

MINUTES
ZONING BOARD OF APPEALS
February 7, 2024

MEMBERS PRESENT: PATRICIA CASTELLI, ACTING CHAIR
THOMAS QUINN
ROBERT BONOMOLO, JR.
BILLY VALENTINE

ABSENT: MICHAEL BOSCO, CHAIRMAN

ALSO PRESENT:	Deborah Arbolino,	Administrative Aide
	Dennis Michaels, Esq.,	Deputy Town Attorney
	Anne Marie Ambrose,	Official Stenographer
	Katlyn Bettmann,	Senior Clerk Typist

This meeting was called to order at 7: 00 P.M. by Ms. Castelli, Acting Chair.
Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

CONTINUED ITEM:

NANUET AUTO REPAIR
370 S. Middletown Road
Nanuet, New York
64.17 / 1 / 1; CO zone

§ 9.32 CHANGE OF USE	ZBA#23-47
APPROVED: § 9.34	
REQUEST WITHDRAWN BY	
APPLICANT	

NEW ITEMS:

119 FRANKLIN AVE. LLC.
119 Franklin Avenue
Pearl River, New York
68.20 / 2 / 18; RG zone

POSTPONED	ZBA#24-06
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MC GINNIS
151 Fairview Avenue
Pearl River, New York
68.19 / 3 / 59; R-15 zone

FLOOR AREA RATIO,	ZBA#24-07
SIDE YARD AND § 9.2 VARIANCES	
APPROVED: UNDERSIZE LOT	
ACKNOWLEDGED	

VIS FAMILY LIMITED
PARTNERSHIP
60 Hardwood Drive
Tappan, New York
74.17 / 4 / 26; R-15 zone

§ 5.143 ACCESSORY STRUCTURE	ZBA#24-08
DISTANCE TO PRIMARY STRUCTURE	
VARIANCE APPROVED	

THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

TOWN OF ORANGETOWN
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BOROUGH CLERK

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The verbatim minutes, as recorded by the Board's official stenographer for the above hearings, are not transcribed.

OTHER BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the Acting Chairperson executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for the State Environmental Quality Review Act (SEQRA) coordinated environmental review of actions pursuant to SEQRA Regulations § 617.6 (b)(3) the following application: 59 Tweed Boulevard Site Plan, 59 Tweed Boulevard, Grandview, NY 71.13/ 1 / 40; R-22 zone; 59 Tweed Boulevard Amendment to Filed Site Plan, 59 Tweed Boulevard, Upper Grandview, NY, 71.13 / 1 / 40; R-22 zone; 39 Tweed Boulevard Site Plan, Critical Environmental Area, 39 Tweed Boulevard, Upper Grandview, NY 71.09/1/40; R-22 zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings.

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 8: 15 P.M.

Dated: February 7, 2024.

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 

Deborah Arbolino, Administrative Aide

DISTRIBUTION:
APPLICANT
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
TOWN BOARD MEMBERS
BUILDING INSPECTOR (Individual Decisions)
Rockland County Planning

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TOWN CLERK'S OFFICE

§ 9.32 CHANGE OF USE APPROVED

§ 9.34 EXTENSION OR ENLARGEMENT WITHDRAWN BY APPLICANT

To: Ayman Jallad
370 South Middletown Road
Nanuet, New York 10954

ZBA #23-47
Date: Dec. 6, 2023 & Feb. 7, 2024
Permit #BLDC-554-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 23-47: Application of Nanuet Auto Repair for variances from Zoning Code (Chapter 43) of the Town of Orangetown, CO District, Section 9.32 (Change of Use: convert partial existing non-conforming auto repair to convenience store) and Section 9.34 (Extension or Enlargement : 2'8" x 27' 6" side addition for convenience store: **withdrawn**) for an addition (**withdrawn**) and change of use at an existing building. The premises are located at 370 S. Middletown Road, Nanuet New York and are identified on the Orangetown Tax Map as Section 64.17, Block 1, Lot 1 in the CO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at Hearings held on the following Wednesdays, December 6, 2023 and February 7, 2024 at which time the Board made the determination hereinafter set forth.

