

**CITY OF MIDDLETOWN  
PLANNING BOARD  
MINUTES**

**September 06, 2017**

A meeting of the Planning Board was held in the Common Council Chambers, City Hall, 16 James Street, Middletown, New York on September 6, 2017 at 7:00 P.M., Mr. Anthony Capozella presiding.

Members Present: Anthony Capozella, Dan Higbie, Steven Sisco, John Naumchik.

Members Absent: Paul Thorn, Nicole Hewson.

Other Attendees: Alex Smith, Assistant Corporation Counsel, Gef Chumard, Planning Board engineer.

The Pledge of Allegiance was said.

On motion of Mr. Naumchik and seconded by Mr. Higbie to appoint Mr. Capozella the temporary chairman for the September 6, 2017 Planning Board meeting.

Roll Call Ayes: Steven Sisco, Dan Higbie, Anthony Capozella, John Naumchik.

Mr. Capozella: Next we always make a mention of this that if you are here for the first time this evening it is considered a preliminary hearing and that the Board has the right not to vote, not to act and move it on to the next month for the further consideration. Just so you all know. Also, this evening we only have 4 members on the Board here today, so that means that if you step forward and want to present your application you need a unanimous vote of the Board in order to pass. Just warning you, just so you know.

**101 Monhagen Avenue LLC  
101 Monhagen Avenue  
Eating establishment 6-month extension**

On motion of Mr. Naumchik and seconded by Mr. Sisco to grant the request of 101 Monhagen Avenue LLC. for a six month extension of the site plan and special use permit dated March 1, 2017 for an eating establishment, located at 101 Monhagen Avenue, Middletown, New York.

Roll Call Ayes: Steven Sisco, Dan Higbie, Anthony Capozella, John Naumchik.

**Johnston Subaru – preliminary hearing only**  
**2-8 James P. Kelly Way**  
**10, 12-14 County Highway 78**  
**Public Garage and Motor Vehicles Sales**

Mr. Capozella: I believe they would like to do a presentation this evening of their project. This is again, part of the preliminary; if you want to get started, please step forward gentlemen.

Mr. Fetherston: Good evening Mr. Chairman. Andrew Fetherston from Maser Consulting here to present Johnston Subaru. We are with this project in two municipalities. We had previously presented this project to the Town of Wawayanda; we are pending responding to comments from your consultants for the City of Middletown and also to the consultant for the Town of Wawayanda, that is pending. What I'd like to do is just take you through the project, if I could, some brief notes and then proceed as the Board desires. So this is presently 5 lots, is how this project is made up. We are proposing to combine some of the lots. There are two lots presently in the Town of Wawayanda, we are going to combine those two, make them one lot and in the City of Middletown there were three lots, we are going to combine them and have two lots afterwards. We can't combine all three because they are actually on either side of... they are straddling the portion of the site that's in Wawayanda; I'll show you that as I get back over to the drawings. There's frontage on 17 M, Dolson Avenue, that was previously the entrance for what was the Wiedy's furniture store. In the Town, it's located in town commercial, it's a permitted use. We have a special permitted use for motor vehicles sales and service in the Town of Wawayanda. There's also frontage on James P. Kelly Way to the south and also onto County Highway 78 to the north. The site is vacant with the exception of a driveway onto County Route 78 and the remanence of what was the Wiedy's building which we are going to refurbish and make that a portion of the proposed dealership. In the City we are located in C-3 General Business Zoning District which has a special permitted use for public garages and motor vehicles storage. Located within the Town of Wawayanda water and sewer districts and I believe also in the City's water and sewer district. Because the site is in two municipalities we are proposing to serve the center of the site which is Wawayanda from State Route 17M with water and sewer so the portion of the site that's in Wawayanda will be served water and sewer from Wawayanda. The same way we have a detail building, it's on the left hand side of the drawing if you are looking at the north end, we are proposing to bring water and sewer to that building from County Route 78, which will be Middletown water

and sewer. So we are trying to keep everything... Wawayanda portion is served by Wawayanda and Middletown portion is served by Middletown. So we are proposing to reduce the lots down to three lots; two in the City, one in the Town. Proposing the construction of a Subaru Dealership and Service Center, I let the architect come up and tell you about the building. We have prepared our Storm Water Management Plan in accordance with the 2015 State Storm Water Management Design Manual, it has been reviewed by your consultant and I have prepared a draft response to all of the comments that we received from both, Gef and also from his Storm Water reviewer. That I've not released to the City or the Town yet, that will be released when we revised the drawings to show that we've addressed the comments. So we've provided a survey, a demolition plan, a layout plan, grading and drainage plans with water and sewer utilities, we've done erosion and sediment control plans, we've done landscaping plans and lighting plans, full set of details for all of those and the storm water report. That's where we are today.

