

**CITY OF MIDDLETOWN
PLANNING BOARD
MINUTES**

April 05, 2023

A meeting of the Planning Board was held in the Common Council Chambers, City Hall, 16 James Street, Middletown, New York on April 5, 2023 at 7:00 P.M., Mr. Anthony Capozella presiding.

Members Present: Anthony Capozella, Richard McCormack, Gretchen Witt, Nicole Hewson, Dan Higbie, Dave Madden, Andy Britto.

Other Attendees: Richard J. Croughan, Planning Board Attorney; Walter Welch, Building Inspector; John Szarowski, Planning Board Engineer.

The Pledge of Allegiance was said.

Motion to approve the March 1, 2023 minutes by Mr. Britto, seconded by Ms. Witt.

Motion passed. Minutes approved.

Mr. Capozella pointed out that all first-time applicant appearances are considered a preliminary hearing and the Planning Board may or may not chose to act or vote on those applications tonight.

**No action on Notice of Intention
Twin Towers Middle School Modernization Project**

Mr. Capozella: This is for the Twin Towers Middle School Modernization Project by the Middletown School Board.

Is anyone here tonight to represent them? No? Okay. Not that they really have to be.

Ms. Hewson: I'll just say for the record I'm a Board member of the Enlarged City School District of Middletown; however, this is, like our Chairman said, it's a non-action item, but I just for transparency's sake wanted to make that known. Thank you.

Mr. Croughan: Just when it came time to vote, Nicole, maybe recuse yourself.

Ms. Hewson: I didn't think there was a vote at all because it's a school district, so yeah. I absolutely would recuse myself 100 percent.

Mr. Croughan: There is a vote tonight, and it's to say that we're not taking an action.

Ms. Hewson: Oh, okay. Of course, I will recuse myself.

Mr. Croughan: And it authorizes the Chairman to sign on behalf of the Planning Board.

Ms. Hewson: Thank you. Should I remove myself from the --

Mr. Croughan: No.

Ms. Hewson: Okay. Thank you.

Mr. Croughan: You're welcome.

Mr. Capozella: Just a little background. This is for a construction project at the Twin Towers Middle School. All right.

The City of Middletown Planning Board hereby Consents and Authorizes the Chairman to sign the Notification on behalf of the Planning Board that the Board of Education of the Enlarged City School District of Middletown serves as Lead Agency for this Action and requests that the City of Middletown Planning Board continue to be notified on filings and hearings on this matter.

Motion by Mr. Madden, seconded by Ms. Witt.

Roll Call Ayes: David Madden, Richard McCormack, Andy Britto, Gretchen Witt, Dan Higbie, Anthony Capozella.

Recused: Nicole Hewson.

Mr. Croughan: And here is the application to be completed that you were just authorized to sign on behalf of the Planning Board.

Mr. Capozella: I'll sign this this evening and give it to our clerk.

**Polycraft
36-60 Industrial Place Ext.
6-month extension letter**

Dear Chairman Capozella:

It is our understanding that the site plan approval for the above reference project will shortly expire. Since the approval was granted, the applicant has been working with an architect to finalize proposed printing plant addition. We respectfully request being placed on the next Planning Board agenda for the extension of our site plan approval. If you have any additional questions or comments, please don't hesitate to contact us.

Ross Winglovitz, Engineering Principal

Mr. Capozella: Any questions?

Mr. McCormack: I have a question. I'm sure this has been answered. I apologize. How many extensions does a project get?

Mr. Capozella: There is no limit.

Mr. Croughan: No, there's not.

Mr. Capozella: But every six months --

Mr. Croughan: Provided they make the application.

I have a question. It says the proposed printing plant addition. Is that what was initially approved? It's not something they're adding?

Mr. Capozella: Well, the problem was there's an existing building there that they're building around, so they probably consider it an addition.

Mr. Croughan: Okay.

Mr. Capozella: If it was an entire warehouse of 72,000 sq.ft. --

Mr. Croughan: As long as they're not changing the approved site plan.

Mr. Capozella: He did not indicate that he was going to change any site plan. He just wants the approved site plan approval to extend.

Mr. Croughan: Okay.

Mr. Capozella: That's how I read it. If there's any other, you know, questions, we'll contact them.

Motion to extend by Mr. Madden, seconded by Mr. Higbie.

Roll Call Ayes: David Madden, Richard McCormack, Andy Britto, Gretchen Witt, Nicole Hewson, Dan Higbie, Anthony Capozella.

