

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

January 15, 2020

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 January 15, 2020 at 7:00 P.M., Joel Sierra presiding.

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

Members Absent: Marc Woody

Other Attendees: Richard J. Croughan, Corporation Counsel

A motion was made by Mr. Luis and seconded by Mr. Barber to approve the minutes of December 18, 2019 as submitted.

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

Raymond Rodriguez
194 Linden Avenue
area variances for a proposed 2-family residential home

Mr. Sierra: All right. Mr. Rodriguez, please state your name and address for the record.

Mr. Rodriguez: Raymond Rodriguez, 7 Francis Drive, Middletown, New York.

Mr. Croughan: Mr. Rodriguez, I'll start. Just on your area variance, you're missing a variance, a request from the Board. Your lot size is 50'x94'. It has to be 75'x100'. You've only requested the width where your required is 75' and your actual is 50', and then the area variance where required is 75' and you have 47'. You don't have the other area variance for the 94' to be to 100', so you're going to have to put out another request for a public hearing on that third variance request.

Mr. Rodriguez: This is something I went over with Mr. Welch, and we went over it together, and it's what he said I needed to do.

Mr. Croughan: Well, unfortunately, there was an error somewhere along the process. You do need that 6' area variance.

Mr. Rodriguez: Okay.

Mr. Croughan: So you're going to have to get with Martina to clarify that. As far as the rest of your presentation, you can make it tonight, just the Board cannot vote until that third variance request.

Mr. Rodriguez: Okay. Not a problem.

Mr. Sierra: So before we let you go, I had a conversation with the Mayor, Council President, the attorney, and I'm not sure how the rest of the Board feels, but that lot is really small. I know the Chiefs are aware of that lot because we went to the fire that burnt that house down.

Mr. Rodriguez: Yeah. I remember you said that.

Mr. Sierra: And we're not against you building, but we are against you building a two-family house just because of the size of the lot. It's too small.

Mr. Rodriguez: Okay.

Mr. Sierra: And you're going to need -- the Corporation Counsel just said you're going to need three variances as it is just to build anything, but just to build a single family, you're going to need three variances, I would hope that you would reconsider and amend your application to reflect a single family home.

Mr. Rodriguez: What if I do an over and under?

Mr. Barber: A mother/daughter?

Mr. Rodriguez: No. A first and second floor instead of having side-by-side.

Mr. Barber: If you can fit it within that variance, sure.

Mr. Sierra: Well, I think one of the issues besides just besides the building (inaudible), you run into recreation issues, you run into parking issues when you're putting that many bodies into a space that small.

Mr. Rodriguez: Okay.

Mr. Sierra: The average family has two cars now, so where are you going to fit four cars in that building (inaudible) with the variances that you already -- understand?

Mr. Rodriguez: Mm-hmm.

Mr. Sierra: We can't set the house back further. You don't have enough room to put a driveway to the back.

Mr. Rodriguez: No. There's no way.

Mr. Sierra: Yeah. So it's going to be an issue. I've already spoke to it at length with Corporation Counsel, with the Mayor, and it's just too small, in my opinion. I mean, you could present what you want to present, but then the Board's going to vote on it. I'm not sure how the rest of the Board members feel, but just in that area, like you said, you can't get to the backyard and, you know, if you're going to do two, three families, you're going to have extra kids there.

Mr. Barber: Two to three family? He didn't say two to three family.

Mr. Rodriguez: No, no.

Mr. Sierra: Two to three bedrooms. I'm sorry.

Mr. Rodriguez: Yeah.

Mr. Sierra: You know, it depends on what you want to build, but the lot is extremely small.

Ms. Clark: What was the concern again you're saying?

Mr. Croughan: He needs three variances --

Ms. Clark: No. I know the variance issue, but when he was saying about talking to the Mayor, what was the concern?

Mr. Croughan: The lot size, putting a big, two-family house there.

Ms. Clark: A two-family residence there.

