

MINUTES  
ZONING BOARD OF APPEALS  
June 1, 2016

MEMBERS PRESENT: DAN SULLIVAN  
PATRICIA CASTELLI  
MICHAEL BOSCO  
THOMAS QUINN  
JOAN SALOMON  
LEONARD FEROLDI, ALTERNATE

ABSENT: NONE

ALSO PRESENT: Dennis Michaels, Esq. Deputy Town Attorney  
Ann Marie Ambrose, Official Stenographer  
Deborah Arbolino, Administrative Aide

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

NUNEZ 4 Legends Boulevard West Nyack, NY 69.07/ 1 / 10.2; R-80 zone	FLOOR AREA RATIO VARIANCES APPROVED	ZBA#16-42
SEVENTH DAY ADVENTIST CHURCH SIGN 210 North Middletown Road Pearl River, N.Y. 69.09 / 2 / 52; R-15 zone	SIGN SIZE AND LOCATION VARIANCES APPROVED	ZBA#16-43
MC SHARRY 77 Buchanan Street Pearl River, NY 68.14 / 2 / 15; R-15 zone	FLOOR AREA RATIO, SIDE YARD, TOTAL SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED AS MODIFIED	ZBA#16-44
DELLOLIO 72 Hickory Street Blauvlet, NY 70.15 / 1 / 10.1; R-15 zone	CONTINUED	ZBA#16-45
REYNOLDS 75 Douglas Court Pearl River, NY 69.09 / 5 / 38; R-15 zone	CONTINUED	ZBA#16-46
MCKENNA 9 Marycrest Road Pearl River, NY 69.07 / 1 /24; R-40 zone	FLOOR AREA RATIO, SIDE YARD, REAR YARD AND VARIANCES APPROVED AS MODIFIED	ZBA#16-47

CLERK'S OFFICE  
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TOWN OF ORANGETOWN

O'RIORDAN  
63 Campbell Avenue  
Tappan, NY  
77.11 / 2 / 81.2; R-15 zone

REAR YARD VARIANCE  
APPROVED WITH CONDITION

ZBA#16-48

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 applications: Organic Recycling Site Plan, 121 Route 33, Orangeburg, NY 74.19/1/3; LI zoning district; RRIS Corp. Site Plan Hotel Plan, 1 Route 340, Orangeburg, NY 74.11/2/26; CC zoning district; Kreiger Minor Subdivision Plan -2 lots; 27 Sunrise Lane, Pearl River, NY 68.18 / 3 / 43; R-15 zoning district ; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.


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

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 10:30 P.M.

Dated: June 1, 2016

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By 

Deborah Arbolino, Administrative Aide

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

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TOWN OF ORANGETOWN

DECISION

**FLOOR AREA RATIO VARIANCE APPROVED**

To: Angel and Patricia Nunez  
4 Legends Boulevard  
West Nyack, New York 10913

ZBA #16-42  
Date: June 1, 2016

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 16-42: Application of Angel and Patricia Nunez for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-80 District, Group A, Column 4 (Floor Area Ratio: 10% permitted, 12% proposed) for a finished basement at an existing single-family residence. The premises are located at 4 Legends Boulevard, West Nyack, New York and are identified on the Orangetown Tax Map as Section 69.07, Block 1, Lot 10.2; R-80 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 1, 2016 at which time the Board made the determination hereinafter set forth.

Angel Nunez and Glen Lumina, Creative Designs, appeared and testified.

The following documents were presented:

1. Survey dated 03/24/2015 signed and sealed by Edward T. Gannon, P.L.S..
2. Architectural plans dated 01/26/2016 with the latest revision date of 03/16/2016 signed and sealed by Robert J. Murphy, Architect.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan 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) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye.

Angel Nunez testified that they have owned the house for ten years and there are three people in the family; that the existing first floor has a kitchen, dining room and library; that the existing second floor is bedrooms and the basement is the only area for the proposed gym, wine storage and theatre.

Glen Lumina, Creative Designs testified that they are proposing to finish the existing basement with open entertaining space; a gym, home theatre, wine storage, bar and utility room.

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Public Comment:

Jesse Shannon, 115 Sickletown Road, representing Manhattan Woods, testified that Mr. Nunez is a good neighbor and he has no objections to the finished basement; that the only concern they would have would be concerning water drainage.

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. Sullivan 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 floor area ratio variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The footprint of the building is not changing, the existing basement space is being utilized as recreational space for the family.
2. The requested floor area ratio variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The footprint of the building is not changing, the existing basement space is being utilized as recreational space for the family.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested floor area ratio variance is not substantial. The footprint of the building is not changing, the existing basement space is being utilized as recreational space for the family.
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 variances.