Robert S. Lewis, P.C. and Ayman Jallad, owner, appeared and testified.

The following documents were presented:

1. Site plan labeled "Skyview Service" dated June 29, 2022 signed and sealed by John R. Atzl, L.S., and Ryan A. Nasher, P.E. (2 pages).
2. Architectural plans dated 8/21/2021 with the latest dated of 11/19/2021 signed and sealed by Liborio Derario, Architect. (5 pages).
3. A letter dated November 27, 2023 from Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
4. A letter dated November 28, 2023 from Rockland County Sewer District No. 1 signed by Nicholas King, Engineer I.
5. A " No comments at this time, Please send future correspondence for review" from Dyan Rajasingham, Rockland County Highway Department, dated November 6, 2023.
6. A letter dated December 6, 2021 from Brian D. Nugent, Attorney on behalf of Kathy Ottaviano, Townline Road resident in opposition to the application.

Mr. Sullivan, Chairman, made a motion to open the Public Hearing which motion was seconded by Mr. Bosco and carried unanimously.

Robert Lewis, Attorney, testified that his client is before the Board for either a use variance or a Special Permit; that Mr. Jallad purchased the property with a main branding gas contract; that when that contract was up, the gas company would not renew it; that the major premium gas companies only want to contract with properties that provide a convenience store along-side the repair/gas station; that his client then contracted with Shell and purchased signs but the process was taking too long for them and they withdrew; that there is parking in the rear that would be utilized by the service station ; that the survey that was submitted is minimal and they can submit a plan showing the required parking spaces; that they can also achieve their desired outcome without the requested addition; that they will supply a short environmental assessment form and request the Zoning Board declare their desire to be Lead Agency; that since there are other

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similar uses in the immediate area, this request would fit into the neighborhood; that Sonoco is interested in supplying gas at the site if they can be assured that a convenience store will be part of the station; that they will submit revised plans with parking, the EAF and the papers to show the case for a use variance; and they would like a continuance.

February 7, 2024 hearing:

Robert S. Lewis, P.C. and Ayman Jallad, owner, appeared and testified.

Items submitted for review at the February 7, 2024 hearing:

1. Short Environmental Assessment Form received December 18, 2023 dated 12/14/2023 signed by Ayman Jallad.(3 pages)
2. Site plan labeled "Skyview Service" dated June 29, 2022 with the latest revision date of January 26, 2024 signed and sealed by John R. Atzl, L.S., and Ryan A. Nasher, P.E. (2 pages).
3. Seqra Lead Agency sign-off from: consent from Rockland County Health Center for Environmental Health signed by Brandon Duranti not dated; New York State Department of Transportation dated January 10, 2024 signed by David A. Groucher, Construction Specialist 1; consent from Rockland County Department of Planning not dated signed by Jake Palant; consent from Rockland County Highway Department dated January 16, 2024 signed by Dyan Rajasingham; consent from Rockland County Drainage Agency dated January 11, 2024 from Liron Derguti, Engineer I.
4. A letter dated January 26, 2024 from Rockland County Health Center for Environmental Health signed by Brandon Durant, Assistant Public Health Engineer.
5. A letter dated December 14, 2023 from the New York State Department of Transportation signed by Ralph Tarulli, P.E., DOT Consultant.

Board members present for the February 7, 2024 hearing:

Tom Quinn, Patricia Castelli, Acting Chair, Robert Bonomolo, and Billy Valentine. Michael Bosco, Chairman, was absent.

Also Present: Dennis D. Michaels, Esq. Deputy Town Attorney, Anne Maria Ambrose, Official Stenographer, Deborah Arbolino, Administrative Aide, Katlyn Bettmann, Senior Clerk Typist.

