

**CITY OF MIDDLETOWN
ZONING BOARD OF APPEALS**

MINUTES

May 20, 2015

A special meeting of the Zoning Board of Appeals was held in the Common Council Chambers, Second Floor, City Hall, 16 James Street, Middletown, New York on May 20, 2015 at 7:00 P.M., Joel Sierra, Chairman, presiding.

Board Members Present: Joel Sierra, Don Luis, Nicholas Barber and Randy MacLean.

Other Attendees: Alex Smith, Assistant Corporation Counsel, Walter Welch, Building Inspector.

Board Members Absent: None

Mr. Sierra: I need a motion to approve the minutes of our December 17th meeting.

On motion of Mr. Barber and seconded by Mr. MacLean to accept the December 17, 2014 minutes as submitted.

Board Members Aye: Joel Sierra, Don Luis, Nicholas Barber and Randy MacLean.

**30 Clinton Street
Mayda Morales Amabile
Area variance – rear property line for the swimming pool**

Mr. Sierra: We have an agenda; I'm going to call up the second item on our agenda, 30 Conklin Street. And I suppose that you are Mrs. Morales?

Mrs. Morales: Yes, I am.

Mr. Sierra: If you can just give us a brief explanation of what you have.

Mrs. Morales: Ok. So, I own the property at 30 Clinton Street and I would like to put in 18 foot round pool in my back yard.

Mr. Smith: Above ground or...

Mrs. Morales: Above ground.

Mr. Smith: And the setback she needs, Walter, is what?

Mr. Welch: Well, she... what she asked for a variance?

Mr. Barber: Eight foot.

Mr. Welch: Ok, her property line goes right along the property line of the Hillside Cemetery, so she will never be encroaching anybody because it's all woods.

Mr. Smith: And that's where the setback is?

Mr. Welch: Right, correct that's where the setback issue is.

Mr. Smith: So there's no home there, anything, it's just...

Mr. Welch: There's never gonna be a home there, sir. It's all woods.

Mr. Sierra: So, I need a motion to approve the variance. Sorry, I'll open public hearing.

Mr. Smith: You send the notices out?

Mrs. Morales: Yes I have it right here.

Mr. Smith: You've got the proof?

Mrs. Morales handed in mailing.

Mr. Smith: As long as the cemetery was one that got the notice.

Mrs. Morales: Everyone on the list, I mean, dead people are included I guess.

Mr. Smith: On the cemetery, not the ones that are dead.

Mr. Sierra: Anyone want to make any remarks?

Mr. Kleiner: Hi, Jerry Kleiner. I photographed at this cemetery a lot and you don't hear anything from beyond that tree line. I can't imagine it is any problem.

Mr. Smith: So, I mean, Jerry, that cemetery is, you know, used I wouldn't say exactly as tourist attraction but lots of people like to walk through it and stroll

through it and I don't know the layout of this particular property and in your opinion is there any kind of...

Mr. Welch: They are not going to be walking through where that... what she is asking for.

Mr. Smith: So it's not going to affect that cemetery in any way shape or form?

Mr. Kleiner: No. When you come in the cemetery and you are on that bottom road and you go all the way to the end of that bottom road and then it turns, you have to turn right and go back up the hill. It's beyond where you stop and I've been back there a lot and I never heard any noise from Clinton Street beyond those trees, so even when they have services there I can't imagine that would really disturb anybody.

Mr. Sierra: And you have a fence?

Mrs. Morales: Yes.

Mr. Sierra: There will be a fence?

Mrs. Morales: Yes.

Mr. Smith: You have to comply with the pool provisions.

Mrs. Morales: Yes.

Mr. Welch: When you are approved you have all your paperwork in order and you'll receive your permit as soon as tomorrow.

Mrs. Morales: Awesome. Thank you so much.

Mr. Smith: Wait, they haven't voted yet.

Mrs. Morales: Oh, sorry.

Mr. Sierra closed public hearing.

