

**CITY OF MIDDLETOWN
PLANNING BOARD
MINUTES**

June 07, 2023

A meeting of the Planning Board was held in the Common Council Chambers, City Hall, 16 James Street, Middletown, New York on June 7, 2023 at 7:00 P.M., Mr. Anthony Capozella presiding.

Members Present: Anthony Capozella, Richard McCormack, Gretchen Witt, Nicole Hewson, Dan Higbie, Dave Madden, Andy Britto.

Other Attendees: Richard J. Croughan, Planning Board Attorney; Theron Adkins, Fire Inspector; Walter Welch, Building Inspector.

The Pledge of Allegiance was said.

Motion to approve the May 3, 2023 minutes by Ms. Witt, seconded by Mr. Madden.

Motion passed. Minutes approved.

Mr. Capozella pointed out that all first-time applicant appearances are considered a preliminary hearing and the Planning Board may or may not chose to act or vote on those applications tonight.

**9-29 Canal Street
6-month extension request**

Mr. Capozella: From Jonathan Lee to Martina, 9-29 Canal Street: The reasons for the extension is that the original use for the permit has been revisited, and the current owners were not 100 percent sure that they will be moving forward with that use. They wanted to have the extension so they could have the time or have some time to continue or to repurpose a new use.

That is our extension. I need a motion to accept --

Mr. Croughan: So just before we do that so that the Board is aware, the building was sold. There's new owners, so the site plan goes to the new owner so they're

just looking it over to see what they want to do, if they want to keep with that plan or not.

Mr. Capozella: I need a motion to accept the extension letter.

Motion by Ms. Hewson, seconded by Mr. Higbie.

Roll Call Ayes: David Madden, Richard McCormack, Andy Britto, Gretchen Witt, Nicole Hewson, Dan Higbie, Anthony Capozella.

Hyun Jin Kim
8-10 East Main Street
Flower art shop

Mr. Capozella: Please step forward and present your application. Step forward, ma'am. Go up to the microphone, please. State your name for the record.

Ms. Kim: Jin Kim.

Mr. Capozella: And what do you plan on doing?

Ms. Kim: Flower shop.

Mr. Capozella: Okay. Very succinct. All right.
So, Ms. Tu, we have the mailings?

Ms. Tu: Yes, we do.

Mr. Capozella: Good. In that case, we're going to open the public hearing. Anyone present wishing to speak on this application, please step forward.
Ms. Tu, do we have anything in writing?

Ms. Tu: Nothing in writing.

Mr. Capozella: Anyone on the telephone?

Ms. Hansen: No one on the phone.

Mr. Capozella: Okay. We're going to open the public hearing.

The public hearing was opened.

Mr. Capozella: Again, does the Board have any comments, concerns?

Ms. Hewson: Will you be part of Da Tang or separate?

Ms. Kim: Separate.

Ms. Hewson: Separate. Thank you.

Mr. Croughan: And you're selling live plants?

Ms. Kim: Fresh flowers and gifts.

Mr. Croughan: And what are your hours of operation?

Ms. Kim: 9:00 to 8:00.

Mr. Capozella: 9:00 a.m. to 8:00 p.m.? 9:00 in the morning to 8:00 at night?

Ms. Kim: Right.

Mr. Capozella: Monday through --

Ms. Kim: Sunday.

Mr. Capozella: Okay. We're just --

Mr. Higbie: It's in her application.

Mr. Capozella: Yup. I'm just verifying because sometimes they change, even from the application. Monday through Sunday.

Any other questions from the Board?

Mr. Croughan: Just the applicant is aware you can't sell marijuana plants.

Mr. Capozella: I'll go back to the public one more time. Anyone wishing to step forward and speak on this application.

I'm going to close the public hearing.

The public hearing was closed.

Mr. Capozella: I'll give the Board one more chance, any comments, questions, or concerns.

On the resolution for 8-10 East Main Street, flower art shop, hours of operation are 9:00 a.m. to 8:00 p.m., Monday through Sunday. Parking is waived. Subject to City of Middletown DPW and City of Middletown Fire Department inspections and approvals and, when necessary, approval of the Commissioner of Public Works. The applicant will obtain all necessary permits and follow the permitting process, codes, and ordinances of the City of Middletown, County of Orange, and the State of New York, if applicable.

In addition, if throughout any of the review process the project is deemed to require Bulk Requirement Tables, the applicant will supply said tables through an architect or engineer licensed in the State of New York.

Whereas, pursuant to the City of Middletown Code, Chapter 475, Article 4, Administration and Enforcement, Section 475-53, Paragraph E-6, unless work is commenced and diligently prosecuted within six months and completed within two years of the date of granting a Special Use Permit, such Special Use Permit shall be null and void. If no work is done in the next six months, you need to send a letter or let the Board know that you're going to extend your approval.

