

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

**November 21, 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 November 21, 2018 at 7:00 P.M., Joel Sierra presiding.

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

Members Absent: Deborah Clark

Other Attendees: Richard J. Croughan, Corporation Counsel

A motion was made by Nicholas Barber and seconded by (unknown) to approve the minutes of October 17, 2018 as submitted.

Roll Call Ayes: Joel Sierra, 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: Let the record reflect that no one is here for this property, so we're going to table this matter for -- Martina, what's the date of the next (inaudible) meeting? I think it's Christmas week, isn't it?

Clerk: Yes.

Mr. Sierra: Are we having a meeting next month?

Mr. Barber: No. I won't be around.

Mr. Sierra: Okay. We're going to need a motion before the meeting ends. So we're going to table this item for our January meeting, if that's okay with the rest of the board. Okay. I need a motion to table.

A motion was made by (unknown) and seconded by Mr. Barber to table KCA

Associates, Inc., 12 Myrtle Avenue, until the January Zoning Board meeting.

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

**Jose S. Flores, Jr.**

**21 Vincent Drive**

**Area variances for the above ground pool and a lot line change**

Mr. Sierra: 21 Vincent Drive. Jose S. Flores, Jr.

Ms. Sciarrotta: He's on his way.

Mr. Sierra: He's on his way?

Ms. Sciarrotta: Yup. He's like five minutes away, and my husband just ran outside to speak to him.

Mr. Sierra: So we have all the documentation?

Mr. Croughan: Yes. Well, that's up to the board to decide if the application is --

Mr. Sierra: Complete?

Mr. Croughan: I believe the 23 Vincent Drive neighbor is here.

Mr. Sierra: Miss, if you could step up to the mic. Please state your name and address for the record.

Ms. Sciarrotta: Amanda Sciarrotta, 23 Vincent Drive, Middletown, New York.

Mr. Sierra: Okay. If you can give us a brief outline of your version, please.

Mr. Sciarrotta: So my neighbors -- when I first moved into the house, I realized my property was closer to their home than what I wanted it to be. I don't think that when I go to sell the house, you know, a few years from now when I start a family, I don't think that's going to be very attractive to have my property line so close to theirs and on top of their house. My neighbor also has a pool on his property, so we discussed me selling the property to him so that this way the pool is not a liability, it's not on my property anymore, and it even got the property line to be more of a selling feature for when I go to sell the house in a few years.

Mr. Sierra: Okay. So it's our understanding that the pool has already been put up?

Ms. Sciarrotta: He does already have the pool up.

Mr. Sierra: And the pool was put up before you owned the property?

Ms. Sciarrotta: No. It was already there when I looked at the house. It was there.

Mr. Sierra: It was there before you bought it.

Ms. Sciarrotta: I think so. There was a pool that was there. They had an issue with it. Something about it broke, something happened, and then another pool went up, but because I was moving and I was in and out of the house at that point, I'm not fully sure what went on when in timeframes.

Mr. Barber: It went up in the same location.

Ms. Sciarrotta: I'm sorry?

Mr. Barber: It went up in the same location?

Ms. Sciarrotta: Yes.

Mr. Croughan: How much property are you selling?

Ms. Sciarrotta: I don't know the exact amount. I just know straight back from where my driveway begins, which is a little bit past my driveway, straight back, and then anything over to the right is what I'm selling.

Mr. Barber: Did you send this in?

Ms. Sciarrotta: I did not. My neighbor did.

Mr. Barber: Your neighbor did.

Ms. Sciarrotta: Yes.

Mr. Barber: Because I'm having a hard time understanding this.

Ms. Sciarrotta: Okay.

Mr. Barber: I thought it was 6-foot by -- you're only selling like a strip of 6-foot by --

Ms. Sciarrotta: To be honest, I don't know the exact amount.

Mr. Barber: I don't remember the footage-wise.

Ms. Sciarrotta: I just know it's where --

Mr. Sierra: Do we have last month's packet? It's in -- we have a picture.

Mr. Barber: I don't have last month's.

Mr. Sierra: It's bigger than 6 feet.

Mr. Sciarrotta: It's 6-foot over from our fence.

Ms. Sciarrotta: Where the property line would be.

Mr. Barber: That's on one end, but then it should be 6-foot by the other.

