



Town of Olive *Zoning Board of Appeals*

P.O. BOX 513, Shokan, New York 12481

Frederick Perry
Chairman

Members
Brian O'Rourke
Chet Scofield
Gemma Young
William Melvin

MINUTES

January 9, 2025

1. Opening:

The Town of Olive Zoning Board of Appeals met on Thursday, January 9, 2025 at the Town of Olive Meeting Hall, to hold a regular meeting and a Public Hearings for Marc Grasso, NY Pepper LLC, Kevin & Kristyn Mastrianni, Debra Saunders & Larry Hierman, and Six Twenty-one Associates/Eberhardt. Chairman Perry brought the meeting to order at 7:00 p.m., at which time the Chairman led the Pledge of Allegiance to the flag.

2. Record of Attendance:

Fred Perry
Chet Scofield
Gemma Young
Brian O'Rourke
Bill Melvin

3. Election of Officers:

Chairman Perry noted that this is the first meeting of the year and the members have to elect officers. Janelle Perry remarked that last year Chet Scofield was the Vice-Chairman and Brian O'Rourke was the Secretary, and Fred Perry has been appointed as Chairman by the Town Board. Brian O'Rourke made a motion to keep the same slate of officers, Gemma Young seconded the motion. With a unanimous vote the elected officers are:

Chet Scofield – Vice-Chairman
Brian O'Rourke – Secretary

4. Approval of Minutes:

On a Scofield/O'Rourke motion the Board dispensed the reading of the December 5, 2024 minutes, and accepted them as written. Bill Melvin abstained as he was not a member of the board during the December meeting.

5. Public Hearing:

5.1 **Application 25-01** of Marc Grasso, NY Pepper LLC, represented by Mike Baden, for property located at 1470 County Road 2, Olivebridge, NY 12461

The hearing for NY Pepper LLC opened at 7:05 p.m. at which time Chairman Perry reviewed the rules for conducting a public hearing. The secretary read the legal notice appearing in the January 2, 2025 issue of the Daily Freeman announcing the applicants' appeal, "...for variance of Article IV, Section 155-16/Article X, Section 155:A1(1) of the zoning ordinance to allow the issuance of a building permit for a 0.33-acre lot in a 3-acre zone, Section 155:A1(2) to vary from the lot width at main building line, Section 155:A1(5) of the zoning ordinance to change the side yard setback and Section 155:A1(6) of the zoning ordinance to change the rear yard setback to allow for construction of a single-family home on a substandard lot."

Present at the meeting is Mike Baden and the property owner, Marc Grasso. Mr. Baden explained that when the application was first submitted Marc Grasso was in the process of buying the property, he now owns the property located at 1470 County Road 2 in Olivebridge. He explained that Real Property records show the parcel as 0.33-acres but Mr. Grasso had the property surveyed in the transaction and the survey came back with a 0.485-acre size. Mike Baden said that on the map that has been provided Mr. Grasso is looking to provide a building area to construct a very small single-family home. He can achieve the 50' front yard setback but since the parcel is triangular shaped he isn't sure if it would be considered as two side yards or what would be a rear yard. Mr. Baden said that they are asking for side and rear yard considerations to be sure since Mr. Grasso is unable to achieve either one. Mr. Baden said that they also need relief for the lot coverage as it is a 3-acre zone.

Mike Baden said that in looking at the Real Property listing the property code is 270-manufactured housing and Mr. Grasso is aware that there was a manufactured home on the property at one time and it was believed to be removed in 2020. He said that there was water and septic to the manufactured home and he pointed out that they have supplied a report from Peak Engineering stating that they believe the parcel can support a well and septic. Mr. Baden said that based on those determinations Mr. Grasso is asking for the variances in order to place a stick built single-family home in the envelope shown on the sketch.

Marc Grasso said that the home size will be approximately 20' x 40', about 800 sq. ft. maximum. He explained that the property had a lot of garbage, he is sure the neighbors remember, which he has cleaned up and hauled out. He said that he has put the driveway back where it had been and has brought the lot back to being clean.

Gemma Young asked where the proposed building site would be. Mr. Baden and Mr. Grasso said that it will be within the inner triangle shown on the sketch, and the variance would probably be even less than what is being asked for. Brian O'Rourke asked Mr. Grasso if he will be occupying the home. Marc Grasso said that he isn't sure, it is to be determined. Gemma Young asked if the notation on the sketch is where the septic is proposed. Mr. Grasso said that it is where the remnants of septic usage was found. He said there was a small metal tank and he isn't sure if there was any leach area.

