

COMMISSION ON THE CITY PLAN - PUBLIC HEARING - NOVEMBER 5, 1959 - 7:30 P.M.  
MAYOR'S CONFERENCE ROOM, CITY HALL, MIDDLETOWN, CONNECTICUT

Present were: Chairman Robert Traverse and Commissioners Dillon, Higgins, Misenti, Passanesi, and Mayor Clew.

Meeting was called to order at 7:30. The Chairman read the agenda:

"AS THE ZONING COMMISSION it will consider an amendment of Section 7 (e) of the Zoning Ordinance now in force, the request that it be repealed and that the following be enacted in lieu thereof:

"(e) Any structure to be used in whole or part for dwelling purposes shall provide within the structure above ground level, exclusive of open porches, open or closed breezeways, entrance platforms not enclosed, or garages, the following square footage of living space per family:

- "1. 750 square feet in one story structures;
2. 1200 square feet in two story structures, of which not less than 600 square feet shall be on the first floor."

Attorney John Pickett, of Palmer and Pickett, Middletown, appeared for Mr. Haftel. First, he asked about the presence of the microphone on the table and the presence of a second stenographer. He was told that both were on trial and that the proceedings would be recorded as usual.

Mr. Pickett:

"I represent Mr. Morris Haftel, the petitioner, and owner of land in the Westfield section of Middletown. For the record, Mr. Haftel is one of the largest builders in Middletown, if not the largest, for some years past. He is the constructor, or builder, of homes in the medium price field. At present, he is building homes in the Westfield section in the \$14,000 range.

"The purpose of the petition here tonight is to allow any person, whether he be a sub-divider or not, to erect a two-story home in Middletown. At the present time, the zoning ordinances in effect, Section 7 (e), provides only for the erection of a one-story home. You are aware of the fact that the one-story home in Middletown must have 750 square feet of living space. In the course of his construction, Mr. Haftel and his firm decided it would be a good thing for the sub-division if they were allowed to erect two-story homes, called "the colonial home, a full 2-story home, not split-level, Cape Cod, or one-story homes.

"In petitioning for this, the change or amendment of the zoning ordinance Mr. Haftel seeks is of no personal benefit (he benefits only as a builder or resident) but it is a correction of the zoning ordinance applying to all persons seeking to build in our city. This might have been presented by the Zoning Commission, because it is a rather obvious oversight in the ordinance, since people might desire to build two-story homes. It is our main contention that the proposed change would merely correct an obvious and unintended omission. At present, we contend, the ordinance is of doubtful legality because of this omission. The sub-section which we seek to amend recognizes only one-story homes. In the passing of this ordinance there was no reference made to a two-story, one-family house. It is quite possible that if we desire to seek building permits for the type of home we hope to erect, the Board would permit us to get such permits because of the obvious ambiguity of the ordinance.

"I direct your attention to the portion of the ordinance following the semi-colon, where the words are concerned with the requirement that there must be 750 square feet on the ground level. The obvious omission is that the subsection (e) provides that there must be a total of 750 square feet erected in Middletown, and of which, 750 square feet must be on the first floor above ground level. It would seem that the legislative intent of the Zoning Commission at the time was that all homes have a minimum of 750 square feet. Whether the second reference to 750 square feet was a typographical error or oversight we do not know. We merely desire to correct an unintended omission. Having called your attention to the error in the zoning ordinance, we ask you then to choose a figure which would rectify the situation; that is, a minimum square footage for two-story homes. We have asked for 1200 square feet for the two-story house, which we believe to be a reasonable figure. We base this belief on the fact that the apparent legislative intent was to have the minimum 750 square feet, not higher. It is quite obvious that 1200 square feet of living space is more than 750 square feet.

