

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

October 17, 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 October 17, 2018 at 7:00 P.M., Joel Sierra presiding.

Members Present: Joel Sierra, Deborah Clark, Don Luis, Nicholas Barber, Marc Woody

Other Attendees: Walter Welch, Building Inspector; Richard J. Croughan, Corporation Counsel

A motion was made by Nicholas Barber and seconded by Deborah Clark to approve the minutes of September 19, 2018 as submitted.

Roll Call Ayes: Joel Sierra, Deborah Clark, Don Luis, Nicholas Barber, Marc Woody

JBA Associates, Inc.

12 Myrtle Avenue

Area variances and use variance in order to have a single family home in I-2 zone

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

Mr. Armstrong: Ivan Armstrong. My name is Ivan Armstrong. My address is 233 Broadway, Suite 2075, New York, New York 10279.

Mr. Sierra: All righty, sir. Can you please tell us what's going on with your property?

Mr. Armstrong: Well, I have a property at 12 Myrtle Avenue. Presently, it's a commercial property, and I'm looking to get a variance to change it to a residential property.

Mr. Sierra: Okay. When did you purchase the property?

Mr. Armstrong: Back in 2012, I believe it was.

Mr. Sierra: From the phone company, or --

Mr. Armstrong: No. From the --

Mr. Sierra: Utility?

Mr. Armstrong: The property? No. It was from a dental guy. I can't think of his -- Ross (inaudible). It was a dental office guy.

Mr. Sierra: The first thing I think we have to deal with is you're asking for two different things. You're asking for an area variance and a use variance.

Mr. Armstrong: Yes.

Mr. Sierra: So the area variance, in your application you have 7,500 required. I think, Walter, it would be only 5,000?

Mr. Welch: It's an existing lot, so to build a single family, then it would be 50 x 100, but this is already there, so I don't think he's requesting 7,500. I think he's requesting 1,000 actually.

Mr. Sierra: But the required dimension would be 5,000.

Mr. Welch: Yes, sir.

Mr. Sierra: And then the actual dimension that you have is 4,000?

Mr. Armstrong: I believe so.

Mr. Sierra: So then you're seeking a 1,000 square foot variance, which would amount to a 20 percent change. On the application at the bottom of it, there's -- in making a determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant. And then in making such determination, the board shall also consider whether, A, an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. Do you want to address that?

Mr. Armstrong: Okay. I don't think there will be any detriment to the area. I think there would be an improvement, you know. The property will become alive again as such instead of being vacant for the past four years. We hope to be able to, you know, move some people into the home, fix the place up, renovate it, clear out the backyard.

Mr. Sierra: Were you planning on making it a single family residential?

Mr. Armstrong: Yes.

Mr. Sierra: And what are your neighbors? Are those single family homes, multi family homes? Is it commercial?

Mr. Armstrong: The area is primarily single family homes.

Mr. Sierra: And the second part of it is the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance. Have you chosen any other options?

Mr. Armstrong: Well, for the past four years, it's been vacant, and the options that we've looked at is present use which is commercial, and I must say we've been unsuccessful in that endeavor which, you know, led me to a conclusion basically since it's in a primarily residential area that the best use of that property would be a residential unit.

Mr. Sierra: The requested area variance is substantial. We already established that it would be about 20 percent variance request. The proposed variance will have adverse effect or impact on the physical or environmental conditions in the neighborhood or district. I think you're keeping it substantially the same.

Mr. Armstrong: Yes.

Mr. Sierra: You wouldn't have any kind of impact, and the alleged difficulty was self-created. Well, it was self-created because you bought it that way. You knew what it was.

Mr. Armstrong: Yes.

Mr. Sierra: So those are all the factors the board has to consider. You also are requesting a use variance unless you want to ask with respect to the area variance. First up, did you have proof of mailing?

Mr. Armstrong: Yes.

Mr. Sierra: Can you give Martina the proof of mailing, please?

Clerk: Thank you.

Mr. Sierra: I know this property well. I actually know Mr. (inaudible) across the street. He couldn't make it tonight, but he voiced some concerns. I know the property's been vacant for longer than four years. You've owned it for four years, but it was vacant before you. It used to be an old telephone or utility distribution.

Mr. Croughan: I think actually what he said is it's been vacant since 2012, so it would be six years.

Mr. Sierra: Okay. But he owns it since '12. Since '14?

Mr. Armstrong: Since '12.

Mr. Sierra: Since '12.

Mr. Armstrong: Yeah.

Mr. Sierra: Gotcha. The concerns I see right off the bat is that you don't have -- you don't have much land.

Mr. Armstrong: Mm-hmm.

Mr. Sierra: I don't know. Do you have a driveway easement, because I know there's a paved area there, but your property line goes through it.

Mr. Armstrong: Mm-hmm.

Mr. Sierra: So you actually own half a driveway.

Mr. Armstrong: That's my understanding.

Mr. Sierra: So I'm not sure if the residence next door to you has their own driveway, or --

Mr. Armstrong: We'll share.

Mr. Sierra: It's a shared driveway?

Mr. Armstrong: Shared driveway.

Mr. Sierra: Is there parking in the back, or --

Mr. Armstrong: Well, at this present time, there is space for parking as well as out front as well.

Mr. Sierra: Mm-hmm. Okay. So you plan on putting more windows in, or what's -- I see you have some -- what is the inside right now? Is it gutted completely?

Mr. Armstrong: No.

Mr. Sierra: Is it occupied as rooms or --

Mr. Armstrong: It's occupied as rooms. It was a dental office at one point in time.

