

MINUTES  
ZONING BOARD OF APPEALS  
July 17, 2024

MEMBERS PRESENT: MICHAEL BOSCO, CHAIRMAN  
THOMAS QUINN  
PATRICIA CASTELLI  
BILLY VALENTINE  
ANTHONY DEROBERTIS, ALTERNATE

ABSENT: ROBERT BONOMOLO, JR.

ALSO, PRESENT: Denise Sullivan, Deputy Town Attorney  
Katlyn Bettmann, Senior Clerk Typist  
Anne Marie Ambrose, Official Stenographer

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

NEW ITEMS:

RRIS CORP. 1 Route 340 Orangeburg, New York 74.11 / 2 / 26; CC - zone	FRONT YARD & SIDE YARD VARIANCES APPROVED W/ CONDITIONS	ZBA#24-34
--	---	-----------

CARBALLO 1 Ferris Lane Nyack, New York 66.17 / 2 / 6; RG - zone	FRONT YARD VARIANCE APPROVED AS CHANGED	ZBA#24-35
--	--	-----------

SAVATTIERI 162 Park Avenue Palisades, New York 77.20 / 2 / 2; R-15 - zone	REAR YARD VARIANCES APPROVED	ZBA#24-36
--	---------------------------------	-----------

Other Business:

**RESERVED DECISION:**

FISHER 7 Berachah Avenue South Nyack, New York 66.61 / 1 / 19.2; R-12HC zone	DENIED	ZBA#24-01
---	--------	-----------

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

TOWN CLERK'S OFFICE  
2024 AUG - 9 - 10: 09  
TOWN OF ORANGETOWN

Page 2

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: Nice Pak/ PDI site plan, 2 Nice Pak Park, Orangeburg, New York 74.07 / 1 / 16; LIO zone; Palisades Free Library Site Plan, 19 Closter Road, Palisades, New York 78.17-2-22; R-40, and Wyman-Fisher Site Plan – Addition, 96-100 Franklin Avenue, Pearl River, New York; 68.20-2-70; CS; Fisher Site Plan, 7 Berachah Avenue, South Nyack 66.61-1-19.2; R-12HC 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 8:30 P.M.

Dated: July 17, 2024

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By 

Katlyn Bettmann, Senior Clerk Typist

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

TOWN CLERK'S OFFICE  
2024 AUG -6 A 10:10  
TOWN OF ORANGETOWN

## FRONT YARD AND SIDE YARD VARIANCES APPROVED WITH CONDITIONS

To: Donald Brenner (RRIS Corp.)  
4 Independence Avenue  
Tappan, New York 10983

ZBA #24-34  
Date: July 17, 2024  
Permit # 45162

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 24-34: Application of RRIS Corp., for variances from Zoning Code (Chapter 43), R-40 and LO District, Section 3.12, CC district, Group JJ, Column 8 (Front yard: required is 0' or 45', with 14.65' proposed to designated street line), and Column 9 (Side yard: required 0' or 12', with 5' proposed) for a proposed one-story commercial building with four tenants. The premises are located at 1 Route 340, Orangeburg, New York and identified on the Orangetown Tax Map as Section 74.11, Block 2, 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, July 17, 2024 at which time the Board made the determination hereinafter set forth.

Donald Brenner, attorney, Sam Adler, RRIS Corp., and Justin Goldstein, Project Engineer, appeared and testified.

The following documents were presented:

1. Final Site plans, dated 2/20/2024 signed and sealed by Jesse Barrett Cokeley, L.P.E. (13 pages).
2. A letter dated June 21, 2024 from Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
3. A letter dated July 5, 2024 from Rockland County Health signed by Elizabeth Mello, P.E., Senior Public Engineer.
4. A letter dated November 3, 2023 from Rockland County Drainage Agency Signed by Liron Derguti, Engineer I.
5. A letter dated July 17, 2024 from the Rockland County Sewer District No. 1 signed by Nicholas King, Engineer I.
6. A letter dated June 11, 2024 from the New York State Department of Transportation, signed by Ralph Tarulli, PE, DOT Consultant.
7. A "Comments attached" from Rockland County Planning Department signed by Jake Palant dated May 21, 2024.

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

Donald Brenner, attorney, testified that this application was originally submitted in 2016 as a hotel however the Planning Board was not in favor of it; that the applicant returned with this new plan in 2017 and received Preliminary approval from the Planning Board PB#16-36; that they then appeared in front of the Zoning Board and received their approvals ZBA#17-73; that they also received ACABOR approval #17-43 as well as Planning Board Final approval PB#18-03; that the Town of Orangetown Department of Environmental Management and Engineering gave the Applicant approval on October 2, 2019; that then came the Covid-19 pandemic and it affected the project; that they tried to re-activate the application on October 10, 2023 which brought them to this new application for re-approval at the Planning Board PB#24-05 where they received Preliminary again as well as SEQRA; that they are now in front of the ZBA seeking re-approval of the variances; that it is the same project previously presented with some small adjustments however no changes to the design of the building; that some of the parking has been rearranged; that the Planning Board felt that there is enough space for maneuverability in the parking lot per their most recent decision; that he does not believe there is any lighting at the back of the exterior of the building but if there is it would be down lighting as to not affect the residents; that they have no issues complying with the conditions in the referral letters received however there have been overrides provided by the Planning Board.

Justin Goldstein, Project Engineer, testified that the design in the parking lot is the same; that what changes is the Designated Street Line being used as where they are taking the measurements from since the date of the original application; that there were some adjustments made to the parking for circulation purposes; that six of the parking spots have been moved to the front of the parking lot to accommodate the Town of Orangetown Fire Prevention comments presented at Planning Board; that they don't believe there is any lighting at the back of the building;

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Bosco moved for a Board determination that, since the Planning Board noticed its intent to declare itself Lead agency and distributed that notice of intention to all involved agencies, including the Zoning Board of Appeals who consented or did not object to the Planning Board acting as Lead Agency pursuant to coordinated review under the State Environmental Quality Review Act Regulation § 617.6 (b) (3); and since the Planning Board conducted a SEQRA review on April 24, 2024 (as set forth in PB#24-05) for Re-Approval of Final Site Plan subject to Conditions, rendered an environmental determination of no significant adverse environmental impacts to result from the proposed land use action (i.e. a "Negative Declaration" or "Neg Dec"), the ZBA is bound by the Planning Board's "Neg Dec", and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulation § 617.6 (b) (3). The motion was seconded Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Valentine, aye; and Ms. Castelli, aye; Mr. Quinn, aye; Mr. DeRobertis, aye. Mr. Bonomolo was absent.

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.

Mr. Bosco made a motion to close the Public Hearing which motion was seconded by Ms. Castelli 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 front and side yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The existing buildings on the lot are in disrepair and the new proposed one-story building will be an improvement for the area. These approvals were previously given.
2. The requested front and side yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The existing buildings on the lot are in disrepair and the new proposed one-story building will be an improvement for the area. These approvals were previously given.

TOWN OF ORANGETOWN

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 front and side yard 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 the existing buildings on the lot are in disrepair and the new proposed one-story building will be an improvement for the area. These approvals were previously given.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvement, 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.

Mr. Bosco made a motion to override several comments from the June 21, 2024 letter from the County of Rockland Department of Planning, signed by Douglas J. Schuetz, Acting Commissioner of Planning, for the following reasons: comment #1 and #5 because these two comments were overridden in the first approval and there have been no significant changes to the plans other than some minor parking locations, and they were also overridden by the Planning Board; and the Board would like to override comment #16 because the maneuverability issues have been addressed by reworking the parking spaces; which motion was seconded by Ms. Castelli and carried unanimously. Mr. Bonomolo was absent.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested front and side yard variances are APPROVED; with the following SPECIFIC CONDITIONS, (1)The Rockland County Sewer District owns and maintains sewers in two (2) easements on the above property, (a) No permanent structures may be built within their easements, (b) General Note 35 on Sheet No. 2 (Project Notes)acknowledges that the District must be notified forty-eight (48) hours in advance if any foundation work or other types of major excavation work is to be done within close proximity to the easement boundary. Shoring or other types of precautions may be needed to protect the sewer main. The property owner must also pay these expenses, (c)General Notes 36 on Sheet No. 2 acknowledges that the District must be notified when the land within the easement is to be modified. This includes but is not limited to regrading, raising or lowering of manhole frames, or working in close proximity to sewers and manholes within the easement. Our office must approve any construction to be done within our easements, (d)The contractor must obtain required insurance and sign a waiver to defend, indemnify, save and hold harmless both the **County of Rockland** and **Rockland County Sewer District No. 1** from any claims arising from work performed within our easements. (2) Sheet No. 5 (Grading, Drainage & Utility Plan) shows that the sanitary sewer for this project will connect to the Orangetown sewer. (3) The "Engineer's Report for Proposed Sewer System" dated June 2018 shows that the District's 48-inch interceptor sewer is above the zone of influence on the soil caused by the proposed building. (4) The Rockland County Health Department must approve the plans for the sewage disposal per Article IV, Section 4.2.1 of the Rockland County Sanitary Code. Formal application is to be made. (5) Application is to be made to the RCDOH for review of the storm water management system for compliance with the County Mosquito Code. (6) A PERM 33COM application is required for initial review and comment. (7) A PERM 32 application is required for utility connections. (8) Show dimension width of driveway on plans. (9) Show on plans two (2") inch mill and pave area in full lane width where proposed saw cut area is for utility connections a driveway. Mill and pave twenty-five (25') feet on both sides of driveway. (10) Show driveway profile. (11) Call out two (2") inch top course in asphalt pavement details with NYSDOT item numbers. (12) Show NYSDOT standards trenching of utilities on the plans. (13) A review must be completed by the New York State Department of

