

STATE OF RHODE ISLAND

TOWN OF MIDDLETOWN

NEWPORT, SC.

PLANNING BOARD

IN RE: Petition for Special Use Permit
Owner/Applicant: Wave Pond Hotel LLC
Property: 38 Purgatory Road, Assessor's Plat 116NW Lot 13

DECISION

STATEMENT OF FACTS

The Owner and Applicant Wave Pond Hotel, LLC (hereinafter referred to collectively as the "Petitioner"), filed applications for combined Preliminary Plan and Final Plan approval for a Minor Land Development Project for the construction of an eight-room motel, pool and associated site work, and including request for waivers from certain design standards of the Middletown Rules and Regulations Regarding the Subdivision and Development of Land ("Subdivision Regulations"), Section 521. The application includes requests for a special use permit pursuant to sections 602 & 1400 et seq of the Middletown Zoning Ordinance ("Ordinance") to allow the motel use in the limited business traffic sensitive (LBA) and Atlantic Beach Overlay District (ABD) zoning district, and variance from Ordinance sections 603 & 1406 to allow a westerly side yard setback of 10 feet and an easterly side yard setback of 9.9 feet where 13.7 feet is required, and lot coverage of 36.37% where 32.75% is permitted, and variance from section 1306 to provide 8 parking spaces where 12 are required, and variance from section 3002(C)(1) to allow front yard parking where prohibited, and variance from section 3002(E)(2) to allow landscaped buffers of 0 feet, 2 feet and 4 feet along the westerly, easterly and northerly property lines respectively, where 5 feet is required. The Subject Premises is located at 38 Purgatory Road, Assessor's Plat 116NW, Lot 13.

The Petitioners own the real estate located at 38 Purgatory Road (hereinafter "Subject Premises") which is designated as Middletown Tax Assessor's Plat 116NW, Lot 13, and is located in the LBA and ABD zoning districts. The Subject Premises is a parcel containing 13,747 square feet of land that has frontage on both Purgatory Road/Aquidneck Avenue and Wave Avenue and currently consists of two vacant residential cottages.

This matter came on to be heard before the Board on April 10, 2024. Present for the board were Bill Nash, Vice Chair, Michael Fenton, Secretary, B.J. Owen, Joe Pierik and Charles Vaillancourt. Petitioner was represented by its Attorney, David P. Martland, Esq., of SILVA, THOMAS, MARTLAND, & OFFENBERG, LTD., 1100 Aquidneck Avenue, Middletown, RI. At the hearing, Mr. Martland introduced the Petitioner's proposed project to the Board. The Petitioner's proposed project consists of the demolition and removal of the existing residential cottages in order to construct an 8-unit motel, pool, parking and associated site work. The proposal requires both Minor Land Development approval and various zoning approvals and therefore was reviewed by the Board in accordance with the recently adopted unified development review process. The Planning Board received the testimony of Geralyn Small, PE of Northeast Engineers

& Consultants, Inc., Spencer McCombe, AIA, an architect with Cordtsen Design, James Houle, a real estate consultant and land use expert, and Nicolas Giacobbi, a representative of the Petitioner. The Planning Board also received comments from the public. In addition to the testimony the Planning Board took into consideration the materials submitted by the Applicant including the following:

- Site plans prepared by Northeast Engineers and Consultants (NEC)
- Elevations, renderings and floor plans prepared by Cordtsen Design Architecture
- Development Impact Statement prepared by NEC
- Stormwater Report prepared by NEC
- Stormwater Operations and Maintenance Plan prepared by NEC
- Soil Erosion and Sediment Control Plan prepared by NEC
- Lighting Plan
- Landscape Plan
- Landscape Maintenance Plan
- Trash Management Plan
- RIDOT Physical Alteration Permit
- CRMC Assent
- Memorandum of Ron Wolanski, Town Planner dated April 1, 2024

Mr. Martland provided an overview of the property. He advised the Board that the project was previously approved for a 13-room hotel with roof top pool. He stated that the applicant purchased the property last year and took the opportunity to reconsider the development plans; that the proposed plans reduce the scope of the overall project. He shared that the building coverage is significantly reduced and the pool is relocated to the ground level.

