

CITY OF MIDDLETOWN
ZONING BOARD OF APPEALS AGENDA
SEPTEMBER 18, 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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES

Accept the Minutes of June 19, 2024

NEW BUSINESS

Application of Shan Hua Jiang for a use variance in order to obtain a non-owner occupied 2-family dwelling status in OR-2 zone at 137 Linden Avenue

Application of Shiya Leibovitz for area variances for a proposed two-family dwelling at 92 Linden Avenue

Application of Jacqueline Accime for an interpretation of the zoning ordinance for a single-family home at 225 Highland Avenue

ADJOURNMENT

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

June 19, 2024

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 June 19, 2024 at 7:00 P.M., Jim Burtis presiding.

Members Present: Wendy Rodrigues, Keith Hallock, Jim Burtis

Members Absent: Marc Woody, Mary Ann Cavallaro

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

The Pledge of Allegiance was said.

Motion to approve the March 20, 2024 minutes.

Motion by Ms. Rodrigues, seconded by Ms. Hallock.

Minutes approved.

Shan Hua Jiang

137 Linden Avenue

Use variance (non-owner occupied 2-family dwelling in OR-2)

Mr. Burtis: We will go ahead and move along to the application for 137 Linden Avenue. I understand we already have an open public hearing on that matter; correct?

Mr. Croughan: That's correct.

Mr. Burtis: So we'll go ahead and resume that public hearing, and I don't see anyone --

Mr. Croughan: Well, maybe the applicant can come up and reacquaint the Board with his project since it's been a while.

Mr. Jiang: Shan Hua Jiang.

Mr. Burtis: Hi there. Thank you for coming.

Mr. Jiang: This application was submitted about a year ago. You know, I have a big building, about more than, you know, 14,000 sq.ft. Right now, I want to have one apartment, so I wish I could have more apartments if they're approved or, you know, if not, I would, you know, try to get a non-owner occupied approval so I can rent another apartment out to cover my costs.

So we spent a lot of money for that building, almost seven years, so every year I lost money, so I sent the tax return to Martina.

Mr. Burtis: Thank you.

Mr. Croughan: Okay. And this property is located in the OR-2 Zone, which means that it would have to be owner occupied, so you're requesting the Board for the use variance of that.

Mr. Jiang: Yes.

Mr. Croughan: And, Martina, we received his financials?

Ms. Tu: Yes.

Mr. Croughan: The tax returns?

Ms. Tu: Correct.

Mr. Croughan: Thank you. So it's a continuation of a public hearing.

Mr. Burtis: Yes. Do any of the Board members have any questions for the applicant?

Mr. Croughan: Now, before we close the public hearing, the applicant should advise if he would want us to take a vote at this point; otherwise, the public hearing would be kept open. Understanding that we have enough -- there are five Board members, three are present which gives us the quorum, but in order to pass a resolution, you would need all three Board members to vote in your favor. Would you like the Board to make a decision tonight?

Mr. Jiang: Yes. If possible, yes.

Mr. Croughan: Okay. The public hearing is still open, so we'd need a motion to close the public hearing if the Board is satisfied with the information that they've received.

Mr. Burtis: Well, I do have a question for the applicant. Would it be feasible for you to rent out your facility to another congregation?

Mr. Jiang: I wish, yeah, but so far, you know, a church guy wanted to come, but didn't get confirmation yet.

Mr. Burtis: Okay.

Mr. Croughan: Mr. Chairman, there's no documentation to show that there was an effort to rent it out to any organization or for any other use. There's only tax returns that were provided.

Mr. Burtis: Okay.

Mr. Croughan: Wendy has a question as well.

Mr. Burtis: Go ahead.

Ms. Rodrigues: Have you listed your property like with a Realtor to try and obtain a tenant for

the building?

Mr. Jiang: Yeah, I do, but no tenants came forward, like, you know, except residential people.

Ms. Rodrigues: Okay. And is this the same building that had some violations?

Mr. Croughan: There's no documentation -- I'm sorry. There's no documentation in the record to show that it was listed with the Realtor for rent to anyone.

Mr. Jiang: I can print out -- yeah, I do. My broker put a listing online, but I can print it out and give it to Martina.

