

**CITY OF MIDDLETOWN  
PLANNING BOARD  
MINUTES**

**July 07, 2021**

A meeting of the Planning Board was held in the Common Council Chambers, City Hall, 16 James Street, Middletown, New York on July 7, 2021 at 7:00 P.M., Mr. Anthony Capozella presiding.

Members Present: Anthony Capozella, Andy Britto, Gretchen Witt, Dan Higbie, Dave Madden.

Members Absent: John Naumchik, Nicole Hewson.

Other Attendees: Richard J. Croughan, Planning Board Attorney; Theron Adkins, Fire Inspector; Walter Welch; Building Inspector.

The Pledge of Allegiance was said.

Motion to amend the June 2, 2021 minutes by Mr. Britto, seconded by Mr. Higbie.

Motion to approve the June 2, 2021 minutes as amended by Mr. Britto, seconded by Ms. Witt.

Roll Call Ayes: David Madden, Andy Britto, Gretchen Witt, Dan Higbie, Anthony Capozella.

Mr. Capozella pointed out that all first-time applicant appearances are considered a preliminary hearing and the Planning Board may or may not chose to act or vote on those applications tonight.

**Double R Fish and Chips  
144-146 Dolson Avenue  
Take-out restaurant**

Mr. Capozella: Good evening, sir.

Mr. Roberts: Good evening.

Mr. Capozella: Please state your name for the record and what you plan on doing.

Mr. Roberts: Roy Roberts. I plan on opening up a fish and chips spot. Take out restaurant. Excuse me. Fish and chips take out restaurant.

Mr. Capozella: And just to verify, sir, -- just a moment.

Ms. Tu, do we have the mailings?

Clerk: Yes, we do.

Mr. Capozella: And we're going to open the public hearing.

*The public hearing was opened.*

Mr. Capozella: So that everyone knows, just to clarify, your hours of operation are Monday through Sunday, 11:00 a.m. to 9:00 p.m. Is that correct?

Mr. Roberts: Correct.

Mr. Capozella: And he plans on having two employees, and we have all our paperwork in place.

All right. Anyone from the public wishing to address this application, please step forward.

Ms. Tu, do you have anyone on the phone?

Clerk: No.

Mr. Capozella: Any written comments?

Clerk: No written comments.

Mr. Capozella: Ms. Hansen, do we have anyone online?

Ms. Hansen: We do not.

Mr. Capozella: We'll go to the Board for any questions or comments.

Mr. Croughan: Mr. Welch, any concerns?

Mr. Welch: No, sir.

Mr. Croughan: Mr. Adkins, any concerns?

Mr. Adkins: No.

Mr. Capozella: Okay. Back to the public. Anyone here wishing to step forward?  
Ms. Hansen, do we have anyone online?

Ms. Hansen: We do not.

Mr. Capozella: We're going to close the public hearing.

*The public hearing was closed.*

Mr. Capozella: Give the Board one more opportunity for questions or comments. There being none, we're going to set up a resolution.

On the resolution for Double R Fish and Chips Take Out Restaurant, 144-146 Dolson Avenue, hours of operation Monday through Sunday, 11:00 a.m. to 9:00 p.m., with two employees. Subject to Middletown City of Middletown DPW and City of Middletown Fire Department inspections and approvals and, when necessary, approval of the Commissioner of Public Works. The applicant will obtain all necessary permits and follow the permitting process, codes and ordinances of the City of Middletown and the State of New York, if applicable. If throughout any of this review process the project is deemed to require any bulk requirement tables, the applicant will supply said tables through an architect or engineer licensed in the State of New York.

Motion by Mr. Madden, seconded by Ms. Witt.

Roll Call Ayes: David Madden, Andy Britto, Gretchen Witt, Dan Higbie, Anthony Capozella.

**Dr. Cristian Castro-Nunez**  
**18 Orchard Street**  
**4 additional examination rooms on the first floor**  
**and 1 one-bedroom apartment on the second floor**

Mr. Capozella: Good evening, sir.

Dr. Castro-Nunez: Good evening, everyone.

Mr. Capozella: Please state your name for the record and your intent.

Mr. Castro-Nunez: Cristian Castro-Nunez. I'm trying to -- I would like to get approval for an additional four examination rooms for our current medical practice at 18 Orchard Street and have an additional one-bedroom apartment on the second level to hold some of our national and international medical doctors that come to the area (inaudible) training new physicians.

Mr. Capozella: Okay. Thank you, sir.

Ms. Tu, do we have our mailings?

Clerk: Yes, we do.

Mr. Capozella: Okay. I'm going to open the public hearing.

*The public hearing was opened.*

Mr. Capozella: Ms. Tu, is anybody on the telephone?

Clerk: No one.

Mr. Capozella: Any written comments?

Clerk: No comments.

Mr. Capozella: Ms. Hansen, is anyone online?

Ms. Hansen: I don't think so.

Mr. Capozella: Ms. Hansen?

Ms. Hansen: I don't think there is.

Mr. Capozella: Okay. Anyone present wishing to step forward and comment on the application?

Okay. I'll go to the Board, leave the public hearing open, and go to the Board for any questions or comments.

Mr. Madden: Can you just reiterate the use of the second floor of the building, please?

Dr. Castro-Nunez: Yes. The second floor, we have a program for trainees, international and national staff. It's for recent graduate physicians. They come to the area for a year, so we do provide housing to them, so that would be a great attraction for them to remain in the area.

Mr. Madden: Thank you.

Mr. Britto: This is a general medical practice?