Mr. Martland introduced Spencer McCombe, A.I.A. of Cordtsen Design Architecture, the lead architect for the project, who was duly sworn and accepted as an expert in architecture. Mr. McCombe testified concerning the architectural plans and renderings, the floor plans, the style of architecture being New England style and building materials that are composite for durability but have the appearance of being wood. He explained that there are four 2-bed units that can be modified to eight 1-bed motel units with a lock out door. He discussed how he designed the rooms to only be 13' wide to reduce the lot coverage and make the building smaller. He advised the Board that the proposed architectural design is in keeping with the New England shape and size and that the proposed project will be a major improvement over the existing conditions on site. Upon questioning by Board Member Pierik, Mr. McCombe confirmed that the rooftop mechanicals would be shielded within the roofline.

Upon being duly sworn and accepted as an expert in the field of engineering, Lyn Small P.E. of Northeast Engineers & Consultants, Inc., the lead engineer for the project, testified regarding the Petitioners' proposal. Ms. Small testified about the existing conditions, proposed conditions, including the building layout, pool layout, parking, the drainage and stormwater management system, and the landscape plan. Ms. Small explained that the existing conditions are challenging in that the abutting properties have been built up around the Subject Premises which causes the surrounding storm water to run towards and collect onsite; that the stormwater management plan meets the town and state requirements for both water quality and runoff; that the proposed storm water management plan will result in an improvement to the existing

conditions on the Subject Premises. Ms. Small explained how the existing site conditions including the lot size, lot width, lot configuration, and the lot fronting on 2 streets along with meeting the stormwater requirements creates hardships resulting in the requested variances and waivers. Ms. Small told the board that there was one on site parking space for each unit and that there would be no staff on Premises so there was no need for staff spots. She further explained that the property owner owned the adjacent hotel and staff from the abutting property would service this property. Ms. Small acknowledged that the landscape architect would address all issues raised by the Tree Commission, including locating trees to avoid conflict with overhead lines. Ms. Small testified that there would not be any negative impacts from the development or the requested variances.

Mr. Martland then introduced James A. Houle, of James Houle & Associates, who was accepted by the Board as an expert real estate appraiser, and who testified to the impact the proposed use might have on surrounding property values, as well as the project's compliance with the Town of Middletown's Comprehensive Community Plan. Mr. Houle explained that he was involved in the original petition for the 13-room hotel previously approved. In Mr. Houle's expert opinion, the Subject Premises is appropriate for an 8-unit motel; the proposed project complies with the aims of the Comprehensive Plan; the proposed development would result in a fully operational motel which is a far more beneficial use to the town than the existing vacant cottages and less intense than the previously approved 13 room hotel; and as a result, the proposed project will create a net benefit to the surrounding property values. Mr. Houle further testified that due to the conformity with the surrounding uses and the limitation for vehicular access only from Wave Avenue, that he was confident that the proposed use would not be a nuisance to the surrounding properties; that the proposed development would not impact the appropriate use of the surrounding properties; and would not create any conditions that are hazardous to the public health, safety, or welfare. Mr. Houle testified that hardship from which the applicant seeks relief is due to the unique characteristics of the subject land, namely, the shape of lot, the size of the lot and the lot having frontage on 2 streets; that the hardship is not the result of any prior action of the applicant; that the requested variance will not alter the general character of the surrounding area, but rather will be an improvement; and that the relief requested is minimal for the reasonable use of the property.

During the course of the hearing Mr. Nash and Mr. Vaillancourt expressed concern regarding the amount of landscaping. It was explained that there is a stormwater management system under the patio and additional landscaping could not be added while meeting the stormwater requirements. Mr. Nash and Mr. Vaillancourt suggested the use of planters on the patio. Petitioner offered to provide planters on 5% of the patio area.

Valerie Gelb of 94 Shore Drive asked for clarification on the building height, public right of way, parking and landscaping.

Terri Flynn of 34 Warren Avenue spoke about the Atlantic Beach District Master Plan and expressed concerns with traffic, parking and proposed landscaping.

