

**CITY OF MIDDLETOWN
PLANNING BOARD
MINUTES**

May 03, 2023

A meeting of the Planning Board was held in the Common Council Chambers, City Hall, 16 James Street, Middletown, New York on May 3, 2023 at 7:00 P.M., Mr. Anthony Capozella presiding.

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

Members Absent: Andy Britto.

Other Attendees: Richard J. Croughan, Planning Board Attorney.

The Pledge of Allegiance was said.

Motion to approve the April 5, 2023 minutes by Ms. Witt, seconded by Mr. Higbie.

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.

Mr. Croughan: Mr. Chairman, wasn't there one application where the mailings weren't done?

Mr. Capozella: Yeah. I was going to get to that.

Mr. Croughan: Oh, okay.

Mr. Capozella: He would be second on the -- third on the agenda.

Mr. Croughan: Well, I was just going to say if anyone's here for that, you can advise them now that they're not going to be on.

Mr. Capozella: I can do that. Sure.

Mr. Croughan: Thank you.

Mr. Capozella: Is anyone here for 40 North Street? Okay. [No one came forward or spoke up.] I'll proceed.

**Universal Communications Network Inc./Shen Yun Foundation, Inc.
29-35 North Street
retail store, video recording studio, and offices**

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

Mr. Zhou: My name is Hugh Zhou. I'm President of (Inaudible) Collections. Good evening, ladies and gentlemen.

Very brief regarding this. We are a company to design and help make and sell products inspired from the Shen Yun Performing Arts that tradition spirits.

So we want to convert this building into a department store with one floor for our products for sale, and another floor we want to try to provide the high quality goods for the daily necessities like for everyday life use which can be used for everyday life. So we want to use this opportunity to try to help the local community to contribute a little about the prosperity of the City of Middletown.

This building, yeah, we have this design, and we want to show everyone to try to get approval from you.

Thank you.

Mr. Hu: Good evening. My name is Jian Hu with JH Architecture. I'm the architect for this project.

So basically, this is a three-story mixed use building. This project is a renovation located in mixed use zone currently with a basement used as storage. We tried to propose the basement is still used as storage, ground floor used as retail, second floor used as retail, third floor is some internal office use.

Actually, part of the second floor is also used for some office, internal office use, with a recording studio, small studio for recording.

So basically, that's the renovation.

Square footage for each floor is around 7,800 sq.ft. Third floor is partially roof deck. If you can see the plan, you can find out that third floor is about 4,000 sq.ft. used for internal office space.

We have sprinklers throughout the building, including the basement, ground floor, second floor, and the third floor. No requirements for standpipe.

In the backyard, we have an easement regarding the car loading area. It's already in the deed documents.

So that's briefly about this project.

We don't have -- we don't propose any change for the usage, so the ground floor, second floor, are still Group N regarding the building type, building use group, and above that, the office is Group B.

That's pretty much it for this project. I'll be very happy to answer any questions.

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

Ms. Tu: Yes, we do.

Mr. Capozella: Okay. We're going to open the public hearing.

The public hearing was opened.

Mr. Croughan: Clarification. How much square footage on each floor?

Mr. Hu: Ground floor, we have -- I'm sorry. Basement we have 7,342 sq.ft. Ground floor we have 7,786 sq.ft. Second floor we have 7,786 sq.ft. The third floor we have 4,581 sq.ft., total 27,495 including basement, so that's on the cover page.

Mr. Capozella: Okay. The public hearing is open. Anyone present wishing to speak on this application, please step forward.

Ms. Tu, do we have anything in writing?

Ms. Tu: Nothing in writing.

Mr. Capozella: Anyone on the telephone?

Ms. Tu: No.

Mr. Capozella: Okay. Then we're going to go to the Board for any questions, comments, or concerns. Ms. Witt.

Ms. Witt: I just have a question for clarification. When you folks first came to us to present, it was my understanding they were coming with -- you were going to be relocating your headquarters. That's what I remember from the meeting.

Mr. Croughan: No. I think that's Fulton Street.

Ms. Witt: Okay. Okay. Thank you. That's why I'm saying for clarification.

Mr. Capozella: Ms. Hewson.

Ms. Hewson: Yes. I have a question about the plan for the -- I want to say it's for the second floor.

Mr. Hu: Mm-hmm.

Ms. Hewson: I just happened to notice that -- I'm sorry. It is under the existing third floor plan. There's a greenhouse. Is that a decorative greenhouse, or are you growing anything for -- like a solarium type of greenhouse, or are you growing anything for profit?

