

MINUTES
ZONING BOARD OF APPEALS
JANUARY 7, 2015

MEMBERS PRESENT: JOAN SALOMON
 DAN SULLIVAN
 LEONARD FEROLDI, ALTERNATE
 PATRICIA CASTELLI

ABSENT: MICHAEL BOSCO
 THOMAS QUINN

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

NEW ITEMS:

SKAE TRAINING CENTER 337-339 Blaisdell Road, Orangeburg, NY 76.08 / 1 / 3 & 4; LIO zone	PRE-EXISTING STRUCTURE LOCATION APPROVED TO BE USED AS PERMITTED BY THE LIO ZONING DISTRICT	ZBA#15-01
SKAE/COLUMCILLE PERFORMANCE STANDARDS 15 Corporate Drive, Orangeburg, NY 70.06 / 1 / 1.13; LO zone	PERFORMANCE STANDARDS APPROVED WITH SPECIFIC CONDITIONS	ZBA#15-02
TREANOR 16 Meadows Street, Pearl River, NY 69.09 / 5 / 25; R-15 zone	SIDE YARD AND REAR YARD VARIANCES APPROVED	ZBA#15-03
MC MULLEN 2 Garber Hill Road, Blauvelt, NY 70.10 / 2 / 10; R-15 zone	FRONT YARD, § 5.153 AND § 5.226 VARIANCES APPROVED	ZBA#15-04
FOUR FRIENDS L.L.C. 102 Center Street, Pearl River, NY 68.15 / 3 / 72; RG zone	BUILDING HEIGHT VARIANCE APPROVED	ZBA#15-05

TOWN CLERKS OFFICE
2015 JAN 29 PM 1 01
TOWN OF ORANGETOWN

OTHER BUSINESS:

ZBA#13-92A: ZAPATA OUTDOOR DINING/SIDEWALK CAFÉ, 779 Route 340, Palisades, NY; 77.20 / 2 / 24; R-15 zone

By order of Honorable Robert M. Berliner, Justice of NYS Supreme Court, Rockland County, the Zoning Board of Appeals, Town of Orangetown, answered the question that was not clearly answered in ZBA Decision #13-92 dated 03/05/2014: The Zoning Board has determined that John Giardiello, P.E., Director, Town of Orangetown Office of Building, Zoning, Planning, Administration & Enforcement, was correct when he determined that the application could not be viewed as a Sidewalk Cafe and Vending under Chapter 31B of the Code of the Town of Orangetown.

ADDITIONAL 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: Retro Fitness Pearl River Commercial Interior Subdivision Plan, 100 North Middletown Road, Pearl River,, NY 69.13 / 1 / 3; CC zone; 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 9:00 P.M.

Dated: January 7, 2015

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

TOWN CLERKS OFFICE
2015 JAN 29 PM 1 01
TOWN OF ORANGETOWN

DECISION

**PRE-EXISTING NON-CONFORMING STRUCTURE APPROVED TO REMAIN
ON PROPERTY WITH THE SPECIFIC CONDITION THAT THE
STRUCTURE'S USE SHALL BE CONFORMING WITH THE LIO DISTRICT**

To: Donald Brenner (Skae Training Center)
4 Independence Avenue
Tappan, New York 10983

ZBA #15-01
Date: January 7, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-01: Application of Skae Training Center for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.11, LIO District, Column 2, refers to LO District, Column 2 (Uses permitted by right: does not permit residential use): Pre-existing non-conforming residential structure exists: applicant would like to continue pre-existing non-conforming use of residential structure; the Planning Board has directed the applicant to remove the structure or proceed to the Zoning Board for a variance. The property is located at 337-339 Blaisdell Road, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 76.08, Block 1, Lots 3 & 4; in the LIO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 7, 2015 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Sara Torrens, Attorney and Peter Skae, appeared and testified.

The following documents were presented:

1. Site plan labeled "Overall Final As built for Skae Training " dated Sept. 12, 2014 with the last revision date of 10/22/2014 signed and sealed by William D. Youngblood L.S..
2. Planning Board decision #14-40 dated October 22, 2014.
3. Zoning Board of Appeals decision #14-20 dated March 19, 2014.
4. A letter dated December 29, 2014 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner.
5. A letter dated December 4, 2014 from the County of Rockland Department of Health signed by Scott Mc Kane, P.E., Senior Public Health Engineer.
6. A letter dated December 31, 2014 from the County of Rockland Department of Highways, signed by Sonny Lin, P.E..

