

**CITY OF MIDDLETOWN  
ZONING BOARD OF APPEALS  
MINUTES**

**February 15, 2023**

A meeting of the Zoning Board of Appeals was held in the Common Council Chambers, Second Floor, City Hall, 16 James Street, Middletown, New York on February 15, 2023 at 7:00 P.M., Jim Burtis presiding.

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

Other Attendees: Richard J. Croughan, Corporation Counsel; Walter Welch, Building Inspector

The Pledge of Allegiance was said.

Mr. Burtis: If anyone has arrived tonight for an item that was formerly on the agenda, 40 Adams Avenue, that's been deferred to next month's meeting.

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

Mr. Burtis: The first item on the agenda would be the applicant. If you would like to please come forward and introduce yourself.

Mr. Dropkin: Yes. Thank you, Mr. Chairman, and good evening to the members, counsel. My name is Philip Dropkin. I'm with the firm of Fabricant, Lipman & Frishberg. I'm here representing Orange Terrace Properties, LLC and their application for a variance.

I know that I would like you also to be aware that I have been the Chairman of the Town of Goshen ZBA, and I'm currently the Chairman, Deputy Chairman, of the Planning Board, so I am not insensitive to the issues that you have to wrestle with, nor am I insensitive to the concerns of the members of the community.

Mr. Burtis: Thank you.

Mr. Dropkin: I have brought this with me before I start the more formal part of my presentation. The yellow is -- the yellow shows the homes that will be -- the lots that would be subject to the subject variance application.

They are 50' frontage on Orange Terrace Lane. The orange shows the other homes in the neighborhood that also have 50' frontage. The point being that the variance being requested in the respect of the width of the facing you would have on Orange Terrace would be consistent with the community and would not disturb the character of the neighborhood.

Now, I understand from looking at the YouTube from the last meeting, people are very agitated. They're concerned about water. They're concerned about sewer. They're concerned about traffic.

Water and sewer is clearly going to be an issue, an engineering issue, that should, and I would expect, be reviewed by the Planning Board and referred over or not to the Common Council.

Issues of traffic likewise should follow that format and that process.

May I show this to the audience?

Mr. Croughan: Sure. You could probably turn it around so that -- I think the Board is familiar with this.

Mr. Dropkin: So having said that, the matter before you comes to you following a recommendation from the Planning Board to the City Council to deny the applicant's request to erect six one-family homes in each of Lots 2 through 7 in Section 33, Block 4.

We now seek your consideration to erect one-family homes on each of the lots because otherwise, and for among other reasons, the building of the road extension, which will be undertaken at the expense of the applicant, would make the project cost prohibitive.

I did speak with the applicant today, and he told me that since he was prepared to commence the construction of the project, and he thought it was December of '21, construction costs have gone up 40 percent, so if you sell more homes, you get more return. In this case, he tells me it's a necessity.

Lots 4 through 7 would have 50' frontage on an extension road to be constructed by the applicant at its expense.

Lots 2 and 3 each have 44' frontage for a shortage of 12 percent from the 50' frontage. Each of these would be buildable as a preexisting nonconforming lot but for the applicant mistakenly having purchased the lots in the name of one company.

Significantly, the neighborhood has shown on the diagram that I just showed you as 75 percent developed with homes having 50' frontage or less; therefore, the lots proposed would be consistent with the character of the neighborhood and

would have no adverse impact due to the frontage size.

I should clarify one thing. Not all of these homes -- not all of these lots have homes on them, I want you to be clear about that, but they are lots with 50' frontage, the ones that were on Orange, I believe.

Under Section 4 of the City's -- of the General City Law, Section 81-B, in making a variance determination, the ZBA is to consider the benefit to the applicant, if granted, weighed against the detriment to the health, safety, and welfare of the neighborhood by the grant.

To do so, a five-factor test is applied. Notwithstanding the fact that I have sat years on the ZBA, I apologize. I can't recall these unless I look at what the five-factor test is.

First -- and these are to be weighed. You may decide that Item 1 is satisfactory, Item 2 isn't. At the end of your analysis, you have to consider all of the factors and make your own determination.

Number one is whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created.

Number two, whether the benefit to the applicant can be achieved by some method feasible for the applicant to pursue other than the area variance that is sought.

Three is whether the area variance is substantial.

Four, whether the proposed variance would have an adverse effect on the physical conditions of the neighborhood.

And five is whether the alleged difficulty is self-created, which consideration is not necessarily -- shall not necessarily preclude the granting of an area variance.

The variance we're seeking, the permitted variance of right now is 75'. We're looking to remain with the existing plots at 50'.

As to number, one, we feel that there is no change to the character of the neighborhood as 75 percent of the lots have 50' road frontage, and the lots and the houses to be built on them are on a dead end, a cul-de-sac that would abut against the cemetery at the end of Orange Terrace Road. The bulk requirements are met in excess of 7,500 sq.ft.

Number two, the benefit sought by the applicant cannot be achieved by some method more feasible for the applicant to pursue unless the neighboring cemetery sells off some land. We have pursued that. We have not gotten a response to their interest in selling perhaps more land, in which case we could put up the six homes and be more in compliant or fully in compliant with the 75' frontage.

The variance is not substantial in the light of the neighboring properties having 50' frontage. The variance will not have an adverse effect on the physical environmental conditions in the neighborhood. The district is zoned R-1, and there will be accordingly a one-family home on each lot.

Mr. Croughan: Mr. Dropkin?

Mr. Dropkin: Yes.

Mr. Croughan: Just to interrupt you for a minute, on number three, whether the requested variance is substantial, what was your answer?

Mr. Dropkin: The variance is not substantial in light of looking at the impact that it would have on the neighborhood.

Mr. Croughan: But looking at the lot itself.

Mr. Dropkin: Looking at the lot itself, I would be hard pressed to tell you it wouldn't be substantial.

