

**MINUTES OF PUBLIC HEARING
HELD BY THE ZONING BOARD OF APPEALS
LINCOLN CENTER HEARING ROOM
FEBRUARY 22, 2012**

MEMBERS PRESENT: James Stevenson, Chair
Albert Gionet, Vice Chair
Robert Haley, Secretary
Edward Slegeski

ALTERNATES PRESENT: Armando Darna (sitting)
Sandra Stough
Michael Stebe

ABSENT: Donna Roberto

ALSO PRESENT: James Davis, Zoning Enforcement Officer
Renata Bertotti, Senior Planner
Ginger MacHattie, Recording Secretary

The Chair opened the Public Hearing at 7:00 p.m. The Secretary read the legal notice for the application when the call was made.

AMERICAN GROUP, LLC – application #2011-150, 151 – request a variance to Article IV Section 5.03.03 to reduce the southern side yard setback to 2.4' (25' required) for an existing building and the northern side yard setback to 24.3' (25' required) for an existing canopy, and request a special exception under Article II Section 24.02.02(a) and Article IV Section 5.01.02 to allow automobile sales at 266 West Middle Turnpike, General Business zone.

Attorney Stephen Penny represented the applicant and explained the subject property located at 266 Middle Turnpike West is a rectangle shaped parcel with 112.63 feet of frontage on Broad Street and 200 feet of frontage on West Middle Turnpike. The parcel is 0.5189 acres which is bounded northerly by Middle Turnpike West, easterly by Broad Street, southerly by another commercial property with frontage on Broad Street, and westerly by Brown's Package Store fronting on Middle Turnpike West. The property is zoned General Business and has one structure on the property, which has been operating as a gasoline service station and for auto related uses since it was constructed in 1968. He said the present building replaced an earlier gasoline service station dated from 1952. Public water and sewer serve the site. The gasoline services station and repair facility uses 1,184 square feet and the remaining 654 square feet are devoted to a convenience store. There are three employees at the site and the applicant is the commercial tenant of the property.

Attorney Penny said the regulations identify new and/or used automobile sales as a special exception use in the General Business zone. Factors the Zoning Board of Appeals (ZBA) should consider include the proximity of the site to schools, places of worship, libraries, theaters or playhouses, or other places of public gathering. In this case, the closest such facility is Waddell School, located on the other side of Middle Turnpike West and Broad Street, which is at least 600 feet away. He said other factors for the ZBA's consideration are intersecting streets, traffic conditions, width of highway, and the effect on public travel to ensure the use will not imperil the safety of the public. In this regard, the subject site is located within a large commercial area and has been devoted to auto related uses for nearly six decades. Middle Turnpike West is a major arterial roadway. It was reported in 1995 that traffic on Middle Turnpike West was 14,700 vehicles per day. The traffic report indicated the proposed use of four cars for sale would have minimal impact on the roadways or intersection. The proposed building for this use may not be located within 400 feet of a public park or playground, school, college, church, public library, or residentially zoned dwelling on the same side of the street. He said there are no such uses within 400 feet of the subject property on the same side of the street. Other general requirements for the location approval include adequate safeguards against leakage of gas and oil. Attorney Penny said the majority of the site is bituminous concrete, and the drains within the building have been blocked in order to prevent any such leakage. A 1993 canopy variance was conditioned in part upon the installation of an oil/grit chamber in the parking lot catch basin.

Mr. Bob Messier, Messier & Associates, 288 Main Street, said when looking at this property, he reviewed how many parking spaces would be allowed and what the regulations require. He determined 32 parking spaces would be allowed and 28 are required. The four remaining spaces will be placed at the northeast corner and used for the sale of four used cars. He said the Town of Manchester is in the process of a major street reconstruction project on Broad Street. Realizing the street will be narrowed and landscaping and crosswalks will be added, the applicant decided to reduce the number of entrances into the site from Broad Street. There will be one entrance from Broad Street, and a new driveway will be located on West Middle Turnpike as well. There will be no changes to the drainage system or the building.

In response to a question from Mr. Slegeski, Mr. Messier said the change in the width of Broad Street will have minimal impact on the property. If anything, there will be a slight addition to the area available to the applicant.

In response to a question from Mr. Stevenson, Mr. Faruk Gulseren, business owner, said there is one delivery per week, usually on Saturday night. He said there is never an issue because he is aware the delivery is coming and will move the cars before the truck arrives.

