

**CITY OF MIDDLETOWN
PLANNING BOARD
MINUTES**

August 02, 2017

A meeting of the Planning Board was held in the Common Council Chambers, City Hall, 16 James Street, Middletown, New York on August 2, 2017 at 7:00 P.M., Mr. Anthony Capozella presiding.

Members Present: Anthony Capozella, Dan Higbie, Steven Sisco, Paul Thorn, Nicole Hewson, John Naumchik.

Members Absent: None

Other Attendees: Alex Smith, Assistant Corporation Counsel, Gef Chumard, Planning Board engineer.

The Pledge of Allegiance was said.

On motion of Mr. Thorn and seconded by Mr. Higbie to appoint Mr. Capozella the temporary chairman for the August 2, 2017 Planning Board meeting.

Roll Call Ayes: Paul Thorn, Steven Sisco, Dan Higbie, Nicole Hewson, Anthony Capozella, John Naumchik.

Mr. Capozella: I always make a statement that if this is your first appearance here this evening that it is considered a preliminary and that the Board has the right not to vote or move you on to another meeting so we always have to mention that.

On motion of Mr. Paul Thorn and seconded by Mr. John Naumchik to approve the minutes of July 5, 2017 as submitted.

Roll Call Ayes: Steven Sisco, Dan Higbie, Paul Thorn, Nicole Hewson, Anthony Capozella, John Naumchik.

**Besnik Fetoski
66 Bennett Street
Dairy product manufacturing**

Mr. Capozella: Please step forward and give us your plan. This is continuation so

we don't need mailing and public hearing is still open so I'm sorry, sir, go ahead.

Mr. Cleverley: Yes, good evening. I'm Brad Cleverley from MJS Engineering and I've been in contact with Gef, we had a couple of things going back and forth and we pretty much revised the engineering plan and the engineer's report to Gef's general satisfaction. There have not been significant changes to the site plan since the last time this project was in front of the Board – milk comes in, cheese goes out, that's pretty much it.

Mr. Smith: Unfortunately, the Board doesn't have the latest submission.

Mr. Cleverley: I have it right here.

Mr. Smith: I understand, but Mr. Chumard has it so we'll make do with that. So Gef, since I've studied your letter of July 27th and comparing it to your letter of August 2nd, do we now have a signed engineer's report?

Mr. Chumard: Yes, we do.

Mr. Smith: All right.

Mr. Chumard: The submission was made yesterday, including a report which has been signed by Michael Sandor who is a principal of MJS Engineering and representing the applicant. We have a revised environmental assessment form in full EAF that was revised July 31st and then a letter from MJS Engineering dated August 1st signed by Mike Sandor addressing my letter of February 27th. It just seems to me that the questions I had were mostly resolved. I did write a letter today just based on material I got yesterday and basically just some clarification, I mean I know there were meetings with the City expressing concern with possible flooding of the site because it is in the 100-year flood plain. The applicant has stated that the previous owners and surrounding owners have never seen the site flood and that may well be true. We also know that frequency and intensity of storms has been on the increase in years and there may be flooding, we would expect it not to be very deep. The engineering report did say that the applicant anticipates flood proofing the building and I would just hope that statement will strengthen to say that the applicant will flood proof the building.

Mr. Smith: Well, we make it a condition of the approval.

Mr. Chumard: Yes. And by the flood proofing the building we don't necessarily mean from floor to ceiling but basically around the doors and any cracks near the

foundation, there is no basement in the building and around the floor so it should be pretty much...

Mr. Smith: What would be a reasonable time for them to do that work? And then what would you want, Walter to inspect it?

Mr. Chumard: I would imagine that it might be a condition of the building permit and one of the items that Walter would look for when he reviews the building permit.

Mr. Smith: Ok. We can make it a condition.

Mr. Capozella: I was going to make it a condition actually as of the Commissioner of Public Works and then inspection thereof DPW.

Mr. Smith: I would put in there flood proofing.

Mr. Capozella: Yes, we'll flood proof.

Mr. Smith: Gef, you also had a comment in the previous letter regarding the odors. That was one of the major concerns of the Board and I think you were a little troubled by the language that it wasn't mandatory there will be no odors; there was a hope that there won't be which is kind of like a lawyer talk and we want an engineering talk - there will be no odors.

Mr. Chumard: Let me read you the response Mr. Sandor had in his letter of August 1st he says: "With regard to potential odors, the applicant has stated that because the facility must be cleaned daily, any odor producing material will not accumulate to a point that an objectional odor is produced. It should be recognized that this is a closed system process. There are no open vats and the building is totally enclosed to prevent any odors from escaping outside, therefore there would be no objections from the neighbors." They also point out that the material they produce, waste does not smell as long as it's cleaned out within about 24 hours and in fact I understand that's a federal requirement that they do this daily cleaning.

Mr. Smith: Why don't we make it a condition of the approval that there will be no odors emanating from this building except for the accidental discharges that are short term?

Mr. Chumard: I would think that's reasonable.

Mr. Smith: Is that reasonable?

Mr. Cleverley: Certainly. It's you know, just inherently it's not the...

Mr. Fetoski: I mean it depends on the...

Mr. Smith: You have to come to the mike.

Mr. Fetoski: Hi everybody. My name is Besnik Fetoski and I'm trying to purchase the building so I think we have to understand first what do we mean with odor, you know like if it's a cheese odor some people don't like the cheese odor. I mean it's a simple smell of the cheese when you put it on the table, it's the same odor. So when we say odor what do we mean with that; how much of smell do we say, you know, so I don't want to be in the position that it's a normal cheese smell and then we get in trouble.

Mr. Smith: Well, but that's why I wanted a description of the process because we can't have odors... we can't have cheese odor engulfing half of the 4th ward. We had a perfume odor years ago from ...

Mr. Fetoski: So how can I...

Mr. Smith: And some people like perfume but a lot of residents over there, street after street, after street had perfume smell half the week.

Mr. Fetoski: So how can I make all of this investment and go through all of this and then when I start processing and you stop me processing.

Mr. Chumard: I think, Mr. Fetoski, I think the general question is, you know, not that there wouldn't ever be any odors and somebody passing, walking by the building might not smell but you are little ways away from Dolson Avenue, I mean is there going to be a general odor that covers the area that people are always gonna notice or is it just gonna be something that is on site and the workers put up with it and it's mild, I mean I think it's a matter of degree. Not that there ever wouldn't be an odor or anything.

Mr. Fetoski: Ok, so how do we determine that? I mean if we determine ... if we put condition today if there is odor in the plant we stop the processing, I mean how do we control the odor level or how do we...

Mr. Chumard: Well, I think we are looking to you to say are we gonna have odors

say 300 feet away or up and down Dolson Avenue or is it just going to be maybe something you might notice if you walk by the building. It's a matter of degree and I don't know how we can put an absolute number on it.

Mr. Fetoski: Yes, it's not gonna be 300 feet but it may be noticeable when you walk around, close to the building maybe noticeable, you may smell cheese not the waste, the waste, I mean the whey will not smell because if it's cleaned on a regular basis you just have regular smell of the cheese; that's all what you gonna have.

Mr. Chumard: I mean if you are representing that it's just going to be pretty much confined to around the building and neighbors up and down the street are not going to notice, I think that probably is what the Planning Board is looking for but I could be wrong.

Mr. Fetoski: We are talking about the cheese smell, it's two different things. Smell of cheese is different and the smell of the waste is different. So I think we are more concerned about the smell of the waste here and that's the biggest problem for any processing plant. So the smell of the waste, as we explained in the report, it's going to be... the plant will be cleaned as a part of the GMO standards you know, with FDA and USDA and it's not going to have any smell and all the system is enclosed system so we are not going to have... for the waste to be able to smell it needs to be for a long period of time in the open area so then it starts smelling, after several days, you know.

Mr. Chumard: So you are required to clean it.

Mr. Fetoski: Exactly, we have to. It's not just because of the smell; we have to clean it for sanitation purposes to be able to make clean product there. It's a normal requirement for every food processing plant.

Mr. Smith: We still have to question; I mean, is the person who lives 3 houses away gonna smell cheese all day long. That's the concern. Is Gef's idea to put a distance factor in here, is that the answer? We won't have smell more than 100 feet from the building? I mean, you know the process better than anybody.

Mr. Fetoski: If you ask me, I mean I'm every day involved in that business so that smell is normal to me but I don't know the answer for any other people, you know. So how can I... I mean...

Mr. Thorn: You mentioned, you said you had similar business or similar

manufacture in other locations, correct?

Mr. Fetoski: Correct. I worked about 20 years in this industry.

Mr. Thorn: Ok, have you had odor concerns in your other locations that you had?

Mr. Fetoski: I mean just a regular smell of the product. That's why when you say odor concern, what do we mean with that.

Mr. Thorn: Right. It's more... we are talking nuisance, like a nuisance level odor to neighboring properties.

Mr. Smith: So if you bring a piece of cheese here, anyone can feel the smell you know. So that's pretty much what people may feel around the building.

Mr. Smith: Mr. Smith: Well, did your other plants have nearby residences?

Mr. Fetoski: They did, yes.

Mr. Smith: Well, it's up to the Planning Board. I mean, I ...

Ms. Hewson: At the June meeting you assured us that smell will not be an issue at all and I'm hearing a different story tonight so I'm little concerned. I think it's a great project for the City but ...

Mr. Fetoski: Well, smell is not a concern at all if you ask me but now if you want to put a condition on that then I cannot move forward with that because anyone can complain tomorrow and stop me from processing. I'm not willing to invest all that money and take a risk and then 5 months from now everything stop there, you know.

Ms. Hewson: I understand your financial concern, sure.

Mr. Fetoski: I cannot have that condition as a condition of this project.

Ms. Hewson: I understand but for the neighbors, I mean...

Mr. Thorn: It's difficult because you can't quantify. If it's noise you can do a decibel meter, you can quantify it and say x number of decibel or whatever...

Mr. Smith: But the City doesn't have a noise ordinance written like that. The

City's noise ordinance is...

Mr. Thorn: No, but I'm just saying if you want to have a discussion about it you can quantify it. You can't ... smell is much different kind of thing.

Mr. Smith: Well, the City's noise ordinance says you can't have sounds emanating from your property or your car that can be heard 60 feet away, period. Doesn't matter whether the music is good music, bad music...