Mr. Croughan: Okay.

Mr. Dropkin: Okay. And I believe I'm up to number five. The alleged difficulty is not self-created as the lots had frontage of 50' and the cost of construction is up 40 percent from when the applicant was ready to start construction. In any event, this last item of self-creation, it does not preclude on the statute the grant of a variance. It is a factor, as the others are, to be considered.

That is my presentation.

Mr. Croughan: Thank you.

Mr. Hallock: Thank you. I have two questions for you.

Mr. Dropkin: Sure.

Mr. Croughan: Before you do that, why don't we open the public hearing.

Mr. Burtis: Okay. Fair enough. And actually before we even do that, I would just like to ask whether the applicant did the mailing and if Martina can confirm.

Mr. Dropkin: We have done it, and I have the affidavit of mailing with me.

Ms. Tu: (Inaudible).

Mr. Dropkin: Yes. Sure.

Mr. Burtis: Does that conclude your presentation?

Mr. Dropkin: Yes.

Mr. Burtis: Excellent. I'd like to open the public hearing, and I would like to remind the public that if you do come up and speak that you would need to please let us know your name and address for the record.

*The public hearing was opened.*

Mr. Cupolo: Hi. My name is Jamie Cupolo. I live in the effected neighborhood. I live at 46 West Conkling Avenue in Middletown.

I talked to a lot of my neighbors in that area. A lot of them work in the city. They work nights. They would've been here, but they just can't. They have kids, they have responsibilities.

What I find, and I'm opposed to this project, number one, there's a housing shortage in Middletown and all around. Regular people just want to build a house, but what happened in my very own backyard is a developer, unbeknownst to myself, bought my backyard and said, oh, it's unbuildable, so that whole area in there is being bought up by developers, speculating sitting on these properties for years, and said, okay, you know, let's make a profit. But regular people want to live and work in Middletown. I used to work in a homeless shelter for years. I worked with people who couldn't afford a place to live. I worked with Habitat for Humanity. People need places to live.

This is being done to make a lot of money whereas we're doing a fundraising project right now in Middletown just to buy a disabled person a house to live, you know, and there's so many people who need housing. You know, many times I've worked at the homeless shelter helping, volunteering at the soup kitchen. People just need a place to live, and what's happening in Middletown, speculators -- there's plenty of land to develop housing projects like this, but they don't want to pay a lot of money. They don't want to pay the proper infrastructure, road development, all that. They just want to make a fast money.

So what I also find environmentally in my backyard and the surrounding areas, which is now woods but was already bought up, is when you clearcut all these areas, water comes downhill. My neighborhood is downhill from this project. Water comes down. Already my basement is completely -- it gets flooded and flooded. Nobody addresses this. Be like, oh well, so you have a nice swimming pool in the bottom of your house. That's a plus. No, it's not.

So, you know, we are affected. You know, this is a wildlife buffer between the cemetery and -- so you have deer running all over the place, in people's

backyards, up and down the street. Wildlife is definitely being displaced. The water table is being displaced. Human beings who live here are being displaced, all so someone could make money.

I would like to see projects in the town that represent the people, the income level, and sustainability that can support this region, so I thank you very much for your time.

Mr. Croughan: Thank you.

Mr. Burtis: Thank you.

Mr. Croughan: If we could just make sure the comments are kept to the five factors, please, when you come up, and please feel free to come up.

Mr. Lichtenstein: How we doing? My name is Jason Lichtenstein. I live at 1 Clinton Street. My house sits on Orange Terrace.

When this first came to our attention, we met with Jacob up on the block there, and we talked about it. One of the concerns that he had when we were talking about it was trying to find past precedents that would potentially stop this, and a lot of the neighbors had information that backed past precedents that was letting them know they had to build on a 75' lot -- 75' of road frontage.

At the time, we couldn't come up with anything, and since then we've done our research, and we found that there was a meeting, a Zoning Board of Appeals meeting, that took place here September 11<sup>th</sup>, 1992, I believe. Hold on for a minute. And that hearing came down to Jack Stack and his company trying to build on the lots up on Orange Terrace. At that time, he was trying to build houses on 50' lots. There was clearly something that was blocking him. He had to apply for a variance.

He came to the Board of Appeals and was denied that variance. We know he was denied that variance because across the street from my house now sits two houses, not three, and had he won the appeal, they would've built three houses there.

Clearly, in 1991, I believe it was '91 there was the meeting, he lost his appeal. When I reached out and spoke to the family, they confirmed that they lost the appeal. They confirmed they lost out on the ability to build the three houses they so chose. They didn't really remember what the reason why to it was, but I have the copy of the letter here that had the minutes where they had the meeting, and it didn't have the actual minutes attached to it.

Mr. Croughan: Are you talking about the three homes on the corner of Corwin and Orange Terrace?

Mr. Lichtenstein: Oh, so I live at 1 Clinton Street, so the corner of -- the paper road of Clinton Street and across from me on Orange Terrace. There are two homes there. Those addresses are --

Unidentified Female: 17-19 -- no -- 17 through 21.

Mr. Lichtenstein: Yeah, because they split them up, so 17 through 21 West --

Unidentified Female: Orange Terrace.

Mr. Lichtenstein: Orange Terrace was where they applied for the initial appeal because they wanted to go 17, 19, 21. They were denied this appeal because they didn't have the appropriate road front allotment to build a house on it.

The other issue, so when you looked at it, they had 288' of road front. Clearly, the last two lots don't even have 50', so to even ask to build on a lot that doesn't even have 50' of road front when you're trying to make that your case, it sends up red flags all of its own.

