

**CITY OF MIDDLETOWN
ZONING BOARD OF APPEALS
MINUTES**

May 15, 2019

A 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 15, 2019 at 7:05 P.M., Joel Sierra presiding.

Members Present: Joel Sierra, Nicholas Barber, Marc Woody

Members Absent: Don Luis, Deborah Clark

Other Attendees: Richard J. Croughan, Corporation Counsel

A motion was made by Mr. Barber and seconded by Mr. Woody to approve the minutes of March 20, 2019 as submitted.

Roll Call Ayes: Joel Sierra, Nicholas Barber, Marc Woody

Szilard Dibble
53-63 Anthony Street
area variances in order to have attached townhouses

Mr. Sierra: Please state your name and address for the record.

Mr. Croughan: Before they start, Mr. Chairman, just to let the applicant know, we do have a quorum; however, if it was to go to a vote tonight, not necessarily that it will, but it was to go to a vote tonight, you would need all three members to vote in favor for you to be granted rather than if the other members were here where you may get one vote against you and still carry two. So it would be up to the applicant whether they want to present.

Ms. Plass: So the other members are not coming tonight?

Mr. Croughan: Well, if you start, once you start, the other members are not here, so we don't know if they're coming. I believe one is definitely not coming.

Mr. Sierra: Why don't we start the process? This way it doesn't hold you guys up.

Ms. Plass: I mean, can we just go to the next meeting then, or do you have to vote, or can we decide after you have questions, or --

Mr. Sierra: We'll start tonight. We'll lay everything out. We'll have a public hearing. We'll open the public hearing.

Ms. Plass: Okay.

Mr. Sierra: Because we don't have a resolution drafted for this anyway, but it should be voted on at next month's meeting.

Mr. Dibble: Okay. So you'll have (inaudible) again any paperwork. I'm sure you have all your paperwork in order, but anything you don't have, you have 30 days until next month's meeting.

Ms. Plass: Okay. All right. So I'm Susan Plass, surveyor, and Szi.

Mr. Dibble: Szi Dibble, 61 Anthony Street, and my wife, Lisa.

Ms. Plass: We have our mailings.

Mr. Sierra: Now if you could just give us a brief overview of your project.

Ms. Plass: Sure. So what we're proposing is a two-building, seven-unit townhouse complex on Anthony Street, and we are in need of a couple of variances. We meet the majority of them, but there's certain ones that we just can't really meet due to the configuration of -- due to the zoning requirements, it's difficult to meet some of the, you know, actual requirements. Like 5,000 square feet for a townhouse is quite difficult because most townhouses are, you know, rather skinny, you know, 25 feet, 24, 28 feet.

Mr. Sierra: You're talking about 5,000 feet.

Ms. Plass: 5,000 square foot lot area. That's the first variance -- we need a variance for that. But in order to get that type of square footage with an average size townhouse, you would be looking at, you know, a 200-foot deep lot, which is a little on the odd size for length-width ratios. So that's the first variance we need. We're proposing 24-foot wide townhomes on lots that are 105 feet deep, so our minimum -- we do have two --

Mr. Barber: Each unit is 24-foot wide?

Ms. Plass: Yes. Each unit --

Mr. Barber: So the three-unit would be 75-foot wide.

Ms. Plass: Well, the units themselves, right, and then the property for the end units is larger.

Mr. Barber: Right.

Ms. Plass: So we have a range of square footage from 2,520 to 4,725, so they all fall under the 5,000 square feet. That's the one variance.

And then, the front yard, we are complying with, I believe, Walt Welch or Jacob or --

Mr. Dibble: Both.

Ms. Dibble: Weren't they both together?

Ms. Plass: They kind of had suggested the 15 feet. It kind of fits the general area of the neighborhood, and also the larger townhome complex behind us. What's the name of that?

Ms. Dibble: Magnolia Park.

Ms. Plass: Magnolia Park is also at 15-foot front yard, so that's the next variance.

Mr. Dibble: He stated that the front -- he said we had to go for that variance anyway, but the properties all have to line up.

Mr. Barber: Yes.

Mr. Dibble: It has to be on there.

Ms. Plass: And then the lot coverage, we're a little bit over because the lot doesn't meet the one acre total. We have three lots that are 80 x 105, and we're putting them together, but the neighborhood consists of -- if you look at the neighborhood, most lots are relative small, like 50-foot wide.

Mr. Barber: But they're only single --

Ms. Plass: They're single family homes, 50-foot wide. Right. But still, it kind of fits the vibe of the neighborhood, you know, 50-foot single family homes. We're looking at 24-foot wide townhomes -- I mean, typically they go down the --

Mr. Barber: You're looking at 75-foot wide townhomes. If each one is 25-foot --

Ms. Plass: Well, the whole building, right, but each unit is individually owned.