On motion of Mr. McLean and seconded by Mr. Barber that the Middletown Zoning Board of Appeals approves the application of Mayda Morales-Amabile for a rear property line area variance in order to have a swimming pool located at 30 Clinton Street.

Board Members Aye: Joel Sierra, Don Luis, Nicholas Barber and Randy MacLean.

50-52 Sproat Street

Rolf Bjorklund

Area variance (lot size variance in a proposed two lot subdivision)

Mr. Sierra: Could you pronounce your last name for me, sir?

Mr. Dillin: Mine is easy. I'm James Dillin, a land surveyor. Mr. Bjorklund...

Mr. Sierra: Bjorklund?

Mr. Dillin: Mr. Bjorklund owns the property. He is also involved with his son who is proposing to build a home on this property. Do you want me to give you a small presentation of what we are doing?

Mr. Sierra: Please.

Mr. Dillin: Sure. This property... what we are trying to do is subdivide it into two lots. It fronts on Sproat Street and it also fronts on Blanchard Street. This property was always two lots from 1914 to 2007. There was two lots next to each other. Previous owner came in and decided to merge them I believe in 2007. Mr. Bjorklund bought it and he thought... I think when he bought it he thought possibly it would be no problem just to subdivide it. When he brought it to me, I checked the zoning and the layout of the old lots, the way they were, wouldn't really work that great so I configured a subdivision, proposed subdivision to bring before the Board which would, we think, require some minor variances both, in area on both lots and a rear yard on lot number 1. They proposed to build a new single family home on this property.

Mr. Sierra: Mr. Bjorklund, does he live in the existing dwelling now?

Mr. Dillin: Does he live in there? No, he doesn't right now.

Mr. Sierra: And is it a single family home?

Mr. Dillin: It's a single family home.

Mr. Sierra: The existing structure.

Mr. Dillin: Yes.

Mr. Smith: Did you do mailing?

Mr. Dillin: Yes, I did the mailing and I think that my evidence was presented last month, I believe.

Mr. Smith: Ok, as long as we have a proof.

Mr. Sierra: Is it occupied now, the existing dwelling?

Mr. Dillin: When I was there it was, you know. I don't know this month, I prepared this a few months ago and it was occupied. There's a little question. You can see a drainage pipe on this. We haven't really found out where that goes, but it seems to go through the house and somewhere out the Sproat Street.

Mr. Smith: So, Mr. Bjorklund owns the entire parcel?

Mr. Dillin: Yes, he does.

Mr. Smith: And he's got a tenant in the existing dwelling, is that what this is?

Mr. Dillin: I believe he does, yes.

Mr. Smith: Ok.

Mr. Barber: That existing dwelling that's adjoining the garage.

Mr. Welch: There's an apartment on the second floor.

Mr. Barber: Yes.

Mr. Dillin: Right, the bottom where you see the ...

Mr. Barber: And then the house, as you are facing the garage to the left of that which is on the same property. Correct?

Mr. Dillin: There is only one house on this property.

Mr. Barber: Well, it is at the top corner of it. That's all the same property with the garage, correct?

Mr. Dillin: Yes, above the garage is a house, yes.

Mr. Barber: There's an apartment above the garage but to the left of that as you are facing the garage to the left it...

Mr. Sierra: On Sproat?

Mr. Barber: On Sproat, there is a two family house there as well.

Mr. Dillin: That's not owned by us.

Mr. Barber: That's a single family?

Mr. Smith: But it's not on this property.

Mr. Dillin: It's not on this property.

Mr. Barber: That garage belongs to that property.

Mr. Dillin: I think at one time it may have. I think you may be right because I think there is like an arbor that kind of straddles it a little bit, you know, like a hedge but they've been separated.

Mr. Barber: I don't think it's separated because you have a concrete walk going up to the slate patio which goes to that house.

Mr. Sierra: You can see it right here.

Mr. Dillin: I think at one time it was.

Mr. Sierra: Does he own a property next to it?