Mr. Thorn: It still quantifies it though.

Mr. Smith: It quantifies it with a distance. That's why I'm suggesting a distance might be a way to handle this.

Mr. Thorn: Right, but what I'm saying is we don't have a way of quantifying smell. We don't have a way of saying ... because one person could walk by something and not even smell it, there is no meter you could put out in the air or something that says this is you know acceptable or not or a level you can point to. I mean to me it sounds like here you have closed manufacturing system. It sounds like it's not really...the manufacturing isn't... the waste isn't the issue...

Mr. Capozella: The waste is the issue.

Mr. Thorn: Well no, but I'm saying due to the way they are required to manage it, the waste is pretty much not going to be an issue.

Ms. Hewson: Well, even a normal cheese smell might be offensive to the neighbors if it's strong enough.

Mr. Fetoski: So I think every processing plant has a similar system. I mean there is no other way to manage it and there are factories, you know, there are plants everywhere. I mean I have not seen any complaints, you know, I worked at 4-5 different plants, I have not seen a complaint from neighbors or people living around there to come and stop the processing in the place, you know so I don't know when you say we'll put a conditional approval then I don't know what you mean and it's risky for me and I don't know what happens 5 months from now.

Mr. Smith: What do you mean you don't know what will happen 5 months from now?

Mr. Fetoski: Well, I mean anyone may come if somebody who doesn't even like

me may come here and complain and say yes, there is so much smell from that building, you know?

Mr. Smith: Well, the City would not take an action unless we'd have some objective accusation, not one person who doesn't like your factory. I mean, we would send inspectors out there, trained inspectors, to gage it.

Mr. Fetoski: Ok.

Mr. Smith: That I can tell you. The City does not act just on anybody's complaint. We would take some objective, reasonable standards but I'm just hesitant to recommend that there be no standards; that people will be able to smell your factory from 3 blocks away.

Mr. Fetoski: So can I ask like what's the major.... I mean why do we ask about odor so much? I think there was a concern in the next town here, in Goshen, there was a plant there, that they had ponds outside, there was so much smell; that's what I heard when I was working on this project with people around here in Middletown. So ...

Mr. Higbie: Yes, but when we opened the public hearing last time there were several people that were concerned with the odor, that spoke. There were several people that were concerned with the odor. You know that...

Mr. Fetoski: Yes, I know, yes.

Mr. Smith: If the City received complaints we would go there and investigate it and we would contact you before we did anything. But ultimately if there was no resolution, you know, there could be a court action. We would take every step to make sure that there was a real problem and give you a chance to fix it, if we saw a real problem.

Mr. Fetoski: How can you fix odor when all the building is enclosed building, you know? What we are trying to do here, we do everything we have to do to stop the odor, to place there an enclosed system that will stop the odor, you know, and you cannot stop if people complain just because of the cheese smell, I cannot stop it.

Mr. Smith: How far is it gonna go?

Mr. Fetoski: I don't know. I mean there are no standards for that.

Mr. Thorn: That's why I was asking from your experience in the other locations where you worked, it sounds like you haven't had issues with neighboring properties.

Mr. Fetoski: Correct. If you walk next to the building you may feel the smell of the cheese. It's not going to be like 50 feet from the building or 300 feet from the building.

Mr. Thorn: If the experiences from other locations with the same manufacturing process is not...

Mr. Higbie: So what about what the attorney, Alex Smith, with his recommendation... put a thing in there saying that we shouldn't be able to smell it 60 feet from the building. I mean would that be something you could work with?

Mr. Fetoski: I don't know, I have to check that.

Mr. Smith: And isn't there equipment you can purchase to place it outside to capture the smell?

Mr. Fetoski: If you make cheese inside, I mean, you cannot capture the smell of the cheese. The cheese is made in vats, open vats. During the process of making the cheese of course you have normal smell of the cheese. I mean of course you can keep the building enclosed and all of that, close everything, you can capture it that way, yes.

Ms. Hewson: I thought you said it was all closed, but you just said open vats.

Mr. Fetoski: Inside the building, yes.

Ms. Hewson: I see.

Mr. Sisco: What kind of cheese is this?

Mr. Fetoski: Well, I'm trying to make different type of cheeses, it will be feta cheese, it will be French style cheese...

Mr. Sisco: Because lot of cheeses don't smell at all.

Mr. Fetoski: Correct.

Mr. Sisco: I'm just trying to ... it's not gonna be Italian Taleggio or some other very smelly cheese. If it's just normal Cheddar or American cheese type of thing I don't think there will be a big smell problem.

Ms. Hewson: Will you be using antibiotics to create the French cheese, for example?

Mr. Fetoski: No, no antibiotics.

Ms. Hewson: No antibiotics. What about other chemicals?

Mr. Fetoski: We'll use cultures, specially designed for making cheese.

Mr. Smith: Well, are you comfortable with the distance or ...

Mr. Fetoski: 60 feet in radius?

Mr. Thorn: Well, what does he have to his property line?

Mr. Capozella: Less than 60 feet.

Mr. Fetoski: 60 feet around the property?

Mr. Smith: 60 feet around the property?

Mr. Higbie: Yes, 60 feet from the property line, you mean?

Mr. Smith: That gives you something to work with.

Mr. Higbie: That gives you greater area.

Mr. Cleverley: Another thing is, this is a building which is not surrounded by residences, it's surrounded by parking lots. So it's not like there's anyone there.

Mr. Smith: Well, that's why a distance makes sense to me.

Mr. Cleverley: Yes, it does because there's no one living there 10 feet of the property line where this could really be a nuisance.

Mr. Smith: What I'm worried about, I think you understand this, is a public nuisance, where people are getting sick like 3 blocks away.

Mr. Cleverley: That's not gonna happen.

Mr. Smith: All right. Then why don't we have a 60 foot with the understanding that the City is going to be reasonable if there's something that comes up with it.

Mr. Fetoski: Ok.

Mr. Smith: And again, I'm not talking about accidental discharges, short term discharges; we are talking about daily occurrence.

Mr. Cleverley: Correct.

Mr. Fetoski: Thank you.

Mr. Capozella: So just let me be clear, so we state in resolution that about 60 feet from the building...

Mr. Smith: No odors more than 60 feet from the building, except for short term, accidental discharge.

Mr. Cleverley: The property line.

Mr. Smith: 60 feet from the property line?

Mr. Cleverley: The property line.

Mr. Smith: Ok. That's reasonable. Gef, anything else?

Mr. Chumard: Last thing I wanted to mention was, they said that they are going to be... hopefully the business is going to be prospering and they are going to be making more cheese and hiring more employees and at some point they gonna have to expand the parking lot because the parking lot isn't going to be big enough for many more employees and that they would expand it as needed. My point is that that should be amended site plan approval and it should be brought to the Planning Board, a design of the expansion before they undertake construction.

Mr. Smith: Well sure, I mean we have a site plan, obviously if you are going to expand, you gonna have to come back here with an amended site plan.

Mr. Cleverley: Certainly.

Mr. Smith: Anything else, Gef?

Mr. Chumard: I have no more concerns. I did submit before a draft Part 2 and Part 3 EAF. You know I always do it with your consideration but you have that and if it's ok then it just needs to be signed.

Mr. Smith: That's fine. Either you can sign it or the Chair can sign it but it is my understanding that you are suggesting that the Planning Board does not have a problem issuing a negative declaration here tonight.

Mr. Chumard: That's my suggestion.

Mr. Smith: With the understanding that the negative declaration takes into account the conditions that gonna be placed on this.

Mr. Chumard: Correct.

Mr. Naumchik: Gef, you mentioned in the flood plain, you mentioned the building but you didn't mention anything about the tanks. Would that be an issue with the tanks in the flood plain?

Mr. Chumard: I mean, it appears, probably, the building is never gonna flood. If it does flood it is probably gonna be a matter of inches, not several feet. The tanks I guess, would sit on the floor and they would be...

Mr. Naumchik: Because they are outside of the building, the tanks, correct?

Mr. Cleverley: Yes, there are tanks which are going to be outside of the building. Of course those will be standard, they will be attached to the ground, foundation and so on and also, again, the magnitude here is like Gef said, inches, so it's not like we are going to be having a flood wave with several feet in which could create buoyancy. These are all attached to the ground with concrete basis and foundation and so on so it's really... I understand your concern but this situation is really not going to be an issue.

Mr. Naumchik: Ok, I just wanted it on the record, to make sure.

Mr. Cleverley: Yes, certainly.

Mr. Chumard: Those tanks are 30 feet high too.

Mr. Naumchik: Right.

Mr. Thorn: Are those tanks ... would they need secondary containment around them or no? Because if they had that then that would be enough.

Mr. Higbie: And the DEC will dictate whether or not ...

Mr. Thorn: Yes, I mean this might be maybe this is more like the DPW or somebody else.

Mr. Chumard: I mean they are not hazardous waste. I can't answer differently.

Mr. Thorn: Ok.

Mr. Cleverley: Yes and we would work with the building department as far as meeting the building department requirements for flood proofing as required by the building department according to the code.

Mr. Capozella: All right, so at this time we... The public hearing was left open, so we'd like to give the public another chance to speak if they'd like on this applicant.

Mr. Lederman: I've got a question. Good evening. I'm Matt Lederman. He mentioned that he's got 5 other factories so would it make sense to maybe speak to the residents if it's in the neighborhood and to make sure that there are no smells and no issues with the existing factories?

Mr. Smith: Well, the problem is we don't know if the processes are exactly the same, we don't know where these other places are; he is under a deadline so... we don't usually... the Planning Board usually doesn't undertake that kind of survey and then again, you never know who you exactly are talking to.

Mr. Lederman: Sure.

Mr. Smith: So I think the... that's why we want to have our own conditions and I think the conditions we were talking about we are going to put on the record and they are going to be protection enough.

Mr. Lederman: Ok. There is a perfume factory on Sprague Avenue.

Mr. Smith: Well that's what I was talking about.

Mr. Lederman: You smell that today for blocks.

Mr. Smith: I know.

Mr. Lederman: So it's more than 60 feet; you smell it for 1000 feet, more than half of the week.

Mr. Smith: Well, we weren't here when that was approved you know, whenever it was, 50-60 years ago.

Mr. Lederman: So we see it today, it's a problem. Thank you.

