

ZONING BOARD OF APPEALS

There was a regular meeting of the Zoning Board of Appeals on Thursday Evening, June 13, 2019 at 8:00 p.m., in the Court Room of the Municipal Building.

Members Present

Mark I. Fisher, Chairman
Ernest Fiore
Paul Katz
Steven Lowenthal
Thomas Foristel
William Harold
Michael Tiesi

Members Absent

The Chairman called the meeting to order at 8:00 p.m.

<u>Cal. #</u>	<u>Applicant</u>	<u>Block</u>	<u>Lot</u>	<u>Decision</u>
Z19-008	Daniel & Lora Katsikas	601	66	Variance Granted
Z19-009	Delilah Galente	834	6	Variance Granted
Z19-010	Hugo Ruiz	519	4	Heard – Closed – Findings being prepared
Z19-011	Montessori Childrens Center	692	3	Variance Granted
Z19-012	Anthony Fragoso & Rosann Leone	906	17	Heard – Closed – Findings being prepared
Z19-013	Joseph & Alice Torre	508	55	Heard – Closed – Extension Granted
Z19-014	Louis Camardella	375	6	Not Heard – Adjourned to the June Meeting
Z19-015	Brain & Spine Surgeons of New York, P.C.	631	19	Heard – Closed – Findings being prepared

The next meeting was scheduled to July 11, 2019.

There being no further business to come before the Board, on a Motion duly made and seconded, the meeting was declared adjourned.

Jacqueline Greer

Town Clerk's Office

Rosemarie Cusumano
Rosemarie Cusumano, Secretary

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JUN 14 2019

THE FORMAL RECORD OF THE ABOVE PROCEEDINGS ARE THE TAPES THEREOF.

RECEIVED

**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar No. Z19-008

Date: June 13, 2019

Property Owner: Daniel & Lora Katsikas

Property Address: 3 Puritan Woods Road

Block 601 Lot 66

WHEREAS, the applicant, the property owner, filed plans to construct a pergola and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Louis Campana, on behalf of the property owners, Daniel and Lora Katsikas, filed on March 15, 2019, an application for an area variance from the Zoning Ordinance to construct a pergola at a property located at 3 Puritan Woods Road. The property is located in an R-1 Zoning District and pursuant to §235-9(B) of the Table of Dimensional Regulations, the minimum side yard for lots in the R-1 Residential District in Block 601 is 50 feet. The proposed pergola will reduce the side yard to 31 feet 11 inches thus requiring an 18 foot 1 inch variance ; and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on April 10, 2019 and May 9, 2019, after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present or indicated that they listened to tapes of the meeting: Mark Fisher, Paul Katz, Ernest Fiore, Steve Lowenthal, Tom Foristel, William Harrold and Michael Tiesi; and

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations thereunder, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

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Katsikas
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- (A) the benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
- (D) whether the requested variance is substantial;
- (E) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

1. Applicant's property is located on an oversized irregularly shaped lot. There is a large rear yard that is restricted due to a 100 foot wetland buffer setback to the rear and a watercourse 50 foot buffer setback to the side. In addition, the rear yard topography is very steep.
2. Applicant is proposing to construct an open air pergola that will encroach into the required side yard. As a result of the irregular shape of the property and its topography as well as the special buffer setbacks referred to above, applicant is constrained in its ability to locate the pergola in any other location on the property. As a result we find that the benefit sought by applicant (the erection of the pergola) cannot be achieved by any other method feasible for applicant to pursue other than an area variance.
3. The side of the property on which the pergola is proposed to be located is heavily screened from view from the adjacent property by existing screening provided in a screening plan filed with this application. Applicant has amended the existing screening plan to provide for 25 additional plantings consisting of Inkberry Holly (10), Mountain Laurel (13) and Nellie Stevens Holly (2). Together with the existing screening, this additional screening should effectively screen the pergola from view from the adjacent property. As a result we find that there will be no detriment to any nearby property created by the granting of the variance. We are specifically conditioning the granting of the variance on the completion of the additional screening, and continued maintenance of the landscape plan prepared by Louis Campana, Architect, dated 8/15/18, as revised on 3/15/19.

NOW THEREFORE BE IT RESOLVED, that the application for a 18 foot, 1 inch side yard variance to allow construction of a pergola in accordance with plans filed with this application be, and hereby is granted subject to the following condition.