**Dunkin' Donuts
2-8 James P. Kelly Way
Amendment of the site plan**

Mr. Szabo: Good evening. Zack Szabo, Engineering & Surveying Properties. I'm here for the applicant, SB Dolson Realty, LLC.

We were in front of the Board about two years ago for the initial application. This is a site plan amendment. The original plan was accepted and approved back in the beginning of 2022. Since then, there has been some DOT revisions, the water main issue that I'm sure everyone here knows about, and then our applicant came back to us and requested to remove 11 spaces on the north side of the proposed Dunkin' Donuts.

Now, the project as is was proposing I believe it was 44 spaces. With the removal of this 11 spaces, we're providing 33 now, which is still way over parked per the Code of the City of Middletown. I believe six spaces is required for this facility, so we're just -- we're way over parked at this point.

For future development, the applicant would like to remove these 11 spaces to give himself a little bit more space on that north side for future development of that lot later on.

Mr. Capozella: That's fine. Ms. Tu, do we have the mailings?

Ms. Tu: Yes, we do.

Mr. Capozella: Okay. Then I'm going to open the public hearing. Anyone present wishing to speak toward this application, please step forward.

The public hearing was opened.

Mr. Capozella: Ms. Tu, do we have anyone on the telephone?

Ms. Tu: No one on the telephone.

Mr. Capozella: Do we have any written comments?

Ms. Tu: No written comments.

Mr. Capozella: I'll go to the Board then. Anyone from the Board have any questions, comments, or concerns?

Ms. Hewson: Just curious. What kind of future development are they considering?

Mr. Szabo: At this time, I haven't seen anything. I know the applicant would like to save a potential retail space in that area. Right now, there's nothing really in the works.

Mr. Croughan: John, does the change affect anything?

Mr. Szarowski: There's plenty of parking on the site. The spaces are technically in the Town of Wawayanda, and they have actually already reviewed this project and it's already gone to County Planning. I believe -- did we refer it to County Planning as well?

Mr. Capozella: Yes.

Mr. Szarowski: Okay.

Mr. Capozella: We got the response. No recommendations.

Mr. Szarowski: Okay. So, I mean, this has no effect. It's a future parcel technically in the Town of Wawayanda.

Mr. Croughan: It doesn't change water flow or anything?

Mr. Szarowski: No. It's just elimination of six or 11 spaces. We're well above the required number of spaces for the site.

Mr. Croughan: Is that area going to remain paved where the 11 spots were going to be?

Mr. Szabo: I believe that it is going to be topsoiled, and it's going to be grass now. In the future, it may become pavement.

Mr. Croughan: Okay.

Mr. Szabo: But that will be under a separate cover for stormwater.

Mr. Capozella: I'll go back to the public. Anyone here wishing to speak, please step forward.

Okay. I'm going to close the public hearing and present a resolution.

The public hearing was closed.

Mr. Croughan: We have the letter back from the County, and that's part of the record.

Mr. Capozella: Yes. The clerk has it from the County. Yes. We have the Planning Board Engineer's comments done.

Mr. Croughan: Okay.

Mr. Capozella: And Wawayanda made no recommendations or comments.

The City of Middletown Planning Board is in receipt of the amended site plan for 2-8 James P. Kelly Way.

Whereas: The amended site plan has been sent to the Town of Wawayanda, the County of Orange, and the Planning Board Engineer for review and comment, all parties had no further comments and/or recommendations.

Therefore, the City of Middletown Planning Board will maintain Lead Agency status and agree that no change in the project to effect the neg dec determination and that no further action be taken.

Motion by Ms. Witt, seconded by Ms. Hewson.

Roll Call Ayes: David Madden, Richard McCormack, Andy Britto, Gretchen Witt, Nicole Hewson, Dan Higbie, Anthony Capozella.

Angie Cruz Garcia
105 Academy Avenue
Retail store

Ms. Garcia: Hello.

Mr. Capozella: How you doing?

Ms. Garcia: Good. How are you?

Mr. Capozella: Please state your name for the record.

Ms. Garcia: Angie Cruz Garcia.

Mr. Capozella: And tell us about what you're doing.

Ms. Garcia: So I'm here to tell you a little bit about the store. It's called Angie Beauty Store, and it's a women's apparel and accessories, and we're just going to provide a lot of like Colombian clothes and some like girdles and like some body shapewear for women, and yeah. That's pretty much it.

Mr. Capozella: That's great. Thank you.
Ms. Tu, do we have the mailings?

Ms. Tu: Yes, we do.

Mr. Capozella: Then I'm going to open the public hearing. Anyone present wishing to speak on this application, please step forward.