Mr. Capozella: Anyone else from the public? *(no one came forward)*. Any other comments from the Board members? Any other questions from the Board members? *(no Board members came forward)*. *Public hearing was closed.*

Mr. Smith: I propose the resolution for SEQRA purposes that the Planning Board and it's consultants have thoroughly reviewed and investigated the environmental impact, papers submitted by the applicant including the long form EAF and there was obviously discussion regarding potential discharges that will be handled also in conditions so pursuing to the requirements of part 617 of the New York SEQRA Regulations, the Planning Board on the advice of it's engineering consultant is hereby declaring a negative declaration for SEQRA purposes.

Mr. Capozella: I need a motion.

Motion was made by Mr. Sisco and seconded by Mr. Thorn.

Roll Call Ayes: Steven Sisco, Paul Thorn, Nicole Hewson, Dan Higbie, Anthony Capozella, John Naumchik.

Mr. Capozella: We are moving on to the regular resolution for the applicant at 66 Bennett Street. It will definitely include the engineer's report and comments, specifically I want to make sure that we have in there that flood proofing will take place at the building as per the Commissioner of Public Works and the inspection of the Building Inspector and/or DPW. No odors will emanate beyond 60 ft. of the property line except for short term accidental spillage.

Ms. Hewson: Can we also mention that daily odor would not be an occurrence?

Mr. Smith: More than 60 feet away, that's right.

Mr. Higbie: That's what we were talking about.

Mr. Capozella: Well, I didn't say daily but it's implied that no odors will emanate beyond 60 feet at any time. And that we will...before the final approval we'll need an amended site plan for the additional parking if required when it happens.

Mr. Cleverley: Yes, at some point in the future.

Mr. Capozella: Yes at some point, before you do any work, ok?

On motion of Mr. Higbie and seconded by Mr. Naumchik to approve the application of Besnik Fetoski for dairy product manufacturing located at 66 Bennett Street.

Mr. Naumchik: Is there anything, Gef, in your last letter that has to be done that wasn't done?

Mr. Chumard: No, we've discussed it all.

Mr. Capozella: And I also included his report in the resolution so that if any open items remain, they need to do that. I don't know if we did include here, and I don't know if I need to put hours of operation for this facility. Could you give us basic hours of your operation?

Mr. Cleverley: Just as a clarification that odor was 60 feet from the property line?

Mr. Smith: Yes.

Mr. Capozella: Yes, from the property line, not beyond 60 feet from the property line. Could you give us basic hours of your operation?

Mr. Fetoski: The hours of operation, the first intention is to have one shift work there and well, the process of making cheese is a longer process; you may need people to come maybe at 5 o'clock in the morning, few people, then few people will come at 8 o'clock in the morning, then after that some people will leave at 2 o'clock, some people will leave at 5 o'clock and that's how the cheese process is, it's an extended process, it's not like an 8-hour shift you know, so...

Ms. Hewson: So give us the longest.

Mr. Smith: Five to five?

Mr. Capozella: It sounds like five to five or five to six, something along those lines.

Mr. Fetoski: Well, if the business.... I mean I would like to have some tolerance there if the business grows to have a second shift there as well, so.

Mr. Capozella: Ok, what would you have your second shift to? What time?

Mr. Fetoski: Is it ok to have from 5 in the morning till 11 or midnight?

Mr. Capozella: That's what we need to know so you don't have to come back, so if you grow...

Mr. Fetoski: Midnight will be...

Mr. Capozella: Midnight? Ok. And that will be Monday through Friday?

Mr. Fetoski: First initial plan is to work 5 days a week. If we are busy we might add another day, maybe you know six days.

Mr. Capozella: I'm going to put Monday through Saturday then

Mr. Fetoski: Ok.

Mr. Chumard: Mr. Chairman, just as clarification, it's a minor thing. The EAF does state that the hours of operation will be 7AM to 5 PM so if a note could be put on that it's amended.

Mr. Smith: We are in effect amending it right now.

Mr. Capozella: Ok.

Mr. Fetoski: Thank you.

Mr. Capozella: No problem. So I just want to add that the daily operation will be from 5AM to 12AM, 12 midnight, Monday through Saturday.

Roll Call Ayes: Steven Sisco, Paul Thorn, Nicole Hewson, Dan Higbie, Anthony Capozella, John Naumchik.

Mr. Capozella: This will be also contingent upon the DPW approval and if the City of Middletown Fire Department needs to be involved in any way, ok?

Mr. Cleverley: Certainly. Thank you.

Mr. Fetoski: Thank you.

MSL Properties, LLC.
126 Sprague Avenue
an auto sales, office and residential rental apartment

Mr. Lederman: Hello, good evening.

Mr. Capozella: Ok, sir.

Mr. Lederman: At the last meeting you requested me to come back with the site plan so I met with the engineer, surveyor and the building inspector and we marked out the parking diagram and I believe everyone has copies of it so...

Mr. Capozella: Yes, sir.

Mr. Lederman: Ok, so we removed the parking on the side facing Sprague Avenue, we eliminated that and we've got 9 spots to the left of the commercial building and 2 spots in front of the garage and 1 spot in front of the building for a total of 10 plus client and a tenant parking for a total of 12.

Mr. Capozella re convened [public hearing was kept opened] public hearing.

Mr. Thomas: My name is Mr. Thomas. We were here before and you had read my letter, what I was saying but the problem I'm having is where are tenants parking? He has all these cars in here and if they have guests coming where are they all gonna park? If he is so called renting out to the college kids, they are gonna cars, they gonna have kids at night partying all hours of night.

Mr. Smith: His approval would be... He is applying for a single family. That's it.

Mr. Thomas: Right, does that count how many friends they are going to have over to party or whatever late at night?

Mr. Smith: Every single family house in town has friends and parties once in a while.

Mr. Thomas: Yes, but you don't live where I live; you don't see stuff that goes on at night. I'm dealing with drugs coming out across the street all the time. You can call the cops, it don't do you no good. There is no place for parking out there to begin with. They can park on the street, I understand that but I'm just concerned where his tenants are going to park, where they are all going to park if they have guests come over, where are they gonna park? If he's gonna have 9 cars there, that's my issue. And if you read my letter you know the rest of my issue was in that letter you read. That's the issue I've got. That's it. I mean I've been there 25 years and the quality of life it's gone downhill there period.

Mr. Lederman: A few weeks ago I put a fence up to kind of separate the property line and justify where the parking would take place and I spoke to Mr. Harold Thomas and I told him I was going to be on site a lot of the time and he said he didn't have a concern then if I was going to be present. He knew I would pick good people and he wasn't concerned at all and said I have no problem with having you bring a residence here. So I'm not sure why his tune changed but ...

Mr. Thomas: If he is staying there, that's fine but he's going to be there during the day... what I'm talking about he has his business there, that's fine during the day, I have no problem with that but he has visitors at night. He's not there, he won't be there to see what goes on just like the other ones don't see what's going on. That's what I'm talking about. I'm not talking about him being there.

Mr. Smith: Yes, but the Planning Board can only do so much.

Mr. Thomas: I understand that.

Mr. Smith: His request is for a single family. Now, as we were just saying with the previous application, we have a noise ordinance, we have court prosecutions every other week, City Court, people violating it. If you hear them from 60 feet away or across the property line, you call the police.

Mr. Thomas: You can call police but it don't do no good, by the time they get there...

Mr. Smith: You say that but you have to rely on the police.

Mr. Thomas: Yes, but by the time they get there it's done, it's over with and they walk away, that's it. I've been through that. I've been through that for the last 20 years.

Mr. Smith: You have to rely on the police. Planning Board cannot be the police.

Mr. Thomas: All I'm saying is I've been doing it for 20 years there; I've been there for 25 years, I've been through enough. It doesn't do no good.

Mr. Smith: All I can tell you is we can't start denying people living in places because there's fear of noise or drugs. You got to rely on the police for that.

Mr. Thomas: I don't rely on them because they don't do no good, I call several times, dirt bikes going up and down the road, they don't come for nothing. They come, they can't catch these kids. And I tell them where they live and they don't do nothing about it.

Mr. Smith: The problem is then with the police. You got to go to the police and talk to them.

Mr. Thomas: It's like talking to the wall.

Mr. Smith: There's nothing we can do about that. That's the enforcement issue.

Mr. Capozella: And this is not the place for that. You need to go to the Common Council; you need to explain to them what's going on and then they can give it to the police department. We feel for you but we really have no power over that.

Mr. Thomas: Well, the problem I have is where they gonna park. That's the problem. If they are there and their friends come over and they park all on the street, in front of my house, I tell them to move ...

Mr. Smith: Well that again is for the Common Council. The Common Council decides where in the City you can park cars. If there is an issue with people parking cars near your house you got to go to the Common Council and put the ban on parking in certain spots if they agree with you.

Mr. Thomas: There are signs out there where they are not supposed to park, they are still parking there, cops don't even stop to give them a ticket.

Mr. Smith: Again, that's the issue for the police.

Mr. Thomas: It doesn't make no sense.

Mr. Lederman: Can I just say something? I just wanted to add one thing. Lot of times you get these multi-families and the complaints come through, the owners of

the properties aren't typically there. So I'm not guaranteeing that there won't be riffraff but I'm there working throughout the day. I don't want to have a problem either and I assured Mr. Thomas that... you know, he said as long as you get a decent family. What's a decent family? You do your background checks, you speak to the people, you check their employer, you check referrals, you check family, I can do the best I can do and...

Mr. Smith: And you can put in your lease that you can't violate City noise ordinances every night and create public nuisance and put it right in the lease.

Mr. Lederman: Happy to do so.

Mr. Smith: Ok.

Mr. Glicksman: My name is Michael Glicksman. I own 120 Sprague and 118 Rear which is a large warehouse and for the warehouse I have deeded right of way which has been there as I understand it for many decades prior to my ownership. It used to be Patterson Glass warehouse for those of you who remember when Patterson Glass occupied 126 Sprague which is the property being discussed right now and I wasn't able to come to the last hearing because my wife had had a surgery and I submitted a written comment which I hope you had received.

Mr. Higbie: We did.