Mr. Sierra: There used to be an old house there before our codes changed, before there were cars. These houses are from the 1800s when people walked and took horses, you know? Now, the codes have changed. The footage you need is 75 by 100 just to build a single family.

Ms. Clark: Right.

Mr. Sierra: This lot is 50 by 94, and he wants to put a two-family.

Ms. Clark: So with the third variance, it goes 75 to 100 -- he wanted to go to a 75 to 100?

Mr. Sierra: He'd have to buy more land and tear a house down.

Mr. Croughan: The required is 75. He's at 50.

Ms. Clark: Right.

Mr. Croughan: And on the other variance, he's at 94 and he has to get to 100.

Ms. Clark: He needs 100.

Mr. Croughan: Yes. And then the area variance that he needs is he needs 75 and he's at 4,700 square footage.

Mr. Sierra: So like I was saying, I know the area. I drove by. I was trying to see if there was a way to figure this out. I spoke to the Mayor, and I'm not sure how the Board feels, and you're more than welcome to interject here, but do you have an opinion at all?

Mr. Barber: If it could fit a two-family on that, whether it's side by side, up, you know, top and bottom, that's his option. Then he could bring it back to the Board.

Mr. Sierra: Chief?

Mr. Luis: It's a lot of square footage.

Mr. Barber: He's looking at changing the configuration of the house.

Mr. Sierra: Right. I made mention of that, but again, it depends what that means -- he does the two single --

Mr. Barber: One bedroom.

Mr. Sierra: -- one bedroom or efficiency. I don't know what you're proposing, but if you did the same proposal in a bilevel or a split level, whatever it is, where are you going to put all these cars? We have to only assume that you're going to have two vehicles.

Mr. Rodriguez: I assumed in the front like everyone else. If the house is set back further enough to have two cars in front of the house on each side.

Mr. Croughan: We only have one set of plans. We don't know what happened to the other six, so I don't know if you want to pass them around or everyone wants to --

Mr. Barber: Well, if he's looking to change the configuration of the house, those plans are no good.

Mr. Sierra: Well, I don't know if he's willing to do that, or if he wants to go forward with what he submitted.

Mr. Barber: What he submitted, he would need that 6' variance, so --

Mr. Croughan: No matter what he submits, he's going to need the variance.

Mr. Barber: Right. So there's no voting on it tonight anyway.

Mr. Sierra: No. Regardless, we're not going to vote on it tonight unless he wants us to vote on it as presented without the variance.

Mr. Barber: You can't vote on it.

Mr. Croughan: Well, you can't because he needs that third variance to do anything.

Mr. Sierra: But if he took those same unit sizes and stacked them --

Mr. Croughan: Well, what are you proposing to do? How many bedrooms?

Mr. Rodriguez: Well, I would have to probably go two bedrooms. I wanted to go the three, but if

it's not possible, it's not possible. I want to make it work. That's what I want, with the allowance of you guys letting me make it work, so whichever way I could go about it to make it happen, I'm opening to opinions.

Mr. Luis: My advice to you, you had an architect draw them up. Go back to your architect and just tell him this one is not going to work. If you can do top and bottom, if you scale it down to two-bedroom, one bath, you know, see if you can fit that within that lot with a driveway for at least two cars. You know, when you rent it out, you can specify one car and that's it. You know, that can be in a rental agreement. Anything other than that, if it gets towed, that's on them, you know?

Mr. Sierra: Again, and remember, we want to keep you at the same setback as the other homes.

Mr. Rodriguez: Oh, absolutely.

Mr. Croughan: Create uniformity.

Mr. Rodriguez: Yes. That's why we were having --

Mr. Barber: That's where that 4,700 feet came in or whatever it was, something like that.

Mr. Rodriguez: And there is a parking issue on that block as it is. The tenants are parking on this property.

Mr. Sierra: Yes. That's why in speaking to the Mayor, he was opposed to any two-family. He wrote an email to the Board. I'm not sure if the rest of the Board members received it.

Mr. Barber: I didn't get one.