Dr. Castro-Nunez: Yes. This is a primary care practice, and we recently added two specialties, infectious disease and urology. That's why we are looking for room for the expansion.

Mr. Croughan: Is the second floor going to be limited to the use of a physician associated with the practice? That's what the applicant said.

Mr. Capozella: He's talking about a student who possibly will be -- like an intern, I would assume. Something like that?

Dr. Castro-Nunez: Yes.

Mr. Capozella: And that's what you're going to limit the use of that apartment to?

Dr. Castro-Nunez: Yes. That's the intention, to provide housing for the training physicians.

Mr. Capozella: I'm going to put that in the resolution as such, and that's what the Code Enforcement will be looking for, an intern; okay?

Also, the Building Inspector and the Fire Inspector will tell you whether that space in that attic area is sufficient and proper for an apartment.

Dr. Castro-Nunez: Okay.

Mr. Capozella: This approval will be subject to their inspections to let you know if you can actually use that space the way it should be used.

Did I state that correctly, gentlemen? Is there anything you want to add, be my guest.

Mr. Croughan: Did either one of you look at the space?

Mr. Adkins: I went out there today and checked it out. I think what we're going to need is a proper set of plans from an architect, especially for that second floor to make sure we're going to meet all the requirements.

Mr. Croughan: Is there any issue with egress out of that?

Mr. Adkins: Not if he's doing what he says he's going to do. That's why we need a set of plans. If he puts the permit in and the plans get approved, then he's approved, but we just need plans to review.

Mr. Croughan: Okay.

Dr. Castro-Nunez: Okay.

Mr. Capozella: I'll go back to the public. Anyone present wishing to address the application, please step forward.

Ms. Hansen, do we have anyone on the line now?

Ms. Hansen: Not at this time.

Mr. Capozella: Okay. Thank you. In that case, I'm going to close the public hearing and go back to the Board one more time for questions or comments.

Mr. Britto: What's on the second floor now?

Dr. Castro-Nunez: It's (inaudible) which is quite an open area, open area about 900 sq.ft., and I'd say a height of almost 9', 8 1/2' and three windows.

Mr. Croughan: And, Doctor, on the first floor, what are you adding, operating rooms or --

Dr. Castro Nunez: No. Four primary care examination rooms.

Mr. Croughan: How many?

Dr. Castro-Nunez: Four.

Mr. Croughan: And are those existing areas that you're just making -- existing rooms converting to an exam room?

Dr. Castro-Nunez: It was an open area as well. It was used by the prior physician,

Dr. (inaudible), that retired in 2010, and he used it for an X-ray machine.

Mr. Capozella: That too will also be subject to DPW and Middletown Fire Department review. When they get the plans, they'll be able to, I think, better address those issues, in my opinion.

Mr. Croughan: So you have to provide plans for the first and second floor.

Dr. Castro-Nunez: Okay. So my understanding was for the second floor. Did you also need plans for the first floor? I'm not getting what the issue is.

Mr. Welch: Remember we revoked your permit because it didn't go to Planning Board? We let you continue working. You have to get another permit. We have to issue another permit on the building.

Dr. Castro-Nunez: Yeah. Sure. Yeah. We did agree on that.

Mr. Welch: I know that.

Dr. Castro-Nunez: No. But now we're moving into an architectural plan. That was not the plan that we had. We had a drawing, a personal drawing.

Mr. Welch: I had nothing for the attic, I mean, for a second floor apartment. I got a set of plans drawn for that.

Dr. Castro-Nunez: Yes.

Mr. Welch: The first floor is fine.

Dr. Castro-Nunez: Okay.

Mr. Welch: The second floor, I need a drawn by an architect.

Dr. Castro-Nunez: Okay. Sure. We can provide that.

Mr. Welch: Okay? That's it.

Dr. Castro-Nunez: But that would be only for the second floor.

Mr. Welch: Correct.

Dr. Castro-Nunez: Okay. Great. Thanks.

Mr. Capozella: Anyone else from the Board?

Ms. Witt: I have two questions. The four parking spaces that are existing, are they existing parking spaces, or are you making those parking spaces?

Dr. Castro-Nunez: No. They currently exist as parking spaces.

Ms. Witt: They're currently existing. Okay.

Dr. Castro-Nunez: Yeah.

Ms. Witt: And then you mentioned about the X-ray machine, so is there going to be an X-ray machine that you're going to be using?

Dr. Castro-Nunez: No. That was removed.

Ms. Witt: Okay.

Dr. Castro-Nunez: That belonged to the prior physician.

Ms. Witt: Okay. So you're not planning on doing -- you're just planning on doing assessments for patients; is that what you're planning?

Dr. Castro-Nunez: Correct. Yes.

Ms. Witt: Okay.

Dr. Castro-Nunez: So it won't be any X-rays, no radiographic studies.

Ms. Witt: Okay. Thank you.

Mr. Capozella: Okay. Just so you know, he's in the DMU Zone. In this case, we'll end up waiving parking regardless of how many he does have.

Ms. Witt: Okay. Thank you.

Mr. Capozella: All right. Anyone else from the Board? We closed the public hearing already. Anyone else from the Board have any question or comment?

Mr. Croughan: My comment would be we did not get a title report on this to ensure that there are no easements, restrictions affecting the property, so it would have to be subject to that as well.

Mr. Capozella: I will do that. I have quite a few subject tos as of right now.

Mr. Castro-Nunez: We have a survey description. Would that meet your requirement?

Mr. Croughan: No. A title report would show, a survey may not, but the title report would show if there are any restrictions affecting parking, the use, so that's why we're requesting it.

Dr. Castro-Nunez: Okay. Great.