Mr. Glicksman: And I don't have any issue with the residential use which I understand is the current issue being discussed but I do have a concern with the obstruction of my deeded Right of Way. Now, I just saw this for the first time about two minutes ago. If you would take a look at this you see the deeded Right of Way is at the top where it says Right of Way access to lot 19 by an 18 foot wide easement and so on. Now, as Mr. Lederman said he put up a fence a couple of weeks ago, you see where it says North 49 degrees 54 and so on and it comes right down almost to the sidewalk and then there's that little sort of pie shaped thing which is the next door neighbor's lawn and that little tiny neck is what my current easement is; that little skinny thing there which I would have to squeeze through. It's not 18 feet wide anymore; it's just a few feet wide. So in other words my easement has been impaired by the fence so that's my beef. So Mr. Lederman has violated my easement. So I've communicated with Jacob and I was told that it's not City matter, that I would have to retain a private attorney on this matter and I suppose you folks would say the same thing. I was kind of disappointed because I thought this matter, all aspects of it, was kind of in limbo until this body made some determination but Mr. Lederman has proceeded with, what he's going to do

with respect to his business including the fence prior to your making a ruling on it which I guess speaks to his regard for law...

Mr. Higbie: We only have to... he only has to come here when he's making a change. If he's putting a fence that goes with the City Code and whatever then he doesn't necessarily need our permission as long as it's legal within the Code of the City.

Mr. Glicksman: Ok, well the City or at least Jacob said that it's not in his purview apparently; it's the private, civil matter.

Mr. Smith: And we all met last year, we reviewed this easement and we told you then this was really a matter between you and the neighbors, that the City couldn't get involved in it.

Mr. Glicksman: Yes, all right, so we gonna have to spend some money on it.

Mr. Higbie: Maybe Mr. Lederman would speak on it.

Mr. Lederman: Sure. Ok, so before I erected the fence I actually met the surveyor and learned that the 18 feet you are referring to or 19 feet starts at my property line and goes into the neighbor's property. I brought a picture just to... I didn't make copies for everyone but this is the easement, this is my parking lot, this is the property line, it starts about here and it goes 18 feet towards the neighbor and I can read you his comments on this quickly: "The access to lot 19 is via an 18 foot wide easement over lands of Anselmo Property Corp." So it's not over my property line at all. I would have never put a fence up to block his access.

Mr. Glicksman: So you are saying it include this?

Mr. Lederman: Correct, it starts at my property line and it goes out 19 feet regardless of where that tree is so...

Mr. Glicksman: Ok because this guy just told me I can't drive over this.

Mr. Lederman: This gentleman just bought the property so that would be between you and him. I'm just letting you know what my surveyor found. He is a new property owner...

Mr. Glicksman: He said we can't use his... so you are saying he is in the wrong.

Mr. Lederman: Correct, the easement starts at my property marker and goes out 19 feet.

Mr. Smith: Which is exactly why the City can't get involved.

Mr. lederman: And what I did as a gentleman is, I brought my fence back 10 feet from the street. I could have gone to the front most property marker; instead I pulled it back as a courtesy to them. You can pull an 18-wheeler through that.

Mr. Glicksman: Well that's how it was intended.

Mr. Lederman: And I would suggest you speak to Jacob and ask them to put a curb cut in so that your easement is clear.

Mr. Glicksman: Well, the curb cut as you know is...

Mr. Naumchik: Alex, does this easement mean anything to our decision?

Mr. Smith: No.

Mr. Naumchik: Well, then...

Mr. Lederman: Ok.

Mr. Naumchik: It's not our issue.

Mr. Higbie: And as far as we are concerned, Mr. Glicksman said that he doesn't have any issue with why he is here.

Mr. Smith: This applicant has already agreed not to obstruct the City easement.

Mr. Capozella closed public hearing.

On motion of Mr. Sisco and seconded by Mr. Higbie to approve the application of MSL Properties, LLC for a an auto sales, office and a single family residential rental apartment located at 126 Sprague Avenue, Middletown, New York. There will be no impediment of the right of way. The applicant will adhere to the parking arrangement shown on the site plan. There will be maximum of 9 cars for sale and one (1) parking spot is to be designated for the residential use. Hours of Operation are Monday through Sunday 8AM to 8PM. This approval is contingent on the approval of the Department of Public Works and Fire Department if

necessary.

Roll Call Ayes: Paul Thorn, Dan Higbie, Anthony Capozella, Steve Sisco, John Naumchik.

No: Nicole Hewson

Mr. Lederman: Thank you.

Mazel Midland, LLC
55 Midland Avenue Extension
Warehouse

(The applicant, Mr. Eisdorfer, has not appeared at the hearing.)

Mr. Capozella: Not here tonight? Ok, we'll skip over it at the moment.

Joel Sierra
81-89 Sprague Avenue
an auto repair shop

Mr. Sierra handed in mailings.

Mr. Sierra: Good evening folks. My name is Joel Sierra, 81-89 Sprague Avenue. This is my proof of mailing. My application is before you again and it seems like it was just 4 years ago this month we came before you guys and you approved auto repair facility for us and thank God business has been well in the last 4 years, we have grown, it's a fairly big building and we do have a storage lot to right-hand side facing the building, we have a storage lot and we did have some parking spaces when we initially came to you that we intended to use for car sales and some storage, we do towing, we do tow for the police department and different law enforcement agencies, we pick up motor vehicle accidents, we do impounds so we use the lot for several different purposes and obviously we are here tonight to look for, I guess it's a variance or a lot line change, I'm not quite sure.

Mr. Smith: No, I don't think it's either one. What this is a part of is that we did an enforcement initiative all around the City for other sales lots, repair lots because what we've found was that a lot of the owners of these lots either had no site plan or were not complying with the site plan they had an on any given day cars were parked everywhere; I mean in no order and it just became a mess all over the City so you are not the only person that we've asked to come here and get a site plan,

there are many. I think with your property, we understand that it's relatively small compared to other businesses we've had here but we have to have some idea on a given day where are there going to be cars for repair, where are there going to be cars for sale... I'm not saying it has to be exact same thing for every day but it can't just be well, anywhere we can put them and that's it.

Mr. Sierra: If I may, I got a couple of pictures that I took, I'd like to have the Board pass around so you can get an idea what exactly we are dealing with on a day to day basis. Like I said, we are handling different scenarios and some days we do impounds, whether it's the Run for Downtown or the Record 10K and we pick up cars, we don't have the keys to these cars so we have to pick up these vehicles, get them out of the road and we need somewhere to drop them. This is where that lot comes in. Well, I have a big tow truck to pick up cars, this is not a Honda Civic, it's a tow truck and if we don't have the keys to these vehicles we have limited access of how we can station those vehicles without causing damage to somebody's car, sometimes people are from out of town, they don't know, they don't see the signs so we pick up their vehicle. Sometimes there's a motor vehicle accident where there's a crime or there's an investigation going on and they need to fingerprint the vehicle, we can't touch the vehicle, we have to handle the vehicle form underneath and we have to pick up the vehicle carefully, place it carefully so that the detectives or what have you, investigators can come and do their task. Sometimes there's a vehicle that's in bad condition, it's pretty mangled, one of the wheels is ripped off or door is ripped off, the Fire Department cuts the vehicle in half, it has to be stationed there. I can't always comply with perpendicular or station... this is not ShopRite, you know what I mean? I can't ... we are not pulling vehicles in and parking them. As you can see in the photos, we do a wide variety of repairs; some days we are working on a horse trailer, some days we are working on a piece of equipment, a mini excavator; anything that has wheels or tracks or a motor of some kind we do repairs on. That keeps my business operational and it's a service that we provide to the public so thankfully I'm here before you that I need this waiver but unfortunately I cannot comply with parking my vehicles in a certain manner every time. As you can see in some of these photos, we have a box truck that's 30 feet long. I can't fit it in an 8 foot spot next to a Toyota Camry, it's just not feasible.

Mr. Smith: So you have 3 types of vehicles. Vehicles for repair, vehicles that have been towed and vehicles for sale.

Mr. Sierra: We have motor vehicle accidents, impounds, yes.

Mr. Smith: So why can't you designate one part of the lot for impounds, one part

for sales and one part for repairs.

Mr. Sierra: Well, if you look at the photos, a photo is worth thousand words. If you look at the photos, my lot is very narrow but deep. My tow truck closed is 27 feet long. When you open it up it doubles in length. I can't drop a vehicle that has 3 wheels, you know, I can't station it and maneuver it in there, I mean you've got to kind of use your imagination a little bit or I would be more than happy to show you how we operate that. Again, knock on wood, but if there is some kind of vehicular murder or manslaughter, what have you, you can't touch that vehicle, it has to be... And there's a lot of times some facilities can't handle those vehicles and the PD will call us to handle those type of vehicles and I can't say that happens every day but it does happen. If I'm working on an excavator that lost a set of tracks, the tow trucks that bring excavators are huge trailers. They drop it off where they can maneuver it until we can facilitate that vehicle. I got a horse trailer that came in where the axle flew off, it had only one axle you know, it's a variety of vehicles and you can see we keep everything orderly and this is stuff... again, we are talking about couple of days here and there, depends on, but we try to get as fast as we can get their parts, in and out, that's what we do. I mean I don't get paid until the vehicles come and leave.

Mr. Smith: But there still could be a designated spot at least for the sales. Those are usually a small size vehicles, correct?

Mr. Sierra: I understand what you are saying but there's again, the situations where in that photo, please, I'm trying to be polite and respectful but if I'm waiting for a car to sell for 3 months or 2 months, I need money today, my staff needs to get paid every Friday and if there's a vehicle that came in and we need to work on that vehicle to me it takes priority to fix that vehicle than to station a car. If I can tell the future I'd be a millionaire but I don't know when this car's gonna sell so I need to take that car that's running and driving, put it in a far back side of my lot so I can fix this excavator or a horse trailer that's gonna make money today. And that's my whole philosophy.

Mr. Smith: All the cars for sale, if you put on the back, alongside the fence so you can use the nearby area, like you said, for impounds and work. Isn't that doable?

Mr. Sierra: It is doable but again, one, I take pride in my business, I'm a Middletown guy, I live not too far from this facility. I don't want to have an eyesore in my business, it just doesn't look right. But too, when you have these vehicles for sale, if someone's driving by, I want them to see that vehicle so based on what I have going on this week or this particular day I move these vehicles.

They have to get washed. As you can see there's vegetation in those pictures that are blocking my neighbors but vegetation also bring leaves falling and so if you have a nice, clean vehicle you park it under the trees, it gets dirty. So now I'm paying a staff member to move this vehicle around multiple times a week and then wash it. And I'm being as blunt as possible, it sounds pretty but in an everyday life I can't afford a guy just to move a vehicle that I'm gonna sell 3 months from now to wash this thing and move it around, it's just not business right.