Mr. Smith: What's going on with SEQRA? Has the Town declared the Lead Agency?

Mr. Fetherston: The Town has circulated for Lead Agency; they have not gotten that back yet.

Mr. Smith: I don't think we've gotten it. Martina, have we gotten anything from the Town regarding SEQRA?

Clerk: No, I don't believe so.

Mr. Smith: And the City Clerk is here. Could you...

Mr. Fetherston: I'll find out about that. I'll certainly find out about that.

Mr. Smith: I don't think there will be any objections to the Town being the Lead Agency, it's probably appropriate but it's got to be coordinated. And the same question about the Section 239 review, what's going on with that?

Mr. Fetherston: That should have gone to the County also. I believe it was sent to the County by Wawayanda and also to New York State DOT. I have to follow up with both of those.

Mr. Smith: Ok, because I don't think we've gotten that either.

Mr. Naumchik: Wouldn't the final plans, Alex, though have to go to the County?

Mr. Smith: Well, it's their choice. I mean the County is gonna want to see the final plans.

Mr. Fetherston: The plans, I certainly believe, went to the County because I remember distinctly, when I presented at Wawayanda that the plans were deemed suitable and of very advanced level of details, certainly suitable for a County review. I'll have to find out why that was not submitted. It's lack of communication, obviously.

Mr. Smith: And plus the final plans should go over to the County too, you know from the Middletown. The plans you are talking about, are they going to be separate plans for Wawayanda and Middletown?

Mr. Fetherston: Absolutely not, one set of plans and we've had two sets of meetings so far. We met with Town of Wawayanda engineer and also Gef came to my office just to review the plans earlier in the process and we also met this afternoon with Gef, Wawayanda's engineer and also Jacob came in, joined us and we went through everything with the architect and the applicant.

Mr. Smith: One other question-when are you going to merge the lots?

Mr. Fetherston: That's pending, that is pending.

Mr. Smith: Well, but is it going to be shown on final plans as merged or how are you going to handle that?

Mr. Cappello: We have contacted the City, we have the form, I was actually under the impression it was filed, we will file that within the next week to 10 days to officially merge the two City of Middletown lots and reflect that on the map that is eventually approved.

Mr. Smith: The three in two.

Mr. Cappello: Yes, there's two on one side that we'll merge and then there's the other one, it's just going to stay as is.

Mr. Smith: Oh, it's going to just stay as is? So you are really merging two lots then.

Mr. Cappello: Right. We are merging the two that are contiguous to each other on the left, the north side as you are looking in. And we did contact the City Assessor

and that can be done just by a form, combining them.

Mr. Naumchik: She said that could be done without the Council approval.

Mr. Cappello: Yes, she actually gave me the form, I sent it to the engineers and we were just talking before, it may have already been filed, we just have to check.

Mr. Smith: I think the Assessor was wondering whether or not you were going to do the merging before or after the Planning Board approval and I thought it would be better to do it before so that the final set plan reflects it.

Mr. Cappello: Yes, we agree and we'll do the same in Wawayanda and then on your question regarding Lead Agency, because I was at the Wawayanda meeting, I know they adopted a resolution, we provided them with the copies, we just have to follow up to make sure that it was mailed. On the 239M, we'll check with the County, I mean it is one unified plan; I don't know, we'll have to check with them whether they gonna want referrals from the City of Middletown and from the Town of Wawayanda since while it is one plan you will each have to grant approvals to...

Mr. Smith: Well, I wasn't suggesting there be separate referrals, I was just suggesting that both, Middletown and Wawayanda sites have to go to the County.