Transportation, and all required permits obtained. **(14)** The western property boundary encroaches into the Sparkill Creek, a County regulated stream. An updated review of the February 24, 2024 site plan must be completed by the Rockland County Drainage Agency and all required permits obtained. **(15)** The New York Natural Heritage Program's (NHP) database, as reflected on the Hudson Valley Natural Resource Mapper (<https://gisservices.dec.ny.gov/gis/hvnrnm/>), indicates that the western portion of the site is within the riparian buffer of the Sparkill Creek. The NHP has identified riparian buffers to highlight important streamside areas that influence stream dynamics and health. Well-vegetated riparian buffers intercept stormwater runoff, filter sediment and nutrients, and help attenuate flooding. Natural buffers also support unique and diverse habitats, and often serve as wildlife travel corridors. The Board must consider the impact of additional structures and impervious surfaces in the riparian buffer and the potential degradation of water quality and intensification of localized flooding. **(16)** According to the Hudson River Natural Resources Mapper, there are federally regulated wetlands on the subject property under the category of "Riverine" (Sparkill Creek). Such wetlands are also depicted along the Sparkill Creek on the maps maintained by the Rockland County GIS Division. The proposal must be submitted to the United States Army Corps of Engineers for a jurisdictional determination. Any federally regulated wetlands must be delineated on the site plan drawing. **(17)** If the US Army Corps of Engineers requires a permit pursuant to Section 404 of the Clean Water Act for the discharge to fill in Waters of the U.S., then a Section 401 Water Quality Certification (WQC) will be required to verify compliance with State water quality regulations. Issuance of these certifications is delegated in New York State to the NYSDEC. If the project qualifies for a Nationwide Permit, it may be eligible for coverage under a DEC Blanket WQC. Coverage under a Blanket requires compliance with all conditions for the corresponding Nationwide Permit. For more information and to view the DEC Blanket WQCs, please visit <https://www.dec.ny.gov/regulatory/permits-licenses/waterways-coastlines-wetlands/protection-of-waters-program>. A determination on Corps jurisdiction and a Nationwide Permit eligibility is likely necessary for a DEC jurisdictional determination. The continued loss of wetlands in the County is resulting in the degradation of water quality and exacerbating flooding. The ZBA must be satisfied that there are no additional negative impacts to wetlands or wetland buffers. **(18)** The subject site encroaches into the 100-year floodplain of the Sparkill Creek according to the maps made available to the Rockland County GIS division via the FEMA Flood Map Service Center. The engineer of record shall certify to the floodplain administrator for the Town of Orangetown that the proposed construction is in compliance with the floodplain regulations of the Town and the Federal Emergency Management Agency. **(19)** An updated review of the February 28, 2024 site plan must be completed by the Rockland County Sewer District No. I and any comments addressed. **(20)** The applicant must comply with the comments provided in the December 14, 2023 letter from the Orangeburg Fire Inspector. In addition, the County of Rockland Office of Fire and Emergency Services or the Orangeburg Fire Department shall be given the opportunity to review this proposal. **(21)** Prior to the start of construction or grading, all soil and erosion control measures must be in place for the site. These measures must meet the latest edition (November 2016) of the New York State Standards for Urban Erosion and Sediment Control. **(22)** There shall be no net increase in the peak rate of discharge from the site at all design points. **(23)** A stormwater pollution prevention plan (SWPPP) was not provided. The SWPPP, if required, shall conform to the current regulations, including the New York State Stormwater Management and Design Manual (August 2010) and local ordinances. **(24)** Water is a scarce resource in Rockland County; thus proper planning and phasing of this project are critical to supplying the current and future residents of the Villages, Towns, and County with an adequate supply of water. The water system must be evaluated to determine if the additional water supply demands of the proposed development can be met. Domestic and fire demands of the project must be determined by a Licensed Professional Engineer and provided to the supplier of water for analysis. Demand calculations and results of the analysis must be provided to the Rockland County Department of Health for review. **(25)** Six of the proposed parking spaces encroach into one of the Rockland County Sewer District No. I's easements. The ZBA must confirm that the parking spaces within the Sewer District easement is acceptable and will not hinder access for maintenance. Additionally, the Town must be satisfied that the signage indicating the "Area

is prone to flooding" adequately addresses the placement of parking spaces within the 100-year floodplain. It is recommend that for any parking within the 100-year floodplain the us or permeable or porous pavers be considered. **(26)** Pursuant to New York State General Municipal Law (GML) Sections 239-m and 239-n, if any of the conditions of this GML review are overridden by the board, then the local land use board must file a report with the County's Commissioner of Planning of the final action taken. If the final action is contrary to the recommendation of the Commissioner, the local land use board must state the reasons for such action. **(27)** In addition, pursuant to Executive Order 01-2017 signed by County Executive Day on May 22, 2017, County agencies are prohibited from issuing a County permit, license, or approval until the report is filed with the County's Commissioner of Planning. The applicant must provide to any County agency which has jurisdiction of the project: 1) a copy of the Commissioner's report approving the proposed action or 2) a copy of the Commissioner of Planning recommendations to modify or disapprove the proposed action, and a certified copy of the land use board statement overriding the recommendations to modify or disapprove, and the stated reasons for the land use board's override. **(28)** The following additional comment is offered strictly as an observation and is not part of our General Municipal Law (GML) review. The board may have already addressed this point or may disregard it without any formal vote under the GML process: **(28.1)** A Site Plan Note indicates that the water district is SUEZ. This must be corrected to Veolia North America. **(29)** The above referenced site is within the jurisdiction of the RCDA, pursuant to the Rockland County Stream Control Act, and therefore, a Stream Control Act permit from the RCDA is required for the current proposal. Please have the applicant submit an application to the RCDA directly. The RCDA will provide project specific comments upon receipt and review of the permit application submission. Copies of permit application package and Chapter 846: Rockland County Stream Control Act are being mailed to the property owner with a copy of this letter and are also available at the County website, within Highway Department, Drainage Division. **(30)** By copy of this letter the RCDA is notifying municipal land use boards and departments that the site is within the jurisdiction of the RCDA, pursuant to the Rockland County Stream Control Act, Chapter 846, as noted above. All future development proposals for this site will require a review and a written determination from the RCDA as to whether a permit is required. The RCDA recommends that the municipal departments ensure the site has no outstanding violations and the applicant has secured the required permit from the RCDA, prior to granting development permits. 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.