The public hearing was opened.

Mr. Capozella: Anything in writing, Ms. Tu?

Ms. Tu: Nothing in writing.

Mr. Capozella: Anybody on the telephone?

Ms. Tu: No one on the telephone.

Mr. Capozella: We'll go to the Board members for any questions, comments, or concerns.

Our inspectors have been to this property and let us know that everything is up to snuff. Are there any other questions for the applicant or in general?

Mr. Croughan: Mr. Welch, any concerns?

Mr. Welch: None whatsoever.

Mr. Croughan: Thank you.

Ms. Witt: So your hours are going to be from Monday to Sunday from 8:00 a.m. to 10:00 p.m.?

Ms. Garcia: Yes.

Ms. Witt: Okay. So every day.

Ms. Garcia: Yeah.

Ms. Witt: Okay. And it'll be just yourself or --

Ms. Garcia: No. I'm going to have some help too.

Mr. Madden: No concerns about parking around that facility? I mean, it's not the DMU, so we don't --

Mr. Capozella: Right. At that point in time, we have our discretion. There is some parking around the facility for the apartments and very limited for the business, but there is street parking, but yes, we have that discretion since it's outside the DMU.

Okay. I'm going to go back to the public. Anyone from the public wishing to speaking the application, please step forward.

I'm going to close the public hearing. One more time to the Board. Any questions, comments or concerns?

The public hearing was closed.

Ms. Hewson: Just a comment that it's nice to see this property getting a business in it because I think this one's been in front of the Planning Board quite a few times for residential.

Ms. Garcia: Thank you.

Mr. Madden: Do we need to waive parking? No? There's ample parking.

Mr. Capozella: Well, the Planning Board's discretion would be there's ample parking.

Mr. Madden: Okay.

On the resolution for 105 Academy Avenue, retail store, women's apparel, accessories, and body shapewear. Hours of operation, Monday through Sunday, 8:00 a.m. to 10:00 p.m. Subject to City of Middletown DPW and City of Middletown Fire Department inspections and approvals and, when necessary, approval of the Commissioner of Public Works. The applicant will obtain all necessary permits and follow the permitting process, codes, and ordinances of the City of Middletown, County

of Orange, and the State of New York, if applicable.

In addition, if throughout any of the review process the project is deemed to require Bulk Requirement Tables, the applicant will supply said tables through an architect or engineer licensed in the State of New York.

Whereas, pursuant to the City of Middletown Code, Chapter 475, Article 4, Administration and Enforcement, Section 475-53, Paragraph E-6, unless work is commenced and diligently prosecuted within six months and completed within two years of the date of granting a Special Use Permit, such Special Use Permit shall be null and void. If no work is done in the next six months, you need to send a letter or let the Board know that you're going to extend your approval.

Motion by Mr. Britto, seconded by Mr. McCormack.

Roll Call Ayes: David Madden, Richard McCormack, Andy Britto, Gretchen Witt, Nicole Hewson, Dan Higbie, Anthony Capozella.

Lepore R. H. LLC
108-110 Sprague Avenue
Off-site cleaning service

Ms. Libolt: Good evening, Mr. Chairman. I'm Kelly Libolt with KARC Planning Consultants. I represent the applicant who's unable to be here this evening. They are proposing to utilize the existing building that's located on that property, there's actually two parcels, for an off-site commercial cleaning service. I believe this use is specially permitted and requires site plan approval as well under your Code.

We've provided you with the application materials, and I'm here to answer any questions that you have.

Mr. Capozella: Great. Ms. Tu, we have the mailings?

Ms. Tu: Yes, we do.

Mr. Capozella: Okay. Then I'm going to open the public hearing. Anyone present wishing to step forward and comment on this application?

The public hearing was opened.

Mr. Capozella: Ms. Libolt, just step to the side and let the public make a comment.
Just state your name for the record, please.

Ms. Ives: Good evening. My name is Jo-Ann Ives. This is my husband, George Cudney. Our concern is exactly what kind of off-site cleaning service is this?

Mr. Croughan: What's your address? I'm sorry.

Ms. Ives: 112 Sprague Avenue, right next door.

Mr. Capozella: Please ask the question again.

Ms. Ives: What kind of off-site cleaning?

Mr. Cudney: Are they going to have chemicals stored there?

Ms. Ives: Exactly what is it going to be used for?

Mr. Capozella: Good question. Yes. It's a cleaning service.

Ms. Ives: What kind of cleaning service?

Mr. Capozella: It's --

Mr. Croughan: Commercial.