Brian O'Rourke asked if there was intent to use the house as a short-term rental. Mike. Baden said that Mr. Grasso intends to either live there himself or rent it full-time. Chairman Perry asked for clarification what was found as the well and septic according to Parcel Viewer. Mr. Baden said it wasn't noted on Parcel Viewer about the well and septic, it was noted that there was a mobile home in 1945 which was removed in 2020, it was based on the surveyor's notes. The thought is if it was used for 75 years there is

an assumption that there had to be some means for water and septic. Mike Baden said that Mr. Grasso is not intending on using any of the old means of water and septic and that is why they had the engineering company review the property to determine if they believe that water and septic can be achieved under state health codes. They believe it can but, of course, he would need to go through any permitting processes. Mr. Baden said that if the variances cannot be acquired than there is no need to go through the other processes.

Gemma Young asked if there are any setback requirements for septic systems. John Ingram, Town of Olive Code Enforcement Officer, is present at the meeting and he stated that there are no lot line restrictions, only that the septic needs to be 100' away from a well. Mr. Ingram doesn't feel that all of that can be achieved on the property. Chairman Perry asked about the notes on the sketch regarding sheds and remains of structures, is that where the mobile home was located. Mr. Grasso said that in talking with neighbors he understands that at some point a camper was put on the property to be used as a hunting camp and he found some remains of a steel structure that had been on wheels, he isn't sure exactly and feels that there may be people in the room who are more familiar with it than he is.

Gemma Young asked what the surveyor's note about the location of a reported well. Chet Scofield asked about the location of an old well and what remains were found. Mr. Grasso said that he found an old-style pump on the property. Chairman Perry remarked that it appears to be very tight to try to get everything on the small piece of property, including an area for a septic reserve which is required.

Mike Baden said that given the SBL number it appears that since the lot number is a single digit and not a point something it generally means that this parcel was an original lot and not subdivided off of another parcel. Marc Grasso said that there aren't any maps filed with Ulster County showing that a subdivision had been done.

Chairman Perry asked the members of the board if they had any questions. Bill Melvin said it appears that there are so many variances that would need to be granted, and this is a concern. Bill Melvin asked about the names and addresses supplied with the application, are these the neighbors and were they notified. Janelle Perry, recording secretary, said that they are the two abutting neighbors to the property and notices were sent out to them. She remarked that there are only two because the applicant's lot is surrounded by a 20 +/- acre parcel and the other abutting parcel is across the street and they own approximately 12 acres. Bill Melvin asked if the board has heard any response from these people, the ZBA has not received any comments from them. Bill Melvin feels that the number of variances being asked for is excessive; from 3-acre to 0.33 or 0.4, and the concern about fitting a house, septic and well on the property and the setbacks that would be needed.

Brian O'Rourke went back to Mr. Ingram's statement that you can't meet any of the normal standards for a well, septic, and a reserve area. John Ingram remarked that the applicant was told from the very beginning that it was a non-buildable lot and virtually impossible to put a building on it to meet the standards of today. They went ahead with purchasing the lot and now have done work on the property against the rules. Mr. Ingram said that he appreciates that they have taken the garbage off of the lot as it has been an eyesore for years, but to his knowledge it has never been a fulltime residence. He said that it hasn't been a trailer home, perhaps some sort of a camp 50 years ago for deer hunters. Mr. Ingram said to make it a viable building lot in a 3-acre zone when it is less than ½ acre and not even square, it is virtually impossible in his opinion as the Code Enforcement Officer.

Chairman Perry opened up the public comment portion of the meeting and asked if there is anyone in the audience who would like to speak. Present is John Wullum, a next-door neighbor at 1454 County Rte. 2. Mr. Wullum said that he has lived there his whole life and there has never been a mobile home on the

property. There has been a camper and a shack, “studio”, on the property. Mr. Wullum said that there has never been a well on the property for as long as he has lived there, his whole life, and there has never been a septic. He said that there were remnants of an outhouse on the border near his property along the stone wall. Mr. Wullum also stated that there was a hose that ran from his stone wall onto his property and a previous owner, Frank, used the hose to draw water from a spring on Mr. Wullum’s property. He said that the remnants of the outhouse and the water line are still there. Mr. Wullum said that there has never been a manufactured home on the property in his lifetime, just a camper and a shed. Brian O’Rourke asked where the spring is located. Mr. Wullum said that when you look at the parcel along the right side there is a right of way up to the 20-acre parcel and then there is a stone wall along his property and the spring is on his side of the stone wall.

