island impacted their neighbors. Houle testified that as a general matter, the hardships previously testified to by Ms. Small: the long narrow lot, the easements burdening the Property, and the topography, really do generate a hardship that justifies the relief requested. He noted that the Owner did not create that hardship and that those hardships have existed since the Owner purchased the Property. Houle testified that the proposed use is clearly consistent with the comprehensive plan and zoning code, as the Town Council

recently just amended both the Comprehensive Plan and the zoning code to recognize the Property as appropriate for industrial use. Finally, as applied to each request for a variance, if the variance were not granted, it would amount to more than a mere inconvenience to the Owner because the relief sought is minimal to a reasonable enjoyment of a permitted use to which the Property is proposed to be devoted.

Houle testified to each proposed variance from Zoning Ordinance §724(B)(2) to allow a 0 ft. vegetated buffer along the east property line where 25 feet is required; Variance from Zoning Ordinance; §724(B)(4) to allow building setback of 42 feet from the east property line where 50 feet is required; §724(B)(5) to allow a dumpster setback of 5 feet from the east and south property lines where 50 feet is required; §719(A) to allow fewer than the cumulative number of required parking spaces; §1301(C) to allow a 0 ft vegetated buffer along the east property line where 20 feet is required; §1301(D) to allow parking with a 0 ft setback from the east property line where 10 feet is required; §1301(G) to allow noncompliance with landscaping requirements; §1304 to provide 120 parking spaces where 173 spaces are required; 1307(B) to provide no loading zones where four are required finding that in his professional opinion, the Owner has established the criteria for the variance for each request. Houle further testified that in his professional opinion, the Owner is also entitled to Master Plan approval, at the proposed development is consistent with the Comprehensive Plan, and the criteria for zoning relief as noted above, the he sees no negative environmental impact from the project, that there is no subdivision of land contemplated, and that the development will have adequate and permanent access to Coddington Highway.

Chairman Nash opened the hearing to the public. One interested party, Martha Koziara, spoke, and acknowledged the project will be an improvement to the area. No objections to the project were heard in person or via zoom. The public hearing was then closed.

Findings of Fact and Conclusions of Law

A motion was made by Member Vaillancourt and seconded by Member Weber to approve the variances requested on the condition that the Owner provide an easement to be created along the border between the Property and the Bay View Mobile Home property to provide additional vegetative screening. Discussion among the board members commenced. Member Vaillancourt explained based on the materials submitted by the Petitioner, the

testimony and other evidence submitted at hearing, and the Planning Board members' personal knowledge of the area that:

- a. The hardships from which the Owner seeks relief is due to the unique characteristics of the Property such as the long and narrow shape of the Property, the pre-existing easements, and topography, and not to the general characteristics of the surrounding area and is not primarily due to a physical or economic disability of the Petitioner.
- b. The hardship is not the result of any prior action of the Owner. Again, the hardship is the nature of the land itself.
- c. The granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the Zoning Ordinance or the Comprehensive Community Plan upon which this Ordinance is based. The project is in fact consistent with several elements of the Comprehensive Plan.
- d. The hardship which will be suffered by the Petitioner if the regulatory variance is not granted shall amount to more than a mere inconvenience, meaning the relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted.

Members Weber, Owen, Nash, spoke and concurred in the reasoning proffered by Member Vaillancourt.

The Board then voted 7-0 to approve the regulatory variances requested.

A motion was then made by Member Weber and seconded by Member Vaillancourt to approve the application for master plan and granting all waivers requested, on the following conditions:

1. A fire department water connection or fire hydrant shall be provided on the Property and identified on the Preliminary Plan, subject to Fire Department approval.
2. The Preliminary Plan submission shall demonstrate adequate access and circulation within the Property for emergency vehicles considering aisle width, turning radii, and building overhangs, subject to Fire Department approval.
3. The underground utilities serving the proposed buildings shall be located outside of the existing storm drain easement on the Property.

4. The existing storm drain line located on the Property shall be inspected, including using cameras to assess its condition prior to permitting for construction, subject to the approval of the Director of Public Works.

The Board commenced discussion and noted reasons for approval have been previously stated, and that the master plan application met all the required findings for approval, and that sufficient evidence was provided to grant each waiver requested.

The Board then voted 7-0 to approve master plan approval and all waivers requested.



William J. Nash, Jr., Chair

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WENDY J. W. MARSHALL, TOWN Clerk
TOWN of MIDDLETOWN, RI