"Now, Mr. Chairman and Members of the Board, I further direct your attention to the fact that Middletown is quite out of step in not having such a provision for two-story homes. I respectfully call your attention to such towns as Manchester, Portland, West Hartford, and Durham, four of the many, many towns in our state having zoning ordinances and recognizing the two-story house. It would seem that the time the existing ordinance was drafted we simply overlooked the fact that people in the future would desire to build a two-story medium price house. At that time, the ranch house was in vogue and popular; but people's desires change and we are faced with the situation where people who desire to build, sell or purchase, do sometimes want a medium priced two-story home.

"I have mentioned some of the towns in our area - Middlefield I did not mention because it has no zoning. Haddam I did not mention because, while there is zoning in Haddam, the Commission in that town felt there was no need for any such restrictions at all, and there is no restriction regarding square footage on any type of home.

"To prove that 1200 square feet is a reasonable minimum, I submit that the minimum set forth by Federal Agencies, F.H.A., etc., is smaller than the area we are petitioning for. While it is true that I represent a sub-divider who desires to erect this type of home within his sub-division, I again wish to point out that at present the individual lot buyer, or the individual who desires to construct his own home, simply cannot choose the two-story, or Colonial type home in Middletown unless he is able to spend about \$20,000.

"In further contention, in allowing a sub-divider or any other person to construct a two-story home you provide certain benefits to the community and to the sub-division:

1. It lends variety within the sub-division. An attractive looking sub-division enhances not only the immediate area in which it is located, but also enhances, beautifies, and increases the value of the entire area in which it is located.

2. It is quite possible in our sales, and requests for sales show this to be true, that some home buyers desire larger floor space on two floors. To be sure, there are several housewives who do not want 1200 square feet to clean and maintain; they are satisfied with 750 square feet. However, for those who do desire a two-story home, enactment of this amendment does allow a larger floor area within the price bracket which can be afforded by the greater number of our citizens. Should they be able to spend more, and afford more than 1200 square feet, I am sure there are many fine contractors in our area who are more than happy to build a customer the home he may desire.

" 3. A two-story home provides bedrooms on a second floor for those desiring it. I am told there are many who have an aversion to sleeping on a first floor. Probably this is a minor point, but worthy of your consideration when you determine whether Middletown home owners are entitled to a choice of a two-story home.

"I have attempted to present the reasoning behind our petition - the reasoning that would show this is no more than an unintended omission and that the 1200 square feet would provide a reasonable restriction for the two-story home. I think the best way I could describe what I have in mind is the use of visual aids. Accordingly, I am giving to you two photographs of the same home, which contains 1202 square feet of living space, exclusive of the sun porch on the left side of the photograph. There is a garage on it which does not count in our computation, nor would it count in the ordinance as written, or the amendment.

"I have architectural drawings of a home which contains 1246 square feet of living space. It is, by accident, the type of home the petitioner seeks to build in his development on Westfield Street.

"We have with us tonight the architect who prepared this drawing, Mr. Segerberg. Mr. Segerberg is licensed in the State of Connecticut. Mr. Segerberg, how long have you been in practice?"

Mr. Segerberg:

"About 34 years in Connecticut."

Mr. Pickett:

"In the course of those 34 years, you have drawn many homes and are familiar with the building trade. You will agree Mr. Segerberg is an architect of long standing, and is an expert in this field.

"Mr. Segerberg, are these the sketches you prepared for Mr. Haftel?"

Mr. Segerberg: "Yes."

Mr. Pickett: "You are here tonight at my request?"

Mr. Segerberg: "Yes."

Mr. Pickett: "Directing your attention to the type of house sketched here, what size family can this house accommodate?"

Mr. Segerberg: "A family of five."

Mr. Pickett: "On Page 2 - the first floor plan - what rooms are included on this first floor?"

Mr. Segerberg: "Entrance hall, 7'4" x 11'5", has stairway and closet. Living room, 11'5" x 18'. Dining room, 10'7" x 12'. Kitchen, 13'6" x 10'7". The kitchen also contains a broom closet and cupboards, sink and laundry tray. On Page 3 - one bedroom, 12' x 12'5" has large closet. One bedroom, 10'7" x 15'3" has good-sized closet. A small room, 9'1" x 11'3", and that has two large closets. The bathroom is 5' x 7'4". There is also a linen closet."

