

Agenda

City of Middletown Zoning Board of Appeals

March 20, 2024

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

Approval of January 17, 2024 ZBA minutes

Orange Terrace Properties, LLC.

Orange Terrace

Area variances for a proposed (4) **four-lot** subdivision

APPLICATION
ZONING BOARD OF APPEALS
City of Middletown, New York

Date deemed complete _____
Accepted by _____

Date 12/18/2023

Items 1, 2 and 3 are required to be completed

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

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: (917) 416-4548

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
a. 475-9 (F)(1)(d).	75' Width	Proposed 4 Lots are each 72.3' wide.	2.7' per Lot.
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 applicant previously sought six (6) lots each of which having a front yard width of 50' (other than 2 lots each having a front yard width of 44'). The predominant front yard widths of lots in the neighborhood is 50'. However, the zoning code has been changed and the code now contemplates a minimum of 75' front yard lots. By reducing the applicant's request from 6 lots to 4 lots, each of the 4 lots will have a front yard width of 72.3', or a variance of only 2.7', which is a mere 3.6% variance from the code requirement of 75'. As a result, applying the above 5-factor test for an area variance, there will be no adverse impact to the neighborhood.

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.

[illegible]

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.

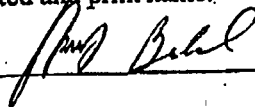
See response #4 above. Also, Chapter 475 of the City of Middletown Zoning Code provides in Article III, District Regulations, 475-9, One Family Residential Districts, which is where the Applicant's 4 proposed lots are located, that front lot widths are to be not less than 75' (see sub-section (F)(1)(d)). The Applicant seeks a front lot variance for each of the proposed 4 lots of 2.7'. Thus, this is a minor variance as the lots are otherwise in compliance with the code.

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



Printed name and title Moses Babad, Managing Member

Date 12/18/2023

LAW OFFICES
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Alan S. Lipman (1934-2021)

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March 11, 2024

Via Email and Hand-Delivery: mtu@middletownny.gov

The City of Middletown, New York
Zoning Board of Appeals
Jim Burtis, Chairman, and
Members of the ZBA Board
16 James Street
Middletown, New York 10940

Re: Orange Terrace Properties, LLC
Tax Section 33, Block 4, Lots 2 - 7 (the "Project")

Dear Ladies and Gentlemen:

This office represents the applicant, Orange Terrace Properties, LLC (the "Applicant"), and we submit this letter in support of the Area Variance Application seeking Zoning Board of Appeals ("ZBA") approval of four (4) lots each having 72.3 feet front yard frontage to build thereon one single family home per lot within the Project site. In all other respects, the four (4) lots meet all applicable dimensional requirements of the City Code. This letter supplements but does not supplant our previous letters to you regarding the Project.

The Issue before the ZBA:

Under the City Code, Section 475-9(F)(1)(d), and for the R-1 zoning district in which the Applicant's lots are located, the front yard width of each lot is required to be a minimum of 75 feet, unless an area variance is granted. The Applicant is before the ZBA because it seeks the permission of the ZBA through the grant of an area variance to allow a front lot with of 72.3 feet, which is a difference of 2.7 feet per lot or a mere 3.6% per lot less than the City Code requires. The sought for reduction in front lot width of 2.7 feet will allow the Applicant to build a single family home on four (4) lots rather than the as-of-right three (3) lots contemplated by the Code. With the grant of the

variance, the Applicant will incur an estimated loss on his investment of \$75,600.00 (exclusive of fees expended to secure ZBA approval) if 4 lots are built upon, rather than an estimated loss of \$155,000.00 if 3 lots are built upon (see **Attachment 1**), with little or no detriment to the health, welfare, or safety to the community or neighborhood, which neighborhood or community is already residential in nature and consists of substandard tax lots having frontage primarily of 50 feet or less (see below). In all other respects, the Applicant's lots are consistent with the dimensional requirements of the R-1 district. Further, the four (4) lots are uniquely located within the tax section and the larger neighboring area in that they are located on a dead end and do not face other housing lots; rather they face the fields and woods of the Hillside Cemetery. Taking all pertinent facts into consideration, as further discussed below, the proposed four (4) residential homes are consistent with the character of the neighborhood.