Mr. Capozella: -- commercial cleaning. Interior, exterior. The whole point of this is that their equipment is not supposed to be stored outside, only their parked cars, employees; okay? Everything else on this property needs to be inside of the building, so whatever equipment they use for -- they have a light landscaping business and they have a cleaning service. All those vehicles need to be parked inside; okay? I have a resolution from the Common Council. They changed some zoning there to make sure that this would be appropriate to fit the area and that nothing would be outside.

Mr. Cudney: Well, the last one we asked are you going to have chemicals there, and we were told no chemicals stored there.

Mr. Capozella: Okay. I don't know what that's about and who said that to you, but there's a cleaning service. They're going to have chemicals.

Mr. Croughan: The applicant can answer that.

Ms. Ives: Well, last time to get it through, they said no.

Mr. Cudney: At the last meeting, they said --

Ms. Ives: We are on a brook.

Mr. Croughan: The applicant.

Mr. Capozella: What last meeting was that?

Ms. Ives: To change the zoning.

Mr. Cudney: To change the zoning. There was going to be no chemicals there.

Ms. Ives: They said absolutely none. We are on top of a brook.

Mr. Capozella: Yes. We know that.

Ms. Ives: My land is right next door to it.

Mr. Capozella: Ms. Tu, do you have the other page to this resolution?

Ms. Tu: (Inaudible).

Mr. Capozella: No? Saving paper.

Mr. Cudney: They said it was going to be maintenance on buildings and stuff, no chemicals. That's what they said when we came up the last time.

Ms. Ives: They said only a vehicle, no chemicals.

Mr. Capozella: That's not what the resolution says.

Mr. Croughan: Are you talking about what the applicant said or what the City Common Council approved?

Ms. Ives: The City Common Council.

Mr. Cudney: That's what they told us.

Mr. Capozella: Do you see that statement in that resolution?

Mr. Croughan: No.

Mr. Capozella: Okay.

Mr. Croughan: What it said is off-site commercial cleaning services but only in that C-2 Zoning District bounded by Sprague Avenue, Sterling Street, Academy Avenue, and Genung, and further provided that all services must be provided off-site, and all large equipment must be stored inside a structure as per the direction of the Planning Board. That's all it references.

Ms. Ives: Well, that's not what we were told.

Mr. Croughan: But this is what's approved, and this is what the Board can work with.

Mr. Capozella: So just so you know, we have a member of the Common Council here who wishes to speak. Could we give him just the time to --

Ms. Ives: Well, we have more questions also.

Mr. Capozella: That's okay.

Mr. Witt: Good evening, Mr. Chair. I really wasn't prepared to --

Mr. Capozella: Just state your name for the record.

Mr. Witt: Oh, I'm sorry. My name is Kevin Witt. I am an Alderman in the First Ward.

Mr. Capozella: Okay.

Mr. Witt: And I believe the conversation that these folks are talking to was a question that was answered by Council President Rodrigues during the questioning that they had. I cannot tell you verbatim what that conversation is, but I'm pretty sure that it would probably be in the minutes.

Mr. Capozella: Okay.

Mr. Witt: That's all I wanted to just say.

Mr. Capozella: All right.

Mr. Witt: But the rest of it, the zoning part and everything, we definitely approved, but these folks asked this question, and that was the answer -- an answer. Again, I can't tell you exactly what was said, but Council President Rodrigues was the one who answered that question for them.

Mr. Capozella: All right.

Ms. Ives: He's the real estate man.

Mr. Capozella: Thank you for that comment, and we'll let the public continue with their questions.

Mr. Witt: Thank you.

Mr. Capozella: We have some things we add to this, so please continue.

Mr. Cudney: We're just worried about the chemicals because we live right next door.

Mr. Capozella: We understand.

Mr. Cudney: And that's been underwater twice, so you know, we don't want the chemicals coming to us.

Mr. Capozella: We fully understand that.

Mr. Cudney: The brook is right behind it, so --

Mr. Capozella: Yup. So do you have another questions?

Ms. Ives: What is a Special Use Permit?

Mr. Capozella: What is a Special Use Permit?

Ms. Ives: What is it? It says a Special Use Permit. What is that exactly?

Mr. Capozella: It's allowance of their use.

Mr. Croughan: Of a use within the Zone.

Ms. Ives: And what kind of equipment? Like is it going to be heavy equipment, vans? What?

Mr. Capozella: The only thing that we are aware of is they have a ride-on cleaning machine like to clean floors, like a vacuum, sucks it up, sweeps it up. They do have one -- we were shown a picture of a --

Mr. Croughan: Excavator.