Mr. Sierra: Okay. And it has a basement that's finished?

Mr. Armstrong: Unfinished.

Mr. Sierra: Unfinished basement?

Mr. Armstrong: Yes.

Mr. Sierra: Now, Walt, I know you do this every day, but I know that these residential properties have to have a certain amount of lighting that goes in.

Mr. Welch: Yeah. He'd have to be to Code.

Mr. Sierra: Right.

Mr. Welch: If he was to be approved, he has to come to DPW no matter what.

Mr. Sierra: Yeah. He'd have to put windows in this property. He needs like a --

Mr. Welch: Oh, definitely.

Mr. Sierra: It barely has windows.

Mr. Welch: He has windows there, but he doesn't -- he doesn't the sizes of them. Every room has a window in it.

Mr. Sierra: Mm-hmm. You know, those are all --

Mr. Welch: The front's got a mullion, which is a picture window, in the front, and he has another mullion in the back, and he's got ample windows, but he'd have to tell me the sizes when he gets his permit.

Mr. Sierra: He'd have to put bigger windows in.

Mr. Welch: Yes. He has to get a permit no matter what to remodel it, so --

Mr. Sierra: Mm-hmm. Do you own the building next door?

Mr. Armstrong: No.

Mr. Sierra: Do you own the building next door?

(unknown): No.

Mr. Sierra: Oh, okay. Well, why don't we do -- why don't we open -- any questions from the board?

Mr. Croughan: Well, do you want to go through both variances, the use variance as well, because he's also requesting a use variance.

Mr. Sierra: He wants an area variance first, I know. What is the criteria for the area variance? They have to give him 4,000 square feet instead of 5,000?

Mr. Croughan: Yeah. He's requesting 1,000 because his required is 5,000, so my understanding in order to give him an area variance, things like parking, lot size --

Mr. Sierra: Well, he would have to comply with DPW requirements. I'm assuming you're not going to live there. You're going to rent it out?

Mr. Armstrong: Yes.

Mr. Sierra: So if you have a family in there, where are the family coming --

Mr. Barber: I mean, it looks like from the front he's got enough parking.

Mr. Sierra: Parking in the front without blocking the driveway?

Mr. Barber: That is the driveway.

Mr. Armstrong: Yes.

Mr. Barber: I mean, there's pictures in the back.

Mr. Sierra: I see. But he doesn't have a yard -- a backyard.

Mr. Barber: That's what the variance is for.

Mr. Sierra: Right.

Mr. Barber: I don't know what the backyard looks like; you know what I mean?

Mr. Sierra: It's overgrown, but there's certain criteria in the Code that you can't put people in just any box; you know what I mean?

Mr. Sierra: Oh, I guess not. I understand that.

Mr. Sierra: You have to have a certain area of space to live in. If they want to have a barbeque or enter a door. The doorway as it is wouldn't pass the Code. It enters right into the driveway. He'd have to change that.

Mr. Armstrong: Yes.

Mr. Sierra: Those are all obstacles, but as a board, we have to consider taking into consideration that you're not putting people in danger.

Mr. Armstrong: Yes. I understand.

(unknown): I think his plan (inaudible). I mean, he answered a lot of those questions, but you brought up parking. He does have parking.

Mr. Sierra: Not for two vehicles.

(unknown): Yes.

Mr. Sierra: Well, with respect to the use variance, the applicant -- no use variance shall be granted by the Board of Appeals without showing by the applicant that

applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located. A, the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence. In order to satisfy that, the applicant has to show financial evidence, so he has to bring in the listings that it hasn't been able to be utilized in any other capacity and the amount of money that you're losing. The alleged hardship relating to the property in question is unique and does not apply to the substantial portion of the district or neighborhood. The requested use variance, if granted, will not alter the essential character of the neighborhood, and the alleged hardship has not been self-created. You're going to have a hard time with that one.

Mr. Armstrong: Well, I've been paying taxes on it, and they're up to date, and the taxes are very substantial.

Mr. Sierra: Right. But the alleged hardship has not been self-created.

Mr. Armstrong: Oh, okay.

Mr. Sierra: You bought the property knowing that it was a commercial property.

Mr. Armstrong: Okay. Understood.

Mr. Croughan: So, I think, you know, if the board has any questions for you, but you might want to write out your responses to that and provide the financial evidence to the board so that they can consider that.

Mr. Armstrong: Okay. And such as in terms of the use, for the last four years it was with a broker in terms of trying to rent the space as commercial space for a number of years.

Mr. Croughan: You might want to get a letter from the broker indicating that.

Mr. Armstrong: Okay. Well, I have the commercial lease agreement, you know, the broker agreement.

Mr. Sierra: Okay. If you could make us a copy of that, when it started, when it ended.

Mr. Armstrong: Okay. That's no problem.

Mr. Croughan: You can open up the public hearing unless there's any other questions from the board so he can get an understanding of what he's up against.

Mr. Sierra: Any other board members have any questions?

Mr. Barber: Have you tried renting it?

Mr. Armstrong: Yes.

Mr. Sierra: He says he's tried.

Mr. Armstrong: I've tried renting it for several years.

Mr. Sierra: Different agents or --

Mr. Armstrong: Same broker. Even I tried renting it myself, put my own phone number up there, for at least a year, year and a half, and the only responses I ever received was for residential renting. Period.

Mr. Barber: Is that the only property that's an I-2 there?

Mr. Sierra: No. I-2 goes down to Sprague.