Whereas this application is located in the DMU Zone, applicants must submit and receive approval from the Department of Public Works according to Chapter 407 Solid Waste, Article II Collection, §407-3, Collection, and comply with this section and any other sections enacted by the Common Council from this date forward.

Also, all façade work, exterior work in general, and exterior signage is subject to the Architectural Review Board.

Also, anything submitted within the application will become part of the record, and the applicant will follow through on.

Motion by Ms. Hewson, seconded by Mr. Britto.

Roll Call Ayes: David Madden, Richard McCormack, Andy Britto, Gretchen Witt, Nicole Hewson, Dan Higbie, Anthony Capozella.

Zachary Jacob Fuller
20-26 West Main Street
Apparel retail/tailoring/alteration space

Mr. Capozella: How are you doing this evening?

Mr. Fuller: Hi, everybody. How are you?

Mr. Capozella: Good. Please state your name for the record.

Mr. Fuller: Zachary Fuller.

Mr. Capozella: And what do you plan on doing?

Mr. Fuller: It's a menswear/womenswear apparel retail space, tailoring, alterations, as you said.

Mr. Capozella: Okay. Ms. Tu, do we have the mailings?

Mr. Fuller: I think she stepped out, but I did give her my mailings.

Mr. Capozella: All right. Give her a second. We need the mailings so we can proceed.

Ms. Hewson: Do we need something from the property owner as well? Just curious as there's a time lag.

Mr. Capozella: For which one?

Ms. Hewson: For any applicant. Do we have to have a statement if it's not owned by the property?

Mr. Capozella: There should be an owner's endorsement.

Ms. Hewson: Okay.

Mr. Capozella: While we're waiting, Mr. Fuller, are you any relation to Fuller's Mens' Shop of many years ago or --

Mr. Fuller: No. Different spelling.

Mr. Capozella: Oh, okay.

Mr. Fuller: F-u-l-l-e-r.

Mr. Capozella: Sorry. Just phonetically in my brain.

Mr. Fuller: Yeah.

Mr. Capozella: It would be a good guess.

Mr. Fuller: Right.

Mr. Croughan: Mailings are good.

Mr. Capozella: Okay.

Mr. Fuller: Thank you.

Mr. Capozella: Very good. So, Ms. Tu, we have the mailings. Ms. Tu would've told me already if we had something in writing or somebody on the phone, so let's proceed.

We're going to open the public hearing. Anyone present this evening wishing to speak on this application, please step forward.

The public hearing was opened.

Mr. Capozella: We'll go to the Board for any questions, comments, or concerns.
Ms. Witt.

Ms. Witt: Hours of operation and days of operation.

Mr. Fuller: Yes. Monday through Friday, 9:00 to 5:00, and Saturday and Sunday, appointment only.

Mr. Capozella: Okay. Anyone else? It's in the DMU area. Okay.

Back to the public. Anyone wishing to speak on the application, please step forward.

Ms. Tu, just for the record, we had nothing in writing?

Ms. Tu: Nothing in writing.

Mr. Capozella: Nobody on the telephone?

Ms. Tu: No.

Mr. Capozella: Okay. Thanks. I'm going to close the public hearing.

The public hearing was closed.

Mr. Capozella: Go to the Board one more time for any questions, comments, or concerns.

On the resolution for 20-26 West Main Street, apparel retail/tailoring/alteration space, hours of operation are 9:00 a.m. to 5:00 p.m., Monday through Friday, Saturday and Sunday, appointment only. Parking is waived. Subject to City of Middletown DPW and City of Middletown Fire Department inspections and approvals and, when necessary, approval of the Commissioner of Public Works. The applicant will obtain all necessary permits and follow the permitting process, codes, and ordinances of the City of Middletown, County of Orange, and the State of New York, if applicable.

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the applicant will follow through on.

Motion by Mr. Britto, seconded by Mr. McCormack.

Roll Call Ayes: David Madden, Richard McCormack, Andy Britto, Gretchen Witt, Nicole Hewson, Dan Higbie, Anthony Capozella.

Tortilleria Parvinci, Inc.
40 North Street
Eating and drinking establishment

Mr. Capozella: Please step forward.

Mr. Avalos: Good evening to all.

Mr. Capozella: Good evening. Your name, please.

Mr. Avalos: Juan Avalos.

Mr. Capozella: And what do you plan on doing?

Mr. Avalos: I plan on extending my restaurant to the second floor as a large gathering party room for restaurant use.

Mr. Capozella: Okay. Fantastic. We're going to -- Ms. Tu, do we have the mailings?

Ms. Tu: Yes, we do.

Mr. Capozella: Anyone on the phone?

Ms. Tu: No one on the phone.

Mr. Capozella: And nothing in writing.

Ms. Tu: No.

Mr. Capozella: I'm going to open the public hearing. Anyone present wishing to speak on this application, please step forward.

The public hearing was opened.

Mr. Capozella: Okay. We'll go to the Board for any questions, comments, or concerns.