Ms. Clark: No.

Mr. Sierra: Because that specific area has really small lot sizes, he was opposed to a two-family. He did agree to a single family.

Mr. Barber: But that's an R-2 there, so --

Mr. Rodriguez: Exactly. And both houses, one house on the left is three-family, and the other house on the right is two-family.

Ms. Clark: That's my concern.

Mr. Sierra: But the units aren't the same size.

Mr. Rodriguez: The one on the left is actually bigger.

Mr. Sierra: With a bigger lot.

Mr. Rodriguez: Yeah. It has 100, I think, square feet.

Mr. Croughan: But that's a preexisting where you're now building, so that predates whatever we've done as a Board.

Mr. Rodriguez: Okay.

Mr. Croughan: So now you're coming before us, and we're just trying to create uniformity and trying to help, you know, there are five criteria that you have to answer in an area variance, requesting one. Is the benefit sought can be achieved by any other means, so you try to look for the least intrusive means and whether it's building a two-family or a one-family.

Mr. Rodriguez: Okay. Back to the drawing board.

Mr. Sierra: They're over 100 years old. You know what I mean?

Mr. Rodriguez: Yeah.

Mr. Sierra: We have to keep changing the code to modern times.

Mr. Rodriguez: Not a problem.

Mr. Sierra: You're already aware that there's a parking issue on that whole block.

Mr. Rodriguez: Yeah, I am.

Mr. Sierra: So if we grant you this huge house that requires more parking, it's just going to add to the parking issue that already exists.

Mr. Rodriguez: Okay.

Mr. Sierra: I can't tell you what to do, you know. I'm just giving you advice.

Mr. Rodriguez: No, no. I understand. I just want to make it work.

Mr. Sierra: Right.

Mr. Rodriguez: That's all I want. I want to present something that's going to work for you guys and for me. That's all I want.

Mr. Sierra: In my opinion, and this is my opinion, I don't know about the rest of the Board, but I'm in favor of letting you build, grant you the variances for a single family home. If you want to rent it at that time, so be it.

Mr. Rodriguez: Okay.

Mr. Sierra: All right? Speaking to the Mayor and a couple members of the Board, and they're all in favor of a single family unit.

Mr. Rodriguez: Okay. Would you gentlemen like to say anything? Have any questions,

comments?

Mr. Croughan: The public hearing is still open, so you can take public comments.

Mr. Sierra: You have any questions or comments?

Mr. Rodriguez: So I would have to return with a new print?

Mr. Croughan: You have to make the application for and speak to Martina so you can get on the next month if you're able to comply with everything for the additional variance.

Mr. Sierra: We'll keep your public hearing open.

Mr. Rodriguez: Okay.

Mr. Sierra: All right?

Mr. Rodriguez: Okay. Not a problem.

Mr. Sierra: This way, you don't have to pay again.

Mr. Rodriguez: All right. Appreciate that.

Mr. Sierra: So we'll table this for next month.

Mr. Rodriguez: All right.

Mr. Croughan: You have to make a motion.

Mr. Sierra: Can I have a motion to table?

Motion to table by Mr. Luis, seconded by Mr. Barber.

Roll call ayes: Joel Sierra, Deborah Clark, Nicholas Barber, Don Luis.

**ADC Middletown, LLC
210-224 Phillips Street
area variances for proposed residential homes**

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

Mr. Tondreau: David Tondreau, president and manager, ADC Middletown, 2 Magnolia Park Road.

Mr. Sierra: All right. Everybody receive their site plan for this project?

Ms. Clark: Yes.

Mr. Barber: No color chart.

Mr. Tondreau: What?

Mr. Barber: Where's the color chart?

Mr. Tondreau: I asked him. You can pick the color.

Mr. Sierra: The public hearing is still open, so we'll close the public hearing.

The public hearing was closed.

Mr. Sierra: Any comments from the Board?

Mr. Luis: No.

Mr. Sierra: Any questions?

Mr. Luis: No.

Mr. Sierra: No questions?

