

MINUTES
ZONING BOARD OF APPEALS
APRIL 20, 2016

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

ABSENT: NONE

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

DEFERRED ITEM:

YONDERHILL INTERPRETATION 1 Closter Road Palisades, NY 78.18 / 1 / 52; R-40 zone	DENIED	ZBA#16-05
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NEW ITEMS:

OLIVER 134 Prospect Place Pearl River, NY 68.20/ 2 / 41; RG zone	FLOOR AREA RATIO, SIDE YARD, TOTAL SIDE YARD, REAR YARD AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#16-24
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BOWMAN BUILDERS 174 So.Middletown Road Pearl River, N.Y. 73.05 / 1 / 1; R-15 zone	FLOOR AREA RATIO, LOT AREA, LOT WIDTH, FRONT YARD, SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#16-25
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THE CLUB AT PEARL RIVER 6 TEMPORARY SIGNS 662 West Blue Hill Road Pearl River, NY 73.10 / 1 / 4; OP & PAC zone	§ 3.11, LO DISTRICT, COLUMN 5, PARA.11, AND § 4.26 (a) & (c), § 4.28 (f) APPROVED	ZBA#16-26
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THE CLUB AT PEARL RIVER DIRECTIONAL SIGNS 662 West Blue Hill Road Pearl River, NY 73.10 / 1 / 4; OP & PAC zone	DIRECTIONAL SIGNS APPROVED	ZBA#16-27
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THE CLUB AT PEARL RIVER
MOUMENT SIGN
662 West Blue Hill Road
Pearl River, NY
73.10 / 1 / 4; OP & PAC zone

SIGN SIZE AND
ILLUMINATION APPROVED

ZBA#16-28

OTHER BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the Acting Chairperson executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for the State Environmental Quality Review Act (SEQRA) coordinated environmental review of actions pursuant to SEQRA Regulations § 617.6 (b)(3) the following applications: Advances Distribution Systems Inc. Site Plan reclassification of two existing storage sheds from temporary to permanent, 614 Route 303, Blauvelt, NY; 70.06 / 1 / 2; LIO zone; J & M North Corp. Site Plan, 327 North Middletown Road, Pearl River, NY; 68.08 / 1 / 4; CO zone; Highland Mews Internal Commercial Subdivision Plan, 65 Main Street, Sparkill, NY; 77.08/ 5/ 49.3; CS zone; Lee Garage /Studio Addition Site Plan, 910 Route 9W, Upper Grandview, NY; 71.17 / 1 / 24; R-22 zone; New York City Football Club Site Plan, 200 Old Orangeburg Road (Convent Road, Pearl River, NY; 73.12/ 1 / 3.2; RPC-R 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 10:30 P.M.

Dated: April 20, 2016

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 

Deborah Arbolino, Administrative Aide

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

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DECISION

INTERPRETATION APPLICATION DENIED

To: Ernest Quick (Yonderhill)
3 Closter Road
Palisades, New York 10964

ZBA #16-05
Date: January 20, 2016
February 3, 2016
April 6, 2016

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#16-05: Application of Yonderhill for an interpretation as to whether the proposed business use on the property is a lawful nonconforming use and as to whether the new proposed use on the property can be considered a continuation of such use. (This will be a second separate use: application requires a commercial subdivision approval from the Planning Board). The premises are located at 1 Closter Road, Palisades, New York and are identified on the Orangetown Tax Map as Section 78.18, Block 1, Lot 52; in the R-40 zoning district.

The applicant did not properly post for the January 20, 2016 meeting and the hearing was postponed until February 3, 2016.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meetings held on the following Wednesdays, February 3, 2016 and April 6, 2016 at which time the Board made the determination hereinafter set forth.