Mr. Croughan: Martina, do you have those documents?

Ms. Tu: No.

Mr. Jiang: Nobody asked me for that. If you ask me for it, I will print it out.

Mr. Croughan: Well, you're supposed to provide that to the Board.

Mr. Burtis: That would be part of your application process. And I would like to clarify the listings that you made or you claim that you made, were those for residential units or for, you know, commercial type units?

Mr. Jiang: Residential.

Mr. Burtis: Residential.

Mr. Jiang: I just needed one more residential to rent out to cover my costs.

Mr. Burtis: Okay. Have you considered listing the property for something other than residential?

Mr. Jiang: It's hard. A church needs more work. I want to, you know, if I rent the apartment out, I can make money to continue to fix the church floor. Mr. Martinez saw that. I can't do anything. We don't have enough money to do that.

Mr. Burtis: Okay.

Mr. Croughan: Have you thought about moving into the premises?

Mr. Jiang: No. I just want to finish that first.

Mr. Croughan: But if you moved into it, then it would be permitted as owner occupied, and whatever you're spending someplace else, you would be saving by moving in.

Mr. Jiang: But my family doesn't want to move there to live outside of Middletown.

Mr. Croughan: Did you have another question?

Ms. Rodrigues: I have another question. I believe from the last meeting there was multiple open violations on this building, if I'm thinking of the right --

Mr. Martinez: The only violation that's on right now would be the stop work order, which he has stopped doing any kind of work inside the building.

Ms. Rodrigues: Okay.

Mr. Martinez: Okay? He has a rental permit for the single family.

Mr. Burtis: I also want to convey that a large part of the City's rebirth has been happening because of the fact that owners have become more involved in their investments and in the properties in the City of Middletown, so there may be some reluctance to grant this type of request, and we would like, or at least I, as a member of the Board, would like you to explore other alternatives other than using this mechanism if possible.

So would you be open to commercially listing a rental unit at your place for a permitted use within the dwelling? If I'm saying that correctly, counsel.

Mr. Croughan: As long as it's a permitted use in the OR-2 Zone.

Mr. Burtis: Do you think you'd be able to work on that?

Mr. Jiang: Yeah, but still, if I could get one more apartment for rent, that would be appreciated. Of course, I can rent the downstairs for the church, but the issue is I need money to fix it.

Mr. Burtis: I don't see that as a concern of this Board.

Mr. Croughan: Well, Mr. Chairman, if we could go through the application with respect to the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence. The applicant has submitted tax returns but hasn't shown that he's tried to sell the property so that he can get a reasonable return or that he's tried to have it rented for another use that would be permitted.

The second part, B, is the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. The property is unique in that it is a church, big and spacious, but it is still in an OR-2 Zone, and the applicant hasn't demonstrated that he's applied to obtain a permitted use there.

The requested use variance, if granted, will not alter the essential character of the neighborhood. The neighborhood is an OR-2 Zone, owner occupied, so it would change or alter the essential character of the neighborhood.

And the alleged hardship has not been self-created. Clearly it has. When he bought the property, he knew what he was buying.

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

It's a four-part test, and a use variance is very difficult to obtain, and you would have to be able to answer all of the questions, and I don't believe the applicant has, but that's the decision of the Board.

Mr. Burtis: What I'd also like to offer to you is rather than examine the application with the three members present tonight, I would ask of you that you consider deferring a decision at this meeting to give you an opportunity to better accomplish the request Mr. Croughan outlined this evening and come back to us at a future meeting being ready to discuss what you've achieved or accomplished between now and then. Is that something you'd be open to doing?

Mr. Jiang: Yes.

Mr. Burtis: Okay.

Mr. Croughan: If the Board is inclined to do that, then the public hearing must stay open.

Mr. Burtis: All right.

Motion to keep the public hearing open on the application for 137 Linden Avenue.

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

Roll Call Ayes: Wendy Rodrigues, Keith Hallock, Jim Burtis

Melissa Farmer
29 Winchester Avenue
Area variances for an addition to an existing dwelling

Mr. Burtis: We have with us tonight our applicant from 29 Winchester Avenue. That would be an area variance for an addition to an existing dwelling.