Mr. Capozella: I have a question concerning your application. You would like to remove so called numbered parking spots and associated parking lots. I might understand that because what you are saying is that you move vehicles constantly and may not always put them in a nice rectangular pattern or whatever. So what this Board worries about mostly is that we would like to have that orderly fashion rather than maybe a numbered spot we would like to hold your lot itself to a particular number. In other words, we are not going to say ... we are not going to give you a carte blanche and that's almost what you are kind of implying by your application. We would never do that because we never let anyone do that. In fact we let everyone lay their parking lot out by 9 by 18 spaces and that's the limit they get for their parking area.

Mr. Higbie: A question, this is not a lot for the public, right? If I'm there I'm not gonna park here to get an estimate on my car or something.

Mr. Sierra: Which Alex just stepped out but we had this discussion. I said Alex, this is not again, this is not Shoprite, this is not Galleria mall.

Mr. Higbie: Sounds like it's a yard.

Mr. Sierra: This is a yard that's fenced in, gated, locked.

Mr. Higbie: So is there a different code or is it the same thing if it's a yard versus a...

Mr. Capozella: No, there's not, that's the problem.

Mr. Sierra: The fire code doesn't specify because if it's a public lot, I understand, if they are coming to purchase goods but this is a locked, gated...

Mr. Higbie: I can understand that maybe the neighbors wouldn't want to have a broken down excavator there for 3 months or whatever.

Mr. Thorn: What I was thinking is, you have a size of the lot. Based on that size of the lot do you know how many spaces would be the maximum for cars? If you gonna have less because you are working on larger vehicles that's not an issue, that's not really the issue. We don't have firm... these aren't the lined spaces that the cars will have to be put in those spaces. We can just look at the size and the amount of room he's got to work with and come up with the maximum number and just say that's it – if there's less than that because you are working with larger vehicles that's fine but we still maintain what we need to accomplish for the City but you'll still have the flexibility.

Mr. Capozella: Right, but we don't want a junkyard appearance obviously, like you said...

Mr. Sierra: Which again, you can drive by it any given time, you know, and I do take pride in my business but you are totally correct, like we do fabrications, we do some things that you know, today is harder to find. You know I just recently had a gentleman come with an equipment trailer. It was rotting out underneath and we had to do some heavy fabrication to support the trailer. Well, the trailer was 20 something feet long. This is not the trailer I can fit inside and maneuver and move on a daily basis but you know we got to it as quick as possible but...

Mr. Capozella: Keep in mind we'll consider that a vehicle, one vehicle. So you know, if we say 15 vehicles are allowed in this area, if it happens to be a trailer or an excavator, whatever that vehicle may be, that piece of equipment, that will be the number that the code enforcement people will be looking for, the total number.

Mr. Sierra: And that can be either a motorcycle or an excavator or a trailer or a boat.

Mr. Capozella: Exactly, and we can understand that you have issues with numbered spots, it's a very precarious situation. We want people to have spots that are labeled and kept orderly, we understand that your business works in a small space and you need to juggle those around. So I think, I'm not positive but the Board may be thinking of a number of vehicles, maybe not spots. So, today, how many vehicles do you have there today? Fifteen, sixteen, seventeen?

Mr. Sierra: I wish I would have had that number.

Mr. Capozella: You have about 15 to 20 vehicles. I counted them.

Mr. Pistone: Twenty-two.

Mr. Capozella: Twenty-two, I couldn't see all the way to the back. So, I mean you are now starting to get very close to a number that looks unpresentable. Even though you get to move things around, we understand that and we didn't take a square footage and counted 9 by 18 spaces and how you would move them around, we haven't done that. So, we'd like to work with you, it's a business, we understand but we have to stay within parameters because there are other people that have the same exact parameters they have to follow and we have to hold them to it. So I don't know. You had a good idea about using 9 by 18 square foot space.

Mr. Thorn: Yes, I just looked at it. This sketch looks like you've got about 65 by 120 foot yard to work with. That gives you about 48 spaces total. I mean it's gonna be awkward sizing so maybe you cut it back to like 40. I mean that seems a lot.

Mr. Capozella: It is because if you see the property today, one gentleman in the audience mentioned 22, I counted 15 to 20, that's ...

Mr. Thorn: I'm just saying.

Mr. Capozella: And that's varied vehicles by the way, that's the trailers, there's a boat...

Mr. Higbie: The box truck.

Ms. Hewson: I drive by this property just about daily, sometimes numerous times per day and I have to say I think it's kept very neatly; I like the fact that it's gated and closed off. I feel like... I know that there is no specific law and please correct me if I wrong Mr. Smith, regarding police impound but I do see this as a special situation because it's police impound. I would be concerned if Mr. Sierra would have sell it and the future car sales or a car repair service would have come in and just make a big mess of things but in his situation, like I see police impound as very different. That's how I see it.

Mr. Capozella: He also takes that on that's his choice to do that.

Ms. Hewson: True but I mean...

Mr. Capozella: He still has to stay within the law. No matter who does the impound, they would have to stay within the law.

Ms. Hewson: Right.

Mr. Sierra: In my defense, there's very limited businesses that can handle that kind of you know ... that have the storage or have the space. Sometimes they require the vehicle to be indoors and I do accommodate the police station. We have a fairly large building at the back that we use to work on vehicles. Not too long ago there was a vehicle fire and Orange County investigators have come down, we accommodated them; the vehicle was inside for well over a week so again, I understand what you are saying and I'm willing to work with the Board however we can but there are some situations that ...

Mr. Capozella: Would you say presently, the number of vehicles you have in that lot is workable for you?

Mr. Naumchik: I'm looking at a number like 25.

Mr. Capozella: I'm throwing it out there. Like I said, what I see there right now, to me is about the maximum. You start getting any more and you start coming out of the gate.

Mr. Sierra: But I have big vehicles there. So if I had smaller vehicles the number would increase. And not only that, if you look at those vehicles that are there currently, there's about 20 feet or so of space in the back. And I'll be more than happy to walk you back there because they were doing some excavation work because I had some drainage issues so there's a large pile of stone back there, there's some equipment in the back that is pushing the vehicles forward. As you can see in the pictures and you know, some of you drive by my facility, I mean I even pay my... I make my staff in the morning, when they come in, they grab their garbage pickers and they pick up the litter in the street, in front of my building. I mean this is how we take care of our ... and all these vehicles comply with the fire code, I know the fire inspector well, we remove any contaminants in the vehicle, we take the gas out of the vehicle, they all have under 2 gallons of gas, they are separated within 3 feet of them, that's another thing, we keep them 3 feet away so if for any crazy reason there was a vehicle fire they are far enough away from each other so that takes up space in itself. This is not like they are 2 inches apart. If the vehicles were closer apart I could probably fit more vehicles but again, according to the situation. If that box truck needs a motor, it's coming from Texas; if I can get the motor tomorrow I guarantee you I want to put that box truck on the road because again, if cars are sitting in my shop they are not making me money but unless I take a drive to Texas I can't get the motor any faster and it's coming by freight.

Mr. Smith: What do you do in winters if there's a big snow storm?

Mr. Sierra: That's another thing. I push the snow into that lot from my side walk. I have 200 and something...

Mr. Smith: So what do you do with the cars that are normally in the lot?

Mr. Sierra: I push them closer together and I push the snow further back which sometimes causes when the snow melts, it comes into my building a bit so I mean I'm really up against the wall here.

Mr. Naumchik: Sounds like you need more space.

Mr. Sierra: Yes, and four years ago I was looking at this building, I'm saying I'm never gonna have to uproot and now, I mean thankfully I'm employing people, I'm putting them to work but cars are not small, they are not a set of shoes, they take up some room and unfortunately we try to fix them as fast as possible and get them out the door so we can make money.

Mr. Sisco: Does it ever get to the point where you have to say no, I can't handle that. You know, tow or somebody bringing a...

Mr. Sierra: There are situations...

Mr. Sisco: I mean, you only have so much space.

Mr. Sierra: Absolutely.

Mr. Sisco: It looks like you are taking everything that you are called upon. Now, with the sales, where are you getting these vehicles? Are they impounds that nobody picked up or...?

Mr. Sierra: It's multiple locations, we get them sometimes from the auction, we repair them in the slow season. You know, in my industry you can't really take a good mechanic or a good technician and you know, like right now everybody is on vacation so business tends to die off. Around Christmas people rather buy Christmas presents than fix their car. But in those highs and lows you got to manage your business so I take a car that we have, whether it's a car accident or a car we got from the auction and we repair it so I keep my guys employed.

Mr. Sisco: It looks to me, like the Chairman mentioned, like a junk yard. When you start talking about storage, registered, non-registered vehicles, trailers, motorcycles, watercraft and other items associated with your business. I mean

without seeing it you can just imagine what that looks like. So I'm just saying...

Mr. Sierra: I'm willing to put up a privacy fence on a front side if that will accommodate. We do have a six foot fence currently.

Mr. Naumchik: Well, won't that hide your cars for sale though?

Mr. Sierra: It will, it will hide my cars for sale, but again...

Mr. Capozella: It's a good suggestion but it also hides number of cars from the code enforcement officers.

Mr. Sierra: I understand that but again, the code enforcement... in the words of justice, I mean I pay my taxes like everybody else.

Mr. Sisco: Do you have your cars for sale in certain area?

Mr. Sierra: Well, I used to. Like I said, I used to but... I try to keep the cars for sale up front so when people drive by they see them. Some situations arrive where, you can see in one of the photos, there's a 20-foot horse trailer there that we are waiting on some special flooring for the horses so I have it parked there because you have to pull it with a big truck. Now, imagine if that horse trailer was in the back, it would be a lot harder. So a car that I have for sale runs and drives, it's easy to jump in that car and move it.

Mr. Sisco: I like Mr. Smith's idea about having everything... the impounds here and sales here, I mean...

Mr. Sierra: I would love to do that and I do it on occasions but when certain vehicles come in, I mean that box truck, all the people in this room couldn't push that box truck and we are waiting on the motor.

Mr. Sisco: Well, maybe that's something you shouldn't be handling.

Mr. Capozella: Well, it's business; he has the right to handle what...