Mr. Sierra: You got a proposed map in the packet.

Mr. Barber: Yeah. I'm looking at it right now. Well, she said each unit was 24- to 25-foot; right?

Ms. Plass: Each unit is 24-foot.

Mr. Sierra: I think there's three units that are 24-foot; correct?

Mr. Barber: Yup. That would be 75-foot.

Mr. Sierra: Yeah.

Mr. Barber: So it doesn't fit the single family home that's 20- to 24-foot wide.

Ms. Plass: Well, the property lines go through the common wall.

Mr. Barber: No, no. I understand that, but the building is one 75-foot long building. It's a townhome.

Mr. Dibble: Correct.

Ms. Plass: Right. There's two buildings. One is 75 --

Mr. Barber: Well, whether the property line goes through your firewall, you know, your (inaudible) wall, whatever, the building is still 75-foot long.

Ms. Plass: Right. It meets your code though. In the code, it says they can't be more than, I believe, it's 160 feet long. I'd have to get that out.

Mr. Barber: Whether there's a firewall or not, a break or something like that, is that what you're --

Ms. Plass: Right. And then you have to have jogs every so -- every 40 feet.

Mr. Barber: The building requirements that are laid out in that zoning, we conform to those. Our buildings are not too long, unlike the guy behind us.

Ms. Plass: No. I was just bringing up the point that the townhomes next to the single family homes, that they don't -- they don't jive with the neighborhood.

Ms. Plass: Well, there's 150 units that surround our north property and our west property line.

Mr. Barber: Right. Behind it.

Ms. Plass: And they will be going down Anthony Street also in the same exact configuration.

Mr. Barber: Yes.

Ms. Plass: They also are along Anthony Street. If you look at your map or the tax map, there's several of them that go right down Anthony Street.

Mr. Barber: Well, I ride by it. I live right behind it, so --

Mr. Sierra: You're on Phillips.

Mr. Barber: Yes.

Ms. Plass: So, I mean, instead of being 70 units, it'll be 77 units.

Mr. Barber: No. I understand.

Mr. Croughan: Just to back up one second.

Ms. Plass: Yes.

Mr. Croughan: Your lot area per unit, you're at approximately 50 percent seeking a variance?

Ms. Plass: The smallest lots are approximately 50 percent, and then we do have two lots that are 47/25, and we also have two lots that are -- I don't what they are --

they're 39-foot by 105.

Mr. Croughan: Well, the requested variance with the --

Ms. Plass: The maximum.

Mr. Croughan: Your lot area per unit is 24, and the minimum required is 5,000, so you're at a 50 percent request of a variance.

Ms. Plass: Yeah. Approximately. Our area is 25/22.

Mr. Croughan: And then the front yard, you're at 15. The required is 30.

Ms. Plass: Correct.

Mr. Croughan: So again, you're at 100 percent there of a variance.

Ms. Plass: Right. 15 feet. Right.

Mr. Croughan: And then lot coverage, is that 4 percent request of a variance?

Ms. Plass: Yes. At the end of the application, I have the variance requested.

Mr. Croughan: Okay.

Ms. Plass: It's as an attachment at the end.

Mr. Croughan: I'm sorry. Continue.

Ms. Plass: Okay. So basically, those are the variances we're looking for that are starred on the map. You know, we feel like we're pretty much in line with the large complex behind us. We're in the same zone as them, and we're looking to get, you know, relief from those requirements basically.

Mr. Sierra: Do you own this piece of property between Anthony Street and the lot?

Mr. Dibble: Yes.

Mr. Sierra: (inaudible)

Ms. Plass: What's that?

Mr. Sierra: On the left side of Anthony Street.

Ms. Plass: On the left side of Anthony Street?

Mr. Barber: Which way are you coming down the street?

Ms. Plass: Are you talking about --

Mr. Sierra: If you're going down Anthony Street --

Mr. Barber: Off of East Main? If you're coming in off of East Main --

Mr. Sierra: It's a lot. It's on your left side when you're going down Anthony Street.

Ms. Plass: Right.

Ms. Dibble: Headed towards East Main then.

Mr. Barber: Heading towards East Main.

Mr. Sierra: Yeah.

Mr. Barber: Okay.

Ms. Plass: Okay. I'm sorry. Say the question again.

Mr. Sierra: I see a strip here.

Ms. Plass: Mm-hmm.

Mr. Sierra: Am I reading this correctly? This is where their lot is and this is (inaudible). This is an easement?

Ms. Plass: No. That's the road right-of-way bounds. Everybody -- nobody owns to the pavement. Everybody owns to 10, 15, 5 feet. It's City owned.

Mr. Sierra: So the existing unit, the existing unit that's on this now, is that your home?

Mr. Dibble: Yes.

Mr. Sierra: So you'll demolish it.