At this time I'd like to call up the applicant, Melissa Farmer. If you could step forward towards the microphone and give us a little recap of what you're asking for here.

Ms. Farmer: Hello. Good evening, and excuse my lateness. Thank you for still seeing my case today.

So I would like to add an addition to the backyard of my home. I have a pretty sizable backyard. My lot is actually 29 -- the formal address is 29-31. I believe it's formally a double lot.

The thing is I didn't want to impede on the middle of my backyard, so I figured the addition I could build on either side of the home. The home is this way, and to build an addition on this side and this side of the home so that I still have the entire middle ground of yard to play with.

The addition would be, one side would be a recreational room and an additional bedroom on the right side of the home.

Am I answering the question how you wanted me to?

Mr. Burtis: So --

Ms. Farmer: Because I see you looking.

Mr. Burtis: Yeah. We'd first off like to inform you that usually this is a five-person Board, so if our Board was to make a determination tonight on your application or any application, it would need to be unanimous to move it forward.

Ms. Farmer: Understood.

Mr. Burtis: So typically we offer the applicant an opportunity to come back when there are more members of the Board present. So that's just a little bit of housekeeping I wanted to lay out for you.

The other thing I'd like to do is to ask you if you've had any architects or engineers produce any blueprints or stamped drawings outlining your renovation and your goals.

Ms. Farmer: Yes. Me and my husband was working with an architect. We was working with him for a few months actually going back and forth, because initially we were thinking about building up, and we decided to build out. We reached out to him to get the final drawings -- well, we've been reaching out for the last two weeks, and we didn't get an answer. We knew that he was in the hospital a week prior. His son responded to the text message saying that he passed away this past Saturday.

And he submitted many things. He's told me he's well known here, so I'm really sad that he passed away. I only known him for a few months, but he worked with us intensely and gave us so many good ideas. So now we're without an architect to do the final drawings.

Mr. Burtis: Okay. What I'd like to offer to you is the opportunity to come back with a complete set of drawings. This way, we can make an informed decision on your request. Is that something you'd be open to doing?

Ms. Farmer: I would be, but would the drawings that I submitted, would that not be suffice?

Mr. Croughan: Mr. Martinez, would you like to comment on that?

Mr. Martinez: I had spoken to Mr. Welch. He wanted something that stated the actual additions on the property itself, and we did not receive anything of that nature.

Mr. Croughan: I believe what the Building Department is asking for is engineered or architectural plans for them to review.

Ms. Farmer: I'm a little inexperienced in this area, so is this what I submitted, is this not architectural drawings?

Mr. Croughan: No, it's not.

Ms. Farmer: Okay.

Mr. Croughan: What was submitted was handwritten. That's not an engineer or architectural plan.

Ms. Farmer: Okay. I just want to make sure that you guys have all the information that I have in front of me. Did everyone see this drawing?

Mr. Burtis: I don't have a copy of that. Does the Building Department?

Ms. Farmer: This one?

Mr. Martinez: This is a layout of the building. It does not -- there's a couple spots where it shows property lines, but it's not stamped, so we need something stamped; okay?

Ms. Farmer: Okay. As long as I know exactly what to get and what to ask for and the verbiage that I use when I'm requesting it, then I can come back and be better prepared. Like I said, I don't -- I have no idea what I'm asking for. I thought this was what architectural --

Mr. Croughan: Sure. And just on the area variance, the application that you have, I think you're going to have to have your engineer or architect look at that because it's not making sense. You have a setback that you're asking for with the required dimension. Required means what the Building Department needs, and you have 30 feet there, and you have actual dimension of 67.2, which would mean that you have more than enough, but then you have variance requested 20 feet.

Then on sideline, you have required 5 feet, actual 17, and requesting 4 feet, so the numbers are not making sense, so you're going to have to have somebody look at that.

Ms. Farmer: Okay.

Mr. Croughan: All right?

Mr. Burtis: And then resubmit the application.

Ms. Farmer: Would it be another fee?

Mr. Croughan: Well, you can amend the application. The public hearing, we would have to open the public hearing and then keep it open while the applicant does the necessary work.

