

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

May 16, 2018

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 16, 2018 at 7:00 P.M., Joel Sierra, presiding.

Board Members Present: Joel Sierra, Nick Barber, Marc Woody.

Board Members Absent: Don Luis, Deborah Clark.

Other Attendees: Alex Smith, Assistant Corporation Counsel.

A motion was made by Mr. Barber and seconded by Mr. Woody to accept April 18, 2018 minutes as submitted.

Board Members Aye: Marc Woody, Nick Barber, Joel Sierra.

12-12 ½ William Street

Jianjiang Ye

a use variance and an area variance (a three-family dwelling in DMU zone)

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

Mr. Ye: My name is Jianjiang Ye, I'm the owner of the property at 12-12 ½ William Street.

Mr. Smith: You were here last month. This is basically a variance from the new DMU requirement for commercial on the first floor. I know the building inspector weighed in. You were going to provide us with some more documents, you did, I've seen them. Is there anything else ...more you want to say? I mean we went through this pretty thoroughly last time.

Mr. Ye: No, that's all I have.

Mr. Smith: That's all you have?

Mr. Ye: Yes.

Mr. Sierra: All right, do we have any questions from the Board? Any questions on this property? (*No one came forward*) Now, you want to keep it as a 3-family dwelling? Is that your intention here?

Mr. Ye: Yes.

Mr. Sierra: And this falls within a new downtown zoning?

Mr. Smith: Right and there is no longer... the Planning Board can't waive the commercial use. Now it's up to the ZBA to grant variance and as you went through it last time, the building inspector indicated that it's not really suitable for a commercial. He didn't really get a warning from the City about the DMU zone when he bought it, it was just prior so he certainly has some issues.

Mr. Sierra: Ok, I know that we discussed title insurance. Did you...

Mr. Smith: I got that and it didn't really add anything to what we already know.

Mr. Sierra: Ok and how did the municipals come out?

Mr. Smith: He wasn't warned.

Mr. Sierra: Ok, so I take it we'll table this until next month meeting, all right?

Mr. Smith: Ok, but you gonna close public hearing? Unless anybody wants to...

Mr. Barber: You gonna do a resolution?

Mr. Smith: Yes.

Mr. Barber: Ok.

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

No one came forward and Mr. Sierra closed public hearing

Mr. Sierra: We'll table this until next month.

Mr. Ye: Thanks.

**60 Hanford Street
George and Donna Lynch
5-year extension to comply with Amortization Ordinance**

Ms. Beverson: Good evening gentlemen. Cheryl Beverson, I'm here with George Lynch, one of the owners of Hanford Street.

Mr. Sierra: Would you like to give us a brief outline on this?

Ms. Beverson: Sure. 60 Hanford Street, what we've applied for, we did not get DPW approval for the variance. We want to have a 5-year extension to convert a 3-family back down to a 2-family. I did submit some documentation to DPW concerning the rents, the mortgage, the expenses on the property and it does create a financial hardship for the Lynches right now. Their monthly expenses on 60 Hanford are about \$1,700.00 a month so without any tenants... because they would have to evict 3 sets of tenants, we would have 3 families who are homeless in Middletown and they'd be in the negative almost \$1,700.00 a month. Mr. Lynch is the only one working in his household. His wife has been a stay-at-home wife and mother throughout their marriage so this would create a financial hardship and we respectfully request the 5-year extension to convert this to a 2-family.

Mr. Smith: Well, as I understand this file, I took a look at it earlier; you are actually appealing the Commissioner's decision not to grant a structural unreasonability.

Ms. Beverson: Yes, which we feel it is as well because there's three separate furnaces, three separate hot water heaters, everything is already set up for a three-family. It's always been that way since the Lynches purchased this back in 2001, February 2001.

Mr. Smith: Did you submit any architectural, engineering plans or anything on the structural unreasonability?

Ms. Beverson: Not yet, no, we have not. If we are allowed time, Mr. Lynch can certainly obtain that.

Mr. Sierra: So, you did apply for the waiver.

Ms. Beverson: Correct.

Mr. Sierra: With the Commissioner of Public Works.

Ms. Beverson: And that was denied.

Mr. Sierra: For structural.

Ms. Beverson: Uhm.

Mr. Smith: So we actually have two issues and frankly the structural unreasonability really comes first, obviously.

Mr. Barber: Did anybody go and look at it from the DPW?

Mr. Lynch: Yes. I don't know his name off hand, he did come look, he went through all the measurements, he had a floor plan, he looked at the floor plan, he measured the whole place and I guess they reviewed it and then it came back denied.