But there's other issues that we do have along with this. We looked at the turnabout that was put in there at one point, and then we know that from the one meeting to the next meeting, the turnabout was changed in there. We have concerns with the DPW trucks and their ability to turn around, a fire truck, its ability to turn around, or even a basic delivery truck, and its ability to turn around on a road like that. The trucks can't turn around now, so now you double the length of that dead end. How are you asking these trucks to back up? How are you asking these trucks to turn around? How are you maintaining a safe quality of life for the people that live where when the trucks can't even properly get out of the dead end?

A couple years ago when we first bought the house, one of my concerns was my house sits at 1 Clinton Street. Nobody could find 1 Clinton Street because it sits on a paper road. The address would bring you to the bottom of the hill. So when we were trying to get our address changed to Orange Terrace, I had a conversation with one of the fire chiefs, and I explained to him, like my concern is what happens if there's an emergency. How do I guarantee people are going to get there? And he said, oh, what kind of emergency are you thinking about? I said, let's say my house catches on fire. He said, with the water pressure you got up there, if your house catches on fire, get your stuff out of there because the water pressure is not sustainable to put the fire out.

Now, is that true or not? I don't know, but I know that if I want to water my lawn, I have to put a pump in to get enough water out there just to water my lawn. What happens with six additional houses? And this is a concern that we brought up multiple times. I'm not sure where it goes from there.

Our other concern was the road. Our road is 30' wide. This road is being proposed at 25' wide. I understand that somebody's trying to make money on this, but they shouldn't be able to cut corners when they're trying to make money on this. The road that's being built should have to match the road that's already there. The road should not be allowed to be narrowed. What happens during a snowstorm if somebody's parked on the road? What happens during an emergency if somebody's parked on the road and a vehicle can't get through because you now have a road that's 5' less with a car parked on the road and an emergency vehicle needs to get from one side to the other. How does that vehicle then turn around to get back out?

We've also watched DPW trucks crash into the retaining wall across from me at the Broker residence just trying to back out. You're now double the length of the road. Not having the turnabout properly sized at the end is a concern.

You know, but at the end of the day, our biggest concern is nobody's trying to tell anybody what they can or can't build. We're trying to make sure everybody's following the same rules.

A lot of the houses that were built there that he has highlighted in orange were built prior to this Zoning Board of Appeals in 1991. Whatever changed in this minute established past precedents moving forward.

Some of those properties aren't even developed. You know, just from quickly looking at it, they're not even developed lots. They probably won't end up being developed lots. But on top of that, some of the highlighted lots there sit on Clinton Street, the paper road of Clinton Street.

We know right now that there's a gentleman going around buying those lots, every other lot, under different LLCs because he understands there's a loophole in the rules that says that if he's landlocked, he can build on a 50' lot. But it's the same guy buying those lots. While he's trying to circumvent the law, it's kind of the job of the Zoning Board and the Common Council to see through this, like see through what's happening there. It does decrease the quality of life in the neighborhood.

No different than years ago when the Zoning Board at the time approved the houses on Wickham Avenue that were gorgeous large family houses to be divided up into four-, five-family houses. And what happened in that neighborhood? You overcrowded the neighborhood with a lot of renters, and the crime rate went up in the neighborhood because you had too many people living in a small area.

What happens in this area when you put too many people in a small area? There's 17 lots, I believe, in the woods, so now you let these six houses go, 17 lots there. You've added 23 families in a small area. What happens to the quality of life of the people that live there? Part of the job of the Zoning Board is to have vision as to what's going to happen in the community and the neighborhood moving forward. I question what happens if you put 23 houses in a small lot, and that's a



concern of ours too. Building in that neighborhood and buying in that neighborhood, we like the space of the neighborhood, much like Presidential has that wide open area. That's the appeal that we had back there. We're trying to maintain our quality of life that we've built and we've worked for in that part of Middletown.

So that's where I'm at.

Mr. Burtis: Thank you.

Mr. Lichtenstein: Thank you.

Mr. Burtis: Next speaker, please.

Ms. Jetjomlong: My name is Maria Jetjomlong. I live at 2 Clinton Street, and I also had to follow that rule with my property. I had two properties at Clinton Street, which were both 50' lots, and when I wanted to build my house on the front lot so I could have a big yard, I was told I couldn't because I have to follow the rules.

So you have this developer come into our town, our area, and why should he be an exception to the rule that everyone before since 1991 had to follow? Is it because he hired an attorney when we can't afford an attorney? I don't think that's right. All the houses on Orange Terrace are within their required space, 75 sq.ft. To say that all the other houses are not, it's not true.

Like we don't want -- you want to build a house? Build a house, but build three, not six, because we want our area to still look like what it is. Don't change it just because you're trying to make a buck at the end of the day. And at the end of the day, it's really not our concern how much construction costs have gone up. We care about the neighborhood. These developers don't care about where we live. They just care about the bottom line, and I don't think that's right. They should abide by the law that everyone else has already abided by.

That's all I have to say. Thank you.

Mr. Croughan: Thank you.

Mr. Broker: Good evening. My name is Peter Broker. I live at 27 Orange Terrace.

I bought property on Orange Terrace back in the 60s, and at that time, they were 50' lots. Well, I wanted to build a house there, and they told me I had to subdivide the property and make sure that it's at least a 75' lot. Now, we're going back to the 70s now. So that's what I had to do.

I don't see how we can get away from that at this particular point. I mean, most of the properties on Orange Terrace are 75' lots. This map --

Mr. Croughan: Excuse me, sir. How many lots did you own when you bought them?

Mr. Broker: Originally, I owned three lots, three 50' lots.

Mr. Croughan: And how many lots did you end up getting?

Mr. Broker: I wound up purchasing 25' from my parents that lived there, and I built two houses then on that property.

Mr. Croughan: So you combined the lots?

Mr. Broker: Yes. That's what I had to do. That was the rules. You know, Commissioner Fusco was in power then along with Ellington Bradford, and there was no ifs or buts. Had to be done. Now why we're going through this 50' lot business, I have no idea.