Mr. Burtis: And the Board is willing to work with you on that.

Ms. Farmer: Okay.

Mr. Burtis: All right? We don't want to see you apply multiple times when it can just be done once properly; all right?

Ms. Farmer: Absolutely.

Mr. Croughan: So, Mr. Chairman, I think you want to open the public hearing at this point, and then if anybody's here from the public, invite them up, and if not, just keep it open, make a motion to keep it open, and then for the applicant to make the necessary changes.

Mr. Burtis: Fair enough.

Motion to open the public hearing for 29 Winchester Avenue by Ms. Rodrigues, seconded by Mr. Hallock.

Roll Call Ayes: Wendy Rodrigues, Keith Hallock, Jim Burtis

The public hearing was opened.

Mr. Burtis: If there's anyone from the public wishing to come forth, please step forward if you have anything to add.

Alderman Kleiner?

Mr. Croughan: If you can just step to the side for a minute.

Mr. Kleiner: I just have one question. The agenda says 129 Winchester, which there is no such thing. It's 29.

Mr. Burtis: Yeah. So the applicant just clarified for us that it would be 29-31 Winchester, so that'll be reflected on future paperwork.

Mr. Kleiner: Okay. Thank you.

Mr. Burtis: You're welcome. Thank you, Mr. Kleiner.

Motion to keep the public hearing open for 29-31 Winchester Avenue by Ms. Rodrigues, seconded by Mr. Hallock.

Roll Call Ayes: Wendy Rodrigues, Keith Hallock, Jim Burtis

Motion passed.

Mr. Burtis: So what we'll do is we'll keep this public hearing and application open to give you an opportunity to take care of whatever paperwork needs exist. You could communicate with Martina, and when you're ready, let us know and we'll schedule the next meeting.

Mr. Croughan: And obviously send it to Mr. Martinez so he can take a look as well.

Ms. Farmer: Okay. Thank you. I just before I leave his email so I can send it before.

Mr. Croughan: Okay. If you wait, he'll provide it to you.

Ms. Farmer: Thank you. Thank you, everyone, for attending this evening.

Mr. Burtis: You're welcome. Is there any other business to be brought before the Board? Hearing none, I'll call for a motion to adjourn.

Motion to adjourn at 7:35 p.m. by Ms. Rodrigues, seconded by Mr. Hallock.

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

Motion passed.

Respectfully Submitted,

Diane Genender, Transcriptionist

APPLICATION

ZONING BOARD OF APPEALS

City of Middletown, New York

Date deemed complete _____

Date _____

Accepted by _____

Items 1, 2 and 3 are required to be completed

1. Address of Subject Property 137 LINDEN AVE

Section 17 Block 1 Lot 10

Current Zoning District OR-2

Building: Existing ☒ New ☐

2. Owner of Property SHAN JIA JIANG

Owner's Address 320 POCATZELLO ROAD

City MIDDLETOWN State NY Zip 10940

Phone numbers: Home: 212-470-1103

Business: _____

Cell: 212-470-1103

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.

(a) I Submit 4 YEARS TAX RETURN SHOWING MY
LOST, EVERY YEAR.

RIGHT NOW I CAN ONLY RENT ONE APARTMENT,
I AM APPLYING TO RENT ANOTHER APT 1/0 OWNER
OCCUPY, TO COVER MY LOST.

(b) MY PROPERTY IS 15000²SF, 3 STORY BUILDING
50 PARKING SPACE, ONLY ONE IN MY LINDEN AVE.

(c) MY PROPERTY IS UNIQUE, CANNOT FIND 2ND ONE.

(d) I BOUGHT THIS PROPERTY ON 2017, LOT OF DRUG
DEALER THERE, AFTER I BOUGHT IT AND CLEAN UP,
CUT BUSHES, TREES, ~~DRUG~~ AND RENT THEM OUT, NOW
WE HAVE NICE NEIGHBOURHOOD.

- 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.

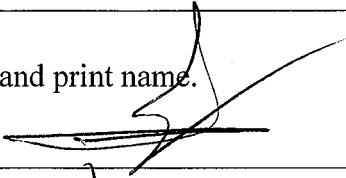
Section/ Title	Required Dimension	Actual Dimension	Variance required
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- 8.** Sign at the place indicated and print name.