TOWN CLERK'S OFFICE  
2024 AUG -6 10:10  
TOWN OF ORANGETOWN

(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 front and side yard variances are APPROVED; with the following SPECIFIC CONDITIONS, (1) The Rockland County Sewer District owns and maintains sewers in two (2) easements on the above property, (a) No permanent structures may be built within their easements, (b) General Note 35 on Sheet No. 2 (Project Notes) acknowledges that the District must be notified forty-eight (48) hours in advance if any foundation work or other types of major excavation work is to be done within close proximity to the easement boundary. Shoring or other types of precautions may be needed to protect the sewer main. The property owner must also pay these expenses, (c) General Notes 36 on Sheet No. 2 acknowledges that the District must be notified when the land within the easement is to be modified. This includes but is not limited to regrading, raising or lowering of manhole frames, or working in close proximity to sewers and manholes within the easement. Our office must approve any construction to be done within our easements, (d) The contractor must obtain required insurance and sign a waiver to defend, indemnify, save and hold harmless both the County of Rockland and Rockland County Sewer District No. 1 from any claims arising from work performed within our easements. (2) Sheet No. 5 (Grading, Drainage & Utility Plan) shows that the sanitary sewer for this project will connect to the Orangetown sewer. (3) The "Engineer's Report for Proposed Sewer System" dated June 2018 shows that the District's 48-inch interceptor sewer is above the zone of influence on the soil caused by the proposed building. (4) The Rockland County Health Department must approve the plans for the sewage disposal per Article IV, Section 4.2.1 of the Rockland County Sanitary Code. Formal application is to be made. (5) Application is to be made to the RCDOH for review of the storm water management system for compliance with the County Mosquito Code. (6) A PERM 33COM application is required for initial review and comment. (7) A PERM 32 application is required for utility connections. (8) Show dimension width of driveway on plans. (9) Show on plans two (2") inch mill and pave area in full lane width where proposed saw cut area is for utility connections a driveway. Mill and pave twenty-five (25') feet on both sides of driveway. (10) Show driveway profile. (11) Call out two (2") inch top course in asphalt pavement details with NYSDOT item numbers. (12) Show NYSDOT standards trenching of utilities on the plans. (13) A review must be completed by the New York State Department of Transportation, and all required permits obtained. (14) The western property boundary encroaches into the Sparkill Creek, a County regulated stream. An updated review of the February 24, 2024 site plan must be completed by the Rockland County Drainage Agency and all required permits obtained. (15) The New York Natural Heritage Program's (NHP) database, as reflected on the Hudson Valley Natural Resource Mapper (<https://gisservices.dec.ny.gov/gis/hvnrml/>), indicates that the western portion of the site is within the riparian buffer of the Sparkill Creek. The NHP has identified riparian buffers to highlight important streamside areas that influence stream dynamics and health. Well-vegetated riparian buffers intercept stormwater runoff, filter sediment and nutrients, and help attenuate flooding.




Natural buffers also support unique and diverse habitats, and often serve as wildlife travel corridors. The Board must consider the impact of additional structures and impervious surfaces in the riparian buffer and the potential degradation of water quality and intensification of localized flooding. **(16)** According to the Hudson River Natural Resources Mapper, there are federally regulated wetlands on the subject property under the category of "Riverine" (Sparkill Creek). Such wetlands are also depicted along the Sparkill Creek on the maps maintained by the Rockland County GIS Division. The proposal must be submitted to the United States Army Corps of Engineers for a jurisdictional determination. Any federally regulated wetlands must be delineated on the site plan drawing. **(17)** If the US Army Corps of Engineers requires a permit pursuant to Section 404 of the Clean Water Act for the discharge to fill in Waters of the U.S., then a Section 401 Water Quality Certification (WQC) will be required to verify compliance with State water quality regulations. Issuance of these certifications is delegated in New York State to the NYSDEC. If the project qualifies for a Nationwide Permit, it may be eligible for coverage under a DEC Blanket WQC. Coverage under a Blanket requires compliance with all conditions for the corresponding Nationwide Permit. For more information and to view the DEC Blanket WQCs, please visit <https://www.dec.ny.gov/regulatory/permits-licenses/waterways-coastlines-wetlands/protection-of-waters-program>. A determination on Corps jurisdiction and a Nationwide Permit eligibility is likely necessary for a DEC jurisdictional determination. The continued loss of wetlands in the County is resulting in the degradation of water quality and exacerbating flooding. The ZBA must be satisfied that there are no additional negative impacts to wetlands or wetland buffers. **(18)** The subject site encroaches into the 100-year floodplain of the Sparkill Creek according to the maps made available to the Rockland County GIS division via the FEMA Flood Map Service Center. The engineer of record shall certify to the floodplain administrator for the Town of Orangetown that the proposed construction is in compliance with the floodplain regulations of the Town and the Federal Emergency Management Agency. **(19)** An updated review of the February 28, 2024 site plan must be completed by the Rockland County Sewer District No. I and any comments addressed. **(20)** The applicant must comply with the comments provided in the December 14, 2023 letter from the Orangeburg Fire Inspector. In addition, the County of Rockland Office of Fire and Emergency Services or the Orangeburg Fire Department shall be given the opportunity to review this proposal. **(21)** Prior to the start of construction or grading, all soil and erosion control measures must be in place for the site. These measures must meet the latest edition (November 2016) of the New York State Standards for Urban Erosion and Sediment Control. **(22)** There shall be no net increase in the peak rate of discharge from the site at all design points. **(23)** A stormwater pollution prevention plan (SWPPP) was not provided. The SWPPP, if required, shall conform to the current regulations, including the New York State Stormwater Management and Design Manual (August 2010) and local ordinances. **(24)** Water is a scarce resource in Rockland County; thus proper planning and phasing of this project are critical to supplying the current and future residents of the Villages, Towns, and County with an adequate supply of water. The water system must be evaluated to determine if the additional water supply demands of the proposed development can be met. Domestic and fire demands of the project must be determined by a Licensed Professional Engineer and provided to the supplier of water for analysis. Demand calculations and results of the analysis must be provided to the Rockland County Department of Health for review. **(25)** Six of the proposed parking spaces encroach into one of the Rockland County Sewer District No. I's easements. The ZBA must confirm that the parking spaces within the Sewer District easement is acceptable and will not hinder access for maintenance. Additionally, the Town must be satisfied that the signage indicating the "Area is prone to flooding" adequately addresses the placement of parking spaces within the 100-year floodplain. It is recommend that for any parking within the 100-year floodplain the us or permeable or porous pavers be considered. **(26)** Pursuant to New York State General Municipal Law (GML) Sections 239-m and 239-n, if any of the conditions of this GML review are overridden by the board, then the local land use board must file a report with the County's Commissioner of Planning of the final action taken. If the final action is contrary to the recommendation of the Commissioner, the local land use board must state the reasons for such action. **(27)** In addition, pursuant to Executive Order 01-2017 signed by County Executive Day on May 22, 2017, County agencies are prohibited from issuing a County permit, license, or approval until the report is filed with the County's Commissioner of Planning. The applicant must provide to any County agency which has jurisdiction of the project: 1) a copy of the Commissioner's report approving the proposed action or 2) a copy of the Commissioner of

Planning recommendations to modify or disapprove the proposed action, and a certified copy of the land use board statement overriding the recommendations to modify or disapprove, and the stated reasons for the land use board's override. (28) The following additional comment is offered strictly as an observation and is not part of our General Municipal Law (GML) review. The board may have already addressed this point or may disregard it without any formal vote under the GML process: (28.1) A Site Plan Note indicates that the water district is SUEZ. This must be corrected to Veolia North America. (29) The above referenced site is within the jurisdiction of the RCDA, pursuant to the Rockland County Stream Control Act, and therefore, a Stream Control Act permit from the RCDA is required for the current proposal. Please have the applicant submit an application to the RCDA directly. The RCDA will provide project specific comments upon receipt and review of the permit application submission. Copies of permit application package and Chapter 846: Rockland County Stream Control Act are being mailed to the property owner with a copy of this letter and are also available at the County website, within Highway Department, Drainage Division. (30) By copy of this letter the RCDA is notifying municipal land use boards and departments that the site is within the jurisdiction of the RCDA, pursuant to the Rockland County Stream Control Act, Chapter 846, as noted above. All future development proposals for this site will require a review and a written determination from the RCDA as to whether a permit is required. The RCDA recommends that the municipal departments ensure the site has no outstanding violations and the applicant has secured the required permit from the RCDA, prior to granting development permits.; was presented and moved by Ms. Castelli, seconded by Mr. Quinn and carried as follows: Mr. Bosco, aye; Mr. Valentine, aye; Mr. DeRobertis, aye; and Ms. Castelli, aye; Mr. Quinn, aye. Mr. Bonomolo was absent.