Mr. Croughan: Mr. Chairman, are we approving the whole building?

Mr. Capozella: I believe that was the intent.

Mr. Croughan: First and second floor then being eating and drinking?

Mr. Capozella: That is correct.

Mr. Croughan: And then third floor office.

Mr. Capozella: Correct. That was our goal; right?

Mr. Avalos: Yes, sir.

Mr. Capozella: Because somewhere in the past, something slipped through the cracks.

Mr. Avalos: Yes, sir.

Mr. Capozella: Okay.

Mr. Croughan: How long have you been in business in that location?

Mr. Avalos: Sixteen years this year in July.

Mr. Croughan: So in reality, you're just continuing on the first floor the way you have for the past 16 years. Second floor you're adding for parties or gatherings.

Mr. Avalos: Yes. Like, for example -- pardon my interruption. If we have a large gathering, let's say 20 people, 20 individuals that come in and they want to dine in, we shift them to the second floor as opposed to halting operations on the first floor.

Mr. Croughan: Got it. And what's your hours of operation?

Mr. Avalos: We operate from 11:00 to 8:00 p.m., Monday through Thursday,

except Wednesday I'm closed, and Friday and Saturday, summer hours are 11:00 to 9:00 p.m. Friday and Saturday.

Mr. Capozella: And Sunday?

Mr. Avalos: Sunday we close at 8:00.

Mr. Croughan: That would be the 11:00 a.m. to 8:00 p.m., and that's Sunday -- what day are you closed?

Mr. Avalos: Wednesday.

Mr. Croughan: Wednesday. Sunday, Monday, Tuesday.

Mr. Capozella: Okay. Now, you mentioned summer hours. Do you have -- are they longer than your winter hours?

Mr. Avalos: Yes, they are because --

Mr. Capozella: That's fine because I want to give you the longer of the hours on your application.

Mr. Avalos: Okay. Thank you.

Mr. Capozella: Okay.

Ms. Witt: Are you still closed on Wednesday for your regular, like your regular hours, not summer hours?

Mr. Avalos: Yes, ma'am.

Ms. Witt: Okay.

Mr. Croughan: And the third floor is just an office, it's not an apartment?

Mr. Avalos: It's just an office. It was, to my knowledge, used before, like in the 80s or something like that, as an apartment, but not anymore.

Mr. Capozella: So those offices are for your purposes only.

Mr. Avalos: Yes.

Mr. Capozella: Okay.

Mr. Avalos: And my two daughters, which they run around.

Mr. Capozella: But they're your business-oriented offices.

Mr. Avalos: Yes.

Mr. Capozella: Anyone else from the Board? Yes, Mr. Adkins.

Mr. Adkins: So on the second floor, that's just going to be an extension of your restaurant. Somebody makes reservations for, you know, 16 people, you're not renting that out as an event space for birthday parties, nothing like --

Mr. Avalos: No.

Mr. Adkins: Just as an extension.

Mr. Avalos: Just an extension or --

Mr. Adkins: I want that to be very clear --

Mr. Capozella: It will.

Mr. Adkins: -- that it's not going to be an event space.

Mr. Avalos: No.

Mr. Adkins: Okay. That's all I have.

Mr. Croughan: Any other concerns?

Mr. Adkins: No. I've been there a few times. The building's great, but we just want to clarify it's not going to be an event space.

Mr. Avalos: No, no, no.

Mr. Adkins: That's all.

Mr. Capozella: I'll state it in the resolution. If I don't get it right, let me know.

We'll make sure we get it right.

Back to the public. Anyone present wishing to speak on this application?
I'm going to close the public hearing.

The public hearing was closed.

Mr. Capozella: Anyone from the Board have any questions, comments, or concerns? No.

Mr. Madden: Quick.

Mr. Capozella: Yeah. Go ahead.

Mr. Madden: Your concern was him renting the space out to someone else's use as opposed to him -- like he should have the ability to cater, you know, a rehearsal party or something. Yes or no.

Mr. Adkins: Correct. Yeah. I'm talking about renting it out for a birthday party where they're serving things they shouldn't be serving, stuff like that. We've had those problems in the past, not necessarily at your place, but --

Mr. Madden: Thank you.

Mr. Capozella: So any events that take place there, he's in charge of. He's holding the event so to speak.

Mr. Croughan: Hosting it.

Mr. Capozella: Hosting the event.

Mr. Avalos: My staff will cook and so would I, and we will shift the food upstairs, based on your approval. I will file the permits required for the Health Department to extend our use to the second floor.

Mr. Capozella: Okay, Mr. Madden? That answer your question?

Mr. Madden: Yes. Thank you.

Mr. Higbie: And you have no potential that you might open on Wednesdays someday? Like should we keep business hours on Wednesday in case?

Mr. Avalos: Yes, sir. I'm actually thinking of that because of the business trends.

Mr. Higbie: Exactly.