Mr. Cappello: Yes, I just want to make sure when they comment that there's not gap; that they say well we got it from Wawayanda so it doesn't count for Middletown, so we'll make sure they understand.

Mr. Naumchik: So I know Kate Schimdt does all the Middletown ones. Is there somebody different that does Wawayanda?

Mr. Cappello: I don't know who does Wawayanda but I will find out tomorrow.

Mr. Naumchik: Because then you are dealing with two different people.

Mr. Cappello: Yes.

Mr. Fetherston: That's really the project. I can take you through the plans if you like; whatever the Board's preference is.

Mr. Capozella: Does the Board have any questions or preferences for the initial presentation?

Mr. Higbie: I know that we have the copies of these, I don't know if there is anybody here from the public hearing that would want to see them.

Mr. Naumchik: Alex, a question: this really isn't a public hearing, correct?

Mr. Smith: Well, not yet. We could open it, I don't know if it makes any sense to go into much detail since we don't have final plans. Perhaps you can open it and see if anybody wants to speak.

Mr. Capozella: We can open it and not close it. He has his mailings, he is ready to go.

*Mr. Capozella opened public hearing.*

Mr. Kleiner: Jerry Kleiner, Randal Heights, Middletown. My concern with this from the beginning when it was first presented, they showed the entrance and exit, including right and left turns, opposite the entrance to Dairy Queen and Quick Check and I just don't think that that's a good idea so I don't know where we are on that.

Mr. Smith: I believe they addressed that this afternoon. I'm not sure, maybe one of the gentlemen would like to speak to it. I think there's been change to the plan but I'm not sure.

Mr. Kleiner: All right, thank you.

Mr. Fetherston: We discussed that today. That was a concern that Jacob brought up long ago and right now the plans that you are looking at show full access, right in, right out, left in, left out. What we are proposing to be the change, as it worked out with my traffic engineers was to have right in, right out and also a left turn in coming down James P. Kelly Way; no left turn out or straight, going directly across the intersection into property across the road. That is something we've spoken about and my traffic engineer will be present at the next meeting to discuss that. That's our plan.

Mr. Naumchik: I thought Jacob wanted the road changed so it goes out to where the traffic light is.

Mr. Fetherston: We don't have control of that piece of property and we've also shown on my plans, we have a retaining wall here, because we are coming downhill from James P. Kelly Way, down into the site to match the existing floor

elevation that there is from the old Wiedy's building. We are trying to reuse that building and we have successfully but we are dropping in grade so grade wise to get up into this other site, if there was legal permission, it would require ramping to get up into that site. But right now we don't have access onto that other site, it's not our property. We do have right in, right out off of 17M, full access onto County Highway 78 and James P. Kelly Way we gonna modify, as I've discussed, so access really isn't an issue for the site, it's got three access points.

Mr. Naumchik: The Commissioner Tawil was ok with that?

Mr. Fetherston: Not yet. We were discussing it, how we want to modify what we have on the plan today and we gonna have the traffic engineers discuss it and find the best solution.

Mr. Capozella: We'll address that when we get to the final plans.

Mr. Fetherston: You got it.

Mr. Higbie: Out of curiosity, what are you doing with your existing Subaru dealer?

Mr. Fetherston: Right now keep it. The applicant is here. Right now there's no plans.

Mr. Capozella: Ok, thank you. Anyone else from the public wish to step forward this evening?

*No one came forward and Mr. Capozella kept public hearing open.*

Mr. Capozella: I think you gentlemen will be back couple more times and we'll continue at that point.

Mr. Smith: Do you have further meetings planned with the Commissioner or how was that left today?

Mr. Fetherston: It was left that I have a comment letter that is due to my office from Wawayanda. When I get that final letter, that would be... there were two from Gef's office, one on the site, one on the storm water, I have one form Wawayanda on the site, I don't have the storm water yet. As soon as I get that, we will be modifying the plans. I have an 11-page comment response letter all drafted up, what I don't have is the comments from Town of Wawayanda storm water, so once I get that we've got very minor changes to make on these plans; really it's the

traffic onto James P. Kelly Way.

Mr. Capozella: Good. I think we have to vote to adjourn for future consideration.