The Senior Clerk Typist 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: July 17, 2024

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Katlyn Bettmann  
Senior Clerk Typist

DISTRIBUTION:

APPLICANT  
ZBA MEMBERS  
SUPERVISOR  
TOWN BOARD MEMBERS  
TOWN ATTORNEY  
DEPUTY TOWN ATTORNEY  
OBZPAE  
BUILDING INSPECTOR - TBD

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

TOWN CLERK'S OFFICE  
2024 AUG -9 A 10:11  
TOWN OF ORANGETOWN

## FRONT YARD VARIANCE APPROVED AS CHANGED

To: Jackie Urra (Carballo)  
48 S. Broadway  
P.O. Box 939  
Nyack, New York 10960

ZBA #24-35  
Date: July 17, 2024  
Permit # BLDR-5081-24

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#24-35: Application of Jaqueline Carballo, for variances from Zoning Code (Chapter 43), Section 3.12, RG district, Group Q, Column 8 (Front yard: required is 25', with 20' proposed) for a new front porch deck, uncovered, and new front porch stoop at an existing single-family dwelling. The premises are located at 1 Ferris Lane, Nyack, New York and identified on the Orangetown Tax Map as Section 66.17, Block 2, Lot 6 in the RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, July 17, 2024 at which time the Board made the determination hereinafter set forth.

Jackie Urra, Architect, and Jaqueline Carballo, homeowner, appeared and testified.

The following documents were presented:

1. Architectural plans dated 4/18/2024 signed and sealed by Jaqueline Urra, R.A. (4 pages)
2. A letter dated June 6, 2023 from Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
3. A letter dated June 5, 2024 from Rockland County Drainage Agency signed by Liron Degruti, Engineer I.
4. A letter dated May 31, 2024 from New York State Department of Transportation signed by Ralph Tarulli, PE (DOT Consultant)
5. A letter dated July 17, 2024 from the Rockland County Sewer District No. 1 signed by Nicholas King, Engineer I.
6. A "this project is out the jurisdiction of this agency and has no further comments" from Dyan Rajasingham, Rockland County Highway Department, dated May 31, 2024.
7. A "Comments attached" from Rockland County Planning Department signed by Jake Palant dated May 31, 2024.
8. A computer-generated photograph of the aerial view of the property, submitted by the Architect at the Zoning Board meeting July 17, 2024.

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

Jackie Urra, Architect, testified that he home is located on a triangular lot; that Broadway and Ferris run parallel to one another; that if they bring the deck parallel to the street it would be facing the sound barrier wall from the highway which is not very attractive to look at and with this proposed location they will have a wonderful view; that they have gone through the possible iterations and this location would make the most sense when driving down the street; that they did not want the setbacks to determine their architecture; that they tried to keep the South end as narrow as possible so could keep the setback on the Northside in line; that they are trying to bring some symmetry to the home; the homeowners are looking to reorient their stairs; that the change in the stairs would; that after some discussion with the Board members the existing setback should be twenty-five (25') feet not thirty (30') as originally perceived as the setback is to the corner of the porch which then makes the variance a five (5') foot variance not a ten (10') foot variance.

2024 AUG -6 A 10:11  
TOWN OF ORANGETOWN

Mr. Quinn asked if the measurements for the variance were taken with or without the stoop?

Mr. Bosco stated that the Applicant would use the measurement which is the closest point as it is part of the structure, which then would make this twenty-five (25') existing and twenty (20') proposed and reduce the variance required, to which the Board agreed.

Mr. Bosco also stated that the lot area is existing non-conforming.

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Bosco 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 Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Valentine, aye; and Ms. Castelli, aye; Mr. Quinn, aye; Mr. DeRobertis, aye. Mr. Bonomolo was absent.

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.

Mr. Bosco 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 front yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The variance is less than originally requested. Similar porches and decks have been constructed in the neighborhood.
2. The requested front yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The variance is less than originally requested. Similar porches and decks 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 front yard 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 variance is less than originally requested. Similar porches and decks 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 improvement, 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 front yard variance is APPROVED AS CHANGED; 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.

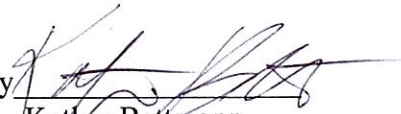
11 10 11  
2024 AUG -9- 9 11 AM  
TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested front yard variance is APPROVED AS CHANGED; was presented and moved by Mr. Quinn, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Valentine, aye; Mr. DeRobertis, aye; and Ms. Castelli, aye; Mr. Quinn, aye. Mr. Bonomolo was absent.

The Senior Clerk Typist 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: July 17, 2024

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Katlyn Bettmann  
Senior Clerk Typist

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 CLERK'S OFFICE  
2024 AUG -9 A 10:11  
TOWN OF ORANGETOWN

## REAR YARD VARIANCES APPROVED

To: Joseph Savattieri  
162 Park Avenue  
Palisades, New York 10962

ZBA #24-36  
Date: July 17, 2024  
Permit # BLDR-4807-24

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#24-36: Application of Joseph and Ann Savattieri, for variance from Zoning Code (Chapter 43), R-15 district, Group M, Section 3.12 Column 11 (Minimum Rear Yard: 35' required, with 15.9' proposed) and revision to ZBA#88-82 (Rear Yard: previously 17.5', 12.3' proposed) for a new screened in deck at a single-family dwelling. The premises are located at 162 Park Avenue, Palisades, New York and identified on the Orangetown Tax Map as Section 77.20, Block 2, Lot 2 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, July 17, 2024 at which time the Board made the determination hereinafter set forth.

Joseph and Ann Savattieri, homeowners, appeared and testified.

The following documents were presented:

1. Site plans, drawn from a survey dated 3/9/1979 by Adler, Caruso, & Young, P.C. (1 page)
2. Survey dated 11/7/1984 based on a survey by Robert R. Rahnifeld (1 page).
3. A letter dated June 17, 2024, in support of the proposed project, signed by four of the neighboring property owners.

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

Joseph Savattieri, homeowner, testified that he would like to extend the top of the deck area and have it screened in.

Ann Savattieri, homeowner, testified that the existing deck was there when they purchased the home; that the measurements listed at the time of the previous variance were incorrect from the prior homeowners; that the home has two front yards due to being a corner lot; that currently their deck is approximately six feet (6'5") five inches; that the proposed screened in porch is to be fifteen feet (15'9") nine inches; that the location of where the screened porch is to be extended will be towards Park Avenue a few feet; and that the existing stairs will remain and be refinished;

Mr. Bosco read into the record a letter in support of the project, signed by four of the neighboring property owners.

Mr. Valentine clarified the proposed rear yard measurements.

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Bosco 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 Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Valentine, aye; and Ms. Castelli, aye; Mr. Quinn, aye; Mr. DeRobertis, aye. Mr. Bonomolo was absent.

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.

Mr. Bosco 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 rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar decks exist in the neighborhood.
2. The requested rear yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar decks exist 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 rear yard variances are 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. Similar decks exist 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 rear yard variances are 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.

TOWN OF ORANGETOWN



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.

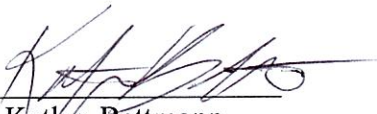
The foregoing resolution to approve the application for the requested rear yard variances are APPROVED; was presented and moved by Mr. Valentine, seconded by Mr. Quinn and carried as follows: Mr. Bosco, aye; and Ms. Castelli, aye; Mr. Valentine, aye, Mr. Quinn, aye, Mr. DeRobertis, aye. Mr. Bonomolo was absent.

TOWN CLERK'S OFFICE  
11:01 A 10:11  
TOWN OF ORANGETOWN

The Senior Clerk Typist 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: July 17, 2024

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Katlyn Bettmann  
Senior Clerk Typist

DISTRIBUTION:

APPLICANT  
ZBA MEMBERS  
SUPERVISOR  
TOWN BOARD MEMBERS  
TOWN ATTORNEY  
DEPUTY TOWN ATTORNEY  
OBZPAE  
BUILDING INSPECTOR- Glenn

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

TOWN OF ORANGETOWN  
2024 AUG -6 A 10:12  
TOWN CLERK'S OFFICE

**LOT COVERAGE, SIDE YARD, TOTAL SIDE, FRONT YARD, §18.33 ACCESSORY BUILDING LOCATION & §18.35 ACCESSORY BUILDING HEIGHT VARIANCES DENIED**