The Neighborhood or Community:

The properties adjacent to or closest to the Applicant's proposed four (4) lots are all located in tax block 4 of Tax Section 33 which Section is bounded by Orange Terrace, Corwin Place, Mountain Avenue, and Hillside Cemetery (the Cemetery being in adjacent Tax Section 34). The lots within tax block 4 are all either adjacent to or nearby the Applicant's lots and the adjacent or nearby lots consist of lots primarily having front lot widths of fifty (50) feet or less: specifically, of a total of 33 tax lots in tax lot 4, there are 20 lots having front lot widths of less than 72.3 feet, or 60.6% of all lots. Of these lots, 53% have single family houses on them; the same type of housing being proposed by the Applicant. Therefore, the Applicant's proposed lots are consistent with the character of the neighborhood in that they have substandard front lot widths but otherwise meet the dimensional requirements of the R-1 district.

We note in a matter similar to the Applicant's situation as described above, Crystal Pond Homes, Inc. v. Prior, 305 A.D.2d, 595,296, 759 N.Y.S.2d 366, 366 (2nd Dep't 2003), where 52 of 100 homes in the local area were located on substandard lots and the zoning board rejected the applicant's area variance, the court rejected the board's denial.

Additionally, tax block 4, and in particular the Applicant's lots therein, are uniquely situated within Tax Section 33 because the Applicant's lots are isolated on a dead-end and surrounded on two sides by Tax Section 34 which consists of the fields and woodlands of Hillside Cemetery. Opposite and facing the Applicant's 4 lots there are no homes or buildable lots; rather, only the fields of Hillside Cemetery. There is no similar tax block within Tax Section 33 and, therefore, the grant of an area variance is in a unique setting and would not set a precedent for future applicant's seeking a front lot width of 72.3 feet.

Comments of City Engineer: The Applicant's engineer has designed and redesigned the Applicant's 4 lots and related infrastructure addressing to the fullest extent reasonably possible the comments of the City's engineer.

Statutory Obligations of the ZBA in Considering an Application for an Area Variance:

In determining whether to grant an application for an area variance, a zoning board is required under state law to engage in a balancing test weighing "the benefit to the applicant if the variance is granted ... against the detriment to the health, safety and welfare of the neighborhood or community by such grant." *General City Law, Section 81-b(4)(b)*. The City Code, *Section 475-55(D)(1)*, likewise restates the above language in the General City Law.

A zoning board, under both state law and the City Code, "shall also consider: (1) 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; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) 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." *General City Law, Section 81-b(4)(b)* and *City Code 475-55(D)(1)*.

The ZBA in adhering to the above balancing test must act in good faith, and in no event be arbitrary or capricious. And "... generalized and unsubstantiated concerns of neighboring owners ... that the character of the neighborhood would be detrimentally changed if the application for variances was granted, were unsupported by any empirical data or expert testimony and were insufficient to counter the evidence presented by the petitioner." (See *Necker Pottick, Fox Run Builder's Corp v Duncan*, 251 A.D.2d 333, 335 (2nd Dep't 1998, and *Gonzalez v Zoning Board of Appeals of Town of Putnam Valley*, 3 A.D.3d 496, 497-498 (2nd Dep't 2004). See also, *Marina's Edge Owner's Corp. v City of New Rochelle Bd. Of Appeals*, 129 A.D.3d 842-843 (2nd Dep't 2015). "Without any valid independent evidence to controvert the petitioner's evidence, the findings of the ZBA have no rational basis, and are not supported by substantial evidence, and its determination is arbitrary and capricious."

Application of the Statutory 5-Part Balancing Test to be Considered in Determining if the Benefit to the Applicant in Granting the Variance is Outweighed by the Detriment to the Health, Safety, and Welfare of the Neighborhood or Community by such Grant:

1. *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 an area variance:* The Applicant has taken to heart what appears to be the hesitancy of the ZBA to grant the previously requested variance seeking six (6) lots, four (4) of which having a front lot width of 50 feet and two (2) of which having a front lot width of 44 feet, and instead the Applicant has requested four (4) lots each having a front lot width of 72.3 ft. This despite, and as noted above, the tax block in which the Applicant's 4 lots are located having front lot widths principally of less than 72.3 feet each. "While no one factor [of the 5 factors] is dispositive, the effect on the prevailing character of the neighborhood is a highly significant consideration in evaluating an area variance." (*See Lodge Hotel, Inc. v Town of Erwin Zoning Board of Appeals*, 21 Misc.3d 1120(A), affd. 43 A.D.3d 1447 (4th Department 2007).