Also in the audience is Trisha Shimer, 12 Ridge Road in Shokan. She asked Mr. Grasso when he purchased the property. Marc Grasso said that he purchased the property during the past 60-90 days. Trisha Shimer was wondering because she knows that as a resident of the town you have to adhere to the regulations and she understands that this property doesn’t meet the regulations. She said that she is thankful that the property has been cleaned up but the work was done when it shouldn’t have been. She wonders if the work on the property was even started before he closed on the property. Gemma Young noted the date on the engineer’s report, Mr. Grasso said that the engineer was doing work while the purchase of the property was under contract.

Mr. Baden said that if the ZBA relieves the setbacks and the Health Department deem it unbuildable because of the requirements for well and septic spacing then it wouldn’t be buildable regardless if the variances are granted. Mike Baden said that the engineers do feel that it is buildable if the setbacks are relieved. Mr. Baden stated that septic design is based on the number of bedrooms and would be designed around that.

Chairman Perry asked if the previous owner was the gentleman that Mr. Wullum was talking about. It was determined that the person Mr. Wullum was referring to was the owner before that. Mr. Baden said that in researching the property it looks like the property was transferred to Ulster County because of tax foreclosure and then was purchased by the person that Mr. Grasso bought it from.

Chairman Perry said that he is familiar with the Ulster County tax sales and the purchases are buyer beware. There was a brief discussion regarding how long the previous owners had the property. The person that John Wullum was talking about owned it for a very long time, and then someone from Wallkill used it as a hunting camp.

Chairman Perry sees this as a self-created hardship as Mr. Grasso was well aware that the property did not conform to the town code. Mr. Baden said that if the variances aren’t granted then the property will sit vacant and worthless, unless one of the neighbors buy the parcel and add it to their property. Mike Baden suggested that maybe the board can hold off making their decision we can have the Ulster County Health Department inspect the property to determine if it is buildable and if we get a favorable outcome from them then we can come back and represent the application. Chairman Perry asked if it is in the Watershed District, the response was that it was not believed to be.

Mike Baden said that he understands the 3-acre zoning in the area, but because this is a lot that was created somewhere along the way, probably before zoning. He said that he is guessing that it was maybe family splitting up a property, but it looks like it was created to achieve some purpose and we don’t know what that answer is. He said that if the board waits for a determination, they can go to the Health Department and if they can’t build on the property then they would rescind the application and everyone would just move on.

A member of the audience, Allison Irwin, wonders if since the property is in 3-acre zoning than why would you be able to do anything. Is it because they think there was a residence there at one time, she didn't think it was even an option. Gemma Young said that the property records do make reference to a manufactured home and the assessor's code states that. Mr. Baden said that it is a possibility that the assessor deemed a camper as a manufactured housing. Mrs. Allison wonders that if there are other properties in the town that has had something on it at some point but hasn't in say ten years, then someone can say even though it is in a ten-acre zone and it is only an acre then I can build there because at one point somebody had a little trailer on it. She doesn't understand. Gemma Young said that if there was a well and septic on it why would you assume the opposite, she explained that if the property class indicates there is a residence there why would you assume that it is inaccurate. Gemma Young said that is why it is being appealed. Mr. Baden said that is why the Zoning Board of Appeals exists; it is to vary the law in certain circumstance. Mike Baden said that Mr. Grasso was aware that the property was in a 3-acre zone when he purchased the property, he knew of the buyer beware and risk of this but we are here before the board to present his case and you get to decide if it is a valid case or not. Mike Baden said that given the past use of the property we would like it to be considered and he understands what other people have said here tonight. He feels it would be a benefit to the community because if you have a vacant piece of land, it will be assessed lower than if you have a home on the property which would increase the property value. Mr. Baden feels it could be a win-win situation, but if it is not able to be achieved for environmental reasons than it isn't able to be achieved.

With no further comments the public comment portion of the meeting was closed at 7:37 p.m. by Chairman Perry.

Chairman Perry asked the members if they had any thoughts on this application. Bill Melvin feels that he cannot approve it at this point, if we were to table it or come back later, he would like to see the size of the house, where would the actual location be. Mr. Grasso said he can't determine that until he knows the actual setback size. Bill Melvin said that if it is approved, then where are the locations of the planned well and septic. He told the applicants that he doesn't feel comfortable considering this until there is approval from the Board of Health, and even then, he isn't sure what he would decide. Marc Grasso said he isn't able to go to the Board of Health without being able to show them what approved setbacks he does have. Gemma Young said that applicants usually come with a proposal showing a more specific request for a variance. Mr. Grasso said that his application does show the triangular area in the middle indicating 25' setbacks. Mr. Grasso and Mr. Baden explained that they did it this way because they didn't know how the board would determine the lines, since there is no actual rear line. Mr. Baden said that the rear yard setback would need to be 75' but side yard setbacks are 50'. Mr. Baden said that they can work with 25' and, of course, 25' to 50' is much different than the 75'. Mr. Grasso said that they don't believe there would actually be a rear yard setback.