Mr. Capozella: So they call it a skid steer; okay? That's supposed to be put inside the building also. That's the largest piece of equipment that we're aware of.

Mr. Croughan: I believe the applicant can maybe address that. Can you please address those two concerns raised?

Ms. Libolt: I can. You consistently listed the equipment that is anticipated, which is a small piece of equipment used for landscaping, that's a skid steer, and then some of the equipment that's used inside of buildings, you know, to vacuum up water, wastewater, fans and so forth, etc.

With respect to the cleaning products that are utilized on-site, they're classified as grey water, and so for those of you who know what grey water is, it's cleaning products that are biodegradable or biocompatible, and they're free of salt, sodium compounds, boron, borate and borax, and chlorine bleach, so this is just readily available documents that I printed. I can hand those out to you.

So all of the cleaning products that will be stored on-site, they're not hazardous. They're classified as grey water cleaning products.

Mr. Croughan: Mr. Chairman, you could add that to the resolution if you desire, nonhazardous grey water.

Mr. Capozella: Well, we have within the resolution that any type of chemical stored here will be approved and maintain a plan to maintain spills, if any, by the Middletown Fire Department. So they will know of any and all chemicals that are in this building; okay?

We are well aware that there's the brook there, the waterway. We're well aware of it. We made them comply to spill and containment methodologies that will be approved by our Planning Board Engineer, Commissioner of Public Works, and the Fire Department, so we understand your concerns, and I hope we've addressed them. That's the best I can do.

Ms. Ives: No, not really, because the whole point was there was no chemicals, and we were told that.

Mr. Cudney: We asked that --

Mr. Capozella: Unfortunately, I'll be honest with you, I have no record of that, and I was only handed a resolution that I have to follow.

Ms. Ives: I'm totally against it. We have animals, and we are right next door. Our borders are right there.

Mr. Croughan: If you could just come up to the mic.

Mr. Capozella: Oh, yeah. I'm sorry.

Ms. Ives: Well, I think that this whole thing, apparently they zoned it because they wanted to, and they changed the zoning under false pretenses. That's my number one concern, and I don't see how you can allow to have chemicals when we are residential right next door. We have animals. We have our lives there, and there's a brook, so if there's going to be any equipment that's going to be going in the back of it, there's another brook right there.

Mr. Capozella: There will be no equipment in the back of it. It'll be stored inside the building. They can't even park in that area.

Ms. Ives: And how many employees will there be, because there's no parking on the street because every other business has come in there.

I am very displeased because across the street there was supposed to be one business, and now there's three businesses, so I do not want that to happen this time. We have to be concerned

about where we live, and this is unfair to us.

Now, I don't see any members here that were here last time, but three assured us there were no chemicals. Now there is, and this is very unfair that they changed the zoning for this building to go in there.

Mr. Capozella: Keep in mind none of these Board members would be there. They're not from the Common Council.

Ms. Ives: Well --

Mr. Cudney: We even stayed after and talked to them, and they said no chemicals.

Mr. Capozella: Well, that was not relayed to us.

Ms. Ives: Well, maybe it should've been, and it should be in the minutes that we brought it up, and they said absolutely not, so -- do you want to say anything else?

Mr. Cudney: No.

Ms. Ives: Well, I find a conflict of interest that the real estate man was Mr. Rodrigues, and I do not believe that this should be happening because now he's got a business going in there. Unfortunately, there was an untruth told about the chemicals.

Mr. Croughan: I just have to interrupt you. I'm sorry.

Ms. Ives: Go right ahead.

Mr. Croughan: It's not relevant to this Board. We understand what you're saying.

Ms. Ives: Of course, it's not.

Mr. Croughan: But the Board can only deal with the application that's before us.

Ms. Ives: Of course.

Mr. Croughan: Thank you.

Mr. Capozella: Thank you for your comments though.
Anything else, Ms. Libolt, you want to share with us?

Ms. Libolt: No. Thank you, Mr. Chairman.

Mr. Capozella: Okay. The public hearing is still open. I'm going to go to the Board for questions, comments, or concerns.

Ms. Hewson: What was the suggestion that you made, Mr. Croughan? Would you mind repeating what you said about putting a stipulation in?

Mr. Croughan: I believe the proposed resolution has comment about the type of chemicals or product that can be stored there where it would have to be approved by the Middletown Fire Department. That's more geared towards the containment issue.

Ms. Hewson: Okay. And for the record, was there a SEQR form filled out for this?

Ms. Libolt: Yes, ma'am.