Signature of applicant

Printed name and title

Date


SHANMA JIANG owner
5/25/23

APPLICATION

ZONING BOARD OF APPEALS

City of Middletown, New York

Date deemed complete _____
Accepted by _____

Date 8/6/2024

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
a.	475-11 (F.1)	SEE ATTACHED		
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.

ZONING REQUIREMENTS

OR-2 TWO FAMILY OWNER OCCUPIED DISTRICT

MINIMUM REQUIRED:

LOT AREA _____ 7,500 S.F.
~~LOT WIDTH _____ 75'~~
LOT DEPTH _____ N/A
~~FRONT YARD _____ 25'~~
EACH SIDE YARD _____ 5'
REAR YARD _____ 20'
BUILDING HEIGHT _____ 35'

AS SHOWN: (PRE-EXISTING LOT)

LOT AREA _____ 3,988 S.F. - Required Variance 25 feet
~~LOT WIDTH _____ 59'~~
LOT DEPTH _____ 79.8' - Required Variance 13 feet
~~FRONT YARD _____ 10'~~
ONE SIDE YARD _____ 5.2'
BOTH SIDE YARDS _____ 11.0'
REAR YARD _____ 21'
BUILDING HEIGHT _____ <35'

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.

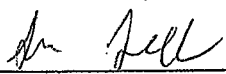
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6. AN INTERPRETATION OF THE ZONING ORDINANCE. Explain the circumstances of the Section in question, the Title of the Section, the nature of the request, and the person or agency making the original determination. Additional sheets may be attached if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

8. Sign at the place indicated and print name.

Signature of applicant 

Printed name and title Shiya Leibovitz, Owner

Date 8/6/24

OWNERS ENDORSEMENT

COUNTY OF ORANGE
STATE OF NEW YORK

Shiya Leibovitz being duly sworn, deposes and
says that he/she resides at 5 Kerestier Ct.
in the County of Orange and State of NY and that he is the
owner in fee or Owner of the
92 Linden LLC OFFICIAL TITLE Corporation which is the owner
in fee of the premises described in the foregoing application and that he has authorized
Fusco Engineering to make the foregoing application for
approval as described herein.

Sworn before me this 6 day of August 20 24


NOTARY PUBLIC

FRANCES MARIE DULLAGHAN
Notary Public, State of New York
No. 01DU6033744
Qualified In Orange County
Commission Expires November 22, 20 25



OWNERS SIGNATURE

Short Environmental Assessment Form

Part 1 - Project Information

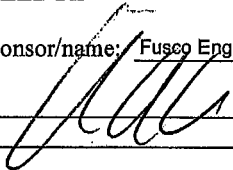
Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