Mr. Pickett: "You mentioned you had been in the profession for 34 years. In the course of your employment, have you had occasion to sketch this home?"

Mr. Segerberg: "Yes. There are seven of these houses in this area."

Mr. Pickett: "This contains less square footage than the home you have designed for Mr. Haftel?"

Mr. Segerberg: "Yes."

Mr. Pickett: "You have had considerable contact with the needs of families and their houses. Does the type of house you have designed containing 1202 square feet adequately house five people?"

Mr. Segerberg: "Yes."

Mr. Pickett: "There would be no public welfare hazard involved in this type of home, no tearing down of the neighborhood, and no fire safety hazard. In your opinion, would it be correct to say that the construction of this type of home in the subdivision contemplated by Mr. Haftel would be of benefit aesthetically and materially to the subdivision and the area?"

Mr. Segerberg: "We have found that a two-story home increases the value of surrounding homes."

Mr. Pickett: "Are homes in that development now one-story or 1-1/2-story homes?"

Mr. Segerberg: "Yes."

Mr. Pickett: "Of course, while we have shown sketches of the home we hope to erect, this ordinance applies not only to this sub-division but to every section of the city. These sketches would not be binding if this ordinance is passed, and we present them only to show that 1200, or 1202 square feet of space in two stories is adequate and of benefit to our community.

"If this petition is denied, we have not suffered to any great extent. We have permission, and we intend to continue with the construction of ranch and Cape Cod homes, but we urge that with the construction of a two-story home, the sub-division and the general neighborhood in that portion of Westfield would be a better place in which to live.

"The lot sizes, of course, would remain the same, regardless of the size of the house, the style of the house, or the number of stories of the house.

"In conclusion, I do want to point out that the zoning ordinances of our town, and every town in the state, and the country, must have a relation - must be based on the public health, the safety, and the welfare of the town or community in question. The ordinance, as it now stands, is confiscatory in nature; it prohibits a land owner from erecting a two-story house unless he is wealthy. It is not right to have our minimum standards geared for the wealthy man. When we restrict a land owner, a home owner, or a business man in his employ or constitutional rights, there must be a good reason. The courts of our state and nation have amply elaborated on this reason - that all zoning ordinances must relate to the public health, safety, and welfare of the people.

Atty. Theodore J. Raczka, Ridgewood Road:

"I would like to expand my own views on this petition, and the effect it may have on our community. First, no one in Middletown, in his right mind, is against a two-story home. Many of us live in two-story homes. We have been able to build two-story homes with this ordinance in effect. There is nothing in our ordinances which prohibits a two-story home; they are being built every day in Middletown by all types of people. There is a two-story immediately west of where you live, Mr. Chairman; sixteen two-story houses have been built within the past year at a cost of \$13,500 to the buyer. So a two-story home does not belong only to a wealthy person. Zoning ordinances are to protect all of us; it is not the purpose of zoning to benefit any one. Each town has certain minimum standards by which we hope the town will progress. I have always been interested in good zoning; not in "minimum" zoning which will hurt the growth of the town.

"What will this house look like? No one will object to this." (The sketches).

"He says this is only an example - they may not look like this. I have looked around Newfield Street, Broadview Heights, Hendley Street, at two-story houses; the ones on Newfield Street have 760 square feet; the ones on Hendley Street have 780 square feet. Homes have been built in Middletown every day by all types of people.