Granting of the variance is subject to the completion and continued maintenance of the screening plan, dated August 15, 2018 last revised March 15, 2019, submitted with this application.

Foregoing Resolution submitted by Zoning Board Member Steven Lowenthal, seconded by Zoning Board Member Michael Tiesi at the June 13, 2019 meeting.

ADOPTED: Mark Fisher, Ernest Fiore, Paul Katz, Steven Lowenthal, Thomas Foristell,
William Harold and Michael Tiesi

AYES: None

NAYS: None

ABSTAINED: None

ABSENT: None


Secretary, Board of Zoning Appeals


Chairman, Board of Zoning Appeals

THIS IS NOT A BUILDING PERMIT. A Building Permit must be obtained from the Building Inspector before any work is started. Other permits or approvals may also be required before work starts. If you have any questions, please call the Building Department.

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HARRISBURG

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Z19-008
Katsikas
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**BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK**

Calendar Z19-009

Date: June 13, 2019

Property Owner: Delilah Galente

Property Address: 5 Pearl Avenue

Block 834, Lot 6

WHEREAS, the applicant, the property owner, applied for a Building Permit and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, Shahin Badaly, on behalf of the property owner, Delilah Galente, filed an application on March 15, 2019 for an area variance from the Zoning Ordinance to construct a two-story addition. This property is located in a B Zoning District and is legally existing non-conforming with regard to side and front yard setbacks. Pursuant to §235-9(B) of the Table of Dimensional Regulations the front yard setback is 20 feet. The proposed addition reduces the front yard setback to 6 feet 4 inches thus requiring a 13 feet 8 inch variance; and

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on April 10, 2019 and May 9, 2019 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present or indicated that they listened to tapes of the meeting: Mark Fisher, Ernest Fiore, Steven Lowenthal, Thomas Foristel, William Harrold and Michael Tiesi.

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance and no one appeared in opposition. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

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WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

1. Applicant's property is legally existing non-conforming with regard to side and front yard setbacks.
2. The property is located at the end of Pearl Avenue at the intersection of Pearl Avenue and Harrison Street. The side of the house adjacent to Harrison Street is screened from view from Harrison Street as a result of significant screening.
3. Applicant is proposing to construct a two-story addition on the side of the house adjacent to Harrison Street in order to provide additional habitable space. The current house contains 1,300 square feet of space and the addition will add 688 square feet of space. As originally proposed, the addition would have required a 15'8" front yard variance. In response to concerns expressed by the Board, applicant reduced the length of the addition which resulted in a reduction of the required variance by two feet to 13'8" thus requiring a 6 foot, 4 inch variance.
4. The front yard property line adjacent to Pearl Avenue slopes towards applicant's house as it approaches the intersection with Harrison Street. As a result, the side of the proposed addition adjacent to Harrison Street is located 6'4" from the front yard property line, and the opposite corner of the addition is located 13'7" from the front yard property line. This serves to minimize the extent of the variance. We note that the

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other side of the existing house, which is prior non-conforming, is located 13 feet, 3 inches from the front yard property line.

5. As a result of the existing screening adjacent to Harrison Street, the granting of the variance will not have any visual impact on properties on Harrison Street. In addition, the new addition will face the side yard of the property located on the other side of Pearl Avenue and will have minimal visual impact on that property.

6. A review of the properties in the immediate area of applicant's property, including those on Pearl Avenue and Harrison Street, indicates that most of those properties do not comply with the 20 foot front yard setback requirement.

7. Based upon the foregoing findings, we find that the granting of a front yard variance will not create an undesirable change in the character of the neighborhood or create a detriment to any nearby properties and that the benefit sought cannot be achieved by any other method feasible for applicant to pursue.

8. While the variance sought is substantial and the difficulty is self-created, we find that these factors are outweighed by our other findings.

NOW THEREFORE BE IT RESOLVED, that the application for a front yard variance for an addition as indicated on drawings submitted by Badaly Engineering PLLC, A-001.00 – AP001.00 dated October 27, 2018, A-101.00 last revised May 5, 2019 with this application be, and the same is hereby granted.

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

This variance shall lapse unless construction begins within one year from the date this variance is recorded in the Clerk's Office and is completed no more than two years from said date.