Mr. Avalos: A lot of people have told me to lower my price on Taco Tuesday, quote unquote. I'd rather close because my food is high quality, high end Mexican food, so it's not profitable to pay the bills if I lower my overhead on Tuesdays, so I might switch it to Wednesday.

Mr. Higbie: So we should keep it seven days.

Mr. Avalos: Yeah. Just to make sure, and of course, all the uncertain that has happened since our magic virus here has kept us on our toes, but we're still trying things, thank God.

Mr. Capozella: So with your approval, you'll be open Monday through Sunday, 11:00 a.m. to 9:00 p.m. That'll cover all your days and all your hours that you have previously stated.

Mr. Avalos: Yes, sir.

Mr. Capozella: Okay. This way, you can't go wrong. You want to close, you can close any time you want.

Mr. Avalos: Yes, sir. Based on health.

Mr. Capozella: Correct. Okay. Any other comments or questions? Okay. We'll try to get this in a resolution.

Mr. Croughan: Mr. Chairman, I just want to be clear that we're giving him the approval on the first floor for eating and drinking. Second floor is hosting events by the owner of the first floor only. But since we're doing the whole building now, it has to be eating and drinking establishment on the first floor.

Mr. Capozella: Right. Isn't that what we did?

Mr. Croughan: But you said --

Mr. Capozella: Eating and drinking on the first floor and second floor.

Mr. Croughan: Yeah. You had said second floor extension of first floor, but he

actually never had the approval on the first floor.

Mr. Higbie: But wouldn't he have eating and drinking on the second floor? Like what if he has 20 tables of four? Can't he use the second floor?

Mr. Croughan: He can, but the thing was he didn't have the approval in the beginning.

Mr. Higbie: Okay.

Mr. Capozella: It's kind of a strange situation. He's owned the business for 16 years.

Mr. Higbie: But he doesn't want to just do large groups there. He may want to do tables of four or something.

Mr. Capozella: There was never approval for the first floor.

Mr. Higbie: Okay.

Mr. Capozella: Way back when, he never had approval for an eating and drinking establishment on the first floor, so when he came to us for the second floor approval, that's when we realized he never had approval for the building. So he really went through the whole process to do the whole building. We're not trying to impede him --

Mr. Higbie: No, no. I know.

Mr. Capozella: -- from carrying his business to the second floor. Okay?

Mr. Croughan: Yes.

Mr. Avalos: We have all the permits, but --

Mr. Capozella: You're good.

Mr. Avalos: Semantics.

Mr. Capozella: Technically, you're making it official after 16 years.

Mr. Avalos: No problem.

Mr. Capozella: Thank you.

On the resolution for 40 North Street, an eating and drinking establishment and offices. This resolution is actually to update the approval of the entire building to include an eating and drinking establishment on the first floor and the second floor, which will pertain only to your business, and the third floor will be for offices only pertaining to your business. Hours of operation will be Monday through Sunday, 11:00 a.m. to 9:00 p.m. Parking is waived. Subject to City of Middletown DPW and City of Middletown Fire Department inspections and approvals and, when necessary, approval of the Commissioner of Public Works. The applicant will obtain all necessary permits and follow the permitting process, codes, and ordinances of the City of Middletown, County of Orange, and the State of New York, if applicable.

In addition, if throughout any of the review process the project is deemed to require Bulk Requirement Tables, the applicant will supply said tables through an architect or engineer licensed in the State of New York.

Whereas, pursuant to the City of Middletown Code, Chapter 475, Article 4, Administration and Enforcement, Section 475-53, Paragraph E-6, unless work is commenced and diligently prosecuted within six months and completed within two years of the date of granting a Special Use Permit, such Special Use Permit shall be null and void. If no work is done in the next six months, you need to send a letter or let the Board know that you're going to extend your approval.

Whereas this application is located in the DMU Zone, applicants must submit and receive approval from the Department of Public Works according to Chapter 407 Solid Waste, Article II Collection, §407-3, Collection, and comply with this section and any other sections enacted by the Common Council from this date forward.

Also, all façade work, exterior work in general, and exterior signage is subject to the Architectural Review Board.

Also, anything submitted within the application will become part of the record, and the applicant will follow through on.

Also, this approval is for an eating and drinking establishment with beer and wine only on the first floor, subject to New York State Liquor Authority approval for

beer and wine only on the second floor -- Section 475.18 C1 12.1.

Motion by Mr. Madden, seconded by Mr. Britto.

Roll Call Ayes: David Madden, Richard McCormack, Andy Britto, Gretchen Witt, Nicole Hewson, Dan Higbie, Anthony Capozella.

AMP Rentals, Inc.
74-82 Irwin Avenue
Childcare facility

Ms. Hewson: Mr. Chairman, if I may.

Mr. Capozella: Go ahead.