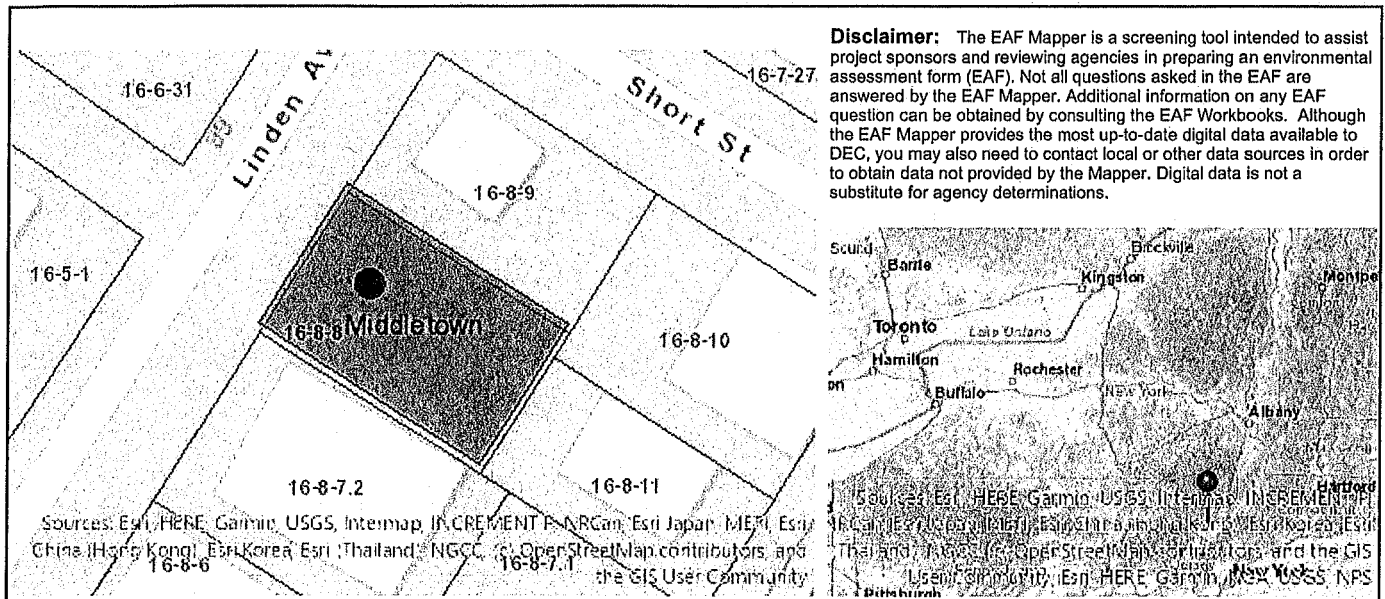
Part 1 – Project and Sponsor Information			
92 Linden LLC			
Name of Action or Project: 92 Linden Ave Site Plan			
Project Location (describe, and attach a location map): 92 Linden Ave, Middletown, NY, Tax Map Section 16, Block 8, Lot 8			
Brief Description of Proposed Action: The applicant is proposing a 39'X47' two family dwelling on the subject property			
Name of Applicant or Sponsor: 92 Linden LLC		Telephone: 845-248-1760	
		E-Mail: mzy11760@gmail.com	
Address: 199 Lee Avenue			
City/PO: Brooklyn		State: NY	Zip Code: 11211
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO ☐
			YES ☒
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: City of Middletown Building Department			NO ☐
			YES ☒
3. a. Total acreage of the site of the proposed action?		0.09 acres	
b. Total acreage to be physically disturbed?		0.07 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		0.09 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. ☐ Urban ☐ Rural (non-agriculture) ☐ Industrial ☐ Commercial ☒ Residential (suburban)			
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other(Specify):			
☐ Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	☐	☒	☐
b. Consistent with the adopted comprehensive plan?	☐	☒	☐
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	☐	☒	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
If Yes, identify: _____	☒	☐	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
b. Are public transportation services available at or near the site of the proposed action?	☒	☐	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	☐	☒	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies: _____ _____	☐	☒	
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____ City of Middletown	☐	☒	
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____ City of Middletown	☐	☒	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO	YES	
	☐	☒	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	☒	☐	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	☒	☐	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	☐	☐	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: ☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☐ Wetland ☐ Urban ☒ Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	☒	☐
16. Is the project site located in the 100-year flood plan?	NO	YES
	☒	☐
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
	☐	☒
a. Will storm water discharges flow to adjacent properties?	☒	☐
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	☐	☒
Storm water will runoff into City of Middletown storm water system		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
	☒	☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
	☒	☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
	☒	☐
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: <u>Fusco Engineering & Land Surveying, DPC</u> Date: <u>8/8/24</u> Signature: <u></u> Title: <u>Engineer</u>		

EAF Mapper Summary Report

Thursday, August 8, 2024 2:29 PM



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	Yes
Part 1 / Question 12b [Archeological Sites]	No
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	No
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	No

APPLICATION

ZONING BOARD OF APPEALS

City of Middletown, New York

Date deemed complete _____
Accepted by _____

Date 5/25/23

Items 1, 2 and 3 are required to be completed

1. Address of Subject Property 225 Highland Ave

Section 8 Block 1 Lot 18 Current Zoning District R1

Building: Existing ☒ New ☐

2. Owner of Property Jacqueline Accine

Owner's Address 225 Highland Ave

City Middletown State NY Zip 10940

Phone numbers: Home: _____

Business: _____

Cell: _____

3. Applicant name Kevin Conway, Esq

If different from Owner

Applicants Address 7 Stokum Lane

City New City State NY Zip 10956

Phone numbers: Home: 845-352-0206

Business: _____

Cell: 845-729-2096

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. _____

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.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or printed text on the paper.