Mr. Capozella: Okay.

On the resolution for Dr. Castro-Nunez, 18 Orchard Street, for four additional examination rooms on the first floor and one one-bedroom on the second floor. Hours of operation will be Monday to Friday, 9:00 a.m. to 6:00 p.m. Subject to receipt and review of a title report, receipt of a set of plans for the second floor so DPW and Middletown Fire Department can review, subject to attic space inspection for the apartment, and that the apartment will be for medical professional of the practice only. Parking is waived. Because it is in the DMU Zone, the applicant will have to meet with the Architectural Review Board to do any façade work or exterior work on this building. Subject to Middletown DPW and City of Middletown Fire Department inspections and approvals and, when necessary, approval of the Commissioner of Public Works. The applicant will obtain all necessary permits and follow the permitting process, codes and ordinances of the City of Middletown and the State of New York, if applicable. If throughout any of this review process the project is deemed to require any bulk requirement tables, the applicant will supply said tables through an architect or engineer licensed in the State of New York.

Motion by Mr. Madden, seconded by Mr. Britto.

Roll Call Ayes: David Madden, Andy Britto, Gretchen Witt, Dan Higbie, Anthony Capozella.

**Jason Hussey**  
**203-211 North Street**  
**Take-out restaurant**

Mr. Capozella: Good evening. State your name for the record.

Mr. McKenzie: My name is Kamal McKenzie.

Mr. Capozella: Okay.

Mr. McKenzie: I'm here on behalf of my Uncle Jason.

Mr. Capozella: Okay.

Mr. McKenzie: We're planning a Jamaican restaurant, a franchise, Pepper's Jerk Chicken. It's a Jamaican restaurant.

Mr. Capozella: You said it was a franchise, sir?

Mr. McKenzie: Yes, sir.

Mr. Capozella: And the name of it again? I'm sorry.

Mr. McKenzie: Pepper's Jerk Chicken. It's a Jamaican restaurant.

Mr. Croughan: Ms. Tu, do we have the mailings?

Clerk: Yes, we do.

Mr. Croughan: And did we have the mailings for the application before?

Clerk: Yes, we did.

Mr. Croughan: Okay.

Mr. Capozella: We did. Yeah. Okay, sir. So Ms. Tu already stated she has the mailings, so I'm going to open the public hearing. Anyone present wishing to step forward and comment on this application?

*The public hearing was opened.*

Mr. Capozella: Ms. Tu, anyone on the telephone?

Clerk: No one.

Mr. Capozella: Any written comments?

Clerk: No comments.

Mr. Capozella: Ms. Hansen, anyone online?

Ms. Hansen: Not at this time.

Mr. Capozella: Okay. We'll leave the public hearing open and move on to the Board for questions and comments.

Mr. Croughan: Mr. Welch, any concerns?

Mr. Welch: No. It's a restaurant (inaudible).

Mr. Croughan: Mr. Adkins?

Mr. Adkins: No.

Mr. Higbie: So is this just going to be the one side of this building, looking at the front, the left side?

Mr. McKenzie: Yes.

Mr. Croughan: Are you primarily take out?

Mr. McKenzie: Yes, sir.

Mr. Croughan: How many seats do you plan?

Mr. McKenzie: No seats.

Mr. Capozella: And just so you know, if you were going to have any seats, the Middletown Fire Department would determine your occupancy by the square footage of your building.

Mr. McKenzie: Yes, sir. And also, the guy that creates the sign said to bring it up

that I need to ask about a permit to put the sign up.

Mr. Capozella: Well, to answer your question, sir, you are in what they call the DMU Zone. You'll have to go to the Architectural Review Board. These two gentlemen here can help you with that when you go to speak to them about other issues within your facility. The Architectural Review Board determines what your façade will be like and your signage will be.

Mr. McKenzie: Yes, sir.

Mr. Capozella: Okay. Yes, Mr. Adkins.

Mr. Adkins: Just on your plans you have seating.

Mr. Higbie: I was just going to say the same thing. Sixteen it shows.

Mr. Adkins: Yeah, 16 seats, four booths.

Mr. McKenzie: Oh, no. They removed it.

Mr. Adkins: So you're not going to have any seats? It's not a problem. I don't think it's a problem, but you know, I don't see it because it's a take out.

Mr. McKenzie: Okay.

Mr. Croughan: So the plans should be revised to show no seating.

Mr. McKenzie: Yes, sir.

Mr. Croughan: Because it's in the DMU Zone, waive parking.

Mr. Capozella: Yes. We have to waive parking, yes, and have a revised floor plan.

Mr. Croughan: Mr. Adkins, any concerns with fryers or anything?

Mr. Adkins: No. I mean, he's just going to have to go through the permitting process for a commercial cooking hood, fire alarm, all that stuff. I'll give you a piece of paper.

Mr. McKenzie: Thank you.

Mr. Capozella: Anyone else? The public hearing's been closed.

*The public hearing was closed.*

Mr. Higbie: Do you know what the hours of operation of the other tenants are in the building because I see he's requesting to 2:30 a.m., and I'm just wondering if they're similar times, or is that -- are you looking for 10:30 in the morning till 2:30 in the morning, your hours?

Mr. McKenzie: Yes, sir.

Mr. Higbie: Okay. And every day, including --

Mr. McKenzie: They're closed -- the store next door closes at 12:00.

Mr. Higbie: 12:00? Okay.

Mr. McKenzie: And the store across the street stays open till 2:00. Kennedy.

Mr. Higbie: The Kennedy Fried Chicken is open till 2:00 a.m.?

