

**STATE OF RHODE ISLAND  
NEWPORT, SC**

**PLANNING BOARD  
TOWN OF MIDDLETOWN**

**IN RE PETITION OF AQUIDNECK COMMERCE CENTER, LLC  
ASSESSOR'S PLAT 114, LOTS 129 AND 504  
809, 811, AND 819 AQUIDNECK AVENUE**

**DECISION**

This matter came on for hearing before the Planning Board (Board) on June 8, 2022 on an application for combined Preliminary and Final Plan approval of a major land development project for a proposed mixed-use development including 12 new residential units and approximately 15,000 sq. ft. of office space contained in one new and two existing buildings pursuant to Article 27A of the Middletown Zoning Ordinance and including a request for waivers from certain design standards of Section 521 of the Middletown Rules and Regulations Regarding the Subdivision and Development of Land. The property is located at 809, 811, and 819 Aquidneck Ave., Assessor's Plat 114, Lots 129 and 504.

The above referenced mixed-use development project was granted Master Plan approval at a hearing of the Planning Board on January 12, 2022, at which time all necessary zoning variances were granted. The applicant proposed combined Preliminary and Final Plan approval for the project, which includes merging the subject parcels and constructing a 12-unit multi-family building, resulting in a mixed-use development. The property currently contains commercial buildings housing offices, which will be retained. The applicant requested approval for the project under the town's mixed-use development ordinance (Article 27A, Middletown Zoning Ordinance). A mixed-use development project is a use allowed by right in the limited business (LB) zoning district. The proposal meets the residential density limitations of Section 27A05 and all other provisions of the Zoning Ordinance with the variances previously granted.

Since Master Plan approval was granted, the applicant has obtained a water availability letter dated April 8, 2022 from the City of Newport Department of Utilities, a sewer availability letter dated April 12, 2022 from the Middletown Department of Public Works, and a physical alteration permit from the Rhode Island Department of Transportation by letter dated May 6, 2022, all of which were submitted with the application materials.

The Technical Review Committee (TRC) reviewed the proposal during its meeting held on May 25, 2022 and voted to forward a positive recommendation to the Planning Board subject to

certain recommended conditions of approval, namely: 1.) Prior to permitting, the applicant must provide confirmation from the Fire Department that the plan provides adequate turning radii for emergency vehicles; and 2.) Prior to permitting, the applicant must provide to the DPW Director for his approval information requested regarding the proposed connection to the public sewer system. The proposal also received a positive recommendation from the Tree Commission at its meeting on May 26, 2022.

At the hearing, the applicant was represented by attorney Matthew H. Leys. The principal of the applicant, Christopher C. Bicho, and project engineer, Lyn Small, P.E., testified regarding the details of the project. Various additional plans were introduced including a site lighting plan dated 5/05/2022 with details regarding the lighting for the site and planting plan dated 5/05/2022 showing screening for HVAC condensers, both of which were discussed by Ms. Small. Also, prior to the hearing a revised sheet C-3 with revision dated May 25, 2022 was submitted and included in the application packet. Ms. Small discussed that revised plan at the hearing, including describing the addition of the condensers, improvements made for fire truck circulation, and that she confirmed with the fire department that their apparatus can pass safely through the entire development. Mr. Bicho testified that the project meets required calculations for mixed-use developments. Ms. Small also discussed the relocation of a stone wall on the property to the north side of the property, as shown on the proposed site plan, and discussed the proposed drainage for the project. Mr. Leys and the Town Planner, Mr. Wolanski, discussed the waivers required for the project.

The Board finds based on the representations and testimony at the hearing, the application materials, and the memorandum from the Town Planner that the following waivers from the commercial development design standards of Section 521 of the Middletown Rules and Regulations Regarding the Subdivision and Development of Land were required: 1.) 521.2.B – Windows must occupy between 20% and 60% of each façade visible from the public way; 2.) 521.2.C. - Use of synthetic exterior building materials is proposed; 3.) 521.2.D. – Flat roof proposed for new building is proposed; 4.) 521.3.D.2 – Required 20-foot landscaped buffer not provided along northerly property line (abutting residential use); and 5.) 521.3.F.1 & 2 – Required street trees not provided.

Based on the representations and testimony at the hearing and the application materials, and for the reasons discussed at the hearing, the Board voted unanimously (7-0) to grant each of

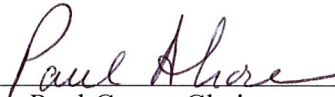
the waivers listed above and finds with respect to each of the waivers listed above that the literal enforcement of one or more provisions of the regulations is impracticable and will exact undue hardship; because of the peculiar conditions pertaining to the land in question; and such waiver and/or modification is in the best interest of good planning practice and/or design, as evidenced by consistency with the municipality's comprehensive plan and Zoning Ordinance.

Furthermore, based on the representations and testimony at the hearing, the application materials, the recommendations of the TRC and Tree Commission, and the memorandum from the Town Planner, the Board finds, subject to the conditions listed below, that the application has satisfied all required findings for approval, including: 1.) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies, particularly the Housing and Land Use elements; 2.) The proposed development is in compliance with the standards and provisions of the Town Zoning Ordinance with the variances granted; 3.) There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions of approval, as reflected in the application materials and by the positive recommendation of the TRC; 4.) 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, as shown by the application materials and testimony; and 5.) All proposed land developments and all subdivision lots shall have adequate and permanent physical access to a public street, as shown by the plans submitted.

For the foregoing reasons, the Board voted unanimously (7-0) to GRANT the application, subject to the following conditions:

1. Prior to permitting, the applicant must provide confirmation from the Fire Department that the plan provides adequate turning radii for emergency vehicles; and
2. Prior to permitting, the applicant must provide to the DPW Director for his approval information requested regarding the proposed connection to the public sewer system.

MIDDLETOWN PLANNING BOARD,

By   
Paul Croce, Chair

Respectfully presented by:

Attorney for the applicant,

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