

MINUTES  
ZONING BOARD OF APPEALS  
JANUARY 16, 2013

MEMBERS PRESENT:

DANIEL SULLIVAN  
JOAN SALOMON  
PATRICIA CASTELLI  
MICHAEL BOSCO,  
LEONARD FEROLDI, ALTERNATE

ABSENT:

NANETTE ALBANESE

ALSO PRESENT:

Richard Pakola, 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

CONTINUED ITEM:

578 ROUTE 303  
70.14 / 4 / 14; LO zone

ACCESSORY STORAGE  
& PARKING IN YARDS  
VARIANCES APPROVED

ZBA#13-03

NEW ITEMS:

WILSON  
70.09 / 3 / 53; R-40 zone

REAR YARD VARIANCE  
APPROVED      ZBA#13-06

HINCHCLIFFE  
70.09 / 1 / 6; R-40 zone

LOT WIDTH, SIDE YARD,  
DISTANCE BETWEEN STRUCTURES  
VARIANCES APPROVED      ZBA#13-07  
APPLICANT SHALL FILE A CEVENANT  
STATING THAT THE PROPOSED STRUCTURE  
WILL NEVER BE USED AS A SECOND  
DWELLING UNIT

FERRIELLO  
69.18 / 1 / 2; R-15 zone

BUILDING HEIGHT      ZBA#13-08  
VARIANCE APPROVED  
WITH IMPLEMENTATION OF  
LANDSCAPE PLAN SUBMITTED  
DATED 10/6/ 12 REVISED 12/27/2012  
BY KARL ACKERMANN, ARCHITECT

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TOWN OF ORANGETOWN

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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: sink Erie Subdivision Plan, 86 West Erie Street, Blauvelt, NY 70.13 / 1 / 21; R-15 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 8:00 P.M.

Dated: January 16, 2013

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

APPLICANT  
TOWN ATTORNEY  
DEPUTY TOWN ATTORNEY  
ASSESSOR  
HIGHWAY DEPARTMENT  
SUPERVISOR  
TOWN BOARD MEMBERS  
BUILDING INSPECTOR (Individual Decisions)  
DEPT. of ENVIRONMENTAL MGMT. and ENGINEERING  
Rockland County Planning

TOWN CLERKS OFFICE

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TOWN OF ORANGETOWN

DECISION

VARIANCES FROM SECTION 3.11, LO DISTRICT, COLUMN 7, # 2 & # 3  
APPROVED

To: Paul Valentine  
20 Buttonwood Place  
Blauvelt, New York  
10913

ZBA # 13-03  
Date: January 2, 2013  
January 16, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#13-03: Application of #578 Route 303 (Paul and Nancy Valentine) for variances from Chapter 43 (Zoning) Section 3.11, LO District, Column 7 #2 (Accessory Storage shall be within completely enclosed buildings) and #3 (No parking is permitted in any required yard unless permitted by any Board); Section 13.6, Route 303 Overlay District, applies. The property is located at 578 of Route 303, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 70.14, Block 4, Lot 14 in the LO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, January 2, 2013 and January 16, 2013 at which time the Board made the determination hereinafter set forth.

At the January 2, 2013 meeting Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Survey dated August 29, 2012 signed and sealed by Stephen F. Hoppe, L.S..
2. Survey dated August 29, 2012 with the latest revision date of January 8, 2013 signed and sealed by Stephen F. Hoppe, L.S..
3. A letter dated December 11, 2012 from the County of Rockland Department of Planning signed by Thomas B. Vanderbeek, Commissioner of Planning.
4. A letter dated December 14, 2012 from the State of New York Department of Transportation signed by Mary Jo Russo, P.E., Rockland County Permit Engineer.
5. A letter dated January 16, 2013 from Paul Valentine naming the tenant of the premises.

At the January 2, 2013 meeting Ms. Castelli, Acting Chairman, made a motion to open the Public Hearing which motion was seconded by Ms. Salomon and carried unanimously.

On advice of Richard Pakola, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application is exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (7) ; 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. Castelli, aye; Mr. Feroldi, aye; and Mr. Bosco, aye. Ms. Albanese was absent.

At the January 2, 2013 meeting Donald Brenner, Attorney testified that the traffic pattern on Route 303 would not be changed by this application because the applicant does not enter or exit the property from Route 303; that there will be no development on Route 303; that the landscape equipment enters from Railroad Avenue, which runs along side the railroad tracks; that he thinks there is one tenant using the house and the landscape storage but he is not sure; and that he would request a continuance to return to the Board with a plan showing the types of storage being proposed for the rear of the property.