Mr. Sierra: It kind of tapers off. It's like 13 --

Ms. Sciarrotta: It gets a little uneven towards the back because the property line was uneven to begin with, so I know that kind of turns it off, but with the way we were doing it and it gets straight, it does straighten it out better.

Mr. Croughan: But are you also selling property in the back?

Ms. Sciarrotta: It's the same piece. There's my house, the neighbor that I'm selling to, and then there's another property and a house that was behind that, so this is the piece of property behind that third house, but it's still my property and attached to my line.

Mr. Barber: So in reality, three-quarters of his pool was on your property.

Ms. Sciarrotta: Correct.

Mr. Barber: Okay. And now he wants to purchase that land so he doesn't have to move the pool.

Ms. Sciarrotta: Correct.

Mr. Barber: Well, even if he purchased that land, it's still not wide enough.

Ms. Sciarrotta: Because the property runs -- you need to be a certain amount away from the property line.

Mr. Barber: It's supposed to be 10-foot.

Ms. Sciarrotta: That's what I thought.

Mr. Barber: And that's why he's here looking for that variance.

Mr. Croughan: Well, Walter, this is when he took out the permit for his pool, but none of that, like the shed on here, is also over the property line. It doesn't show it here. The pool he says is 10 feet from the property line. It's not.

Mr. Sierra: Martina, you can let the record reflect that Walter dropped off a document to you early this morning and you said that it has been (inaudible).

Clerk: Sure.

Mr. Sierra: It's the permit before the full application. The only thing is -- Mr. Flores?

Mr. Flores: Yes?

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

Mr. Flores: Jose Flores, 21 Vincent Drive.

Mr. Sierra: Your neighbor here was just briefly giving a description, her version, and Mr. Welch entered the pool application into the -- submitted for the -- that's where we're at. We're reviewing your pool application that you (inaudible).

Mr. Flores: I got the application here, the original one that I submitted when I first started.

Mr. Sierra: Do you have a copy?

Mr. Flores: This is the original copy. They have a copy.

Mr. Sierra: May I see that one?

Mr. Flores: Sure. You could take the whole folder. This is the survey. That's the map that I had to submit.

Mr. Sierra: Amanda?

Ms. Sciarrotta: Yes.

Mr. Sierra: You are the sole property owner?

Ms. Sciarrotta: Yes, I am.

Mr. Sierra: Is there a mortgage on the property?

Ms. Sciarrotta: Yes, there is.

Mr. Sierra: Pronounce your last name again for me.

Ms. Sciarrotta: Sciarrotta.

Mr. Sierra: Sciarrotta? Did you contact the bank about this transaction?

Ms. Sciarrotta: I didn't know I needed to.

Mr. Croughan: Well, you would need to contact the bank because the bank has a mortgage against all of the property, so you can't convey it to your neighbor because that property is encumbered by a mortgage. So if you conveyed it, he's taking on part of the mortgaged property.

Mr. Sierra: It complicates things for us. I mean, it's a little bit more complicated than just granting you the application for this.

Mr. Flores: It's okay. I'll just tear down the pool. I mean, I'm not going to go through this. I mean, I invested \$10,000 in the pool already, but if it's just going to go through all this, I'll just tear the pool down.

Mr. Croughan: What about the shed?

Mr. Flores: Hmm?

Mr. Croughan: The shed is also encroaching on her property.

Ms. Sciarrotta: Is there any way that we can sign off that it's okay that the shed is there? I mean --

Mr. Sierra: You would have to get legal counsel on that matter. We can't really advise you on that. We have to take every precaution here to not give away your property and then get sued by your bank.

Ms. Sciarrotta: Okay.

Mr. Sierra: So we just gotta make sure that there's checks and balances in place before we grant this variance.

Mr. Barber: Are either one of you selling your houses now?

Ms. Sciarrotta: No.

Mr. Flores: Have no plans near or in the future to sell it.

Ms. Sciarrotta: Five, 10 years down the road when I start a family and my kids are old enough, probably need a bigger house at some point, but --

Mr. Barber: And the pool will be rotten then.

Mr. Flores: The pool will probably be gone before that.

Mr. Croughan: He does have a building permit though. The board can't proceed to take an action while you have a mortgage on the property because we can't grant the variance to you and then be subject to the bank coming back and saying how can you do that when we have a lien on the property? So you would have to get the approval with the bank and then come back with us with that information in order for us to make an action on it.