"He says the ordinance only provides for one-story houses in Middletown. You will find that any person can build any house that has 750 square feet of area as the minimum on the first floor. He can put any number of floors above it, but the first floor must contain 750 square feet. There is no limitation upon Mr. Haftel or anyone to add to the minimum area above the first floor; he alone can decide that. There is nothing doubtful about this; there is no error or omission that I can see. I did not add the word "all" the minimum of 750 square feet shall be on the first floor. The word "all" does not appear in the ordinance. If we are going to amend our regulations, we should approach it intelligently, carefully, thoroughly, and with a great deal of study. We should not let it be done by a speculative builder - to set the standards in our city. I will be the first to say that our zoning ordinances need revision. We don't just build one-story houses. Some provision should be made for cellars - we must provide for utility space - and its relation to square footage. Some houses provide for one and one-half stories; many of those are being built in Middletown. Then the split level - how do you fit a split level into this ordinance? Then - what is a story? Is the two-story the same as a one and one-half story? There is no definition of a story - how do we determine it? This will apply to all zones, including restricted zones as well as medium density. I have no interest in who proposed the change; he owns this property, but this will apply with equal effect to all people in the entire city of Middletown. Let's forget who is petitioning; this affects the whole city of Middletown.

"The question of living space - the ordinance which Mr. Pickett proposes does not specify how this space shall be computed. Do you compute the area around the outside, the center of the room, or what? A good ordinance should provide for that. My idea of a good ordinance is that of the town of Glastonbury. In their AA Zone (our Medium Density Zone) they provide "Dwellings on one floor shall have a minimum floor area of 1250 square feet." The minimum is not up to me or Mr. Haftel - that should be determined by the Board. "Dwellings without cellars, minimum floor space shall be increased by 120 square feet for heating. One and one-half stories, with living area on ground floor, shall have 1001 square feet and on second floor, if finished (this should make a difference) an additional 350 square feet; if unfinished, 600 square feet. If a dwelling has two full stories, the minimum square footage will be 1500, with at least half on the first floor.

"It isn't important that they specify 1500 square feet, but it is important that they provide a gradation for these various types of homes. One house varies from another, and the living space requirements should vary with it. They also have a definition of "living space": 'All living quarters, to qualify as such, shall have ceiling height of 7'3".'

"This amendment to the ordinance is more ambiguous than the ordinance we have at the present time, and therefore, it is dangerous. I believe you have been working on revision of our rules and regulations. You shouldn't be hurried into something that is being proposed by a petitioner until you have had a chance to study this type of ordinance.

"We have no objection to a two-story house. Our foremost objection is that 600 square feet on the first floor is too small. The house is 20 x 30 and I do not believe there is such a house in Middletown, built before zoning. All houses in this area since zoning were built with 750 square feet on the ground floor. If one of the purposes of the zoning is to protect the value of houses in the area, - I question that. There is nothing to prevent Mr. Haftel from building two-story houses now; there is one opposite me, but it has a minimum of 750 square feet on the ground floor. He was able to build it then, why not now?

"His story two weeks ago was that he owned these fourteen lots and he wanted to build a model home. If that sold, he would build sixteen homes. They turned him down - that was not grounds for variance. Now he says our zoning regulations prohibit two-story houses in Middletown. I say we are building them all the time. We have no objection to him beautifying our area if he thinks this is the way to do it. We believe you should decide - it is not a matter which a minimum-standard builder should foist upon us. That is my own personal view."

Atty. Pickett: "I want to cross-examine Mr. Raczka. If he is appearing as an attorney, I will withdraw my point - if he is appearing as a citizen, I have that right."

Mr. Raczka: "I am not speaking as an attorney, but object to the cross-examination."

Atty. Pickett: "I am an attorney and I am representing a petitioner. In accordance with the laws of the State of Connecticut, there is the right of cross-examination." (Atty. Pickett cited a Zoning Board of Appeals public hearing case to establish his claim) "Mr. Raczka made some glaring, or intentional, errors in his declarations. You must rule on this. We have presented facts, and I want the right of cross-examination in accordance with the rules I have read here tonight."

Commissioner Higgins: "I object of any cross-examination. This is a public hearing, not a court of law."

Chairman Traverse: "We will have no cross-examination."

