

MINUTES  
ZONING BOARD OF APPEALS  
DECEMBER 7, 2011

MEMBERS PRESENT: WILLIAM MOWERSON  
JOAN SALOMON  
PATRICIA CASTELLI  
DANIEL SULLIVAN  
NANETTE ALBANESE  
THOMAS WARREN, 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. Mowerson, Chairman.

Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

NEW ITEMS:

TREANOR 69.09 / 5 / 25; R-15 zone	FLOOR AREA RATIO VARIANCE APPROVED	ZBA#11-102
CHESTNUT PETROLEUM 74.10 / 1 / 68; CS zone	EXTENSION OF TIME APPROVED FOR ONE YEAR	ZBA#11-103
PAPALAMBROS 77.07 / 2 / 53; R-15 zone	CONTINUED	ZBA#11-104
SCHINDELE 77.08 / 5 / 19; RG zone	FLOOR AREA RATIO, AND SIDE YARD VARIANCES APPROVED	ZBA#11-105
BOERA 69.06 / 1 / 74; R-15 zone	SIDE YARD, TOTAL SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#11-106
INTERPRETATION REQUEST OF "ACCESSORY" RELATED TO EMERGENCY GENERATORS	INTERPRETATION GRANTED	ZBA#11-107

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 9:15 P.M.

DECISION

FLOOR AREA RATIO VARIANCE APPROVED

To: Michael and Eileen Treanor

ZBA # 11-102

16 Meadows Street  
Pearl River, New York 10965

Date: December 7, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-102: Application of Michael and Eileen Treanor for a variance from Chapter 43 (Zoning) Section 3.12, R-15 District, Group M, Column 4 ( Floor Area Ratio: .20 permitted, .1965 existing, .2675 proposed) ( Section 5.21 Undersized lot applies) for the construction of a new single family residence. The premises are located at 16 Meadows Street, Pearl River, New York an identified on the Orangetown tax Map as Section 69.09, Block 5, Lot 25; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, December 7, 2011 at which time the Board made the determination hereinafter set forth.

Michael and Eileen Treanor appeared and testified.

The following documents were presented:

1. Architectural plans dated 08/24/2011 signed and sealed by Stephen Mitchell, Architect.
2. A letter in support of the application signed by three abutting property owners.

Mr. Mowerson 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. Mowerson 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: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

Eileen Treanor testified that they moved into the house ten years ago with one child and they now have three boys' ages 13, 8, and 5; that they have outgrown the house but not the neighborhood or the school district; that they would like to knock this house down and rebuild a new one within the building envelope.

Michael Treanor testified that the existing house is a split level with three bedrooms and one bath; that it is 1500 sq. ft.; that the new proposed house would be 2,675 sq. ft. and have four bedrooms and 2 1/2 baths; that they are building out eight feet in the front of the house and two feet out the back from the original foundation; that the lot is undersized; and that the only variance requested is the floor area ratio variance.

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. Mowerson 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 new proposed house is being built within the required building envelope and the only variance requested is for floor area ratio. The undersized lot prompts the need for the floor area ratio variance.
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 new proposed house is being built within the required building envelope and the only variance requested is for floor area ratio. The undersized lot prompts the need for the floor area ratio variance.
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. The lot is undersized by 500 sq. ft. which is causing the need for the floor area ratio variance.
4. The requested floor area ratio variance, although somewhat substantial, affords 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 house is being built within the required building envelope and the only variance requested is for floor area ratio. The undersized lot prompts the need for the floor area ratio variance.
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 is **APPROVED**; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

#### General Conditions:

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

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

which are hereinbefore set forth.

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

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

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

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

#### DECISION

#### EXTENSION OF TIME TO IMPLEMENT THE OFF-STREET PARKING SPACE VARIANCE APPROVED

To: **Ciro Interrante**

**ZBA # 11-103**

85 Market Street

Date: December 7, 2012

Poughkeepsie, New York 12601

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-103: Application of Chestnut Petroleum Distributors for an extension of time to implement the variance granted in ZBA #09-39: Chapter 43 (Zoning) of the Code of the Town of Orangetown, CS District, Section 3.11, Column 6 (Minimum Required Off Street Parking Spaces: One parking space for each 200 sq. ft. of gross floor area ratio; 20 spaces required, 19 spaces proposed) for a retail establishment. Premises are located at 75 Dutch Hill Road, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 74.10, Block 1, Lot 68; CS zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, December 7, 2012, at which time the Board made the determination hereinafter set forth.