Mr. Barber: I got a question.

Mr. Sierra: Yes, sir.

Mr. Barber: The drainage in the back of the house, is that going down the hill towards Wilson Street?

Mr. Tondreau: It goes back down that street, yeah, towards where that wetland stream is.

Mr. Barber: Down that neighbor street, down to the other Phillips Street, down to Wilson Street where the gate is?

Mr. Tondreau: No. The drainage easement in the back actually runs down closer to Magnolia Park Road.

Mr. Barber: Oh, okay.

Mr. Tondreau: And then it comes into that 36" culvert that we tied -- that Magnolia tied where the townhomes are tied into which goes out to the Brick Pond.

Mr. Barber: Okay.

Mr. Tondreau: The other drainage street on the opposite side of Phillips Street from the structure actually goes toward the gate, which is just the surface drain from the houses up above. So there's two drainage easements.

Mr. Barber: One's going down towards Magnolia.

Mr. Tondreau: Right.

Mr. Barber: And the other one is going where again?

Mr. Tondreau: The other one goes toward the gate.

Mr. Barber: Towards the gate. Okay. That's just on grade though; correct? The drainage is on grade.

Mr. Tondreau: Yes. That's just on grade. Right.

Mr. Barber: Okay.

Mr. Sierra: All the drainage running in these back yards?

Mr. Tondreau: The new road, yes. The new proposed road, that drainage easement and those storm drains all come behind the new structures and drain towards Magnolia.

Mr. Barber: Where does the hospital, that parking lot, fall into place with your cul-de-sac per se? Where does that -- like if I'm looking at it this way, where does the hospital fall in up here?

Mr. Tondreau: The parking lot falls more where the end of the cul-de-sac and the fire hydrant is.

Mr. Barber: Over here?

Mr. Tondreau: You see to your right where the fire hydrant is at the end of the cul-de-sac by the last lot?

Mr. Barber: Right there.

Mr. Tondreau: Yes. That's kind of about halfway on the parking lot.

Mr. Barber: Okay. So this isn't coming down the hill pretty much towards the gate, it's staying up above.

Mr. Tondreau: Yeah. Well, actually, the gate actually climbs up in elevation.

Mr. Barber: Right.

Mr. Tondreau: The drainage easement actually runs in toward where the gate is and then kind of follows back down around (inaudible).

Mr. Barber: Okay.

Mr. Tondreau: But doesn't come down the gated road.

Mr. Barber: Right. No. I didn't know, you know, no landmarks here to know how far you're actually coming down to where you were going to be on the coal pile or not.

Mr. Tondreau: Oh, no. No. No.

Mr. Barber: Okay.

Mr. Sierra: So does that drainage hook into that new development?

Mr. Tondreau: No.

Mr. Sierra: No?

Mr. Tondreau: No. Naturally fed into the (inaudible).

Mr. Croughan: Is your variance for one home, or is it for a series of homes?

Mr. Tondreau: It's for all of them. We're proposing to do it for all of them because originally the houses were designed, the lots were designed in the original approval for being wide left and right, where all of Phillips Street facing the lots, the houses were all built from front to back in length, so what we wanted to do was turn that structure, match the existing structures because the original approval for 30 in the front and 30 in the back kind of left us with a bilevel, and there's no bilevels on Phillips Street.

Mr. Croughan: But in your application, you made it for 37, 8, 158. Is that for one lot or --

Mr. Tondreau: No. It's for all 8 lots to turn the structures --

Mr. Croughan: What is 158?

Mr. Tondreau: 158 is the eighth lot at the end of the cul-de-sac.

Mr. Croughan: So is that the only application that you're making, for that lot?

Mr. Tondreau: No. For 151 through 158.

Mr. Barber: So all the lots.

Mr. Tondreau: Yeah. All eight lots.

Mr. Croughan: So you're making the same application eight times.

Mr. Tondreau: Yes.

Mr. Barber: Just be a little quiet when you're building, please. I live down the street.