Mr. Morton Leonard: "Up to the time I came in here tonight I felt we had a good building code in Middletown. In view of what has been said here, I would recommend that the building code be modified or revised in favor of two-story houses. In Mr. Pickett's presentation, he has already installed a new limitation that would set the minimum at 1200 square feet. Now, we can build with less, if it has 750 square feet on the first floor. The 600 square feet which he proposes presents a reasonably small

building. 600 square feet would constitute a 20 x 30, or 24 x 25, foundation. 24 x 25 you will agree is the size of a two-car garage. Mr. Pickett also made comment that the small building with 600 square feet on the ground floor, of which photographs were shown, was enhanced, I believe by means of adding a garage and porch which tend to make the building look considerably bigger than it is. If we allow this procedure and say that only 600 square feet are enough for the ground floor, it does not mean that any of these things need be added. People will build whatever they choose as long as they meet the requirements of the building code. 24 x 25 will be a cube. Whether or not this becomes a desirable thing for the community, or whether it improves the community is somewhat of a question and there is some question in my mind as to whether or not this is an improvement. "

Mrs. John R. Camp: "I beg that nothing be done in a hurry. This business of (Ridgewood Road) railroading a change in the ordinance at the request of one building contractor is not for the best interest of the community. It is my recommendation that thought be given to Mr. Raczka's point of gradations in the ordinance."

Virginia Gilbert: "I wish to support Mr. Raczka's presentation and all his (Milbrook Road) statements regarding the careful study of any change of ordinances."

Mrs. George Jensen: "I would like to refer to a book entitled "Planning the (Higby Road) Home for Occupancy", which was published in 1950 by the Public Welfare Service, in which, for a family of five, they recommend a minimum of 1400 square feet. This represents the normal requirements for physical and mental health."

Chairman Traverse: "We have a copy of it."

Mr. Leonard: "I want to say that with this proposal for a 600 square foot house, maybe we are losing sight of what is actually being talked of. With a minimum of 750 square feet on a floor, there would be 1500 square feet; a difference of 300 square feet in a building. How this happens to affect the value of property should be taken into consideration by this Board."

Atty. Pickett: "I am not sure how to make reference to this point, and I will do it by saying that there was an oversight. First of all, the houses alluded to in Attorney Raczka's comments, and I particularly make reference to the sixteen near your home, are not of this type at all; they are 1-1/2 story, such as are being built by the petitioner, not the two-story type. If I am correct, I think he said I have had no respect for minimum zoning. I disagree I think it would be fine if everybody would build a \$25,000 home, but a man has a right to use his own land as he sees fit, subject to the good of the community, and the general welfare, safety and health."

"Mr. Raczka and I agree that no one would object to these plans - we agree that sometime the requirements should be revised; however, as a resident, as a landowner, and as a citizen, the petitioner has a right to request that we attention to an unintended omission and that it be rectified by the granting of this ordinance."

"If I said it is illegal to build a full two-story home in Middletown, I am in error; I did not mean to say that. Again, because Mr. Raczka says I did say such a thing, invite the Commissioners to see Section 7, Subsection (e) for the language of that section. We must remember that it states "dwellings must have a minimum of 750 square feet"; and after the semicolon it says, "of which a minimum of 750 square feet shall be on the first floor." I think this strong evidence of an error, and it should be clarified immediately.

"Mr. Raczka also said it would be well for the commissioners to forget from whom the petition comes. I agree - This could have come from the Commission, or from anyone, including Mr. Haftel. He is no more nor less privileged than any other resident of our town.

"As far as definition is concerned, I call attention to the building code (this is not what we wish to change, but the zoning ordinance). You are not deciding or enacting a zoning law for the personal desire of a segment or individual in our town, whether here for the petitioner or in opposition. The rule is that the zoning ordinance must be reasonable and fair and just. They must be related to the health, safety and welfare of the community. Of all previous speakers in opposition, only one made reference to the public health, safety and welfare aspect of what we propose, a 1200 square foot home. I am sure it was sincere but I would call attention to the fact that the minimum square footage allowed is 750 square feet, considerably less than 1200. Reference was made to the difference between 1200 and 1500. The difference to a family desiring to buy such a home would be about \$4000.00.