Robert Lewis, Attorney for the applicant, testified that they have reconfigured the parking as requested by the Board at the last appearance; that they have head to head parking on the northwest parking area; that the proposed bump-out has been removed; that they do not need a variance from Section 9.32 because they are not expanding the existing space; that the southwesterly parking was not added because it was advised by the engineers that the cars could get clipped by in-coming cars from Middletown Road; that they have enough parking to meet the code without those spots; that the entrance to the convenient mart is on the westerly side of the building; that the air conditioning units are where the old bump-out was proposed and they are existing; that there will not be any changes there; and that the applicant needs to have a convenient store attached to the service station in order to sell branded gasoline; that he will be selling Shell if the Board approves these changes; and that they do not need any over-rides from the Rockland County Department of Planning "GML" report dated November 27, 2023.

Ayman Jallad, owner of the service station testified that the service station would not be able to provide branded name gas unless they added a convenience store to the service station and there are other similar service stations with convenience stores attached in the immediate area. Not having brand name gas would negatively impact this business.

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NANUET TOWN BOARD

Public Comment:

No Public comment.

The ZBA members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

Ms. Castelli, Acting Chair, made a motion to close the Public Hearing which motion was seconded by Mr. Quinn and carried unanimously.

SEQRA DETERMINATION

The proposed action is classified as an "Unlisted Action" as defined by §617.2 (alk) of the Regulations of the State Environmental Quality Review (SEQRA) Regulations. No agency, other than the ZBA will have any significant involvement in the review process, and the ZBA declares itself to be the SEQRA Lead Agency, pursuant to §617.6 of SEQRA Regulations; by motion made by Ms. Castelli, and seconded by Mr. Quinn, and carried as follows: Mr. Bonomolo, aye; Mr. Valentine, aye; Mr. Quinn, aye; and Ms. Castelli, aye; the Board declared itself Lead Agency. Mr. Bosco was absent.

Pursuant to SEQRA Regulations § 617.7, the Board, as the SEQRA Lead Agency, for the reasons articulated in this Board's analysis of all of the submissions from the applicant, interested agencies, Town Departments and Offices, and the public, including the Environmental Assessment Form (EAF), which reasons are summarized below, the ZBA determined that the proposed action will not have a significant adverse impact on the environment and a Draft Environmental Impact Statement (DEIS) will not be prepared; in other words, the ZBA issued a Negative Declaration as defined by SEQRA Regulation §617.2 (z)

After having identified all of the relevant areas of environmental concern, namely drainage, surface water runoff, land clearing, impacts on vegetation and fauna; vehicular traffic and noise levels, and

after having taken a hard look at said environmental concerns, and

after having deliberated regarding such concerns, and having heard from the applicant, and the applicant's professional representatives, namely Robert S. Lewis, Esq. (attorney), and Ayman Jallard, (owner), and

after having heard from the following interested agencies: Rockland County Department of Planning, Rockland County Department of Highways, Rockland County Drainage Agency, Rockland County Department of Health, Rockland County Sewer District No.1, NYSDOT, Town of Clarkstown Planning Board and

after having reviewed a proposed Site Plan by prepared by Atzl, Nasher & Zigler, P.C, last dated June 29, 2022 and Architectural plans labeled " Skyview Service " last dated November 19, 2021 with the latest revision date of January 26,2024,

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TOWN OF CLARKSTOWN

a summary of the reasons supporting this determination of a Negative Declaration are, and the Board finds, that the proposed action:

- will not significantly affect existing air quality or noise levels;
- will not significantly affect existing surface water quality or quantity or drainage;
- will not significantly affect existing ground water quality or quantity;
- will not significantly affect existing traffic levels;
- will not create a substantial increase in solid waste production;
- will not create a potential for erosion, flooding, leaching or drainage problems;
- will not have a significant adverse impact on the environmental characteristics of our critical environmental area or environmentally sensitive sites or features;
- will not have an impairment of the character or quality of important historical, archeological or architectural resources;
- will not have an impairment of the character or quality of important aesthetic resources;
- will not have an impairment of existing community or neighborhood character;
- will not remove or destroy large quantities of vegetation or fauna;
- will not remove or destroy large quantities of wildlife species or migratory fish;
- will not have a significant adverse impact to natural resources;
- Is consistent with the Town Comprehensive/Master Plan;
- will not have adverse economic or social impacts upon the Town;
- will not create a hazard to human health; and
- will not create a substantial change in the use of land, open space or recreational resources.