Mr. Sierra: I get that, I understand, but who's gonna handle it? I mean my competitors?

Mr. Capozella: So, back to the point about number of cars. We feel you have 20, 22 right now. Mr. Naumchik put forward an approximate number of 25. Is that a

doable umber for you?

Mr. Smith: It looks like we are not going to decide this tonight. Maybe you ought to think about it. You've heard some of the comments from the Board and maybe you just ought to take it back and present us with a couple of ideas next time, you know, respond to what some of the Board members were saying. As Nicole said, there is no law about site plan. Planning Board issue site plan approvals based on what's reasonable and what's reasonable for one car owner is not necessary reasonable for another car owner. We are just trying to be consistent with all the car dealerships and sales and auto repair places around town and we try to have some order in each one but we always try to gear it toward the needs of the individual lot. Well and we got to do that here to.

Ms. Hewson: I just think form my perspective; we have those who are compliant as I feel Mr. Sierra is, and we have those who are not and I know it comes down to code enforcement, I wish there was some kind of special use for police impound and that situation but...

Mr. Smith: And we can take that into consideration.

Ms. Hewson: Yes, I mean I really feel that way but I'm thinking, and I won't name any names, of course, we have one auto dealer that's in the City that I drive by every day as well who's had numerous violations, numerous times in and out of Court and still parking on the sidewalk, still not following the law whereas I drive by Mr. Sierra's business, to compliment you, that you are taking care of the ... you are not parking on the sidewalk here, you really are trying to keep up the property...

Ms. Smith: I think the maximum would be...

Mr. Sierra: Let's say today I have 22 cars there. We have The Run for Downtown next weekend; I do 10 tows on that one day. That brings me up to 32 cars, right? Just like that in one day. But those cars will leave the next day or that same day.

Mr. Smith: What do you do with the cars for sale when that happens?

Mr. Sierra: Again, I move them because ...

Mr. Smith: In that same small lot?

Mr. Sierra: Yes. How long does it take to move a car that's running? But imagine

how long it takes to move a trailer that's 20 feet long, I have to hook up my truck to it or a box truck that's missing a motor or a clutch. I mean these are situations I'm dealing with. I mean it's not like... again, somebody has to fix this vehicles in the name of commerce. That box truck delivers... it's another business in town and he delivers linens 7 days a week to businesses all over the Orange County and when you guys limit me, you are not just limiting me, you limiting...

Mr. Smith: The idea of Middletown code enforcement and the Planning Board is not to limit any business...

Mr. Sierra: And I totally respect what you are saying.

Mr. Smith: It's just to put reasonable...

Mr. Sierra: And I get that. I understand what you guys are trying to do here and I commend you, thank you, thank you for what you are doing and I'm telling you the way I carry my business but I'm not a junk yard, I'm not a slum lord, I try to move these vehicles in the best fashion that I feel for that business to keep my employees working, one, and I emphasize, I got a van there that has an electrical issue, we are waiting on parts, they are coming in this week; that van will leave but it's been maybe 10 days there. If we need to put up a privacy fence, even if it is on temporary basis, I would hate to tie my hands but again, I can't ...

Mr. Smith: Why don't you think about the maximum and also think about some sort of privacy fence for cars that are really in bad shape.

Mr. Sierra: Again, let me just paint you a picture – on a car that comes in that's in a bad shape. The Fire Department had to rescue somebody, cut them out of it. Now the car came in and let's say it came in on Friday. That business day is done, Saturday and Sunday, Allstate, State Farm, they won't even come look at it. Let's say the police ... by the time you get the police report it take 10 days from the date of the accident to get the police report. The insurance company will not make a move until ...

Mr. Smith: Ok, while you wait, block that car off with some sort of privacy fence so the neighbors don't have to look at it. That's my suggestion.

Ms. Hewson: How are your relations with the neighbors since that first public hearing?

Mr. Sierra: I try to get along with all my neighbors. There's been... it's a mixed

use area just like that gentleman with a used car lot, they are down the street; it's a mixed use area, I know some of my neighbors, some of my neighbors are renters so they are coming and going.

Ms. Hewson: Did you happen to have any complaints or anything?

Mr. Sierra: I haven't had any...

Mr. Capozella: Let's open the public hearing just to find out.

Mr. Sierra: Absolutely.

Mr. Capozella opened public hearing.

Mr. Pistone: How are you doing? I'm Perry Pistone, I'm at 99-102 Sprague Avenue. Since Mr. Sierra's shop is located on Sprague Avenue, at times you actually have to navigate to get your car through in front of his building. Yesterday, 6 police cars, firetrucks sped through Sprague Avenue and nobody was at his office so they were able to fly through. On a typical day that would not happen; the firetrucks would have to navigate through. Because he has no place to turn around or place to pull in all his clients come to my office, make a U-turn and then head up the street and I watch it all day, every day, clients of his. I tell them, please don't make U-turns in my driveway and they do it anyway and I see where they are going, they are going right up the street to Sierra. I also see that that lot he's referring to, as far as used cars, I don't know how he is going to do that. Right now it looks like there is a bunch of impounded cars that either work or don't work but it looks like every inch of that is taken up right now. Some days I go by, like I said, I have to navigate through. He's got big tow truck, he's got big trucks outside, I don't know if it's the right application for that location.

Mr. Smith: Well, the application's already been approved. We are not here to revisit that, we are just here to talk about a site plan.

Mr. Pistone: Agreed, and I'm not here to change anything, I'm just telling you what I deal with living on Sprague Avenue. I've been there since the 80s so I've been there quite a while. Another issue that we have there is the parking is the problem, his vehicles are all over, they are probably employees. Now, I looked at that building, that building is probably 25 to 30,000 square feet. That's enough to park cars. If you've got cars that are going to be dead, maybe they should be inside instead of on the street where people can't get through. So far I haven't found him being a good neighbor.

Mr. Capozella: Anyone else wishes to step forward? (*no one came forward*)

Mr. Smith: Do you want to respond briefly because we have more applications tonight?

Mr. Sierra: I'm sorry, this is the first I've heard from Mr. Pistone. How he knows that people turn around in his lot and come to my shop I'm not quite sure.

Mr. Pistone: I watch them.

Mr. Sierra: Ok. Have you addressed those customers?

Mr. Pistone: They pull in, back out and they are on their way. And then I watch them and I watch them pull right in front of your place; all day.

Mr. Sierra: I can't agree with that comment but again, I have not heard one complaint from the Fire Department on access, I mean it's a pretty wide road there. I do have some approved parking spots in front of my facility that my customers park. It's two 15-minute parking spaces there. There are two parking spaces down that we occupy in front of my storage lot for my employee parking. I would have to disagree with his comments; it is a fairly large building...

Mr. Higbie: So your employees don't park on the street?

Mr. Sierra: My employees do park on the street, not directly in front of my office, there's... in front of my building there is two 15-minute parking spaces for my customers when they are dropping off vehicles or picking up vehicles.

Ms. Hewson: That's already been approved by the Board.

Mr. Smith: Yes, we are only here for the site plan.

Mr. Sierra: Yes, we are only here for the lot.

Mr. Smith: Why don't you take back some of the comments that you heard and like I said, we have more applications tonight, put this over for 30 days.

Mr. Sierra: I mean if the Board is giving me a number I could work with I would be more than happy...

Mr. Smith: Why don't you give a number to the Board that you can work with?

Mr. Sierra: Ok. I would suggest if you can approve 35 vehicles, I can work with that. That would be the maximum. Again, on certain situations when I pick up 10 vehicles a day, if I have to go over that I would be more than happy to put up some privacy fence but again, I try to keep my business as neat and orderly as possible.

Mr. Capozella: Ok, I do have one more question because according to the original approval all the vehicles in that lot are supposed to be registered and drivable vehicles because it was an auto sales. Is this still being maintained, that condition? I mean obviously...

Mr. Sierra: No, if we are working on the vehicle that's without a transmission or without of motor or has some kind of body defect it's not drivable there is...

Mr. Capozella: But it's about to be. It's still registered.

Mr. Sierra: Some are registered, unless they are for sale, there are certain situations; obviously if it's a piece of equipment it's not registered.

Mr. Smith: That's why we are here, to amend this; we have to have an amended site plan that works.

Mr. Sierra: Correct. And again, sometimes it's with impound vehicles, which are abandoned and by law I can't just go off and junk somebody's vehicle. There are certain time limits, there are certain guide lines that DMV... we have to comply with. You could be in a hospital, you could be in a coma, we've seen all situations just in last four years. Not that we are here to take people's vehicles but I can't pick up your vehicle today and junk it tomorrow that's a grand theft auto so we are bound by state law to keep these vehicles for a minimum time.

Ms. Hewson: Well, considering the police impound element of this, Mr. Naumchik suggested 25 max; you are saying 35. Would anybody be opposed to meeting in the middle at 30 with the privacy fence? Would that be suitable for you, Mr. Sierra?

Mr. Naumchik: That was my next suggestion – 30. Was the original approval as an impound lot?

Mr. Capozella: It does not mention impounds whatsoever. It only mentions auto sales, registered vehicles, drivable cars will be stored and will be moved as quickly as possible within this lot.

Mr. Naumchik: I know Mr. Sierra has a towing license for the City of Middletown and in the City Code it specifically says that you have to have an impound lot in the City of Middletown, which he does.

Mr. Pistone: Why don't you count what's there now and see how much room is left.

Mr. Sierra: We just discussed that the vehicles are pushed forward.

Mr. Naumchik: You said you saw how many?

Mr. Capozella: Like I said, I saw 15 to 22 and I think Mr. Pistone is around 20-22.

Mr. Pistone: I counted 22 riding by.

Mr. Capozella: Ok, I mean I have no issue with... I'm not totally opposed to the 30; I was going to offer 25 and then leave it open, open-ended for impound cars because Mr. Sierra stated he might put 10, 12 cars in there for impound but they need to be removed quickly because they will be impounded.

Mr. Sierra: But I will have to call the PD and say hey, find another tow yard, tow them to the Town of Wallkill and let the people walk from the Run for Downtown to the Town of Wallkill, see how they feel. When now they run couple of blocks and they are at my shop. I'm not trying to be unreasonable here, I apologize.

Mr. Capozella: That's ok, if you have that many impound cars for that day we are ok with that. We are ok to see the number go up for impounds; we have no issue with that.