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

General Conditions:

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

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

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

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

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


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The foregoing resolution to approve the application for the requested floor area ratio variance was presented and moved by Mr. Quinn, seconded by Mr. Bosco and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye ; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: June 1, 2016

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

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

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

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the sign was designed to sit above snow level; and the number 210 will also be on the sign for the address; that when the sign was selected they did not realize that both sides of the sign counted in measurement and thought they were complying with the 20 sq. ft. rule; that they did not realize that the 17 ½ sq. ft. sign was counted twice because it is double sided to be able to see it coming north or south; that he has several pictures of larger signs in the area; that the church building sits back only 25' from the property line; and the new proposed sign will be further off the road than the existing sign; and the sign will not be scrolling or flashing any messages.

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. Sullivan 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 sign size and sign setback variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The new proposed sign is being located in the same as area as the previous sign for the church and is not intrusive. The location and size of the proposed sign will allow the church to be easily identified from the roadway, without interfering with traffic flow.
2. The requested sign size and sign setback variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The new proposed sign is being located in the same as area as the previous sign for the church and is not intrusive. The location and size of the proposed sign will allow the church to be easily identified from the roadway, without interfering with traffic flow.
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 sign size and sign setback variances, although somewhat substantial, afford benefits to the applicant that is not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The new proposed sign is being located in the same as area as the previous sign for the church and is not intrusive. The location and size of the proposed sign will allow the church to be easily identified from the roadway, without interfering with traffic flow.

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TOWN OF CANTON



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 variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested sign size and sign setback variances are APPROVED and to override the disapproval from the County of Rockland Department of Planning letter dated May 23, 2016; 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.

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The foregoing resolution to approve the application for the requested sign size and sign setback variances are APPROVED and to override the disapproval from the County of Rockland Department of Planning letter dated May 23, 2016; was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: June 1, 2016

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

APPLICANT  
ZBA MEMBERS  
SUPERVISOR  
TOWN BOARD MEMBERS  
TOWN ATTORNEY  
DEPUTY TOWN ATTORNEY  
OBZPAE  
BUILDING INSPECTOR-R.A.O.

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

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DECISION

**FLOOR AREA RATIO AS MODIFIED TO .26, SIDE YARD, TOTAL SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED**

To: Thomas and Beth McSharry  
77 Buchanan Street  
Pearl River, New York 10965

ZBA #16-44  
Date: June 1, 2016

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#16-44: Application of Thomas and Beth McSharry for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 3.12, Columns 4 (Floor Area Ratio: .20 permitted, .265 proposed), 8 (Front Yard: 30' required, 29' proposed: Eliminated as unnecessary due to project modification), 9 (Side Yard: 20' required, 13' proposed), 10 (Total Side Yard: 50' required, 26.7' proposed) and 12 (Building Height: 13' permitted, 23.8' proposed) for an addition/ alteration and demolition to an existing single-family residence. The premises are located at 77 Buchanan Street, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.14, Block 2, Lot 15; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 1, 2016 at which time the Board made the determination hereinafter set forth.

Jonathan Hodash, Architect, Thomas McSharry appeared and testified.

The following documents were presented:

1. Architectural plans dated March 28, 2014 with the latest revision date of January 12, 2016 signed and sealed by Jonathan Hodash, Architect. (9 pages)
2. A letter dated May 24, 2016 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
3. A letter dated May 6, 2016 from the Rockland County Sewer District No.1 signed by Joseph LaFiandra, Engineer II.
4. A letter dated April 28, 2016 from the County of Rockland Department of Health Division of Environmental Health signed by Scott McKane, P.E., Senior Public Health Engineer.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan 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) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye.

Jonathan Hodash, Architect, testified that the existing house was built in 1958 and it is a very small cape cod style house with tiny rooms; that the layout of the house is outdated; that the McSharrys' purchased the house in 2007 and would like to expand it; they are proposing to remove some of the house and build an addition and live in part of the existing house while the construction is taking place; that they are expanding the living

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space and adding an additional bedroom; that they would like to use the existing foundation and make a six foot deep front porch in the front of the house; that the house does not sit straight on the lot and they could make the porch five foot wide and eliminate the front yard variance request; that reducing the porch by 108,5 sq. ft. reduces the requested floor area ratio to .26 and may change the side yard to about 13 ½ foot.