Ciro Interrante, Architect, appeared and testified.

The following documents were presented:

1. Site plan dated 3/27/06 (1 page) with the latest revision date of 4/14/08 signed and sealed by Ciro Interrante, Architect.
2. A letter of explanation dated October 20, 2011 from Mickey Jamal.
3. Zoning Board of Appeals Decision #09-39 dated 09/09/2009.

Mr. Mowerson 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. Mowerson moved for a Board determination that since application ZBA #11-103 (Applicant, Chestnut Petroleum), seeks a renewal of a permit or license, where there will be no material change in permit conditions or the scope of permitted activities, this application is exempt from environmental review under the State Environmental Quality Review Act pursuant to SEQRA Regulations §617.5 (c) (26); and Since the applicant seeks area or bulk variances for construction or expansion of a primary or accessory/appurtenant, **non**-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, this application is alternatively exempt from Environmental review under the State Environmental Quality Review Act pursuant to SEQRA Regulations § 617.5(c)(7). The motion was seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Ms. Castelli, aye; Ms. Albanese, aye; Mr. Sullivan, aye; and Mr. Mowerson, aye.

Ciro Interrante, Architect, testified that they are requesting an extension of time to implement the previously granted variance because they did not start the project immediately after approval because of the economy; that they did want to start it in September and they were told that the variance had lapsed; that they would like the extension so that they can begin the project immediately and hopefully finish by the summer.

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. Mowerson 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 extension of time to implement the prior approval of the variance is granted outweighs the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. No significant change in circumstances has occurred since the prior approved variance was granted that would warrant Board reconsideration of its approval.
2. Applicants stated that they expect construction to begin in the near future.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested extension of time to implement the variance granted in ZBA # 09-39 dated 09/09/2009 is APPROVED and the extension is granted for one year from the date of the filing of this decision; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

The foregoing resolution to approve the application for an extension of time to implement the prior approval of an off street parking space variance was presented and moved by Mr. Mowerson, seconded by Ms. Salomon, and carried as follows: Ms. Salomon, aye; Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Albanese, aye; and Mr. Mowerson, 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.

DECISION

FLOOR AREA RATIO, BUILDING HEIGHT, AND SECTION 5.153 VARIANCES APPROVED

To: George and Carol Papalambros

ZBA # 11-104

138 Campbell Avenue  
Tappan, New York 10983

Date: December 7, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-104: Application of George and Carol Papalambros for variances from Chapter 43 (Zoning), R-15 District, Group M, Section 3.12, Columns 4 ( Floor Area Ratio: .20 permitted, .26 proposed), 12 (Building Height: 20' permitted, 23' proposed) (Section 5.21e Undersized lot applies) and from Section 5.153 (Shed in front yard) for an addition to an existing single-family residence. The premises is located at 138 Campbell Avenue, Tappan, New York an identified on the Orangetown tax Map as Section 77.07, Block 2, Lot 53; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, December 7, 2011 at which time the Board made the determination hereinafter set forth.

George Papalambros appeared and testified.

The following documents were presented:

1. Architectural plans dated 04/12/2011 signed and sealed by Joseph A. Cecco, Architect.
3. Survey dated July 22, 2011 signed and sealed by Stephen F. Hoppe, L.S.
4. A letter dated August 16, 2011 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
5. A letter dated July 18, 2011 from the County of Rockland Department of Health signed by Scott McKane, P.E., Senior Public Health Engineer.
6. A letter dated July 27, 2011 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.
7. A letter dated August 26, 2011 from the County of Rockland Sewer District No. 1 signed by Joseph LaFiandra, Engineer II.