Mr. Smith: Yes, I took a look at that this morning too. I spoke with the ... Cheryl, what we've been doing is, globally the ZBA has been remanding these appeals from structural unreasonability decisions back to the Commissioner. You are entitled to have a written resolution doing that. I'm gonna recommend that in this case as well because we want to be consistent with all of them. If you want to make it easier and quicker, if you just want to consent to the remand, what the ZBA has been doing is holding open the 5-year extension issue because obviously if you are granted on the remand of structural unreasonability, you don't need a 5-year extension; it's there forever. So if you want to just consent to it as opposed to having us do a whole resolution, it's simply a remand that will allow you to come back without financial penalty to the ZBA if you get a decision from the Commissioner denying it again, just appeal that decision within 60 days and you can come back. I'm also aware of ... you paid \$350.00 for this gentleman and your other client tonight...

Ms. Beverson: It's Mr. Lynch.

Mr. Smith: On both properties?

Ms. Beverson: Yes.

Mr. Smith: Ok.

Ms. Beverson: 13 Eldred is also his, yes.

Mr. Smith: All right. And 13 Eldred is in the same status. Those checks were not cashed because we were not certain whether you are also appealing structural unreasonability and there is no sense in City cashing those extension checks, that's what we call it, 5-year extension, until it's determined that it's necessary so, that's the good news for you. If and when you lose the structural unreasonability and you want a 5-year extension then you have to re-submit \$350.00. The only financial bad news I have for you is that you haven't paid \$100.00 for the appeal for the structural unreasonability on either property so you do have to pay \$100.00 on each property for the structural unreasonability appeal.

Ms. Beverson: That's fine; we would certainly consent to that and just a side note, I probably would have been better informed but my initial letters going back to 2017 to DPW, I have never received any communication from the City of Middletown other than when Martina called my office last week to see if I was available for this evening so we probably could have avoided some of this if there was any communication with the Lynches attorney in this matter. So that's one of the issues I do have that there's been zero communication with my office.

Mr. Smith: All right. I don't know what happen but we are going to rectify it now. That's why we never cashed those extension checks because we just weren't sure what happened here but I took a look at it today and my suggestion to the ZBA is to remand this on the same terms as we've been remanding other structural unreasonability decisions and if you want to consent to it, the ZBA can vote on it tonight without a written resolution.

Ms. Beverson: I would certainly consent to that and then when would you need the \$100.00 tendered? I can have Mr. Lynch submit that to DPW during the week.

Mr. Smith: No, not to DPW, Martina.

Ms. Beverson: Oh, right here. So if we have that tonight, we can leave it tonight, right?

Mr. Smith: Yes.

Mr. Sierra: Just briefly for the record, were these properties built as 3-families?

Ms. Beverson: They were pre-existing when they purchased them. Unfortunately, you see, I did the closing...

Mr. Sierra: Mr. Lunch didn't convert these into 3-families, right? You have separate utilities, you said?

Mr. Smith: And one of the things we are looking at on these remands is what they were originally built as.

Mr. Sierra: Ok, so any other information you need from Corporation Counsel?

Ms. Beverson: At this time, no.

Mr. Sierra: So we gonna draft the resolution ...

Mr. Smith: No, we don't need a draft, we can vote tonight.

Mr. Sierra: There we go, we gonna vote right now to send this back to the Commissioner of Public Works.

Ms. Beverson: We consent 100% to that.

A motion was made by Mr. Barber and seconded by Mr. Woody to remand the application of George and Donna Lynch for the property located at 60 Hanford Street, Middletown, New York to the Commissioner of Public Works for further analysis and reconsideration.

Board Members Aye: Marc Woody, Nick Barber, Joel Sierra.

Mr. Sierra: All right, so you will be hearing from both, Corporation Counsel and the Commissioner of Public Works.

Ms. Beverson: Thank you.

Mr. Sierra: Thank you.

Ms. Beverson: Do you want to do Eldred Street or we dealt with that or no?

Mr. Sierra: We dealt with that.

Mr. Smith: Oh, this motion covered both?

Mr. Sierra: Well, she is representing both, correct?

Mr. Smith: You don't have any problem with the motion deeming both going back to the Commissioner?

Ms. Beverson: No, actually we would prefer that if we can send both back to remand them and then apply for the 5-year extension because it's the same situation on 13 Eldred. That has all separate utilities, three furnaces, three hot water heaters, there is a sprinkler system. They purchased this one in 1996 and it was already a preexisting 3-family.

Mr. Sierra: All right, I need another motion for 13 Eldred.

A motion was made by Mr. Barber and seconded by Mr. Woody to remand the application of George and Donna Lynch for the property located at 13 Eldred Street, Middletown, New York to the Commissioner of Public Works for further analysis and reconsideration.

Board Members Aye: Marc Woody, Nick Barber, Joel Sierra.

Ms. Beverson: Thank you. So we'll get that \$200.00 to you. I'm not sure if I put George on the spot if he has it with him tonight. So we'll get that over. Thank you.

Mr. Lynch: Thank you.

Mr. Sierra: All right, thank you.

**9-13 Mulberry Street
David Soto
area variance for an existing sign**

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

Mr. Soto: Yes, I'm Pastor David Soto from the New Beginnings Church 9-13, I always say 11 but I believe it's 9-13 and the reason I guess for us being here is for a variance for a sign, right?

