

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



DEBRA YURO
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ZONING BOARD MEETING MINUTES AUGUST 28, 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 August 28, 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. Bane, Mrs. Rogers, Mrs. Sheridan, Mr. Shanker

Absent: Mr. Hibell, Mr. Barvels

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

A Salute to the Flag followed.

APPROVAL OF MINUTES

July 24, 2023 – MRS. BOUW OFFERED A MOTION TO APPROVE THE MINUTES OF JULY 24, 2023, SECONDED BY MR. WREDE.

Roll Call:

Ayes: Wrede, Bouw, Hinckley, Truscott, Bane, Rogers, Sheridan

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 – MRS. BOUW OFFERED A MOTION TO ADOPT THE RESOLUTION, SECONDED BY MR. BANE.

Roll Call:

Ayes: Wrede, Bouw, Hinckley, Truscott, Bane

Nays: None

#2023-003 – Wasserman, Block 1048.01, Lot 33, 1 Davenport Drive, Granting Lot Coverage Variance – MR. TRUSCOTT OFFERED A MOTION TO ADOPT THE RESOLUTION, SECONDED BY MR. HINCKLEY.

Roll Call:

Ayes: Wrede, Bouw, Hinckley, Truscott

Nays: None

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

Roll Call:

Ayes: Wrede, Bow, Hinckley, Truscott, Bane, Rogers, Sheridan

Nays: None

ADMINISTRATIVE MATTERS

None

OLD BUSINESS

#2022-017, Almost Home Market, Inc., Block 1049, Lot 1, 276 Sunnyside Road, Appeal of the Zoning Officer's Decision – The applicant has requested the Zoning Board hear and decide an appeal of the Zoning Officer's decision that Use Variance approval for an Expansion of a Non-Conforming Use, and bulk variance approval for deficient number of off-street parking is required.

#2022-018, Almost Home Market, Inc., Block 1049, Lot 1, 276 Sunnyside Road, Application for Use Variance – The applicant is seeking Use Variance approval for an Expansion of a Non-Conforming Use, and bulk variance approval for deficient number of off-street parking to expand the existing business to include tables and seating for 18 patrons while maintaining the residence on the second floor.

Mr. Vella reviewed the previous hearing for both applications for the board. Mr. Steib agreed with Mr. Vella that the matter was still open for public comment and that he had nothing further to say.

Meeting was open to the public, none appearing the public portion of the meeting was closed.

Mr. Vella asked if Mr. Steib was going to provide a summation. Mr. Steib replied no.

Mr. Vella reviewed the 2-tiered applications and vote, the Zoning Officer's determination and the Use "D" variance.

Mr. Vella advised that should the Board act favorably, the following conditions would be imposed:

1. Seating for 18 tables
2. Closing time of 3 p.m.
3. No dinner parties.
4. Township will be adopting a draft ordinance for limited street parking within 90 or 120 days of the resolution, or the applicant will have to come back to the board.
5. Parallel parking signs on Sunnyside
6. Fire Advisory Review
7. No exterior seating
8. Health Department septic approval for inside tables
9. Valid Certificate of Occupancy
10. 18 seats on the revised plans.

Mr. Hinckley opened the meeting for discussions from board members.

Mr. Wrede asked if there would be 1 or 2 votes. Mr. Vella reviewed several different ways the board could vote on the matter.

Mr. Hinckley discussed his reasons for approving and stated that the biggest issue is the parking, how it got there, no background, commercial use in a residential zone, park wherever you want. Several other problems Mr. Vella just made clear, operating with no real regulations commercial in a residential zone. Board has settled every problem, including parking. The board doesn't have evidence on the first Zoning Officer's approval.

Mr. Wrede discussed the Zoning Officer's decision from the expansion of a deli into a restaurant where 28 spaces are required and parking. Mr. Wrede stated that building has 12 spaces, and the tenant requires 2 spaces. In the past we would ignore and start from scratch. The applicant hasn't put on any documentation, no Certificate of Occupancy, no permits. The board is establishing a commercial entity here, a cancer, he votes no.