Mr. Sullivan, Chair, 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 since the Planning board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or did not object to the Planning Board acting as Lead Agency for this application, pursuant to coordinated review under the State Environmental Quality Review Act Regulations §617.6 (b) (3); and since the Planning Board conducted a SEQRA review and. On October 22, 2014, rendered an environmental determination of **no** significant adverse environmental impacts to result from the proposed land use action (i.e., a "Negative Declaration" or "Neg. Dec"), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulation § 617,6 (b)(3). The motion was seconded by Ms. Castelli and carried as follows: Mr. Feroldi, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were absent.

TOWN OF ORANGETOWN
2015 JAN 29 PM 1 01
TOWN CLERKS OFFICE

Donald Brenner, Attorney, testified that the building was before the Board for the exercise center; that they have merged two properties; that the property with the house was known as the "Limmer house"; that it was used as a residence but has not been in use for a while; that they are proposing to keep the building in its present location and to eventually rehab it and use it for a commercial use; that they would like the three comments from the County to be overridden because they do not make sense for this request; and that nothing is changing.

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 Section 3.11, LO District, Column 2 variance to keep the pre-existing non-conforming residence, as a residence, was **withdrawn**. The request to keep the pre-existing non-conforming building in its present location will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has agreed that the building will be used for a use permitted in the LIO District and **not** as a residence.
2. The Zoning Board of Appeals overrode the conditions from the County of Rockland Department of Planning's letter dated December 29, 2014.
3. The requested Section 3.11, LO District, Column 2 variance to keep the pre-existing non-conforming residence, as a residence, was **withdrawn**. The request to keep the pre-existing non-conforming building in its present location will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has agreed that the building will be used for a use permitted in the LIO District and **not** as a residence.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
5. The requested variance, although 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 applicant has agreed that the building will be used for a use permitted in the LIO District and **not** as a residence.

TOWN OF ORANGETOWN
2015 JAN 29 PM 1 01
TOWN CLERKS OFFICE

6. 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 to keep the pre-existing non-conforming **building** in its present location is APPROVED with the Specific Condition that the building's use conform with the permitted uses in the LIO Zoning District as prescribed in the Orangetown Zoning Code; 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 CLERKS OFFICE
2015 JUN 29 PM 1 01
TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the request to keep the pre-existing non-conforming **building** in its present location with the Specific Condition that the buildings use conform to the uses permitted in the LIO Zoning District as prescribed in the Orangetown Zoning Code; was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Feroldi, aye; Ms. Salomon, aye ;Ms. Castelli, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were 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.

DATED: January 7, 2015

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 -N.A.

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

TOWN OF ORANGETOWN
2015 JAN 29 PM 1 02
TOWN CLERKS OFFICE

DECISION
PERFORMANCE STANDARDS REVIEW APPROVED WITH SPECIFIC
CONDITIONS

To: Donald Brenner (Skae/Columcille)
4 Independence Avenue
Tappan, New York 10983

ZBA # 15-02
Date: January 7, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-02: Application of Skae/Columcille Properties for Performance Standards Review as per Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 4.12 for installation of four generators and three chillers. The building is located at 15 Corporate Drive, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 73.20, Block 1, Lot 34; in the LIO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 7, 2015 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Sara Torrens, Attorney and Peter Skae appeared and testified.

The following documents were presented:

1. Site Development Plan for Generators/Chillers at Columcille Properties LLC signed and sealed by Jay A. Greenwell, LLC dated 10/15/14.
2. Use Subject to Performance Standards Resume of Operation and Equipment.
3. Fire Prevention Supplement.
4. Hess Safety Data Sheet (10 pages).
5. A letter dated December 29, 2014 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
6. A memorandum dated January 7, 2015 from Michael B. Bettmann, Chief Fire Inspector, Town of Orangetown.
7. A memorandum dated December 24, 2014 from Joseph J. Moran, P.E., Commissioner, Department of Environmental Management and Engineering, Town of Orangetown.
8. A memorandum dated December 11, 2014 from Bruce Peters, P.E., Engineer III, Department of Environmental Management and Engineering, Town of Orangetown.
9. A memorandum dated December 11, 2014 from Ken Skibinski, Chief Plant Operator, Department of Environmental Management and Engineering, Town of Orangetown.