Ms. Hewson: This applicant is someone who I actually find near and dear to my heart, and I happen to have been her teacher when she was a little girl and have watched her turn into an amazing businesswoman; however, as a representative elected by the Board of Education, or by the community, to be a Board Trustee, I don't want to impede her ability to apply for Universal Pre-K, so therefore, I'll be recusing myself for this application.

Mr. Capozella: Okay.

Ms. Parrotta: Good evening.

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

Ms. Parrotta: Nicole Parrotta.

Mr. Capozella: And what do you plan on doing?

Ms. Parrotta: I'm looking to do an infant and toddler childcare program.

Mr. Capozella: Okay. Ms. Tu, do we have the mailings?

Ms. Tu: Yes, we do.

Mr. Capozella: All right. Do we have anyone on the telephone?

Ms. Tu: No.

Mr. Capozella: Anything in writing?

Ms. Tu: No.

Mr. Capozella: Okay. I'm going to open the public hearing. Anyone present wishing to speak on this application, please step forward.

The public hearing was opened.

Mr. Capozella: Okay. I'm going to go to the Board for any questions, comments, or concerns.

Mr. Croughan: Just so the Board is aware, they did change the zoning. I believe we have the resolution.

Mr. Capozella: I do. I can read it into the record. This is from the City of Middletown Common Council.

**Resolution to amend City Code to Include Daycares in a
UR-3 Zoning District**

WHEREAS, the City of Middletown has been presented with a proposal for a child day care facility in the UR-3 zoning district which is abutted on its northwestern side by Irwin Avenue and on its northeastern side by Wisner Avenue, and

WHEREAS, this zoning district also abuts the facilities and playgrounds associated with the Twin Towers Middle School, and

WHEREAS, the Mayor and Economic Development Director are recommending rezoning this particular UR-3 district to allow for child daycare facilities.

NOW, THEREFORE, BE IT RESOLVED, AND BE IT ORDAINED, by the Common Council of the City of Middletown, as follows:

Section 1. The Code of the City of Middletown, N.Y., Chapter 123, Zoning, as adopted March 27, 1967 and amended, be and is hereby

further amended by adding a new Paragraph (10) to Subsection C, Uses requiring issuance of both a special use permit and site plan approval by the Planning Board, to read as follows:

- (10) Child day-care facility, provided that such facility:
 - (a) Is licensed by the State of New York;
 - (b) Contains at least 3,000 square feet of usable floor space;
 - (c) Provides an outside play area of at least 600 square feet; and
 - (d) Provides an off-street drop-off area for such children to avoid impacting street traffic in the area.

Section 2. This Ordinance shall take effect immediately.

Mr. Croughan: And what's the date of that, Mr. Chairman?

Mr. Capozella: May 16th, 2023.

Mr. Croughan: Thank you. And I imagine the applicant meets all the requirements as set forth in the resolution?

Mr. Capozella: That is our assumption. Okay. Any questions? Go ahead, Ms. Witt.

Ms. Witt: I notice on your sheet that you gave to us about your hours of operation, they differ from what's on the blueprint in front of me, so can you just verify what your days of operation and employees are?

Mr. Capozella: Would you have your engineer just introduce himself for the record, please.

Mr. Rotundo: Cesare Rotundo. I'm sorry. Okay. So number of employees is 10 to 12. Days and hours of operation is, I believe it's 6:50 a.m. to 6:00 p.m.

Ms. Witt: So I'm just letting everyone know just for the record that the letter that's in front of us dated May 18th to our clerk has your hours of operation from 7:00 a.m. to 6:00, and then you list that you're going to have a total of six employees, so that's why I was asking like what are you planning on doing.

Ms. Parrotta: My intention is from 6:50 a.m. to 6:00 p.m. with 10 to 12 employees.

Ms. Witt: Okay. Thank you.

Mr. Capozella: And just so everyone knows, there is ample parking. There's also street parking. Even though it's restricted from 8:00 a.m. to 4:00 p.m., it doesn't affect the daycare because they have enough parking to handle the daycare. And then there is a slight transition between the dance studio and the daycare, but that's after 4:00 p.m. so there should be no conflict for parking.

Mr. Madden: Do you have the outdoor play or outdoor space that was required?

Mr. Rotundo: Yes. I don't know if I showed on the plans --

Mr. Capozella: No. I don't see it on the ones that we have right now.

Mr. Rotundo: They're all regulations which we're going to go through. There's enough space there that we can have the playground in there, and we're going to go through the --

Mr. Higbie: Can you just speak in the mic for our --

Mr. Rotundo: We have to go through the Office of Child and Family Service on this application anyway, so whatever they require, but I'm pretty sure that we have enough space. If you look at the plans here, there's enough room that we can put a playground area in there.

Mr. Croughan: You do have to comply with the resolution that was passed, so with the square footage of the playground, Mr. Chairman, what was that, 600?

Mr. Capozella: 600 square feet. We'll probably be requiring that on the site plan, so in the resolution there'll be a subject to the final site plan showing the play area.