Mr. Hu: Third floor? I'm sorry. You said --

Ms. Hewson: Third floor.

Mr. Hu: That's only for internal office, not greenhouse.

Ms. Hewson: Oh, because it says on your plan greenhouse.

Mr. Hu: If you see updated proposed third floor plan marked here as O internal office use.

Ms. Hewson: So you're getting rid of the greenhouse.

Mr. Hu: Yeah. No greenhouse.

Ms. Hewson: Thank you.

Mr. Capozella: Does everybody have greenhouse on your plans?

Mr. Higbie: Well, it's existing.

Mr. Hu: Oh, that's existing.

Mr. Capozella: Okay.

Ms. Hewson: I wasn't clear about the language on there, so thank you. Now I

understand.

Mr. Hu: No problem.

Mr. Capozella: But everyone has on their proposed plan just a roof deck; correct?

Mr. Hu: Yeah. That's roof deck.

Mr. Higbie: Yeah, but they have an office. It says office where the greenhouse was.

Mr. Hu: Yeah. The greenhouse is existing already with interior space we use just as office. We use O as office as much as possible on the third floor.

Mr. Croughan: Do we have hours of operation?

Mr. Capozella: No, we do not. Do you have any idea when you'll be operating?

Mr. Jhou: Operating hours will be 8:00 to 12:00, 8:00 a.m. to 12:00 a.m.

Mr. Capozella: Okay.

Mr. Madden: The existing basement has two staircases, and your proposal is to remove one of those two. There'll be one staircase exiting the basement of 7,000 sq.ft.

Mr. Hu: Since we use basement only for storage, by calculation, by code, it's okay to use only one egress stair to get out.

Mr. Madden: I didn't know if that was a concern for fire safety, you know, if there's only one staircase out of a basement that large.

Mr. Capozella: If approved, obviously it will fall under the Middletown Fire Department privy, and they'll determine whether that's safe or not, and the applicant will have to conform to whatever the Fire Department requires.

Mr. Hu: I'll be happy to provide more information, including calculations regarding the storage. It's about 300 sq.ft. per person occupancy, so by that, using that formula, it's way below the requirements for two exits.

Mr. Higbie: I'm sorry. Can we go back to your hours of operation? 12:00

midnight, there's, I mean, it's a mixed use downtown. There's a lot of apartments on second floors and third floors. I'm just wondering why a retail space and office space you're going to be open till midnight.

Mr. Jhou: It's for like after, you know, after the store closes, you still need to arrange goods, all these kind of things, like (inaudible) time to prepare for tomorrow to open the store for people to come buy products. This is for safe.

Mr. Hu: And employees of mixed shifts; right?

Mr. Jhou: Yeah, yeah.

Mr. Higbie: What's that?

Mr. Hu: Employees of mixed shifts. Some people working in the morning time, some people working in the afternoon, something like that.

Mr. Croughan: Shifts. They would be in shifts.

Mr. Capozella: They're going to run shifts, one or two shifts.

Mr. Lee: Jonathon. Hi. This is an office up on the second floor and the third floor, part of the second floor and third floor. To the public, they're going to close around 8:00, so for the employees, sometimes they prepare for the next day or so. They may be working inside, but they are not open to the public in general.

Ms. Bruni: Maria Bruni, Economic Development, City of Middletown. We have restaurants and bars open till 2:00 a.m. I mean, this is retail and offices, you know. I don't think it's an issue.

Mr. Capozella: Right. It'll fall within the DMU regulations as far as hours of operation.

Ms. Bruni: Yeah.

Mr. Capozella: I think Mr. Higbie was just --

Mr. Higbie: I just wanted a clarification about the retail establishment open till midnight, but now it makes a lot more sense. It's only going to be open till 8:00 or something, and you might have people that, you know --

Mr. Lee: Mr. Higbie, what's the general DMU requirement for this, for the opening hours? Is it -- every time I see you guys, you ask about the same question. Is it required that -- I know it's a bar, if you have a bar, then you have an issue.

Mr. Higbie: 2:00 a.m.

Mr. Capozella: That's only on Friday nights and Saturday nights, and Sunday through Thursday, I believe it's 12:00 midnight.