Ms. Dibble: Eventually. Yes.

Mr. Barber: So your house is on the top over here where it says frame dwelling.

Mr. Dibble: Yes.

Mr. Barber: Now I'm understanding 100 percent.

Mr. Dibble: Okay.

Mr. Barber: Okay.

Mr. Croughan: So just to go through the criteria, whether the proposed area variance, if granted, will produce an undesirable change in the community or surrounding neighborhood?

Mr. Dibble: It will improve it.

Mr. Croughan: Based upon?

Mr. Dibble: What's already taken place.

Mr. Croughan: Whether the relief sought can be achieved by some other means rather than the variances requested.

Ms. Plass: Well, the difficulty is, I don't know how familiar you are with the zoning, but, like I said, to meet, you know, I don't know too many townhouse complexes that have 50-foot wide townhomes in Orange County anyway, so if you're allowed to have a 100-foot wide lot, how do you ever get to 5,000 square feet unless you have a 50-foot wide townhome, which is not what I think as a townhome. I don't know who considers that a townhouse. Otherwise, you're in the situation where you have that long, skinny bowling alley-type lot, which again, most townhomes are not really looked favorable on those either.

Mr. Croughan: But I guess though, if you were to keep the structure itself, you wouldn't need any variances, so it's only because you're going with a townhouse

type setting is that you need the variances.

Ms. Plass: Well, the structure that exists right now is on one of the three lots, the middle lot, and we're looking to get rid of that and put up the townhomes, you know, as an investment.

Mr. Croughan: Whether the requested variance is substantial, so the variances requested are lot area, approximately 50 percent, the front yard -- what's required is 30, you're at 15 -- so that's 100 percent because you're requiring another 15, and then block coverage is 4 percent, which is kind of negligible.

Ms. Plass: Correct.

Mr. Croughan: So it seems like you have two substantial variances.

Ms. Plass: Well, again, the 15, you know, we're being told we have to be at 15, but either way, I mean, we have an extra 5 feet. We're at 105-foot, the depth of the lots, so we could move it back to 20 and as for a 10-foot, but we were going by the guidance we were, you know, given.

Mr. Barber: Those are what the other houses are as set back now.

Ms. Plass: Yeah. Roughly. I mean, you know, I didn't locate all of them, but roughly, and like I said, the 150-unit complex is at 15 feet, and they only have 100-foot deep lots.

Mr. Barber: You've got to remember, those were approved --

Ms. Plass: Well, it's the same zoning.

Mr. Barber: -- 20 years ago?

Ms. Plass: Well, the zoning, according to Alex, the zoning was written for that subdivision, for that complex. The UR-3A or whatever it's called. That's what he told me at one of the meetings.

Mr. Barber: I believe --

Ms. Plass: Because I asked him about it. I said how come the zoning is strange, and he said it was written for that project.

Mr. Barber: For that project.

Mr. Sierra: Yeah.

Ms. Plass: Yeah.

Mr. Sierra: Yeah. It's definitely over 20 years old.

Mr. Barber: Like 25 years.

Ms. Plass: Right. But --

Ms. Dibble: Like 2005, 2006.

Ms. Plass: I guess my point is if the zoning was written for that project, that project asked for four variances themselves -- lot area, front yard -- I have a copy of their map and what they asked for. They needed substantial variances also because, again, the zoning is difficult to build a townhouse complex based on the zoning.

Mr. Croughan: Just to continue along for a moment, whether the variance, if granted, will have an adverse effect on physical or environmental conditions of the neighborhood or district?

Mr. Dibble: No.

Mr. Croughan: And whether the alleged difficulty was self-created.

Mr. Dibble: No.

Mr. Croughan: I think you'd have a hard time there because you've owned the property, so you took it subject to whatever was there, so it does become self-created. But again, any one factor here does not preclude you. It's just stuff for the board to consider.

Ms. Plass: Right.

Mr. Croughan: We did also receive a letter from the Orange County Department of Planning, which I'll read into the record.

The Department has received the above referenced area variance for a seven-lot subdivision in two buildings in the UR-3A zone and has found no evidence that significant intermunicipal or countywide impacts would result from its approval.

In determining whether to grant the requested area variance, consideration should be given to the added benefit afforded the applicant if the variance is granted versus the potential detriment to the health, safety, and welfare of the community or neighborhood by such an approval. When deliberating whether to grant a requested variance, consideration should be given to -- and we went through the five factors already.

And again, no one is dispositive. It's taking in a cumulative effect. Martina, you had suggested to me that there may be a letter forthcoming.

Clerk: Yes. Unfortunately, we haven't received anything yet.

Mr. Croughan: Okay. It is a public hearing.

Mr. Sierra: Mr. Dibble, when did you purchase the property?

Mr. Dibble: I purchased this property in --

Ms. Dibble: November 25, 2006.