Mr. McKenzie: Yes, sir.

Mr. Higbie: Okay. Gotcha.

Mr. Capozella: Okay. Any other questions or comments?

On the resolution for Jason Hussey, 203-211 North Street, take-out restaurant only, possible franchise. Subject to revised plans without seating. Parking is waived. Hours of operation are Monday through Sunday, 10:30 a.m. to 2:30 a.m., and possibly three employees. Subject to Middletown DPW and City of Middletown Fire Department inspections and approvals and, when necessary, approval of the Commissioner of Public Works. Because it is in the DMU Zone, the applicant will have to meet with the Architectural Review Board to do any façade work or signage work on this building. The applicant will obtain all necessary permits and follow the permitting process, codes and ordinances of the City of Middletown and the State of New York, if applicable. If throughout any of this review process the project is deemed to require any bulk requirement tables, the applicant will supply said tables through an architect or engineer licensed in the State of New York.

Motion by Mr. Britto, seconded by Ms. Witt.

Roll Call Ayes: David Madden, Andy Britto, Gretchen Witt, Dan Higbie, Anthony Capozella.

**Assamet Alzanam**  
**292 North Street**  
**Grocery/deli**

Mr. Capozella: Please step forward, sir.

Clerk: Can I have the mailings, please?

Mr. Capozella: Please state your name for the record and your intentions.

Mr. Alzanam: Assamet Alzanam. I own a deli and grocery store.

Mr. Capozella: Okay. All right. And just to verify, your hours are Monday through Friday, 7:00 a.m. to 11:00 p.m., Saturday and Sunday, 7:00 a.m., and I'm guessing to 10:00 p.m.?

Mr. Alzanam: Correct.

Mr. Capozella: All right. Thank you very much, sir. We're going to open the public hearing. Anyone present --

Mr. Croughan: So, Martina, you have the mailings?

Clerk: I do.

Mr. Capozella: Sorry. For the record, Martina has the mailings. We're going to open the public hearing. Anyone here that wishes to address the application, please step forward.

*The public hearing was opened.*

Mr. Capozella: Ms. Tu, anyone on the line, telephone?

Clerk: No one.

Mr. Capozella: Any written comments?

Clerk: Nothing.

Mr. Capozella: Ms. Hansen, anyone online?

Ms. Hansen: Not at this time.

Mr. Capozella: Okay. We'll go to the Board. Any questions or comments? All right. That being said, we'll go back to the public hearing one more time for anyone present.

Ms. Hansen, has anyone come online?

Ms. Hansen: Not at this time.

Mr. Capozella: Okay. Back to the Board one more time.

Mr. Britto: We need clearer plans on this. It's just difficult to read, or if you guys are good, then we're good.

Mr. Adkins: They're already open.

Mr. Britto: Say again?

Mr. Adkins: They're already open.

Mr. Capozella: It's kind of -- they're already open, and our two inspectors have already seen the property.

Mr. Britto: Okay.

Mr. Capozella: They're in compliance. It's just that he needed to come to us to make it official.

Mr. Britto: Gotcha.

Mr. Capozella: Am I correct in that comment?

Mr. Adkins: Yes. And let me just say that he wasn't aware of Middletown's procedures, and he brought everything into code, into uniform, very quickly, and he's a pleasure to work with.

Mr. Croughan: Parking is waived?

Mr. Capozella: Yeah. We'll have to waive parking in the final resolution. So we're good with the plans then. We're all right the way they are, and we'll close the public hearing and our comments.

*The public hearing was closed.*

On the resolution for 292 North Street, grocery/deli. Hours of operation, Monday through Friday, 7:00 a.m. to 11:00 p.m.; Saturday and Sunday, 7:00 a.m. to 10:00 p.m. Subject to Middletown DPW and City of Middletown Fire Department inspections and approvals and, when necessary, approval of the Commissioner of Public Works. Parking is waived. The applicant will obtain all necessary permits and follow the permitting process, codes and ordinances of the City of Middletown and the State of New York, if applicable. If throughout any of this review process the project is deemed to require any bulk requirement tables, the applicant will supply said tables through an architect or engineer licensed in the State of New York.

Motion by Mr. Britto, seconded by Ms. Witt.

Roll Call Ayes: David Madden, Andy Britto, Gretchen Witt, Dan Higbie, Anthony Capozella.

**Xiowen Jiang**  
**8-10 East Main Street**  
**Residential apartments**

Mr. Capozella: Just a little background. We have a public hearing that is already open, and this gentleman had to meet with our DPW and Middletown Fire Department to work out fire egress methods, and from what I understand, the plans have been revised and then reviewed, and basically our inspectors are okay with it.

Mr. Jiang: Good evening. That is (inaudible).

Mr. Capozella: Okay. Thank you. I just wanted the Board -- I just wanted to catch the Board up that's why you're back in. That's fine. I didn't mean to steal your thunder.

Mr. Croughan: Mr. Adkins, you reviewed?

Mr. Adkins: Yes. I did a site visit. We came up with a good solution, and he put them on the plans, and I think we're going to be okay.

Mr. Jiang: There's another item I want to mention. (Inaudible) of the first page, we amended it. The owner wanted me to show there's a group of people negotiating to rent the space from them. It's about 750 square feet. Also, there's like a tax person who wanted to rent the space. If you look at the lower door upon entering, you make a right, it shows more space there, maybe 60 or 70 square feet, so it's one person trying to file taxes there. And then themselves, the supermarket wanted to have -- wanted to establish about a 450, 500 square foot kitchen. So you see a lot of supermarkets, they sell and cook food. So this first floor shows a few items here. So I wanted to know from the Board the tax person is and (inaudible) because the tax person is one person. The kitchen is occupied by themselves. Can we just place this on the record that they don't have to come back to the Board again to do this?

