

**CITY OF MIDDLETOWN
ZONING BOARD OF APPEALS**

MINUTES

June 17, 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 June 17, 2015 at 7:00 P.M., Joel Sierra, Chairman, presiding.

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

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

Board Members Absent: Nicholas Barber

Mr. Sierra: I need a motion to approve the minutes of our May 20th meeting.

On motion of Mr. MacLean and seconded by Mr. Luis to accept the May 20, 2015 minutes as submitted.

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

50-52 Sproat Street

Rolf Bjorklund

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

Mr. Dillin: Good evening. Jim Dillin, we are back to continue in public hearing. I have the applicant here with me. He is the fellow who wants to build the house.

Mr. Sierra: How are you doing?

Mr. Bjorklund: Hi, how are you?

Mr. Sierra: I had a chance to drive by the proposed lot, proposed site and I know that a couple of board members wanted to take a look at the lot and they all drove by. I spoke to Mr. Barber and he had a chance to drive by, he is very familiar with the lot also. I need a motion to close the public hearing.

Mr. Smith: Unless there is anything more you gentlemen want to say.

Mr. Dillin: Not really. There was... you know you said that our houses may be too close. And I just brought some pictures of stuff right across the street where the houses are like only 10 feet apart. Right within the zone, so...

Mr. Smith: Do you want to hand them into the ...?

Mr. Dillin: Yes, I think I will. I just took a couple of pictures. This is just directly across the street where the houses are probably about ten feet apart.

Mr. Sierra: I believe we asked for some information, if I remember correctly, last month. Did we ask for some information, some history about the existing structure? There were some questions about the garage and such and the apartment above it, if it was inspected.

Mr. Smith: I know there was a discussion about it. But you gentlemen, anything more you want to put in? You have one picture?

Mr. Dillin: No, I have some pictures of the house. If you want to but if you saw it, in case you didn't, just took the rear view and...

Mr. Smith: Luckily they all went out.

Mr. Sierra: I mean, if you want to submit them, that's fine.

Mr. Dillin: Yes, let me submit them. I mean, if you went out there you can see how large the lot is behind this house. It looks like it could easily fit another house on this property. And incidentally the street that we are subdividing on is also really in R-2 zone and that's what we would front on even though we are I think R-1. And all houses down below are really close to each other.

Mr. Sierra: Blanchard Street?

Mr. Dillin: Yes, Blanchard Street. In fact, even the building inspector thought it was an R-2 because we fronted on that road. And that's where this house is going to front on. We just don't think the house is out of character even though we are asking for some variances and they are all little bit significant but it seems to fit into what's there now.

Mr. Sierra: Any additional information you'd like to add?

Mr. Dillin: We only had that question about the drainage pipe coming right through our house.

Mr. Sierra: I know DPW is looking into it. That's a separate issue. We are in public hearing. I'd like to close public hearing but is there anything in the public hearing that you would like to put on the record; you'd like to add, so that we can close the public hearing portion?

Mr. Dillin: I think we're fine.

Mr. Sierra closed the public hearing.

Mr. Smith: I will prepare the resolution for the next month.

Mr. Dillin: Ok, thank you.

Mr. Bjorklund: Thank you.

Mr. Sierra: And we'll make sure we follow up with DPW to get out there and see if they can locate that pipe.

Mr. Dillin: Ok. Thanks.

Mr. Smith: Walter, can you take care of the pipe...

Mr. Welch: I'm writing it down right now.

Mr. Smith: Ok, thank you.

Mr. Sierra: And if you could also find out if there is any recent inspection on the property.

Mr. Welch: Ok.

86 Grand Avenue

Jose Rios

Area variance – side yard variance for the swimming pool

Mr. Sierra: Could you please state your name and address for the record?

Mr. Rios: Jose Rios, 86 Grand Avenue.

Mr. Sierra: And if you could tell us little bit about what you want to do here.

Mr. Rios: I'm just trying to install a pool in my side yard.

Mr. Smith: Above ground or in ground?

Mr. Rios: Above ground.

Mr. Smith: He needs a side yard variance, Walter, is that what this is?

Mr. Welch: Excuse me?

Mr. Smith: What kind of variance does he need? Side yard?

Mr. Welch: Side yard. He is asking for a 6 foot side yard variance. He has no back yard. If there's no back yard so he has to put the pool on the side, the area is fenced in already so you cannot even see the pool. I see no problem whatsoever.

Mr. Smith: DPW has no problem?

Mr. Welch: No, sir.

Mr. Smith: Did you do a mailing?

Mr. Rios: Yes.

Mr. Smith: Could you turn it in to the secretary?

(Mr. Rios handed in proof of mailing)

Mr. Sierra: He doesn't need a variance for a side yard fence, correct? Is he here for the fence or is he here for the pool?