Mr. Barber: So that house next to it is an I-2. That white house right there, that's an I-2? That's what I'm saying, you know. Is that the only property that's an I-2 right there because it's sitting in between those two houses?

Mr. Welch: That might be an I-2, but once you go around the corner, that's where the I-2 --

Mr. Barber: That's when it should really kick in, from the bridge down.

Mr. Sierra: All right. So I'm going to go ahead and open the public hearing. Anyone from the public wishing to be heard?

The public hearing was opened.

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

Ms. Zeman: Okay. Helen Zeman, 12½ Myrtle Avenue. I've been living there since 1970. I also have been mowing the lawn in the back since 1975. Recently, a tree fell down, and obviously I can't do anything about it, but my daughter-in-law and my son came over, and they started cutting it but then it got, you know, raining too much and all that, so they stopped. But I have been mowing around that tree and have not been compensated. I've been using the driveway since 1970 exclusively, so obviously I don't like the door going into the driveway because that is scary.

Mr. Sierra: And can you tell us has it been vacant for more than six years?

Ms. Zeman: That I can't tell you. The gentleman who owned it was a man who made dentures for New York City dentists. Prior to that, there was a psychiatrist in there, and prior to that, of course, it was (inaudible), and the Jones' owned it, and before them, it was people who moved out like a month after I moved into my house. I can't remember their name. But it has been unoccupied for a long time. The mail is piling up in the mailbox and it's rotting from the rain hitting it, so I didn't think anybody had it at all. I thought it was totally abandoned, so -- I do need to use that driveway all the time.

Mr. Sierra: Is there a driveway easement that you're aware of?

Ms. Zeman: No. Last time --

Mr. Sierra: Is it deeded?

Ms. Zeman: Pardon?

Mr. Sierra: Do you have a driveway easement in your deed?

Ms. Zeman: Probably. I haven't looked at it since 1970.

Mr. Sierra: Do you know if there's an easement on the deed?

(unknown): Well, yes. We did have a survey, and yes, it is under these notes and his survey. It is a shared driveway, and it is already documented in the copy of the survey that you have.

Ms. Zeman: Excuse me. It says that the driveway is shared up to the end of my kitchen, and then it's not shared anymore, so -- also, the gentleman who made (inaudible) wanted to put in a beauty parlor there, and everyone, you know, the City went there and checked it and said there was no way they could park in the

back because they would have to drive on my property to get out.

Mr. Sierra: Do you have parking area, or do you just park in the easement?

Ms. Zeman: I park in the back end of the driveway because I've been doing that I'd say about 10 years.

Mr. Sierra: Can two cars pass on there?

Ms. Zeman: No. It's just barely wide enough for a car to go through.

Mr. Sierra: Well, if you have an easement on it, then you can't just park on it though. You can't obstruct your neighbor from having access.

Ms. Zeman: Well, there was no one there.

Mr. Sierra: Well, that's regardless. He would still have the right to use it.

Ms. Zeman: Mm-hmm.

Mr. Barber: I don't see where it says it's a shared driveway. Oh, a joint driveway.

(unknown): Oh. You want to get a copy probably of the survey.

Mr. Barber: (inaudible). I just saw it.

(unknown): Yeah. And this one, this was on the September 10, the new one, so he went to a lot of trouble to see if there was an easement or not, but he found out it's a (inaudible) driveway all the way to the back.

Mr. Sierra: Mrs. Clark?

Ms. Clark: If there's a shared easement, obviously because of the situation it vacant, you've been taking advantage of the driveway and parking there. What we're trying to say is if it was rented, or if there was someone there, you wouldn't be able to do what you're doing today. That's what we're trying to say.

Ms. Zeman: But they still couldn't go in the backyard anyhow because there's not enough room for them to turn around without going on my property.

Mr. Barber: That is true.

Ms. Clark: At one point, this was rented. There was many businesses there before, so what happened prior to? I mean, this is nothing --

Mr. Barber: There are parking spots in the front.

Ms. Clark: Front? And it looks like --

Mr. Barber: And if you look at it, she owns more of the driveway than they do.

Ms. Clark: Right.

Mr. Barber: So by looking at the stakes, she owns more of it just in the front coming off of Myrtle Avenue.

Mr. Sierra: Mm-hmm. The property line is in her favor. We're going to have to see some kind of legal document, a deed, a copy of the deed.

Mr. Barber: Is that -- and this is for you, Rich.

Mr. Sierra: I understand the survey has it?

Mr. Barber: (Inaudible) driveway easement per L-13-66-7. Is that a legal form or something?

Mr. Croughan: Yeah. It's a liber.

Mr. Barber: Okay.

Mr. Croughan: It's a recorded instrument at the Orange County Clerk's office if we look up that number.

Mr. Barber: Okay. And that would say that it's a joint driveway on it, or is that just giving you a landmark?

Mr. Croughan: No. If it's a shared driveway that it appears to be, that would be a recorded document.

Mr. Barber: Okay.

Mr. Croughan: But the fact that it's a shared driveway is that both parties have access to the driveway, and you can't obstruct just because if her property line is a

little bit there, if two cars can't pass there, then you can't obstruct either car from coming in and out, so you would have to have some kind of parking in the back because you can't obstruct, and if you pulled all the way to the back and the current owner pulled in and was sitting there, you wouldn't have a way to get out. So nobody should be blocking access in the driveway.

Ms. Zeman: Mm-hmm.

Mr. Croughan: It should just be a means to get to a parking spot on your property.