Attorney Penny said there is adequate parking on site with enough parking for four extra spaces. He said minimum lot frontage is 150 feet and there is 200 feet provided. Minimum front yard requires 40 feet and 71 feet is provided. Minimum side yards of 25 feet are required. The building has a side yard of 2.4 feet and the canopy has a side yard of 24.3 feet. A minimum rear yard of 30 feet is required and 60 feet is provided. The general special exception criteria require a suitable location and neighborhood compatibility. This property has been used for an auto related use since 1952. The streets are adequate for this use and four additional spaces for car sales will not impact the roadways or the intersection. No access issues were raised by Town staff. The site has adequate public utilities and the structures are suitable for their uses, he said.

Attorney Penny explained that his client will need two variances. The building was constructed in 1968 and approved by the Zoning Board of Appeals. One of the selling points of the building's location was it was further from the school than the building previously located on the same site. This, however, created a side yard setback of 2.4 feet. A variance is needed for the canopy as well. It has a setback of 24.3 feet and 25 feet is required. He said the Zoning Board of Appeals granted a variance to allow a setback of 16 feet for the canopy in March of 1993. The front yard of a corner lot is the side with smaller frontage; in this case it is Broad Street. Because the applicant is introducing another use, he is obligated to have the Zoning Board of Appeals repeat its approval. The hardship is created because the present building has existed on site in its current condition since 1968. He said the variance would not change the character of the neighborhood. There are no outstanding staff comments.

In response to a question from Mr. Haley, Mr. Penny said the applicant is not currently selling cars at the site.

In response to a question from Mr. Haley, Mr. Gulseren said there are cars currently parked in those four spaces. One is his, the jet skis are his, and the remaining cars belong to customers for repair. Mr. Gulseren said he did not plan to leave unregistered vehicles on the site.

In response to a question from Mr. Slegeski, Mr. Messier said the hatched area on the plan near space number 16 is a chain link fence. Mr. Gulseren added he has a proposal to sell propane, but it has not yet been approved by the propane company.

In response to a question from Mr. Slegeski, Mr. Messier said if a vehicle is located in the way of propane delivery or propane customers it would have to be moved. The propane would be placed in the fenced in area in back of the bollards. Mr. Slegeski said he did not see how the propane will work in that location.

In response to a question from Mr. Stevenson, Mr. Messier said the handicap space can be moved over one space. Mr. Stevenson asked that revised plans be submitted.

In response to a question from Mr. Gionet, Mr. Messier explained the plan he provided represents existing conditions. The bollards would remain for safety. He can move the handicap space over one or two spaces.

Chairman Stevenson asked for public comment either in favor of or in opposition to this application. No member of the public wished to comment on this application.

Ms. Bertotti said there were no outstanding staff comments.

The public hearing on this application was closed.

MUHAMMADU N. BELLY – application #2012-002 – request a variance to Article II Section 1.03.04(c) to reduce the rear yard setback to 20 inches +/- (3' required) for placement of a shed at 48-50 Wadsworth Street, Residence B zone.

Mr. Muhammadu Belly, 48-50 Wadsworth Street, said staff reviewed this application and asked him to provide photos of the existing shed and foundation. He said he e-mailed that information to Ms. Bertotti. The shed is mounted on nine pillars made of buckets filled with concrete.

In response to a question from Mr. Haley, Mr. Belly said the shed is existing.

In response to questions from Mr. Stevenson, Mr. Belly said he replaced a shed with a bigger shed but the rear of the shed is in the same place as the old shed.

In response to a question from Mr. Gionet, Mr. Belly said the foundation consists of nine buckets filled with concrete.

In response to questions from Mr. Slegeski, Mr. Belly said the buckets are in the ground as deep as the buckets are tall. The first shed existed when he purchased the house. He did get a permit for the shed but the rear yard setback is the problem.

Chairman Stevenson asked for public comment either in favor of or in opposition to this application.