Mr. Capozella: I don't think so, sir.

Mr. Jiang: Okay.

Mr. Capozella: We're addressing your residential apartments.

Mr. Jiang: Right. Right.

Mr. Capozella: Do you have any other changes there? You should, again, you'll have to draw the plan up. These gentlemen will have to take a look at it, and you'll have to come back.

Mr. Jiang: Okay. No problem.

Mr. Capozella: Okay?

Mr. Jiang: Okay.

Mr. Capozella: So that being said, how many apartments are we adding here? I just want to put that in.

Mr. Jiang: We have three apartments on the second floor and five apartments on the third floor and fourth floor.

Mr. Capozella: Three on the second?

Mr. Jiang: Yeah. And five on the third and fourth.

Mr. Capozella: Five on third and fourth.

Mr. Croughan: That's a total of five between the third and fourth, or five on three and five on four?

Mr. Jiang: No. Total. It's like you enter on third floor and a portion of the apartment is occupied, and a portion on the fourth floor, so it's combined.

Mr. Capozella: Total five.

Mr. Jiang: Total five.

Mr. Capozella: Third and fourth floor. I'm just -- I got confused with the floors.

Mr. Higbie: Me too.

Mr. Capozella: It's five total apartments, third and fourth.

Mr. Higbie: And three on the second.

Mr. Capozella: Eight total that they're requesting. And does that number jive with what you guys have seen on the site? Okay. Good.

Okay. So the public hearing is still open on this application.

Ms. Tu, have we had anything come in telephone-wise, written comments, since that time?

Clerk: No, we did not.

Mr. Capozella: Okay. Ms. Hansen, do we have anyone online?

Ms. Hansen: We do not.

Mr. Capozella: Okay. Going to the Board, question or comments?

Mr. Madden: I'm looking at the plans here, and I'm going to defer to Mr. Welch and Mr. Adkins, but I mean, I can't, I mean, there's no fourth floor shown. This is

a difficult project for me to say yes to when I don't even see a fourth floor.

Mr. Jiang: The fourth floor, we only submitted an amended three sheets, so the fourth floor and third floor has not changed, so the plan we submitted before is still okay.

Mr. Madden: Okay. I appreciate that. Thank you.

Mr. Capozella: Do we need a set of amended plans, gentlemen?

Mr. Adkins: Well, they're going to have to submit a full set of plans and go through the permitting process, but the only thing that he changed were the items that we talked about, and that's what he drew up for the second floor.

Mr. Capozella: For the egress.

Mr. Adkins: For the egress.

Mr. Capozella: Okay. So he addressed what was -- the only thing that we had a problem with last time around.

Mr. Adkins: Correct.

Mr. Capozella: Okay. Is that okay, Mr. Madden?

Mr. Madden: Yes.

Mr. Capozella: Okay. Anyone else Board-wise?

Okay. I'm going to go back to the public hearing. Anyone on, Ms. Hansen?

Ms. Hansen: Not at this time.

Mr. Capozella: I'm going to close this public hearing then and actually give the Board one more shot. Any questions or comments?

*The public hearing was closed.*

On the resolution for 8-10 East Main Street, eight residential apartments, three on the second floor, five combined apartments between the third floor and fourth floor. Subject to Middletown DPW and City of Middletown Fire Department inspections and approvals and, when necessary, approval of the Commissioner of

Public Works. Because it is in the DMU Zone, the applicant will have to meet with the Architectural Review Board to do any façade work or exterior work on this building. Parking is waived. The applicant will obtain all necessary permits and follow the permitting process, codes and ordinances of the City of Middletown and the State of New York, if applicable. If throughout any of this review process the project is deemed to require any bulk requirement tables, the applicant will supply said tables through an architect or engineer licensed in the State of New York.

Motion by Mr. Britto, seconded by Mr. Madden.

Roll Call Ayes: David Madden, Andy Britto, Gretchen Witt, Dan Higbie, Anthony Capozella.

**T-Mobile  
358-360 Highland Avenue Ext.  
Installation of Diesel Generator and Concrete Pad**

Mr. Capozella: Please state your name for the record.

Mr. Weller: Alex Weller with Synergy Engineering on behalf of T-Mobile.

Mr. Capozella: Okay.

Mr. Weller: T-Mobile intends to install a diesel generator on a 4'x8' concrete pad, which is a standalone generator for backup power.

Mr. Capozella: Okay. Do we have our mailings, Ms. Tu?

Clerk: Yes, we do.

Mr. Capozella: Okay. I'm going to open the public hearing. Anyone present from the public wishing to speak, please step forward.

*The public hearing was opened.*

Mr. Capozella: Ms. Tu, anyone on the telephone?

Clerk: No one at the moment.

Mr. Capozella: Okay. I'm going to ask online. Do we have anyone online?

Ms. Hansen: We do have one person. We have a Renee Fisher who has asked me to ask a couple questions on her behalf.

She wants to know is this at the water tower on Highland Avenue Extension? There's no number. She's at 361 Highland Avenue Extension.

Mr. Weller: Yes.

Ms. Hansen: And she has noise concerns. How noisy will the generator be? When will it be running, and air pollution issues. Is it only for emergency use? She has a noise issue from the garbage facility at 366. They are very loud from 2:00 a.m. to 5:00 a.m., so she just doesn't want any problems.

Mr. Weller: Yes. This will be a standalone backup emergency generator.