Mr. Barber: Did you ever park behind your house?

Ms. Zeman: Yes, I did.

Mr. Barber: Well, there you go. There's your answer.

Ms. Zeman: Yeah, but now I have a dog, and she knocked me over and split my head open, so my son put a run there.

Mr. Barber: But you still have a big enough back yard to where you could fit your car in and the dog still run.

Ms. Zeman: Oh, yeah. Yeah.

Mr. Barber: All right. So I have more questions than answers.

Mr. Sierra: Mr. Woody, you have a question?

Ms. Zeman: Okay. But I've been maintaining the mowing the lawn and shoveling and everything, and no one's compensated me for it.

Mr. Barber: Well, you're doing it for your convenience to get your car out.

Ms. Zeman: And mowing the lawn? I don't do that for the convenience of my car.

Ms. Clark: Did anyone ask you to do it?

Ms. Zeman: No. It just looked like heck.

Mr. Barber: I sympathize with you because I've been mowing my neighbor's -- my two neighbors' on either side of me, their lawns, for the past five years.

Ms. Zeman: Mm-hmm.

Mr. Barber: Nobody's compensated me neither, and trust me, I've asked.

Ms. Clark: Well, you only get compensated if there's a mutual agreement between two parties.

Mr. Barber: But do you want to live --

Mr. Croughan: Well, we have property maintenance --

Mr. Barber: There's a property maintenance in the City, but again, when they only do it once every six weeks --

Ms. Clark: That's right.

Mr. Barber: -- I don't want to live like that.

Ms. Clark: I agree.

Mr. Barber: So I take it upon myself and do it, and that's how it is. She's in the same boat.

Ms. Clark: I'm just saying to her, you can't expect compensation. That's what I'm saying.

Mr. Barber: And that's what I'm explaining, you know?

Mr. Sierra: Well, the owner's here if you want to talk to him now, but let's keep the meeting moving. Anyone else wishing to be heard? Anyone here for 12 Myrtle Avenue wishing to be heard? Please state your name and address for the record.

(unknown): Hi. I'm (inaudible), (inaudible) Avenue. I've been in charge (inaudible). My customer, Mr. Armstrong, is in New York, and in regards to the questions about the egress, windows, and the door that is in the side, he hired an architect, Hennessy Architects, and they will know the Code.

Mr. Barber: We saw. We saw that.

(unknown): Yeah. And they want to do whatever it is required, also in regards to the size, and the building is going to stay the same, no additions, no nothing. The

basement is going to be only for the heating systems, and I would think it's going to be exact as it is having windows, and I spoke through Mr. Miller, which is the surveyor, and he really went to the deed and the paperwork to see if there a shared driveway, and it is. Also --

Mr. Sierra: Now, just before you go any further, we're going to need those documents.

(unknown): Yeah. I will bring them all to you.

Mr. Croughan: I don't really think that you're from the public though. It seems like you're an advocate for the applicant.

(unknown): Well, yeah, because, you know, he asked me if it's possible, and I did provide him professional --

Mr. Barber: Do you work for him?

(unknown): I'm planning to, but I just tried to get him from the area, you know, the architects, to make sure they can tell him about the Code, surveyors that they know, you know, professionals that will help him in case that you will give him the approval and everything, of course.

Mr. Barber: So you're like the general foreman kind of guy.

(unknown): Mm-hmm. Yes.

Mr. Barber: Project manager, putting everything together for him.

(unknown): We tried to do that, to put everything together, make sure that the property --

Mr. Croughan: Sir, you can speak on behalf of the applicant, but right now we're opening it to the public.

(unknown): Okay.

Mr. Croughan: So thank you though.

(unknown): No problem.

Ms. Zeman: I have one other thing.

Mr. Sierra: Please approach and state your name and address again, please.

Ms. Zeman: Okay. Helen Zeman, 12 Myrtle Avenue. Could I please request that they not put a window exactly opposite my bathroom window? There's like an overhead thing in the office that is right directly opposite my bathroom window, and one evening, I just happened to look up and there were people standing there -- this is when the psychiatrists were there -- looking into my bathroom, so I put frosted glass in, but still I would prefer not having a window opposite my bathroom window.

Mr. Sierra: Okay. We'll take that into consideration, ma'am.

Ms. Zeman: Thank you.

Mr. Sierra: What we're going to do is we're going to table this matter for 30 days. If you gentlemen can get those copies.

Mr. Armstrong: At a brokerage --

Mr. Sierra: The brokerage, the deed, easement for the driveway.

Mr. Armstrong: The easement?

Mr. Croughan: Yeah. Just address all the concerns and the use application and the variance application. So you can get a copy again from Martina if you don't have it, but all of the standards that the board has to consider you have to address. You're going to have to talk to him or call his office. You're going to have to talk to him on what all those criteria he asked.

Mr. Armstrong: I understand. I have two outstanding items, the brokerage agreement and the financial --

Mr. Croughan: On the application on the area variance portion, it asks you to complete an undesirable change. You have to answer all those questions. And then for the use variance, you have to address the applicant cannot realize a reasonable return, and that's where you're going to get your brokerage, the alleged hardship relating to the property in question is unique and does not apply to substantial portions of the district. The requested use variance, if granted, will not alter the essential character of the neighborhood. Those are the things you have to address

and be prepared to address the board with; okay?

Mr. Armstrong: Okay.

Mr. Sierra: All right. So just when you get those other two documents we asked you for, there might be additional documents you have to get, so just if you could speak to the Corporation Counsel and have him further explain those to you. All right, and we'll table this matter for next month. Thank you.