To: Kier Levesque (Architect)  
49 Third Avenue  
Nyack, New York 10960

ZBA #24-01  
Date: Jan 3, 2024, April 17, 2024, June 19, 2024, & July 17, 2024  
Permit # BLDR-1784-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 24-01: Application of Fisher Site Plan for variances from Zoning Code (Chapter 43) Chapter 43, Section R-12HC District, however Article XVIII.. Attachment 19.3. Table 3.13 “ If any conflict shall arise between the applicability of the SN-R-12H regulations and those identified on the filed plan, those on the filed plan shall prevail” The approved subdivision indicated RG-8 zoning .Per the approved subdivision plan RG-8 Zoning district chart on page 7 of 8 the following variances are required: Maximum lot coverage permitted is 45% with 59% proposed; Side Yard required is 15’ with 12.8’ proposed; Total Side Yard required is 30’, 27’ proposed; Front Yard set-back to accessory structures is 55’ , 0’ proposed to carport; proposed carport is 753 square feet which results in a lot coverage of 15.9% with 7% permitted for accessory structures. Also per Chapter 43, Article XVIII(18), Section 18.33, number 2, Relation of Accessory buildings to streets. No accessory building shall project nearer to the street on which the principle building fronts than such principle building. Should topographic conditions be such that practical difficulties would be caused by this requirements with respect to the location of a garage, the Planning Board may authorize the erection of such garage within not less than 10 feet of the street line where the natural slope of the ground within 25 feet of such line is between 12% and 20% and within not less than five feet of the street line where such slope within 25 feet of such line exceeds 20%: Variance required; Per Chapter 43, Article XVIII (18), section 18.35, “Maximum building height applicability. In considering maximum height per Hamlet of South Nyack General Use Bulk and Parking Regulations, per Figure 1, when considering a front yard setback variance for any structure, allowable roof height to the topmost extremity shall not extend above a line drawn from 5 ½ feet above the nearest point on the front line to a point 30 feet above the required front yard setback. An exception to this limit may be granted only if there is no other feasible alternative and if the balancing of benefits to the applicant if granted, versus benefits to the community if not granted, weigh strongly in favor of the applicant. “Variance required as a portion of the carport roof is outside the envelope, see sketch. The applicant also requires an exception pursuant to New York State Town Law, Section 280-a ( Relation of structure to streets or highways) for the proposed new residence and carport. The premises are located at 7 Berachah Avenue, South Nyack, New York and are identified on the Orangetown Tax Map as Section 66.61, Block 1, Lot 19.2 in the R-12HC zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at Hearings held on the following Wednesdays, January 3, 2024, April 17, 2024, and June 19, 2024 at which time the Board made the determination hereinafter set forth.

**January 3, 2024**

Kier Levesque, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans labeled “Fisher Residence” dated 08/01/2022 with a revision date of May 3, 2023 signed and sealed by Kier B. Levesque, AIA. (8 pages)
2. Planimetric plan for Fisher fated May 2, 2023 revised September 19, 2023 signed and sealed by Steven Michael Sparaco, P.E., ( 5 pages)
3. Major Subdivision lands of Dan some, LLC final subdivision plan dated 11/14/2003 signed and sealed by Michael M. Murphy, P.E., (1 page)
4. Plan labeled “The Fisher Residence Plan- Robert Fisher” drawn by DFG dated March 15, 2023 not signed or sealed.
5. Planning Board Decision #23-04 dated October 25, 2023 with a Neg. Dec.
6. A letter dated December 21, 2023 from Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
7. A letter dated December 19, 2023 from Rockland County Health Center for Environmental Health signed by Elizabeth Mello, P.E., Senior Public Health Engineer.

8. A “ this project is out the jurisdiction of this agency and has no further comments” from Dyan Rajasingham, Rockland County Highway Department, dated January 5, 2023.
9. A letter not dated from Alissa and Barry Schurr, 9 Berachah Avenue, Nyack ( abutting property owners) in opposition to the location of the car port with attachments.
10. Printed sheet from the architect showing proposed impervious areas and floor areas.
11. A letter dated December 18, 2023 from roger and Sara Seller, 5 Berachah Avenue, South Nyack in support of the application.
12. Five computer generated pictures of the proposed house and carport submitted by the applicant.
13. Twelve pictures of houses in the area with garages and parking areas submitted by the applicant.
14. Three color photos of the area that the proposed carport is to be constructed in relation to the house owned by Alissa and Barry Schurr, 9 Berachah.

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

Kier Levesque testified that the applicant has moved the house further to the east; that the carport is proposed to be constructed on a private drive owned by the adjacent property owners; that constructing the carport on Berachah Avenue would cause great land disturbance; that the proposed location would have the carport built on piers without a foundation; that the engineer approved the roof drains and drainage for these locations of the house and the carport; that he has the square footage of the impervious surfaces and the floor area ratio that the county asked for; that the roof of the carport is 800 sq. ft. and it complies with the NYS Stretch Energy Code for future solar panels; that the house is 31' wide and the carport is 24' wide; that the solar panels would need a three foot firemen's walkway around them; that the roof is approximately 400 s.f.; that there is one level deck on the house; that they are waiting for a hold harmless to be drawn up the Town Attorney's office allow it them to construct the wooden walkway over the drainage easement; that the proposed carport is 24' x 20' and they would like to hold the line at 51''; that they could reduce it to 20' x 20' losing 4' 4''; that the issue with grades and the location of the drainage pipes, that this location is not as steep as it seems; that only two trees are being removed to construct the carport; that there is a 39 ½' apron to the street; and that he would request a continuance to address the concerns of the Board.

Ms. Castelli asked questions about the NYS Stretch Code and if they apply for new construction and renovations and if the 400 sq. ft. of space for solar panels can be split up to 200' and 200' and the architect answered yes; she also had questions regarding the granting of a 280-a on a private road; and strongly suggested that the carport be reduced in size and relocated to Berachah Avenue.

Mr. Bosco agreed with Ms. Castelli, and stated that the pictures submitted by the neighbor at 9 Berachah really showed how much the proposed location of the carport would affect the existing older house on the lot directly below the proposed location; and stated that there are definitely other locations that would not be as intrusive.

The three members present asked for legal advice from the attorney and left the room for an executive session.

Upon returning the Board asked the client to reach out to the attorney on the following Wednesday, January 10, 2024.

TOWN OF ORANGETOWN  
2024 AUG -6 A 10:12  
TOWN CLERK'S OFFICE

Public Comment:

Alissa Schurr, 9 Berachah Avenue, Nyack, testified that her house was constructed in the 1880's; that the rear yard has several retaining walls, some as high as twenty-five feet; that she would like to show the Board pictures of her house and the proposed location of the carport in relation to those walls and her house; that she is concerned about the integrity of the hillside and how high the retaining walls are; that the benefits of a carport can be achieved on Berachah Avenue without looming over her property; that the proposed variance is very substantial at 127% ; that this proposal will cause an adverse physical effect as the County stated; that this is definitely self- created because there is a location on Berachah that can accommodate the car port; that the neighbor that was on the Zoning Board in South Nyack and wrote the letter of support for the project is not downhill from it; and that she appreciates the Board consideration.

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.

**April 17,2024 continuation of meeting:**

Members present: Michael Bosco, Chairman, Rob Bonomolo, Trish Castelli, Billy Valentine, Tom Quinn was absent.

Also present: Denise Sullivan Esq., Deputy town attorney, Anne Marie Ambrose, Official stenographer, Katlyn Bettmann, Senior Clerk Typist

Kier Levesque, Architect, and Robert Fisher, Applicant, appeared and testified.

The following documents were presented:

1. Architectural plans labeled "Fisher Residence" dated 08/01/2022 with a revision date of February 23, 2024 signed and sealed by Kier B. Levesque, AIA. (A-6, A-7).
2. Planimetric plan for Fisher dated May 2, 2023 revised February 26, 2024 signed and sealed by Steven Michael Sparaco, P.E., ( 5 pages).
3. A letter from the OBZPAE, Jane Slavin, Director, dated March 7, 2024
4. An email from Brian DeBonis, Orangetown Highway Maintenance Supervisor dated February 6, 2024.
5. Printed sheet from the architect showing proposed impervious areas and floor areas, revised February 12, 2024.
6. A narrative, from Kier B Levesque, Architect, dated February 15, 2024.
7. A letter dated April 12, 2024 from Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
8. An email dated April 16, 2024 from Bonnie Christian.
9. Eight pictures of houses in the area with garages and parking areas submitted by the applicant.
10. A letter dated December 18, 2023 from Roger and Sara Seiler, submitted by the applicant.
11. A letter dated April 17, 2024 and three-color photos of the area that the proposed carport is to be constructed in relation to the house owned by Alissa and Barry Schurr, 9 Berachah.