Mr. Capozella: Okay. We actually have something that's written for the record. Similar questions, so if Ms. Hansen has no one else online --

Ms. Hansen: One final question. Is the diesel tank double walled?

Mr. Weller: Yes. I believe so. That's part of code.

Mr. Capozella: That's the belly tank; right?

Mr. Weller: Yes.

Ms. Hansen: Will there be an alarm if it fails?

Mr. Weller: Yes. They are equipped with alarms.

Ms. Hansen: Okay.

Mr. Capozella: And also, we do have a written response from Lorraine A. Brennan, 38 Jimal Drive, Middletown, New York.

Sirs,

Pertaining to the City of Middletown Planning Board Meeting to take place on Wednesday, July 7, 2021, with regard to a special use permit application of Smartlink on behalf of T Mobile.

Whereas my condo is located directly behind the site (Highland Park Village) of the application please note the following concerns:

The current available space so that this new unit and storage tank would not have ominous visibility is limited. Where or how will this unit and storage tank be situated?

Will this unit (generator) be in use continually or only during power outages? What is the noise level capability of the unit? What is the duration of the unit's in process timing -- would it be hours or days? Does the unit have a "testing mode" if it is not in continual use -- how often and what would be the duration?

Who is responsible in case of unit or tank failure such as a fuel leak? Will the surrounding property owners be notified and by who?

Please take these questions for consideration.

Mr. Weller: Sure. There are a few on there.

Mr. Capozella: I'm pretty sure that they're all going to be what the Board is about to ask you, so we'll start.

Mr. Weller: Okay. No problem. You want me to kind of answer them as I remember them?

Mr. Capozella: Well, I'll tell you what. We'll let the Board members proceed also with any questions.

Mr. Weller: Sure. Yeah. No problem.

Mr. Capozella: Who would like to go first? Anyone?

Mr. Higbie: I'm just curious more than anything, but why are you choosing diesel. There's natural gas in that area, isn't there? I mean, why would you want to have a tank, and why would you want to have, you know, and natural gas doesn't run out if we have a power outage.

Mr. Weller: I honestly don't know the reason for T-Mobile's stance on that.

Mr. Higbie: I would think it would be quieter too. I mean, I don't know, and

obviously a lot cleaner. It would burn a lot, I mean, it would run a lot cleaner as well.

Mr. Weller: I could definitely look into the reason why they chose diesel over propane or natural gas but, you know, it might've been an issue where they did not know that the natural gas hookups were, you know, readily available.

Mr. Higbie: I believe they are. I don't know if anybody can confirm that, but -- there's natural gas, right, on Highland Avenue Extension?

Mr. Croughan: Mr. Welch, do you know what the other generator is running?

Mr. Welch: I can't recall. There's no fuel tank.

Mr. Higbie: Yeah. I believe it's natural gas.

Mr. Weller: Well, that always is an option too to switch to natural gas.

Mr. Higbie: I would think you would want to, I mean, then you don't have to worry about old fuel, 220 gallons of fuel sitting. Technically, we don't lose power that often. And what is the -- does it run once a week for half an hour or something? I'm assuming it's just for backup purposes; correct?

Mr. Weller: Correct. Yes. There's basically a cycling time for it, which is approximately around that time, like an hour I believe it's a week, and it is only for backup purposes when there's power outages.

Mr. Croughan: And you can coordinate the times to run that, the test mode?

Mr. Weller: Yeah. Absolutely. That's something that, you know, depending on what the City of Middletown, who I believe owns the water tank there, they can coordinate that with the T-Mobile technicians. Yes.

Ms. Witt: I have a concern. So the plans that were submitted to us, there is no contact for T-Mobile, so you're here representing as an agent for them, so who is going to be the point person?

Mr. Weller: Well, actually, we would have Smartlink is the --

Ms. Henry: Yeah. I'm here on behalf of Smartlink.

Ms. Witt: Okay. No. I'm just saying, like you supplied official documents, and there's no contact.

Mr. Weller: Contact. Gotcha. Yes.

Ms. Witt: Yeah. So --

Mr. Weller: I believe Tia at Smartlink has been in contact with the Town as well.

Ms. Witt: Okay.

Mr. Croughan: And noise emissions, you would comply with the City of Middletown, whatever our code requires.

Mr. Weller: Absolutely. Yes. Absolutely.

Mr. Croughan: And is it a fully enclosed tank?

Mr. Weller: Yes. There is a full enclosure that could be around the tank as well.

Mr. Higbie: What do you mean, a secondary containment?

Mr. Weller: Oh, no. Just basically the enclosure that's standard with the tank from the manufacturer.

Mr. Capozella: There's no curbing, no nothing, so if this thing leaks, it goes onto our property?

Mr. Weller: That would be something where the T-Mobile technician would get a, you know, an alarm code. There would be something with the generator that would kind of trigger an alarm for them, and then we'd have to come back (inaudible).

Mr. Capozella: Okay. Just so you know and the Board knows, in this resolution, because we've been going through this probably over a year, and part of your resolution and your approval is going to be based on and contingent on the Commissioner of Public Works' review, because the placement of the tank, even though you've given us a map, a drawing, he has the right to change that as not to interfere with the maintenance of the tank and anything that's in the tank that the City owns.

Mr. Croughan: You're talking about the water tank.

Mr. Capozella: Yes. And anything else that's in there that happens to be the City's, you know, this location may or may not change per your plan.

Mr. Weller: Okay.

Mr. Capozella: Okay? He may request a curbing, some type of containment.

Mr. Weller: Sure.