My main concern if you allow this 50' lot on Orange Terrace, there's all this property on Clinton Street. All those lots are 50', but we already have a person that buys every other lot under a different name, so I can see what's going to happen there. It's crazy.

Mr. Croughan: Understood.

Mr. Broker: You shouldn't allow it. Thank you.

Mr. Croughan: Thank you.

Mr. Burtis: Thank you.

Mr. Villafane: My name is Luis Villafane, and I live at 19 Orange Terrace, and that's one of the properties that Jack Stack wanted to build three houses, and he was forced to build two.

All I'm asking is that if the law back then or the rules back then were applied to us and we had to follow that, so should this developer have to follow that rule. That's all I'm asking.

I'm not asking to put no houses. You have to 288' there. Good enough to subdivide and have three nice, good homes, maintaining the same -- because if you go on Orange Terrace, you ain't going to see, what, 75 percent of 50' lots? No. I would say that almost 99 percent on Orange Terrace are on 75 or more.

That's all I'm asking. I'm asking to be fair. Apply the law like you did back

then, apply now. Thank you.

Mr. Croughan: Thank you.

Mr. Fagan: My name's Donald Fagan. I live at 44 West Conkling.

I agree with my other neighbors. If the law is good for one, it should be good for all. The applicant was aware of the zoning issues when he purchased the property. If he wasn't, that's his fault for not doing his due diligence. So if you're aware of the law and you buy the property anyway, you should abide by the law.

I also agree with the situation where if we allow the applicant this variance, it will snowball into the so-called paper road of Clinton, which I do own a lot on, and it'll overcrowd Clinton and it'll make other problems besides traffic and such.

And then again, as my neighbor Jamie mentioned, drainage is an issue. You know, since I've lived there since 2004, and I've seen some houses have been built, and I don't begrudge anybody building a house on a legal, buildable lot, which apparently is 75' of road frontage, and that has affected the drainage in the neighborhood immensely. So another six houses is going to affect the drainage tremendously.

And then if the additional houses get built on Clinton, because if we allow one variance, they're invariably going to cite that situation as a precedent and try to force the City into allowing a variance on the other 17 lots, or whatever it is, on Clinton. And that's just going to wreak absolutely havoc with drainage for all of West Conkling and Clinton.

So also, even if they only move forward with three houses and they adhere to the 75' of frontage, I believe there needs to be some remediation of stormwater because as of now, you know, our driveway can become unusable if we have a thaw and refreeze situation due to the way the water drains off the side of the hill into Jamie's backyard, and then it runs down my driveway.

So even if they are able to move forward in some shape or form, I do believe that there needs to be some kind of stormwater remediation, detention pond, pipe it into the City's stormwater system, or something of that nature.

So in closing, you know, if Peter Broker wasn't allowed to build on a 50' lot, if the Stacks weren't allowed to build on a 50' lot, why is the applicant -- why should the applicant be granted a variance to be allowed to build on a 50' lot?

There seems to be quite a history of precedents for people not being allowed to build on a 50' lot, so I don't see any reason to circumnavigate the 75' lot requirement, and I don't believe that construction costs are the City's concern, and it doesn't create a hardship for the applicant. The applicant created his own hardship by purchasing lots that were nonconforming. He should've known that ahead of time, and he should've budgeted for that.

That's all I have to say. Thank you, and have a good night.

Mr. Croughan: Thank you.

Ms. Santamaria: Good evening. My name is Alexandra Santamaria. I live at 47 West Conkling.

I had the blessing 20 years ago, I moved to one of those news houses in that area, and my whole point of right here is not everybody is so (inaudible). I just want you guys -- all of you are working for the town, and thank you. My whole point of moving to this area is to grow my family in a quiet safety in a family ambiance. I want you guys to keep that in mind when you go back home and how comfortable you're living in your area. Just keep it in mind that this person just wants to create money without care all my neighborhood is being requested. I really appreciate that you think about it of the quality because now that my children are raised, I hope my grandchildren will be able to enjoy the peacefulness area. Thank you.

Mr. Croughan: Thank you.

Mr. Burtis: Thank you.

Mr. Lichtenstein: I'm sorry. I forgot one item. As for notification of the public hearings, I received a certified -- a notice of a certified letter for the first public hearing, and the mail carrier left the notice on my door on the 6<sup>th</sup>. The meeting was on the 7<sup>th</sup>. So by the time I got home from work at 5:00, the post office wasn't open. By the time I got the letter, I actually had to have my mother-in-law go get the letter for me, and so I got home -- I worked late that night. I got home at 6:30, quarter to seven, and to find out that there was a public meeting then.

Mr. Croughan: You're talking about the Common Council meeting?

Mr. Lichtenstein: Yes. And then the notice for this meeting was I think merely just a couple of days ago, so I don't feel that's enough notice. I don't know if there's something in the rules of the Planning Board that requires a set timeframe for the notices, but the notices for me made it very difficult for me to be here tonight. Thank you.

Mr. Croughan: Thank you.

Mr. Burtis: Thank you.

Mr. Croughan: Any other members of the public who would like to speak?

Martina, were there any letters that were sent in?

Ms. Tu: No.

Mr. Burtis: Do we have any speakers online?

Ms. Hansen: Not at this time.

Mr. Burtis: Thank you.

Mr. Croughan: You can keep the public hearing open.

Mr. Burtis: Okay.

Mr. Croughan: We did have to send the plans to the County for their comments as well, so the public hearing will be kept open, but maybe the Board has some comments they'd like to make or questions to ask the applicant.

Mr. Burtis: Do any Board members have any questions?

Ms. Rodrigues: I have a question. You said for the request that you're asking for the percentage for the variance. You said it would only be 12 percent?

Mr. Dropkin: From the prior 50' frontage, so the 50' to 44' would be a 12 percent differential.

Ms. Rodrigues: Okay. But for 75' --

Mr. Dropkin: It would be a bigger differential.