Mr. Rotundo: Sure.

Mr. Capozella: Okay.

Mr. Croughan: And the license, you already have that?

Ms. Parrotta: No. I can't apply for my application until I get a CO.

Mr. Capozella: That'll also be subject to then. Any other comments from the

Board? Ms. Witt?

Ms. Witt: So I noticed on your plan for the parking, you were mentioning about a handicapped ramp, but I don't see any handicapped spaces. Are there spaces already existing that are just not on the plan?

Mr. Rotundo: They're all existing spaces there. We could provide the handicapped parking lot.

Ms. Witt: Thank you.

Mr. Croughan: Theron, any comments?

Mr. Adkins: No. We've been in communication. Anything they may or may not need when they start down this path, they've been talking to me, and we'll make sure it's all in compliance.

Mr. Croughan: Walt, any concerns?

Mr. Welch: No.

Mr. Capozella: Anything else, Board members?

Okay. I'm going to go back to the public one more time. Anybody here wishing to address this application, please step forward.

I'm going to close the public hearing.

The public hearing was closed.

Mr. Capozella: And go back to the Board one more time, comments, questions, or concerns. Okay.

Ms. Hewson: I should've also mentioned that as a Board member, this property is bordering the school district, so that would be a second reason why I couldn't vote on this.

On the resolution for AMP Rentals, Inc., 74-82 Irwin Avenue, childcare facility, hours of operation are 6:50 a.m. to 6:00 p.m. Subject to producing New York State license and providing a revised site plan covering all ADA parking requirements and for 600' play area. Subject to City of Middletown DPW and City of Middletown Fire Department inspections and approvals and, when necessary,

approval of the Commissioner of Public Works. The applicant will obtain all necessary permits and follow the permitting process, codes, and ordinances of the City of Middletown, County of Orange, and the State of New York, if applicable.

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Also, anything submitted within the application will become part of the record, and the applicant will follow through on.

Motion by Mr. Britto, seconded by Mr. Madden.

Roll Call Ayes: David Madden, Richard McCormack, Andy Britto, Gretchen Witt, Dan Higbie, Anthony Capozella.

Recused: Nicole Hewson.

Maher Jamal
18 Dolson Avenue
Deli/convenience store including tobacco sale

Mr. Capozella: How are you doing this evening, sir?

Mr. Jamal: Good evening, everybody. How's everyone feeling today?

Mr. Capozella: What's your name, sir?

Mr. Jamal: My name's Maher Jamal.

Mr. Capozella: And state your intent.

Mr. Jamal: My intent is to open a business, you know. That's the goal. We plan on selling tobacco products, obviously. We intend on selling vape products, and we intend on selling, you know, drinks and some chips to go as well, just as any common convenience store.

Mr. Capozella: Okay. All right. Ms. Tu, do we have the mailings?

Ms. Tu: Yes, we do.

Mr. Capozella: Do we have anybody online or on the phone? That was a long time ago.

Ms. Tu: No.

Mr. Capozella: And nothing in writing. Thank you very much.

I'm going to open the public hearing. Anyone present here wishing to speak on this application, please step forward.

The public hearing was opened.

Mr. Capozella: Okay. I'm going to go to the Board for any questions, comments, or concerns.

Mr. Croughan: This is an expansion of an existing use already; right? You already have the deli and the convenience?

Mr. Jamal: We're not going to do the deli. We have the convenience. It's going to be like a smoke convenience.

Mr. Croughan: So small convenience, that's already existing.

Mr. Jamal: Mm-hmm.

Mr. Croughan: And to that, you're adding the smoke shop.

Mr. Jamal: Yeah. The smoke shop.

Mr. Capozella: No deli then.

Mr. Jamal: No deli at all. Yeah.

Mr. Capozella: Okay. And just for the record, I want to read into the record so that the Planning Board knows --

Mr. Croughan: And the applicant.

Mr. Capozella: -- and the applicant, of course. It's from the Common Council, City of Middletown.

**Resolution Amending the City Code to Create a New Section
475-28A Prohibiting Cannabis Sales in the City**

WHEREAS, by Local Law #1 of the Year 2021, adopted July 20, 2021, the City of Middletown opted out of the establishment of cannabis retail dispensary licenses within the City of Middletown pursuant to Section 131 of the New York Cannabis Law.

NOW THEREFORE, be it Resolved, and be it Ordained, by the Common Council of the City of Middletown, New York, as follows:

Section 1 - The Code of the City of Middletown, N.Y., Chapter 475, Zoning, be and is hereby amended by creating a new Section 475-28A of Article IV, General Regulations, to read as follows:

Section 475-28A. Cannabis Sales.

(1). The sale of cannabis, cannabinoids, cannabinoid hemp, cannabis flower, cannabis products, cannabis -infused products, hemp and hemp extract, as those terms are defined in Section 3 of the New York Cannabis Law, is prohibited in and on all private and public property in every zoning district in the City of Middletown.