Mr. Sullivan, Chair, 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 based upon the testimony heard by this Board, and the facts presented in the application submissions and in the record, since the application ZBA#15-02 (Applicant, Skae/Columcille Properties) entails the ZBA engaging in a review to determine compliance with technical requirements, this application is exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (28). The motion was seconded by Ms. Castelli and carried as follows: Mr. Feroldi, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were absent.

TOWN CLERKS OFFICE

2015 JAN 29 PM 1 02

TOWN OF ORANGETOWN

Donald Brenner, Attorney, testified that they have filled out the full performance standards form; that they have the data for noise; that these are only emergency generator; that the units meet the fire standards; that they can provide additional data if the Board wants them to; and that some of the items in the memorandum from Bruce Peters are items that the Planning Board would inquire about for site plan approval.

Peter Skae testified that the Orangetown sound attenuation is from the 1950's and so out of date; that no one measures sound that way today.

Public Comment:

No public comment.

The Performance Standards Resume of Operations and Equipment, and the Fire Prevention Supplement completed by the applicant were thereupon reviewed in detail.

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 the documents presented, the Board found and concluded that:

Based upon the information contained in the applicant's Resume of Operations and Equipment and the Fire Prevention Supplement, the letter dated December 24, 2014 from Joseph J. Moran, P.E., Commissioner of the Orangetown Department of Environmental Management and Engineering (D.E.M.E.); a memorandum dated December 11, 2014 from Bruce Peters, P.E., Engineer (DEME); the memorandum dated January 7, 2015 from Michael Bettmann, Chief Fire Inspector, Town of Orangetown Bureau of Fire Prevention (B.F.P.); Rockland County Department of Planning letter dated December 29, 2014 signed by Douglas J. Schuetz, Acting Commissioner of Planning; and the other documents presented to the Board and the testimony of applicant's representatives, the Board finds and concludes that conformance with the Performance Standards set forth in Zoning Code Section 4.1 will result sufficient to warrant the issuance of a Building Permit and/or Certificate of Occupancy, subject to compliance with the orders, rules and regulations of the Orangetown Office of Building, Zoning & Planning Administration & Enforcement, DEM and Orangetown B.F.P., and all other departments having jurisdiction of the premises.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for Performance Standards Conformance, pursuant to Zoning Code § 4.1, is APPROVED with the SPECIFIC CONDITIONS that the applicant adhere to all of the requirements set forth by the Chief Fire Inspector, Town of Orangetown B.F.P.; and all of the requirements set forth by the Department of Environmental Management and Engineering; and County of Rockland Department of Planning; including, but not necessarily limited to , the following:

TOWN OF ORANGETOWN

2015 JAN 29 PM 1 02

TOWN CLERKS OFFICE

1. When the building is converted to a Data Center the applicant must (a) update the Fire Sprinkler system to protect the Data Center;(b) Upgrade the Fire Alarm system, submit proposed Fire Alarm drawings to the Chief Fire Inspector, Town of Orangetown, for approval before the work begins, (c) Connect to Rockland County 44-Control in Contact ID format; (d) Install Portable "Fire Extinguishers as per NFPA 10; (e) Install key box; (f) Apply for and maintain a Certificate of Compliance with the "Fire Inspector; and (g) Show Fire Zone/No Parking on final approved site plan.
2. Applicant must submit a noise attenuation study performed by an acoustical engineer.
3. Applicant must address to the satisfaction of the DEME the following comments:
 - (A) How will the generators and chillers be installed/services/refiled? There is no apparent access to them from the existing parking lot.
 - (B) Soil erosion and sediment control plans and details shall be submitted to the DEME for review and approval.
 - (C) The total area of disturbance shall be listed on the plans, including all temporary and permanent access road(s), land clearing and grubbing for chiller/generator location, etc.
 - (D) The generators shall be housed in sound attenuating enclosures due to their proximity to the neighboring property. Also, the applicant should submit specifications for the generators which include the noise levels at various distances from the generators.
 - (E) There does not appear to be any measures shown to prevent any possible leaks or spills of diesel fuel (from the generators) from flowing down into the stream along the southern property line, this shall be addressed on the plans.
 - (F) The site plan shall show all proposed regarding.
 - (G) Do the generators/chillers need to be fenced in for safety/security purposes?
 - (H) A detail for the gravel base for the chillers/generators shall be added to the plans.
4. The applicant must obtain any necessary permits from the New York State Department of Environmental Conservation's division of Air Resources for the proposed generators
5. Noise attenuation designs should be incorporated into the site plan to help buffer the sound to the adjacent residential area to the south.
6. Additional landscaping may be warranted to help shield any visual impacts to the adjacent neighbors to the south.