Jose S. Flores, Jr.
21 Vincent Drive
Area variances for the above ground pool and a lot line change

Mr. Sierra: Next item on our agenda, Jose S. Flores, Jr., 21 Vincent Drive.

Mr. Flores: Jose Flores, 21 Vincent Drive.

Mr. Sierra: Okay, Mr. Flores. Give us an update on your application.

Mr. Flores: Basically, I purchased a house about 12 years ago. Two years ago, we had a -- one of those rubber pools, and it wasn't -- a behoovement to our family, so I wound up building one from Pools Plus, and I paid \$4,500 for the pool. I did all the required electrical. It was hired through Middletown. The electrical was done. There was no fencing required. The other one that I had before that, the rubber one, I had to put a fencing around it because it wasn't 48 inches. So I wound up having this pool made two years ago, which I still haven't been in yet. The pool, as of right now, we ran into a difficult situation because my neighbor -- the house was bought by Amanda Sciarrotta and her mother a year ago, and when they bought the house, their driveway was too narrow, so they extended the driveway. So they hired a surveyor, Fusco Surveying Company, and they did the survey. In the survey, it was discovered that my pool that I put up, because of the information that was given to me prior, you know, when I first bought the house. They said your property line is over here, so I said okay, my property line is there. I could build a pool here.

(unknown): Did you get a permit?

Mr. Flores: Yes. The permit, everything is all done.

(unknown): So it was inspected by the City.

Mr. Flores: Yes. It was inspected. It was -- everything was -- everything is up to par. I got the sticker from the electrician, you know, the whole thing was basically done.

(unknown): But that's not from the City. The electrical is not done by the City.

Mr. Flores: No. I had to hire somebody from Middletown. I was going to hire an electrician, but he wasn't from Middletown.

(unknown): You hired a licensed electrician from Middletown.

Mr. Flores: From Middletown. Right.

(unknown): I understand that. But somebody from DPW had to come out and inspect it after the pool was up to make sure you were away from your property line and all that.

Mr. Flores: Right.

(unknown): Somebody did that, and they signed off on it.

Mr. Flores: Mr. Ramkissoon. Yeah. Mr. Ramkissoon. He came to the house, and he basically did -- he started the inspection. He came one time, and he never came back, so I couldn't tell --

Mr. Sierra: There's on fence; correct?

Mr. Flores: It's not required to have a fence because it's 52 inches high. It was required to have a fence if it was below 48 inches. They said that you had to have some kind of fencing with a door, with a lock, so nobody could get to the pool. With this pool, it's one that you buy. Like I said, I paid \$4,500 for it, so it has the ladder with the (inaudible) that you pull down so there's no accident, nobody can climb into the pool. It has the floating alarm that if anything moves the water, the alarm goes off in the house. I'm also on the verge of putting a video camera facing the pool, and I have a TV on the inside of the house so I could see the pool without going out. I also put additional lighting in the back of the house, so when I flip the switch you could see, you know, everything clearly. There's no -- it won't be dark.

Mr. Croughan: Did you ever have a survey when you bought the property?

Mr. Flores: Yes. I had the survey done recently because when this --

Mr. Croughan: Before. Before.

Mr. Flores: No. I don't remember back when I bought the house.

Mr. Croughan: So you built the pool without the utilization of a survey, just what you suspected to be --

Mr. Flores: Right. When the Carrillo family sold me the house, they lived next door to me. They sold me the house. You know when you buy the house -- this is my first house and, you know, I bought it 12 years ago. I wasn't familiar to what you had to do. But they told me, okay, your property line lies right here where this mark is at. I said okay, no problem, where it turns out, I can't contest it because Mr. Carrillo passed away a year later, and he's the one that did all the, I guess, the arrangements, you know, and took care of the house. The wife had told me that prior to that, the person that lived next door, they had a mutual agreement that there's no fencing. There's one fence that goes along, and basically there was some kind of debate with them. They said that I could -- they could utilize this part of the property, so I'm going back what he tells me. He tells me this is where your property line lies. I said okay, if it's here, and then I could put the pool at this --

Mr. Croughan: When was the shed built?

Mr. Flores: Hmm?

Mr. Croughan: When was the shed built?

Mr. Flores: The shed was built when I -- back when I moved in.

Mr. Croughan: So the shed that adjoins onto the property line there, that was an existing shed?

Mr. Flores: No, that wasn't. That was -- I built that like a year later after I moved into the house.

Mr. Sierra: What size is it?

Mr. Barber: You only have one shed; right?

Mr. Flores: Yeah. That's it. I have one shed. It's a 10x10, I think it is.

Mr. Welch: That's five feet from the property line.

Mr. Barber: Not anymore. This is the property line.

Mr. Croughan: That's with the lot line change.

Mr. Welch: Well, no. That's what I'm saying. I'm trying to figure this mess out. I mean --

Mr. Flores: But we also discovered when this thing happened, when we were looking at the survey, the old survey that, you know, before they went out, we noticed that --

Mr. Barber: Who has a copy of the old survey? Where is the old survey?

Mr. Flores: We don't have a copy per se. I mean, from the one that we have here, we've deciphered -- yeah -- we deciphered that what happened was 30 years ago, or whatever you want to, like back in the 70s, the property line that they had, it was basically without the garage. They had added on this garage, which brought the property out whatever amount of -- whatever the 12 feet, 13 feet, the size of the garage. So the actual plot that they have I guess on the City record doesn't show the garage. The property line for the garage basically is where the house stood, not where the garage --

Mr. Barber: Have you ever tried going to Goshen to the County records and getting a copy?