Public Comment:

Kathleen Pietanza, 5 Van Buren testified that she is a neighbor on the side of the McSharry's and she is not opposed ; that all of the houses were originally small capes and many of the houses in the neighborhood have already been expanded and she would like to see her neighbors stay because they are good neighbors.

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. Sullivan 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 floor area ratio as modified to .26, side yard, total side yard and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The front porch has been reduced from six-foot wide to five-foot wide and this reduction has eliminated the necessity of the front yard variance and reduced the floor area ratio to .26. The side yard setback may also increase to 13 ½ feet from 13.
2. The requested floor area ratio as modified to .26, side yard, total side yard and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. . The front porch has been reduced from six-foot wide to five-foot wide and this reduction has eliminated the necessity of the front yard variance and reduced the floor area ratio to .26. The side yard setback may also increase to 13 ½ feet from 13.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested floor area ratio as modified to .26, side yard, total side yard and building height variances, although somewhat substantial, afford 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 front porch has been reduced from six-foot wide to five-foot wide and this reduction has eliminated the necessity of the front yard variance and reduced the floor area ratio to .26. The side yard setback may also increase to 13 ½ feet from 13.

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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 variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested floor area ratio variance as modified to .26, and side yard, total side yard and building height 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.

**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.

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The foregoing resolution to approve the application for the requested floor area ratio variance as modified to .26, and side yard, total side yard and building height variances, was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: June 1, 2016

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

APPLICANT  
ZBA MEMBERS  
SUPERVISOR  
TOWN BOARD MEMBERS  
TOWN ATTORNEY  
DEPUTY TOWN ATTORNEY  
OBZPAE  
BUILDING INSPECTOR-R.A.O.

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

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TOWN OF ORANGETOWN

DECISION

**SIDE YARD, REAR YARD, AND BUILDING HEIGHT VARIANCES  
APPROVED AS MODIFIED**

To: Barry McKenna  
9 Marycrest Road  
Pearl River, New York 10913

ZBA #16-47  
Date: June 1, 2016

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#16-47: Application of Barry McKenna for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-40 District, Group E, Section 3.12, Columns 4 (Floor Area Ratio: .15 permitted, .16 proposed), 9 (Side Yard: 30' required, 15' proposed), 11 (Rear Yard: 50' required, 12'6" proposed to pool, 15' proposed to cabana) and 12 (Building Height: 10' permitted, 12'9" proposed) for an in-ground pool and cabana at an existing single-family residence. The premises are located at 9 Marycrest Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.07, Block 1, Lot 24; in the R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 1, 2016 at which time the Board made the determination hereinafter set forth.

Kier Levesque, Architect, appeared and testified.

The following documents were presented:

1. Survey and Architectural plans dated December 31, 2015 with the latest revision date of April 12, 2016 (2 pages).

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan 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) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye.

Kier Levesque, Architect, testified that the applicant has expressed a desire to place the pool and cabana as far away from the house as possible to have a grassy area for the kids to play; that they chose to tuck the pool and cabana in the southeast property corner because it is heavily planted and fenced already that if they conformed to the rear yard and side yard setback the pool would be too close to the house and need a variance for that set back; that they have paid a lot of attention to the property line and have added a berm and planted it with 12 to 15 foot trees; that many of the large trees that were on the property before the house was built were dead; that they were not in violation for removing trees and they have added a lot of screening; that he can take five feet off the length of the proposed cabana reducing it to 340 sq. ft., a reduction of 85 sq. ft.; that they will move the pool to meet the 20' rear yard setback eliminating that variance but the cabana would be moved to 22 ½' from the rear yard and 20' from the side yard and would require variances; that the reduction in the cabana also reduces the floor area ratio variance to .157.

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Public Comment:

Leonard Marsigliano, 1 Hogan Lane, West Nyack, NY testified that he is an abutting property owner and has been negatively impacted by this proposal; that having a structure 7 ½' from his property line in one-acre zoning is terrible; that the pool would fit into the required setbacks; that there is plenty of room in the backyard; that he wants to know where the filtration system will be and asked about a lighting plan; and wanted the cabana rotated toward their house for noise control.

Maureen Marsigliano, 1 Hogan Lane, West Nyack, NY, testified that it is wonderful that some people can afford to build a palace but respect should be shown for the original owners; that they deserve some privacy from these giant structures that have removed all the trees from the property; that these new people come in and take over and this doesn't really fit into the neighborhood.