AND FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

TOWN CLERKS OFFICE
2015 JAN 29 PM 1 02
TOWN OF ORANGETOWN

General Conditions:

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

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

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

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

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

TOWN OF ORANGETOWN
2015 JUN 29 PM 1 02
TOWN CLERKS OFFICE

The foregoing Resolution to approve the application for the requested Performance Standards review with the Specific Conditions set forth above, was presented and moved by Mr. Sullivan, seconded by Ms. Castelli and carried as follows: Mr. Feroldi, aye; Ms. Salomon, aye ;Ms. Castelli, aye; and Mr. Sullivan, aye. Mr. Bosco and Mr. Quinn were 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.

DATED: January 7, 2015

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

TOWN OF ORANGETOWN
2015 JAN 29 PM 1 02
TOWN CLERKS OFFICE

DECISION
SIDE YARD AND ZONING CODE §2.227 VARIANCES APPROVED

To: Michael and Eileen Treanor
16 Meadows Street
Pearl River, New York 10965

ZBA #15-03
Date: January 7, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-03: Application of Michael and Eileen Treanor for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, R-15 District, Group M, Column 9 (Side Yard: 20' required, 8' proposed) and from Section 2.227(Rear yard for swimming pool: 20' required, 8' proposed) for the installation of an in-ground pool at a single-family residence. The premises are located at 16 Meadows Street, Pearl River, New York and is identified on the Orangetown Tax Map as Section 69.09, Block 5. Lot 25; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 7, 2015 at which time the Board made the determination hereinafter set forth.

Michael Treanor and Armando Insignares, Cool Pool, appeared and testified.

The following documents were presented:

1. Partial copy of site plan not dated or signed or sealed.
2. A computer drawing of the proposed location of the pool not signed or sealed.
3. Two computer generated pictures of the proposed pool, spa and patio.

Mr. Sullivan, Chair, 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: Mr. Feroldi, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were absent.

Michael Treanor testified that he would like to install an in-ground pool in his backyard; that he has an undersized lot; that if he moved the pool to the center of the rear yard he would have no lawn area at all; that he would like to have a diving pool; that a diving pool must be at least eight feet deep; that the house behind him has a ½ acre of property and is set far away from him; that the houses on either side of him are set back about equal with his house and they do not have pools; and that the house across the street has a pool.

Armando Insignares, Cool Pool, that the pool is 18' wide and 41' long; that it has interior steps in the low end of the pool; and that in order to accommodate the eight foot depth and the interior steps, the pool must be 41' long.

TOWN CLERKS OFFICE
2015 JAN 29 PM 1 02
TOWN OF ORANGETOWN

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 side yard and Section 2.227 (rear yard for a pool) variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar pools exist in the neighborhood.
2. The requested side yard and Section 2.227 (rear yard for a pool) variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar pools exist in the neighborhood.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested side yard and Section 2.227 (rear yard for a pool) 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.
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 OF ORANGETOWN
2015 JUN 29 PM 1 02
TOWN CLERKS OFFICE

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested side yard and Section 2.227 (rear yard for pool) 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.


TOWN OF ORANGETOWN
2015 JAN 29 PM 1 02
TOWN CLERKS OFFICE

The foregoing Resolution to approve the application for the requested side yard and section 2.227 (rear yard for pool) variances was presented and moved by Mr. Feroldi, seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Mr. Feroldi, aye; Ms. Castelli, aye; and Mr. Sullivan, aye. Mr. Bosco and Mr. Quinn were 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.