Mr. Flores: No. I don't -- no. I don't think so.

Mr. Barber: They would have an old copy on file. They would have them all on file since the house was built. As many times as that got surveyed, the County would have a copy of it. I'm going to suggest that you go to the County and get a copy.

Mr. Flores: Okay.

Mr. Barber: I don't think you have a copy, do you?

Mr. Luis: Does your neighbors --

Mr. Croughan: Don, can I interrupt for just one second?

Mr. Luis: Go ahead.

Mr. Croughan: Just so the board is clear, you have a gray area on the map here, and that's what you're proposing to purchase from your neighbor? It's a lot line change?

Mr. Flores: Yeah. I paid her for the property already, and when I started the process, they told me, okay, it's going to cost -- I paid the \$250 plus the \$100, and they basically said once this is finished, you understand, I could give you the variance or whatever that that shaded part is what I'm basically -- what she sold to me. She basically doesn't want -- she doesn't even want the property.

Mr. Croughan: Sir, do you have anything recorded yet that shows that you're the owner of that?

Mr. Flores: No. This is what -- I got the letter that -- between me and her that the purchase that I had paid her a certain amount of money.

Mr. Croughan: Was the deed recorded, the lot line change?

Mr. Flores: Not yet. That's what I'm going for, a plot line change to show that I'm purchasing or purchased that part, so this way the pool wouldn't be on her property.

Mr. Croughan: Okay. I just wanted the board to be aware of that.

Mr. Flores: That's mainly what I'm going for, for property plot line change, so the pool wouldn't be on her property. Right now, the pool is almost two-thirds on her property, so --

Mr. Luis: So she owns your pool.

Mr. Flores: Basically, yeah.

Mr. Luis: Okay. So do you have a copy of the contract?

Mr. Flores: Which contract?

Mr. Luis: Between you and your neighbor. Not that we don't believe you, but if we change this plot line and all the sudden you --

Mr. Flores: I submitted that with the paperwork.

Mr. Luis: With the packet?

Mr. Flores: Yeah. With the packet. Not with this one, but with the first one that I think I put in in the office downstairs when we first applied for the -- that you have to pay the \$250 and the \$100.

(unknown): The lot line's not a big deal though. You're clearing up more and more information.

Mr. Croughan: Do you already own the gray area?

Mr. Flores: Yes. I already paid her for it.

(unknown): She doesn't own the pool now. You own it now.

Mr. Flores: Well, until this plot line is changed, you know what I mean? She's a very nice person. The mother and the daughter, I mean, they had no problems. They even come to the house. I told them, listen, you could use my pool, you know. We have an amicable agreement.

(unknown): I mean, they own two-thirds of it.

Mr. Flores: Yeah. So I just tell her to stay on this side of the pool.

Mr. Croughan: Also, do you have a copy of the mailings that you sent?

Mr. Flores: Yes.

Mr. Luis: First, we have to see the contract. Not that I don't believe you, but, you know.

Mr. Flores: Well, it's --

Mr. Luis: If you move this lot line, and this woman starts coming to me and says, yo, you took away my property.

Mr. Flores: The letter that we -- we made a letter, and we had it notarized, stating that Miss Amanda Sciarrotta --

Mr. Luis: I get that, but you're still going to have to get an attorney to draft this because you're moving these lot lines. You're going to have to get a surveyor to

come out here and -- not only with the City, but with the County.

Mr. Flores: Well, I had this survey done with Fusco, and they basically said that -- they gave me all the paperwork, they gave me all the maps, and they said just -- you're going to have to go into the town and process it and get this plot line changed. Basically, that's all I'm really looking for is just a plot line change.

Mr. Sierra: Lot line change. Any questions from the board?

Mr. Croughan: I think we have to check with the Building Department how it got approved, the pool, if there was some kind of survey submitted to them or how they went about approving this, so we have to check on that. I don't know, Joel, if you want to look it up.

Mr. Welch: Did you put this pool up when?

Mr. Flores: Excuse me?

Mr. Welch: Twelve years ago?

Mr. Flores: I bought -- yeah -- 2006.

Mr. Luis: When did you put the pool up? What year?

Mr. Flores: Oh, this would be the second year. The first year, we had problems with the electrical, you know, it had to be dug out, you know, so I had to hire the electrician. He had to run the line.

Mr. Barber: You had a permit already for the pool.

Mr. Flores: Yes. The permit for the pool is already -- the electrician came in. He did the whole thing. He checked the grounding. He checked everything.

Mr. Welch: We went through that already. I understand that. The problem is that you're too close to the property line, so you have to go for a variance for being so close to the property line.

Mr. Flores: Yes.

Mr. Welch: I have to look at my records because I'm in charge of pools, and it had to be some kind of survey showing where the pool was going before you put it up.

Mr. Flores: Fusco --

Mr. Welch: Well, I don't see any problem with the variance after we find out where -- once we get it all squared away legal, because your neighbors sold you the property and they use the pool. They're not going to say we want you to move that 10 feet. So that could be resolved very easily.

Mr. Flores: Mm-hmm.

Mr. Welch: But now the only thing they're asking for is the litigation, the papers showing that you own that property.

Mr. Flores: That's what we have to address right now.

Mr. Sierra: The other property owner's not here, so we have to see some kind of legal documents.

Ms. Clark: Right.