Ms. Rodrigues: Okay. I just want to make sure you're aware of that.

Mr. Dropkin: Oh, yeah.

Mr. Croughan: So if we can just go through these factors with you for a moment.

Mr. Dropkin: Can I just say a couple things?

Mr. Croughan: Sure.

Mr. Dropkin: In doing that, and in response to the public's concerns and

comments, I think that one thing I would urge the Board and the public to take into consideration is the location of where these homes would be. They are on a dead end abutting against a cemetery. They are not likely, because I don't know the location of the other applicants who were denied 50' builds in 1992 or whatever -- whenever it might've occurred. These more likely than not were in the middle of a street. This is off at the end of Orange Terrace Road, isolated from the rest of the community.

The other thing is that the applicant is undertaking at substantial cost, likely unlike other applicants to build a road extension. The road extension a year and a half ago was \$700,000.00. That was the estimate they received. If you compute that out at 40 percent, that's close to \$1,000,000.00 now. Those two are distinguishing factors that I ask you to take into consideration during your deliberations.

Mr. Croughan: Sure. So going to factor number one, whether 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. In light of the comments that you heard tonight, how would you respond?

Mr. Dropkin: You know, I -- water pressure, turnabout, remediation of stormwater, these, to me, are engineering issues. It should be, and definitely ought to be, addressed through the Planning Board process for their review and then their referral to the Common Council for their disposition. We would fully expect, as with any development, that water issues, traffic issues with the roadway turnabout, remediation of stormwater, they all should be address, and they're appropriate concerns, but I think that they -- were you to proceed, you could make these conditions of any approval, that these matters be addressed, and they are appropriately addressed, as I understand your structure, the City's structure, with the Planning Board review and the Common Council review.

Mr. Croughan: Going to the next one -- well, just going back to that on the location map that I have on Orange Terrace, you're talking about Lot, what I have is 8.1, 10.2, 12, 14, and 16 as being the ones with homes built on them just on that side of the street. 8.1 has 100' of frontage. 10.2 has 100' of frontage. 12 has 75'. 14 has 100', and 16 has 75'. The only lots nonconforming on that side of the --

Mr. Dropkin: On which street is that?

Mr. Croughan: On the Orange Terrace side of the street.

Mr. Dropkin: Okay.

Mr. Croughan: -- is Lots 1 through 7. Now, Lot 1 is 50' for a cemetery, so the only nonconforming lots are 2 through 7, which your client owns.

Mr. Dropkin: Yes.

Mr. Croughan: Going to number two on the five factors, whether the benefit sought by the applicant can be achieved by some other method. So your client bought one of the lots and put it in a different LLC, but if you combined those six lots, wouldn't you be able to have the correct road frontage for three lots?

Mr. Dropkin: You would have the correct road frontage for three lots. Yes. But that would limit the number of homes.

Mr. Croughan: Right. But that's not a factor for the Board to consider.

Mr. Dropkin: Well, we're asking for the variance because were we limited to the three homes, the road improvements and the homes would be economically infeasible.

Mr. Croughan: But another method would be to combine the lots to get three lots and then be in compliance with the Code.

Mr. Dropkin: I'm not entirely following that.

Mr. Croughan: Another method, so that's what it says, whether the benefit sought by applicant can be achieved by some other method. So if your guy that owns the six lots, one being in a different name, was to put them all in one name, he could then build three homes and comply with the City with 75', at least 75', of road frontage.

Mr. Dropkin: Right. He could build three homes, but that would make the project not economically feasible.

Mr. Croughan: Okay. Number three is whether the requested variance is substantial. I think we went over that with you needing at least 25' on four lots, or 25' and 29' on the other lot, or 44' and 75', 31' on the other two.

Mr. Dropkin: That's right.

Mr. Croughan: So you're at least at 33 percent.

Mr. Dropkin: Right.

Mr. Croughan: Whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood. In light of the public's comments, how do you respond?

Mr. Dropkin: I respond by stating that the proposed construction is on a cul-de-sac, removed at the end of Orange Terrace Lane. It is six homes in a neighborhood that has maybe hundreds of homes. I don't think that the few homes that are being sought for in the variance would have an adverse impact on the neighborhood.

Mr. Croughan: Well, environmental conditions in the neighborhood, I think you heard a couple comments --

Mr. Dropkin: The issue again is I think these are engineering matters that should be addressed and are appropriate to be raised.

Mr. Croughan: Okay. Whether the alleged difficulty was self-created. Obviously that being relevant, but not necessary preclusive.

Mr. Dropkin: Right.

Mr. Croughan: So your client bought these lots, would you agree, knowing that there's a 50' -- or a 75', I'm sorry -- foot frontage requirement?

Mr. Dropkin: Actually, I don't think he knew when he bought it there was a 75' requirement.

Mr. Croughan: He could've easily have checked though.

Mr. Dropkin: He could've found out, but I'm responding to your question.

Mr. Croughan: I understand.

Mr. Dropkin: Right.

Mr. Woody: May I say something? May I ask a question?

Mr. Croughan: Absolutely.



Mr. Woody: Thank you, everybody. I appreciate everybody's being here and supporting, and I just want to clarify, first and foremost, I want to make sure that what we're looking at is accurate with what you have. That's accurate, isn't it? I'm just looking at how it's outlined, and most of them, just like you were saying, it seems like there is a 50' wide front yard on most of these properties, right, which is what you said.

Mr. Dropkin: Yes.

Mr. Woody: I know it came into question with the community, but again, I just want to make sure what you have is what we have. What you referred to earlier on Orange Terrace, when you said 100', so let's say 18.1 is 100', 10.2 is at 100', 14 is 100'. Those, if I'm not mistaken, because I went down there, are double lots, so they were 50' a piece. Most of this neighborhood, or probably 75 percent, just from what I'm looking at, just as a matter of fact, were 50' for the lots.