On motion of Mr. Higbie and seconded by Mr. Naumchik to adjourn for future consideration application of Johnston Subaru for public garage and motor vehicles sales located at 2-8 James P. Kelly Way and 10, 12-14 County Highway 78, Middletown.

Roll Call Ayes: Dan Higbie, Anthony Capozella, Steve Sisco, John Naumchik.

**MSL Properties, LLC.**

**126 Sprague Avenue**

**an auto sales, office and residential rental apartment - Reconsideration**

Mr. Smith: I sent a letter to Mr. Lederman two weeks ago. DPW discovered after the Planning Board voted to approve this, that the lot requires area variances. So there is really nothing we can do. My suggestion is that the Board should vote to vacate it's decision and refer this gentleman to the ZBA and have them consider the area variance because you have to have a couple of them. And be in touch with Walter and he will give you specifications of exactly what the footage is because on the application to the ZBA you should put exact footage. I think you need... there is a lot size, there is width variance I believe, Walter?

Mr. Welch: Square footage it's... yes, area variance.

Mr. Lederman: Just curious why this came up six months after I attended the meeting?

Mr. Smith: It was just discovered. I don't know if it was on the original site plans, I don't know if there was footage on there or not but it was just discovered. The DPW was reviewing it in preparation for ...

Mr. Lederman: And what was the concern, what was the flag, the reason for it?

Mr. Smith: The variances, the lot sizes. You see, if you would have been a grandfathered use, you could continue without an area variance but you changed the use. So that triggers the need to get area variances; your lot size is too small and Walter can explain to you with the width, what the setback variances are, there is couple of them.

Mr. Lederman: Ok.

Mr. Smith: So there is really no choice. It has to be done.

Mr. Lederman: Ok.

Mr. Smith: So that's why I suggest a motion to vacate the decision and to refer it to the ZBA and once the ZBA makes the decision you come back.

Mr. Lederman: Ok, thanks.

On motion of Mr. Naumchik and seconded by Mr. Sisco to vacate the Planning Board decision made on August 2, 2017 regarding the application of MSL Properties, LLC for a an auto sales, office and a single family residential rental apartment located at 126 Sprague Avenue, Middletown and refer the matter to the Zoning Board of Appeals to obtain required area variances.

Roll Call Ayes: Dan Higbie, Anthony Capozella, Steve Sisco, John Naumchik.

**Mazel Midland, LLC**  
**55 Midland Avenue Extension**  
**Warehouse**

Mr. Capozella: We finally have received the letter from Orange County and I think that was the only thing we were waiting for.

Mr. Smith: Yes.

Mr. Capozella: So the Board was just waiting for the paperwork to come through. If there are any questions, I mean we can close the public hearing at this time or I should I guess address one more time, anyone from the public that would like to comment on this application please step forward.

*No one came forward and Mr. Capozella closed public hearing.*

Mr. Capozella: Having received the last bit of paperwork I will need a motion to grant this applicant's request.

On motion of Mr. Higbie and seconded by Mr. Sisco to approve the application of Mazel Midland, LLC approves the application of Mazel Midland, LLC for distribution and warehousing facility located at 55 Midland Avenue Ext.,

Middletown, New York. Hours of Operation Monday-Thursday, Saturday and Sunday 9AM to 5PM, Friday 9AM to 2PM. This approval is contingent on the approval of the Department of Public Works and Fire Department if necessary.

Roll Call Ayes: Steven Sisco, Dan Higbie, Anthony Capozella, John Naumchik.

Mr. Capozella: Thank you sir.

Mr. Eisdorfer: Take care.

**Love Legacy Chapel International**  
**139-147 Wickham Avenue**  
**charitable organization office including training and development rooms,**  
**counseling, food and clothing distribution**

*No one came forward*

Mr. Capozella: Not here again?

Mr. Smith: Second no show.

Mr. Capozella: This happened last time.

Mr. Smith: We need a vote to strike them from the calendar. Half of what they want to do is not allowed in that zone anyway.

Mr. Capozella: But they exist there right now. That's the problem.

Mr. Naumchik: They are there now?

Mr. Capozella: They have a store front, they decorated, they are there.

Mr. Smith: Well, we'll have to look at that.

Mr. Capozella: So officially, what do we do?