Mr. Sierra: If it happens it happens, listen, they go on a Saturday night, they go downtown, they get hammered and there's 20 vehicles on the street and they got to get them out at 5AM, we are towing.

Mr. Smith: Like I suggested, you go back and figure out in the next 30 days what the number of vehicles is for each category and bring it back to us.

Mr. Sierra: Ok, I thought you guys were almost ready to decide it now. So if you were...

Mr. Smith: I don't think that's a good idea because everybody wants to think about it a little bit and determine what kind of privacy fences and whether they are

necessary.

Mr. Sierra: Can we agree on 30 cars with the exception of impounds? And we can put this to rest.

Ms. Hewson: I'm ok with that but I don't know how the other Board members feel.

Mr. Capozella: I'm open, we are discussing it.

Mr. Naumchik: I'm fine with that.

Mr. Thorn: Yes, I mean I'm fine with that, I would, you know to me I think it makes more sense to have a number based on the area rather than you know the particular lined up spaces; because like you said he may have larger vehicles, he will have fewer vehicles as long as there is a max number he can't go over it. You'll have a flexibility to work with it how you need to work with it. It would be nice to know if there is like... if you are saying 30 vehicles not including the impounds, if we knew how big you are getting with the impounds that would be nice but I don't know if you have sense of that, but that would be based on what you can actually fit.

Mr. Capozella: The one agreement I have with Mr. Smith is that you should drive by the lot, see what's there, before you make a decision because my choice is not 30 cars, it's a lot more cars, and I don't mean to impede your business either, I really don't, but it looks like 25 to me is going to be the max because he is tight right now, he has to move cars around that mess and for the impounds...

Mr. Sierra: Again, please take into consideration that there's 20 feet behind those cars. I can push them down.

Mr. Capozella: Then you should maintain the lot so that those cars can go back there. If you've had recent issues then you need to get it clean.

Mr. Sierra: They are doing work on my building. They are literally doing work doing this one construction. They can't excavate on frozen ground in January.

Mr. Smith: How long is that work gonna take?

Mr. Sierra: It's up to the contractor and now with the Heritage Trail coming they are dropping trees back there, they are working. The Heritage Trail runs behind my shop and they are doing the tree removal, you know? So again, I'm not here to run

a salvage yard. I'm running a legitimate business and keeping commerce moving.
Mr. Capozella: Ok, does the Board have a general consensus on this so that Mr. Sierra doesn't have to come back?

Mr. Sierra: With all due respect, Mr. Pistone, do you live in the City of Middletown?

Mr. Pistone: No.

Mr. Sierra: Ok. How many residents have complained here that live in the City of Middletown? How many residents are coming here to complain?

Mr. Capozella: Ok, let's not go there. It's public hearing, lets the public address...

Mr. Pistone: I'm at my office 12 hours a day.

Mr. Naumchik: I'm good with 30, I'm just concerned about how many after that with impounds.

Mr. Higbie: How about 30 max?

Mr. Capozella: You could do that too, you could say 30 max that include impounds and everything. I'm listening to the Board. Are there any other comments?

Ms. Hewson: Would that work for you too?

Mr. Higbie: 30 max?

Mr. Capozella: 30 max.

Mr. Sierra: I'll have to comply. If that what the Board chooses and...

Mr. Higbie: Or like Mr. Smith said, we can table it, you can go back and think...

Mr. Sierra: I don't want to go backwards here. I really want to put this to bed. Honestly, I mean, if...

Mr. Higbie: But if 30 doesn't work for you I would suggest, you know, us just having to think on it, that's all.

Mr. Sierra: Can we do 30 with the exception of impounds? Because the impounds

are gone in a couple of days.

Mr. Higbie: But they are saying, Mr. Capozella and this gentleman, both are saying... and I even counted... they are saying 22 is max.

Mr. Thorn: Without any sense of how many we are talking with impounds I can't...

Mr. Sierra: 10 impounds.

Mr. Thorn: That could be 20 more cars, it could be 50, we don't know what that ... you were saying you were moving 20 impounds a...

Mr. Sierra: Can we do 10 impounds? They are impounds.

Mr. Capozella: I don't want to restrict your impounds because they can move out and why would you restrict yourself?

Mr. Sierra: I totally agree. Listen, but again, if the PD calls me and tells me... I'll have to turn them down.

Ms. Hewson: I'm ok with 30 with the exception of impounds but I don't know how the other Board members feel.

Mr. Capozella: I can put it up for a vote.

Mr. Thorn: I would be more comfortable with just a max number.

Mr. Naumchik: Me too.

Mr. Thorn: Max number. Impounds, non-impounds, I don't care but a max number of vehicles.

Mr. Sisco: Now, does 30 include all these trailers, motorcycles...

Mr. Capozella: 30 would include all vehicles: trailers, motorcycles, boats, cars, box trucks, whatever you want to call them. That would be a total.

Mr. Sisco: Because even 30 is a guess.

Mr. Capozella: You know he guessed it anyway, he doesn't know...

Mr. Sierra: Well, if you look at it now, with all due respect, we just closed last week; I got to give my staff vacation; we just closed last week for a week. So some of those vehicles are still there because we haven't got to them. When we got back this week... that's why it looks like that but if you look at the picture back there, there is a picture where all the cars are pushed back, parked in nice, orderly fashion, that's how it is 90 % of the time. Because we haven't been there 2 weeks... I have to give my staff off, you got to treat your employees right, you know so I work them 5 ½ days a week and that's why those vehicles are there. I guarantee you, there are parts coming, those vehicles are moving. I try and keep my place ... again, I take a lot of pride, I live...

Mr. Capozella: I make one more pass at this and then that's it, then we are going to adjourn if we don't come to consensus.

Mr. Sierra: Ok.

Mr. Capozella: So, am I hearing 30 max or am I hearing 30 with impounds?

Mr. Thorn: I want a number with impounds.

Mr. Naumchik: I'm 30 max.

Mr. Capozella: Does that sound reasonable? We are willing to put it up for a vote with 30 total, including impounds. If you don't like that we can wait till next month and you can come up with a set number that you got from history, what you've dealt with.

Mr. Thorn: Yes, if you have a sense of you need more based on a traffic flow, I'm reasonable, I'm just saying I don't feel comfortable with an undefined number.

Mr. Capozella: I hear you. That's why we are going 30 with impounds.

Mr. Sierra: So I'll take 30 with the impounds and if that number changes am I welcome back to come...

Mr. Capozella: You can always come back, absolutely.

Mr. Sierra: Again, I'll take more pictures if need be but it means I can handle 8 impounds now until those cars get sold and move out, but I appreciate it, thank you. Any number would be well appreciated.

On motion of Mr. Naumchik and seconded by Ms. Hewson to approve the application of Joel Sierra for a site plan involving the parking area of an auto repair shop located at 81-89 Sprague Avenue. There will be maximum of 30 vehicles on the lot including vehicles for sale, vehicles for repair and the impounded vehicles. This approval is contingent on the approval of the Department of Public Works and Fire Department if necessary.

Roll Call Ayes: Paul Thorn, Nicole Hewson, Dan Higbie, Anthony Capozella, John Naumchik.

Roll Call No: Steven Sisco.

Mr. Capozella: Thank you for your patience.

Mr. Sierra: Thank you for your service, have a good night.

Erqian Na, Hongwei Wu, Jianhong Xiong
65-67 Wickham Avenue
one-family residential

Ms. Na: Hi, good evening. I'm one of the owners of this property.

Mr. Capozella: Now, is this a new application?

Clerk: Yes.

Ms. Na: Yes, just applying for one-family use.

Mr. Capozella: Right.

Mr. Smith: Is this one family use on both floors?

Ms. Na: Yes.

Mr. Smith: Ok, unfortunately, we don't have the building inspector here tonight. I'll just go through the history really briefly. The last time there was the application here it was going to be a real estate office and a single family usage that would be combined on first and second floors. Mr. Welch had a problem with that. The applicant was instructed last December or so to meet with Mr. Welch and go over whether it was doable because there were State code issues. Unfortunately, the

applicant allowed a tenant to come in who promptly opened up a 5-room boarding house for recovering alcoholics. City raided it, one person was arrested for having an outstanding warrant, they all went to Court, including these three ladies, they had a counsel, these three ladies plead guilty to unapproved use. One of the parts of the Judge's order on that plea was this place could not be re-occupied without the Planning Board approval and unfortunately these ladies have now re-occupied it, they will be headed back to court for that violation as well as a violation of the Court Order. However, they are here with the application and some Planning Boards don't entertain applications when there are violations. There is violation, however we have never taken that position as the Middletown Planning Board, especially when the application will in effect cure the violation. I mean they will have to have their time in court but that's something separate. However, we don't have the building inspector here so I'm not sure what his take is on the single family usage on both floors. I mean I don't know why he opposed it.

Mr. Capozella: I think he is ok with it. He had a dental issue and he had to leave, he was in pain so...

Mr. Smith: I mean if the Board was inclined to approve it I would do so with the condition that number one, immediately the application be made for a rental permit, because they are there now, not only in violation of the Zoning Code, there is no rental permit. And either the Planning Board or DPW can handle the issue of ... single family means a family. I don't know if all those people there now are family but as I said, the Planning Board can get into that if they want to, I think it might be smarter to let DPW handle that as a part of the rental permit. But I certainly would condition any approval to immediately a rental permit be applied for and that would be a condition and that any residential usage be one family only.

Ms. Na: Let me clear one of the issues. Last time I was here to apply for a mixed use but when the kitchen had the issue so we withdrew this application. And then for the judge, unfortunately that day I didn't attend so I really, not intentionally, but I really don't know the difference of one-family use and one-family rental permit. So that's why today I'm here and then I heard about this house has to be applied for one-family use. My understanding before, that's why I made this mistake, is if I use as mixed use, this is commercial mixed use I need to apply to the Board. So when we withdrew back to the one-family I thought it would be ... just need to apply for a one-family rental permit, so we did, we already did. And unfortunately I just misunderstand one-family use permit and one-family rental permit.

Mr. Smith: Well, we'll deal with that at the City court.

Ms. Na: Yes, I already applied for one-family rental permit.

Mr. Smith: Well. I can't do anything to give you...