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

Kier Levesque testified that since their last appearance they have made changes in the size of the carport from 799 sf to 626 sf; that the width was reduced from 31' to 24'; that the roof size has also been reduced; that he would like to remind the Board that at the last meeting he identified the boundary line and submitted photocopies of other locations where they have accessory garages in their front yards; that all of the water from the roof run off will be collected in the stormwater detention system located on the North side of the property;

that there is a need to have two trees removed where the carport is to be placed, however there will be new plantings behind the carport between the downslope and the property owner behind the carport; that all other trees that are marked to be removed are to enable the detention system install; that the height variance is needed and is not articulated in his letter provided as it is not for the principal structure but for the accessory structure, and that did not change when that carport was made smaller due to the changes being made on the side that is closer to the street(the East side); that all other prior conditions reviewed remained the same; that the land disturbance to place the carport on Berachah Avenue would be even worse, almost triple; that there would then need to be a separate detention system provided; that this location would cause a fifty (50%) percent at least of the slope to be disturbed, in order to put in the detention system; that this was discussed twice at Planning Board, and at the previous Zoning Board meeting; that the percentage of the variance is high because of the steep slope, but that more variances would be required if the carport were to be moved to Berachah Avenue; that they are doing engineering and planning sensitive to the sight, but that it is causing variances; that he feels that he has abated the concerns with the stormwater; that there will be heavily planted areas along the property line to give a better view than what exists today for the neighbors; that the concerns can be mitigated; that on the ground is gravel item # 4, not asphalt, therefore would be no opportunity to place porous pavers (as requested in Rockland County Planning letter); that Orangetown DEME is happy with the proposal; that originally DEME had asked for a separate retention for the carport at the planning board level, but after reviewing the applicant's proposal, DEME agreed that it was best to have water piped into/connect to the existing retention system; and they will need to have a sewer easement as well as a hold harmless agreement; that the height from the ground to the peak of the carport is 21'4" on the south side, and 25'8" on the hill; that the carport is a design feature; that it is designed with steel supports painted black, and shrubbery will be planted along the back property line to help disguise and obscure concrete pieces of foundation, so it will "disappear"; that the premise is that it will look like limbs coming out ground; that there will be concrete walls so no one will drive off; that this is designed with safety and protection for homeowner and everyone on the street; that he will work up changes to show the Board what it would look like to move the carport to the lower section of the property at Berachah Avenue, the environmental impact, and the possible drainage; that they cannot put a garage under the house because they would have to drive all the way around and there is a retaining wall in the way that holds up the street; that they can't do a drop down driveway because the grade is too steep; that the structural engineer said they don't need a geotechnical engineer, and the footings will be designed to be sound; that it will not slide, if it were a higher slope it could slide; that the neighbors engineer brought up the potential issues and the geotechnical engineer, but the foundations haven't been designed yet, they will be calculated with spread footings; that ACABOR has jurisdiction over screening, shrubs, and aesthetics; that the concrete wall on the east side of the carport will be painted black to disappear in sight; and that the Applicant requests a continuance to address the concerns of the Board.

Robert Fisher testified that he was not at the prior meetings; that he would like to re-submit the letter from the former chair of the South Nyack ZBA previously read into the record; that the eight pictures of similar structures in the area are common and have been approved; that this proposal will not be a detriment to the neighborhood; that the detention system being put in will carry the water over to their own house, and will be less water on the neighbors' property than what is there now; that it is a hilly area and right now there is water coming down from all sorts of sources, and their house is still standing; that the neighbors' concerns are based on fear and have no basis in engineering or scientific fact; that his engineer has designed a very credible detention system that will result in a reduction of the water to their home not an increase; that the neighbors have never previously raised any issues of the view of the carport; that the view of the carport is a concern brought to their attention from the Zoning Board; that the design will be beautiful and have shrubbery; that the conversation brought up by the neighbors with the engineers is not the same as what he understood; that he believes the engineer to be ok with the structural integrity; that the aesthetics of the carport are unbelievably beautiful and will add to the neighborhood; that the quality of life comments from the neighbors are not valid, as this was granted preliminary approval by the planning board; that this is nothing new and the neighbors want to stop him; and he feels that he has a right to do this project;

that he hopes later they can be friends and that the carport will be a beautiful addition to the neighborhood, not a nightmare; that if the environmental impact and carport below with a walkway would cause more disturbance would the Board be inclined to approve the application; that going through the motions to find out is a waste of his time, and he can't image it not creating more of a land disturbance to have the carport located at Berachah Avenue; that he cannot put a garage under the house either, it's not feasible, he has limitations but that it was carefully considered; that if they move the carport to Berachah Avenue the noise from the cars will be bothersome to the neighbors and that he doesn't want to walk that far with his groceries; that there was no correspondence from an engineer from the neighbors (Schurr) submitted.

Chairperson Bosco stated that 13' piling plus 12' high carport structure will be 25' high; and the distance from Berachah up to College is approximately 32 feet.

Mr. Bosco also stated that water is not the only issue the Board has concerns with; that the neighboring property owners would be affected by the proposed location and have to stare at it all day; that the proposed location of the carport is a substantial variance to request for a property that was purchased in this fashion, to which the applicant's Architect agreed. Mr. Bosco also brought up clarification for the side yard and front yard measurements, the Architect agreed to update the bulk table. Mr. Bosco stated that fifteen feet from the neighbor's property will now be a twenty-five-foot-high structure, which is not within the applicant's right, it's a significant concept; asked if it is possible to re-design the house and have the carport under the house; also has concerns with lights from the cars shining right into the neighbor's house and stated that he is considering not approving this application, but would like to see an example of the carport placed at Berachah Avenue as well as the cost differential, the environmental impact, and the land disturbance; also reminded the Applicant that the property was purchased this way.

Ms. Castelli agreed with Mr. Bosco that this was her concern at the previous meeting and it remains to be her concern at this meeting, and asked for the carport to be moved to another location. Ms. Castelli agrees with Mr. Bosco, that the carport should be somewhere else.

Mr. Valentine stated that the proposed project is not in keeping with the neighborhood; that he wants to see the hardship upon the Applicant's return, and wants to see the carport placed not directly behind the neighbor's house.

The three members present asked for legal advice from the attorney and left the room for an executive session.

Public Comment:

Patricia Burchell, 26 College Avenue, Nyack testified that she lives on the South side of the lot; that she has had water issues since she has lived there, which is the last 4 years; that the older houses on Willow(Ct.) and College(Ave.) are concerned with the runoff from the carport from the road; that she is the only person on College Ave. who is taking care of the sewers, clearing away the dirt, trees, rocks, etc.; that she is concerned with the pilings being so close to the other houses and why it can't be closer to their own house; and that she gets runoff from every angle pouring down her property.

Alissa Schurr, 9 Berachah Avenue, Nyack, testified that at the last meeting the Board requested that the applicant scale back the carport and a second plan be done showing the carport in another location, but that she did not see that done; that she had her engineer review these plans, and was told that a geotechnical engineer should be hired; that they then went and spoke with applicant who said they will not be doing so, as he is assuming that his architect is doing the work properly; that she does not feel comfortable with this project being done above her house; that once this is approved, if something goes wrong, she can't just come back to the Board to have them fix what is broken; that this will affect her quality of life; that the Applicant purchased the property this way and he is creating these issues.

Barry Schurr, 9 Berachah Avenue, Nyack, passed out a packet of three pictures to the Board members and testified that the first picture is taken from his side yard, the red rectangle in the picture is the proposed carport location; that the second picture is taken from the proposed space,

looking at my home; that the third picture is from my back yard looking up at the space; that from where the Board is sitting, looking fifteen feet ahead (pointed out that location), and then at the ceiling, that will be his view at a forty-five-degree slope to the carport; that he will be looking up at a concrete slab, and what's stopping a car from coming right off; that his quality of life will be greatly affected, and it should not be detrimental to him for the issues of the Applicant having a carport; that this sets a bad precedence, and that this is the critical environmental area for a reason; that there could possibly be more land disturbance if the proposed location were to change, but it would be on a street, as to not have human life disturbance; that two of the largest one-hundred year old stabilizing hillside trees are going to be removed, and nothing will be grow there now; that there will be destabilization on the hillside; and asked who will take care of all of the water.

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.

**June 19, 2024 continuation of hearing:**

Members present: Michael Bosco, Chairman, Rob Bonomolo, Trish Castelli, Billy Valentine, and Anthony DeRobertis, Alternate. Tom Quinn was absent.