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At the January 16, 2013 meeting Donald Brenner, Attorney and Paul Valentine appeared and testified.

Donald Brenner testified that the legal matter has been resolved; that there is one person renting the lot and he and his family live in the house and it would be his trucks/trailers that would be stored in the rear of the property; and that a revised site plan has been submitted which shows where the trucks/trailers would park and where the outdoor storage would be located.

Paul Valentine stated that Mr. Moran has been his tenant for ten years; that the trailers/trucks would enter and exit onto Railroad Avenue; that you cannot see the rear of the property from Route 303; that there is a mini-mall on one side of the property and the railroad tracks are behind the property; and that no changes are being made to the front of the property.

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. Salomon 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 § 3.11, LO District, Column 7, #2 & #3 (outdoor storage and parking in yards) variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants' lot is long and the rear of the property is not visible from Route 303. The trucks/trailers will be entering and exiting the property from the rear on Railroad Avenue, and an updated site plan has been submitted which clearly depicts the number of trucks/trailers and the location of any outdoor storage.
2. The requested § 3.11, LO District, Column 7, #2 & #3 (outdoor storage and parking in yards) variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicants' lot is long and the rear of the property is not visible from Route 303. The trucks/trailers will be entering and exiting the property from the rear on Railroad Avenue, and an updated site plan has been submitted which clearly depicts the number of trucks/trailers and the location of any outdoor storage.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.

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4. The requested § 3.11, LO District, Column 7, #2 & #3 (outdoor storage and parking in yards) variances, although substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The property is unique because it can be accessed from Route 303 for the house, and from the rear onto Railroad Avenue for the proposed trucks/trailers; however the two access points do not connect within the property; insuring that the trucks/trailers will never access the property from State Highway Route 303.
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 § 3.11, LO District, Column 7, #2 & #3 (outdoor storage and parking in yards) 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.

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578 Route 303 (Valentine)  
ZBA#13-03  
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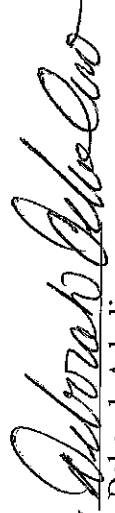
(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for the requested § 3.1.1, LO District, Column 7, #2 & #3 (outdoor storage and parking in yards) variances was presented and moved by Mr. Sullivan, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Mr. Bosco, aye; Ms. Salomon, aye; Mr. Feroldi, aye; and Ms. Castelli, aye. Ms. Albanese 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.

DATED: January 16, 2013

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.O.

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

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TOWN OF ORANGETOWN

DECISION

REAR YARD VARIANCE APPROVED

To: Donald and Kathy Wilson  
22 Colony Drive  
Blauvelt, New York 10913

ZBA # 13-06  
Date: January 16, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#13-06: Application of Donald Wilson for a variance from Chapter 43 (Zoning), Section 3.12; R-40 District; Group E, Column 11 (Rear Yard: 50' required, 36.8' existing, 48' 4" proposed) for a 100 sq. ft. addition to the rear of an existing single-family residence. The premises are located at 22 Colony Drive, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 70.09, Block 3, Lot 53 in the R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 16, 2013 at which time the Board made the determination hereinafter set forth.

Kathy Wilson appeared and testified.

The following documents were presented:

1. Proposed plot plan and elevations of the proposed addition dated 8/27/2012 signed and sealed by Jorge L. Lopez, Architect.
2. Zoning board of Appeals Decision # 92-45 dated May 27, 1992.

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

On advice of Richard Pakola, 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. Salomon and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Mr. Feroldi, aye; Ms. Castelli, aye; and Mr. Bosco, aye. Ms. Albanese was absent.

Kathy Wilson testified that she would like to push out her family room by 4 ½ feet; that the room is small; that this is the room the family gathers in; that she should have done this when she did the other addition and didn't; that they were granted a variance for the rear addition that they did in 1992 and they thought they would just get a permit for this one because it does encroach into the rear yard further than the variance that was granted; that they were surprised to learn that they would be required to get another variance; and that is why she is before the Board again.