Mr. Dillin: He doesn't, no.

Mr. Smith: So, this existing dwelling is...what are the dimensions of it? It was once a garage and...

Mr. Barber: It was a garage for that house.

Mr. Smith: That's what I'm saying it was once... This existing dwelling once was simply a garage.

Mr. Barber: Yes.

Mr. Smith: And somebody put an apartment on it at some point. Correct?

Mr. Barber: Yes.

Mr. Welch: Years ago.

Mr. Sierra: How many years ago?

Mr. Barber: I remember Ross Critelli owning that property and then it was just a garage.

Mr. Sierra: He just said that in 2007 it was two separate lots. So what was the old lot line? If it was a garage to the house next door....

Mr. Barber: I'm looking at the solid black line. That to me is separating the properties. But I honestly don't... I need proof that they are separated.

Mr. Dillin: The vicinity map up in the right hand corner is representation of the way the tax lots look today and the shaded one is the parcel that our application is for.

Mr. Sierra: And there's dwelling on it now, correct?

Mr. Dillin: Yes.

Mr. Smith: And how far is that dwelling of off the property line?

Mr. Dillin: I'm gonna guess by looking... slightly less than 20 feet.

Mr. Smith: I don't know if it matters, historically if the existing dwelling was the garage to the dwelling next door as long as different lots met.

Mr. Barber: I just want to see if this owner owns that house as well. I want to know if he own that house. He owns a garage, does he owns that house to the left?

Mr. Smith: No, according to Mr. Dillin Bjorklund owns the entire property.

Mr. Dillin: I can show you a map of 2006 that shows the individual lots and how we reconfigured this lot that was done.

MR. Smith: Can you hand that out?

Mr. Dillin: Yes.

(Mr. Dillin handed in map to Mr. Smith. Off the record discussion followed)

Mr. Smith: Walter, does DPW have any input on this? That's the old one. You can see the lots were then configured a lot differently. Now we are on the record.

(ZBA members reviewing the map)

Mr. Smith: While they are looking at that map, what are the configurations of the existing dwelling?

Mr. Dillin: You mean the size?

Mr. Smith: Yes.

Mr. Dillin: You know what, I didn't bring the scale.

Mr. Smith: Well, about. I'm not...

Mr. Dillin: Ok, I would say... It looks like to me it's about 25 feet wide by maybe 25 feet deep.

Mr. Smith: So that house would be... is it one story?

Mr. Dillin: Well, the garage area I believe is a one story but I think there are two stories on the left side of the garage and then above the garage.

Mr. Smith: And that's a single family house?

Mr. Dillin: As far as I know it's a single family house.

Mr. Sierra: Chief, did you drive by this property today?

Mr. Barber: I know it pretty well.

Mr. Sierra: Yes? And is that a single family house or is it a car garage?

Mr. Barber: It's a car garage. It's a garage with an apartment upstairs. Unless they converted it but it still looks like a garage downstairs.

Mr. Welch: It's a garage.

Mr. Smith: It was probably converted illegally. Because in days when that dwelling was there.... You can't have more than one residence on the same lot, so... But I don't know that that matters anymore today; we have what we have here now.

Mr. Dillin: But that was always a separate lot.

Mr. Smith: I understand.

Mr. Dillin: Even if it was owned by the neighbor it always stood on its own.

Mr. Sierra opened public hearing.

Mr. Sierra: And Martina, we do have the proof of mailing? Did anybody show up at the last month's meeting?

Clerk: We cancelled.

Mr. Smith: The reality of this is if there is a tenant in that dwelling, that person is not going to get the notice, because he is not the owner.

Mr. Barber: Correct.

Mr. Smith: I mean you are asking the Board to do something that's going to significantly affect... and I realize Mr. Bjorklund owns it now, but you are separating it into two separate lots and somebody might find themselves owning these two houses right next to each other. Different people.

Mr. Dillin: The distance between the houses though really does comply to what the City's zone is.