Mrs. Rogers asked what the board was voting on. Mr. Vella replied the use variance. The Zoning Officer determined that the use could exist with 12 parking spaces as a pre-existing nonconforming use, but the tables were an expansion and had to come to the board. It is clear from the legal record that there were no tables previously. Mr. Vella discussed the 2 motions one to deny the appeal and a 2nd motion to grant the expansion of the 18 seats with conditions and reviewed the conditions for the board. He thought personally of all the conditions closing at 3 o'clock was what the board heard the neighbors complain about the parking that's what the second motion is. If the board denies they will still be in business.

Mr. Wrede stated that they still need Health Department approval of the septic system. Ms. Citrano and Mr. Vella replied that is one of the conditions, the seats add to a larger septic system. Mr. Wrede replied and the apartment. Mr. Vella replied, the restaurant, bathrooms, and apartment, it is a condition.

Mr. Truscott stated that he didn't have a problem with the store but that he was struggling with the parking as part of the use variance. Applicant has agreed to parking in front 3, 4, 5 cars all of a sudden parking demand will go away. The applicant is agreeing to work with his customers what if that doesn't happen, they will be parking in Holmdel.

Mrs. Bouw replied that this is contingent upon letting the customers know. The police are aware and will issue a summons and the objectors will let him know.

Mr. Truscott replied that he hopes they ticket this is 7 days a week and for weekends. Mr. Vella replied that if the board wants it as part of the resolution closing at 3 p.m.

Mr. Wrede replied that parking will be parallel, and the Township is giving that right-of-way to the applicant. Mr. Vella replied that if you live 2 doors down you can park there. Mr. Wrede and Mr. Vella continued to discuss the parking situation.

MR. HINCKLEY OFFERED A MOTION TO AFFIRM THE APPEAL OF THE ZONING OFFICER'S DECISION (2022-017), SECONDED BY MR. BANE.

Roll Call:

Ayes: Wrede, Bouw, Hinckley, Truscott, Bane, Rogers, Sheridan

Nays: None

MR. HINCKLEY OFFERED A MOTION TO APPROVE APPLICATION (2022-2018), SECONDED BY MR. BANE.

Roll Call:

Ayes: Bouw, Hinckley, Bane, Rogers, Sheridan

Nays: Wrede, Truscott

NEW BUSINESS

#2023-004, Sebring/Ford, Block 326, Lot 2, 36 Oakwood Road, Application for Bulk Variance –
The applicant is seeking Minimum Rear Yard Setback approval where 30' is required and 21' feet is proposed for a 445 square foot rear addition.

Mr. Vella advised that the notices are in order and the Board has jurisdiction to hear this matter. Architectural Plans consisting of six (6) sheets, prepared by Alan J. Zimble, R.A., dated February 23, 2023, was marked as Exhibit A-1. The project narrative was marked as Exhibit A-2. The Technical Memorandum of the Township Planning Director was marked as Exhibit ZB-1.

John Anderson, Esq. appeared on behalf of the applicant. Mr. Anderson reviewed the existing property, tax records, R-15 Zone, minimum GFA of 800 square feet, mother lives there requires home care. The applicant is seeking to construct two (2) additions, a rear mother-daughter suite and addition to the kitchen. The applicant is also finishing the basement but that does not trigger variances. A mother-daughter addition is permitted in the Zone and is not a use variance. The applicant is requesting rear setback and coverage variances that are diminimus. He reviewed the State of New Jersey's public policy on suitable housing for seniors. The addition is a single-story allowing for light, air, and open space as the mom has mobility issues. He stated that he would have three (3) witnesses starting with the homeowner, Ms. Sebring.

Ms. Sebring was sworn in by Mr. Vella.

Mr. Anderson asked Ms. Sebring questions about who lives in the home, mother's health issues, Ms. Sebring's job in healthcare, number of bedrooms, and a deed restriction required so the property can never be rented out.

Mr. Anderson asked if board members had any questions for Ms. Sebring.

Mr. Hinckley asked about circles on the top of the drawing. Mr. Wrede commented that it is a fence. Mr. Anderson replied that there is a 6-foot vinyl fence. Mr. Hinckley asked if there are any buildings behind the fence if this is the railroad right-of-way. Mr. Anderson stated that they have a planner.

