

# TOWNSHIP OF MIDDLETOWN

Zoning Board of Adjustment and Appeals

One Kings Highway

Middletown, NJ 07748-2504

JAMES HINCKLEY  
Chairman



AMY H. CITRANO, P.P., A.I.C.P.  
Director of Planning

ERIN URIARTE  
Secretary

Organized December 14, 1667  
"Pride in Middletown"

Tel: (732) 615-2102  
Fax: (732) 615-2103

## ZONING BOARD MEETING MINUTES JULY 24, 2023

A Regular Meeting of the Zoning Board of the Township of Middletown was held in the main meeting room at Town Hall, One Kings Highway, Middletown New Jersey at 7:00 PM on July 24, 2023. Chairman Hinckley called the meeting to order and read a statement of compliance with the Open Public Meetings Act. All notification for this meeting was given pursuant to the Open Public Meetings Act at least 48 hours prior to this meeting.

Roll call was taken with the following members present: Mr. Wrede, Mrs. Bouw, Mr. Hinckley, Mr. Truscott, Mr. Hibell

Absent: Mr. Bane, Mrs. Rogers, Mrs. Sheridan, Mr. Barvels, Mr. Shanker

Also present: Gregory Vella, Esq., Board Attorney; Amy H. Citrano, P.P., Township Planner; Erin Uriarte, Board Secretary

A Salute to the Flag followed.

### APPROVAL OF MINUTES

June 26, 2023 – MRS. BOUW OFFERED A MOTION TO APPROVE THE MINUTES OF JUNE 26, 2023, SECONDED BY MR. WREDE.

Roll Call:

Ayes: Wrede, Bouw, Hinckley, Truscott

Nays: None

### APPROVAL OF RESOLUTIONS

#2023-019, HazaBell of Northeast, Block 605, Lots 62 & 63, 1580 Route 35, Denying Site Plan and Conditional Use Variance Application – Mr. Vella advised this Resolution is being carried to the next meeting.

#2023-011, Jeffrey Jansen, Block 1, Lot 7, 109 Seabreeze Avenue, Granting Bulk Variance Approval – MR. WREDE OFFERED A MOTION TO ADOPT THE RESOLUTION, SECONDED BY MRS. BOUW.

Roll Call:

Ayes: Wrede, Bouw, Hinckley, Truscott

Nays: None

**Many Neighborhoods. One Middletown!**

Belford ◊ Chapel Hill ◊ Fairview ◊ Harmony ◊ Leonardo ◊ Lincroft ◊ Locust ◊ Middletown Village  
Monmouth Hills ◊ Navesink ◊ New Monmouth ◊ North Middletown ◊ Nut Swamp ◊ Oak Hill ◊ Port Monmouth ◊ River Plaza

**#2022-021, William & Maria Hemberger, Block 644, Lot 2, 120 Evergreen Terrace, Granting Bulk Variance Approval – MRS. BOUW OFFERED A MOTION TO ADOPT THE RESOLUTION, SECONDED BY MR. WREDE.**

Roll Call:

Ayes: Wrede, Bouw, Hinckley, Truscott

Nays: None

**#2022-020, New Monmouth 35, LLC, Block 811, Lot 2, 1040-1090 Highway 35, Granting Bulk Variance Approval – MR. TRUSCOTT OFFERED A MOTION TO ADOPT THE RESOLUTION, SECONDED BY MRS. BOUW.**

Roll Call:

Ayes: Wrede, Bouw, Hinckley, Truscott

Nays: None

### **ADMINISTRATIVE MATTERS**

None

Chairman Hinckley advised he will be amending the agenda to take the residential application first.