Legislation suggests that prior to the enactment of the 75' wide requirement, Middletown was satisfied -- you know, facts -- with a 55' width front yard, so I just wanted to clarify that and just make sure we have some facts here --

Mr. Dropkin: Right.

Mr. Woody: -- before we, you know, again, most of those are 50'. I know people said they were 75'. Just according to my map, unless they have a double lot, there isn't anything with 75'. If anybody can dispute that, please. I'd like to hear.

Mr. Croughan: Well, I think they had to combine lots.

Mr. Woody: They combined lots.

Mr. Croughan: Yeah.

Mr. Woody: 50' 50'.

Mr. Croughan: Right.

Mr. Woody: So to your point, if they do two, it's 100'.

Mr. Villafane: We were forced to subdivide. Yeah, they're 50' lots, and if there's one owner, they were forced to build on 75' or 100', so I'm not disputing the fact that you say it's a 50' lot, but if you're forcing us, or you forced Pete here before

Jack Stack --

Mr. Croughan: I'm sorry. You have to come up to the mic and speak if you're going to make a comment. Please state your name again, I know you said it before, and your address.

Mr. Villafane: Luis Villafane, 19 Orange Terrace. I agree with you. You said most of those lots are 50' lots; okay? And if you own more than one lot, okay, you were forced to subdivide, just like Pete in '73 had to subdivide, and Jack Stack had to subdivide. So, yeah, if you go by the way you're stating it, yeah, they're all 50' lots, but you've got to apply that law that was back then, apply it today too. Thank you.

Mr. Woody: Thank you for that. And as a matter of fact, Lots 4 and 5, do you know when they were purchased? I've got a purchase date of 3/06, so Lots 4 and 5, which will be 7 and 9 if I'm not mistaken, and just to your point earlier about the '91, I know laws have changed in Zoning, but Lots 4 and 5 purchased in '06, can you verify that? March of '06?

Mr. Dropkin: I will check.

Mr. Woody: And, if I'm not mistaken, let me just go down the line here, Lots 2 and 3 were purchased in September of 2021?

Mr. Dropkin: The 4 and 5 in '06, you believe?

Mr. Woody: March of '06. To be specific, March 24<sup>th</sup>, 2006. And Lots 6 and 7 were purchased before 3 and 4, which was February and May of 2021. So four of those lots, four of the six, were purchased in 2021, and I think the original two, 4 and 5, was kind of the middle of the parcel that we're talking about. I just want some clarification on that, please.

Mr. Dropkin: Okay.

Mr. Woody: Thank you.

Mr. Croughan: I have a question for the applicant.

Mr. Dropkin: Sure.

Mr. Croughan: What was your reason for withdrawing your application from

Common Council?

Mr. Dropkin: Actually, I wish I could tell you. I wasn't involved with the matter at that time. I don't know. I know there was a lot of movement ahead and movement back. I'm not aware of the reasons.

Mr. Burtis: If you have a question for our public comment period, please step forward. State your name and address.

Ms. Jetjomlong: Maria Jetjomlong. Going back to what you were pointing out about the purchases back in 2021, I actually did my research on it, and if you look at all the names, it's everybody just switching back and forth. They're like two years apart, so they can make it look like there's a constant new transaction. They've been doing this back since 2006. Then it went to 2019, 2021. Like think about it. Back in -- 7 Orange Terrace, it was sold back on March 5<sup>th</sup>, 2019 for \$963. Like really? Like you can tell that these are properties just being switched back and forth so you can see --

Mr. Woody: What was that purchase price again, and what property?

Ms. Jetjomlong: This I have for 7 Orange Terrace.

Mr. Woody: Yup.

Ms. Jetjomlong: It was sold on March 5<sup>th</sup>, 2019 to an Ari Stessal for \$963; okay? Then it was sold again in February 17<sup>th</sup>, 2021 to a Thomas Buffamante for \$20,000. And then it repeats that at 9 Orange Terrace, and if you look at 11 Orange Terrace, everything is sold for \$963 or \$980. 13 Orange Terrace was sold on October 9<sup>th</sup>, 2013 for \$1.

Mr. Woody: (Inaudible). I just want to run some numbers past you have I have.

Ms. Jetjomlong: Okay. Well, I mean, I got this off of the website.

Mr. Woody: That's fine. That's fine. I appreciate the facts.

Ms. Jetjomlong: I did my research a while ago. We could compare this.

Mr. Woody: I just want to run the number past you, just so I know, because when I hear \$900, I get alarmed. So I have Lot 7, 5/25/2021, sold for \$25,000.

Ms. Jetjomlong: Lot number --

Mr. Woody: I have Lot 6 --

Ms. Jetjomlong: See, I have -- hold on.

Mr. Woody: So when I hear lowball numbers, I mean, obviously as a Board member --

Ms. Jetjomlong: I have them as the actual address. I'm not sure which lot number is exactly which one. I'm assuming that -- okay. So Lot 3 is actually number 2 for me on the map.

Mr. Woody: Okay. Well, I have Lot number 2 and 3 were sold on the same date for the same price. Do you have that?

Ms. Jetjomlong: For \$17,600.

Mr. Woody: \$17,600?

Ms. Jetjomlong: Yes. And that was on September 30<sup>th</sup> of 2021.

Mr. Woody: Thank you.

Ms. Jetjomlong: You're welcome.

Mr. Croughan: I'm sorry. If you have stuff written down, if you wouldn't mind submitting that.

Ms. Jetjomlong: It's got all my notes on it.

Mr. Croughan: Okay. If you could make a copy, a clean version --

Ms. Jetjomlong: Okay. That's fine.

Mr. Croughan: -- for us and submit that.