Mr. Welch: He is here for the pool. He has to be 10 feet from his property line for the pool and he needs 6 feet.

Mr. Smith: He needs a 6 foot variance because he has 4 feet...

Mr. Welch: He has four feet now.

Mr. Sierra: He doesn't need a variance for the fence, correct?

Mr. Welch: No.

Mr. Sierra: He has two front...

Mr. Welch: Correct, but he did drop front yard down to four. He has six feet on the side.

Mr. Sierra: Do you plan on putting in 6 foot fence?

Mr. Rios: There is a six foot fence...

Mr. Welch: Fence is already there.

Mr. Rios: ...on the side of the house. The front is gonna stay just the way it is – four feet around the front.

Mr. Welch: It has to.

Mr. Rios: I also have a self-closing gate on the fence, so...

Mr. Sierra: Any questions from the board?

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

On motion of Mr. McLean and seconded by Mr. Luis that the Middletown Zoning Board of Appeals approves the application of Jose Rios for a 6 foot side yard area variance in order to have an above ground swimming pool located at 86 Grand Avenue.

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

Mr. Welch: You gotta come and see me for a pool permit.

Mr. Rios: Yes, I have that; I have the paperwork here already.

Mr. Welch: Ok, I see you tomorrow.

Mr. Rios: Ok, thanks.

**86-90 North Street
Hope Bible Church, Inc.
Use variance (house of worship in a C-3 zone)**

Mr. Casscles: Do you want my mailing address or the address of the Church?

Mr. Sierra: If you could give your mailing address, your name.

Mr. Casscles: Sure. My name is pastor Wellington Casscles, Hope Bible Church. The church's address is hopefully is 86-90 North Street; my mailing address is 28 Rosman Road, Thiells, New York.

Mr. Sierra: Please tell us about what you are proposing.

Mr. Casscles: Sure. November of 2013 the church decided to look for a space to hold our services. We've been holding them in houses. We approached the realtor, we found the suite that we are currently renting in the 86-90 building; we are on the second floor on top of the pizza place, on the corner. Both realtors told us no problems, we signed the documents in good faith and about, I guess early April, just before Easter, the realtor called to say there may be an issue. By the end of April I had met with the Fire Inspector who told us that we need a variance in order to meet there. I came over, I saw Martina, we filled out the paperwork and we are at this point now.

Mr. Smith: Did you buy the building?

Mr. Casscles: No, sir. We are renting one suite in the building itself.

Mr. Smith: So that's where you want to have the church?

Mr. Casscles: That's where we have our... we have had our services for the last year and a half up until the point when I met the Fire Inspector and we ceased meeting there until after we get through this process.

Mr. Smith: So, it's just on one floor you are talking about.

Mr. Casscles: It's one corner of one floor. It's about 1000 square feet in the building, it's two rooms. It's a large open room and then a small office that I use as my study and we've...

Mr. Smith: How many people do you expect to have at your service?

Mr. Casscles: We have about 14 and two of our young ladies are going to be going away to college so we will have 12 at the most. It's a very small congregation. Very small independent Baptist Church.

Mr. Smith: Walter, is there any public assembly issue in this? I don't know what that floor used to be in that building.

Mr. Welch: I don't know. It used to be Green's...

Mr. Smith: Green's Department Store.

Mr. Welch: I remember that part but upstairs are all offices.

Mr. Casscles: I believe a CPA was in that suit prior to us. He has moved around the corner, Mr. Wilson, I think is the gentleman's name.

Mr. Smith: If you make it a public assembly, is there gonna have to be reckoning with the state building code?

Mr. Welch: That would be with Mr. McCarey.

Mr. Smith: Ok, all right. Well, there is couple of issues here. That's one - whether the building can be converted to a public assembly. That's not a simple, not necessarily a simple proposition.

Mr. Casscles: We are not looking to convert the entire building, just the ...

Mr. Smith: Well, even a portion of the building to a public assembly that's not necessarily a simple thing. We'll have to get a report from the Fire Inspector on that. But the use variance is what you are seeking and it's not easy to get. I mean, you have to show, number one you have to show hardship. I don't know what your hardship is. Other than the fact that your realtor didn't tell you the whole story.

Mr. Casscles: Right, we put some upgrades into the space. The church has spent about \$4,000.00 on cabinetry, countertop for storing materials, so as a small congregation we've laid out quite a bit of money.

Mr. Smith: You said you have a lease?

Mr. Casscles: Yes, sir.

Mr. Smith: Is it a year lease?

Mr. Casscles: It was a two-year lease and the lease would end in January of this year, but since we have not been able to use the suit for the last two months the building's owner may extend the lease to February of next year.