DATED: January 7, 2015

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

TOWN OF ORANGETOWN
2015 JAN 29 PM 1 02
TOWN CLERKS OFFICE

DECISION

**FRONT YARD, SIDE YARD, §5.153 (STRUCTURE IN FRONT YARD), AND
§ 5.226 (FRONT YARD FENCE HEIGHT) VARIANCES APPROVED**

To: Jason and Tracy Mc Mullen
2 Garber Hill Road
Blauvelt, New York 10913

ZBA #15-04
Date: January 7, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-04: Application of Jason and Tracy McMullen for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, R-15 District, Group M, Columns 8 (Front Yard: 30' required, 10' proposed); 9 (Side Yard: 20' required, 10.8' proposed); from Section 5.153 (No structure shall be located in a front yard: applicant has two front yards); and from Section 5.226 (Front Yard Fence Height: 4 ½' permitted; 6' proposed) for the installation of an in-ground pool and fence at a single-family residence. The premises are located at 2 Garber Hill Road, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 70.10, Block 2, Lot 10; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 7, 2015 at which time the Board made the determination hereinafter set forth.

Jason and Tracy McMullen appeared and testified.

The following documents were presented:

1. Survey of property with pool dated October 14, 2014 signed and sealed by Robert E. Sorace, P.L.S..
2. A letter dated 03/27/2014 from Edward McPherson, Code Enforcement Officer to Mr. McMullen regarding the damage to his existing six-foot fence.
3. A letter dated December 23, 2015 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
4. A letter dated January 6, 2015 from the County of Rockland Department of Highways signed by Sonny Lin, P.E..
5. A letter dated December 4, 2014 from the County of Rockland Department of Health signed by Scott McKane, P.E., Senior Public Health Engineer.

Mr. Sullivan, Chair, 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: Mr. Feroldi, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were absent.

Jason McMullen testified that he would like to replace an above-ground pool with an in-ground pool; that he has a corner property with two front yards; that the existing fence is approximately five feet from the property line; that the fence was there when they purchased the house; that they got a letter from the building department stating that they were in violation of the property maintenance codes because the fence was damaged during super storm sandy and that they had five days to fix it or answer the summons; that they installed a new fence; that the lot is oddly shaped; that this is the only are that would accommodate the pool to work with the interior layout of the house; and that no matter where they placed the pool, they would need a variance.

TOWN OF ORANGETOWN
2015 JAN 29 PM 1 02
TOWN CLERKS OFFICE

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 front yard, side yard, and § 5.153 (structure in front yard) and § 5.226 (front yard fence height) variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants' property is a corner lot with two front yards and the lot is oddly shaped. Because of the corner lot and the odd shape of the property, the pool would require variances in any location on the property.
2. The requested front yard, side yard and § 5.153 (structure in front yard) and § 5.226 (front yard fence height) variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicants' property is a corner lot with two front yards and the lot is oddly shaped. Because of the corner lot and the odd shape of the property, the pool would require variances in any location on the property.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested front yard, side yard and § 5.153 (structure in front yard) and § 5.226 (front yard fence 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. Because of the corner lot and the odd shape of the property, the pool would require variances in any location on the property.
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
2015 JAN 29 PM 1 02
TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested front yard, side yard and § 5.153 (structure in front yard) and § 5.226 (front yard fence 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.


TOWN OF ORANGETOWN
2015 JAN 29 PM 1 02
TOWN CLERKS OFFICE

The foregoing Resolution to approve the application for the requested front yard, side yard and § 5.153 (structure in front yard) and § 5.226 (front yard fence height) variances was presented and moved by Mr. Sullivan, seconded by Ms. Salomon and carried as follows: Mr. Feroldi, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were 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.

DATED: January 7, 2015

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

TOWN OF ORANGETOWN
2015 JAN 29 PM 1 02
TOWN CLERKS OFFICE

DECISION
UNDERSIZED LOT BUILDING HEIGHT VARIANCE APPROVED

To: Jay Singer (Four Friends LLC)
275 Treetop Circle
Nanuet, New York 10954

ZBA #15-05
Date: January 7, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-05: Application of Four Friends L.L.C. for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 5.21(e), RG District, Group Q, (Undersized lot building height: 20' permitted, 23.75' proposed) for an addition to a single-family residence. The premises are located at 102 Center Street, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.15, Block 3, Lot 72; in the RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 7, 2015 at which time the Board made the determination hereinafter set forth.

Jay Singer and John Ceglia appeared and testified.