Mr. Smith: I would say it would be to strike the application.

Mr. Capozella: Motion to strike?

Mr. Smith: Strike the application.

On motion of Mr. Sisco and seconded by Mr. Naumchik to strike the application of Love Legacy Chapel International for charitable organization office including training and development rooms, counseling, food and clothing distribution located at 139-147 Wickham Avenue.

Roll Call Ayes: Dan Higbie, Anthony Capozella, Steve Sisco, John Naumchik.

**Robert C. Clarke**  
**39 Railroad Avenue**  
**Barber School**

*Mr. Clarke handed in mailings.*

Mr. Clarke: How are you?

Mr. Capozella: Good, how are you doing?

Mr. Clarke: Good. So currently we've been at 39 Railroad Avenue and we are barber supply, we do workshops there. What we are looking to do is the same room that we are doing workshops and do the state exams there; we are just looking to now educate, turn it into a barber school. We already, actually we merged with the barber school out of White Plains - Anthony's Barber Institute, so they are coming up to our property. They are already a school, the State has already granted us you know that we can use it once we prove that the Board says it's ok to be used for a school and how many people we can have in that particular room and they'll tell us how many students we can train in that particular space so what we are looking for now is just the approval from the Board to tell us that we can go ahead and do some education out of there. Again, we are doing workshops already and we do state exams, so people who come for their barber license they come there to take the exam and we are granted for that space already.

Mr. Capozella: Ok, thank you.

*Mr. Capozella opened public hearing.*

Mr. McCarey: Basically Mr. Clarke has this already set up, he just need the approval from the Planning Board to get the license to have the school, correct?

Mr. Clarke: That's right.

Mr. McCarey: Everything is already set up, the tables, the chairs, he already uses it for the testing facility; he just wants to use it for educational purposes. So no change to the building whatsoever?

Mr. Clarke: No change to the building, no.

Mr. Smith: And this is in the new... this is the rezoned area for downtown, so you are in the new zoning district but as I reviewed the new district the educational facilities for adults is a permitted use so this is a permitted use and Walter, I have my question for DPW, is there any issue with this building, this application?

Mr. Welch: No, I've been in there 4 times already.

Mr. Smith: Ok.

Mr. Capozella: Any other comments from the Board members? *(There were no comments from the Board members)* I just need to know though what we normally ask for any business. Oh, I'm sorry, you have that on your application, the hours of operation are already in there, we'll make sure we include that in the resolution and we do it officially.

Mr. Smith: Monday to Friday, 9AM to 6PM?

Mr. Clarke: Yes.

*Public hearing was closed.*

On motion of Mr. Higbie and seconded by Mr. Naumchik to approve the application of Robert C. Clarke, Sr. for a barber school located at 39 Railroad Avenue, Middletown, New York. Hours of operation are Monday to Friday 9AM to 6PM. Planning Board waives parking requirements. This approval is conditioned upon the approval of the Department of Public Works and Fire Department.

Roll Call Ayes: Steven Sisco, Dan Higbie, Anthony Capozella, John Naumchik.

Mr. Capozella: See Mr. Welch from the DPW.

Mr. Clarke: Ok. Thank you. Do we make an appointment to see you or...

Mr. Welch: Call the City Hall, DPW, you talk to Katie, ok?

Mr. Clarke: Ok, thank you. Have a good night.

**Morales Holdings, Inc.**

**295 Wawayanda Avenue**

**Storage space for an existing eating and drinking establishment**

*Mailings were submitted*

Mr. Morgante: Good evening everyone. My name is Michael Morgante. I'm the project engineer for this application before the Board. I would like the Board know this application, well, the original application was here... I think it was probably right around the end of 2016, beginning of 2017. The site had previously been used as a food and drinking establishment. We are looking for a re-site plan approval, so to speak, for what's proposed before you as Sorrento's Restaurant. The construction... and the Board did create the approval for site plan in this particular use. During the construction the applicant determined and the owner determined that they needed more storage space for their supplies for the restaurant at which point now we've come back to the Board with this particular application. We are proposing a 27 foot by 18 foot storage addition in the back left corner of the building. Essentially this addition is shown in more detail on the sheet 2.

Mr. Smith: So it's attached to the building?