Ms. Jetjomlong: And I also wanted to add that the other properties that Jason mentioned on Clinton Street, that it's under a different LLC and a different individual. I can verify that those properties are strictly owned by the same person. And why do I say that? Because I used to work for the firm that represents the

man. I'm not saying what firm it is, but I know it's the same person, so there's no detesting that. I just wanted to make you guys --

Mr. Croughan: Well, that's not before us.

Ms. Jetjomlong: No. I understand that, but this is what happens and what we've noticed, that you buy a lot and you put it under a different name, like I have all this information here, and the lot is -- Richard, you own this one, and Walter will own this one, and Richard, you're going to own the next one. But technically, Mark owns all of them, and this is what's happening.

Mr. Croughan: I understand.

Ms. Jetjomlong: Okay.

Mr. Croughan: Thank you.

Ms. Jetjomlong: I'm just making it aware, and I'll make a copy of this.

Mr. Croughan: Thank you.

Ms. Jetjomlong: Thank you.

Mr. Burtis: Thank you. Do we have another speaker? Yes, counsel. Alderman.

Mr. Kleiner: Thank you. Jerry Kleiner, 13 Randall Heights. I just have two comments, and I'm really speaking more not from the council, but from the historical society. When I hear the cemetery referred to as the cemetery, or its impacts because it runs into a cemetery, and even that they're trying to buy land from the cemetery, this is Hillside Cemetery from 1861 designed by Calvert Vaux. It's on the National Register of Historic Places, and it is to be part of the consideration when you look at the surrounding neighborhood. So when you talk about environmental consideration, I think that probably protecting wildlife is not exactly in your consideration, but certainly the noise and the encroachment and trying to buy land from the cemetery.

The other thing is the cost of building the road. I would consider that a self-created hardship because you knew a road had to be built, and if the price to build it goes up, that's not the City's fault.

Thank you.

Mr. Burtis: Thank you.

Mr. Lichtenstein: Jason Lichtenstein, 1 Clinton Street. To your point about the 50' properties, where were those 50' properties? I'm just curious where they were located. Are they in the immediate area, and are they developed land?

Unidentified Male: Immediate area.

Mr. Lichtenstein: And can you confirm whether or not they're developed land or they're vacant lots?

Unidentified Male: It's a combination. I can't tell --

Mr. Lichtenstein: Because I'm going to tell you that they're vacant lots by looking at the map I have here, and while they are 50' lots, they haven't been built on, so that can't set a precedent moving forward when it's still woods.

In reference to the environmental factors on there, they came in and tore up the woods before the April 1<sup>st</sup> date they had to beat in order to prevent the bats from coming back, so they don't exactly have a track record of caring about the environment or the animals that live within, so to ask them to act on good faith, that they're going to continue to do this moving forward when they went through there with a backhoe with no regard to the neighbors, no regard to the noise variance. The police were called up there because they started working prior to the 7:00 a.m. time they were supposed to work. They tore down the trees and left the woods in shambles for months until another complaint had to be put in place for them to clean it up. Like to think for any sense they're going to act on good faith is beyond me because they've already proven they're not going to.

They put forth a plan, manipulated the plan when they went to the next level by changing the road width, by changing the turnabout size, and then also they put their plan back in when they were already told six wasn't an option. They were told four was feasible, five was a stretch, three was realistic. They then completely ignored all that and wasted time with the Board here to come back with six lots.

But going back to the original point, the lots in question are not built. So yes, there's 50' lots there. To be built upon, they're going to have to become 75' lots.

And the question of why were they 100' lots and not 75' lots, who would sell half of their lot? I wouldn't sell you half my lot. If you want my lot, you're going to buy it all for full asking price. So that's why the lots are at 50', because if they wanted to build their house, I'm not going to be like, you know what, I'll give you 25' and I'm stuck with this 25' I can never do anything with. That's why they're 100' lots because where do you get the other lottage from? They were stuck. They were told they had to build on a 75' or more frontage. That's what we did.

I understand my lot is different because I sit on a corner lot, same as Maria, so our road frontage is a little bit different, which is also why I couldn't put my house onto Orange Terrace as I originally asked because I didn't have the road allotment that I needed.

But what's being asked here is circumventing the law. If they didn't know it, that's their fault. You do your research. I knew when I bought my house what the rules were. I spoke to the builder. He explained it to me. I understood. I asked questions. If I was going to invest potentially millions of dollars, I probably would've done more homework. The fact that they didn't raises a whole lot of other questions. What kind of integrity are you going to get from the houses built? What kind of integrity are you going to get from how they're going to improve the community, how they're going to improve the neighborhood?

The builder came and spoke to me, and he said, hey, think about the value of your house and how it's going to go up. Why would the value of my house go up because my neighborhood becomes overcrowded? The value of my house is going to continue to go up because anymore living in a city, to have that type of lifestyle is a rarity. That's why the value of my house will go up, not because you put six more houses, 12 more cars, 24 trips up and down the road. That's not going to increase the value of my house.

And as our property taxes continue to rise, understandably, I want to make sure the property of my house is going to follow that. So when the time comes if I choose to move, my value is still there on the property which I invested in, which is what my house is. My house is an investment. My property is an investment. This does not benefit my investment. This hurts my investment because it decreases the quality of life in our neighborhood.

And then to speak to the cemetery. To be so nonchalant about it. If you go down into the woods, you see all the runoffs that are there. The house that sits next to my house on West Conkling used to be the main homefront that lived up there. When it rains, you can still see the footage of the house there. When you go back into the woods, you can still see the steps they built, the gardens they built, of all the stone and all those individual properties. There are streams that run off into the rivers, or into the streams, that run through the cemetery. They put no consideration into what happens to the water that goes into that cemetery.