### **NEW BUSINESS**

**#2023-003, Adam Wasserman, Block 1048.01, Lot 33, 1 Davenport Drive, Application for Bulk Variance – Mr. Vella advised that the notices are in order and the Board has jurisdiction to hear this matter. A Plot, Grading, Variance Plan, consisting of two sheets, prepared by Center State Engineering, dated February 16, 2023, last revised March 21, 2023 was marked as Exhibit A-1. A Colored rendering of the proposed addition was marked as Exhibit A-2. The Technical Memorandum of the Township Planning Director was marked as Exhibit ZB-1.**

Rick Brodsky, Esq. appeared on behalf of the applicant. He advised the subject property is located in the RR zone and the applicant is seeking variance relief to permit the construction of an addition to the rear of the home. The applicant is seeking to permit a 3-season room with an uncovered deck. Two variances are required for lot and building coverage. The applicants are the original owners of this property, and it abuts the Bamm Hollow detention basin. The water in the basin attracts insects making the rear yard almost unusable. The applicant has 4 kids under 10 years of age and would like to be able to use the backyard space. The ordinance does allow for certain exceptions for lot coverage related to a pool, however this applicant does not want a pool and there are no exceptions for this type of proposal.

Ms. Citrano explained that the proposed deck does not count towards lot coverage and is not a part of this application; the applicant is here for relief related to the 3-season room only.

Ernest Feist was sworn in and accepted as an expert engineer and planner. With A-1 displayed, Mr. feist described the layout of the site noting the unique situation due to the placement of the detention basin. The lots abutting the detention basin are much smaller than the others in that area and if the basin was not there, the subject lot would be more uniformed with the other lots in the area and a variance would not be required.

Board members asked questions related to the relief requested. Mr. Feist advised that the applicants revised their plan after the Zoning Denial was issued, in an effort to become more conforming than originally proposed.

A discussion was held regarding the detention basin. Mr. Vella explained the ownership of the basin falls on the homeowner's association.

Mr. Feist testified as to the physical constraints on the subject property's lot size based on the location of the detention basin. He feels the variance can be granted under as a hardship variance and also as a flexible C variance due as it will advance many purposes of the Municipal Land Use Law.

Board members questioned climate control in the 3-season room. Mr. Brodsky advised there will be air conditioner and a fan, but no heat. Board members noted that the builder built this property to the maximum lot coverage. Mr. Brodsky added that the builder did not notify homeowners of that situation. These are the only three lots that appear to be smaller due to the placement of the detention basin. This is a very unique situation within the Bamm Hollow Subdivision.

Mr. Feist continued by stating that he feels that granting the variance relief requested would cause no detriment on the zone plan, Master Plan or neighbors. This is just a small increase in coverage. The addition will be consistent with existing architecture.

Adam Wasserman was sworn in as the homeowner. He described the pictures shown in Exhibit A-2.

Chairman Hinckley opened the hearing to members of the public who wish to speak or ask questions; however, none were received. Mr. Hibell offered a motion to close the public hearing, seconded by Mr. Truscott. All present eligible members voted in favor by voice vote.

Board members discussed the size of the addition and asked if the applicant would agree to reduce the size of the building addition. The applicant agreed to a 24' x 24' addition for the 3-season room.

Mr. Vella advised that should the Board act favorably, the following conditions would be imposed: a reduction in room size, as amended, a grading plan to be submitted for review and approval of the Township Engineer, and a deed restriction regarding the no heat or plumbing in the 3-season room restriction.

MR. HIBELL OFFERED A MOTION TO APPROVE THE APPLICATION, SECONDED BY MRS. BOUW.

Roll Call:

Ayes: Wrede, Bouw, Hinckley, Truscott, Hibell

Nays: None

#### **OLD BUSINESS**

#2022-017, Almost Home Market, Inc., Block 1049, Lot 1, 276 Sunnyside Road, Appeal of the Zoning Officer's Decision & #2022-017, Almost Home Market, Inc., Block 1049, Lot 1, 276 Sunnyside Road, Application for Use Variance – Mr. Vella advised that the notices are in order and the Board has jurisdiction to hear this matter. A previous hearing was held January 23,

2023. Mr. Vella explained that the first part of the application is to hear the applicant's appeal to the Zoning Officer's decision. Then, if the Board votes to uphold that decision, they will vote on the Use Variance application. The standard set by the Board is that if there are less than seven members present on a use variance, they will carry the vote to allow for more members to listen to the recordings and become eligible to vote.