Ms. Hewson: Oh. I see the short form. I apologize.

Ms. Libolt: Yes, ma'am.

Ms. Hewson: I must've skipped over that when I was looking earlier.

Ms. Witt: I have just one question about your form, Ms. Libolt. On page 3 on number 20, you state has the site been a proposed action or the property been the subject of remediation ongoing or completed for hazardous waste, and you marked yes, and you said spill site closed by New York State DEC. Can you give us more information on that, please?

Ms. Libolt: Yes. Let me just see if I have the attachment.

Mr. Croughan: John, did you want to comment on that?

Mr. Szarowski: If I could speak to that. That's actually a parcel or a lot down the road that they're just in the spill -- the radius of the search that would show up on the databases. It's not actually at the site itself. It's just nearby.

Ms. Libolt: What happens when we populate that documentation, DEC automatically fills in --

Mr. Szarowski: When you go to the DEC website, it just fills out the form for you, and if it's in a certain radius, it will flag that, but it's not actually at the site.

Ms. Witt: Okay.

Mr. Szarowski: It's down the street.

Ms. Witt: Okay. It just makes it confusing because it makes it misleading, like on your part, like being the client, you know.

Ms. Libolt: Yeah. Unfortunately, DEC really doesn't like it when we change the form, so we could force a change, but we thought that it's best to provide the factual.

Mr. Szarowski: Yeah. And, in fact, if they had forced a change, the back pages that come with it would actually still show it, so the answer to that question is that this is not the parcel that's impacted by the spill. And the spill has been remediated as well, so this is already taken care of. It's just in the database.

Ms. Hewson: I have a question about the SEQR form as well. On question 12, it asks about whether or not the property is related to an archaeological or historical site, and it says yes. Could you go into detail about that, please?

Ms. Libolt: So similar to the response that we just had is the same scenario, so when we populate the site, there must have been a historic property in the neighborhood, not this particular property, that comes up as being listed on the register.

Mr. Szarowski: Again, just in the search radius, and anything over 50 years old now is included, so the whole City of Middletown now is basically historic zone. My mom's house, the 1964, you know, little ranches, is a historic home.

Mr. Capozella: Yes. Yes, sir.

Mr. Madden: Is it possible that we could ask the applicant to store any of these chemicals that we do approve for their use above ground level in the case of a flood situation?

Mr. Higbie: Or in some kind of secondary containment system or -- and I would like to know what your comment is, like were you at that meeting that your neighbors --

Ms. Libolt: I was not.

Mr. Higbie: You were not. Okay.

Mr. Capozella: I haven't read it yet, but we have within this resolution a spill control and containment must be maintained and approved by our Engineer, the Commissioner of Public Works; all right? So we thought about this.

The only thing that I might want to add is that could you define -- you said grey water. Could you define what that is?

Ms. Libolt: Yes. I can provide you with this documentation and just leave it here with you, and this is just generically off of the internet. And so grey water is -- it contains products that are biodegradable, biocompatible, and they're free of salt, sodium compounds, boron, borate, and borax.

Mr. Capozella: Okay. Because what we're trying to formulate here is to make sure that -- we're unaware of a situation, all right, so we have several codicils here to make sure that this property is protected.

Ms. Libolt: Yes.

Mr. Capozella: Okay? What we were going to add, you know, that no hazardous materials and/or chemicals to be stored on these premises. It's going to be part of the resolution which becomes law to you and your client.

Ms. Libolt: Understood.

Mr. Capozella: Okay? So we don't care what was said anyplace else. This is what we are about, and if we can protect the property, we will.

Ms. Libolt: Understood.

Mr. Capozella: Okay.

Ms. Libolt: And we'll certainly work with the Fire Department and the City Engineer to develop a spill response.

Mr. Capozella: Okay.

Ms. Hewson: I just have another question that I thought of as far as the biodegradable, biocompatible grey water type of materials that aren't hazardous. Are any of them explosive type?

Ms. Libolt: They're not.

Ms. Hewson: Okay. Combustible I think is the proper word.

Ms. Libolt: Combustible, yes. And not hazardous.

Ms. Hewson: Okay.

Mr. Capozella: Any other questions, comments, or concerns?

Mr. Croughan: John, did you review the application?

Mr. Szarowski: I did. I did review the application, and we've been repeating a lot of what I've already said, that any chemicals, any cleaning chemicals, stored there -- now, cleaning chemicals, again, they're going to be handled by people, so these aren't your Part 375 thou shalt not touch chemicals. These are things that you would see in your house. Maybe a slightly stronger solution, but again, biodegradable.