For the reasons noted above, by any standard of common sense, the 4 lots proposed by the Applicant under the current subject area variance application, which would add one lot in addition to the 3 as-of-right lots, will have no detrimental or adverse change to the character of the neighborhood or be a detriment to nearby properties.

2. *Whether the Benefit Sought by the Applicant can be Achieved by Some Other Feasible Means:* The lots on either side of the Applicant's lot are owned by third parties. One immediately adjacent lot is occupied by a private home and is to the Applicant's knowledge is not available for sale. On the other adjacent side of the Applicant's lots, these lots are owned by Hillside Cemetery and on two occasions the Applicant has been advised by the Cemetery that the lots are not for sale. Therefore,

the benefit the Applicant seeks, one additional lot more than the 3 as-of-right lots, cannot be achieved by any other feasible means.

3. Whether the Requested Area Variance is Substantial: As noted above, the R-1 district within which is the Applicant's 4 lots, requires a 75 foot front lot wide. The Applicant, by reducing the number of lots sought to 4 under its current area variance application results in a front lot width for each of the 4 lots of 72.3 feet, which is 2.7 feet less than the required 75 feet or a difference of 3.6%. By any standard, a 3.6% differential is not substantial. Additionally, being uniquely located on a dead end and facing the fields of the Hillside Cemetery, does not result in a grant of the variance establishing a precedent. As your counsel has previously advised you in countering a public statement that the Applicant's variance request establishes a precedent, each variance application must be assessed on its own merits, and this application, if granted, would not establish a precedent.

4. Whether the Proposed Variance will have an Adverse Effect or Impact on the Physical or Environmental Conditions in the Neighborhood or District: The Applicant's engineer has demonstrated through retention walls on each lot, retention ponds, thorough and comprehensive responses to the City engineer's comments, the City's fire chief's written acknowledgment that the turn-about at the end of the proposed paved extension of Orange Terrace, and the water service and connection are each adequate and acceptable, and the minimal additional traffic from one additional home water connection above the 3 a-of-right lots, demonstrates that any adverse effect or impact, if any, has been mitigated to the fullest extent reasonably possible or is otherwise minimal. It should be noted that the DPW of the City has also acknowledged in writing that the water lines to the Project from the existing City water lines are also acceptable and approved.

5. 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: Based on the Applicant's affidavit previously submitted to the ZBA, the Applicant was not made aware that 4 lots required ZBA approval. The first he was made aware that ZBA approval might be needed was 6 or 7 months following its purchase of the last of the 6 lots. In fact, DPW had initially advised the Applicant in writing that the 6-lots to be improved with one-family homes was acceptable to it, but later after generalized community complaints, advised the Applicant that 4 lots would be acceptable. Nonetheless, and as expressly stated in the area variance statute, even if the ZBA determines that the difficulty were self-created, this does not preclude the granting of the variance.

Conclusion: Weighing the 5 factors, the ZBA can reasonably conclude that the benefit to the Applicant, which is reducing his loss on his investment to an estimated \$75,600.00, outweighs any detriment to the neighborhood or community, if any, if the variance is granted.

State Environmental Quality Review Act (SEQRA): An uncoordinated SEQRA review by the ZBA is required. Under the SEQRA statute, the building of a single family home is a Title II Action and exempt from SEQRA review. And the paved extension of Orange Terrace road with the turn-about at the end of the cul-de-sac where the paved road would abut Hillside Cemetery would not likely result in any material adverse environmental impact based upon the Environmental Assessment Form 1 submitted to the ZBA and the Applicant's other submissions. Therefore, the issuance of a SEQRA negative declaration would be appropriate.