Mr. Anderson discussed the configuration of the applicant's lot and the lot to the rear of the applicant's lot and the setback associated with the side and rear yards.

Mrs. Bouw asked if the addition would be placed on a portion of the rear deck. Ms. Sebring replied yes. Mr. Anderson replied that the design is to coincide with the existing deck.

Mrs. Bouw stated that the Township Ordinance requires that no door can ever be constructed, and that the addition has to be free flowing. Ms. Sebring replied yes.

Mr. Wrede asked about the expansion of the kitchen. Ms. Sebring reviewed for the board.

Mr. Vella entered the property survey as Exhibit A-3 showing the jog of the kitchen to the board.

Mr. Anderson asked for the Tax Assessor's record be entered as Exhibit A-4.

Mr. Wrede and Mr. Hinckley discussed the kitchen remodel.

Mr. Wrede asked if the property abuts the trail and the property on Broadway. Ms. Citrano replied that it was a separate lot.

Mr. Vella entered mounted color photos as Exhibit A-5.

Mr. Anderson reviewed the photos, vinyl fence and adjacent property for the board.

Alan Zimble was sworn in and accepted as an expert architect. Mr. Anderson asked if Mr. Zimble was familiar with the property if he prepared the plans and asked him to describe the application for the board.

Mr. Zimble reviewed the existing home, mother-daughter addition, kitchen addition and remodel, mother-daughter access to the deck at grade level.

Mr. Anderson stated that there cannot be a new front entrance but that there can be a door to the deck per the Ordinance.

Mrs. Bouw asked the width of the ingress and egress between the mother-daughter and existing dwelling. Mr. Zimble replied 3-4 feet with no door.

Mr. Hinckley asked if there were any questions for Mr. Zimble. Mr. Anderson replied that he will remain.

Andrew Janiw was sworn in and accepted as an expert planner.

Mr. Anderson asked if Mr. Janiw was familiar with the site and if he reviewed the plans. Mr. Janiw replied yes and reviewed the Planner's Technical Memorandum, R-15 Zone, the use is permitted, and variances for the board.

Mr. Janiw entered two (2) mounted aerials as exhibit A-6 and reviewed the house on Broadway.

Mr. Janiw entered six (6) mounted photos as exhibit A-7 and reviewed the neighborhood context, pattern is Cape Code except house on Broadway, homes that have additions are to the rear trying to honor that.

Mr. Janiw reviewed the goals and objectives of the Master Plan, enhancement of the Master Plan, family and elderly care in the home, important for this kind of house, purposes of the land

use law, public purposes E, G, L, and M, variance relief, bulk variance, C1 or C2 Criteria, 3 points for positive criteria and 2 for negative criteria, no substantial detriment, intent of the land use law, this board can grant with no substantial detriment.

Mr. Anderson asked if board members had any questions of Mr. Janiw.

Mr. Wrede brought up two (2) lots behind the house on Broadway that are landlocked. Ms. Citrano replied that the Township has had interest in those 2 lots, but they would have to build a road. Mr. Vella replied they would have to come to this board. Mr. Hinckley and Mr. Wrede continued to discuss the lots.

Mr. Hinckley asked if there were any additional witnesses. Mr. Anderson replied no.

Motion was made to open the meeting to the public. Motion was seconded with an all-in favor vote.

The following member of the public appeared and made comments:

Mr. Kirk, next door neighbor spoke in favor of the application.

Motion was made to close the public portion of the meeting. Motion was seconded with an all-in favor vote.

Mr. Vella advised that should the Board act favorably, the following conditions would be imposed: a deed restriction for the mother-daughter unit, and a grading plan to be submitted for review and approval by the Township Engineer.

Mr. Wrede asked if a CO will be required when the mother passes for the next person. Mr. Vella replied that the apartment is for immediate family only. Ms. Citrano replied that the intent is free flowing access and there are no further checks and balances.

MR. TRUSCOTT OFFERED A MOTION TO APPROVE THE APPLICATION, SECONDED BY MRS. ROGERS.