Brian O'Rourke referred to Mr. Ingram's statement that there is no way that the lot is buildable, he asked Mr. Ingram if there is a way that the setbacks can be arranged that the lot is buildable. John Ingram said that the lot cannot be built on without any variances being given. Brian O'Rourke asked if the Board of Health takes that into consideration. John Ingram said that he didn't know that answer but he feels that they wouldn't be happy about the possibility of neighboring contamination if the systems don't work. He pointed out that you have to have a reserve area that equals the size of the initial area if it doesn't work. Marc Grasso said that the engineer and the Board of Health establish that. John Ingram said that he deals with engineers and architects everyday and they vary too much in their thinking and ideas and have no idea what the soil is like on a parcel, even if they screw a screw in the ground and take out a sample. Chairman Perry asked what the general contour of that area is like, is it swampy. Mr. Grasso said that his property is more dome like but it is swampy on the other side of the neighboring stone wall.

Gemma Young said that she is comfortable tabling it until there is a Board of Health decision. Chet Scofield said that it seems like putting the cart before the horse because there are so many speculations and what ifs. Mr. Grasso said that he can't go to the Board of Health without something from the Zoning Board of Appeals. Gemma Young feels that you can, and Mike Baden wasn't entirely sure.

Chairman Perry said it is the boards obligation to the neighbors and town code doesn't require that we approve this so you can do this, it is very clear that you knew the code when you bought the property. The chairman said that there have been denials because it is a self-created hardship. He pointed out that there are neighbors who have done the right thing and have built in compliance with the regulations of the 3-acre zone. Mr. Grasso pointed out that he is sure the neighbors are happy to have all of the garbage cleared away that has cost \$10,000 to remove. Chairman Perry said that the concern is of the safety of the neighbors and if the septic fails and the reserve area you are a stone's throw away from the neighbors well that is why you need the acreage. The chairman said that the board has to consider that they would be setting a precedent that if someone has a ¼-acre in a ten-acre they can ask for the same thing to get approval because we have done this in the past.

Bill Melvin said that he parallels the chairman thoughts and feels that the applicant is asking for too much, it is a substantial request asking for too many variations.

Chairman Perry advised that he can ask for a motion to table the decision, or for an up or down vote. Gemma Young said that she may be the only one comfortable with tabling the decision so she may not get a second. Mike Baden asked if he could comment on a few of the remarks that have been made this evening. Mr. Baden said that the Board of Health follows state regulations and either you meet them or you don't, there is no negotiations with the Board of Health so if it doesn't meet it and it can't be done and they will tell us that. Things like setbacks and zoning code is the reason this board exists, and he doesn't feel that a precedence would be set as every application would have to be considered. Consideration is about community character and slopes and other things, and he points out that you wouldn't be setting a precedence for every non-conforming lot size by approving this. Mr. Baden said that if they do go to the Board of Health and get a preliminary approval, because they can't give a final approval until variances are given and then can be presented with a full set of plans. The Board of Health could provide the maximum size of the system that the property could sustain, whether it be a one- or two-bedroom home. Marc Grasso said that in his conversation with the Board of Health they said that if there are remnants of previous wells or septic they could be repaired and fixed to current standards. Mr. Baden said that it isn't the plan to reutilize them, they were just shown on the map as they were identified on the site. The applicant was asked if the outhouse was still on the site, Mr. Grasso said it wasn't as everything was cleaned up.

Chairman Perry brought up a previous application that the Zoning Board considered, the school house in Krumville. The applicants had gotten Board of Health approval on a lot larger than this lot and it was all rock. The chairman said that somehow the county approved the perk test and a pumping system was put in that was always malfunctioning and the alarm would keep the neighbors up at night. So, the compliances that the county set didn't work, the chairman said it may not happen here but it is like putting a square peg in a circle. Again, the chairman said, it is buyer beware, and he does believe it would be setting a precedent by allowing building to be done on such a non-compliant site.

After reviewing the appeal, and determining the Finding of Facts Brian O'Rourke made a motion to deny the request, Chairman Perry seconded the motion.

A roll call vote was taken which resulted as follows:

- Chet Scofield voted to deny the application as presented.
- Gemma Young voted to deny.
- Bill Melvin voted to deny.
- Brian O'Rourke voted to deny.
- Fred Perry voted to deny.

