

**STATE OF RHODE ISLAND
NEWPORT, SC.**

**TOWN OF MIDDLETOWN
PLANNING BOARD**

DECISION

The within matter came before the Planning Board of the Town of Middletown (“the Planning Board”) on June 4, 2024 on the Petition of **PRESCOTT POINT, LLC**, owner and applicant (“Owner”), for master and preliminary plan approval of a major land development project for the development of a twenty unit multi-family condominium project and a 2,500 sq. ft. clubhouse with 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 521.2.C, 521.3.C and 521.3.D.1 &.D.2.. As a Unified Development project, the application included requests for a special use permit under section 602 of the Middletown Zoning Code and variances from Middletown zoning ordinance sections: 903, to allow principal buildings height of 40' (35' permitted), 1506, to allow service by a private sewer system (public sewer required) and 1508 to allow principal buildings to be located within 25' of other principal buildings (50' required). The property located on the west side of West Main Road, approximately less than .1 mile to the south of the intersection of Freedom Trial Drive, Tax Assessors Plat 104, Lot 7 (the “Property”).

Chairman Nash opened the hearing to the public. Prescott Point, LLC, represented by Jeremiah C. Lynch, III, introduced the project to the board by explaining that a similar project was approved by the Middletown Zoning Board in 2017 and that approval lapsed. Mr. Lynch explained the requested zoning relief and explained the hardship facing the applicant and the need for zoning relief. Planning Board members conducted a site visit on May 2, 2024.

Mr. Lynch presented the testimony of Christoher Bicho, principal of Prescott Point and civil engineer Lyn Small.

Mr. Lynch 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 serviced by a private sewer system, licensed and approved by RI DEM. Ms. Small explained the operation of the sewer system and noted that the infrastructure for the sewer system is located on the Portsmouth side of the development. Ms. Small also noted that the stormwater drainage features are also located on the Portsmouth side of the development. Ms. Small also discussed the status of the culverts running under Freedom Trial Drive. She discussed the condition of the culverts with the Middletown Fire Department and Department of Public Works. Both departments were satisfied the culvert crossing was safe. Northeast Engineers will provide a structural report for the culvert crossing. Ms. Small also stated that the applicant negotiated an easement with Balfour Properties for emergency access through the Navy Housing Development for emergency access/egress. Ms. Small also addressed the arsenic contamination on the site and the methods of remediation. She stated RI DEM reviews and approves all required remediation. She then explained how arsenic contamination creates the hardship requiring relief from §903. The permitted height is based upon the existing grade. The remediation protocol requires addition clen fill to be brought to the site and blended with the contaminated soils. The blended soils are then spread on the site raising the existing grade. Small explained that the 20' buffering requirement in sections 521.3.C., D.2, 521.3.D.3 cannot be achieved because of the hardship that the northern boundary

line is the town line between Portsmouth and Middletown. The proposed development straddles the town line.

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 and preliminary plan approval.

Christopher Bicho was sworn in and addressed the Board's questions about the operation of the private sewer system. He also explained the original development plan for Prescott Point and the conditions imposed on development by the Town of Portsmouth.

One interested party, Conrad Donahue, spoke, and questioned the location of the clubhouse and the sufficiency of parking. Barry Ripley, an owner at Prescott Point stated he had no objection to the height variance. Susan Bowley questioned whether there would be a multi-unit building on the site. The public hearing was then closed.

Findings of Fact and Conclusions of Law

A motion was made by Ms. Owen and seconded by Mr. Pierik to approve the variances requested on the condition that the height of the proposed buildings be no higher than 35' from finished grade. Discussion among the board members commenced. Member Nash stated the materials submitted by the Petitioner, the testimony and other evidence submitted at hearing, and the Planning Board members' personal knowledge of the area demonstrated:

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~~existing private sewer system, 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 and Vaillancourt spoke and concurred in the reasoning proffered by Member Nash.

The Board then voted 6-0 to approve the regulatory variances requested. Members voting to approve were Mr. Nash, Mr. Weber, Mr. Vaillancourt, Ms. Owen, Mr. Pierik and Mr. Fenton.

A motion was made by Mr. Weber and seconded by Ms. Owen to approve the special use permit. Discussion among the board members commenced. Member Nash 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 demonstrated:

- a. The proposed special use permit will not be result in a significant diminution of property values in the surrounding area of the district;

b. The proposed will not create a nuisance in the neighborhood; is compatible with the Comprehensive Plan;

c. The proposed use will not be detrimental to, or substantially or permanently injure, the appropriate use of the property in the surrounding area or district; and

d. The proposed use will not result in hazardous conditions or conditions inimical to the public health, safety or welfare.

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

The Board then voted 6-0 to approve the special use permit requested. Members voting to approve were Mr. Nash, Mr. Weber, Mr. Vaillancourt, Ms. Owen, Mr. Pierik and Mr. Fenton.

A motion was then made by Mr. Weber and seconded by Ms. Owen to approve the application for master and preliminary plan and granting waivers from sections 521.2.C, 521.3.C, 521.3.D.1 and 521.D.2, on the following conditions:

1. Prior to Final Plan approval, documentation shall be provided to show the rating of the culvert weight load capacity.

2. Prior to Final Plan approval, the applicant shall demonstrate adequate access for emergency vehicles to buildings 40 & 41, subject to approval of the Fire Chief.

3. Prior to Final Plan approval, the plans shall be revised to provide 10 bicycle spaces.

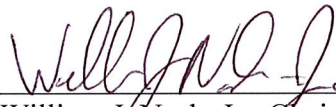
4. Prior to Final Plan approval, calculations shall be provided to demonstrate the plans meet the required minimum 25% landscaping for the project.

5. Prior to Final Plan approval, the emergency access/egress on the south of the development by included on the plans.

6. Prior to Final Plan approval, the applicant can elect to reduce the roadway from 24' to no less than 20' and add a sidewalk meeting the American with Disabilities Act ("ADA") standards along the condominium units fronting Private Drive "B" and Private Drive "C" within Middletown or maintain the 24' roadway and add an ADA compliant sidewalk along the condominium units fronting Private Drive "B" and Private Drive "C" within Middletown.

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

The Board then voted 6-0 to approve master and preliminary 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