Respectfully submitted,

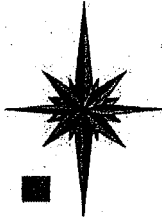
Philip Dropkin, for the firm

Estimated Costs for lots

	6 houses	5 houses	4 houses	3 houses
Amount paid for the 6 lots	\$100,000.00	\$100,000.00	\$100,000.00	\$100,000.00
Additional expenses for engineering	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00
Amount paid + engineering	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00
Cost for Orange Terrace Road - current cost	\$660,400.00	\$660,400.00	\$660,400.00	\$660,400.00
Amount paid + engineering + Road x (2,200 square feet per house) x (number of houses) - see calculation below	\$810,400.00	\$810,400.00	\$810,400.00	\$810,400.00
Total cost	\$1,848,000.00	\$1,540,000.00	\$1,232,000.00	\$924,000.00
Cost of money - 7% of \$2,000,000	\$2,658,400.00	\$2,350,400.00	\$2,042,400.00	\$1,734,400.00
Total cost including cost of money	\$140,000.00	\$140,000.00	\$140,000.00	\$140,000.00
Sale of house - \$470,000 per house	\$2,798,400.00	\$2,490,400.00	\$2,182,400.00	\$1,874,400.00
Profit	\$2,820,000.00	\$2,350,000.00	\$1,880,000.00	\$1,410,000.00
Margin	\$21,600.00	-\$140,400.00	-\$302,400.00	-\$464,400.00
	0.81%	-5.97%	-14.81%	-26.78%
Profit or loss per house				
3 houses				
4 houses				
5 houses				
6 houses				
Cost per house calculation				
Cost per square foot	\$140.00			
Square feet	2200			
Cost per house	\$308,000.00			

FUSCO

ENGINEERING &
LAND SURVEYING, D.P.C.



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Consulting Engineers

Alfred A. Fusco, Jr.
P.E. Principal

Alfred A. Fusco, III
General Manager

March 6, 2024

CPL Architecture
Christian T. Moore, P.E.
26 IBM Road
Poughkeepsie, New York 12601

RE: 2-7 Orange Terrace
City of Middletown
Our File #21-054E

Dear Mr. Moore,

In response to your review letter dated March 5, 2024, we offer the following response:

4. Comment: Question #3.; the total acreage to be disturbed scales approximately 0.9 acres, not 0.56 acres. Please revise. It appears that the discrepancy in limit of disturbance indicated on the plans is not including the roadway extension or Orange Terrace, which must be included.

Response: *The limits of disturbance including the road is 0.9 acres. The total limits of disturbance is shown on the plan.*

Plan Comments:

5. Comment: The limit of disturbance is to be calculated and listed on the plans. A scaled estimate of the provided plans indicates a limit of disturbance of approximately 38,400± sf, which is below the threshold for the NYSDEC General Permit. We recommend that during construction this limit of disturbance be staked out by a Licensed Land Surveyor to ensure the disturbance does not exceed one acre during construction. A note to this effect shall be added to the plans.

Response: *A note has been placed on sheet 3 of the plan set stating that "prior to the start of construction the limit of disturbance shall be staked by a Licensed Land Surveyor."*

Comment: A stormwater analysis must still be provided to compare pre to post construction effects on stormwater runoff from the site as it impacts the adjoining properties. The proposed swales behind the houses are directed to the uphill side of the proposed roadway extension, which discharges via a roadside ditchline onto the adjoining parcel. The stormwater analysis provided is to take into account not just runoff generated from the site itself, but also any offsite runoff entering the site from the northwest properties. The net effect of the proposed runoff patterns on the downstream discharge point needs to be quantified and demonstrate no adverse impacts.

Comment remains. To clarify, we are not requesting the applicant to attenuate water from offsite sources, just that the analysis must take into account offsite runoff.

Response: *The pre-development analysis shows a peak runoff for a 100 year storm is 0.22 cfs. Our post-development analysis shows a peak runoff of 0.22 cfs. The project consists of 5,900 s.f. of impervious area with the disturbance area of 24,393 s.f. The existing lot area for all of the lots is 54,014 s.f. with no existing impervious area. As shown on the calculations provided below each lot requires 5 l.f. of the recharge trench system, we are providing 10 l.f. which is double the required cf per lot.*