Mr. Sierra: Pastor, what exactly are you trying to do? Are you trying to put a sign up or a bigger sign, smaller sign, what kind of sign is it that you want?

Mr. Soto: It's a bigger sign, it's more modern, you know a lighted sign and we are trying to get it centered on the property, we want it to be visible so that it looks right on the property so I was told that we need a variance because it needed to be 15 feet back, that puts it real back.

Mr. Smith: And you want 7 feet back, is that what it is?

Mr. Soto: Yes, I was hoping to get it more centered so it's not so close to the building but a little bit further.

Mr. Smith: Well, your application says you want basically two variances.

Mr. Soto: Correct.

Mr. Smith: There's an 8-foot variance to alleviate the 15 foot requirement.

Mr. Soto: Correct.

Mr. Smith: So you want it to be 8 feet from the neighboring...

Mr. Soto: From the sidewalk.

Mr. Smith: From the sidewalk, ok. You want a variance so you can build the sign 8 feet from the sidewalk; that's number one.

Mr. Soto: That's number one.

Mr. Smith: And the number two is, the dimensions on the sign is limited to 3 by 8 and you want 4 by 8.

Mr. Soto: Right because I didn't know that so we have ordered a 4 by 8 so that's why they told me just go ahead and ask for a variance and see if you get it so we don't have to send it back or...

Mr. Smith: So you are basically asking for a one foot variance although I guess it's really the square footage it would be 24 feet, yes, it's really 8 square foot variance.

Mr. Barber: This is just back ... Is it LED?

Mr. Soto: It's double sided and I think it's LED inside but it's not one of those LED flashing signs, it's just like a white florescent background with the little black letters.

Mr. Barber: That you change?

Mr. Soto: That you can change yes, you can put announcements on it you know but you change them manually.

Mr. Barber: Manually.

Mr. Soto: Yes, it's not...

Mr. Barber: Electronic.

Mr. Soto: No, it's not that.

Mr. Woody: Is it fixed?

Mr. Soto: It will be a fixed sign, sure. Yes, it's gonna have some pillars on the side, some brick that we gave...

Mr. Sierra: It's not obstructing any view of traffic or anything?

Mr. Soto: Nothing like that.

Mr. Smith: It looks like you are in the BID district so you have to probably get an approval from the BID.

Mr. Soto: Yes, I think they are the ones who sent me down, the ones that you know, worry about how things look and the colors...

Mr. Smith: Yes, exactly.

Mr. Soto: Yes, they are the ones who sent it back so that's why we are here.

Mr. Smith: All right, so they've already OK'd it?

Mr. Soto: Well, they saw it, so as long as we get the variance, you know...

Mr. Smith: All right, we have to make it... if the ZBA wants to approve it we'll make it conditional that you comply with whatever the BID committee says, the BID Board.

Mr. Soto: Uhm, right.

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

Mr. Sierra: I need a motion to approve the sign.

Mr. Smith: And I would just make it conditional on BID Board approval and DPW field approval.

A motion was made by Mr. Woody and seconded by Mr. Barber to approve the application of David Soto for area variances in order to have 4x8 sign placed 8 feet from the sidewalk, located at 9-13 Mulberry Street, Middletown, NY. This approval is contingent on the field approval of the Department of Public Works and on the approval of the Business Improvement District Committee.

Board Members Aye: Marc Woody, Nick Barber, Joel Sierra.

Mr. Sierra: All right Mr. Soto, go to see BID and I'm sure you talked to Walter already.

Mr. Soto: Yes. That's it?

Mr. Sierra: That's it.

Mr. Soto: Thank you, good night, guys.

Mr. Sierra: Have a good night.

Ms. Beverson: Not to interrupt but can we go on the record for a receipt? Martina can't give us a receipt.

Mr. Smith: All right.

Mr. Barber: I write you a receipt.

Ms. Beverson: Cheryl Beverson again for George and Donna Lynch for 13 Eldred. I have a \$100.00 I'm tendering to Martina right now; I'd like an acknowledgment on the record that the City of Middletown is in receipt of that for the remand. And that was 13 Eldred and I acknowledge that she did give me back George and Donna Lynch's check #6843 in the amount of \$350.00 uncashed. I'm in receipt of that. I also got back from Martina check #6842 in the amount of \$350.00 for 60 Hanford and I'm handing her another \$100.00 in cash.

Mr. Smith: Receipt's on the record.

Ms. Beverson: Thank you.

Mr. Sierra: All right, thank you. I need a motion to go into executive session for advice of the counsel.

A motion was made by Mr. Barber and seconded by Mr. Woody that the Middletown Zoning Board of Appeals holds an executive session for advice of the counsel. (7:18PM).

Board Members Aye: Marc Woody, Nick Barber, Joel Sierra.

7:35PM. Zoning Board of Appeals came out of the executive session.

Adjourned at 7:36 p.m.

Respectfully submitted

Martina Tu, Clerk