Mr. Dibble: -- 2006, then moved in --

Ms. Dibble: April of '07.

Mr. Dibble: That timeframe.

Mr. Sierra: I know that that project at that time wasn't being built. It was on hold (inaudible).

Mr. Barber: You don't plan on living there after you build these?

Ms. Dibble: We do, actually.

Ms. Plass: They're going to live in one of the units.

Ms. Dibble: Yeah. We plan on taking probably one of the end units. I think, just for myself, I'd like to point out too that we grew up here, we live here, we have property throughout the City and, you know, I think we take pride in any project that we tackle, so I think that's important to remember too, you know, on a personal level. We plan to live there.

Mr. Dibble: We're not going anywhere.

Ms. Dibble: So, you know, we've invested in our City. I think, just like I said, we have two other properties within the City limits.

Mr. Barber: So are you going to rent all of these units or sell them?

Ms. Dibble: Oh, no. We're going to sell them.

Ms. Plass: No. Sell the units.

Mr. Barber: Sell them.

Ms. Dibble: Yeah. With the exception of one for us.

Mr. Dibble: Or your mother -- my mother-in-law.

Ms. Dibble: We'll cross that bridge when --

Mr. Barber: So now you're down to five units.

Ms. Dibble: Yeah.

Ms. Plass: Potentially. Potentially.

Ms. Dibble: No. She's got a house. She's fine where she is.

Ms. Plass: She does have a nice house actually.

Ms. Dibble: Now she does. Yes.

Mr. Sierra: Mr. Woody, do you have any questions or comments?

Mr. Woody: I'm good. I don't have any questions.

Ms. Plass: No questions?

Mr. Sierra: Okay. So what we're going to do is we're going to table this matter until next month's meeting.

Ms. Plass: Okay.

Mr. Sierra: We're going to leave the public hearing open for any written comments or concerns. Any other questions from the board or counsel?

Mr. Croughan: Just a neighbor did voice a concern, and they said that they were going to submit, but as of now, they have not submitted, but the public hearing is being kept open.

Ms. Dibble: Okay.

Mr. Croughan: We do have our letter from the County, and just by next meeting, I can prepare the resolution if the board would like.

Mr. Sierra: In my opinion, I --

Mr. Barber: I would like to wait and see if there are any letters come in.

Mr. Sierra: Okay.

Mr. Barber: Or if anybody shows up next month.

Mr. Sierra: In my opinion, I think it's going to be contingent with the (inaudible) project, like I said, as well as, you know, you said you spoke to Jacob. I'd like to get some comments from Jacob and Mr. Welch. Usually he's here. He's not here tonight.

Ms. Dibble: Yeah. We met with them together not long ago.

Mr. Dibble: If I could say, these variances we were asked for were ran by Commissioner Tawil and Jacob, the inspector.

Mr. Sierra: I don't doubt you, but I've got to get approval from him.

Mr. Dibble: No, no.

Mr. Sierra: Even though you guys still need to go to the Planning Board; correct?

Ms. Plass: Right. We've been to multiple boards.

Mr. Sierra: You're just asking for zoning, and you've got to go to the Planning Board for the fine tuning. I get it. This is a first step.

Ms. Plass: Not the first step.

Mr. Sierra: We've gone through the processes here. We're leaving the public hearing open. We have to get a comment from Mr. Tawil, Mr. Welch, and obviously from the neighbors, and we'll table this for next month.

Mr. Dibble: Do we have a time or --

Ms. Plass: What is the day of the next meeting?

Mr. Barber: Third Wednesday. That's how I remember it.

Ms. Plass: Third Wednesday.

Mr. Sierra: Third Wednesday, 7:00.

Ms. Plass: All right.

Ms. Dibble: So no required additional mailers. That's it.

Clerk: No.

Mr. Sierra: You already mailed everything out.

Ms. Plass: Okay. So no additional information you want us to bring or anything -- any other --

Mr. Barber: Happy faces. That's all.

Mr. Dibble: No nervous face?

Mr. Sierra: If there's anything, Martina will -- if something happens between now

and next month, Martina will reach out to you.

Ms. Plass: Okay.

Mr. Croughan: And just to let the applicant be aware, there are two other members who are not present tonight, so they may have additional questions or may ask that you provide some additional documents at the next meeting.

Ms. Plass: Okay.

Mr. Croughan: Okay?

Ms. Plass: Okay. Thank you very much.

Mr. Dibble: Thank you for your time. Thank you, Martina. Thank you for your patience.

Clerk: You're welcome.

Mr. Barber made a motion to adjourn, seconded by Mr. Woody.

Roll Call Ayes: Joel Sierra, Nicholas Barber, Marc Woody

Adjourned 7:28PM

Respectfully Submitted,

Diane Genender, Transcriptionist