5.2 Application 25-02 of Kevin & Kristyn Mastrianni, 80 Mountain Road, Shokan, NY 12481

The hearing for Kevin & Kristyn Mastrianni opened at 7:55 p.m. at which time Chairman Perry reviewed the rules for conducting a public hearing. The secretary read the legal notice appearing in the January 2, 2025 issue of the Daily Freeman announcing the applicants' appeal, "...for a variance of Article IV, Section 155-16/Article X, Section 155:A1(6) of the zoning ordinance to change the rear yard setback from 50' to 6' to allow for the conversion of an existing wood shop into an Accessory Dwelling Unit."

Present at the meeting is Kevin Mastrianni, Chairman Perry asked the applicant to explain what he is proposing. Mr. Mastrianni explained that they purchased the property in June and there is a building which he was told was a wood shop on the property. He said the structure is approximately 750 square feet in size and he would like to turn it into an Accessory Dwelling Unit (ADU).

Bill Melvin asked if the building is there and in good shape with a roof on it. Mr. Mastrianni said that it is there and the neighbors have told him that the property that is only six feet behind it was owned by the same people and sold to the neighbor at some point. Mr. Mastrianni feels that is why it was probably allowed to be built where it is. Chet Scofield remarked that nothing is changing, the building will still be 6' off of the property line.

Gemma Young asked if the building currently has electricity or water. Kevin Mastrianni said that it doesn't but he is currently waiting for Central Hudson to hook up the electric. He said that no matter what he is putting in electric and will use the shed as a man cave. Brian O'Rourke asked if there will be any changes to the footprint or a second story added. Mr. Mastrianni said that it will be the same building as it currently exists. Bill Melvin asked Mr. Mastrianni about adding well and septic. Mr. Mastrianni said that he will be able to add the shed to the existing septic system. He will be converting one of the bedrooms in the house into an office so the ADU can be added to the system. He said that there is also talk that a town sewer line will be put in, or he may also upgrade his current septic system. Kevin Mastrianni said that he has talked with the Building Inspector and DEP about the septic system. There was a brief discussion on how you can change the classification of a bedroom.

Gemma Young asked if there has been any correspondence. Janelle Perry reported that the letters were sent out to the neighbors and there has been no response. Chairman Perry opened up the public comment portion of the meeting and asked if there is anyone in the audience who would like to speak.

A neighbor, David Kaufman was present and asked Mr. Mastrianni if he planned on using the ADU as a short-term rental. Kevin Mastrianni said he has no intent to use the ADU as a rental. He said that he and his wife bought the house and he has a 16-year-old daughter and a 14-year-old son who is autistic. He said that during their teenage years his daughter and her friends can use it as a hangout, and his sister and brother-in-law and kids can stay in it when they visit. He said that later if he decides to retire here his autistic son can live in the dwelling. Mr. Mastrianni stressed to Mr. Kaufman that he has no intention to use the dwelling as a short-term rental.

Also present is another neighbor, Thomas Feaster, he said that he has the same question regarding using the ADU as a short-term rental. He thanked Mr. Mastrianni for his transparency.

With no further comments the public comment portion of the meeting was closed at 8:02 p.m. by Chairman Perry.

Chairman Perry said that the Town has created the law to allow ADUs so that there are more opportunities for families to have a way for their children to afford to have a place in the town. Mr. Mastrianni said that it is particularly hard if your child has disabilities so he is glad that they have that option.

Bill Melvin asked Mr. Mastrianni what is on the property behind the shed with the 6' setback. Kevin Mastrianni said it is a vacant parcel. He believes that the gentleman who owned the house prior to him needed money and the parcel was sold to the neighbor next door, Norma, because they didn't want someone else to buy it and put a house on it.

After reviewing the appeal, the Board has come to the following Findings of Fact:

- A) There were no objections from the adjoining neighbors, and some were present at the meeting.
- B) The hardship is not self-created as the building being converted into the ADU is a preexisting nonconforming structure on the property and no change will be made to the footprint of the existing wood shop.
- C) There are no adverse effects on the physical or environmental conditions of the neighborhood by allowing the variance request.
- D) No public interest would be served by denying the applicant's request.

On a Young/Scofield motion it was agreed that the Board vote on the appeal to grant an area variance of Article IV, Section 155-16/Article X, Section 155:A1(6) of the zoning ordinance to change the rear yard setback from 50' to 6' to allow for the conversion of an existing wood shop into an Accessory Dwelling Unit. It is stipulated that action will be taken within one (1) year, by January 9, 2026, at which time the variance will become null and void. The Accessory Dwelling Unit will be created conforming to town code.

A roll call vote was taken which resulted as follows:

- Chet Scofield voted in favor of granting the variance.
- Gemma Young voted in favor.
- Bill Melvin voted in favor.
- Brian O'Rourke voted in favor.
- Fred Perry voted in favor.