(2). Penalties. Any person who violates any of the provision of this Section or any person who owns or controls property upon which such violation occurs shall, upon conviction, be guilty of an offense punishable by a fine of not less than \$250 nor more than \$2,000 or by imprisonment for a period not exceeding 15 days, or by both such fine and imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense. The term "Person," as used in this Section, shall include the owner, property manager as defined in Chapter 296 of the City Code, occupant, mortgagee, vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent,

or any other person, firm or corporation directly or indirectly in control of a premises or part thereof.

Section 2 - Severability. If the provisions of any section, subsection, paragraph, subdivision or clause of this Ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this Ordinance.

Section 3 - This Ordinance shall take effect immediately.

Mr. Capozella: Okay. We just read that in because smoke shops are not cannabis dispensaries. That's not how it works, no way, no how, no part. We wanted to make it very clear to you and the public.

Mr. Jamal: Yes. I have seen that letter, and we will not sell any cannabis products in the store.

Mr. Capozella: Thank you. All right. We'll move on. Any questions, comments, or concerns from the Board?

Mr. Britto: Hours of operation?

Mr. Jamal: Hours of operation, they may beg to differ. Right now, we're going to start from 10:00 a.m. to 10:00 p.m., but as the business progresses, we may change the hours to 8:00 to 12:00 a.m.

Mr. Capozella: Okay. Is that going to be daily, Monday through Sunday?

Mr. Jamal: Yes.

Mr. Capozella: Okay. Well, if you had planned to expand your hours -- I'm sorry. Did you want to say --

Ms. Hewson: I was going to say the same thing as you.

Mr. Capozella: Okay.

Ms. Hewson: I'll let you do it.

Mr. Capozella: If you plan on extending your hours, now would be the time to

decide.

Mr. Jamal: All right.

Mr. Capozella: Or else you'll end up coming back to us or be in violation.

Mr. Jamal: We will be open from 8:00 to 12:00 -- 8:00 a.m. to 12:00 a.m.

Mr. Croughan: Daily.

Mr. Capozella: Daily. Monday through Sunday. 8:00 a.m. to 12:00 a.m., better known as midnight so we're clear.

This person already has parking. This is an extension of an existing use basically. The gentleman just had to add tobacco sales to it.

Mr. Croughan: Theron, any concerns?

Mr. Adkins: Are you a smoke shop or a convenience store?

Mr. Jamal: A smoke shop.

Mr. Adkins: A smoke shop. So can we be clear on that? It's a smoke shop.

Mr. Jamal: But it will be like a small convenience. We will have, as I said, we will have chips, drinks, ice cream.

Mr. Capozella: We need to know why you're asking that question.

Mr. Adkins: Because we need to know the use of the building.

Mr. Capozella: Okay.

Mr. Adkins: We need to know the use for the future, so when they leave, is it going to be a convenience store or a smoke shop if somebody else wants to come in there?

Obviously, if they want to put a barbershop in there, they have to come back to us, so and I know that we had issues in the past with dual use, so I want to just be clear that it's a smoke shop or a convenience store because we had issues there, and that's why they're here now.

Mr. Jamal: Correct.

Mr. Croughan: Theron, I think they can be both --

Mr. Adkins: Okay.

Mr. Croughan: -- with the smoke shop being the accessory use to the convenience because it's under one ownership.

Mr. Adkins: I think it's going to be the other way around.

Mr. Capozella: Okay.

Mr. Adkins: I think it's going to be a smoke shop that sells sodas and candy bars.

Mr. Jamal: But we do have grocery items such as eggs and milk and ice cream.

Mr. Capozella: Okay. Well --

Mr. Croughan: Since the existing use is convenience already, let's just keep it as the convenience with the accessory smoke shop.

Mr. Adkins: I just want to make sure the Board is aware of what's going on.

Mr. Capozella: Okay.

Mr. Croughan: Understood.

Mr. Adkins: And who is the owner of the business?

Mr. Jamal: I am the owner of the business.

Mr. Adkins: You are the owner of the business. You're going to be the listed owner of the business.

Mr. Jamal: Yes.

Mr. Adkins: So you're going to contact me tomorrow and fill out your business permit.

Mr. Jamal: Hopefully.

Mr. Adkins: Yes.

Mr. Croughan: Well, in order for you to proceed, you have to get in touch with Theron.

Mr. Jamal: I will.

Mr. Capozella: Okay?

Mr. Jamal: If we could exchange information soon?

Mr. Adkins: Yup. Absolutely.

Mr. Jamal: Or if you have a card you could give me, that would be great.

Mr. Adkins: Absolutely. Thank you.

Mr. Jamal: That's all I have, but I also just wanted to add that the business will be a smoke shop, but it's also a convenience. I just see most stores around the area or in the county carry both grocery items and smoke shop items.