Also present: Denise Sullivan Esq., Deputy town attorney, Anne Marie Ambrose, Official stenographer, Katlyn Bettmann, Senior Clerk Typist

Board alternate member Anthony DeRobertis advised that he had familiarized himself with all of the documentation submitted for the application; and the documentation submitted for the record; and familiar with the site; and that he was fully apprised and could participate in the continuation of the hearing.

Kier Levesque, Architect, and Robert Fisher, Applicant, and Dennis Letson, P.E., appeared and testified.

The following documents were presented:

1. An updated narrative with pictures, from Kier B Levesque, Architect, dated May 13, 2024 (4 pages).
2. An assessment of site disturbance for garage construction, prepared by Dennis M. Letson PE & Associates, Consulting Engineer, dated May 10, 2024 (4 pages).
3. A letter from Robert Fisher, dated May 14, 2024 (4 pages).
4. Page 5 & 6 of PB#23-04 decision, submitted by Kier Levesque at the meeting of June 19, 2024.
5. A letter from Leonard Jackson, P.E. dated June 18, 2024 (1 page) on behalf of Alissa & Barry Schurr.
6. A letter from Alissa & Barry Schurr, received June 19, 2024 (3 pages).
7. A topographic survey of 9 Berachah Avenue, submitted by Alissa Schurr at the meeting of June 19, 2024 (1 page).
8. Three Computer generated pictures, submitted by Alissa Schurr at the meeting of June 19, 2024 (3 pages).

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

Kier Levesque testified that since their last appearance in front of the Board pictures had been taken on the Berachah Avenue side of College Avenue as well as from the top view; that the property line has been drawn into the submitted documents as well as the curb; that the existing utility feed has two that go to the neighbors and one that goes down Route 9W which he believes Orange and Rockland will likely not be willing to move; that they have reduced the size of the carport to 636 s.f. which is a twenty (20%) percent reduction; that in reference to the variance which states "with respect to the location of a garage.....and within not less than five feet of the street line where such slope within 25 feet of such line exceeds 20%" we are at this point and are willing to move it to five (5') feet to remove that portion of the variances required; that this will be determined by the Planning Board;



that these changes have not yet been reflected in the bulk table but will be once all changes are made; that this application was granted a Negative Declaration SEQRA at the Planning Board meeting in October PB#23-04 PB#1784-22; that placing the carport on Berachah Avenue instead of the proposed location would create a hardship and have a financial impact on his client; that the Applicant's engineers report will show the Board what was requested to be seen at the previous ZBA meeting; that the carport reduction is twenty-two (22%) percent and the lot coverage is thirteen (13.2%) percent; that they would like to have permission to measure the lighting at the neighbors windows; that this application still needs to go for ACABOR approval; that there will be two trees removed and significant planting will be done; that the twenty (20") inch maple tree is to remain and boxwoods will be placed to disguise the underside of the carport; that they want this to be a natural landscape; that the current vegetation is seasonal; that they will not be using pilings; that they are ok with putting a solid wall on the backside of the carport; that the survey provided by the abutting neighbor (Schurr) will show him where their house is relative to the rear property line and give him the grades; that as an Architect he would buy a house with a carport over his head.

Robert Fisher testified that he appreciates the Board being sensitive to any impediment to the neighbors in terms of his proposed carport; that currently the headlights from the vehicles parking at the house directly to the North of these neighbors would be shining directly into their mansion; that his proposed carport won't make their situation any worse since they are already living this way and they are going to have shrubbery; that he would like to call by a show of hands to ask the Board which members visited the property; that he is not trying to make this personal but their claim over a quality of life is a big joke; that he will never put the carport on Berachah Avenue no matter what the Board says; that the neighbors will see the carport every time they go into their house if it is relocated to Berachah Ave.; that they will not spend a lot of time straining their neck looking up at the carport; that currently Roger Seiler has an existing parking lot in their view but this carport would be totally camouflaged; that the neighbors have caused unnecessary time delays and expenses; that the Planning Board has been labored and had them make changes as well; that the neighbors are not being reasonable and have crossed the line; that he has spent a lot of time and money on this project; that the neighbors had never mentioned the carport being unsightly prior and only mentioned a geotechnical engineer because Leonard Jackson, P.E. mentions it in his letter; that the Planning Board said that they are being sound and efficient; that he believes it to be telling that Mrs. Schurr indicated the she cannot walk up her steep backyard; that she has been trying to force him to put the carport way down from his house on Berachah Avenue which would be much steeper than her back yard; that expecting him to walk up that every day with packages, in the rain, in the snow is unreasonable; that she is trying to force us to put a carport where it would be virtually impossible, environmentally, engineering; that she can't walk up the steepness of her backyard but she wants me to; that he is not aware of any NYS laws that guarantees that the neighbors will not see any type of structure; that where they are asking us to put the carport will be more visible; that it will be a constant reminder to them and they will have to see it; that their argument is specious and a sham;

Dennis Letson, P.E., testified that by relocating the carport, they would eliminate the need for one of the originally requested variances; that will request that the planning board grant a five (5') foot setback from the street as a part of the site plan approval; that because they are moving it back the five (5') feet and they have slopes in excess of twenty (20%) percent with twenty-five (25') feet off the street the Planning Board has the authority to grant that; that all they will have to do it move the sidewalls of the building; that the balance of the building will remain exactly the same; that the footprint will not change; that he spoke with Mr. Sparaco recently and that this is the best alternative; that Mr. Jackson said nothing of a conversation with Mr. Sparaco; that he spoke to Kier and he said nothing about speaking to Mr. Sparaco or plans being replaced with a pad; that he spent fifty years defending construction and where it is being put on Berachah Avenue is ludicrous; that a Geotech is unnecessary and will not provide substantial information; that they will do a soil evaluation but at this time it is premature because soil types at this site would not warrant these; that they are unable to turn the carport sideways and come in from the South; that they would have to create an elevated driveway; that there is a letter from the Town of Orangetown DEMA in regards to the putting the carport over the detention;

that they did not do a relative cost analysis for the amount of excavation; that he has done similar on Tweed Boulevard the geometry is very similar; that construction of a garage on Berachah Avenue violates every tenet of the Orangetown Comprehensive plan; that the elevation of the existing maple tree behind the garage(sic carport) probably provides a certain amount of screening for the backside of the garage(sic carport) by virtue of the site angle; that there will also be supplemental plantings for screening;

Chairperson Bosco asked what happened with Mr. Sparaco, the applicant's P.E., that the plans were going to be changed to a pad? Also, what about a Geotechnical Engineer?

Mr. Bosco asked if they had thought about changing the direction of the carport and moving it sideways.

Mr., Bosco stated that he was asking because the applicant had not done what the Board had asked of them.

Ms. Castelli asked the applicants is they would purchase a house with a carport above their head Mr. Bosco stated that on Tweed Boulevard most of those are on the road and don't have houses behind them, not a property behind them.

Mr. Bosco asked in regards to back section of carport its wire and solid, can it be solid all the way across? Also, can you get permission to take a measurement of the elevation at the back of the 2nd floor window without having to go on their property?

Mr. DeRobertis asked if there are any deciduous trees on the property line that could provide year-round coverage?

Mr. Valentine asked if the applicants feel differently about the height of the carport relative to the neighbors' window, when shown pictures they've been provided by the neighbors?

Ms. Castelli stated that maple trees are seasonal.