DECISION

The Board, having considered the record, testimony, exhibits and arguments, and having deliberated, then voted as follows:

1. Upon motion by Mr. Vaillancourt, seconded by Mr. Fenton, the Board voted 5-0 to grant variances from Zoning Ordinance Section 603 and Section 1406 to allow a westerly side yard setback of 10 feet and an easterly side yard setback of 9.9 feet where 13.7 feet is required, and lot coverage of 36.37% where 32.75% is permitted. The Board noted the unique characteristics of the property and the minimal relief in support of its vote.
2. Upon motion by Mr. Vaillancourt, seconded by Ms. Owen, the Board voted 5-0 to grant a variance from section 1306 to provide 8 parking spaces where 12 are required, subject to the condition that a parking agreement be established with approval by the Town Solicitor. The Board noted the minimal relief and the shared parking arrangement for employee parking.
3. Upon motion by Mr. Vaillancourt, seconded by Ms. Owen, the Board voted 5-0 to grant a variance from section 3002(C)(1) to allow front yard parking where prohibited. The Board noted that the unique characteristics of the subject property having 2 front yards and irregular shape of the lot necessitating the relief requested.
4. Upon motion by Mr. Vaillancourt, seconded by Ms. Owen, the Board voted 5-0 to grant a variance from section 3002(E)(2) to allow landscaped buffers of 0 feet, 2 feet, and 4 feet along the westerly, easterly, and northerly property lines respectively, where 5 feet is required, subject to the condition that planters be added to 5% of patio area and reviewed by the Middletown Tree Commission. The Board found the request was minimal and reasonable based on the unique characteristics of the property, including lot size, lot shape and drainage requirements.
5. Upon motion by Mr. Vaillancourt, seconded by Mr. Fenton, the Board voted 5-0 to grant the special use permit to allow a hotel/motel in the limited business traffic sensitive (LBA) and Atlantic Beach Overlay District (ABD) zoning district. The board found that the use was compatible with the neighborhood; that it would not be detrimental and met the requirements of the special use permit based upon the testimony of Mr. Houle.
6. Upon motion by Mr. Vaillancourt, seconded by Mr. Fenton, the Board voted 5-0 to grant combined preliminary plan and final plan approval for a minor land development project subject to the following conditions, grant the requested waivers, and make the required five findings of Section 404.

Conditions:

- a. A sewage holding tank and backflow preventer shall be provided, with the design to be approved by the Director of Public Works prior to permitting.
- b. A fire department water connection shall be provided on the Wave Avenue side of the building, subject to Fire Department approval prior to permitting.

- c. The stormwater management plan shall be revised to include buoyancy calculations for the lined stormwater structures, and calculations to demonstrate that stormwater will discharge from the system within 48 hours of the end of a storm, subject to the Town Engineer's approval prior to permitting.
- d. Prior to permitting, the plans shall be revised to include a New England-style stone veneer on the retaining wall facing Aquidneck Avenue.
- e. Prior to permitting, a shared parking agreement for four parking spaces shall be established with the property on Plat 116NW, Lot 1202, subject to approval by the Town Solicitor.
- f. Prior to permitting, the plans shall be revised to include planters added to 5% of the patio area, subject to review by the Middletown Tree Commission.

Requested Waivers:

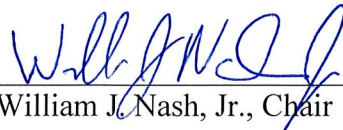
- a. Section 521.2.C – Building exteriors constructed of traditional materials such as wood, stone or brick. The applicant proposes the use of substitute materials including Hardie cement fiber clapboard, SBC shingles and PVC trim.
- b. Section 521.3.B – Planted landscaping occupies a minimum of 25% of the project area. Provided landscaping does not meet this requirement.
- c. Section 521.3.C – Landscape screening elements required along all property lines. Not provided along the Wave Ave. frontage.
- d. Section 521.3.D.1 – A landscaped buffer at least 10' is provided along all property lines. Buffer along easterly property line is only 5' wide.
- e. Section 521.3.D.3 – A landscaped buffer at least 10' wide shall be provided between buildings and parking lots/driveways. The buffer shall be defined by curbing, and may include sidewalks, but must include a minimum 5' planting strip. No buffer is provided between the front of the building and parking lot
- f. Section 521.3.F.1 – Deciduous street trees required. Not provided.

Findings

- a. The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;
- b. The proposed development is in compliance with the standards and provisions of the Town Zoning Ordinance;
- c. There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;
- d. The subdivision, as proposed, will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be

impracticable. (See definition of buildable lot). Lots with such physical constraints to development may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans; and

- e. All proposed land developments and all subdivision lots shall have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered compliance with this requirement.



William J. Nash, Jr., Chair

RECORDED: May 31, 2024 11:29A
DOC #: 00000875
RECEIPT #: 70000
WENDY J. W. MARSHALL, TOWN Clerk
TOWN of MIDDLETOWN, RI