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.

the applicant seeks an interpretation of the building inspector's determination attached hereto entitled notice of violation & order to remedy as this is a lawful two-family dwelling as can be shown by the historical records maintained by the municipality and as such would not be limited to single family occupancy.

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.

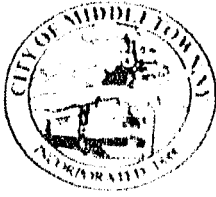
Signature of applicant

Printed name and title

Date

8/25/22

[Signature]
Robert T. Conway, Esq.



City of Middletown

Department of Public Works
16 James Street
Middletown, NY 10940
845-343-3169

NOTICE OF VIOLATION - ORDER TO REMEDY

ISSUED TO: Yves Bigord
225 Highland Ave
Middletown, NY 10940

REFERENCE NO: 202300645

ISSUE DATE: 04/27/2023

REINSPECTION DATE:

RE: 225 Highland Ave

SEC-BLK-LOT: 8-1-18

PLEASE TAKE NOTICE THAT the property described above, including any improvements thereon, which is owned, occupied or operated by you or in which you have an interest, is in violation of the City Code of the City of Middletown and/or the Uniform Fire Prevention and Building Code as specified in the attached 'MEMORANDUM OF VIOLATIONS'.

All violations are to be corrected prior to the reinspection date noted on this notice.

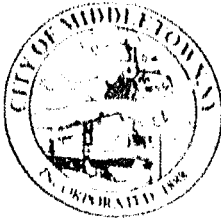
Your failure to correct these violations within the time noted above, and to comply with the applicable provisions of law may constitute an offense punishable by a fine or imprisonment or both.

For the purposes of applying the penalties described in this order, your first violation shall be deemed to have occurred as of the ISSUE DATE noted above.

ONLY CITY OF MIDDLETOWN LICENSED PLUMBERS AND ELECTRICIANS ARE TO BE USED ON ALL PLUMBING AND ELECTRICAL REPAIRS IN ANY RENTAL PROPERTY.

Should you have any questions, please contact me at (845) 343-3169

Brent DeWitt
Code Enforcement



City of Middletown

Department of Public Works
16 James Street
Middletown, NY 10940
845-343-3169

MEMORANDUM OF VIOLATION

ISSUE DATE: 04/27/2023

REGARDING: 225 Highland Ave

SEC-BLK-LOT: 8-1-18

ISSUED TO:

Yves Bigord
225 Highland Ave
Middletown, NY 10940

LOCATION: 225 Highland Ave

SECTION: 107.1.4 Unlawful Structure

DESCRIPTION: An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

OBSERVED:

RESOLUTION: THIS DWELLING IS HEREBY CONDEMNED DUE TO BEING ILLEGALLY OCCUPIED. ONE OCCUPANT MUST VACATE THE PROPERTY BY 2PM ON JUNE 1, 2023. THIS CONDEMNATION CAN BE RESCINDED ONCE PROPERTY COMES INTO COMPLIANCE WITH OCCUPANCY LIMITS.

OWNERS ENDORSEMENT

COUNTY OF ORANGE
STATE OF NEW YORK

Jacqueline Accime being duly sworn, deposes and
says that he/she resides at 225 Highland Avenue Middletown NY 10940
in the County of Orange and State of New York and that he is the
owner in fee or Jacqueline Accime of the _____
OFFICIAL TITLE _____ Corporation which is the owner
in fee of the premises described in the foregoing application and that he has authorized
Kevin Conway to make the foregoing application for
approval as described herein.

Sworn before me this 25 day of May 2023

Wendy Altieri
NOTARY PUBLIC

WENDY ALTIERI
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01AL6443817
Qualified in Rockland County
Commission Expires November 14, 2026

[Signature]
OWNERS SIGNATURE