Public Comment:

Alissa Schurr, 9 Berachah Avenue, Nyack, testified that her house is actually three stories; that the back yard/back patio starts on the second story; that when the Board is referring to the second story in their earlier discussions they're actually referring to the third story of the house; that the house was built in 1880's and the ceiling is over eleven and a half (11.5') feet high; that looking at her patio on topographical survey the patio is at two-hundred and sixty (260') feet; that the second floor has one bedroom that faces the rear of the house and the third floor has two bedrooms facing the rear of the house; that regarding Len's [sic Leonard Jackson, P.E] conversation with Mr. Sparaco (P.E.), he(Leonard Jackson, P.E.) submitted a letter to the Board stating that he(Mr. Sparaco) advised him(Leonard Jackson, P.E.) that the plan for the carport was being abandoned; that she doesn't know why he did or didn't discuss that with Mr. Letson today but the fact that he didn't discuss it doesn't mean it didn't happen; that they only want opportunity to hire an engineer at their cost to confirm Mr. Letson's narrative or rebut it if applicable; that when the application was before the Planning Board they hired an Engineer to review water issues because they were told that was the only issue that was before the Planning Board; that they were also told that is was not the proper venue to assert quality of life issues or our home resale values; that those issues were to be addressed before the ZBA and that's why those issues are being brought up and we brought them up at the last two meetings as well; that the planning board may have approved the water retention plan but they didn't approve carport; that they very kindly kicked it to ZBA to deal with; that in her opinion it is abundantly apparent that the carport should be relocated to Berachah Avenue even if as the applicant asserts it would be more of an eyesore to them; that it may be an eye sore but it's not hanging precariously above their house giving them concerns while being an eyesore at least it'll just be an eyesore at street level; that everyone in neighborhood has garages at street level it's sort of part of the character; that what nobody has is their garage hanging over another neighbor's house; that it is a detriment to them; that all be it an inconvenient alternative for the applicant but it belongs on Berachah Avenue or it shouldn't happen at all in her opinion; that there are also potential environmental issues as the County of Rockland pointed out in their letter they don't think the carport should be granted; that the applicant asked to come to their house for coffee after they appeared at the first Planning Board meeting;

that they were contacted by the neighbor Roger Seiler who had sold a portion of his land to the applicant so that the applicant had enough property and Mr. Seiler contacted them and said that the applicant and Mr. Levesque would like to come and meet with you wanted to talk about the plan and she naively thought they were going to meet to discuss a change to the plans; that she did not invite them over for coffee and as a welcoming this was all after board meeting; that photos show how close and how steep the slope is if you're standing on college you're looking down 30' right into her backyard.

Mr. Bosco, Chairman, asked if the applicant has permission to come out and take a reading to measure where the lighting will affect their house, from the street level.

Alissa Schurr:

Of course, we would be willing to let them do that, I'm curious why though?

Fisher

ZBA#24-01

Permit #BLDR-1784-22

Page 9 of 12

Mr. Bosco, Chairman, we would like to know where they are pulling in at 305' where that affects your house.

Alissa Schurr testified that she appreciates the Boards concern about the lighting however that is not their only concern it's one of many; that Mr. Chairman said he visited the property today he can see that the knotwood that's pervasive all over that back yard, that is gone in September and comes back in May; that there is no brush back there; that there are three large tree which have to be removed and there is nothing else and even if planting you can't plant to cover pilings that'll be the first ten (10') feet or twenty (20') feet or fifteen (15') feet but there is nothing that is thirty (30') feet tall there's nothing that they're going to be able to put to block this; that it is not just about blocking the view it's about the steepness; that you can't walk up that slope side unassisted as it is that steep, it's a concern; that she does not want to spend her life worried and doesn't want to have to worry about re-selling her house; that what is fair is that this garage be located somewhere else; that there are suitable alternatives, they may be inconvenient, but there are alternatives.

Barry Schurr, 9 Berachah Avenue, Nyack, testified that car lights don't point straight they point at the road so they angle down so in respective of the ten (10') feet to twelve (12') feet difference it's going to be problematic; that the other thing he wanted to point out that he hopes is pretty evident is that re-landscaping or reforesting a forty-five (45°) degree slope side with trees or any vegetation that needs to be minimally twenty (20') feet or more if not thirty (30') feet tall, in order to cover or disguise the structure is necessary; that they are not talking about three (3') foot tall, four (4') foot tall, six (6') foot tall boxwoods - those won't do anything; that the underside of the carport at three hundred and five (305') feet is level; that then going down and out twenty (20') feet at a forty-five (45°) degree angle is going to be twenty (20') feet before it even gets to looking at the bottom of that carport; that also to point out that the applicant's property from Berachah Avenue up is a much lower grade than and then it starts to get significantly get steeper; and that there are plenty of homes in the neighborhood without a garage.

The members present asked for legal advice from the attorney and left the room for an executive session.

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.

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

A motion was made by Mr. Bosco to reserve the Board decision to be made until the next meeting which motion was seconded by Ms. Castelli and carried unanimously.

TOWN CLERK'S OFFICE  
2024 MAR -9 - 10:13

TOWN CLERK'S OFFICE

**July 17, 2024 reserved Decision:**

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Bosco moved for a Board determination that, since the Planning Board noticed its intent to declare itself Lead agency and distributed that notice of intention to all involved agencies, including the Zoning Board of Appeals who consented or did not object to the Planning Board acting as Lead Agency pursuant to coordinated review under the State Environmental Quality Review Act Regulation § 617.6 (b) (3); and since the Planning Board conducted a SEQRA review on October 25, 2023 (as set forth in PB#23-04) for Preliminary Site Plan approval subject to Conditions, rendered an environmental determination of no significant adverse environmental impacts to result from the proposed land use action (i.e. a “Negative Declaration” or “Neg Dec”), the ZBA is bound by the Planning Board’s “Neg Dec”, and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulation § 617.6 (b) (3). The motion was seconded Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Valentine, aye; and Ms. Castelli, aye; Mr. Quinn, aye; Mr. DeRobertis, aye. Mr. Bonomolo was absent.

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

Mr. Bosco made a motion to close the Public Hearing which motion was seconded by Ms. Castelli 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:

1. Applicant seeks to construct a new house with carport. The new dwelling will front on Chase Avenue and the carport will be to the South on College Avenue. The Applicant is requesting separation of the dwelling and the carport. They would like the new dwelling to be placed upland near College Avenue, while having an address on Berachah Avenue.
2. The property at & Berachah Avenue is on a steep hill which slopes from the West to East between College Avenue and Berachah Avenue. The elevation at College Avenue is 302’ and slopes down to an elevation of 262’ at Berachah Avenue.
3. The property is an L-shaped lot which is cut in half by a drainage easement that runs through the center of the property.
4. The Applicant is seeking five (5) variances. Some of the variances are small in stature but the overall impact is substantial and self-created:
  - Side yard – 15’ required and 12.8’ proposed
  - Total side yard – 30’ required and 27’ proposed
  - Maximum lot coverage – 45% permitted and 51.4% proposed
  - Accessory lot coverage – 7% permitted and 13.2% proposed
  - Front yard setback for an accessory structure – 55’ required and 5’ proposed

The front yard setback for the accessory structure proposed on this property is the most substantial variance required.

5. Although other properties have requested and have been granted this type of variance in the past it was for either two reasons that this Board is aware of:
  - It was based on the fact that they were already existing. It would be part of an Applicants building department denial when seeking a building permit.
  - The Applicant was selling their home and it came up on the property review.In both of these scenarios the structures were in the front yard of the applicant's property with the Applicant's house behind it. As long as I, the Chairman, have been a member of ZBA there has not been a variance granted for an accessory structure garage or carport that overlooked another neighbor's property.

6. The Board spent time reviewing the site, as well as all of the adjoining streets and neighborhoods in South Nyack, Grandview and Piermont. They could not find one location where a carport or garage of one property overlooked and/or perched above another property.
7. The Board has concerns granting any variances required for one property's accessory structure towering over another property. The proposed carport would be an imposing structure of thirty (30') feet high set into the slope which already sits above the neighbor's house to the East. There is clear concern from the abutting neighbors to the East on the location of the carport sitting above their property. They have stated their concerns for aesthetics, car lighting intruding into their window's, the potential of a car crashing into their home at any point in time and the resale value of their home with this structure in the proposed location
8. The Applicant has attempted to show that the carport is not capable of being placed at bottom of the property off of Berachah Avenue and is proposing that it be placed at College Avenue, which is a private road. The Applicant has stated that his property has use of the aforementioned private road. However, the Applicant can still achieve the beneficial use of the property with the carport and drive area coming off of Berachah Avenue, which is a public street. The carport can fit in this location and the utility pole will not impact the said location.
9. Many properties in the neighborhood have similarly situated parking areas, carports and garages.
10. The abutting neighbor to the East has stated under oath and on the record that they have no issue with the carport being located adjacent to their property on Berachah Avenue.
11. The proposed location of the accessory structure on this property will impact the existing community, the character of the neighborhood and it will certainly have an undesirable and negative impact to the adjacent property.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application is DENIED; 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 DENY the application for the requested variances are; was presented and moved by Mr. Bosco, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Valentine, aye; Mr. DeRobertis, aye; and Ms. Castelli, aye. Mr. Quinn, abstained. Mr. Bonomolo was absent.

The Senior Clerk Typist 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: July 17, 2024

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Katlyn Bettmann  
Senior Clerk Typist

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 CLERK'S OFFICE  
2024 JUL -6 A 10:13  
TOWN OF ORANGETOWN