Ms. Virginia Lux, 23 Summit Street, said her side yard abuts Mr. Belly's yard. When Mr. Belly purchased his house there was a 6' aluminum shed in this general location. Last winter the snow caved in the roof of the shed and the sides started coming apart. She said about mid-August, Mr. Belly removed the old shed and constructed a new shed. On August 24, Mr. Belly applied for a building permit. The Town was assured that the building was not less than 3' from the property line. A property inspection by Town staff revealed the shed was located less than 3' from the rear property line. A letter was sent to Mr. Belly in September giving him 20 days from the letter to respond; he did not. In October, Ms. Lux contacted the Zoning Enforcement Officer. On November 19, another letter was sent to Mr. Belly. The building permit that was issued included a plot plan that illustrated the shed would be 3' from the property line. Ms. Lux displayed photos of the view of the shed from her yard. She said the property value of her house will decrease with that size shed in its current location. The shed was built without a building permit and then when the permit was finally obtained, the location was misrepresented. She said allowing this variance would set an interesting precedent. Ms. Lux said we should all play by the same rules.

In response to a question from Mr. Haley, Ms. Lux said it would be a relief if the shed were moved back to 3' from the property line.

Mr. Davis reviewed the timeline. He was unsure when the shed was built. The building permit application was received on August 24, and it was noted the shed was 3' from the rear property line. On August 29, the permit was approved with the condition the shed be no more than 10' in height and 3' from the property line. An inspection was conducted. On September 20 a Notice of Violation was sent and no response was received. On November 8 an Order of Remedy was sent.

Ms. Bertotti said there were no outstanding staff comments. She said she did not receive an e-mail from Mr. Belly. She asked for the pictures for the ZBA to use in making their decision. Ms. Lux provided photographs.

In response to a question from Mr. Slegeski, Mr. Davis said the building permit stated the shed was a minimum of 3' from the property line and a condition of approval was that the shed should be no less than 3' from the property line. Mr. Davis measured the distance and the shed is 20' from the chain link fence.

In response to a question from Mr. Slegeski, Mr. Davis said this size shed does not require footings. It can be placed on the ground. He said most sheds this size are placed on a concrete patio.

In response to a question from Mr. Gionet, Mr. Davis said the shed is less than 10' high from ground to peak.

The public hearing on this application was closed.

JAMES S. & CYNTHIA L. ORFITELLI – application #2012-004 – request a variance to Article IV Sections 7.00.02, 7.01.01, and 7.03.02 to permit the removal of a legal nonconforming structure devoted to a nonconforming use, and replacement with a larger such structure at 18 Warren Street and 1 Village Street, Residence B zone.

Attorney Penny spoke on behalf of the applicant, James Orfitelli. He said the application for the variance was mistaken; it stated the structure will be larger, but in fact it will be smaller. The property consists of two parcels together zoned Residence B and is a portion of the Royal Ice Cream operation which has been at this location since 1931. There was a barn on this property that was 3,115 square feet and 20 feet at its highest point. The building predated zoning and had been used as a storage warehouse. There is no structure at 1 Village Street as the barn has been removed. Attorney Penny said it will be replaced with a 50' x 50' metal building that will meet all zoning requirements. The steel building will be light grey with a zinc aluminum roof and will match the principal manufacturing building. A sample was provided. This proposal will reduce the size of the nonconforming structure by reducing the height and eliminating outside storage containers. He said moving the building further back from Warren Street will not result in an expansion of the nonconforming status. There will be no new employees or any other changes. The barn was a nonconforming structure and has been removed, and it will be replaced by a less nonconforming structure. The cost of the new building will exceed 50% of the cost of the barn. Strict application of the zoning regulations will create a hardship. The business operated continuously at this site since before zoning.

In response to a question from Mr. Gionet, Attorney Penny said all outside containers would be removed if this variance was granted. His client is agreeable to that being a condition of approval.

Chairman Stevenson asked for public comment either in favor of or in opposition to this application. No member of the public wished to comment on this application.

Ms. Bertotti said Town staff has reviewed this application. She said one peculiar thing about this structure is it exists on top of a sanitary sewer line, but the line will be abandoned this summer as part of a project to relocate the sewer line to Warren Street. The applicant is aware that when he applies for a building permit, there may be delays for this reason.

The public hearing portion of the meeting was closed at 8:04 p.m.

I certify these minutes were adopted on the following date:

Date March 28, 2012

James Stevenson, Chair

**NOTICE: A DIGITAL RECORDING OF THIS PUBLIC HEARING CAN
 BE HEARD IN THE PLANNING DEPARTMENT.**

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