Mr. Welch: I'm agreeing. We have to have some kind of legal papers saying --

Mr. Luis: He's saying that the contract is contingent on us getting his lot line changed. What we're saying is that we can't even consider that without a contract.

Mr. Flores: Well, it's -- I don't know if you would call it a -- it's a written or typed contract between me and her, notarized. I don't know --

Mr. Croughan: It's some type of an agreement that you have with her.

Mr. Flores: Yeah. I have that.

Mr. Croughan: Or have her come to the next meeting.

Mr. Welch: They need that.

Mr. Flores: Okay.

Mr. Welch: Then we can go from there.

Mr. Flores: All right.

Mr. Welch: That's what it comes down to.

Mr. Flores: Okay.

Mr. Croughan: We just want to make sure that's in place before we give away this woman's land or this person's --

Mr. Flores: No. Like I said, she has -- she even told me if you have problems, call me and I'll go with you, but I have the notarized letter that she signed and I signed, stating that she's selling me the property and an approximation of the size, which is like a triangular size, and it's only going from -- it's like 16 feet going, and then the length from the back to the front.

Mr. Sierra: So what I'm going to go ahead and do, I'm going to open up the public hearing. Anybody from the public wishing to be -- okay.

The public hearing was opened.

We're going to leave the public hearing open. We're going to table this until next month's meeting; all right?

Mr. Flores: All right. Thank you.

Mr. Sierra: Thank you.

Mr. Croughan: And maybe ask your neighbor to come to the next month's meeting.

Mr. Flores: Yeah. I'll inquire, but I just need to know more or less exact date so this way I could tell her on what date it's going to be --

Mr. Croughan: Okay.

**Gregorian, LLC
90 Linden Avenue
5-year extension to comply with Amortization Ordinance**

Mr. Sierra: Final item on our agenda, 90 Linden Avenue. Save the best for last. Please state your name and address for the record.

Mr. Preston: Good evening. My name is Kevin Preston. I'm the attorney for the applicant, Gregorian, LLC. With me is Maier Shelley and Jennifer Livesey. They are representatives of the applicant. This is an application pursuant to § 475-44-J-4 for an extension for a period till the end of 2021 to use 90 Linden Avenue as a 12-unit dwelling.

Mr. Croughan: What was the time period for that?

Mr. Preston: Till the end of 2021, five years from the date that they -- the statute requires it to be measured from. My clients purchased the property in 2013 as set forth in the financial analysis. They bought the property for \$250,000. They put approximately \$220,000 into upgrading the building. At this point, all they're looking for is a little additional time to recoup the investment that they've made in the building and the improvements that they've made to the building. We also have an application before the DPW to reconsider a decision that was made in 2012 by the Building, by Mr. Tawil, that indicated that the property should be used as a 6-unit dwelling rather than a 12-unit dwelling, but that until it's reconsidered, that decision of Mr. Tawil still stands.

Mr. Sierra: So it's being occupied now as how many units?

Mr. Preston: Twelve.

Mr. Sierra: It's currently being occupied as 12.

Mr. Preston: It is. The financial analysis makes a comparison between the expenses, the income, and the revenue with the building used as a 12-unit dwelling, compares it to the building used as a 6-unit dwelling to show that the applicant will not be able to recoup near as much using it as a 6-unit as it would as a 12-unit. Given the recent purchase, the relatively recent purchase of the property in 2013, the applicant simply hasn't had enough time to use the unit for its intended purpose and to derive the revenue that it thought it was going to get from that use as a 12.

Mr. Sierra: When was the decision by Tawil, '12?

Mr. Preston: It was in '12. Correct.

Mr. Sierra: So he bought the property knowing -- as a 6-unit.

Mr. Preston: He bought the property knowing that that initial determination had

been made. Correct.

Mr. Sierra: Mrs. Clark.

Ms. Clark: Do we know why -- you said you've already been to Mr. -- to the DPW.

Mr. Preston: We have.

Ms. Clark: And he said he's staying firm on the 6-unit.

Mr. Preston: No. He hasn't said that.

Ms. Clark: Okay. So you're waiting for him?

Mr. Preston: That's correct.

Ms. Clark: Okay. So you're waiting for him --

Mr. Sierra: They put an --

Ms. Clark: The application?

Mr. Sierra: Mr. Tawil, Commissioner of Public Works, made a determination back in '12 that it's to go from a 12-unit to a 6-unit. The applicant put in a -- the former owner, correct, not the applicant -- the former owner.

Mr. Preston: The determination by Mr. Tawil was made at a time when my client had not yet bought the property.

Mr. Sierra: So the former owner put in for a reconsideration.

Mr. Preston: No. My client put in for a reconsideration in 2016 on the same day that the application was made before the ZBA for the extension.

Mr. Sierra: Okay.

Mr. Welch: Right now, you have 12 apartments in that building being rented?

Mr. Preston: Yes. All 12.

Mr. Welch: See, I thought that was reduced. That's where -- that number 6. That's why I came back.

Mr. Sierra: Yeah. I thought it was a 6 this whole time.

Mr. Welch: I thought it was reduced to 6.

Mr. Shelley: No. It's 12.

Ms. Livesey: It's been 12, and it's inspected every year. We have the inspectors in there, Boris until he left.

Mr. Welch: Okay. I'm not -- I'm just -- 6 sticks in the back of my mind, that it was reduced to 6.

Mr. Preston: It was, but as I understand it, the use remains 12 until this board makes a determination as to whether it could receive an extension for five years to be used as a 12.