Mr. Smith: Who are the building's owners?

Mr. Casscles: Northern Enterprise, LLC out of Cornwall, I believe.

Mr. Smith: And they didn't advise you that there was a zoning issue?

Mr. Casscles: No, no. Like I said their representative and my realtor, we stood there and you can actually see the steeple across the street and... there's no problem, there is another church down the block from us, so we made an assumption and we know what assumptions do.

Mr. Smith: See, the other part of the not only local law but a state law, you have to show, to get a use variance, that you can't make a reasonable return on that property for something that is allowed in the zoning. And I don't know how you are going to show that.

Mr. Casscles: Right, because we are lessee as oppose to the owner.

Mr. Smith: I understand but as a lessee you could use it for whatever is permissible there; that's a downtown business district and you could use it for office space, you could use it for any number of things. I know you don't want to but unfortunately you are stuck with state regulations and local regulations regarding use variances. There are designed to be difficult because the legislative body here, the Common Council, has decided that's not a use to be allowed in downtown business section because the goal was to establish the place where commercial would get the ... would be the focus of either a new construction or the existing buildings would be turned to commercial. It was the whole idea of much of our downtown zoning over the past 25 years. You know, downtown area to come back commercial wise. Normally, the ZBA would require financial data on the hardship and why you can't use it for something that is allowable in the zoning. Again, I know you don't want to but...

Mr. Casscles: Right, I don't know...

Mr. Smith: I don't know how you are going to do it. It's required by law, though. My suggestion is, why don't you think about this and we'll ask the Fire Inspector to do inspection, Walter. I understand, also, is there any liquor establishment hereby?

Mr. Sierra: That's another issue, there are two liquor establishments and I know there is certain amount of footage that has to be away, so I'm not sure how this operates. I think around maybe three. We have Nelson's across the street, we have Bobbie's and we have one establishment...

Mr. Welch: Underneath it.

Mr. Sierra: Yes, right underneath it.

Mr. Smith: Underneath it?

Mr. Welch: Yes. Same building.

Mr. Smith: See, you are butting up against not only zoning regulations but the State Liquor Authority.

Mr. Sierra: Yes, State Liquor Authority. You have several issues, besides New York State Fire Code which is outside our scope; you have to comply with the New York State Building Fire Code, so that will be Adam's issue, then you have the Liquor Authority issue...

Mr. Smith: And then we have the financial issue. My suggestion is to keep public hearing open, I don't know if anybody else wants to speak, but it will allow you to think about this a little bit. We'll get the inspection of the building; we'll get that nailed down...

Mr. Casscles: I believe that was done in April. I actually met with the Fire Inspector.

Mr. Smith: Ok, we'll have to get a report from him.

Mr. Casscles: We are not the only ones who are having issues in the building.

Mr. Smith: Ok, we'll get a report from him.

Mr. Casscles: Ok.

Mr. Sierra: Any members of the public wish to speak?

Mr. Degnan: My name is John Degnan, I live at 8 Brittany Drive in Middletown. I'm here as the executive director of the Business Improvement District, the Downtown Business Improvement District and that is a not for profit, 501 C 3 and the membership is made up of all the building owners within the district, which was legislated back in the 1990s. My concern is certainly not with a house of worship because I believe we have 12 of them within the central business district at the present time. The thing that I would caution and ask, that we don't want to jeopardize the ability of another building that's within 200 feet, I believe it is with the State Liquor Authority to open a restaurant that serve full wine, beer and liquor and each time a church is opened up that creates that problem. So it actually does create a hardship for some of the building owners that may be within that circle. And that's the only thing, as I said, it's not against the house of worship, I believe the City of Middletown has a very liberal policy in terms of houses of worship in other zones. So that's the only thing I wanted to say. Thank you.

Mr. Sierra: Any other members of public wish to speak? *(no one came forward)*. Ok, so we are going to table this matter until next month and I hold public hearing open. Anything else you wish to add?

Mr. Casscles: Just thank you for your time, we appreciate it.

Mr. Smith: Now that you know the law, anything you want to address to us, feel free.

Mr. Casscles: I know that saying it isn't gonna change the issue but we have no problem with either the pizza place selling beer or Nelson's across the street, they were clearly there before us. I understand it's a law and it's not within your purview to stay, so thank you for your time. Do I give the mailing to Martina?

Mr. Smith: Yes, please.

Mr. Casscles: Ok. Thank you, gentlemen.

On motion of Mr. MacLean and seconded by Mr. Luis that the Middletown Zoning Board of Appeals hold an executive session (7:20PM).

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

7:25PM. Zoning Board of Appeals came out of the executive session.

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

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

Adjourned at 7:25 p.m.

Respectfully submitted

Martina Tu, Clerk