Ms. Sciarrotta: Okay.

Mr. Flores: All right.

Mr. Croughan: You're devaluing your property by conveying a portion of it, so

you need your lender's approval.

Ms. Sciarrotta: Okay.

Mr. Croughan: And there is a process to do that.

Ms. Sciarrotta: Okay.

Mr. Sierra: We apologize.

Ms. Sciarrotta: It's not your fault.

Mr. Sierra: If you get something from the bank stating this, we'll be more than happy to review it.

Mr. Croughan: We can table it for further action.

Mr. Sierra: Would you like us to table it while you contact your bank?

Ms. Sciarrotta: Yeah. Let's put it to the side for a second and let me see what we can do.

Mr. Sierra: Okay. So we'll table this matter to January, the January meeting.

Ms. Sciarrotta: Sure.

Mr. Barber: We'll wait to get back to us. We'll wait until they get back to us.

Mr. Croughan: They can come back and request an extension, but we can table it for two months, and then if you need an extension of time, you can submit a letter.

Mr. Sierra: All right. I need a motion to table till January's meeting.

A motion was made by (unknown) to table the meeting until January and seconded by (unknown).

Roll Call Ayes: Joel Sierra, Nick Barber, Marc Woody, Don Luis

**JBA Associates, Inc.**

**12 Myrtle Avenue**

**Area variances & use variance for a single family home in I-2 zone**

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

Mr. (inaudible): Newburgh, New York.

Mr. Croughan: Hold on. Before you begin, just for the record, this was tabled before you showed up late, so it's being put back on as it was tabled already.

Mr. (inaudible): Yes. Mr. -- the owner of the property, he was, I don't know. He's got an emergency. He's not here, so he asked me just to be present to see your resolution and make sure I convey it to him. Before that, he did sign and notarize a paper that I can represent, and I don't know if you have it. We sent it.

Clerk: Yes.

Mr. (inaudible): So again, I'm just here to see. We sent the paperwork that you asked last time, and we just, you know, he just wanted (inaudible).

Mr. Croughan: The paperwork -- do you have that, Joel?

Mr. Sierra: Yeah.

Mr. Croughan: It appears there's a listing with HVMLS for an exclusive right to sell to Keller Williams. That was from a listing date of March 25<sup>th</sup>, 2014, expired a year and a half, September 30<sup>th</sup>, and a copy of that MLS listing agreement, and he has submitted a title report dated November 6<sup>th</sup>, 2006 -- 2006 -- \$170,000. And he has some notes. The property is located in a residential neighborhood. The best use of the property is as a residential property. The property has been vacant since 2012. He's been unable to rent the property as a commercial space. The only inquiry made from people wanting residential property. He's paid all the taxes, and he's tried to use the property as it was created; however, due to market conditions and location, residential. Last time we had (inaudible) here, he was saying that they had used the driveway as well.

Mr. (unknown): I contacted again the surveyor, and it is going to be surveyed because we did a survey (inaudible) has to be -- they're allowed to use that, and the survey marks that, so I mean, he doesn't have any objection to keep it the way it is.

Mr. Sierra: Do you have a copy of the survey?

Mr. (unknown): There is a copy.

Mr. Barber: There's not a copy. It's just written. It's not a drawn out copy.

Mr. (unknown): No. There is.

Mr. Barber: Not in this packet.

Mr. (unknown): Then the packet before that, there is a survey. In the initial copies that we submitted, there is a survey. That's the survey.

Mr. Sierra: That's the survey?

Mr. (unknown): Yes.

Clerk: That's last month. It should be in the file.

Mr. Barber: The survey shows that the driveway is split, and both parties -- we need parking in the back.

Mr. (unknown): Actually, the one for 12 Myrtle, there is parking space in the front, and he's not planning to use anything in the back. He doesn't want it to -- you know the lady that was here? (Inaudible) because she has like blacktop space. She can still use it.

Mr. Barber: Well, no. She has a right to use it.

Mr. (unknown): Yeah, yeah. But he's not planning to use any parking in the back because he's got enough for two in the front (inaudible), so he's -- and also, there is on the building that is on the side, there is a door, so the plans for the architect, he's planning to cancel that door to make sure it doesn't interfere, cause an accident, and put it in the front, so the door is going to be in the front.