5.3 **Application 25-03** of Debra Saunders & Larry Hierman, 34 Dogwood Drive, Shokan, NY 12481

The hearing for Debra Saunders & Larry Hierman opened at 8:08 p.m. at which time Chairman Perry reviewed the rules for conducting a public hearing. The secretary read the legal notice appearing in the January 2, 2025 issue of the Daily Freeman announcing the applicants' appeal, "...for a variance of

Article IV, Section 155-14 to allow for an undersized dwelling unit in order to convert the existing second story of a detached garage into an Accessory Dwelling Unit.”

Present at the meeting is Debra Saunders and Larry Hierman. Chairman Perry asked the applicants to explain what they are proposing. Ms. Saunders said that she has owned the property for 23 years and there were two owners before her. She said that there was an existing two-story detached garage on the property. The property was their escape from New York City after 911. She explained that around 2010 she had to go to California for work and we rented the house out long-term, never for short-term. She said that they are now ready to retire and move back to New York. She said that two of her children have been living in the house since November 2023.

Ms. Saunders said that they will be doing two renovations simultaneously. One renovation is planned in the garage to convert the upstairs into an ADU. She said that there is no intention to use the ADU as a short-term rental, she said that between her and her husband they have five children and will need a place for them to stay. She said that they also plan on living in the ADU when the main house renovations are being done. Debra Saunders said that they will not be changing the footprint of the garage. The only change is the upstairs will have an outside entrance. She said that the measurement of the interior is where the walls are 6' high so that is where they are getting the 288 sq. ft. from. She said that even if they were to measure from the perimeter of the garage, they still wouldn't meet the required 600 sq. ft. minimum, it would be 500 something.

Debra Saunders said that they have written to the seven adjoining neighbors and we did get three responses back, but she said they didn't give them much time to respond. She said that the intent is to turn it into an ADU for their own use and they will be occupying the home full-time probably this summer, depending when construction starts.

Brian O'Rourke asked the applicants about the septic and water for the ADU. Ms. Saunders said that the garage currently has electric but it doesn't have water or septic. Part of the renovations is to remove one of the bedrooms downstairs and convert the space into another bathroom and closet. The contractor said that it will be very easy to run the septic line from the garage into the existing septic system and the well is between the garage and the house and can be easily connected. It is noted that the town sewer line is proposed in this area also.

Bill Melvin recapped that the only variance needed is to allow for the undersized unit. He asked if the upstairs is also the same 24' x 24'. Ms. Saunders pointed out on the sketch where the walls will be 6' high because of the pitch of the roof, this leaves the floor space of 288 sq. ft.

Chairman Perry opened up the public comment portion of the meeting and asked if there is anyone in the audience who would like to speak. Present is a neighbor, Bob Helfant who lives at 35 Dogwood Drive. He came forward to look at the sketch, he asked if the roof line was being changed. He said that his day-time view is of the house and garage. Mr. Hierman said that there will be no exterior changes other than adding a door to access the unit from the outside. Mr. Helfant said that he has no problem with the project, he is glad that it will not be used as an AirBnB. The one thing he did ask the applicants is if they can remove the incredibly bright lights on the exterior of the garage. Ms. Saunders and Mr. Hierman said they will take care of that.

Bill Melvin asked about windows or skylights. The applicants said that they will probably put in a solar tube.

With no further comments the public comment portion of the meeting was closed at 8:17 p.m. by Chairman Perry.

After reviewing the appeal, the Board has come to the following Findings of Fact:

- A) There were no objections from the adjoining neighbors, either in writing or present at the meeting.
- B) The hardship is not self-created as the building being converted into the ADU is a preexisting detached garage on the property. The intent is to create the ADU in the existing second story of the garage without changing the footprint or height of the structure. Granting the variance will not change the character of the neighborhood and has the potential of increasing the property value.
- C) There are no adverse effects on the physical or environmental conditions of the neighborhood by allowing the variance request.
- D) No public interest would be served by denying the applicant's request.

On a Young/Scofield motion it was agreed that the Board vote on the appeal to grant an area variance of Article IV, Section 155-14 to allow for an undersized dwelling unit in order to convert the existing second story of a detached garage into an Accessory Dwelling Unit. It is stipulated that action will be taken within one (1) year, by January 9, 2026, at which time the variance will become null and void. The Accessory Dwelling Unit will be created conforming to town code.

A roll call vote was taken which resulted as follows:

- Chet Scofield voted in favor of granting the variance.
- Gemma Young voted in favor.
- Bill Melvin voted in favor.
- Brian O'Rourke voted in favor.
- Fred Perry voted in favor.