Runoff Calculations

Lot 4

1,390 s.f. (proposed impervious)
0.50 inch / 2 hour storm
 $1,390 \text{ s.f.} \times 0.50 \text{ in} \times 1 \text{ ft}/12 \text{ inches} = 57.91 \text{ cf required}$
recharge trench volume = 12.34 cf/lf
 $57.91 \text{ cf} / 12.34 \text{ cf} = 4.69 \text{ l.f. required}$
10 l.f. of trench provided $\times 12.34 \text{ cf}/\text{lf} = 123.4 \text{ cf provided}$

Lot 3

1,390 s.f. (proposed impervious)
0.50 inch / 2 hour storm
 $1,390 \text{ s.f.} \times 0.50 \text{ in} \times 1 \text{ ft}/12 \text{ inches} = 57.91 \text{ cf required}$
recharge trench volume = 12.34 cf/lf
 $57.91 \text{ cf} / 12.34 \text{ cf} = 4.69 \text{ l.f. required}$
10 lf of trench provided $\times 12.34 \text{ cf}/\text{lf} = 123.4 \text{ cf provided}$

Lot 2

1,370 s.f. (proposed impervious)
0.50 inch / 2 hour storm
 $1,370 \text{ s.f.} \times 0.50 \text{ in} \times 1 \text{ ft}/12 \text{ inches} = 57 \text{ cf required}$
recharge trench volume = 12.34 cf/lf
 $57 \text{ cf} / 12.34 \text{ cf} = 4.61 \text{ l.f. required}$
10 lf of trench provided $\times 12.34 \text{ cf}/\text{lf} = 123.4 \text{ cf provided}$

Lot 1

1,380 s.f. (proposed impervious)
0.50 inch / 2 hour storm
 $1,380 \text{ s.f.} \times 0.50 \text{ in} \times 1 \text{ ft}/12 \text{ inches} = 57.5 \text{ cf required}$
recharge trench volume = 12.34 cf/lf
 $57.5 \text{ cf} / 12.34 \text{ cf} = 4.65 \text{ l.f. required}$
10 lf of trench provided $\times 12.34 \text{ cf}/\text{lf} = 123.4 \text{ cf provided}$

6. Comment: This project will require a substantial amount of grading and land recontouring to provide Suitable building locations. A cut-fill estimate is to be provided for review. The estimate must also include any removal of material regarding the roadway extension. Applicant has indicated $5,000 \pm$ cy cut, $400 \pm$ cy fill. Please estimate the number of vehicular trips to remove the excess and a timeframe of bulk grading to assess temporary impact of construction vehicles during grading operations.

The export has been lowered to 1,326 cy. While this represents a significant reduction in earthwork, please provide an estimate of truck trips needed to move this amount.

Response: *Exporting 1,326 cy from the site will take an estimated 53 trucks over a eighteen month period.*

Retaining wall comments:

7. Comment:

- a. All retaining walls in excess of 48" in height require a detailed design by a NYS Licensed Professional Engineer. Drawings and calculations are to be submitted for review.
The information provided on the plans is useful from a constructability standpoint, however calculations for overturn, sliding, bearing, and slope stability need to be provided for review.

The information on sheet 6 is general and is not a design. Please provide the needed calculations as previously requested.

The wall for lot 2 is 11 feet high at the corner adjacent to lot 3; if the geogrid layback length is 11 feet per the detail, the wall is only 5 feet off the property line, and therefore cannot be constructed without encroaching onto lot 2. The same comment applies for the lot 3 wall next to lot 4.

Response: *A note has been placed on the plans stating that a retaining wall design with calculations for overturn, sliding, bearing, and slope stability is required prior to the issuance of a building permit.*

The retaining wall has been modified to a design that does not require geogrid, see details included in this submission.

- b. The retaining wall is shown crossing property lines. If maintenance is ever needed on a given wall section, maintenance/access easements will be required if the needed repair would necessitate work on an adjacent property.

Alternatively, if the retaining wall is designed such that each lot had its own wall, separate and independent of the others, this might lessen or reduce the need for maintenance easements.

What mechanism is proposed to be in place to ensure that the conveyance of lots 1 and 2 is dependent and predicted on the common grading and wall construction being complete?

Response: *A blanket cross easement for the construction of the retaining wall on lots 1 and 2 has been provided in the notes on the plan, allowing for access to both sites for the purpose of performing the grading and construction of the retaining wall.*

- c. Fencing or railing is to be shown along the walls for safety, including how it will be installed, either behind the walls or integral to them.