What happens if that cemetery floods? What happens to the bodies that are buried down there? As I'm sitting here, these are all questions that I'm thinking about if you don't pay attention to these things. It's an engineering issue. You're right. But it has to go before the Zoning Board because these are questions that have to be asked, and to expect them to operate under good faith when they've already proven they're not going to operate under good faith. It's a little beyond me to think that they're not going to turn a leaf to it when they're number one concern is pushing off their short sight in this of making a dollar onto the Zoning

Board. That's not your concern. Your concern is the vision of the City, the vision of the town, and the vision of that community specifically. This hurts it.

Thank you.

Mr. Woody: How much narrow or narrower is the street proposed?

Mr. Lichtenstein: Five feet.

Mr. Woody: Five feet? Two and a half? Five on one side.

Mr. Lichtenstein: Five on one side. I drove a 2019 Dodge Ram.

Mr. Woody: That's a nice truck.

Mr. Lichtenstein: It's a very nice truck. It wouldn't fit.

Mr. Woody: Right.

Mr. Lichtenstein: If you parked a car on the side of that road, I'm not driving up and down that road. How am I turning around to get my car out of there? It wouldn't fit.

Mr. Woody: I can tell you just from being there, I was there today, I'll be honest with you. I've been there a couple of times, and I saw, prior to this, there were some engineering problems that I noticed. One of them is if you've been on Orange Terrace, one thing I never liked, there's an incline. If you were to guess 30 degrees maybe, 25. It's an incline.

Mr. Lichtenstein: If you go stand in the cemetery --

Mr. Woody: Correct.

Mr. Lichtenstein: -- and you look back towards my house, you can't see my house. That's how much the road drops down.

Mr. Woody: Right. So if you were on the street above, you wouldn't be looking at just somebody's house. It's level. But one thing I noticed, just prior to any building that might happen, I saw the house that's across the street from that dead end, and the driveway goes in.

Ms. Jetjomlong: That's my house.



Mr. Lichtenstein: My house is the one next to it.

Mr. Woody: Does your driveway get flooded? I'm just curious.

Ms. Jetjomlong: So --

Mr. Woody: Because it seems like it's an engineering issue prior to anyone going in.

Ms. Jetjomlong: When we first moved in there, yes. My house gets flooded. I do get water, but Alderman Rodrigues came, and he put berms up for me to prevent that.

Mr. Woody: Okay.

Ms. Jetjomlong: But with the plows when they come, they keep getting scraped off, so that water keeps coming into my driveway, and we have to kind of -- we made do and like make the water shift so that it doesn't come into my house, but my basement has flooding because I sit below street level.

Mr. Woody: Well, the only thing I want to establish is just in general, just for my own opinion from what I've seen, there's an engineering issue in that area preexisting.

Ms. Jetjomlong: Mm-hmm.

Mr. Woody: Is that fair to say?

Ms. Jetjomlong: Yes.

Mr. Woody: Okay. Thank you.

Mr. Cupolo: Jamie Cupolo, 46 West Conkling Avenue. So to add to that point, when you look at this map over here, you see on Clinton and Orange Terrace a big woods area, and you have all these speculators who've bought all this land, but when you look at the land and you look at the whole side of the whole hill and the mountainous area, water comes downhill. I mean, it's a fact. So if you look from an engineering perspective at the whole piece of land, not just like this little six-house thing, you've got to look at the whole land, and if you look where the water runs, if you had one of those lots that, you know, in the woods that was like a

retention pond or a way to collect water, you could make it into like a little park or whatever. The water will have a place to go, and you see that in this neighborhood around the Carmelite monastery there. They have created those ponds with those projects because you do get a lot of water coming off of there, and you can't not have it come downhill, so you have to look at the project's potential on Clinton and off of Orange Terrace in that whole area. You have to go and look, you know, why my basements, why Don's basement floods, and all the houses down there flood, and there's a lot of water issues going on in that area. You've got to look at the big picture, so that's important. Thank you.

Mr. Croughan: Thank you.

Mr. Burtis: Thank you for your comments.

Dr. Johnson: Good evening. I wasn't sure of the protocol, but Alderman Kleiner has changed the protocol, and it's always better to ask for forgiveness than permission, so my name is Paul Johnson. I live at 8 Standish Avenue. Along with Alderwoman Wray, we represent the Third Ward.

Our comments have been made in the committee and in the council meeting.

I tried to listen closely to our attorney's comments. You asked why the application was withdrawn. His answer was he wasn't sure. I believe that this has been a very circuitous process, four, three, six, drop it over here, go back there, and I believe him when he tells me he's not sure. Not a good sign for me.

I think the North Pole for all of us in the City is quality of life, and quality of life should be protected by residents before entrepreneurs. That's my opinion. That's my North Pole.

When counselor says, well, it's on a dead end street, I find that to be a non sequitur, so rules don't apply on dead end streets, but they apply on three streets? I think it's just throwing out some confusion, spaghetti on the wall, see where it sticks. My personal opinion.

And lastly, cost of construction has gone up 40 percent. Well, you know what? When you go to that engineering project, it might go up 140 percent. It is not the responsibility of any regulatory agency in this City to protect the economic interest of entrepreneurs. Does every entrepreneur have it work out in his or her favor? Probably not. So you take it on the chin and you move on. Thank you very much.

Mr. Croughan: Thank you.

Mr. Burtis: Thank you. Any other comments?

Do we have anyone online or on the phone?

Ms. Hansen: Not at this time.

Mr. Burtis: I'd like to ask for a motion to adjourn for next month's meeting.

Motion by Ms. Rodrigues, seconded by Mr. Woody.

Roll Call Ayes: Wendy Rodrigues, Marc Woody, Mary Ann Cavallaro, Jim Burtis, Keith Hallock

Motion to adjourn at 8:00 p.m. by Mr. Woody, seconded by Ms. Rodrigues

Roll Call Ayes: Wendy Rodrigues, Marc Woody, Mary Ann Cavallaro, Jim Burtis, Keith Hallock

Respectfully Submitted,

*Diane Genender, Transcriptionist*