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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 rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed addition bumps out into the rear yard 4 ½ feet, and is on the interior of the previously granted addition which extends further into the rear yard.
2. The requested rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed addition bumps out into the rear yard 4 ½ feet, and is on the interior of the previously granted addition which extends further into the rear yard.
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 rear yard 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**

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

General Conditions:

- (i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.
- (ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.
- (iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.
- (iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.
- (v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

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The foregoing resolution to approve the application for the requested rear yard variance was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Mr. Bosco, aye; Mr. Feroldi, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Ms. Albanese 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.

DATED: January 16, 2013

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  
O&ZPAE  
BUILDING INSPECTOR -B.vw.

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

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TOWN OF ORANGETOWN

DECISION

**LOT WIDTH, SIDE YARD, DISTANCE BETWEEN STRUCTURES  
VARIANCES APPROVED; SECTION 10.331 INTERPRETATION GRANTED  
PROPOSED SPACE NOT A SECOND DWELLING UNIT; APPLICANT SHALL  
SUBMIT A COVENANT**

To: Jonathan Hodash (Hinchcliffe)  
60 So. Main Street  
New City, New York 10956

ZBA # 13-07  
Date: January 16, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-07: Application of Robert Hinchcliffe for variances from Chapter 43 (Zoning), Section 3.12, R-40 District, Group E, Columns 6 (Lot Width: 150' required, 112.35' existing), 9 (Side Yard: 30' required, 6.2' existing); from Section 5.153 (Distance between structures: 15' required, 10.4' existing) and from Section 10.331 (An interpretation is requested as to whether proposed project constitutes creation of a second dwelling unit in a detached structure) for additions and alterations to an exiting pool house/garage at an existing single-family residence. The premises are located at 118 Sunset Road, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 70.09, Block 1, Lot 6; R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 16, 2013 at which time the Board made the determination hereinafter set forth.

Jonathan Hodash, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans dated March 5, 2012 revised March 29, 2012 signed and sealed by Jonathan Hodash, Architect, (6 pages).

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

On advice of Richard Pakola, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing applications are 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. Salomon and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Mr. Feroldi, aye; Ms. Castelli, aye; and Mr. Bosco, aye. Ms. Albanese was absent.

Jonathan Hodash testified that the proposal is to add onto the existing two-car garage; that they would like to create a pool house at the rear of the existing garage with storage above it; that the parents live in the house and the son is moving back in with them; that he would like to have an office space above the pool cabana and the cabana area is being built for entertaining when the pool is open; that there might be a microwave installed but there will not be a stove; that the space is not being used for a second dwelling unit; that the existing house is large and has five bedrooms; that they will file a covenant stating that the space will never be used as a second dwelling unit; and that there was not a handicap ramp there when he started this project; that if there is one there now he will add it to the building permit and legalize it.

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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 lot width, side yard and §5.153 accessory structure distance variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The garage exists and the addition to the garage to convert part of it into a cabana will not intrude on other surrounding properties. The applicant has agreed to sign and file a covenant stating that the structure will never be used as a second dwelling unit. The applicant has agreed to apply for a building permit for the handicap entrance that has already been constructed in the front of the house. No certificate of occupancy will be issued until a covenant is filed and the handicap entrance is legalized.
2. The requested lot width, side yard and §5.153 accessory structure distance variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The garage exists and the addition to the garage to convert part of it into a cabana will not intrude on other surrounding properties. The applicant has agreed to sign and file a covenant stating that the structure will never be used as a second dwelling unit. The applicant has agreed to apply for a building permit for the handicap entrance that has already been constructed in the front of the house. No certificate of occupancy will be issued until a covenant is filed and the handicap entrance is legalized.
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 lot width, side yard and §5.153 accessory structure distance variances are not substantial, and 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 shall legalize the handicap entrance that was built without a building permit before a certificate of occupancy will be issued for the house/cabana addition to the garage.

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6. The applicant shall execute and submit a restrictive covenant with the Town of Orangetown acceptable in form and substance to the Town Attorney which shall be recorded in the County Clerk's Office, to the effect that the proposed pool house/cabana shall never be occupied as a second dwelling unit.
7. 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 lot width, side yard and Section 5.153 accessory structure distance variances are **APPROVED** with the following Specific Conditions: (1) The applicant shall legalize the handicap entrance, that was built without a building permit, before a certificate of occupancy will be issued for the pool house/cabana addition to the garage; (2) The applicant shall execute and submit a restrictive covenant with the Town of Orangetown, acceptable in form and substance to the Town Attorney, which shall be recorded in the County Clerk's Office to the effect that the proposed pool house/cabana shall never be occupied as a second dwelling unit; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

