



MIDDLETOWN
Rhode Island

PLANNING DEPARTMENT

TOWN OF MIDDLETOWN

350 East Main Road, Middletown, RI 02842
(401) 849-4027 | MiddletownRI.com

To: William J. Nash, Jr., Vice Chair
Planning Board members

From: Ron Wolanski, Town Planner

Date: September 4, 2024

Re: **Public Hearing** - Review and recommendation to the Planning Board - Application of 15 Aquidneck Ave, LLC. for Development Plan Review for a second-floor exterior deck addition, including request for waiver(s) from certain provisions of the commercial development design standards of Section 521 of the Middletown Rules and Regulations Regarding the Subdivision and Development of Land. The application includes a request for a special use permit from Middletown Zoning Ordinance Section 602 to allow the expansion of a restaurant with alcohol sales and a request for variance from Section 603, to allow front yard setbacks of 1' and 0.8', where 10' is required. Property located on 15 Aquidneck Ave, Tax Assessors Plat 116NW, Lots 36, 37, 37A, and 38A

The hearing for the above referenced application was continued to the September 11th Planning Board meeting at the request of the applicant for the applicant to address questions related to the site's compliance with town parking requirements relative to the proposed increased floor area. The applicant's attorney had previously indicated that the application would be modified to request necessary zoning relief. As of this date the revised application has not been provided. If submitted, the revised application would need to be advertised, and abutters notified before the application could be heard. Therefore, the hearing cannot proceed on September 11th unless a determination is made by the Zoning Official that zoning relief is no longer required. Per Planning Board policy, an application will be removed from the agenda if it not able to proceed for a period of six months. This application first appeared on the May 2024 agenda.

The applicant is proposing to add a second-floor exterior deck to the existing restaurant on 15 Aquidneck Ave located in the Limited Business, Traffic Sensitive (LBA) and Atlantic Beach Overlay District (ABD) zoning districts. The 660 square foot wood deck will be constructed over the existing concrete patio, resulting in no new impervious surfaces. In addition, the applicant is proposing to merge the four lots together through an administrative subdivision. No other exterior building work or site work is proposed.

Under the regulations passed during the 2023 RI General Assembly Session, the Planning Board must review land development project applications and the requested zoning relief under unified development review. The Planning Board's review will result in a decision to approve or deny the application, including zoning relief. Any appeal of the Planning Board's decision would be made directly to Superior Court.

Site plans, landscape plan, building design drawings and other submitted items are attached. Application materials can also be viewed online at: <https://middletownri.com/504/Planning-Board-Meeting-Packets> Request for comments and plans were provided to the DPW Director, \\midsrv48\Groups\Planning\Planning Board\Development Plan Review\PB DPR items\116NW-37,37A,38A,36 15 Aquidneck Ave, LLC

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Town Engineer, Building/Zoning Official, Fire Department, and Roads & Utilities Committee. Any comments received will be provided as they become available.

TRC Review:

The Technical Review Committee (TRC) reviewed the application during its meeting on April 24, 2024. Proposed project scope, zoning relief, and other aspects of the plan were discussed. Following its review, the TRC voted to forward a positive recommendation to the Planning Board.

Requested zoning relief:

The applicant is requesting the following relief from provisions of the Middletown Zoning Ordinance:

1. Per Zoning Ordinance §602, Special Use Permit to allow the expansion of a restaurant with alcohol sales in the limited business traffic sensitive (LBA) and Atlantic Beach Overlay District (ABD) zoning district.
2. Variance from Zoning Ordinance §603 to allow front yard setbacks of 1' and 0.8', where 10' is required.

Required findings for granting a special use permit (Zoning Ordinance §902):

1. It will not result in a significant diminution of properly values in the surrounding area of the district;
2. It will not create a nuisance in the neighborhood;
3. That the granting of such special use permit will not be detrimental to or substantially or permanently injure the appropriate use of property in the surrounding area or district;
4. That the granting of such special use permit will not result in hazardous conditions or conditions inimical to the public health, safety or welfare.
5. The use will comply with the following criteria subject to its use category:
 - Commercial/Office/Institutional – Restaurant
 - No significant negative impacts to ground or surface water quality.
 - Will not cause significant negative traffic or parking impacts in the neighborhood.
 - Will comply with applicable requirements and standards of Article 27 - Commercial and Industrial Performance Standards.
 - Will comply with commercial development design standards of Article 5 of the Rules and Regulations Regarding the Subdivision and Development of Land

Required findings for granting a variance (Zoning Ordinance §903):

1. That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(a)(16) RIGL;
2. That the hardship is not the result of any prior action of the applicant; and
3. That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the Comprehensive Plan upon which this chapter is based.
4. The Zoning Board of Review shall, in addition to the above standards, require that evidence be entered into the record of the proceedings showing that:

- (a) In granting a use variance the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of this chapter. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and
- (b) In granting a dimensional variance, that the hardship which will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience, meaning that relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.
- (c) Dimensional variances granted in conjunction with a special use permit shall be supported by independent evidence on the record satisfying each of the requirements for a dimensional variance, and the Board shall vote on each dimensional variance before voting on the special use permit.

Required findings for Development Plan Review approval:

In accordance with section 309 of the Middletown Zoning Ordinance, prior to granting any development plan review approval, or issuing a recommendation in favor of approval to the Zoning Board of Review, the Planning Board shall find that:

- (1) The granting of approval will not result in conditions inimical to the public health, safety and welfare;
- (2) The granting of such approval will not substantially or permanently injure the appropriate use of the property in the surrounding area or zoning district;
- (3) The plans for such project comply with all the requirements of this chapter and the Regulations, or that necessary waivers from the requirements of the Regulations have been granted;
- (4) The plans for such project are consistent with the Comprehensive Plan; and
- (5) Any conditions or restrictions that are necessary to ensure that these guidelines have been met have been incorporated into the written approval or recommendation.