Roll Call:

Ayes: Wrede, Bouw, Hinckley, Truscott, Bane, Rogers, Sheridan

Nays: None

#2023-005, Matthew Werner, Block 901, Lot 11, 2 Farrell Lane, Application for Bulk Variances
– The applicant is seeking Principal Street Side Yard approval where 25' feet is the maximum required and 9.2' is proposed; and Principal Rear Yard where 50 feet is minimum required and 30' is proposed to construct an addition.

Mr. Vella advised that the notices are in order and the Board has Jurisdiction to hear this matter. A Site Plan, Floor Plan, and Elevations consisting of three (3) sheets, prepared by Shissias Design and Development, dated April 13, 2023, was marked as Exhibit A-1. Property Survey prepared by Charles Surmonte, P.E. & P.L.S, dated January 12, 2023, was entered as Exhibit A-2. The project narrative was entered as Exhibit A-3. The Planner's Technical Memorandum was entered as Exhibit ZB-1.

Matthew Werner, property owner was sworn in.

Al Shissias was sworn in and accepted as an expert Architect.

Mr. Hinckley stated that the testimony is strictly land use.

Ms. Citrano reviewed the principal dwelling and garage. The setbacks for the detached garage are less than setbacks for an attached garage.

Mr. Vella replied that no other variances are needed but the setback calling it a different thing principal instead of accessory.

Mr. Hinckley replied that it already exists. Mr. Vella replied correct.

Mr. Shissias summarized the case, the existing conditions, detached garage, existing house. The courtyard between the detached garage and house, noise from Middletown-Lincroft Road, reviewed the addition.

Mr. Hinckley stated that he did not have any questions. Mr. Wrede asked about the bump in the garage and how much room to the front door. Mr. Shissias replied eleven (11) feet. Mr. Wrede replied that it is 2-car garage now you are taking away one (1) stall. Mr. Shissias replied that it will be 16 ½ feet. Mr. Wrede replied it will still be a 2-car garage. Mr. Shissias replied it will be a little tight.

Mr. Hinckley asked if any other board members had questions.

Mr. Truscott offered a comment about a hardship with the house located at an angle.

Mr. Shissias stated that he ordered a new survey. Mr. Surmonte found that the right-of-way was closer to the road and was bumped in twenty-five (25') feet that is why the 9.2 setback is triggered.

Mr. Vella replied it was probably thirty (30') feet. A pipe found old corner and the County took it. Ms. Citrano replied that it is probably for future road widening more of a right-of-way, we've seen that by Newman Springs Road for future widening. Mr. Wrede replied they took his whole corner. Mr. Vella replied that a prior owner was probably paid for it.

Motion was made to open the meeting to the public. None appearing the public hearing was closed with an all-in favor vote.

Mr. Vella advised that should the Board act favorably, the following condition would be imposed: a grading plan to be submitted for review and approval of the Township Engineer.

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

Roll Call:

Ayes: Wrede, Bouw, Hinckley, Truscott, Bane, Rogers, Sheridan

Nays: None

#2023-006, La Avenida, LLC, Block 435, Lots 1 & 2, 162 Avenue D, Application for Use D Variance & Bulk Variances – The applicant seeks approval to perform interior and exterior repairs and to utilize the existing structure as a single-family home with 3 bedrooms and 2 bathrooms where “D” Use Variance “single-family, detached” is not permitted in the B-2 Zone, Front Setback (Principal) 50' is the minimum required, and 3.6' feet is proposed, Front Setback (Accessory) 50' is minimum required, and 49.7' is proposed, Street Side Setback (Principal) 25' is

the minimum required, and 17.5' is proposed, Street Side Setback (Accessory) 25' is the minimum required, and +/-7' is proposed, Street Rear Setback (Accessory) 50' is the minimum required, and +/-23' is proposed.

Application was not heard and was carried to the September 25, 2023, meeting.

EXECUTIVE SESSION – None

ADJOURNMENT

MRS. ROGERS OFFERED A MOTION TO ADJOURN THE MEETING AT 8:39 PM, SECONDED BY MR. TRUSCOTT. ALL PRESENT MEMBERS VOTED IN FAVOR BY VOICE VOTE.

Prepared by:

Debra Yuro
Board Secretary