Mr. Mowerson 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. Mowerson 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: Mr. Warren, aye; Ms. Salomon, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Mr. Sullivan was absent.

Public Comment:

No public comment.

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

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

Mr. Mowerson 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, building height and §5.153 variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has two front yards. Similar additions have been constructed in the area.
2. The requested floor area ratio, building height and §5.153 variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. . The applicant has two front yards. Similar additions have been constructed in the area.
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, building height and §5.153 variances, are not substantial, and will not have an adverse effect or impact on the physical or environmental conditions of the area. . The applicant has two front yards. Similar additions have been constructed in the area.
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, building height and §5.153 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.

The foregoing resolution to approve the application for the requested floor area ratio, building height and Section 5.153 variances was presented and moved by Ms. Albanese, seconded by Mr. Mowerson and carried as follows: Ms. Castelli, aye; Mr. Warren, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Mr. Sullivan was absent.

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

## DECISION

### FLOOR AREA RATIO AND SIDE YARD VARIANCES APPROVED

To: Robert Shindele

ZBA # 11-105

12 Paulding Place  
Sparkill, New York 10976

Date: December 7, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-105: Application of Robert Shindele for a variance from Chapter 43 (Zoning), RG District, Section 3.12, Group Q, Columns 4 (Floor Area Ratio: .30 permitted, .32 proposed) and 10 (Side Yard; 10' required, 7' proposed) for an addition to an existing single-family residence. The premises are located at 12 Paulding Place, Sparkill, New York an identified on the Orangetown Tax Map as Section 77.08, Block 5, Lot 19; RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, December 7, 2011 at which time the Board made the determination hereinafter set forth.

Robert Shindele and Jane Slavin, Architect, appeared and testified.

The following documents were presented:

1. Site plan dated 10/11/2011 based on survey by William Youngblood, L.S., signed and sealed by Jane Slavin, Architect.
2. Architectural plans dated 10/12/2011 signed and sealed by Jane Slavin, Architect.
3. Zoning Board of Appeals Decision #10-51 dated July 21, 2010.

Mr. Mowerson 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. Mowerson 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: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

Jane Slavin, Architect, testified that that on July 21, 2010 the applicant was approved for a floor area ratio variance of .408, front yard and building height variances; that the house is very small; that since the approval, the economy has turned and the applicant has reduced the proposed plans; that they are scaling back and proposing to add a bathroom and walk-in closet upstairs; that the 7' side yard exists; that the building height would be the same as the previous approval; that the new proposed floor area ratio is .32; and that the other variances were already granted.

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. Mowerson 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 and side yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The instant proposal before the Board is smaller than the previously approved plan for ZBA #10-51 dated July 21, 2010.
2. The requested floor area ratio and side yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The instant proposal before the Board is smaller than the previously approved plan for ZBA #10-51 dated July 21, 2010.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The lot is undersized by more than half the required 10,000 sq. ft. which is causing the need for the floor area ratio variance, and the side yard of seven feet is an existing condition.
4. The requested floor area ratio and side yard variances, although somewhat substantial, affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The proposal before the Board is smaller than the previously approved plan for ZBA #10-51 dated July 21, 2010.
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 and side yard variances are APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

The foregoing resolution to approve the application for the requested floor area ratio and side yard variances was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye.

DECISION

SIDE YARD, TOTAL SIDE YARD AND BUILDING HEIGHT VARIANCES  
APPROVED

To: William and Catherine Boera

ZBA # 11-106

77 Villa Road  
Pearl River, New York 10965

Date: December 7, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-106: Application of William and Catherine Boera for variances from Chapter 43 (Zoning), Section 3.12, R-15 District, Group M, Column 9 (Side Yard: 20' required, 13.4' proposed), 10 (Total Side Yard: 50' required, 45.6' proposed) and 12 (Building Height: 13.4' permitted, 20.6' proposed) for an addition to an existing single-family residence. The premises are located at 77 Villa Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.06 , Block 1, Lot 74; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, December 7, 2011 at which time the Board made the determination hereinafter set forth.