A chainlink fence is shown along the top of the proposed wall(s). The City should determine if a chainlink fence is appropriate for a residential application. Also, the provided detail does not indicate a height of the fence, and shows a gate; where is the gate proposed?

The chainlink fence has been removed from the plans, but a fence is needed for safety. Please address.

Response: *A chainlink fence has been provided anywhere the retaining wall is over 30", see detail provided on sheet 5 of the plan.*

Individual forcemains:

8. Comment:

- a. Comment satisfied.
- b. Comment satisfied.
- c. The forcemains may need to be installed with greater separation between them and must also provide 10 foot separation from the existing water main. This might place some of the forcemains under the proposed pavement and should be reviewed for suitability.

Confirmation from the City DPW Commissioner is to be provided regarding the configuration of the sewer as claimed by the Applicant's consultant.

Response: *We have provided a copy of the approval letter from the City of Middletown DPW.*

- d. If there is a leak with one of the forcemains, there needs to be some method to determine which of the four is leaking.
The concern is to identify which of the four houses a given forcemain serves, so that the pump tied into a particular forcemain can be deactivated for maintenance and repair.

Is the DPW empowered to enter private property and conduct a dye test? The only logical place to introduce dye would be in the pump chamber and that would necessitate obtaining consent of the homeowner.

Response: *The City Code allows the DPW to authorize work for the health and safety and welfare of the public.*

Bio-retention swale/rain garden comments:

9. Comment:

- a. Provide calculations demonstrating what effect these rain gardens will have on the proposed drainage patterns.

Comment remains.

b. Comment satisfied.

- c. The bioretention/swale detail indicates a perforated underdrain about 5 feet below grade, but no connections or outlets for these underdrains are shown on the plans. With no outlet, the swales will fill up and discharge.

The swales must be graded; a line with arrows indicating direction of desired flow is not acceptable. The swale for lot 2 needs to be moved further away from the proposed house, and it appears there is room to do this.

A detail for the rain gardens must be provided, and it must demonstrate how the connection is made from the bioretention underdrain to said rain garden.

A rain garden detail has been provided. The detail shows an underdrain about 30" below grade; how does this underdrain connect to the roadside drainage conveyance?

Response: *The rain gardens have been eliminated and replaced with a recharge trench detail. The calculations for sizing are provided on sheet 3 of the plan set.*

10. Comment: Contours appear to indicate a roadside ditchline on the uphill side of the Orange Terrace extension, but they are shown going across driveway aprons. This may lead to icing up of the aprons during the winter. It appears that culvert piping will be needed; these need to be shown along with size, slope, material, end sections, etc.
Also, the proposed contours do not indicate a uniform cross slope on the pavement.

All culverts are to be labeled with size, slope, material, end sections, etc.

Response: *All culverts are labeled with size, material, slope, invert and end sections.*

11. Comment: A cross section of the proposed roadway extension is to be provided, shoulder to shoulder.
The "Rural Street Detail" provided on Sheet 5 indicates a 24 ft. lane width with 6 foot wide paved shoulders for a total pavement width of 36 ft. However, the plans show a proposed pavement width of 24 feet in total. Please revise as needed.

The detail has been changed. However, it does not show the roadside ditch section correctly, please revise.

Response: *The roadside ditch has been revised.*

12. Comment: Erosion control detail shows insufficient height of silt fence, and the notes reference haybales, which are no longer suitable for use as erosion control. The silt fence material is to be specified.

A silt fence detail has not been provided. Please add one and show on the plans where silt fence will be installed.

Response: *The NYSDEC silt fence detail has already been provided on sheet 5 of the plan. The location shown on the plan.*

13. Comment: The grading for the driveways needs to be reviewed for Lot 1-3. Proposed contours show sections of the driveways that are around 20% - 25% grade and this is not navigable.

If it is the intent to have front-load garages for these house, a landing area of no more than 2% in front of the garage is recommended to allow cars to park inside without bottoming out.

Profiles may be helpful to check for excessive grades.

Response: *The driveways are all at a 20% grade or less. A 2% landing in front of the garage is not feasible.*

14. Comment: Lot 3 needs a proposed 618 contour coming out the front of the house and tying in to Grade in the vicinity of the tank.

