

# Agenda

# City of Middletown Zoning Board of Appeals

February 15, 2023  
7:00 PM

Common Council Chambers

**Meeting called by:**

Jim Burtis, Chairman

**Clerk:**

Martina Tu

**Members:**

Wendy Rodrigues, Marc Woody, Mary Ann Cavallaro, Jim Burtis, Keith Hallock

Orange Terrace Properties, LLC.  
Orange Terrace  
Area variances for a proposed six-lot subdivision

# APPLICATION

## ZONING BOARD OF APPEALS

### City of Middletown, New York

Date deemed complete \_\_\_\_\_  
Accepted by \_\_\_\_\_

Date 12/23/2022

*Items 1, 2 and 3 are required to be completed*

1. Address of Subject Property 3,5,7,9,11 & 13 Orange Terrace, Middletown, NY

Section 33 Block 4 Lot 2,3,4,5,6 & 7 Current Zoning District R-1

Building: Existing \_\_\_\_\_ New X

2. Owner of Property ORANGE TERRACE PROPERTIES LLC

Owner's Address 199 Lee Avenue, Suite 663

City Brooklyn State New York Zip 11211

Phone numbers: Home: \_\_\_\_\_

Business: \_\_\_\_\_

Cell: \_\_\_\_\_

3. Applicant name ORANGE TERRACE PROPERTIES LLC

*If different from Owner*

Applicants Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone numbers: Home: \_\_\_\_\_

Business: \_\_\_\_\_

Cell: \_\_\_\_\_

4. **AREA VARIANCE.** An appeal is requested from the Zoning Board of Appeals to the Zoning Ordinance, Section 475 of the Code of the City of Middletown. Indicate the Article, Section, Subsection, Paragraph, Subparagraph and Title of the Section that are the subject of the appeal. Indicate the necessary amount of relief requested. Additional sheets may be attached if more space is necessary.

Section 475-9, R-1, F(1)(d)	Required Dimension	75' Width	Actual Dimension	50' Lot Width - lots 4-7 and 44' lot width lots 2 and 3	Variance Requesting	25 foot variance for lots 4,5,6 and 7 and 31 foot variance for lots 2 and 3
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a. The variances for six pre-existing, non-conforming lots which are otherwise conforming.

b. \_\_\_\_\_

The Zoning Board of Appeals, shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances, as defined herein. The Board of Appeals, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider whether:

- (a) An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; and
- (b) The benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; and
- (c) The requested area variance is substantial; and
- (d) The proposed variance will have adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (e) The alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

\_\_\_\_\_  
 The 6 Tax Lots were created by a prior approved and filed subdivision map. The  
 \_\_\_\_\_  
 lots have become non-conforming by subsequent zoning amendment. These lots  
 \_\_\_\_\_  
 would each be buildable as pre-existing non-conforming lots but for applicant,  
 \_\_\_\_\_  
 mistakenly having purchased lots in the name of just one company instead of by  
 \_\_\_\_\_  
 individual owners. The neighborhood is generally developed with homes on similarly  
 \_\_\_\_\_  
 non-conforming lots. There will be no adverse impact on the neighborhood. The  
 \_\_\_\_\_  
 cost of the road improvements would be prohibitive of development with less than 6 lots.  
 \_\_\_\_\_



**6. AN INTERPRETATION OF THE ZONING ORDINANCE.** Explain the circumstances of the Section in question, the Title of the Section, the nature of the request, and the person or agency making the original determination. Additional sheets may be attached if more space is required.

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**7. SIGN ORDINANCE.** Indicate the section to be varied, the title, and the amount of the variance in excess of the ordinance. Explain all conditions that require the variance to be issued. Additional sheets may be attached if more space is required.

Section/ Title	Required Dimension	Actual Dimension	Variance required
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**8. Sign at the place indicated and print name.**

Signature of applicant *Moses Babad*

Printed name and title MOSES BABAD

Date 12/23/22

**CITY OF MIDDLETOWN, N.Y.  
PLANNING BOARD  
RECORD OF VOTE**

FOLLOWING WAS PRESENTED

By Andy Bitto

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Sec'd by Dan Higbie

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Date of Adoption: 10/05/2022

NAMES

	AYES	NOES	ABSTAIN	ABSENT
CAPOZELLA	X			
MADDEN		X		
NAUMCHIK				X
BRITTO		X		
WITT		X		
HEWSON				X
HIGBIE		X		
TOTAL	1	4		2


WHEREAS, Orange Terrace Properties, LLC. filed an application for Subdivision located at Orange Terrace, involving Lots 2, 3, 4, 5, 6, and 7 (Section 33, Block 4).

WHEREAS, after due notice a hearing was held by the Planning Board on October 5, 2022 at 7:00 p.m. in the Common Council Chambers, City Hall, Middletown, New York, and

WHEREAS, all testimony has been carefully considered.

WHEREAS, at said hearing the Planning Board voted against recommending that the Common Council look favorably on this application.

Filed with the Clerk of the City of Middletown  
on: 10/07/2022

  
Richard P. McCormack  
City Clerk

**CITY OF MIDDLETOWN, N.Y.  
PLANNING BOARD  
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on: 10/07/2022

  
Richard P. McCormack  
City Clerk

Department of Public Works  
City of Middletown

Jacob S. Tawil, P.E.  
Commissioner of Public Works



16 James Street  
Middletown, NY 10940  
Phone: 845-343-3169  
Fax: 845-343-4014

January 25, 2022

Fusco Engineering & Land Surveying  
233 East Main Street  
Middletown NY 10940

Re: Orange Terrace Development  
Middletown NY 10940

Dear Mr. Fusco,

The road extension and sewer connection plan submitted to our office on January 18, 2022, showing a revision date of December 21, 2021, and the revised public improvements cost estimate are hereby approved.

