

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

**July 19, 2023**

A meeting of the Zoning Board of Appeals was held in the Common Council Chambers, Second Floor, City Hall, 16 James Street, Middletown, New York on July 19, 2023 at 7:00 P.M., Jim Burtis presiding.

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

Other Attendees: Richard J. Croughan, Corporation Counsel

The Pledge of Allegiance was said.

Motion to approve the June 21, 2023 minutes.

Motion by Ms. Rodrigues, seconded by Mr. Hallock.  
Minutes approved.

Two items that were on the agenda, Orange Terrace and Linden Avenue, are being deferred to a future meeting.

There will be no ZBA meeting in August 2023.

**Abraham Rosenbaum**  
**40 Adams Avenue**  
**Area variance for a single-family home**

Mr. Austerlitz: I'm Mordechai Austerlitz. I'm here for 40 Adams Avenue.

Mr. Burtis: Okay. Do you have any new information related to your application?

Mr. Austerlitz: No. We have everything like last month that we redid the plans, we made the house smaller and the garage, two parking spots in the driveway, so we made everyone happy, all the neighbors that had their issues.

Mr. Burtis: Okay. Has anything been done with the neighboring garage?

Mr. Austerlitz: Yes. We made the deal when we bought it that we're going to remove it.

Mr. Burtis: Okay. So it's not been taken down yet, but will be.

Mr. Austerlitz: Correct.

Mr. Burtis: Okay. Thank you. Do any of the Board members have questions for the applicant regarding this application?

Mr. Hallock: No.

Mr. Burtis: Mark?

Mr. Woody: I just have one question. For the modifications, particularly with the garage, the arrangement that you made with the neighbors, is that in writing, or that just an agreement that you have?

Mr. Austerlitz: No, not in writing. It was here at the public hearing.

Mr. Croughan: No. We're talking about the garage on the property that you're saying will be destroyed.

Mr. Austerlitz: It's not in writing. No.

Mr. Croughan: But that can be a condition, Mark, of any kind of approval.

Mr. Woody: Okay. Thank you.

Mr. Burtis: Thank you. Wendy, any questions for the applicant?

Ms. Rodrigues: No.

Mr. Burtis: Okay. Hearing none, I'd like to make a motion -- I'm sorry. Does the applicant have anything further to add?

Mr. Austerlitz: No.

Mr. Burtis: Okay. All right.

Motion for approval of the Adams Avenue application for two variances, one would be for lot depth of 1.14' and overall size of 77'. The requirement is 5,000', and the applicant has 4,923'. Both variances are for approximately 1.5 percent.

Mr. Croughan: Jim, just to clarify on the lot depth, the required is 100', the actual is 98.46, so that would be a 1.54' variance request, but still at 1.54 percent.

Mr. Burtis: Thank you. So that was the motion for the two variances with conditions being modification of the house as the applicant had described with parking for two cars and the one car garage underneath the house as part of the plans; correct?

Mr. Austerlitz: Correct.

Mr. Burtis: Then second condition would be, well, I already said, reduction in the house size from 1,500 sq.ft. to 1,200.

Mr. Austerlitz: Correct.

Mr. Burtis: And third condition would be the applicant removing the existing garage that straddles the two properties.

Mr. Austerlitz: Correct.

Motion to approve, seconded by Mr. Hallock.

Mr. Burtis: I'd like to enter into a discussion on the motion. Do any of the Board members have any discussion or counsel?

Mr. Croughan: I think Keith had some comments he wanted to share?

Mr. Hallock: Actually, that wasn't on this applicant.

Mr. Croughan: Oh, sorry. As we went through, the neighbors have shown an adverse reception to the project. The undesirable change, the applicant has downsized the house to be in conformity with the neighborhood, change in topography or environmental impact.

He's building a house on an existing lot. The lot obviously is not -- it's short on lot area and lot depth, but to answer number 5, substantial, it's not substantial

since it's a 1.5 percent.

Is it self-created? Yes. The applicant bought it knowing the condition that it was in.

So that's going through the factors, and then the Board has to balance those factors in order to make a decision.

Mr. Burtis: Thank you. Any further discussion? Okay. Hearing no further discussion, I'd like to start with roll call.

Ms. Cavallaro: I'm going with the neighborhood, nay, based on number 5 especially.

Mr. Croughan: Number 5, just for clarification, is not a standalone, so just because you answer no to self-created, it does not negate the application, so you have to have more than just that.

Ms. Cavallaro: Okay. Being new at this, I want to make the right vote. I know legally he may have met what counts, but I also found their objections to be credible, and I also worry about -- what was number 4? I'm so sorry.

Mr. Croughan: Well, substantial is 5, self-created is 3, or 4, and then you have change in topography and environmental impact and undesirable change.

Ms. Cavallaro: I'm staying based on 3 and 5 and most of the others. I'm staying with the neighborhood, and it's a nay from me.

Roll Call Ayes: Keith Hallock, Mark Woody, Jim Burtis

Roll Call Nays: Mary Ann Cavallaro, Wendy Rodrigues

Motion passes.

Mr. Austerlitz: So that means it's approved.

Mr. Croughan: Yes. It's approved.

Mr. Austerlitz: Thank you.

Mr. Burtis: Thank you. Sir, any other business before the Board this evening?

Mr. Croughan: Nothing further.

Mr. Burtis: Okay.

Motion to adjourn at 7:15 p.m. by Mr. Rodrigues, seconded by Mr. Hallock

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

Respectfully Submitted,

Diane Genender, Transcriptionist