Mr. Capozella: A lagoon. Just so you know, because just personally, this has been a little difficult to get this where you are today.

Mr. Weller: Gotcha.

Mr. Capozella: Okay? And we understand your concerns, and our concerns are also for the public and what happens for the City within that space.

Do you have a comment, Mr. Welch? I'm sorry.

Mr. Welch: Can I make a recommendation?

Mr. Capozella: Absolutely.

Mr. Welch: I don't vote or anything like that, but why don't we look into the natural gas?

Mr. Higbie: Because I'm just thinking, like do they have to have a bulk storage permit?

Mr. Capozella: We could actually add that.

Mr. Higbie: I mean, at what point, does anybody know, like do they have to have a bulk storage permit? Does DEC have to come and inspect it? Like at Mid-City, I mean, I have lots of tanks and --

Mr. Capozella: Mr. Adkins is saying no.

Mr. Higbie: No. Not for 220? I know for 325 gallons you have to, but I'm not sure about 220.

Mr. Adkins: I can't speak to DEC regulations, but the fire code doesn't trip until

about 1,000 gallons.

Mr. Higbie: Okay.

Mr. Adkins: So, I mean, you know, we have a diesel generator at the fire house probably about the same thing that we use, and then it runs right next to --

Mr. Higbie: I have a 220-gallon fresh oil tank that I have to have a secondary, fresh oil, new oil, and I have to have it in a secondary containment and it's a double walled tank.

Mr. Adkins: Right.

Mr. Welch: It seems cheaper to maybe go natural.

Mr. Higbie: And quieter, cleaner.

Mr. Capozella: Well, again, we can make the whole thing subject to further review, and the Commissioner of Public Works and you guys can sit down and hash that out; okay?

Mr. Weller: Okay.

Mr. Capozella: Is that okay, Mr. Higbie?

Mr. Croughan: Or we could just put it over for the applicant to research --

Mr. Higbie: And maybe they (inaudible) the location; right? We don't even know the location of the tank.

Mr. Capozella: We do know the location, it's just the Commissioner wants to ability to be able to change it.

Mr. Higbie: To move it once it's in?

Mr. Capozella: No, no. Prior to when it goes in. That's what he asked me to do.

Mr. Britto: On the other tank, we've approved other generators; correct?

Mr. Capozella: Correct.

Mr. Britto: And are they diesel or natural gas or do we know?

Mr. Capozella: I personally do not remember, but there's one on Kennedy Terrace, and it's a very similar situation. Whether it's gas or diesel, I cannot remember, but it's a similar situation -- pad, generator, sound attenuation panels on the generator, same conditions, you know. You have to meet the City of Middletown noise ordinance. It's for emergency purposes only. The times that were set at Kennedy Terrace seemed to work because we haven't had a complaint. It's been there for quite a few years, and I can tell you that T-Mobile has agreed to adjust times. They've agreed to give us access to the generator. This generator doesn't need a key to get in. It has a combination code, so we'll get a contact person. We'll get codes and whatever, again, whatever the Commissioner of Public Works requires, they're going to have to supply us.

Mr. Britto: But we can't require it to be natural gas.

Mr. Capozella: I don't think we can. No. We can't require them to have a natural gas unit. The only thing that we will require is that if they decide to go with a diesel unit, if the Commissioner of Public Works considers or needs containment curbing or whatever, they'll have to do that. If our Fire Department looks at it and says, oh, you know, it's an issue as far as capacity of gallons or needs additional permits or whatever, they'll follow the codes. That's the only thing that we can do. We can't -- we can only recommend. I'd like to see gas, but obviously, you have the option.

Anyone else? The public hearing is still open, so I'll go back to the public.

Mr. Higbie: Did we address (inaudible)?

Mr. Capozella: I think we did. I'll go over it one more time.

Mr. Croughan: I could go over the list while you check.

Mr. Capozella: I think the one that was read online is very similar to the one that I read to you.

Mr. Higbie: Yeah. Definitely.

Mr. Capozella: Yeah. It was more about emergency generator and backup generator. We determined it's a backup generator. Coordinate times for testing mode, we will do that.

How long will it run? That's the other -- I was told it's only going to be like

a five- to 10-minute run time when it does test?

Mr. Weller: Yes.

Mr. Capozella: Okay.

Mr. Higbie: Once a week, you said; right?

Mr. Weller: I believe that's the schedule for it.

Mr. Capozella: The engineer I spoke to over the phone, I don't know -- I don't think it was you.

Mr. Weller: I don't believe it was me.

Ms. Henry: He was on behalf of (inaudible), the construction manager.

Mr. Capozella: Yeah. He said it might be two or three times a week. He wasn't certain.

Ms. Henry: Or we can run on the same schedule that your generator is now.

Mr. Capozella: Right. We haven't been able to locate that schedule as of yet, so when that takes place, it'll be fine.

Ms. Witt: How loud will it be like when it runs for testing?

Mr. Capozella: Well, on their previous submission, it was rated at 75 dBs at 23 feet; okay?

Ms. Witt: Okay.

Mr. Capozella: We also requested additional information. We didn't get that, the additional information, by the way. The brochure, we didn't get that. We got a simple spec sheet, and that's all that was on it, no information about decibels or anything.

But regardless of that, if they violate the noise ordinance, they'll be subject to --

Ms. Witt: No, no. I'm talking about like the residents around them.

Mr. Capozella: No, no. So am I.

Ms. Witt: Yeah.

Mr. Capozella: If it's noisier than it says it's going to be, then they have to add additional sound attenuation, whether they put trees or sound barriers or whatever it takes.