On motion by Ms. Castelli, and seconded by Mr. Quinn and carried as follows: Mr. Valentine, aye; Mr. Bonomolo, aye; Mr. Quinn, aye; and Ms. Castelli, aye the Board made a Negative Declaration pursuant to SEQRA. Mr. Bosco was absent.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the Zoning Code § 9.32 Change of Use is approved, outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested § 9.32 change of use variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant withdrew the request for the variance from § 9.34 expansion of non-conforming use or bulk, because they have removed the proposed addition from the plans. Revised site plan has been provided. There was testimony that the service station would not be able to provide branded name gas unless they added a convenience store to the service station and there are other similar service stations with convenience stores attached in the immediate area. Not having brand name gas would negatively impact this business.
2. The requested § 9.32 change of use variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant withdrew the request for the variance from § 9.34 expansion of non-conforming use or bulk, because they have removed the proposed addition from the plans. Revised site plan has been provided. There was testimony that the service station would not be able to provide branded name gas unless they added a convenience store to the service station and there are other similar service stations with convenience stores attached in the immediate area. Not having brand name gas would negatively impact this business.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.

4. The requested § 9.32 change of use variance although substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The applicant withdrew the request for the variance from § 9.34 expansion of non-conforming use or bulk, because they have removed the proposed addition from the plans. Revised site plan has been provided. There was testimony that the service station would not be able to provide branded name gas unless they added a convenience store to the service station and there are other similar service stations with convenience stores attached in the immediate area. Not having brand name gas would negatively impact this business.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

DECISION: In view of the foregoing and the testimony and documents presented, the ZBA RESOLVED that the application for the ZBA's approval of the requested Zoning Code § 9.32 Change of Use variance is APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the ZBA of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

TOWN OF ORANGETOWN

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for the requested Zoning Code § 9.32 Change of Use is APPROVED; was presented and moved by Mr. Quinn, seconded by Ms. Castelli and carried as follows: Mr. Valentine, aye; Mr. Bonomolo, aye; Mr. Quinn, aye; and Ms. Castelli, aye. Mr. Bosco was absent.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk of the Town of Orangetown.

DATED: February 7, 2024

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR-G.M.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE, ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

TOWN OF ORANGETOWN
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TOWN CLERK'S OFFICE

**FLOOR AREA RATIO, SIDE YARD, & SECTION 9.2 NON-CONFORMING BULK
VARIANCES APPROVED: UNDERSIZED LOT ACKNOWLEDGED**

To: Karl Ackerman(McGinnis)
159 E Central Ave
Pearl River, NY 10965

ZBA #24-07
Date: February 7, 2024
Permit # BLDR-4324-23

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 24-07: Application of Elisha McGinnis for variances from Zoning Code (Chapter 43) of the Town of Orangetown, Section 3.12, R-15 District, Group M, Column 4 (Floor Area Ratio: 20% permitted, 23.58% proposed), 9 (Side Yard: 15' required, 5' proposed) (Section 5.21(c) undersized lot applies), section 9.2 (Degree of Non-Conforming Bulk not to be increased) for an addition to an existing single-family residence. The premises are located at 151 Fairview Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.19, Block 3, Lot 59 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, February 7, 2024 at which time the Board made the determination hereinafter set forth.

Karl Ackerman, Architect and Elisha McGinnis appeared and testified.