5.4 Application 25-04 of Six Twenty-one Associates/Eberhardt, for property located at 3852 Route 28, Boiceville, NY 12412

The hearing for Six Twenty-one Associates/Eberhardt opened at 8:22 p.m. at which time Chairman Perry reviewed the rules for conducting a public hearing. The secretary read the legal notice appearing in the January 2, 2025 issue of the Daily Freeman announcing the applicants' appeal, "...for an Interpretation of Section 155-17: D(3) & (4) of the zoning ordinance to determine if the Proposed Use of parking trucks and construction equipment on the premises and inside existing structures in the R/E-1A zoning district is a permitted accessory use."

Present at the meeting is Andrew Eberhardt, Chairman Perry asked the applicant to explain what he is proposing. Mr. Eberhardt explained that he is the sole member of Six Twenty-one Associates and the reason he is here is because he is in contract to purchase the former Lane property which is located on Route 28. He said that there is a stipulation in the contract that the purchase is contingent on getting a Special Use Permit to park trucks on that site using the existing structures that are on the property. Andrew Eberhardt said that he went to the Planning Board and they seemed to be receptive, one member said that what was being proposed was about 10% of what had been done on the property in the past.

Chairman Dibbell said that he had looked at the zoning regulations and he wasn't comfortable with how it was written and referred him to the Zoning Board of Appeals for an interpretation.

Mr. Eberhardt said that the previous owner had an issue with the Town and owes them in excess of \$80,000 in fines. He said that he is a 50+ year resident of the town and he would like to see his town paid. The town will become whole with the sale of this property. Andrew Eberhardt said he has done the right thing by asking for the special use permit and not just show up there and start to park vehicles.

Mr. Eberhardt said that he has a proven track record of buying up properties and rehabilitate them and get them back on the tax roll. One was the Sloven estate on Burgher Road and another property on Hillside Drive. He said that Mr. Lane had a sawmill on the property and there were several diesel engines running all of the time to operate the sawmill. Mr. Eberhardt said that he plans on being a good neighbor, he spoke to one of the neighbors and he said that Mr. Lane would start his day at noon and would be operating the equipment on his property until later in the evening, but this is not how we will operate. Andrew Eberhardt said that all they are looking to do is to park trucks. He explained that his son operates Eberhardt Excavation, a septic and excavation business and he moves liquid waste. He explained that during this time of year liquid waste trucks need to be kept inside a heated structure. He said that where they currently store the trucks has no hot or cold running water. What they are looking to store are three dump trucks and two liquid waste trucks, and in the old sawmill they would store a bulldozer and excavator along with supplies. He remarked that the F-series trucks are only there during the day and go home at night.

Brian O'Rourke asked where the other trucks will be stored. Andrew Eberhardt pointed out on the sketch the buildings on the property and what vehicles would be stored in each. He said that he also has a vintage airstream camper that he will probably park in the structure that was a sawmill.

Brian O'Rourke said that he did drive up to the property to see everything. He remarked that it cannot be seen from Route 28. Andrew Eberhardt said that only 85% of the property was cleaned up during the auction, there is still a lot of logs and steel on the property that has rolled down the hill. It is his intention to clean that all up.

Andrew Eberhardt also remarked that he hopes to purchase the property because he lives in West Shokan and doesn't want to see that property bought and subdivided with the potential of a few more houses and seeing lights on the hill across the reservoir.

Brian O'Rourke asked how large the parcel is. Mr. Eberhardt said that it is 8.1-acres and the lot that was broken off for Jenna Lane is 1.6-acres. Mr. Eberhardt explained that the neighboring property was also part of the Lane parcel at one time. It is now owned by the Frattaroli family and he was the neighbor who complained about the equipment operating at all hours. Mr. Eberhardt said that his son has a young family and looks to be home by 4:30-5:00. Bill Melvin asked if there was access to the property from Upper Boiceville Road. Mr. Eberhardt said that there wouldn't be. Bill Melvin asked what you see if you look at the property from Upper Boiceville Road. Chairman Perry remarked that he drives past there often and all that you can really see is the roof tops of the buildings. Mr. Eberhardt said that there is no proposed access to Upper Boiceville Road. Bill Melvin asked if there is water, electric and septic on the site. Mr. Eberhardt pointed out where the electric line runs to the property, and there is a spring and legitimate septic system on the site for the home on the property.

Brian O'Rourke asked how many employees they have, Mr. Eberhardt said that it is seasonal but there are six and, in the summer, when there is more work, they generally call the union for more operators but they report directly to the job sites.