Construction shall be deemed to have begun when all required footings and foundations have been completed, or when actual work of a substantial nature has begun on projects that do not require footings or foundations. Site preparation shall not satisfy the terms of this condition. Construction shall be deemed to have been completed when the Building Department has issued a Certificate of Occupancy.

An application for an extension of these periods may be granted by the Board of Zoning Appeals if good cause is shown by the applicant and, if in the Board's judgment, the facts and circumstances which existed at the time of the original application have not materially changed.

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Foregoing Resolution submitted by Zoning Board Member Ernest Fiore, seconded by Zoning Board Member William Harold at the June 13, 2019 meeting.

ADOPTED: Mark Fisher, Ernest Fiore, Paul Katz, Steven Lowenthal, Thomas Foristel, William Harold and Michael Tiesi

AYES: None

NAYS: None

ABSTAINED: None

ABSENT: None

Rosemarie Cesenaro

Secretary, Board of Zoning Appeals

[Signature]

Chairman, Board of Zoning Appeals

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THOMAS LOWENTHAL
JUN 13 2019

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BOARD OF ZONING APPEALS
TOWN/VILLAGE OF HARRISON, NEW YORK

Calendar No. Z19-011

Date: June 13, 2019

Property Owners: HTA-White Plains Eat LLC

Property Address: 220-230 Westchester Avenue Block 692 Lot 3

WHEREAS, the property owner filed a site plan for the expansion of an existing day care center and that application was denied by a determination of Harrison's Building Inspector (the administrative official charged with the enforcement of Harrison's Town Code, Chapter 235 (Zoning)) that the application did not strictly comply with the Code's requirements; and

WHEREAS, James A. Ryan, on behalf of Montessori Children's Center, the proposed lessee, filed on April 25, 2019 an application for an area variance from the Zoning Ordinance with respect to a children's day care center. This property is located in an SB-0 Zoning District and pursuant to §235-17-R(8) of the Zoning Ordinance of the Town/Village of Harrison day-care center may exceed two stories or 25 feet in height, nor shall its floor area exceed 12,000 square feet. In addition, if located in other than freestanding building, the area of the SB-0 Day-Care Center shall be limited to the first floor of such building and its floor area shall not exceed the lesser of 12,000 square feet, or 60% of the first floor of such building. Also as per §235-37 of the Zoning Ordinance 500 parking spaces are required for this location; however there are only 370 provided. The following variances are required: (i) the expansions to the second floor requires a variance as the Ordinance limits day care centers to the first floor of a building; (ii) the proposed expansion will occupy approximately 66% of the space thus requiring a variance for the 6% over the permitted occupancy; and (iii) the proposed elimination of four (4) parking spaces increases the non-conformity with respect to the required number of parking spaces.

WHEREAS, a Public Hearing on this application was duly scheduled and held by the Board of Zoning Appeals, at the Municipal Building, 1 Heineman Place, Harrison, New York, at 8:00 p.m., on May 9, 2019 and June 13, 2019 after due notice and publication pursuant to Town Law 267-a (7) at which the following members were present or indicated that they had listened to tapes of the meeting: Mark Fisher, Paul Katz, Ernest Fiore, Steven Lowenthal, Thomas Foristel, William Harold and Michael Tiesi; and

WHEREAS, the Board reviewed the Short Environmental Assessment Form submitted by the applicant, declared itself to be Lead Agency within the meaning of New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 et seq., and the regulations there under, 6 N.Y.C.R.R. Part 617, and determined that the action was a Type II Action for which no Environmental Impact Statement was required; and

WHEREAS, Board Members had inspected the site; and

WHEREAS, at said Hearing, the applicant appeared in support of the variance. All those who desired to be heard were heard and the Board reviewed the documents submitted to it; and

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WHEREAS, the Board reviewed all testimony and documents submitted and have carefully considered:

- (A) The benefits to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant;
- (B) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;
- (C) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than a variance;
- (D) Whether the requested variance is substantial;
- (E) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (F) Whether the alleged difficulty was self-created.