We ask that they all be held, any chemicals, any cleaning supplies, be kept on a containment pad, ideally above the floodplain, because the floodplain in this area is at elevation 501.

Equipment storage should be stored in some kind or on some kind of containment area inside the building, and my understanding is there were no floor drains discovered, but should one be discovered, that all floor drains be capped and sealed so that there is no connection to the creek.

Mr. Capozella: Right.

Mr. Szarowski: And then if any of the chemicals do contain, again, MS-4 sheets, or not MS-4 sheets --

Ms. Libolt: MS-4. MS-D.

Mr. Szarowski: Yeah. Them. They should be kept on-site. They're going to be required anyway as part of OSHA and the employees have to have access to them, but any of those -- I forget where I was going with this.

Ms. Libolt: Be provided and in the spill response program.

Mr. Szarowski: And the spill response, yes. I think that's the bulk of what I had to say. And, oh, bulk chemical storage. If there's anything over 200 gallons that does have a component on the hazardous, any component in there, it would have to then be registered on the bulk storage, chemical bulk storage.

Mr. Croughan: And, John, they haven't supplied a containment plan yet, have they?

Mr. Szarowski: No. I have not seen anything for that, but literally these are just skids that are bought off the shelf from like any supply company. They're just big -- they're just grates, open grates, with containment underneath them, so if something spills, it's kept inside. It doesn't leak out on the floor.

Mr. Capozella: All right.

Ms. Hewson: I have one more question. This was fully residential or commercial in a different way before the zone was changed at the Common Council? What was the zoning for this property?

Mr. Capozella: It was commercial.

Ms. Hewson: It was commercial?

Mr. Capozella: Sprague Avenue is one of those places where residential, commercial, and industrial --

Ms. Hewson: Yeah.

Mr. Croughan: The Common Council just added off-site cleaning services to be permitted in the area.

Ms. Hewson: Okay. Thank you.

Mr. Capozella: Still in the public hearing, so I'm going to go back to the public. Anyone here wishing to speak on this application, please step forward.

I'm going to close the public hearing.

The public hearing was closed.

Mr. Capozella: Board, one more time, any questions, comments, or concerns?

I'll read the resolution. I think we covered our bases. If it's not appropriate, then you can let me know.

On the resolution for Lipore R.H. LLC, 108-110 Sprague Avenue, off-site cleaning service. Hours of operation are Monday through Saturday, 7:00 a.m. to 5:00 p.m. Subject to City of Middletown DPW and City of Middletown Fire Department inspections and approvals and, when necessary, approval of the Commissioner of Public Works. The applicant will obtain all necessary permits and follow the permitting process, codes, and ordinances of the City of Middletown, County of Orange, and the State of New York, if applicable.

In addition, if throughout any of the review process the project is deemed to require Bulk Requirement Tables, the applicant will supply said tables through an architect or engineer licensed in the State of New York.

Whereas: This application is located in proximity of a Middletown waterway, this approval is subject to the Applicant supplying a spill/containment plan for approval of the Planning Board Engineer, Commissioner of Public Works, and any conditions set forth by the Middletown Fire Department.

Whereas: Only equipment related to business may be stored inside the building provided they are code compliant, and parking will be in the area per the plan submitted in the application.

Whereas: Any type of chemicals stored in the building should be discussed with the Middletown Fire Department to make sure proper fire protocol can be maintained and/or planned. There will be no hazardous materials and/or chemicals stored on these premises.

Whereas: All materials should be disposed of properly as to protect the integrity of the watershed

area.

Whereas: This property has been given code specific conditions by the City of Middletown Common Council which will be included as part of this approval. Resolution-Index No: 284-22.

Whereas, pursuant to the City of Middletown Code, Chapter 475, Article 4, Administration and Enforcement, Section 475-53, Paragraph E-6, unless work is commenced and diligently prosecuted within six months and completed within two years of the date of granting a Special Use Permit, such Special Use Permit shall be null and void. If no work is done in the next six months, you need to send a letter or let the Board know that you're going to extend your approval.

Therefore, the Planning Board approves said application.

Motion by Mr. Britto, seconded by Mr. McCormack.

Ms. Hewson: I just have a quick question about the plan. You will be approving the plan, but part of the plan will include the MS -- I'm probably saying it wrong.

Mr. Szarowski: MSDS. They're the --

Ms. Hewson: The sheets.

Mr. Szarowski: -- yeah, the sheets that tell you what's in each solution, that's their cleaning solution, and then any treatments and fire hazards. It's a standard OSHA sheet that has to be on-site.