William and Catherine Boera and Jane Slavin, Architect, appeared and testified.

The following documents were presented:

1. Survey dated 05/12/2009 with a revision date of 09/28/2011 signed and sealed by Robert Sorace, PLS.
2. Architectural plans dated 10/12/2011 with the latest revision date of 09/26/2011 signed and sealed by Jane Slavin, Architect.
3. Google earth aerial view picture of the neighborhood.
4. Six pictures of houses in the area with additions.
5. A survey of the property across the street that is under construction.
6. A tax map with properties marked that have additions.

Mr. Mowerson 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. Mowerson 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: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

Catherine Boera testified that the family has grown from four to six since they purchased the house; that they love the neighborhood and the schools; that they want to stay where they are and improve the house to accommodate the family.

Jane Slavin, Architect, testified that the house has an existing screened in porch that has a 15.3' side yard; that they are removing the porch and building the addition in its place; that the reason the side yard requested is less than the existing is because the proposed addition will be going further into the rear yard and the rear yard narrows; that because of the property shape the new requested side yard would be 13.4'; that the width of the lot in the rear is only 90'; that there have been many similar additions constructed in the area; that she would like to present an aerial view of the area which show #77, #85, #91, #72 and #58 with similar additions; that #91 was granted side yard and building height variances; that #80 was granted side yard and total side yard variances; that #91 was granted a side yard variance; and that she has pictures to submit of #136, #12, #13 and

#11.

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. Mowerson 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 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 lot is oddly shaped and narrow in the rear, which is the reason for the side and total side yard variances. The proposed addition is being added to the lower portion of the house. There are numerous similar additions that have been constructed in the area.
2. The requested 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 lot is oddly shaped and narrow in the rear, which is the reason for the side and total side yard variances. The proposed addition is being added to the lower portion of the house. There are numerous similar additions that have been constructed in the area.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The lot is oddly shaped and narrows in the rear of the property.
4. The requested side yard, total side yard and building height variances, although somewhat substantial, affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The lot is oddly shaped and narrow in the rear, which is the reason for the side and total side yard variances. The proposed addition is being added to the lower portion of the house. There are numerous similar additions that have been constructed in the area.
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 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.



Heard by the Zoning Board of Appeals (“ZBA”) of the Town of Orangetown at a meeting held on Wednesday, December 7, 2011, at which time the ZBA made the determination hereinafter set forth.

The following documents were presented:

1. A memorandum dated November 22, 2011, from John Giardiello, P.E., Director of OBZPAE, to the ZBA.
2. Nine copies of pictures of a house proposing an emergency-only power generator.
3. A survey of a house proposing an emergency-only power generator.
4. A print-out of a portion of the Zoning Code of the Village of Scarsdale regarding emergency-only power generators.

Mr. Mowerson 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 ZBA, Mr. Mowerson moved for a ZBA determination that the foregoing application seeks an interpretation of the Orangetown Zoning Code (Chapter 43), which application is exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5(c)(31), which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli, and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

The ZBA discussed the application and the local law that the Village of Scarsdale adopted to regulate emergency-only power generators, and reviewed all applicable provisions of the Orangetown Zoning Code, including, but not limited to, the definition of “Accessory” as defined in §11.2 (“Definitions”).

Public Comment:

No public comment.

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

**FINDINGS OF FACT AND CONCLUSIONS:**

The ZBA hereby finds, determines and concludes that, as per Orangetown’s current Zoning Code in existence at the time of this Decision, a typical emergency-only power generator is **not** an “Accessory” structure as defined in Orangetown Zoning Code §11.2 (“Definitions”), and should be treated similar to air conditioning compressors and HVAC units, until such time as the Orangetown Town Council adopts regulations specifically regulating (including inspection and monitoring) of emergency-only power generators, which the ZBA strongly recommends be enacted, similar to §310-7(S) of the Zoning Law of the Village of Scarsdale (copy attached), as soon as possible.