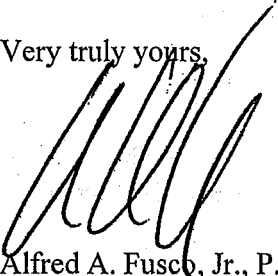
Response: *The 618 proposed contour is now shown on lot 3.*

15. Comment: Review the BFE for lot 1. If the BFE is intended to be the elevation of the garage level, it is two feet below the elevations of the driveway.

Response: *The grading has been corrected and the BFE is now consistent with the grading shown on the driveway.*

Please advise if you have any questions.

Very truly yours,



Alfred A. Fusco, Jr., P.E.
FUSCO ENGINEERING &
LAND SURVEYING, D.P.C.

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.

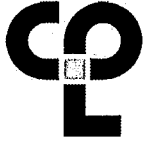
If you have any questions or concerns, please feel free to contact the office.

Sincerely,

A handwritten signature in black ink, appearing to be "Jacob S. Tawil", followed by a long horizontal line.

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

JT/kg



MEMORANDUM

TO: Chairman Jim Burtis, Zoning Board of Appeals, City of Middletown

FROM: Christian T. Moore, P.E.

Cc: Martina Tu (*via email*)
Jacob Tawil, P.E. (*via email*)
Richard Croughan, Esq. (*via email*)

DATE: 3/5/2024

RE: 2-7 Orange Terrace
Engineering review
CPL# R23.00084.01

We are in receipt of the following materials provided for review:

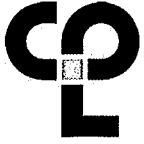
- Short Form EAF undated (received on 1/17/2024)
- "Plan Prepared for Orange Terrace Properties, LLC" Prepared by Fusco Engineering and Land Surveying, P.C, rev 1/17/2024

Based on our review we have the following engineering related comments.:

EAF Comments:

1. Question #2 needs clarification:
 - a. Additional permits are required for water and sewer connections.
Comment satisfied.
 - b. A City Highway work permit is required for the extension of Orange Terrace.
Comment satisfied.
 - c. A performance bond for the road extension improvements will be required. This would appear to involve the City to authorize that action and approve the bond amount and form.
2. The answer to Question #17 needs to be corrected.

Comment satisfied.



3. Question #18 references "rain gardens and detention ponds, but no detention ponds are shown on the plans. Please clarify.

Comment satisfied.

4. Question #3; the total acreage to be disturbed scales approximately **0.9 acres**, not 0.56 acres. Please revise.

It appears that the discrepancy in limit of disturbance indicated on the plans is not including the roadway extension or Orange Terrace, which **must** be included.

Plan Comments

5. The limit of disturbance is to be calculated and listed on the plans.

A scaled estimate of the provided plans indicates a limit of disturbance of approximately 38,400± sf, which is below the threshold for the NYSDEC General Permit. We recommend that during construction this limit of disturbance be staked out by a Licensed Land Surveyor to ensure the disturbance does not exceed one acre during construction. A note to this effect shall be added to the plans.

A stormwater analysis must still be provided to compare pre to post construction effects on stormwater runoff from the site as it impacts the adjoining properties. The proposed swales behind the houses are directed to the uphill side of the proposed roadway extension, which discharges via a roadside ditchline at its terminus, directly onto the adjoining parcel.

The stormwater analysis provided is to take into account not just runoff generated from the site itself, but also any offsite runoff entering the site from the northwest properties. The net effect of the proposed runoff patterns on the downstream discharge point needs to be quantified and demonstrate no adverse impacts.

Comment remains. To clarify, we are not requesting the applicant to attenuate water from offsite sources, just that the analysis must take into account offsite runoff.

6. This project will require a substantial amount of grading and land recontouring to provide suitable building locations. A cut-fill estimate is to be provided for review. The estimate must also include any removal of material regarding the roadway extension.



Applicant has indicated 5,000± cy cut, 400± cy fill. Please estimate the number of vehicular trips to remove the excess and a timeframe of bulk grading to assess temporary impact of construction vehicles during grading operations.