Mr. Morgante: It's attached to the building, yes. It is attached to the building, there will be access through the side door over here that's shown on section 8. And again, it's only to be really used for storage for food and other things for restaurant. So the application before you, the plans before you are very minor in nature. Again, it's just a storage facility for the restaurant.

Mr. Smith: Walter, is there any DPW issue? I understand there was a concern about the base?

Mr. Welch: Yes, there is. They poured a slab with no permit whatsoever.

Mr. Smith: When you say a slab, what do you... explain it.

Mr. Welch: Like floor, concrete.

Mr. Smith: For the shed?

Mr. Welch: For the addition to the building. It's not a shed, they want to attach it to

the building.

Mr. Smith: Ok.

Mr. Welch: And I explained to the owners two months ago, three months ago, and they had the architect to draw a set of plans up and the plans are very nice but he keeps on saying slab done by others. There's no foundation under the slab. You can't attach a building that's got a foundation with a floating slab to it. You got to put a foundation under that slab before they attach that to the existing...

Mr. Morgante: You mean a base for the actual footing itself and the slab itself.

Mr. Welch: It's no different...that slab's on top of the ... on grade ok?

Mr. Morgante: Ok.

Mr. Welch: And you can't attach on grade slab to a permanent structure.

Mr. Morgante: Understood.

Mr. Welch: And whoever did the plans, did a nice job doing the plans but two times on plans that I read they said slab done by others.

Mr. Morgante: That was there before we got involved.

Mr. Welch: Ok, but I'm saying that.

Mr. Morgante: Sure.

Mr. Welch: Nothing wrong that you did, but there has to be a foundation.

Mr. Morgante: Ok.

Mr. Welch: It's not a major project really, I mean they can dig under the slab; that slab has to be 10 inches thick in some spots but you can't... you have to... you can't...

Mr. Morgante: Sure, is that something that can be dealt with directly through your office?

Mr. Welch: Oh definitely, if you want to design a set of plans for the foundation.

But this was explained to them a long time ago and I rode by again today and it wasn't done so...

Mr. Morgante: Is that something we can make like... if we were able to get an approval today, conditional...

Mr. Welch: We can definitely give you approval for the addition but you can't do the addition until I'm satisfied with the foundation.

Mr. Morgante: Understood, good.

Mr. Welch: Ok? That's all.

Mr. Morgante: That's fine.

Mr. Welch: And I explained to the owners also, if it wasn't attached to the building, if it was free-standing, it would be ok because that's only a shed.

Mr. Morgante: Right.

Mr. Welch: But they want to attach it, which is a good idea, of course.

Mr. Morgante: Understood.

Mr. Welch: Thank you very much.

Mr. Morgante: All right, thank you.

Mr. McCarey: Another issue with that on the floor plan for the building, the exit into the addition where they have that slab, there is a doorway here, that's an exit for the restaurant, their second means of egress for their occupancy load so they have to make sure that it stays a clear path to a public way which is all the way around to the other side of the building.

Mr. Capozella: Ok.

Mr. McCarey: Because right now they were gonna just add this section, enclose it and the exit was gonna go to the storage shed.

Mr. Capozella: I have a question. Obviously, this is a second application for this property, that's how we are looking at it.

Mr. Morgante: Correct.

Mr. Capozella: I think you are required to do another mailing.

Mr. Morgante: We did.

Mr. Capozella: You did? Ok, thanks, that's good. Thank you. And it sounds like we need some more planning, more plans drawn, new foundation plans, we need an exit plan established here so this Board is going to require another set of plans and maybe another visit and get with the DPW and the Fire Department to make sure that you have everything in place next time you come.

Mr. Morgante: Well, we are here tonight before this Board for the actual proposed use and location zoning setbacks. As it relates to the structural issues that might be concerning this project we would like to deal with those as conditions directly with DPW.

Mr. Smith: Well, but how do you... you are asking the Planning Board for a site plan approval. How do we approve a site plan that's faulty?

Mr. Morgante: Well, as many site plan approvals that come before any Board, typically what shown for you guys is a sketch of what's prepared for the particular dwelling or the particular commercial use or whatever the deal is and it usually only have floor plan and elevation view and then the more detailed building drawings, architectural drawings or structural drawings are then provided to the DPW department or the respective building departments for those conditions that are associated.