"The sketches submitted are merely evidential; changes could be made and I emphasize that point. But how else are you going to get a home, regardless of its design, with 600 square feet on the first floor and 600 square feet on the second floor, unless it substantially conforms to this sketch? We have heard an architect with 35 years experience, who has designed such homes, and he contended that the home shown in this photograph is quite adequate for a family of five, and no mental strain was placed on the members of that family.

"I am not going to belabor the point by stating the law at any great length, but for the record I do want to cite certain cases: In your deliberations, you might wish to inspect these cases with reference to the zoning ordinances.

"Wade vs. Town Planning and Zoning Commission. 145-Conn-592, Page 594.

DelBuono vs. Board of Zoning Appeals. 143-Conn-673.

Service Realty Corporation vs. Zoning Board of Appeals. 141-Conn-632 at Page 635.

Yokel on Zoning, Page 419, Section 169. (Gives great clarity to the particular point of zoning designed to restrict square footage)

"An interesting note might be injected at this time: While Connecticut is one of the few states that views such restrictions as constitutional, there are states, like Pennsylvania, that have found that the restriction of square footage at all is unconstitutional and illegal, as too great an imposition on the home owner.

"Sienefsky vs. Lawlor. 12 N.W. Second 387 (That Court found that 1300 square feet was an unreasonable limitation.)

Brookdale vs. Johnson. 10 Atlantic Second 477 N. J.

"I mentioned the Pennsylvania case holding any restriction of floor space at all unconstitutional.

"Appeal of Nedinger - 104 Atlantic Second 118.

"In conclusion, there are five points that I think are worthy of careful consideration as a basis of this much needed amendment:

- "1. We are here tonight because of a mere unintentional omission in the zoning ordinance.
- "2. The figure of 1200 square feet is a reasonable restriction. It is not pulled out of a hat - it is based on the sketches that we have shown this evening.
- "3. It allows the home buyer of the moderately priced home a choice of homes. He can build a 2-story home now, if he has the money. I am talking about a full 2-story home at this popular priced range, where the young purchaser may purchase this type of home.
- "4. I contend that this type of home does not detract from the general welfare but promotes the general welfare, whether it be a subdivision or the general neighborhood.
- "5. The present law, without the amendment, is ambiguous, and far too harsh and unreasonable.

"The final thought I want to give to you to consider carefully is a quote from MacQuillan - Second edition, Volume 3, Section 1048, Page 504:" (Atty. Pickett quoted from this work regarding the exercise of police power and the tendency to assume that a public desire is the equivalent of a real public need and to overlook personal guarantees).

"The zoning law as it now stands is unreasonable. This amendment is reasonable and I ask that it be enacted."

Mr. Richard Rogers:

"I am not sure what the definition of public welfare is - I submit that the public welfare would include taxation. If these houses are built in the minimum price range, and the architect has said that this house would sell for 13 - 14,000 dollars, I am not sure how much we would be affected. It costs \$272 to send a child to school. or every house built our taxes will go up. Is this public welfare, I am not sure?"

Dr. Heinz Gronau: "I have no grudge against the petitioner or his attorney. I merely raise the thought of taxation. Last night I had the opportunity to attend the joint meeting of the new Boards of Education and we discussed this point of expanding population. There is some talk of a high school in that area to take care of the growing need. This type of development is the thing that is promoting a greater tendency toward the type of problem we have in the educational field. I don't see how we can avoid raising taxes, with three kids to a house. Mayor Clew is as anxious to keep taxes down as I am. I am not here to rebuff anyone; I just want to raise the point that the taxation problem in Middletown is not acute, but is getting to be."

Hearing adjourned at 8:55.

Respectfully submitted,

*Claire Hedges*  
Claire Hedges,  
Secretary