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. Sullivan 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 floor area ratio as modified to .157, 20' side yard, and 22 ½' rear yard to the cabana, variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar pools and cabanas have been installed in the neighborhood. The rear yard variance for the pool and the building height variance for the cabana have been eliminated. The cabana has been reduced by 85 sq. ft., reducing the requested floor area ratio to .157 and the pool and cabana have moved to change the requested side yard to 20' and rear yard to 22 ½'.
2. The requested floor area ratio, side yard and rear yard variances, as modified, will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar pools and cabanas have been constructed in the neighborhood. The rear yard variance for the pool and the building height variance for the cabana have been eliminated. The cabana has been reduced by 85 sq. ft., reducing the requested floor area ratio to .157, and the pool and cabana have moved to change the requested side yard to 20' and rear yard to 22 ½'.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.

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4. The requested floor area ratio, side yard, and rear yard variances, although somewhat substantial, afford 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 pools and cabanas have been constructed in the neighborhood. The rear yard variance for the pool and the building height variance for the cabana have been eliminated. The cabana has been reduced by 85 sq. ft., reducing the requested floor area ratio to .157, and the pool and cabana have moved to change the requested side yard to 20' and rear yard to 22 ½'.
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 variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested floor area ratio (.157), side yard (20'), and rear yard (22 ½'), variances, as modified, 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.

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.

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(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 floor area ratio (.157), side yard (20'), and rear yard (22 ½ '), variances, as modified was presented and moved by Mr. Quinn, seconded by Mr. Bosco and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: June 1, 2016

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

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

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

TOWN CLERKS OFFICE  
2016 JUN 20 PM 12 00  
TOWN OF ORANGETOWN

DECISION

**REAR YARD VARIANCE APPROVED**

To: Gerald and Emer O’Riordan  
63 Campbell Avenue  
Tappan, New York 10983

ZBA #16-48  
Date: June 1, 2016

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#16-48: Application of Gerald and Emer O’Riordan for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 5.227 (Rear Yard: 20’ required, 11’ proposed) for an in-ground pool at an existing single-family residence. The premises are located at 63 Campbell Avenue, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.11, Block 2, Lot 81.2; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 1, 2016 at which time the Board made the determination hereinafter set forth.

Emer and Gerald O’Riordan and Lenny Lesin, Penguin Pools, appeared and testified.

The following documents were presented:

1. Site plan with proposed pool drawn on it and pool specifications.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan 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) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye.

Lenny Lesin, Penguin Pools, testified that in order to minimize the requested variance for the rear yard the O’Riordan’s have opted for a 18’ wide pool; that they have removed a lower deck and stairs to accommodate the pool; that the rear property line runs on an angle and this adds to the problem; that there are no neighbors to the rear of the house; that there is retention pond owned by the town in the rear of the property; and that the house has a full basement and has never had water in it; and the neighbor that is concerned about the water lives uphill from the house..

Emer O’Riordan testified that they have owned the house for eleven years and there are five in the family.

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Public Comment:

Lois Graney, 75 Campbell Avenue, Tappan, testified that she lives next door to the O’Riordans’ and the property slopes down to them; that there is a 50 to 75’ drainage ditch and a 3 acre drainage lake on Paul Court; that she bought her house in 1968 and when the O’Riordan’s built their house they brought in a lot of fill and she had run-off and she is concerned about how the pool will compromise her property.

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. Sullivan 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 rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The property at the rear of the subject property is owned by the Town of Orangetown and cannot be developed.
2. The requested rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The property at the rear of the subject property is owned by the Town of Orangetown and cannot be developed.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variance.
4. The requested rear yard variance, although somewhat substantial, afford 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 property at the rear of the subject property is owned by the Town of Orangetown and cannot be developed.
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 variances.

TOWN CLERKS OFFICE  
2016 JUN 20 PM 12 00  
TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested rear yard variance is APPROVED and specifically conditioned upon the Orangetown Department of Environmental Management and Engineering determining the applicant’s plans for the construction of the in-ground pool, and any appurtenant structures, will result in a zero net increase in surface water runoff to neighboring properties; 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.

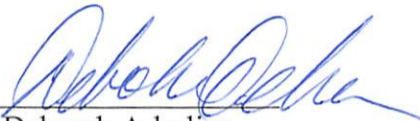
TOWN OF ORANGETOWN  
2016 JUN 20 PM 12 00  
TOWN ENGINEERS OFFICE

The foregoing resolution to approve the application for the requested rear yard variance specifically conditioned upon the Orangetown Department of Environmental Management and Engineering determining the applicant's plans for the construction of the in-ground pool, and any appurtenant structures, will result in a zero net increase in surface water runoff to neighboring properties; was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: June 1, 2016

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

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

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

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2016 JUN 20 PM 12 00  
TOWN CLERKS OFFICE