Mr. Steib advised he would like to present the full case and hold the vote until there are more eligible members present. Mr. Steib described the property location, noting that it is on the corner of Sunnyside Road and Everett Road. The site is currently developed and operated by Almost Home Markets and was previously operated as Sunnyside Deli. The new owners are very successful and are seeking approval to add tables and chairs, which the Zoning Officer found to be an expansion of a non-conforming use. The Zoning Officer also deemed the parking as deficient for the restaurant use. It is the applicant's position there is no expansion of the building. However, if the Board is to uphold the Zoning Officer's decision the applicant is requesting the use variance. Neighbors had expressed concern, some who were represented by Robert Simon, Esq. The applicant has agreed to certain conditions to satisfy those neighbor concerns. They will limit the seating to 18 seats and the deli will close at 3:00 pm. The area will also be subject to a newly proposed "No Parking" Ordinance that will be introduced by the Township Committee. A copy of the Draft Ordinance was marked as Exhibit A-1. Mr. Steib advised that Township Committee seems favorable however no formal action has been taken. Mr. Vella explained that if this becomes a condition of approval and the Township Committee does not adopt the Ordinance, the applicant will have to come back to the Board. There is also a condition that the gravel area across the street from the subject property will be striped to provide parallel parking.

Andrew Janiw was sworn in and accepted as an expert Planner. Mr. Janiw advised he reviewed the notes from the previous hearing and described the existing conditions of the subject property. He advised that the ordinance does not address deli use in the parking requirements. He disagrees that adding seating to a previously existing deli is an expansion. Case law indicates expansion must be based on an intensification of a use. Since the ordinance calculates parking on square footage and not seating, he feels there is no expansion. An increase in volume should not count as an expansion. Regardless, the applicant is willing to limit hours and parking availability to mitigate any impact. Mr. Janiw discussed the zoning history, noting that the building was constructed in the 1970's. The applicant does not disagree that the use is non-conforming, they disagree that adding seating is an expansion. There is no evidence to show that tables existed prior to the zoning being created in the 1930s. Three photos from the 1990s were marked as Exhibit A-2 and reference "eat-in" option.

Mr. Janiw further explained that if the Board were to agree with the Zoning Officer's decision, they are then seeking a use variance to allow for the expansion of a non-conforming use to permit 18 seats. 12 parking spaces are provided and have existed for many years. The added seating is an enhancement to the neighborhood and will advance several purposes of the MLUL. This site has historically operated as it does now, and seating will add convenience for the clientele. The applicant is also agreeing to limitations that could potentially hurt their business but will help to address the nuisance concerns from the neighbors. The applicant also agrees to no private parties after hours. This is an efficient reuse of the land; all changes are

interior and would not cause a detriment. The restaurant will continue to operate as it does today; the number of seats does not affect the building capacity or the parking requirements. The applicant is confident they can increase the turnover to make up for the lack of parking.

Board members questioned the apartment use above the deli. Mr. Janiw advised they use 2 parking spaces.

Board members offered comments related to the applicant's willingness to compromise and the previous deli operation.

Chairman Hinckley opened the hearing to members of the public who wish to speak, however none appeared. Mr. Hinckley noted that he will keep the public hearing open until the next meeting.

Ms. Citrano reminded the Board that her first tech memo goes into detail regarding the Zoning Officer's determination. The second tech memo relates to the use variance.

Mr. Vella advised this application is being carried to August 28, 2023, at 7:00 pm at Town Hall. No further notice will be given.

**EXECUTIVE SESSION** – None

**ADJOURNMENT**

MR. TRUSCOTT OFFERED A MOTION TO ADJOURN THE MEETING AT 9:07 PM, SECONDED BY MR. HINCKLEY. ALL PRESENT MEMBERS VOTED IN FAVOR BY VOICE VOTE.

Prepared by:

Erin Uriarte  
Board Secretary