The following documents were presented:

1. Architectural Plans dated April 29, 2022 with the latest revision date of December 1, 2023 signed and sealed by Karl Ackermann, AIA. (11 pages)
2. Copy of Survey dated March 18, 2022 signed by Anthony R. Celentano P.L.S..(1 Page)

Ms. Castelli, Acting Chair, made a motion to open the Public Hearing which motion was seconded by Mr. Bonomolo and carried unanimously.

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Ms. Castelli moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (11), (12), (16) and/or (17); which does not require SEQRA environmental review. The motion was seconded by Mr. Valentine and carried as follows: Mr. Bonomolo, aye; Ms. Castelli, aye; Mr. Quinn, aye; and Mr. Valentine; aye. Mr. Bosco was absent.

Karl Ackerman, Architect, testified that the lot is undersized; that it is in the R-15 zoning district and should be 15,000 sf of property but it is only 13,150 s f. and therefore it requires a floor area ratio larger than if it was the right size lot; if the lot was 15,000 sf the proposed addition would only be 101 sf over the permitted floor area ratio; that the house existed in its present location when a subdivision was done and that subdivision created the existing side yard of 4.8' in the back corner of the house; that they are proposing to add a front porch onto the house at the front that will match the existing line of the house and it will require a 5' side yard at the front corner of the lot; that the second floor is not extending any further than the existing house; that they are not going to use the garage beneath the house any more and will move the existing driveway to other side of the house; that the house is a full block house that is in need of repair and those repairs will take place at the same time as the addition is constricted; that the existing screened in porch in the rear of the house complies with zoning and is included in the floor area ratio calculation; that this is modest house and after the addition will be 3,101 s f.; that are many larger homes in the area; and many of the houses have renovated and look like two-story colonials; and that this proposal is in keeping with the character of the neighborhood.

Elisha McGinnis testified that there are three members of her family living in the house.

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Public Comment:

Patrick Coyne, 143 Fairview Avenue, testified that the McGinnis family moved in a few years ago and have done a really good job of cleaning up the property and sprucing the house up; that many other houses in the area have added large additions and all the improvements have added value to everyone's property; that he is here to offer support for the application.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

Ms. Castelli made a motion to close the Public Hearing which motion was seconded by Mr. Bonomolo and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested floor area ratio, side yard and § 9.2 non-conforming bulk variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. § 5.21 (e) undersized lot acknowledged. The house as it exists is 4' 8" from tax lot 68.19-3-60 and the proposed front porch will be 5' from that tax lot and the owner of that property spoke in support of the application. Similar additions have been constructed in the neighborhood.
2. The requested floor area ratio, side yard and § 9.2 non-conforming bulk variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. § 5.21 (e) undersized lot acknowledged. The house as it exists is 4' 8" from tax lot 68.19-3-60 and the proposed front porch will be 5' from that tax lot and the owner of that property spoke in support of the application. Similar additions have been constructed in the neighborhood.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested floor area ratio, side yard and § 9.2 non-conforming bulk variances although substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. § 5.21 (e) undersized lot acknowledged. The house as it exists is 4' 8" from tax lot 68.19-3-60 and the proposed front porch will be 5' from that tax lot and the owner of that property spoke in support of the application. Similar additions have been constructed in the neighborhood.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested floor area ratio, side yard and § 9.2 non-conforming bulk variances are APPROVED; and undersized lot acknowledged; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

AS DECISION MADE

BY THE BOARD


ON 08/21/24

The foregoing resolution to approve the application for the requested floor area ratio, side yard and § 9.2 non-conforming bulk variances are APPROVED and undersized lot acknowledged; was presented and moved by Mr. Valentine, seconded by Mr. Quinn and carried as follows: Mr. Bonomolo, aye; Ms. Castelli, aye; Mr. Quinn, aye; and Mr. Valentine, aye. Mr. Bosco was absent.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED: February 7, 2024

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR-Ken L.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE,ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