Mr. Welch: You wouldn't have any problem with the board tabling this for another month, would you?

Mr. Preston: No, not at all.

Mr. Welch: Because, I mean, I'd like to look in to see. Something sticks at the back of my mind there's only supposed to be 6 in there.

Mr. Sierra: Yeah.

Mr. Croughan: Well, it seems that there was a determination made that it was 6, so based upon the determination, why were you recalling he's able to use it as a 12?

Mr. Preston: Because during the pendency of this application.

Mr. Sierra: But in '16. That was just two years ago.

Mr. Preston: Correct.

Mr. Sierra: But from '12 to '16, that should've been a 6-unit building.

Mr. Preston: Well, the applicant, as I understand, the new amortization law was

passed approximately six months after my clients bought the property.

Mr. Sierra: No.

Mr. Barber: 2009.

Mr. Preston: Yes, it was.

Mr. Sierra: I sat on the Common Council. Absolutely not. I remember this property 100 percent before your client owned it.

Mr. Preston: No, no, no. I'm saying the amortization law as it exists today.

Mr. Sierra: And as it exists today, correct me if I'm wrong, '09.

Mr. Croughan: I'm not sure.

Mr. Sierra: They revived it in '09. We passed this back in 2006.

Mr. Preston: Right. It was struck down though in March of 2013. It was struck down, so it didn't exist anymore. My client bought the property during a period of time when that law had been struck down, and I agree, the Common Council did pass a new law in March of 2014, which is six months after my clients bought the property. So at the time they bought the property, the amortization law was not in effect. There was a little window there.

Mr. Sierra: It wasn't struck down.

Mr. Preston: It was struck down by Judge Onofry.

Mr. Sierra: There was a change in it, which -- and Alex Smith is the one -- make sure he's at next month's meeting. Alex Smith can speak to you, but you're not the first one that we've dealing with this amortization.

Mr. Preston: Understood.

Mr. Sierra: And what they did is they granted more years onto it. But this determination, because that building was condemned. Correct me if I'm wrong. Correct?

Mr. Shelley: Excuse me?

Ms. Livesey: When we purchased it, was it condemned? Yeah.

Mr. Sierra: It was condemned.

Mr. Preston: Yup. Which is why he put so much into it.

Ms. Livesey: Yeah.

Mr. Sierra: Right. So right off the bat, you lose your -- you lose your zoning right off the bat. Your use. Your use you lose once it's condemned and it's vacant for over a year. Am I wrong, Walter?

Mr. Welch: If it was vacant for more than one year, but I'm not going to --

Mr. Sierra: You lose your use variance.

Mr. Preston: They are looking for a use variance. They've been using the building as a 12-unit dwelling for the last five years, so we are coming to use -- for a variance to use it as a 12-unit dwelling. In our view, we have the right to use it because the City has inspected it every year as a 12-unit dwelling and given my clients the right to use it year after year after year. All we're looking for is the extension that's contained in the amortization law.

Mr. Sierra: Do you have any of those permits that grant --

Ms. Livesey: Of course. And they're visible in the building.

Mr. Sierra: It says 12 units on it?

Ms. Livesey: Yes. 12 units, and they're inspected and measured.

Mr. Sierra: Make sure we get copies to Martina.

Mr. Shelley: Of course. The last time it's Boris.

Ms. Livesey: Yeah. Until Boris left, we did a lot.

Mr. Shelley: He inspected our apartment, each apartment, his agency, but in 2018, nobody showed up to do the inspection because of the application we submitted.

Mr. Sierra: Okay. If you can get us those copies of those.

Mr. Preston: Of course.

Mr. Sierra: There's a few things that we're going to need to -- Martina, did you give them that checklist for the amortization hardships?

Clerk: I believe so. Yes.

Mr. Sierra: Financials. We're going to need financial statements, bank statements, mortgage statements, estimates, contractor invoices. Anything that you can prove that \$220,000 that you put into it.

Mr. Preston: I'm assuming this is on the list that Martina's going to give me?

Mr. Sierra: I'm assuming it is. We've been giving it out for a while.

Mr. Preston: All right. Good.

Mr. Sierra: Martina, do you have that? Can we get it to --

Clerk: Sure.

Mr. Sierra: We've made a checklist for certain things, but anything that can prove your hardship.

Mr. Preston: Of course.

Mr. Sierra: And bank statements, like I said, estimates, invoices.

Mr. Preston: Of course.

Mr. Sierra: Also the contract price that you paid for \$250.

Mr. Barber: And what it will cost to change it from 12- unit to 6-unit.

Ms. Livesey: Okay.

Mr. Sierra: And the copy of the leases.

Ms. Livesey: Sure.

Mr. Preston: The current leases?

Mr. Croughan: Yeah.

Mr. Preston: Okay.

Mr. Croughan: Are they month-to-month or are they longer term?

Ms. Livesey: No. They're one-year minimum.

Mr. Sierra: And what's going to be very crucial is those rental permits.

Mr. Preston: Sure.

Ms. Livesey: Yeah. But we have those.

Mr. Sierra: Okay. So what we'll do is we'll table this until next month.

Ms. Livesey: Okay.

Mr. Sierra: If you can get that stuff before next month to Martina's office, the Corporation office, please, and then I'll see you next month.

Mr. Preston: Very good.

Mr. Sierra: All right.

Mr. Preston: Thank you.

Mr. Sierra: All right? Thank you.

Adjourned 8:00PM

Respectfully Submitted,

Diane Genender, Transcriptionist