Mr. Barber: Right. But if you're making a rental out of this, the tenants would need to know that that lady has the driveway.

Mr. (unknown): Yes.

Mr. Barber: That there's no, you know, you're not supplying parking for them in the back of the house.

Mr. (unknown): No, no. Definitely not.

Mr. Croughan: Well, neither one should be parking on the driveway.

Mr. Barber: Correct. But there's no parking in the back of -- on the (inaudible).

Mr. (unknown): (inaudible)

Mr. Barber: Okay. So they would have to make a parking space back there if they plan on using the driveway. If there's no parking back there, there's no reason for them to use it.

Mr. Croughan: Other than if they wanted to -- if it's a residential and they wanted to drop off groceries and the door is there, they can access the driveway to do that. But neither party should be blocking the use of the driveway because there is a driveway easement.

Mr. (unknown): Probably he's planning on like clean up the back yard, you know, things like that so (inaudible) space to give them access, but not to park any cars. It's just in the front, and right now, as you know, if they rent -- they use it to be residential, they will let the tenants know at this point, we don't know who they're going to be, to make sure they can have the driveway and make sure the lady, you know, all these years she's been using it. He's not planning to make any changes but, you know, she's very nice, so he said, you know what, it's going to be fine unless it's not blocking, he doesn't have any objection.

Mr. Croughan: In order to grant a use variance, you have to demonstrate financial. There's no financials in here, so he would need to show what his mortgage and his operating expense and how much he's losing. So if he's filing a tax return on an LLC, that should be submitted and made part of the record.

Mr. (unknown): Well, what you told the last time -- okay.

Mr. Croughan: Okay. In order to grant a use variance, that's part of the criterium that's listed; okay?

Mr. Sierra: I believe we requested that last month.

Mr. (unknown): No. The only thing it was -- because I was here too. The only thing that you requested was like if it was listed, and he showed you that it was listed at some time.

Mr. Croughan: Does he have a mortgage on it?

Mr. (unknown): Yes.

Mr. Croughan: So we should see a copy of the mortgage.

Mr. (unknown): That was sent when you asked last time to send it to you. We can send it anyway. He told me whatever you're asking for, you know, like we can give you. That's what I'm here, like --

Mr. Croughan: Well, financial records. So if he has -- is this owned by an LLC or individually?

Mr. (unknown): It's an LLC.

Mr. Croughan: So when he does a tax filing, we should -- he should submit those tax filings showing if he's operating at a loss.

Mr. (unknown): Okay.

Mr. Croughan: And he should submit a couple years of it; okay?

Mr. (unknown): A couple years like from 2016, '15, something like that?

Mr. Croughan: Whatever the board could use or feels necessary to help in their determination, so maybe three years to show that he's been operating at a loss?

Mr. (unknown): Yeah. Because I mean like technically, he's been losing because he's paying all the taxes.

Mr. Croughan: You have to demonstrate it. You have to demonstrate it.

Mr. Sierra: We'll just need some documentation.

Mr. (unknown): Okay. So you need right now 2015, 2016 taxes for LLC.

Mr. Croughan: '15 and '16 and '17.

Mr. (unknown): '15, '16, and '17. Three years.

Mr. Croughan: Three years.

Mr. (unknown): Okay. What else?

Mr. Sierra: We're going to table this meeting for January. We're not going to have a meeting next month, so if you could have -- you can communicate with Martina and Mr. Croughan here in their office, and they'll review the documentation and then we'll see you back.

Mr. (unknown): So anything else, that paperwork, that you really need because that's --

Mr. Croughan: The mortgage. Any financials that would help the board make the decision.

Mr. Sierra: Bank statements, mortgage statements, any money he's invested into the property, receipts.

Mr. (unknown): Okay.

Mr. Sierra: Is there any other questions from the board? Anything the board would like to see?

Mr. Croughan: He's requesting two things, a use variance and an area variance; okay?

(Unknown) made a motion to table the application until January, seconded by Mr. Barber.

Roll Call Ayes: Joel Sierra, Nick Barber, Marc Woody, Don Luis

A motion to suspend the December 2018 meeting was made by (unknown), seconded by Mr. Barber.

Roll Call Ayes: Joel Sierra, Nick Barber, Marc Woody, Don Luis

Adjourned 7:30PM

Respectfully Submitted,

*Diane Genender, Transcriptionist*