Gemma Young asked if there has been any correspondence. Janelle Perry reported that the letters were sent out to the neighbors and there has been no response. Chairman Perry opened up the public comment portion of the meeting and asked if there is anyone in the audience who would like to speak

Present is Collin Douma, residing at 277 Upper Boiceville Road. He said that he isn't concerned with the visible aspects of the application. He said that they did hear the sawmill all of the time. He is happy to hear that this is not going to be the case here. His concern was regarding any access off of Upper Boiceville Road. Andrew Eberhardt assured Mr. Douma that they would not create any access to Upper Boiceville as it would be a concern to the neighbors and it would create run-off. He pointed out that the existing driveway is 25' wide with an approved NYS DOT curb cut access to Route 28.

Also present is Jeff Nerp, he owns 307 Upper Boiceville Road, and his driveway goes in right across the street from Lane's 310 Upper Boiceville Road parcel. The property has been in his family for 80 years and he is glad to hear what he has heard tonight that there will be no access to that property to Upper Boiceville Road. Andrew Eberhardt said that he wouldn't mind if that was written in as a restriction to an approval.

Allison Irwin was present and said that she had been to the Planning Board meeting and thought that it had been remarked that buildings had to be built on the property to park the trucks. Andrew Eberhardt said that the only reason they are interested in purchasing this property is because of the number of buildings and the size of the buildings that exist on the property. Mrs. Irwin also thought that there had been a remark that there might be times in an emergency when trucks would go out after hours. Andrew Eberhardt said that yes, if there is a call on a Saturday or Sunday, or if they get a call from a restaurant in Phoenicia they have to go out to take care of it. Gemma Young said that this would be an exception to the normal working hours. Andrew Eberhardt said that the normal working hours will be from 7:00-3:30 or 7:00-4:30.

Bill Melvin wanted to clarify that there will be no light issues for the neighbors. Andrew Eberhardt said that he doesn't want to see lights across the reservoir, he will make sure the lights are low by the door. Bill Melvin said that there doesn't seem to be any concern of noise, just the trucks going out for the day. He asked Mr. Eberhardt if there is any odor associated with the liquid waste trucks. Andrew Eberhardt said that the trucks are relatively clean, they are sealed and there is no odor. He said that the trucks have an Ulster County permit, a NYS permit, and an Albany permit.

Collin Douma said that some of the noise that came from the property was the slamming of the dump trucks all of the time. Andrew Eberhardt said that it can be controlled to some extent. Mr. Eberhardt said he cannot say it won't happen but he can say it won't happen at 7:00 Sunday morning.

Janelle Perry said that the Planning Board's question is that this property is zoned residential and their concern was this business operating in a residential zone. This is the reason for a special use in a residential neighborhood. It was explained that Mr. Lane operated his business on the property as a home occupation.

With no further comments the public comment portion of the meeting was closed at 8:56 p.m. by Chairman Perry.

Chairman Perry said that the equipment on Mr. Lane's parcel wasn't really visible from Upper Boiceville Road when he was operating his business and this whole thing has been a thorn in the Town's side. He said that looking through the Planning Board minutes he did see that a member had remarked that this use is approximately 10% of what used to be on the property. The chairman said that he went to the auction

and there was old equipment all over the place and it is good to see a local business person wanting to clean up and have a use for the property. Andrew Eberhardt said he wants to be a good neighbor.

After reviewing the appeal, the Board has come to the following Findings of Fact:

- A) There were no objections from the adjoining neighbors, either in writing or present at the meeting.
- B) There are no adverse effects on the physical or environmental conditions of the neighborhood by not allowing this permitted accessory use. In fact, the applicant will be cleaning up the property.
- C) No public interest would be served by denying the applicant's request to allow parking of commercial vehicles in the R/E-1A zoning district as a permitted accessory use.

On a Young/O'Rourke motion it was agreed that the Board vote on the appeal for an Interpretation of Section 155-17: D(3) & (4) of the zoning ordinance and it was determined that the proposed use of parking trucks and construction equipment on the premises and inside existing structures in the R/E-1A zoning district is a permitted accessory use.

A roll call vote was taken which resulted as follows:

- Chet Scofield voted in favor.
- Gemma Young voted in favor.
- Bill Melvin voted in favor.
- Brian O'Rourke voted in favor.
- Fred Perry voted in favor.

It is stipulated that there will be no future driveways or access off of Upper Boiceville Road, and limited lighting on the property.

6. Adjournment:

With no further business to discuss, the meeting was adjourned at 9:15 p.m. on an O'Rourke/Young motion.

7. Next Meeting:

The next meeting of the Board will be held at 7:00 p.m. on Thursday, February 6, 2025 if there is business to discuss.