

**CITY OF MIDDLETOWN
ZONING BOARD OF APPEALS AGENDA
AUGUST 20, 2025 7:00 PM
COMMON COUNCIL CHAMBERS**

Meeting called by: Jim Burtis, Chairman

Clerk: Martina Tu

Members: Wendy Rodrigues, Marc Woody, Tracy Racine, Jim Burtis, Keith Hallock

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES

Accept the Minutes of _____

Approval of March 19, 2025, minutes

NEW BUSINESS

Request of Shiya Leibovitz for area variances for a proposed single-family dwelling at 92 Linden Avenue, located in the OR-2 zone

Request of Steven F. Figueroa Cusquillo for a use variance in order to have a non-owner-occupied two-family dwelling at 42 Prince Street, located in the OR-2 zone

ADJOURNMENT

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

March 19, 2025

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 March 19, 2025 at 7:00 P.M., Jim Burtis presiding.

Members Present: Marc Woody, Tracy Racine, Jim Burtis

Members Absent: Wendy Rodrigues, Keith Hallock

Other Attendees: Sixto Martinez, DPW; Richard J. Croughan, Corporation Counsel

The Pledge of Allegiance was said.

**Orange Terrace
6-month extension**

Mr. Burtis: Is the applicant for Orange Terrace in the room? Please step forward and introduce yourself.

Mr. Johnson: Ernie Johnson representing Fusco Engineering.

Mr. Burtis: Okay. We just went over the attendance situation this evening. Are you okay with that?

Mr. Johnson: Yeah. We're fine.

Mr. Burtis: Okay. Fair enough. Would you like to bring us up to date on any changes?

Mr. Johnson: What we're basically here for tonight is just a six-month extension of the variance that you gave us before, just to carry it out so that we can do some other -- try to work with the client to try to get this thing through somehow, some way.

Mr. Burtis: Fair enough.

Mr. Croughan: So you're tweaking your plans.

Mr. Johnson: We're going to try to tweak it and maybe convince him there may be another way of doing this besides using the variance, but we'd like to keep the variance for the six months just in case that's the only way that we can do it.

Mr. Croughan: Understood, and you've been before the Common Council.

Mr. Johnson: We've been before the Common Council.

Mr. Croughan: We've been diligently pursuing this matter.

Mr. Johnson: Right.

Mr. Croughan: Thank you.

Mr. Burtis: Fair enough. So final decision on this project would come from Common Council ultimately if they decide to do that.

Mr. Croughan: Yes. That's correct. The project is currently pending before the Common Council. The only reason that he's here is to extend time for six months for the variances that were issued out of here.

Mr. Burtis: Okay. Fair enough. Do any of the ZBA members have any questions regarding this agenda item?

Mr. Racine: I do not.

Mr. Woody: I do. Just one quick question, because I know a lot of time, energy on both our parts have been put into this. All I simply want to know is can you share if there's anything that we need to know about, anything that might be causing the six-month delay, or are there any setbacks that you didn't anticipate?

Mr. Johnson: There was a delay -- it wasn't a delay. It went before the Common Council. They didn't like shortening them to the 72-69, so we're going to try to see if we can, like I said, tweak the plans to get it to be more in line for what they want. I mean, we're only, you know, whoever was here for the first board meeting, they're only shorting each lot by I believe 2.3 feet, I mean, to make it perfectly legal.

So if we can do something that'll be beneficial to the counsel, that'll be great. If not, then it's on our court to get back to our client and maybe only go instead of four lots, three lots and make them all conforming and work that way.

But we need the extra six months with the variance just in case we need to use it.

Mr. Woody: Understood. Thank you.

Mr. Burtis: Okay. Any questions, Tracy?

Mr. Racine: No.

Mr. Burtis: Okay. So all that being said --

Mr. Croughan: You can close the public hearing.

Mr. Burtis: Okay.

Motion to close the public hearing by Mr. Racine, seconded by Mr. Woody.

Motion carried.

The public hearing was closed.

Mr. Burtis: Next I'd like to move forward with a motion to grant a six-month extension to Orange Terrace Properties.

Is that worded properly, Counselor?

Mr. Croughan: Yes.

Mr. Burtis: Okay.

Mr. Croughan: So you would need somebody to make that motion, then a second on it, and then the vote.

Mr. Burtis: Fair enough. I'd be comfortable making that motion myself.

Motion to grant Orange Terrace Properties a six-month extension by Mr. Burtis, seconded by Mr. Woody.

Roll Call Ayes: Marc Woody, Tracy Racine, Jim Burtis

Mr. Croughan: There were three yes votes for granting the extension, no one voting against it, so the motion carries. Extension granted.

Motion to adjourn at 7:10 p.m. by Mr. Burtis, seconded by Mr. Woody.

Roll Call Ayes: Marc Woody, Tracy Racine, Jim Burtis

Motion passed.

Respectfully Submitted,

Diane Genender, Transcriptionist

APPLICATION

ZONING BOARD OF APPEALS

City of Middletown, New York

Date deemed complete _____
Accepted by _____

Date 7/7/2025

Items 1, 2 and 3 are required to be completed

1. Address of Subject Property 92 Linden Ave. Middletown NY 10940

Section 16 Block 8 Lot 8 Current Zoning District OR-2

Building: Existing _____ New X

2. Owner of Property 92 Linden LLC

Owner's Address 199 Lee Avenue, Suite 538

City Brooklyn State NY Zip 11211

Phone numbers: Home: _____

Business: _____

Cell: 845-248-1760

3. Applicant name Shiya Leibovitz

If different from Owner

Applicants Address 5 Kerestier Ct

City Monroe State New York Zip 10950

Phone numbers: Home: _____

Business: _____

Cell: 845-248-1760

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	Required Dimension	Actual Dimension	Variance Requesting
	475-11(F.1)	Lot Width 75'	50'	25'
a.	475-11(F.1)	Front Yard 25'	11.4'	13'
b.	475-11(E.2)	7,500 sq.ft.	3,988 sq.ft	3,512 sq.ft

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.

APPLICATION

ZONING BOARD OF APPEALS

City of Middletown, New York

Date deemed complete _____
Accepted by _____

Date _____

Items 1, 2 and 3 are required to be completed

1. Address of Subject Property 42 Prince St

Section 26 Block 10 Lot 2

Current Zoning District _____

Building: Existing New _____

2. Owner of Property Steven F Figueroa Cusquillo

Owner's Address 3544 100th St

City Queens State New York Zip 11368

Phone numbers: Home: 347-288-4368

Business: _____

Cell: 347-288-4368

3. Applicant name _____

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	Required Dimension	Actual Dimension	Variance Requesting
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a. _____

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.


5. USE VARIANCE. Indicate on a separate piece of paper the specific reason(s) that the variance is necessary. All concerns listed below must to be addressed.

The Zoning Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of this ordinance, shall have the power to grant use variances, as defined herein.

No use variance shall be granted by the Board of Appeals without showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

- (a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; and
- (b) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; and
- (c) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (d) The alleged hardship has not been self-created.

The Board of Appeals, in granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.



5. USE VARIANCE

A.) My issue is not a financial issue.

B.) The property is located in a DR-2 zone, this means that the owner needs to live in the property while it is being rented. I wish to rent both floors of the property without me needing to live in the property. I have a stable job around my current address and it is financially beneficial for me to stay where I currently live.

C.) If granted, my hardship will not alter the character of the neighborhood at all.

D.) My hardship was not self created

note: in the past this property was already granted a permit allowing it to be fully rented

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.

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 Steven Figuera

Printed name and title Steven Figuera

Date _____