Mr. Smith: I would go along with it if it was something really minor but it's not, I can't call this minor and the site plan that comes out of this Board is the one that's gonna get filed.

Mr. Morgante: No, understood but if we provided structural means as to how that slab would be corrected the Board would not even have jurisdiction to review them.

Mr. Smith: Well, if we went that route but I don't think that's a good idea. One of the reasons I think that is, just out of experience 10 years from now there will be contradictory site plans for this building and you might not be around, the owners might not be around and somebody's gonna say what were they doing?

Mr. Morgante: There wouldn't be a contradictory site plan floating around, this would be a site plan that gets filed with the City. There would be actual means and methods drawings for the architectural and structural stuff that we file with the building official.

Mr. Smith: It's up to the Board. I don't think that's a good idea. Walter, Adam?

Mr. McCarey: Doesn't this also need setback variance or area variance?

Mr. Capozella: I do not know.

Mr. McCarey: Because you are showing the slab addition, is it 9'7" to the property line? It's awfully close, I don't know exactly what the setback is, the minimum.

Mr. Welch: Zoning's different because it's a commercial zone.

Mr. McCarey: But it's a residential behind it.

Mr. Welch: Put the distance between that and ... there's a draining ditch there.

Mr. Morgante: So if you take a look, I put a note underneath it, it says Section 475-18 referring to no accessory building or structure shall be within 5 feet of the property line.

Mr. Smith: But is that an accessory building or is this a part of the main building?

Mr. McCarey: Yes, it's an addition not an accessory structure. It's like a shed.

Mr. Smith: Accessory building is like a garage.

Mr. Capozella: Under normal circumstances, if this would come before the Board before you even started work and these questions would have come up and you would have to address the structural issues before you even started work. Obviously you proceeded with work without any Board approval so at this point in time I normally go along, I'm pretty lenient but I think you need to redo your plan with the foundation plan and to address Mr. McCarey's exit plan for this building, it is a restaurant; we need to address the two issues at hand.

Mr. Smith: And the setbacks.

Mr. Capozella: Right, and if they are an issue, which I'm not aware of at this time, they need to be addressed also.

Mr. Morgante: So, it is my understanding from discussions with the applicant, because I did have this discussion with the applicants themselves, I thought that there was a discussion between the DPW and them regarding what the potential setbacks were for this. If there is a need for us to get referred to the Zoning Board of Appeals for a variance, I'd love to iron that out tonight and also get a potential referral.

Mr. Smith: Well, if I were you, see this Board can't iron it out with you. Walter or maybe even Jacob have to get involved to iron that out and I suggest you meet with them and come up with a sketch plan of some sort so that you guys can have an intelligent conversation as to setbacks in that zoning district. The zoning district is not listed on your application. Do you know what it is off the top of your head?

Mr. Morgante: It is listed on the plan, C-1.

Mr. Smith: C-1?

Mr. Naumchik: Yes, it's not on the application, I saw that too but it's on the very first page.

Mr. Smith: But I agree with you, it's something you need to iron out and the C-1 zone has its own setback requirements. They are spelled right out there in 475-18.

Mr. McCarey: You say required 20 feet, provided 9.7 and then the accessory structure again, but again, it's not the accessory structure.

Mr. Morgante: Understood, it's attached.

*Mr. Capozella opened public hearing. No one came forward and Mr. Capozella kept public hearing open.*

Mr. Capozella: I think we need to adjourn for future consideration and the applicant should get a hold of the DPW to find out... to work on your setback issues and the structural issues and the egress plan and if anything is necessary from the Zoning Board, obviously we need to direct the applicant in the proper way.

On motion of Mr. Higbie and seconded by Mr. Naumchik to adjourn for future

consideration the application of Morales holdings, Inc. for a storage space for an existing eating and drinking establishment located at 295 Wawayanda Avenue.

Roll Call Ayes: Steven Sisco, Dan Higbie, Anthony Capozella, John Naumchik.

Mr. Morgante: Thank you for your time.

Adjourned 7:45PM

Respectfully Submitted,

*Martina Ju, Clerk*