Ms. Na: Yes, that's why we are eager to get this permit from you. And the other thing is for one-family we already applied for and fortunately we got one family, it is one family and today, because of this situation, we already have one notice, it says violation and we found one family, in fact, the family is here and they are very nice people and they have their difficulties because they lived in one house and the owner sold that house so immediately they don't have the place, in a very short time and the mother is working with the church and she probably doesn't speak English but her daughter is... and the church is nearby that place. So the family have 5 members and this is the mother and the daughter so they are just very eager and they don't have place to live so at that moment we are trying to help them and say ok, we are already applying for a one-family rental permit so we didn't know we need this Board and that's why I'm here.

Mr. Smith: City in its kindness did not condemn the building. We could have.

Ms. Na: I know, we already have the sign so that's why we are here; really, please just help us resolve this problem. Now I really understand. First I need a permit of one-family use and then to rent this one, also a one-family rental permit.

Mr. Naumchik: So you only have two people living in this big house?

Ms. Na: No, now it's one family.

Mr. Naumchik: How many people?

Ms. Na: Five. Let her daughter speak a little bit if you can.

Mr. Smith: Well I think, if I heard the Planning Board members right, you want to let DPW take care of whether it's a family or not a family. That would be a part of the rental permit. Now, I mean the Planning Board has a jurisdiction; if you want to get into this and demand proof that this is a real family, I mean the Planning Board has a jurisdiction. I'm just saying DPW does this all the time and rather than taking a proof here and requiring driver's licenses and marriage certificates and...

Mr. Thorn: Personally, I'd rather not get into this. I think this is for us...

Mr. Smith: It can be tricky.

Mr. Thorn: Is it functionally a single family house or we are just confirming it's a single family house; is that what we are doing here?

Mr. Smith: Yes, yes. If you approve this, you are giving an approval for a single family residence. When DPW issues the permit, they will determine whether or not it's really a single family and again, it can be very time consuming, they sometimes require documents, licenses, voter registrations, I mean they go through a whole process to determine whether it's really a family or not.

Ms. Hewson: So there was some concern about the house itself when they appeared before. I know you were going to originally have an office on the first floor but there were concerns about number of bedrooms, that there was no living room, no kitchen, we don't have to get into any of that?

Mr. Smith: Well no because now they are going to use both floors. I mean we have a one family on both floors so I can't imagine that Walter would have an objection to that. His objection stemmed from the fact that they were going to have a business on the first floor that was going to obstruct the family usage.

Ms. Hewson: And you mentioned something about it could have been condemned – is there a working bathroom?

Mr. Smith: It could have been condemned because it's right now being used illegally.

Ms. Hewson: I see.

Mr. Smith: But we are trying to exercise our discretion and not put people on the street unless there is some sort of safety or you know, hazardous conditions.

Ms. Hewson: Right, ok.

Ms. Na: Yes, they are very nice people and we are very good citizens to be honest. I just try to obey the law so that's the purpose today.

Mr. Naumchik: I was just concerned about the 3 family rooms on one floor. That was my only concern.

Ms. Na: They have 4 bedrooms and 3 1/2 bath.

Ms. Hewson: The rental permit will...

Ms. Na: We already applied.

Ms. Hewson: The rental permit and the inspection will address security and locking doors because there were security and locking door issues.

Mr. Smith: Well it won't be now because it's a single family.

Ms. Hewson: That's true too.

Mr. Smith: There better not be any locking doors.

Ms. Na: No.

Mr. Capozella: The rental permit addresses safety.

Ms. Hewson: Ok.

Mr. Smith: Right. And there will be yearly or bi-yearly inspections.

Mr. Thorn: Can we add that to the resolution?

Mr. Capozella: Yes.

Mr. Capozella opened public hearing.

Mr. Petrozak: Good evening, Adrian Petrozak, 78 Highland Avenue. Our property abuts this property from the Highland Avenue side so I'm sitting here all evening, I still don't quite follow 100 percent what the usage is. My understanding is that the intent is just a single family; is that... so it's one family with no rental. Is there a potential for future rental?

Mr. Smith: They are the owners. They are going to rent to a single family.

Mr. Petrozak: Ok, I got you. So the house will be rented. The owner lives...

Mr. Smith: Somewhere else and that why they have to have a rental permit.

Mr. Petrozak: I see. Ok, that clarifies it.

Mr. Higbie: And in the rental requirements of the City there are certain things that they have to... you know, the house has to be inspected, they will have to have somebody on call if there is ever a problem, the City does have requirements for landlord and you know...

Mr. Petrozak: I see, ok.

Mr. Higbie: Even for a single family.

Mr. Petrozak: Ok because I heard previously, and I know it's a moot point now but I heard the real estate office...

Mr. Higbie: Yes, there were couple of different things they came with, a kitchen store and all this.

Mr. Petrozak: Ok. I do have one request; there is an in-ground pool on the property, it is covered but it's not currently opened for the season. I would asked that maybe it be maintained, it tends to... right now it's just a green pond and I'm concerned about mosquitos and my son is getting over Lyme disease so we are a little touchy about things like that.

Mr. Capozella: I think that will be part of the DPW inspection.

Mr. Petrozak: Ok.

Mr. Smith: Yes, this will be subject to DPW approval.

Mr. Petrozak: Thank you.

Mr. Smith: They will inspect the whole property and if they don't you can make a complaint to them.

Mr. Capozella: Anyone else from the public wishes to step forward?

No one came forward and Mr. Capozella closed public hearing.

On motion of Mr. Thorn and seconded by Mr. Higbie to approve the application of Erqian Na, Hongwei Wu, Jianhong Xiong for a single-family residential dwelling located at 65-67 Wickham Avenue. This approval is contingent on the applicant obtaining a single-family rental permit and on the approval of the Department of

Public Works and Fire Department if necessary.

Roll Call Ayes: Steven Sisco, Paul Thorn, Nicole Hewson, Dan Higbie, Anthony Capozella, John Naumchik.

Mr. Capozella: See Mr. Welch from the DPW.

Ms. Na: Thank you so much.

Carmen Terrero

267 North Street

Waiver of the 1st floor commercial use requirement (2-family dwelling in a C-2 zone)

Ms. Terrero handed in proof of mailing.

Mr. Capozella: How are you doing this evening?

Ms. Terrero: Good evening. My name is Carmen Terrero, I'm the owner of 267 North Street. (*Ms. Terrero continued in Spanish*)

Mr. Smith: Are you going to translate?

Mr. Felix Ramirez: Yes.

Mr. Smith: Ok, somebody's got to translate.

Mr. Capozella: We were little confused there. I'm sorry.

Mr. Ramirez: She said that she's here because she is applying for a permit for a two-family house on 267 North Street.

Mr. Smith: How long have you owned the house?

Mr. Ramirez: For a little more than 2 years.

Mr. Smith: Unfortunately Walter's not here. Does anybody know what this place was before then?

Mr. Capozella: This doesn't say past usage. Two-family house in a C-2.

Mr. Ramirez: She said that when she bought the house she bought it as a two-family house and nobody told otherwise that it wasn't a two-family house. When the inspector went to inspect the house, he notified her that the City was requesting to turn the house into a one-family instead of two and that the bank has the house for about 7 years so the house was unoccupied for more than 7 years.

Mr. Smith: Oh, so that was going to be my next question. When you bought the house was there anybody living there?

Mr. Ramirez: No.

Mr. Smith: And that's why 1st floor has to be commercial. Does anybody know where exactly this is, 267 North?

Mr. Thorn: It looks like a house, it doesn't look like something that was a commercial.

Mr. Capozella: Its' mostly houses, there is a church right there, down the street from them there is a deli down the street but that's closer to North and Wickham.

Mr. Smith: What intersection is this here?

Mr. Ramirez: She is saying that the area is mainly residential, like you said, there is a church and there is a playground around there.

Mr. Capozella: It's technically; it may be a quarter of mile of Park Circle, on the same side as Park Circle Liquor.

Mr. Smith: So it's surrounded by quite a few residences.

Mr. Higbie: Oh yes.

Mr. Naumchik: It doesn't look like there is a driveway or anything.

Mr. Smith: Chances are it's never been used as a commercial.

Mr. Capozella: Is there a driveway on both sides of the house that is used by the occupants?

Mr. Ramirez: Yes.

Mr. Capozella: It's hard to tell. There is a driveway on one side, on the other side it looks like a small porch, it's difficult to tell.

Mr. Ramirez: She has a driveway that fits like a one car and then the other one fits like 4 or 5.

Mr. Capozella: Yes. That's about right. I drove by it.

Mr. Naumchik: The only thing I was concerned about is 4 bedrooms on the bottom floor, on top there's only 2 bedrooms. It's pretty big.

Mr. Capozella: It's an old house, pretty big.

Ms. Hewson: How many square feet is the house?

Mr. Ramirez: She doesn't recall.

Ms. Hewson: Approximately?

Ms. Terrero: I have no idea.

Mr. Smith: Mr. Kleiner, this is your ward, isn't it? Has there ever been a commercial establishment in that house?

Mr. Kleiner: Not that I know of.

Mr. Smith: That goes back... that's gonna cover about 50 years.

Mr. Kleiner: Yes.

Mr. Naumchik: I guess it is a larger house because it has a living room and the kitchen.

Mr. Capozella: If these dimensions are accurate it's a large house. It's an older, large house.

Mr. Smith: How do you get ingress and egress to the second floor? Is it an inside stairway?

Mr. Ramirez: Yes, inside.

Mr. Smith: Of course, if the Planning Board approves this you have to get a rental permit, like we told those other people.

Mr. Ramirez: Yes, the inspector said that she has to get your approval first.

Mr. Capozella opened public hearing. No one came forward and Mr. Capozella closed public hearing.

On motion of Mr. Naumchik and seconded by Mr. Sisco to approve the application of Carmen Terrero for a waiver of the 1st floor commercial use requirement in a two-family dwelling located at 267 North Street. This approval is contingent on the applicant obtaining a two-family rental permit and on the approval of the Department of Public Works and Fire Department if necessary.

Roll Call Ayes: Steven Sisco, Paul Thorn, Nicole Hewson, Dan Higbie, Anthony Capozella, John Naumchik.

Mr. Capozella: Thank you very much. See Walt Welch from the Department of Public Works.

Ms. Terrero: Thank you.

Mr. Capozella: Just before I adjourn, Martina, just want to make sure for the record Mr. Welch was here but had to go home ill.

Adjourned 9:05PM

Respectfully Submitted,

Martina Ju, Clerk