Mr. Capozella: That's okay. You are a convenience store with added tobacco sales. That's perfectly okay.

Mr. Jamal: We will have stuff like as to tobacco accessories, such as we may sell like tobacco pipes or tobacco bongs or hookah products, which also contain tobacco or such as hookahs, we will contain stuff like that.

Mr. Capozella: That's fine as long as you're not in violation of the cannabis.

Mr. Jamal: I just wanted to clarify.

Ms. Hewson: I have a question.

Mr. Capozella: Yes, Ms. Hewson.

Ms. Hewson: Have there been any noise ordinance violations to anybody's knowledge? Like just because Mr. Higbie was mentioning to me that the hours of operation, although it's Dolson Avenue, it is near some residential. We just want to make sure we have all the facts before we vote on it.

Mr. Capozella: We have nothing of record.

Ms. Hewson: Well, I can ask Mr. Jamal. You haven't had any noise ordinance violations?

Mr. Jamal: We had no violations, no issues with anyone. We know both neighbors --

Ms. Hewson: Okay.

Mr. Jamal: -- surrounding the property. They're great people. We're all on good terms.

Ms. Hewson: Okay.

Mr. Croughan: And that's up to the police to enforce.

Ms. Hewson: Absolutely, but it would influence our vote possibly if there had been because part of what we look at is quality of life for everybody, what's in the best interest of Middletown.

Mr. Jamal: Just to add to that, the neighbors in the area, for example, the property neighbors to the left and to the right both support the business. They're both looking forward for the business to reopen. We've had nothing but compliments and motivation from our surrounding citizens in Middletown.

Ms. Hewson: That's all we like to hear.

Mr. Jamal: It's ready to go. We're just waiting for the approval.

Ms. Hewson: Thank you. We like to hear that people are good neighbors.

Mr. Jamal: Thank you.

Ms. Hewson: Thanks.

Mr. Jamal: It's Middletown, you know?

Mr. Capozella: Okay. Reasonable question. Anybody else?
I'll close the public hearing.

The public hearing was closed.

Mr. Capozella: Board, any more questions?

Mr. Madden: Does the existing convenience store have alcohol sales?

Mr. Jamal: No alcohol.

Mr. Madden: Thank you.

Mr. Jamal: It'll be a smoke shop and a convenience, so we'll have chips, drinks, ice cream.

Mr. Capozella: They have no approval for alcohol.

Mr. Jamal: We will also have a smoke shop, obviously.

Ms. Witt: I just have a quick question. On your plan here, is the back part of where your store is, is that a private residence because I see it says a living room and like a garden and everything, so --

Mr. Jamal: No. The store is just a store, and there is a back yard to the store, but there is no back entrance to the back of the store --

Ms. Witt: Okay.

Mr. Jamal: -- but there is --

Ms. Witt: Is that a private --

Mr. Jamal: No. That's included with the store as well.

Ms. Witt: Oh, okay. Okay. Thank you.

Mr. Capozella: Okay.

Mr. Jamal: I just want to clarify with the tobacco, that includes vapes, bongos, hookahs, tobacco products and stuff used to --

Mr. Capozella: As long as it's the sale of tobacco products related thereto.

Mr. Jamal: All right. Thank you very much.

On the resolution for 18 Dolson Avenue, convenience store including tobacco sales, hours of operation will be Monday through Sunday, 8:00 a.m. to 12:00 a.m. midnight. Subject to City of Middletown DPW and City of Middletown Fire Department inspections and approvals and, when necessary, approval of the Commissioner of Public Works. The applicant will obtain all necessary permits and follow the permitting process, codes, and ordinances of the City of Middletown, County of Orange, and the State of New York, if applicable.

In addition, if throughout any of the review process the project is deemed to require Bulk Requirement Tables, the applicant will supply said tables through an architect or engineer licensed in the State of New York.

Any licenses needed through the State of New York will need to be provided.

Whereas, pursuant to the City of Middletown Code, Chapter 475, Article 4, Administration and Enforcement, Section 475-53, Paragraph E-6, unless work is commenced and diligently prosecuted within six months and completed within two years of the date of granting a Special Use Permit, such Special Use Permit shall be null and void. If no work is done in the next six months, you need to send a letter or let the Board know that you're going to extend your approval.

Also, anything submitted within the application will become part of the record, and the applicant will follow through on.

Motion by Ms. Hewson, seconded by Mr. Britto.

Roll Call Ayes: David Madden, Richard McCormack, Andy Britto, Gretchen Witt, Nicole Hewson, Dan Higbie, Anthony Capozella.

Motion to adjourn by Mr. Britto, seconded by Mr. Madden.

Roll Call Ayes: David Madden, John Naumchik, Andy Britto, Gretchen Witt, Nicole Hewson, Dan Higbie, Anthony Capozella.

Adjourned 8:50 p.m.

Respectfully Submitted,

Diane Genender, Transcriber