Mr. Sierra: These backyards, are they going to be leveled out?

Mr. Tondreau: Oh, yeah. Yeah. I think they're 2 percent or 4 percent by site plan design naturally.

Mr. Sierra: Any other questions from the Board?

Ms. Clark: Did you say they're all bilevels?

Mr. Tondreau: No. They're all two story single family homes.

Ms. Clark: Just two story.

Mr. Tondreau: Just two story single family homes, attached one car garage on the side. There's a funny right-of-way in there or we would've tried to come up further because what we're trying to do is build in line with what's there and match the houses from front to back as opposed to left to right.

Mr. Barber: That's what we discussed last month or last time we were here.

Mr. Tondreau: Yes.

Mr. Sierra: All right. Any questions from the public? All right. I'm going to go ahead and close the public hearing.

The public hearing was closed.

Mr. Sierra: No other comments from the Board? All right. We have a resolution tonight. I'll turn it over to Corporation Counsel to read the resolution.

Resolution:

In the Matter of the Application of ADC Middletown LLC for premises located at 210-224 Phillips Street, Middletown, NY, Section 37, Block 8, Lots 151-158

Background:

Applicant appeared on November 20, 2019 and made their initial presentation, which carried over to tonight. Applicant is the current owner of the premises, which is seeking residential building lots. The applicant is proposing to build eight single family homes that the use is permitted under current zoning. Applicant is seeking an area variance for front yard set-back on the eight lots from the required 30 feet to a proposed set-back of 15 feet which would be a 15-foot variance. The meeting was properly called to order and the public was invited to voice their concerns, if any.

Discussion:

For an Area Variance, the Applicant must demonstrate that he or she has answered the criterion as laid out on our application, City ordinance, and State Law. The applicant states that he is proposing to build eight single family homes on approved building lots. The lot are approved and

meet all the other requirements other than the front yard set-back. The applicant is seeking an area variance for eight front yard set-backs from the required 30 feet to 15 feet, requiring a variance of 15 feet.

For the variance sought, the Board would need to determine if an undesirable change in the character of the neighborhood or detriment to nearby properties will be created by granting the variance; Applicant stated Phillips Street, where lots are located, is mostly residential, if not all residential, and would be consistent with the existing character of the neighborhood. The proposed homes would be similar in look to what is currently there and line up with the existing homes. If he had to build with a 30-foot set-back, these homes would stand alone. The use of the lots is to construct single family homes still within the character of the neighborhood and would not be detrimental to surrounding properties.

The benefit sought by applicant can be achieved by some method feasible for the applicant to pursue, other than a variance. The applicant cannot buy other properties and cannot develop other lots as it is mostly built already with the eight.

The proposed area variance is substantial. The applicant is seeking an area variance for a front yard set-back from 30 feet to 15 feet, which would be a 15 foot variance, or approximately 100%; This is not to be used as a determining factor but weighed in with other factors.

The proposed area variance will have adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The change will not result in any negative environmental conditions or neighborhood. It would be creating consistency with what is existing.

Lastly, the alleged difficulty was self-created: It was self-created as applicant knew what he was purchasing.

All of the above are factors for Board to consider but any one negative response shall not necessarily preclude the granting of an area variance.

Public Discussion:

When meeting was called for public comment, it is noted that one member of the public spoke and was not concerned so much with the project but wanted to be made aware of what the project consisted of. The Board questioned the applicant regarding how the house would be configured to make sure it was in alignment with what was existing. There was considerable conversation over the percentage of variances sought and all were factored in when the Board considered the granting of the variance along with all the other factors as detailed above.

Conclusions of Law:

Applicant has demonstrated to this Board that the area variances sought, although substantial, is unique to the eight properties in that they are existing lots in an existing neighborhood and the construction of eight single family homes, being mostly lined up with what is currently existing, will create a consistent pattern in the neighborhood. For these reasons, the Board is approving the area variance sought.