Contact person, keys. DPW has final approval. Commissioner has final approval, because this resolution I read is going to be a little bit different than our normal resolution for cell towers.

I think we addressed the questions.

Mr. Croughan: We did.

Mr. Capozella: Okay. All right.

So in that case, I'll ask again. Ms. Hansen, anyone on the line?

Ms. Hansen: Not at this time.

Mr. Capozella: Okay. So I'm going to close the public hearing and go back to the Board for any final comments or questions that you come up with, and I'm going to try to read this resolution. Bear with me. We can always add to it.

*The public hearing was closed.*

On the resolution for a cell tower generator at 358-360 Highland Avenue Ext., said approval is subject to any additional comments and/or requirements that the City of Middletown Commissioner of Public Works may impose, but not limited to, the final location of generator concrete pad as not to interfere with any DPW maintenance functions and the proper sound attenuation panels and/or sound barriers. The applicant will also at the request and recommendation of the Planning Board look into the use of natural gas in lieu of diesel.

Also, in addition to any approvals as required, this approval is subject to the terms and conditions of the existing Lease. The Generator testing periods will run at times as suggested by the DPW to avoid unnecessary interference with the neighbors and the DPW/MFD given access to said generator either by key or access code. The landscaping, if any, will be done at the direction of DPW. In addition, applicant shall comply with City Code sec 475-43.

Subject to Middletown DPW and Middletown Fire Department inspections,

approvals and, when necessary, approval of the Commissioner of Public Works. The applicant will obtain all necessary permits and follow the permitting process, codes and ordinances of the City of Middletown, Federal Government and the State of New York, if applicable.

Motion by Mr. Britto, seconded by Mr. Higbie.

Roll Call Ayes: David Madden, Andy Britto, Gretchen Witt, Dan Higbie, Anthony Capozella.

**Frank Villano**  
**29 Myrtle Avenue and 91 Prospect Avenue**  
**Commercial space/office and residential**

Mr. Capozella: This is an application that has come before us. We have an open public hearing on this application, so I'm going to ask Martina, do we have anyone on the telephone?

Clerk: No, we do not.

Mr. Capozella: Any written comments?

Clerk: No comments.

Mr. Capozella: Ms. Hansen, do we have anyone on the line that wishes to address this?

Ms. Hansen: Not at this time.

Mr. Capozella: Okay. We'll go to the Board for any questions or comments on this.

I'm going to close the public hearing and go to the Board for any questions or comments.

*The public hearing was closed.*

Mr. Higbie: Do we just make a motion for future --

Mr. Capozella: No. We're going to decline it.

Mr. Higbie: Decline it. Okay.

Mr. Croughan: But there will be a motion to --

Mr. Capozella: There will be a motion in a minute. We've already, actually just for the record, we have already moved it on for further consideration.

Mr. Higbie: I know we have.

Mr. Capozella: And today we're going to have a motion on 25 Myrtle Avenue/91 Prospect Avenue.

Mr. Croughan: There was some research done into this property, and it was found that there are two lots, but one address with a building on it that needs further determination.

Mr. Capozella: So the request to use 25 Myrtle Avenue/91 Prospect Avenue as a commercial space/office and residential mixed use structure:

Whereas, after investigation into the location and address, it has been determined that this property has two separate lots which should have two separate addresses as per the City's Assessor's Office.

That being said, this Board cannot properly evaluate the application without this matter first being addressed.

Therefore, the City of Middletown Planning Board declines the applicant's/owner's request.

Motion to decline by Mr. Britto, seconded by Mr. Madden.

Roll Call Ayes: David Madden, Andy Britto, Gretchen Witt, Dan Higbie, Anthony Capozella.

**Frank Siena**  
**108-110 Sprague Avenue**  
**Car detail and office**

Mr. Capozella: Again, this one has an open public hearing.

Ms. Tu, have we had any additional phone calls, written?

Clerk: No, we have not.

Mr. Capozella: Okay. Ms. Hansen, anyone online for this application?

Ms. Hansen: Not at this time.

Mr. Capozella: Thank you. I'm going to close the public hearing and go to the Board for any questions or comments.

*The public hearing was closed.*

Mr. Croughan: Just via background to the Board, the applicant was to appear last month before the Zoning Board because their variances had expired as the use had not been used for over a year. They did not show up at the meeting. Martina, they did not contact her. There were no further submissions to Martina, and for those reasons, the motion, since this Board had requested that they go to the ZBA, and they have not appeared before the ZBA at this time.

On the resolution for request to use 108-110 Sprague Avenue as a car detail shop and office space:

Whereas: the non-conforming variances on the property has expired; B, that the property has remained vacant for over one year; and

Whereas: as the applicant/property owner was referred to the City of Middletown Zoning Board to address the non-conforming status as a condition prior to acting on the pending application, and

Whereas: the applicant/owner did not appear at a scheduled City of Middletown Zoning Board meeting nor called to reschedule said hearing, and

Whereas: the Planning Board Clerk has not had any response to inquiries on the applicant/owner's intentions as to the submitted request.

Therefore the City of Middletown Planning Board has declined the applicant/owner's request.

Motion by Ms. Witt, seconded by Mr. Higbie.

Roll Call Ayes: David Madden, Andy Britto, Gretchen Witt, Dan Higbie, Anthony Capozella.

Motion to adjourn by Ms. Witt, seconded by Mr. Higbie.

Roll Call Ayes: David Madden, Andy Britto, Gretchen Witt, Dan Higbie, Anthony Capozella.

Adjourned 8:00 p.m.  
Respectfully Submitted,  
*Diane Genender, Transcriber*