Mr. Smith: Yes, but the back yards don't.

Mr. Dillin: The back yard I will agree.

Mr. Smith: Back yard is deficient and you are asking for about 1400 square feet for the one lot and about 1200 for the other one, so I mean...

Mr. Barber: That's a lot of square footage.

Mr. Smith: Yes, I don't have a percentage in my head but it's a substantial request. My suggestion would be to keep the public hearing open for a month and to think about it.

Mr. Barber: Does he plan on living in this house?

Mr. Dillin: His son does. The son wants to build the house.

Mr. Sierra: And there is the tenant in the existing dwelling?

Mr. Dillin: Yes, there is.

Mr. Smith: But of course if it's subdivided, what I'm saying is he could sell the existing dwelling, to somebody else.

Mr. Barber: He could sell both parcels.

Mr. Smith: He could sell them both or he could sell them separately.

Mr. Sierra: There is nothing binding after we approve it. I need a motion to table this for 30 days. We'll keep the public hearing open.

On motion of Mr. Barber and seconded by Mr. McLean that the Middletown Zoning Board of Appeals adjourns for future consideration the application of Rolf Bjorklund for a lot size area variance in order to subdivide the property located 50-52 Sproat Street, Middletown.

Board Members Aye: Joel Sierra, Don Luis, Nicholas Barber and Randy MacLean.

Mr. Dillin: Did you want an input from the records? I mean, I don't know how...

Mr. Sierra: I'd like to get some information on the existing dwelling. Walter, I don't know if you can pull up some history on this?

Mr. Welch: Excuse me?

Mr. Sierra: I don't know if you can pull up some history on this existing dwelling.

Mr. Welch: Oh, I think we can.

Mr. Smith: If we could get a photograph.

Mr. Dillin: Sure, I can bring you some photos.

Mr. Sierra: I'd like to get some dimensions on that existing dwelling if you could, please.

Mr. Dillin: I can put them on for sure. Certainly.

Mr. Smith: Could ZBA member come take a look at it?

Mr. Dillin: Oh, sure, go ahead. That's fine. I would also ... could I ask the Board to have the public works department look at this pipe that goes through the house? We are trying to find where it goes to.

Mr. Smith: The proposed house?

Mr. Dillin: No, the existing house has a large drainage pipe going through it.

Mr. Smith: Walter, can you take a look at that?

Mr. Welch: I'll show this to Mr. Moser, Deputy Commissioner, I'll ask him.

Mr. Smith: Ok.

Mr. Dillin: I looked in Sproat Street to find where it started from. The water would run down, obviously. The only reason it's on the way I show is it's at a concrete pipe and I followed it with the metal detector. But you can see the pipe going in the corner of the house.

Mr. Smith: You know, there's also this...you have it marked as a slate patio. Does that encroach on to where the lot of the existing dwelling?

Mr. Dillin: Yes, it does. That's I think what this gentleman was saying...

Mr. Barber: That's what I was talking about.

Mr. Smith: Yes, I understand that.

Mr. Barber: That was all one, the house and the garage were all one.

Mr. Sierra: And you see it on the old schemata.

Mr. Barber: I used to go there all the time to hang out. I used to park in the garage and walk to the house, so I know it's all one.

Mr. Sierra: That's how close it is.

Mr. Barber: Yes.

Mr. Smith: All right. You get some pictures and we'll take a look at it personally.

Mr. Dillin: Ok.

Mr. Sierra: And if you could get us dimensions of that house.

Mr. Dillin: I'll put the dimensions on.

Mr. Sierra: Ok. See you next month.

Mr. Dillin: That's great. Thanks.

A motion was made by Mr. Luis and seconded by Mr. Barber to adjourn the Zoning board of Appeals meeting.

Board Members Aye: Joel Sierra, Don Luis, Nicholas Barber and Randy MacLean.

Adjourned at 7:25 p.m.

Respectfully submitted

Martina Tu, Clerk