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

RDM Group
101-128 Dolson Avenue
area variances for proposed warehouse

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

Mr. Neuman: Sure. Isaac Neuman, 1 International Boulevard, RDM Group Management.

Mr. Croughan: So why don't you just explain to the Board as far as with the revised site plan the changes that you made based upon the comments that you had received.

Mr. Neuman: Sure. I'll start from the bottom of the plan. We took into consideration the fact that there might be a request to want a sidewalk, even if some of the neighbors didn't, but although across the street, the McDonald's does have one. So obviously we're going to go through the Board later on and try to determine exactly the dimensions and how that was, but we are understanding that we need to put one in, and probably future development on that street would want to have it, so we're advising that we would do the same.

Next up, we put in a comment that we're going to maintain -- we had suggested it, but it wasn't on the plan -- to maintain, I know it's very choppy and it probably hasn't been maintained in a while, the driveways and pavements in that area so, of course, we're going to redo it because of our design, but we just wanted to comment that we're going to continuously maintain that area as well.

Ms. Clark: Only on your section.

Mr. Sierra: Did you get an agreement? Because I know we talked about an agreement with the other property that used that lot. Were you able to locate the property owner?

Mr. Neuman: So we haven't located any of the property owners. We've suggested many things. We've gave notice to them. We've walked over, and nobody really understands who's owning anything there. We've just said we would, you know, maintain our section. If we want to maintain all the other sections, we should make an agreement with them, but we don't have a problem with doing so.

Mr. Sierra: So those 73 spaces, no one knows who they belong to?

Mr. Neuman: Well, are you talking about the 73 spaces on the bottom? So on the bottom, that's shared with the rest of the plaza. It wasn't necessarily allocated for us. We are going to do some sort of maintenance in that area. That's what we had suggested that we were going to do, and our shading is going to be right in front of there. That's actually the next comment that I was going to talk about, which was the trees. We do understand that there are going to be certain trees that are going to be needed to shade. We're offering whatever trees that are necessary that the Board would approve that would be the correct shading where just determining whatever that is, and we'll obviously coordinate that at that time.

As far as signage goes, we're just -- we're not changing any of the signage. It is what it

is, and whatever's there we'll use.

And the last one was allocating that parking for the employees.

Ms. Clark: What signing are we talking about?

Mr. Neuman: So I believe maybe it's a Wholesale Liquidators sign there right now.

Ms. Clark: Is that sign staying there?

Mr. Sierra: No. On the building sign, because if you look at the rendering, that sign that you talked about, sign post or what have you, that is technically not on this site. If you look on the corner here, way in the left hand corner, you'll see a little area where an entrance is, and there's a little straight dark line that says sign.

Ms. Clark: Found it.

Mr. Neuman: Yeah. We would only maintain what existing sign is there now. We're not anticipating putting any extra signage there or anything else.

Mr. Croughan: Well, that's going to be controlled by DPW, signage and façade.

Mr. Neuman: That's true.

Mr. Sierra: You know, you can't put a billboard on the front of this thing, neon, you know, LEDs and --

Ms. Clark: Well, that's what I'm thinking.

Mr. Neuman: I don't think we would want to anyway, but yes, you're right.

Mr. Sierra: We've got to control it. It's been done by other properties.

Mr. Neuman: I'm sure. I'm sure. I understand.

Mr. Sierra: We're not looking for a Times Square here.

Mr. Neuman: No.

Mr. Sierra: So that's the signing we referred to.

Mr. Neuman: Yes.

Mr. Sierra: Okay. The employee parking that we spoke about, I know you need a parking space variance. You addressed that. Sidewalk. Any other questions or concerns for the Board?

Ms. Clark: The sidewalk, where are we talking, the one for the sidewalk?

Mr. Neuman: So my understanding was inside the lot line where it's our lot, so obviously we're

going to add that from where the lot starts to where the lot finishes.

Mr. Croughan: They can only build within their boundaries, so it would be their boundary line.

Mr. Neuman: Correct.