Ms. Hewson: And there will be pads underneath?

Mr. Szarowski: Yeah.

Ms. Hewson: Okay.

Mr. Szarowski: There'll be containment pads under all the solutions.

Ms. Hewson: Okay. Thank you.

Mr. Capozella: Mr. Szarowski, I have a question. Do we have to declare Lead Agency or declare neg dec because there was a short form?

Mr. Szarowski: That's the Board's option, I believe. You can probably -- I don't know. I mean, this is a Type II action, so you don't necessarily have to go through the full Lead Agency declaration. That's the Board's option.

Mr. Capozella: Okay. Because it was never discussed because of that. Do you recommend that we do or don't? I mean, does it -- it doesn't hurt us if we do.

Mr. Szarowski: Doesn't hurt you.

Mr. Capozella: And it doesn't hurt if we do the neg dec either; correct?

Mr. Szarowski: If you declare Lead Agency and advertise, that delays it by 30 days because they have to have a response. We have to give somebody the chance to respond.

Ms. Libolt: If I could, Mr. Chairman. I believe that this project qualifies as being a Type II action,

which would mean it's exempt from SEQR, and so no SEQR review is required. I'll defer to the attorney and to your Engineer.

Mr. Capozella: Would you agree with that?

Mr. Szarowski: I would agree with that. Yes.

Mr. Capozella: I'm willing to go without it. The Engineer seems to think it's not necessary.
Yes, Mr. Higbie.

Mr. Higbie: Can you just explain, so we're not going to declare Lead Agency because it would postpone them 30 days?

Mr. Capozella: No. It's not necessary to do it. It was a question that came up from my attorney when we were sitting here whether we had to or not. During our discussions for the last 30, 40 days, 50, 60 days, it was not a requirement because of the classification of the property and the SEQR that's involved. It was just a question.

Mr. Croughan: So it's not we're trying to shortcut it. It's not required.

Mr. Capozella: An inquiry. He just asked me the question, and the Engineer just --

Mr. Higbie: Okay. But you said something about the SEQR not -- I mean --

Ms. Libolt: I might be able to explain. It's a little bit complicated, but under the New York State Department of Environmental Conservation, they manage the SEQR process, there's three types of projects, and so initially projects are classified as one of the three. It's unusual the way that they do the numbering system, but a Type II action is the first action, and that's exempt from SEQR, and that's what this project would fall under, and the reason it's exempt from SEQR is because the magnitude of the project falls under the thresholds that are listed in that section.

The next type of project is called an Unlisted Action, so it's sort of in the middle ground, and those are projects that aren't Type I, meaning it requires an Environmental Impact Statement, but they're also not Type II, so it's that big middle ground that most of your projects are Unlisted Actions. A Type I action is the biggest project, which I'm sure you've had before you. Generally, it requires the preparation of an Environmental Impact Statement.

So in this particular scenario, because it is a Type II action, there's no SEQR that's required. The process for doing a Lead Agency circulation isn't necessary.

Mr. Capozella: That's better than I could do. That sounds good. Any other questions?

Mr. Croughan: We're still on discussion.

Mr. Capozella: Still on discussion. Yup. Do we think we covered enough of this to protect the property or the watershed area that was -- that was the main concern that this Board had in the very beginning because we knew where it was.

All right. I'm going to call for the roll.

Roll Call Ayes: David Madden, Richard McCormack, Andy Britto, Gretchen Witt, Nicole Hewson, Dan Higbie, Anthony Capozella.

Idris Sutton
39 Railroad Avenue
Convenience store

Mr. Croughan: Ms. Tu, did the applicant call?

Ms. Tu: (Inaudible).

Mr. Croughan: Mr. Chairman, since the applicant is not here, the application should be withdrawn.

Mr. Capozella: Do we need to vote on it, or can we just withdraw it?

Mr. Croughan: It can just be withdrawn. They're not here to make a presentation to the Board.

Mr. Capozella: Application is then withdrawn.

Mr. Higbie: They'd have to do a whole new application; right?

Mr. Croughan: They would.

Mr. Capozella: They would.

Mr. Croughan: Do new mailings.

Mr. Capozella: New mailings, everything else. Yeah.

Motion to adjourn by Mr. Madden, seconded by McCormack.

Roll Call Ayes: David Madden, Richard McCormack, Andy Britto, Gretchen Witt, Nicole Hewson, Dan Higbie, Anthony Capozella.

Adjourned 7:45 p.m.
Respectfully Submitted,
Diane Genender, Transcriber