If you have any questions or concerns, please feel free to contact the office.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacob S. Tawil", written over a horizontal line.

Jacob S. Tawil, P.E.  
Commissioner of Public Works

JT/kg



## ORANGE TERRACE PROPERTIES, LLC NARRATIVE

This document supplements the application to the zoning board of appeals for an area variance.

The applicant, Orange Terrace Properties, LLC, purchased six properties on Orange Terrace in Middletown, New York. Specifically, 3, 5, 7, 9, 11 and 13 Orange Terrace, Middletown, New York.

Each property is located in Section 33 Block 4 and are Lots 2, 3, 4, 5, 6 and 7, respectively.

Lots 4, 5, 6 and 7 are 190 feet by 50 feet. The Fifty foot front lot that is contiguous to Orange Terrace.

Lots 2 and 3 are 190 by 44 feet.

### The Current Zoning Code

The property is in the R-1 zone. This zone permits one family dwellings, not to exceed one dwelling building on each lot §475-9(1).

Section 475-9(f) states in pertinent part:

Yards required.

- (1) Each lot shall have front, side and rear yards with depths and widths of not less the following:
  - (D) Front yard width: 75 feet, except that where the allowable lot area is less than 7,500 square feet, then the minimum shall be 50 feet for valid pre-existing lots.

The legislation suggests that prior to the enactment of the 75-foot-wide requirement for a front lot, Middletown was satisfied with lots that were 50 feet wide for a front yard.

Specifically, Section 475-9(e) states that each one family dwelling shall be located in a lot not less than 7,500 square feet and not less than 75 feet wide. However, there is an exception. If the lot area is restricted by adjoining lands owned by others and where such restriction has not been created by the individual or entity seeking to construct the use on such substandard lot, in such cases the minimum lot area shall be 5,000 square feet and the minimum width shall be 50 feet for existing lots.

The tax map suggests that Lots 27, 28, 29.2, 31.1, 32, 33, 7, 6, 5, 4, 3 and 1 was from a subdivision map from Tomas/Vitcha & Edwina subdivision map.

When this subdivision occurred, the front yards had a width of 50 feet. Based upon the tax map, it appears there were 12 lots in that subdivision, and of those 12 lots, 10 of the front yards had a width of 50 feet or less.

Based upon the above, Middletown approved that subdivision of 50 feet or less.

### **The Variance Application**

The property owner applied to the planning board of the city of Middletown ("Planning Board") for a five-lot subdivision. As previously mentioned, the property owner owns six lots, that is Lots 2, 3, 4, 5, 6 and 7 in Block 4 Section 33.

A copy of the tax map is annexed as **Exhibit A**.

Fusco Engineering and Land Surveying, PC prepared the subdivision map with a last revision date of December 21, 2021. Copy annexed as **Exhibit B**.

The property owner would like to develop a one family house on each lot. Lots 4, 5, 6 and 7 have 9,500 square feet. Lots 2 and 3 each have 8,360 square feet. Each lot meets the bulk area requirements for the R-1 zone.

On October 7, 2022, the Planning Board voted against recommending that the common council look favorably on the application. **Exhibit D**.

The Planning Board did not give any explanation as to why it did not look favorably upon the application, however, one reason may have been is that each lot lacks the required frontage of 75 feet.

Accordingly, the property owner seeks an area variance for each lot.

For Lots 4, 5, 6 and 7, the property owner seeks an area variance of 25 feet for the front yard width. For Lots 2 and 3, the property owner seeks an area variance of 31 feet for a front yard width.

Under the General City Law, and as the city of Middletown acknowledges in its application, the Board of Appeals in granting of an area variance shall grant the minimum variance that it shall deem necessary and adequate, at the same time preserve and protect the character of the neighborhood and health, safety, and welfare of the community.

Under Section 81-b of the General City Law, an area variance shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations. Under Section 4 of General City Law 81-b, in making the determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board should also consider:

- (i) Whether an undesirable change will be produced in the character of the neighborhood or detriment to the nearby properties will be created by the granting of the area variance;
  - (ii) Whether the benefits sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
  - (iii) Whether the requested area variance is substantial;
  - (iv) Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district; and
  - (v) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals but shall not necessarily preclude the granting of the area variance.
- (c) The board of appeals in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate, and at the same preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The applicant seeks to develop six parcels of land.

Initially, the applicant sought before The Planning Board to combine two of those parcels, that is Parcels 2 and 3, so that it would have five total parcels. It appears the Planning Board rejected this proposal.

As demonstrated below, there is no detriment to the health, safety and welfare of the neighborhood or community if the ZBA grants the variance to the applicant.

First, it will not result in an undesirable change in the character of the neighborhood. The neighborhood could fairly be described as part of a Block 4 which is bounded by Corwin Place, Mountain Avenue, and Orange Terrace. It has 28 separate lots. Eight of those 24 lots conform to the front yard requirements (Lots 8.1, 10.2, 12, 14, 16, 26, 29.2, and 33). The remaining 21 lots have a front yard of 50 feet or less. Stated differently 75% of the those lots have frontage of 50 feet or less.

The applicant's lots meet the bulk requirements. Lots 2 and 3 have 8,360 square feet. Lots 3, 4, 5, 6 and 7 each have 9,500 square feet.

This makes sense because under the original subdivision map, each lot only had 50 feet of frontage for the front yard. A copy of the original map is annexed as **Exhibit C**.

Lots 2 and 3, originally Lots 45 and 44 feet of frontage on the filed map. Tax Lots 4, 5, 6 and 7 corresponding to the subdivision map lots 43, 42, 41 and 40, respectively, also had 50 feet of frontage.