**General Conditions:**

- (i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.
- (ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.
- (iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.
- (iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

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**TOWN OF ORANGETOWN**

Hinchliffe  
ZBA#13-07  
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(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for the requested lot width, side yard and §5.153 accessory structure distance variances are APPROVED with the following SPECIFIC CONDITIONS: (1) The applicant shall legalize the handicap entrance that was built without a building permit before a certificate of occupancy will be issued for the pool house/cabana addition to the garage; (2) The applicant shall execute and submit a restrictive covenant with the Town of Orangetown, acceptable in form and substance to the Town Attorney, which shall be recorded in the County Clerk's Office to the effect that the proposed pool house/ cabana shall never be occupied as a second dwelling unit; was presented and moved by Mr. Sullivan, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Mr. Bosco, aye; Mr. Feroldi, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Ms. Albanese 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.

DATED: January 16, 2013

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

APPLICANT  
ZBA MEMBERS  
SUPERVISOR  
TOWN BOARD MEMBERS  
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DEPUTY TOWN ATTORNEY  
OBZPAE  
BUILDING INSPECTOR - B.v.W.

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MGMT. and ENGINEERING  
FILE/ZBA, PB  
CHAIRMAN, ZBA, PB, ACABOR

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TOWN OF ORANGETOWN

DECISION

**BUILDING HEIGHT VARIANCE APPROVED**

To: John and Mary Ferriello  
421 Orangeburg Road  
Pearl River, New York 10965

ZBA # 13-08  
Date: January 16, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-08: Application of John and Mary Ferriello for a variance from Chapter 43 (Zoning), Section 3.12, R -15 District, Group M, Column 12 (Building Height: 16' permitted, 24' 8 <sup>3</sup>/<sub>4</sub> " proposed) for additions and alterations to an existing single-family residence. The premises are located at 421 Orangeburg Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.18, Block 1, Lot 2; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 16, 2013 at which time the Board made the determination hereinafter set forth.

John Ferriello and Karl Ackerman, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans dated 10/7/2012 with the latest revision date of 12/27/2012 signed and sealed by Karl Ackermann, Architect.
2. Survey dated July 20, 1987 by Thomas A. Donovan, P.L.S..
3. Five computer generated pictures of the house and surrounding area.
4. Landscaping plan dated 10/7.2012 with the latest revision date of 12/27/2012 by Karl Ackermann, Architect.

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

On advice of Richard Pakola, 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 §17.5 (c) (9), (10), (12) and /or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Albanese and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Bosco, aye. Ms. Albanese was absent.

Karl Ackermann, Architect, testified that the site has a 16' side yard and because of that side yard the building height is restricted to 16' and the proposed addition is 24' 8 <sup>3</sup>/<sub>4</sub> " high' that the plans were submitted and a building permit was issued; that there was a complaint and new plans were submitted with the height measurements on them; that the corner of the house requires a height variance; that they are removing the existing garage and rebuilding it in a different location that meets zoning requirements; that the shed in rear of the lot will remain; that they are planning to install a six foot fence and a landscape buffer; and that the attic is unfinished storage space.

John Ferriello testified that he has a building permit and after the work was started he was told that he needed a variance for height; that it would be an economic hardship if he had to change the roof; and that they have continued working to close everything in while they were waiting for the meeting.

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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. Salomon 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. The building permit was issued in error and it would be an economic hardship to change the proposed roof line. The majority of the proposed addition is set far enough back from the side yard that it does not require a height variance and the applicant has submitted a landscaping plan that he will implement.
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. The building permit was issued in error and it would be an economic hardship to change the proposed roof line. The majority of the proposed addition is set far enough back from the side yard that it does not require a height variance and the applicant has submitted a landscaping plan that he will implement.
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 building height, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The applicant has submitted a landscape plan that shall be implemented.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

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DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested building height variance is APPROVED with the SPECIFIC CONDITION that the landscape plan by Karl Ackermann, Architect, dated 10/7/2012 revised 12/27/2012 shall be implemented and completed before the issuance of a certificate of occupancy; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

- (i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.
- (ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.
- (iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.
- (iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.
- (v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

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The foregoing resolution to approve the application for the requested building height variance with the SPECIFIC CONDITION that the landscape plan by Karl Ackermann, Architect, dated 10/7/2012 revised 12/27/2012 shall be implemented and completed before the issuance of a certificate of occupancy was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Mr. Bosco, aye; Mr. Feroldi, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Ms. Albanese 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.

DATED: January 16, 2013

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

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