**DECISION:** In view of the foregoing and the testimony and documents presented, the ZBA RESOLVED that, as per Orangetown’s current Zoning Code in existence at the time of this Decision, a typical emergency-only power generator is **not** an “Accessory” structure as defined in Orangetown Zoning Code §11.2 (“Definitions”), and should be treated similar to air conditioning compressors and HVAC units, until such time as the Orangetown Town Council adopts regulations specifically regulating (including inspection and monitoring) of emergency-only power generators, which the ZBA strongly recommends be enacted, similar to §310-7(S) of the Zoning Law of the Village of Scarsdale (copy attached), as soon as possible; and FURTHER RESOLVED that this Decision, and the vote thereon, shall become effective and be deemed rendered on the date of adoption by the ZBA of the minutes of which they are a part.

General Conditions:

- (i) The approval of any variance or Special Permit is granted by the ZBA 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 ZBA 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 ZBA 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 ZBA 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, OBZPAE shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of OBZPAE, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by OBZPAE, which legally permits such occupancy.
- (v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this Decision, or that of any other Board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this Decision. Merely obtaining a Building Permit, with respect to construction, or a Certificate of Occupancy with respect to use, does not constitute “substantial implementation” for the purposes hereof.

The foregoing Resolution finding, determining and concluding that, as per Orangetown’s current Zoning Code in existence at the time of this Decision, a typical emergency-only power generator is **not** an “Accessory” structure as defined in Orangetown Zoning Code §11.2 (“Definitions”), and should be treated similar to air conditioning compressors and HVAC units, until such time as the Orangetown Town Council adopts regulations specifically regulating (including inspection and monitoring) of emergency-only power generators, which the ZBA strongly recommends be enacted, similar to §310-7(S) of the Zoning Law of the Village of Scarsdale (copy attached), as soon as possible; was presented and moved by Mr. Mowerson, seconded by Mr. Sullivan, and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Albanese, nay; Ms. Salomon, aye; and Mr. Mowerson, aye.

**§310-7(S) of the Zoning Law of the Village of Scarsdale:**

- S. Permanent emergency-only generators, customarily incidental to the residential use, being for the exclusive use of the occupants of such principal or accessory building and their guests, provided that said use is consistent with the public health, safety and welfare of the community, are subject to all of the following:
- (1) All property owners seeking to install a permanent emergency backup generator must file an application with the Building Department prior to installation. All property owners must also certify to the Building Department that on the date of installation and every five years thereafter the generator has been inspected by an acoustical engineer who has certified that the generator does not exceed 55 decibels as measured from the nearest property line.



- (2) Generators must be placed in the principal or accessory building or in an underground facility constructed purposely to house a generator or in the rear yard of any property located behind the house and shall be set back 20 feet from the rear and side yard property lines.
- (3) All permanently installed backup emergency generators shall be placed so as to minimize the visual impact on adjacent properties with the use of appropriate sound-attenuating architectural materials and landscaped screening.
- (4) The generator shall be used only during electrical power outages and as required by the manufacturer for maintenance purposes. Maintenance operation shall only take place during daylight hours between the hours of 10:00 a.m. and 5:00 p.m., not to exceed once a week for a maximum period of 45 minutes.
- (5) The generator shall operate only on liquid propane or natural gas. (Other fuel sources are not permitted.)
- (6) Documentation of the noise level of the generator measured from the nearest property line shall not exceed 55 decibels and shall comply with Chapter 205 of this Code.
- (7) Applicants for a backup emergency generator shall obtain all permits as required under federal, state and local laws, including the New York State Uniform Fire Prevention and Building Code and the Scarsdale Village Code.
- (8) All generators shall be installed and maintained in compliance with all federal, state and local laws, including the New York State Uniform Fire Prevention and Building Code, as amended from time to time.
- (9) All property owners with a permanent emergency backup generator prior to the effective date of this local law shall be required to certify to the Building Department every five years from the effective date of this local law that their permanent emergency backup generator has been inspected by an acoustical engineer who has certified that the generator does not exceed 55 decibels as measured from the nearest property line.
- (10) The Village Board of Trustees may, by resolution, impose a fee for the filing of the application as required under Subsection S(1).



