Ms. Clark: My concern is that somewhere in our realm as the Planning Board, I just don't want to see a sidewalk here and then nothing.

Mr. Sierra: There's a plan to give the rest of the businesses down Dolson Avenue a certain amount of time to get to that.

Mr. Clark: To get to that. Okay.

Mr. Sierra: There's a plan in place.

Ms. Clark: Okay.

Mr. Neuman: And you have one started across the street I saw in the new development, so that's a great idea.

Mr. Sierra: We're requiring all new businesses to put sidewalks, and then we're having the existing businesses, I think it was a five-year plan or something like that, to get them all in compliance.

Mr. Luis: Is the sidewalk going where the goat path is now?

Mr. Neuman: The goat path? I'm sorry.

Mr. Luis: I've always called it a goat path.

Mr. Neuman: Yes. We'll put that by the Pools Plus, in front of there. Yes. Correct. The goat path.

Mr. Sierra: It's not me, that's for sure.

Mr. Croughan: The applicant is also seeking 44' in the height where that would be up to the Planning Board if you, as a Board, decided. It would be up to 44', not necessarily 44', because the Fire Department would have to review it as well to determine if they have ladders tall enough to get to it.

Mr. Barber: We'll leave that up to the Fire Inspectors though.

Mr. Sierra: And you did say you were going to maintain the sprinkler system?

Mr. Neuman: Yes.

Mr. Sierra: Okay. So it's not going to change. It's just going to be higher up.

Mr. Neuman: Yes. And the sprinkler system is up to date. I checked the tags.

Mr. Luis: What was the height that you were raising the roof?

Mr. Neuman: Interior, we're going to try to get 36' clear. The reason we're asking for 44' is because the pitches of the roof, but we might be able to go for a lower profile roof, but we're not sure yet.

Mr. Sierra: It's a lot. It's high.

Mr. Neuman: It's five pallets. Racking system.

Mr. Luis: It'll be a lot when you see it to double the height.

Mr. Neuman: It's going to look high. We're going to put a new façade on it. It'll look really nice.

Mr. Sierra: We got a brand new ladder truck, a 100' ladder truck. It'll get up there.

Mr. Neuman: Oh, really? So maybe I should ask for more then.

Mr. Sierra: Oh, we're going to break it in on that building; right? All right. Any other questions or comments from the Board? Any questions or comments from the public? Mr. Kleiner.

Mr. Kleiner: Hi. Jerry Kleiner, Randall Heights. Again, I think this is totally out of jurisdiction. My concern is with that left turn the truck traffic will be making coming in say from 84 down Dolson and whether they're turning left at that traffic light or are going to try and turn left between the light going into Playtogs Plaza and the light going into the Walgreens store.

Mr. Barber: The Pools Plus entrance.

Mr. Kleiner: The Pools Plus.

Mr. Barber: Entrance.

Mr. Kleiner: Yes.

Mr. Sierra: Yes.

Mr. Kleiner: Are there any plans to do anything additional with that or, I mean, I know you talked about improving the pavement, etc., but is there any plan for additional signage, anything with additional lights or anything about how to handle that truck traffic?

Mr. Sierra: We had a meeting with the Mayor -- Tony Capozella, myself, the Commissioner of Public Works -- in the Mayor's office. They're going to address the additional signage and stuff. They're leaving the Zoning Board and going to the Planning Board.

Mr. Neuman: Yes. We have to go through the Planning Board.

Mr. Sierra: They'll address signage, lighting, and other --

Mr. Kleiner: Okay. Thank you. Very good.

Mr. Sierra: Okay. That being said, I'm going to close the public hearing.

The public hearing was closed.

Ms. Clark: We need to talk about the height for the trees.

Mr. Neuman: Mature.

Ms. Clark: What's mature mean?

Mr. Sierra: Well, we're just saying mature, and they're going to address it at the Planning Board.

Ms. Clark: They will. Okay.

Mr. Sierra: But the applicant is aware that we don't want 4' trees. We want large--

Mr. Neuman: Mature trees.