Mr. Lee: Yeah. So when they say midnight, because I'm thinking that, you know, they are thinking to bring some Christmas spirit to the town, so they are thinking the second floor, it used to be, I'm pretty sure like a lot of old timers know, that there was a Christmas, like in the middle of the staircase, so I'm pretty sure they're going to open during Christmas season for kids to take pictures and stuff, and if they're open at 12:00, that's normal I think in the season; right? This is a department store. They open to the public.

If there is a concern, we can always like adjust the hours.

Mr. Capozella: Well, we'll make sure in the resolution if we get approval, you'll be following the DMU code hours of operation.

Mr. Lee: Okay.

Mr. Capozella: If I'm incorrect, if it's not midnight, if it's 11:00 p.m., then it'll be 11:00 p.m.

Mr. Lee: Thank you.

Mr. Capozella: Any other questions, Board members, that you can come up with, you can think about?

Ms. Hewson: I'm just curious. How many employees will you have total for the whole building?

Mr. Capozella: Did you ever get your survey?

Mr. Lee: Oh, yes.

Mr. Capozella: And we also need that easement for parking. You need to obtain all those documents.

Mr. Lee: I had a contractor who was supposed to do the survey, and then I realized the previous owner had a survey and did spend a lot of money on that. Martina has it, and I did have an agreement with her that she will release it to us for this purpose.

Mr. Capozella: All right. So you will have those documents eventually.

Mr. Lee: Yes. I think Martina would have it.

Ms. Tu: I do have it in the file.

Mr. Capozella: Okay. And we still have the parking easement on file too?

Ms. Tu: Yes.

Mr. Capozella: Okay. And just so we're all aware, because there is, on the proposed second floor plan, it shows a café.

Mr. Lee: Oh, that's an internal thing. No, no. That's for any people coming in, but there's no stove. It's only for --

Mr. Capozella: There will be no cooking?

Mr. Lee: No cooking.

Mr. Capozella: Okay. And that café is just for your customers?

Mr. Lee: Patrons.

Mr. Capozella: Patrons, your customers. Okay. And you'll be serving what at that café? What's your plan?

Mr. Lee: Coffee and tea.

Mr. Capozella: Coffee and tea? That's it?

Mr. Lee: Premade maybe donuts type of thing.

Mr. Capozella: Okay.

Mr. Lee: Pastries.

Mr. Capozella: Packaged goods brought in?

Mr. Lee: Yes.

Mr. Capozella: Okay. Does anyone have any other questions? Does that answer your question, sir?

Mr. Croughan: Well, you have to be careful about being an eating and drinking establishment.

Mr. Capozella: Right. Does coffee and tea and packaged goods push it to the edges?

Mr. Croughan: Yeah. The tea and coffee I would believe so, because that could be dispensed, but once you start to get into packaged goods, then you're looking at an eating and drinking establishment. Same thing we had with the bookstore.

Mr. Lee: Yeah. I just want to interject. The group here is Falun Dafa, Falun Gong Group, and we are strictly prohibited to drink, drinking, so I used to drink before I practiced, but now I don't drink, so we're not going to supply any liquor.

Mr. Croughan: Yeah. It doesn't have to do with liquor. It just has to do with eating and drinking, drinking not necessarily being liquor or alcohol. It's a generic term.

Mr. Lee: Okay. Coffee is included? All right.

Mr. Capozella: Yeah.

Ms. Hewson: Mr. Croughan, does refreshments fall in line with that under the law, because I thought when we had some buildings that were using their facilities for like Alcoholics Anonymous, for example, they're allowed to serve coffee and donuts. Wouldn't that be in the same type of category, or no? I'm looking for clarification, not arguing with you.

Mr. Croughan: No. There is a difference when you're resaling it as packaged goods.

Ms. Hewson: I see. And are you going to charge the customers, or is it like free refreshments?

Mr. Lee: Yeah. Basically, we don't sell this stuff.

Ms. Hewson: Okay. So it's just refreshments.

Mr. Lee: Yeah, yeah. And probably not provide too many, probably like occasionally, when our important customer, we want to have meeting. Something like that. Not for general public, no. And also, we will not sell. I want to confirm one thing. We don't want to sell like (inaudible), all these kind of things. We will never for sure.

And also, we don't sell any food which has very short expiration time. Even if we have some food, but we will have like longer, like more than one year, one-year, two-year expiration period, so that's our strategy for what goods we want to select for sale here.

Mr. Capozella: Okay. So on the proposed third floor, your breakroom then will just -- because I see you have stove and a refrigerator. I mean, you have a possible cooking situation there. Is that just for the use of the office area upstairs? Is that what the goal is?