The export has been lowered to 1,326 cy. While this represents a significant reduction in earthwork, please provide an estimate of truck trips needed to move this amount.

7. Retaining wall comments:

- a. All retaining walls in excess of 48" in height require a detailed design by a NYS Licensed Professional Engineer. Drawings and calculations are to be submitted for review.

The information provided on the plans is useful from a constructability standpoint, however calculations for overturn, sliding, bearing, and slope stability need to be provided for review.

The information on sheet 6 is general and is not a design. Please provide the needed calculations as previously requested.

The wall for lot 2 is 11 feet high at the corner adjacent to lot 3; if the geogrid layback length is 11 feet per the detail, the wall is only 5 feet off the property line, and therefore cannot be constructed without encroaching onto lot 2. The same comment applies for the lot 3 wall next to lot 4.

- b. The retaining wall is shown crossing property lines. If maintenance is ever needed on a given wall section, maintenance / access easements will be required if the needed repair would necessitate work on an adjacent property.

Alternatively, if the retaining wall was designed such that each lot had its own wall, separate and independent of the others, this might lessen or reduce the need for maintenance easements.

What mechanism is proposed to be in place to ensure that the conveyance of lots 1 and 2 is dependent and predicated on the common grading and wall construction being complete?



- c. Fencing or railing is to be shown along the walls for safety, including how it will be installed, either behind the walls or integral to them.

A chainlink fence is shown along the top of the proposed wall(s). The City should determine if a chainlink fence is appropriate for a residential application. Also, the provided detail does not indicate a height of the fence, and shows a gate; where is the gate proposed?

The chainlink fence has been removed from the plans, but a fence is needed for safety. Please address.

8. Individual forcemains:

- a. Review the indicated lengths of the forcemains; some appear inaccurate.

Comment satisfied.

- b. Six forcemain penetrations into the existing manhole will compromise the manhole's integrity. Applicant is to provide a connection method which prevents this.

Comment satisfied.

- c. The forcemains may need to be installed with greater separation between them, and must also provide 10 foot separation from the existing water main. This might place some of the forcemains under the proposed pavement, and should be reviewed for suitability.

Confirmation from the City DPW Commissioner is to be provided regarding the configuration of the sewer as claimed by the Applicant's consultant.

- d. If there is a leak with one of the forcemains, there needs to be some method to determine which of the four is leaking.

The concern is to identify which of the four houses a given forcemain serves, so that the pump tied into a particular forcemain can be deactivated for maintenance and repair.

Is the DPW empowered to enter private property and conduct a dye test? The only logical place to introduce dye would be in the pump chamber and that would necessitate obtaining consent of the homeowner.



9. Bio-retention swale / rain garden comments:

- a. Provide calculations demonstrating what effect these rain gardens will have on the proposed drainage patterns.

Comment remains.

- b. Identify the entity responsible for long term maintenance.

Comment satisfied.

- c. The bioretention/swale detail indicates a perforated underdrain about 5 feet below grade, but no connections or outlets for these underdrains are shown on the plans. With no outlet, the swales will fill up and discharge overland.

The swales must be graded; a line with arrows indicating direction of desired flow is not acceptable. The swale for lot 2 needs to be moved further away from the proposed house, and it appears there is room to do this.

A detail for the rain gardens must be provided, and it must demonstrate how the connection is made from the bioretention underdrain to said rain garden.

A rain garden detail has been provided. The detail shows an underdrain about 30"± below grade; how does this underdrain connect to the roadside drainage conveyance?

10. Contours appear to indicate a roadside ditchline on the uphill side of the Orange Terrace extension, but they are shown going across driveway aprons. This may lead to icing up of the aprons during the winter. It appears that culvert piping will be needed; these need to be shown along with size, slope, material, end sections, etc.

Also, the proposed contours do not indicate a uniform cross slope on the pavement.

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A silt fence detail has not been provided. Please add one and show on the plans where silt fence will be installed.

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15. Review the BFE for lot 1. If the BFE is intended to be the elevation of the garage level, it is two feet below the elevation of the driveway.

We ask the Applicant to provide an item by item response to the above comments. Additional comments may be forthcoming as the project progresses. Should you have any questions regarding this review, please do not hesitate to contact me at 845-686-2330 or by email at cmoore@cplteam.com.