TOWN OF ORANGETOWN
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TOWN CLERK'S OFFICE

**SECTION 5153 ACCESSORY STRUCTURE DISTANCE TO PRIMARY STRUCTURE
VARIANCE APPROVED**

To: Vinny Sabatino (VIS Family Limited Partnership)
60 Hardwood Dr
Tappan, NY 10983

ZBA #24-08
Date: February 7, 2024
Permit # BLDR-4416-23

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 24-08: Application of VIS Family Limited Partnership for variances from Zoning Code (Chapter 43) of the Town of Orangetown, R-15 District, Group M, Section 5.153 (Accessory Structure Distance from Primary Structure: 15' required, 1' proposed) for a pergola at an existing single-family residence. The premises are located at 60 Hardwood Drive, Tappan, New York and are identified on the Orangetown Tax Map as Section 74.17, Block 4, Lot 26 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, February 7, 2024 at which time the Board made the determination hereinafter set forth.

Vinny Sabatino appeared and testified.

The following documents were presented:

1. Computer generated picture of pergola and footings, dated September 22, 2023 by Lokman Sepet. (2 pages)
2. Survey dated September 29, 2021, last revised October 4, 2021 signed and sealed by Jay Greenwell, P.L.S.. (1 Page)

Ms. Castelli, Acting Chair, made a motion to open the Public Hearing which motion was seconded by Mr. Bonomolo and carried unanimously.

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Ms. Castelli moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (11), (12), (16) and/or (17); which does not require SEQRA environmental review. The motion was seconded by Mr. Quinn and carried as follows: Mr. Bonomolo, aye; Ms. Castelli, aye; Mr. Quinn, aye; and Mr. Valentine, aye.

Vinny Sabatino testified that he would like to install an accessory structure Pergola on his patio one foot from the family room door; that the pergola that he is interested in purchasing and installing has remote control shades and four footings that he did not want to attach it to the house because he has a 16" overhang and he would like this installed outside of the gutter line; that his rear yard is very sunny and this pergola would allow the family to enjoy the outside space more and it would not interfere with any of his neighbors.

BOB SABATINO
154 8 21 2024
TOWN OF ORANGETOWN

Public Comment:

No public comment.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

Ms. Castelli made a motion to close the Public Hearing which motion was seconded by Mr. Valentine and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested § 5.513 accessory structure distance to primary structure variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Although this is a substantial variance, it makes sense to construct it right outside of the gutter line so that the shades and be operated by the remote and this structure will not interfere with any of the neighbors' properties and it will allow the family to enjoy their rear yard without the sun beating down on them. The applicant also testified that he would install a drainage system if that was necessary.
2. The requested § 5.513 accessory structure distance to primary structure variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Although this is a substantial variance, it makes sense to construct it right outside of the gutter line so that the shades and be operated by the remote and this structure will not interfere with any of the neighbors' properties and it will allow the family to enjoy their rear yard without the sun beating down on them. The applicant also testified that he would install a drainage system if that was necessary.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested § 5.513 accessory structure distance to primary structure variance although substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. Although this is a substantial variance, it makes sense to construct it right outside of the gutter line so that the shades and be operated by the remote and this structure will not interfere with any of the neighbors' properties and it will allow the family to enjoy their rear yard without the sun beating down on them. The applicant also testified that he would install a drainage system if that was necessary.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

DECISION: In view of the foregoing and the testimony and documents presented, the Board **RESOLVED** that the application for the requested 5.513 accessory structure distance to primary structure variance is **APPROVED**; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for the requested 5.513 accessory structure distance to primary structure variance is APPROVED; was presented and moved by Mr. Bonomolo, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Ms. Castelli, aye; Mr. Quinn, aye; and Mr. Valentine, aye.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED: February 7, 2024

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR-Dom.M.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE,ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

TOWN CLERK'S OFFICE
2024 FEB 12 P 1:57
TOWN OF ORANGETOWN