WHEREUPON, the Board found, after due deliberation, based upon the testimony and documents submitted and its site visit, pursuant to Town Law §§267-a and 267-b and Harrison Town Code §§235-56 et seq., it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

The Board found that:

1. Applicant is proposing to expand its operations of a day care center in a building that is part of an existing corporate park located at 220-20 Westchester Avenue.
2. We have previously granted a variance to applicant (Calendar Z17-043) to operate a day care center on the first floor of the building. The prior variance related to the 60% space limitation (73% was proposed) as well as to the height of a proposed fence.
3. The expansion of the day care center will be located entirely on the second floor of the building. A variance is being sought from the requirement of the Ordinance that the day care center be located on the first floor and that the space of the day care center be limited to the lesser of 12,000 square feet or 60% of the entire space on the floor.
4. This building essentially has two grade level ground floors due to the change in elevation and grade. The existing child care center is located on the lower floor at grade level, provides for direct access to the outside at street level and has its own parking lot. Similarly, the expanded day care center will be located on a floor that is also at grade level and which provides direct access for toddlers onto the outside at street level. There are three means of egress at grade level as well as an internal fire exit. That floor also contains its own parking lot. In addition, the entire building is sprinklered. The operation of the day care center needs to satisfy the requirements of the New York State Office of Children and Family Services (NYOCFS), and that office has not raised any issues with respect to the location of the expanded center. It seems apparent to us that the Ordinance's requirement that child care centers be located on the first

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floor is designed to address safety concerns. These concerns appear to be appropriately addressed by the foregoing findings.

5. With respect to the limitation on the amount of permitted space, we believe it is appropriate to make that determination based on the actual space on the floor on which the expanded center will be located, rather than based on the literal language of the Ordinance, which refers to the first floor space. We note that if the determination was based on the first floor space, the required variance would only be 2% rather than the 6% variance which the Building Inspector determined was required.

6. The expanded operations will occupy 3,400 square feet which equates to 66% of the total second floor area. The remainder of the area consists of a medical office, a fire stairway and an elevator. No change is being made to the footprint of the building. As we stated in the prior variance, we have been unable to identify the rationale for the 60% requirement imposed by the Ordinance. As set forth above, the operation of the day care center needs to satisfy the requirements of the NYOCFS. Those requirements do not include the space limitation imposed by the Ordinance. In addition, the applicant has for the past twenty five years been operating day care centers.

7. As a result of the above findings, we find the granting of the variance from the first floor requirement and the 66% space requirement will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.

8. Applicant is also requesting a variance with respect to the elimination of four (4) parking spaces. The entire corporate park is currently legally non-conforming with 374 parking spaces provided. The parking adjacent to the first floor entrance currently contains 24 spaces. As presently configured, the parking layout is comprised of two (2) dead end parking lanes which do not allow for ease of movement. In addition, there is inadequate passage for pedestrians when car doors are open on the two spaces closest to the sidewalk. Those spaces are also not ADA compliant. To improve the overall circulation, safety and access to the building applicant is proposing to create a one-way system for clarity, ease and improved traffic flow. In order to create the one-way traffic flow it is necessary to eliminate 4 parking spaces. By creating a one-way traffic flow, the two dead ends will be eliminated and the safety issues associated with cars parked close to the sidewalk will be addressed. The elimination of the 4 spaces will have no impact on the remainder of the corporate park. Accordingly, we find that the elimination of the 4 spaces has a positive safety impact and the benefit sought cannot be achieved by any other feasible method other than a variance.

NOW THEREFORE BE IT RESOLVED, that the application for variances to allow operation of a day care center occupying 66% of the space on the second floor of a building, and the elimination of 4 parking spaces, in accordance with plans submitted with this application by JMC, dated 4/23/19 V-1, V-2, be, and the same is hereby granted, subject to the following conditions:

Except as specifically set forth above, nothing herein shall be construed to indicate this Board's approval of any architectural, design, or structural elements of the submitted plans.

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Foregoing Resolution submitted by Zoning Board Member William Harold, seconded by Zoning Board Member Thomas Foristel at the June 13, 2019 meeting.

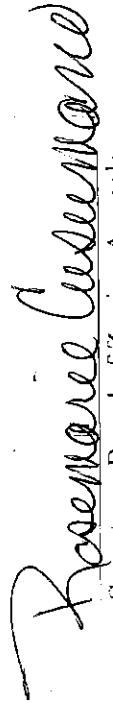
ADOPTED: Mark Fisher, Ernest Fiore, Paul Katz, Steven Lowenthal, Thomas Foristel, William Harold and Michael Tiesi

AYES: None

NAYS: None

ABSTAINED: None

ABSENT: None


Secretary, Board of Zoning Appeals



Chairman, Board of Zoning Appeals

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HARRISBURG, PA

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6/13/19

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