The following documents were presented:

1. Architectural plans and site plan dated November 4, 2014, with the latest revision date of November 25, 2014 signed and sealed by Margaret L. Fowler, Architect. (5 pages)
2. Four computer generated pictures of the house and the surrounding houses.

Mr. Sullivan, Chair, 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: Mr. Feroldi, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were absent.

Jay Singer testified that they are proposing to remove the dormers and make the second story a full height second story ; that presently with the slanted ceilings, the rooms are small; that the additional ceiling height will allow for full size bedrooms and a bath; that they will be in keeping with the character of the neighborhood because similar additions have been constructed in the area; and he submitted pictures of houses on both sides of the applicants house.

TOWN OF ORANGETOWN
2015 JAN 29 PM 1 02
TOWN CLERKS OFFICE

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 building height variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. There are other two-story residences in the area.
2. The requested building height variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. There are other two-story residences 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 a variance.
4. The requested building height variance is not substantial.
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
2015 JUN 29 PM 1 02
TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested building height 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.

TOWN CLERKS OFFICE

2015 JUN 29 PM 1 02

TOWN OF ORANGETOWN


(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 building height variance was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Feroldi, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were 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.

DATED: January 7, 2015

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 -B.vW.

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

TOWN CLERKS OFFICE
2015 JAN 29 PM 1 02
TOWN OF ORANGETOWN

DECISION

To: Burton Dorfman, Esq. (Zapata)
450 Piermont Avenue
Piermont, New York 10968

ZBA #13-92A
Date: January 7, 2015

FROM: ZONING BOARD OF APPEALS, Town of Orangetown
ZBA #13-92A: ZAPATA MEXICAN RESTAURANT OUTDOOR
DINING/SIDEWALK CAFÉ (779 Route 340, Palisades 77.20/2/24; R-15 zone): Re-Deliberations by the Zoning Board of Appeals (hereinafter "ZBA" or "Board") of its Decision ZBA #13-92, decided on 03/05/2014, as per the Decision & Order of Hon. Robert M. Berliner, Justice of NYS Supreme Court, County of Rockland, dated 11/20/2014. The Public Hearing was closed on 03/05/2014; NO further documentary submissions, correspondence, communications, reports or testimony will be accepted or heard by the ZBA; however, the public and applicant may attend the meeting, but will NOT be permitted to address the ZBA or submit any documents. The following documents were presented:

1. Decision & Order of NYS Supreme Court, County of Rockland, in the case of Zapata Brothers Corp. d/b/a Zapata Mexican Restaurant and Godinez v. Town of Orangetown Zoning Board of Appeals (Index No. 684/14), dated 11/20/2014, signed by Justice Robert M. Berliner (hereinafter "Court Decision & Order").
2. ZBA Decision #13-92 dated March 5, 2014.
3. Chapter 31B of the Code of the Town of Orangetown ("Orangetown Code") -- "Sidewalk Cafes and Vending."
4. Official ZBA court reporter's/stenographer's transcripts of the verbatim minutes for Zapata Sidewalk Dining ZBA#13-92 dated March 5, 2014 and December 4, 2013.

In addition, the contents of the previous submissions were available for the Board to review:

5. Site plan with the proposed dining area hand-drawn on it.
6. ZBA Decisions #07-38 dated 04/18/2007 and #09-85 dated May 5, 2010.
7. A letter dated November 14, 2013 from the County of Rockland Department of Planning signed by Thomas B. Vanderbeek, P.E., Commissioner of Planning.
8. A letter dated November 19, 2013 from the county of Rockland Department of Highways signed by Sonny Lin, P.E.
9. A letter dated November 5, 2013 from the County of Rockland Department of Health signed by Scott McKane, P.E., Senior Public Health Engineer.
10. A letter dated December 3, 2013 from the State of New York Department of Transportation signed by Mary Jo Russo, P.E., Rockland County Permit Engineer.
11. An e-mail dated November 24, 2013 from Celeste Bester.
12. A letter dated November 25, 2013 from Celeste Bester, 793 Route 340 Palisades, NY.
13. Two more letters in opposition to the project.

