

**CITY OF MIDDLETOWN
ZONING BOARD OF APPEALS**

MINUTES

July 15, 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 July 15, 2015 at 7:00 P.M., Joel Sierra, Chairman, presiding.

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

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

Mr. Sierra: I need a motion to approve June 17th meeting minutes.

On motion of Mr. Barber and seconded by Mr. MacLean to accept the June 17, 2015 minutes as submitted.

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

Mr. Sierra: Ok. I'm gonna skip to the second item on our agenda, 86-90 North Street, Hope Bible Church.

Mr. Smith: Well, since the Chair called 90 North, Walter, did you get anything from Adam in terms of the review whether or not there is any uniform code violation issues?

Mr. Welch: No, I didn't receive anything from Mr. McCarey.

Mr. Smith: All right.

Mr. Sierra: So, we'll give them a few more minutes and then we'll address our first item on the agenda which is 50-52 Sproat Street.

**50-52 Sproat Street
Rolf Bjorklund**

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

Mr. Sierra: All right. We are going to move to the first item on the agenda, 50-52 Sproat Street. Does any member of the Board have any questions or comments?

(No one came forward)

Mr. Sierra: Alex?

Mr. Smith: All right. I drafted your resolution. I know that all members of the Board have had a chance to look at it. I put it on the record now and then the Board can take a vote.

WHEREAS, Rolf Bjorklund filed an application with the Zoning Board of Appeals of the City of Middletown seeking 2 lot size area variances and 1 rear yard depth area variance in connection with a proposed 2-lot subdivision located at 50-52 Sproat Street, Middletown, New York, and

WHEREAS, after due notice public hearings were held by the Zoning Board of Appeals on May 20, 2015 and June 17, 2015 at 7:00 p.m. in the Common Council Chamber, City Hall, Middletown, New York, and

WHEREAS, at said hearings all those who desired to be heard were heard and their testimony recorded, and

NOW THEREFORE BE IT RESOLVED by the Zoning Board of Appeals that the following are designated as Findings of Fact:

1. The premises is proposed to be subdivided into two irregularly shaped, substandard parcels in an R-1 single family residential zoning district. The subdivision would result in the existing dwelling remaining on one lot, and the applicant envisions the construction of a new single family dwelling on the second lot. The Zoning Code requires a lot size of 7,500 square feet for each parcel and rear yard depth of 30 feet. The applicant would require a lot size variance for each parcel, and a rear yard depth variance for the existing dwelling.

2. Because of the irregular shape of the proposed lot, Lot # 1 requires a rear yard depth variance of 18.5 feet. Lot # 1 requires a lot size variance of 1,328 square feet. Lot # 2 requires a lot size variance of 1,137 square feet.

3. The applicant purchased the lot in 2007, and is presently renting the existing dwelling.

and it is further

RESOLVED by the Zoning Board of Appeals that the application be denied on the following grounds:

1. The requested area variances, especially the lot size variances, are substantial;

2. The irregular shape of the proposed lots and the nearness of the proposed dwellings to each other is not consistent with orderly and appropriate development of the subject neighborhood.

3. Although there would be significant benefit to the applicant in terms of profit, the hardship, i.e., lack of profit, is obviously self-created due to his recent purchase of the existing improved lot.

Mr. Smith: That's the resolution.

Mr. Sierra: I need a motion for the resolution on the floor.

A motion was made by Mr. Barber and seconded by Mr. Luis to accept the above resolution.

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

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

Mr. Sierra: All right, we are going to move to the next item on the agenda, 86-90 North Street, Hope Bible Church. I need a motion to close the public hearing.

Mr. Kleiner: Can I before you do?

Mr. Smith: Unless someone wants to speak.

Mr. Sierra: Any member of the public has anything to say?

Mr. Kleiner: Jerry Kleiner, Randall Heights; first thing I want to welcome your new member to the Board, Deborah Clark. Alex brought up a lot of points last time and I don't know, speaking... because I don't know if you are going to accept or deny the resolution but I didn't hear any response to whether, in terms of code, you said if it's a place of public assembly, it may need to be looked at in terms of the code and whether we put in jeopardy...

Mr. Smith: I'm gonna get that done in the interim between now and time when we have a resolution. I will check with Mr. McCarey myself on that.

Mr. Kleiner: Ok. And then the problem with the restaurants and bars if anybody wants to serve alcohol is it a hardship for them if we put another...

Mr. Smith: Well, it would prevent like any religious ... any church that becomes established and operating then under State Liquor Law you would not be able to put any eating and drinking establishment within 200 feet. So, that is an issue. It was raised by Mr. Degnan last time.

Mr. Kleiner: Right, but it wasn't...

Mr. Smith: And it's a legitimate issue and there's no way around it.

Mr. Kleiner: No way around it, ok. But any eating establishment that's already there would be grandfathered in?

Mr. Smith: Right.

Mr. Kleiner: Although we've seen how frequently some of those places have changed and I imagine any time it would change then it would stop it from...

Mr. Smith: That's probably correct and the SLA might very well deny a liquor license to new owners. I don't know. If we change the size or location of the present eating and drinking establishment that's grandfathered the SLA might very well deny a new liquor license. So that is an issue.

Mr. Kleiner: So when you allow...

Mr. Sierra: Are you asking questions or you are just addressing the board? Because, I mean I feel like you can ask these questions to Alex another time. Do you have any comments for the Board?

Mr. Kleiner: Well, just because I thought the answers to those questions were relevant to whether this was approved and allowed or not and if, depending on what those answers are, I would just as a resident and as a second ward alderman, but as a member of the public I would not be in favor of allowing this establishment if that were the case. And I didn't know whether the place of assembly for place of worship whether that becomes a church under all the meanings of the law. These are things I don't really know. And going by having heard the conversation last time I didn't speak because I wanted to listen to all of it and then you said you will be looking up some of these things and trying to get answers and if it seems like all your concerns were basically validated that it would be a problem then I would like to agree with the director of the BID and weighing it against it. Thank you.

Mr. Sierra: Thank you. Any questions or remarks from the Board?

(No one came forward)

Mr. Sierra: I need a vote on the motion that we have on the floor.

Mr. Smith: That's to close public hearing.

Mr. Sierra: This is a motion to close public hearing.

A motion was made by Mr. Barber and seconded by Mr. Luis to close the public hearing.

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

Mr. Sierra: The public hearing is now closed and we need a motion now to adjourn.

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, Nicholas Barber, Deborah Clark and Randy MacLean.

Adjourned at 7:15 p.m.

Respectfully submitted

Martina Tu, Clerk