Mr. Lee: Yeah. It's basically for office use because we don't have a plan to change the third floor. We'll just use as is. If that was a kitchen, we'll use that for some coffee for the office environment, but it's not supposed to be some cooking or some heavy stuff. It's office use only.

Ms. Hewson: Like would it be a breakroom?

Mr. Lee: Breakroom.

Ms. Hewson: A breakroom.

Mr. Lee: Yeah. On the third floor.

Ms. Hewson: Okay. So what I'm hearing is a breakroom and refreshments after occasions, so it doesn't sound -- but I just want to make sure we're within the law. Thank you.

Mr. Capozella: Okay. Are we clear on that enough?

Mr. Croughan: Did you have Theron do a walkthrough?

Mr. Lee: Yes. I did a walkthrough with Theron, and then I told him that we're

going to use the third floor -- now it's two apartments right now up there. We're going to use the whole building as retail, and the third floor is going to be offices, so he's aware of everything.

I believe he has the plans for this already, so he's aware of everything.

Mr. Croughan: Thank you. I haven't seen Theron's comments, so it should just be subject to.

Mr. Capozella: Right. As always. No problem. Does any other Board member have any other questions, comments, or concerns?

Mr. Higbie: I just wanted to point out on one of your engineering pages where it says first floor and second floor proposed basement, you have 71-73 East Main Street as the address. I think that that should be changed to 29-35 North Street.

Mr. Lee: Oh, I'm sorry. Yeah. My bad. Thank you.

Mr. Higbie: And you're planning on keeping the bathtub?

Mr. Lee: You're talking about existing?

Mr. Higbie: Proposed third floor plan.

Mr. Lee: Proposed third floor plan. They're not doing any remodeling on the third floor, so they're going to keep everything there.

Mr. Higbie: Okay. And that's currently an apartment?

Mr. Lee: Yeah. It's approved for an apartment up on the third floor. Two apartments.

Mr. Higbie: But you're going to make that office space.

Mr. Lee: Yes.

Mr. Capozella: You're just leaving the bathrooms as they are.

Mr. Lee: Correct.

Mr. Higbie: Correct.

Ms. Hewson: I want to compliment my colleague on his good eye. I just noticed the same thing on another page, so you'll want to go through and just double check the address on the bottom corner of each page.

Mr. Lee: Okay. Thank you.

Mr. Capozella: They will have to submit a full plan to the DPW.

All right. I'm going to go back to the public hearing momentarily. Anyone from the public wishing to speak on this application, please step forward.

Okay. I'm going to close the public hearing and go back to the Board one more time with any comments, questions, or concerns.

The public hearing was closed.

On the resolution for Universal Communications Network, Inc., Shen Yun Foundation, Inc., 29-35 North Street, retail store, video recording studio, and offices. Hours of operation will be 8:00 a.m. to 12:00 a.m. for employees. Store hours will be 8:00 a.m. to 8:00 p.m. and governed by the DMU Zone. Eating areas are meant for the use of the employees and are complimentary tea and coffee for the patrons of the retail area. 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.

Any documents that are owed for the Planning Board records such as the survey and parking easement documents will also be subject to this approval.

Whereas, pursuant to the City of Middletown Code, Chapter 475, Article 4, Administration and Enforcement, Chapter 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.

Whereas this application is located in the DMU Zone, applicants must submit and receive approval from the Department of Public Works according to Chapter 407

Solid Waste, Article II Collection, §407-3, Collection, and comply with this section and any other sections enacted by the Common Council from this date forward. Therefore, applicants must receive approval from the Architectural Review Board on all façade work, exterior work in general, and exterior signage, and the Planning Board will waive parking regulations.

All plans submitted to the Planning Board will be part of that approval.

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

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

Mr. Capozella: Next on the agenda would've been 40 North Street. They were advertised in the Public Notices, so we had to mention there would be a public hearing. Anyone here, we apologize, but they did not do the mailings in time, so they could not be here this evening to present their project. Hopefully they'll be here next time.

PRELIMINARY HEARING ONLY - Not for any action but for future presentation and possible action at a date not yet determined

Mulberry JD, LLC
43½-45 Mill Street
Showroom/retail

Chaya Weber and Judy Wolcowitz @ Joyland Management
Jack Wolcowitz -- property owner

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

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

Adjourned 7:50 p.m.
Respectfully Submitted,
Diane Genender, Transcriber