After the ZBA's counsel, Deputy Town Attorney Dennis D. Michaels, summarized and recited from portions of the Court Decision & Order, the Board discussed its previous Decision (ZBA #13-92) and its deficiency (according to the Court Decision & Order) regarding a direct answer to the request for Sidewalk Cafe Permit, as per Orangetown Code Section 31B-1, 31B-2 & 31B-3; the Board discussed the Purpose section of

TOWN CLERKS OFFICE
2015 JAN 29 PM 1 03
TOWN OF ORANGETOWN

Orangetown Code Chapter 31B, and quoted that this Section specifically states that "The sidewalk café and vending regulations as established in this chapter are designed to allow sidewalk cafes and vending on public property, in locations where they are determined to be appropriate by the Director of the Office of Zoning, Planning, Administration and Enforcement (Director) and to promote and protect the public health, safety and general welfare." The Board members focused on said Purpose of Chapter 31B that the Sidewalk Café was not appropriate in this location because the restaurant exists in a residential Zoning District. The restaurant is a pre-existing non-conforming use for the area and a Sidewalk Café or outdoor dining would be detrimental to the surrounding residential neighborhood. The Board members stated several times that a Sidewalk Café in this location **would not promote** and protect public health, safety and general welfare.

Another section of the Orangetown Code that was quoted from by the Board was Section 31B-3(B) & (K) "Rules and Regulations. The Director is hereby authorized to grant revocable permits for the use of the sidewalks for sidewalk cafes and vending upon the following terms and conditions: ...K. Operations of a sidewalk café or vending shall not adversely impact on adjacent or nearby residential, religious, educational or commercial properties and shall be in accordance with all applicable codes and regulations."

The Board members pointed out, several times, that the restaurant use is a pre-existing non-conforming use that the applicant is entitled to continue, however, it exists in a residential Zoning District and John Giardiello, P.E., was correct in determining that it does not meet the criteria for a Sidewalk Café because it **would adversely impact the adjacent and nearby residential properties.**

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.

TOWN OF ORANGETOWN
2015 JAN 29 PM 1 03
TOWN CLERKS OFFICE

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, reviewing all the documents submitted during the Public Hearing held on December 4, 2013 and March 5, 2014, and the Court Decision & Order, the Board found and concluded that:

1. John Giardiello, P.E., Director of the Office of Building, Zoning, Planning, Administration and Enforcement ("OBZPAE"), Town of Orangetown, was **correct** in his determination that the Applicant did **not** meet the qualifications for Sidewalk Cafes and Vending as specified in Orangetown Code Chapter 31B, for the following reasons:
 - (a) The Director of OBZPAE is the person who determines the locations that are appropriate for a Sidewalk Café as per Orangetown Code Chapter 31B, which Chapter is very specific that the proposed location should promote and protect the public health, safety and general welfare of the area for the proposal (see 31B-1: "Purpose").
 - (b) Orangetown Code Section 31B-1(D) states: "To preserve and enhance the character of the neighborhoods through the town and to protect adjacent residential areas." The Applicant's restaurant is located in a residential Zoning District and permitting outdoor service of any kind will adversely impact the residences in the surrounding residential neighborhood.
 - (c) Orangetown Code Section 31B-3 (K) states: "Operations of a sidewalk café or vending shall not adversely impact on adjacent or nearby residential, religious, educational or commercial properties and shall be in accordance with all applicable codes and regulations."
 - (d) The Board cited the foregoing Sections of Chapter 31B of the Orangetown Code for Sidewalk Café and Vending, because they agreed with the Director of OBZPAE that this Application does **not** qualify for a Sidewalk Café because it conflicts with the these Sections.


TOWN OF ORANGETOWN
2015 JAN 29 PM 1 03
TOWN CLERKS OFFICE

For all of the reasons set forth above, Daniel Sullivan made a motion to **affirm** the determination of John Giardiello, P.E., Director of OBZPAE, that the Application should be treated as a Special Permit for outdoor dining as per Orangetown Zoning Code (Chapter 43) §3.11, Table of General Use Regulations, Column 7, Note #6 ("All restaurants or food-serving facilities shall be within completely enclosed buildings, unless by special permit of the [ZBA]"), and **not** as an Orangetown Code Chapter 31B application for a Sidewalk Cafe (as per); which motion was seconded by Ms. Castelli and carried as follows: Mr. Feroldi, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Bosco and Mr. Quinn were absent.

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

DATED: January 7, 2015

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 -B.v.W.

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

TOWN CLERKS OFFICE
2015 JAN 29 PM 1 03
TOWN OF ORANGETOWN