Mr. Barber: Palm trees.

Mr. Neuman: I don't know about palm trees. Evergreens. Evergreens.

Mr. Sierra: All right. We'll close the public hearing, and I'll turn it over to Corporation Counsel for the resolution.

Resolution:

In the Matter of the Application of RDM GROUP, premises located at 102-128 Dolson Avenue, Middletown, NY, Section 48, Block 1, Lot 1.2, for An Area Variance for Building Height and Parking.

Background:

Applicant appeared on November 20, 2019 and made their presentation. Applicant is the current owner of the premises, or a representative of the applicant, which is a commercial building that they would like to convert into a Distribution Center. The building is located in the I-1 zone so that the use is permitted under current zoning. Applicant is seeking an area variance for height from the required 35 feet to a proposed new height of 44 feet which would be a 9-foot variance, and parking variance whereas required spaces is 741 and applicant has 296 spaces whereas variance sought is 445 spaces. The meeting was properly called to order and the public was invited to voice their concerns, if any.

Discussion:

For an Area Variance the Applicant must demonstrate that he has answered the criterion as laid out on our application, City ordinance, and State Law.

The applicant states that what he is proposing is converting a retail space into a distribution center which is unique. The building is located in the I-1 zone so that the use is permitted under current zoning. The applicant is seeking two area variances; one for height from the required 35 feet to a proposed new height of 44 feet which would be a 9-foot variance, and the second for a parking variance whereas required spaces is 741 and applicant has 296 spaces whereas variance sought is 445 spaces.

For both variances sought, the Board would need to determine if an undesirable change in the character of the neighborhood or detriment to nearby properties will be created by granting the variance. Applicant stated Dolson Avenue, where building is located, is mostly a commercialized corridor especially where this building is located. The building is located in a commercial shopping center and across the Street is the Shop-Rite plaza. In this area there are many commercial structures and is controlled by traffic lights. The use of the building while different from others is still within the character of the neighborhood and would not be detrimental to surrounding properties.

The benefit sought by applicant can be achieved by some method feasible for the applicant to pursue, other than a variance. The applicant cannot use the current roof size as it is not aligned with the proposed use and the lot is only big enough to accommodate the proposed parking spaces. There is additional parking available in the other shopping center that is adjacent to this lot; however, said parking may not always be available to this applicant.

The proposed area variance is substantial; The applicant is seeking two area variances; one for height from the required 35 feet to a proposed new height of 44 feet which would be a 9 foot variance, or approximately 25%; and the second for parking variance whereas required spaces is 741 and applicant has 296 spaces whereas variance sought is 445 spaces, or 60%. This is not to be used as a determining factor but weighed in with other factors.

The proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The change will not result in any negative environmental conditions on neighborhood and can be controlled through the Planning Board. The applicant has submitted a revised site plan that the Planning Board can use as its reference, but said conditions must be used for approval unless Planning Board deems a change is necessary.

Lastly, the alleged difficulty was self-created: It was self-created as applicant knew what they was purchasing.

All of the above are factors for Board to consider but any one negative response shall not necessarily preclude the granting of an area variance.

Public Discussion:

When meeting was called for public comment it is noted that one member of the public spoke and was not concerned so much with the project but concern for the maintenance of the property.

The Board questioned applicant regarding the truck traffic and controlling it, concerns with use of the building and buffering. There was considerable conversation over the percentage of variances sought and all were factored in when the Board considered the granting of variance along with all the other factors as detailed above.

Conclusions of Law:

Applicant has demonstrated to this Board that the area variances sought although substantial is unique to this property in that it is an existing lot with limited use of its own parking as its proposed use a distribution center rather than retail so less parking is needed. In addition, the applicant will still need to comply with the DPW and/or Planning Board requirements and have a plan to maintain the paving to avoid damage to the existing roadways. For these reasons the Board is approving the area variances sought.

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

Motion to adjourn at 7:59 p.m.

Respectfully Submitted,

Diane Genender, Transcriptionist