Steven Lonsdale, Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Copy of site plan with partial west plan & elevation by Richard Bloch, Architect, not signed or sealed. (1 page).
2. Architectural plans labeled "First Floor Construction Plan" not dated, signed and sealed by Richard Bloch, Registered Architect (1 page).
3. Zoning Board of Appeals Decision #04-55 and #04-117.
4. 16 letters in support of application.
5. Cover letter dated January 18, 2016 from Burton Dorfman, P.C. (3pages) with exhibit A: Certificate of Occupancy issued to Lessee: Jodie Tassello and Bianca Beldini; Exhibit B: Nine 3" x 5" color photographs of the staircases and parking lot and one 8" x 10" computer generated picture of the parking area.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that since the foregoing application requests your interpretation of an existing code, rule or regulation, this application is exempt from the State Environmental Quality Review Act (SEQRA) pursuant to SEQRA Regulations §617.5 (c) (31); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Feroldi, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were absent on February 3, 2016.

Donald Brenner testified that the Zoning board granted a commercial use for the Yonderhill building in ZBA# 04-117; that the building was a Church until 1930* that since then it has been retail office space, auction house with independent appraisers; that the owners want to rent the lower portion of the building to Sotheby's; that they are allowed to have more than one tenant but they need a commercial subdivision now; that the Building Department started requiring commercial subdivisions in 2012; that a subdivision was not required in 2004; that this Board allowed a commercial use for the building and they are before the Board for recertification of the 2004 ZBA Decision#04-117; that the testimony in that decision shows that the building always had multiple uses; that this is a continuance of the pre-existing non-conforming use; that the new tenant

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would be continuing the non-conforming use not increasing it; that the building always has multiple uses connected to the antique business such as auction, appraiser and carpenter; that separate businesses ran out of the building and the building always had multiple uses; that in 04 they had one tenant with multiple uses and since then the owner rented to a medical use and now wants to rent the lower part for real estate use; that the internal operation of the building will be determined by the Building Department and the Fire Inspector; that the existing tenant will not be deprived of entrance to the building; that the 2004 variance showed multiple uses and this proposed use is less impact than the prior tenant; that one person went away and they can rent the building to two people with the uses that Weleda had; and how did the building department determine that the medical use upstairs was ok; and asked for a continuance to see if a deal could be reached.

Steven Lonsdale testified that Sotheby's will have one full time employee and four or five agents and possibly two more people per hour; that Weleda Pharmacy had shipping, retail sales, office space and at least 14 employees; that they were rigid with parking; that they worked 9-5 and had no problems with parking. Steven Lonsdale showed a picture on his phone of a dump truck and county truck parked across the street, where Joan Salomon stated the triangle was to stay forever wild. Steven Lonsdale testified that they have always rented the red barn carriage house; that Jodie Tassello lied when she said they offered to rent the whole the building; and testified that there was an agreement with the upstairs tenant that they would use the front staircase and not the staircase within the building that they presently use.

Public Comment:

Burt Dorfman, Attorney, representing Sundala, the tenants; testified that his clients practice acupuncture and therapy and have some very ill patients, some with cancer; that they are not against Sotheby's, however they do need to protect the business that they have spent the last few years establishing; that they would love to see the outside of the building preserved; that he would like the Board to understand that the interior of the building is designed for one use; that you walk through the building to the stairs to get up to Sundala treatment rooms; that the 2004 decision granted a continuance of a pre-existing non-conforming use for one tenant; that Mr. Quick testified "that he has tried very hard to find the appropriate tenant for the building, that it had to be a business that was large enough for the building but small enough for the parking lot"; that the parking plan referred to the Zoning Board was never implemented; that Sotheby's has 15 brokers listed for Prominent Properties; that they will have a secretary, a manager, clients and possible 15 brokers and there is not enough parking; that the parking needs to be planned; that elderly patients need to continue to use the main stairs that is located on the first floor in the main area; that he would like to know if there is a certificate of occupancy for the red barn; that it is currently listed for rent; that the pre-existing non-conforming use that was allowed to continue in the Zoning Board Decision #04-117 was for one use; and he is concerned about access to the upstairs treatment rooms because his clients have already been denied access through the first floor a few times; and he objects to the request for a continuance.

Mark Willis, 72 Franklin Street, Manhattan, testified that he has known Ernie, Richard and Steven for many years; that he has rented space in the building for many years; that he is in the country for six months at a time; that Weleda took over the entire building but there were three offices in that space and this is easily a multifaceted building; that Ernie had his office in the building and he stored things in the building and still does; and his business is coming up with and developing ideas for other companies; and he didn't have a certificate of occupancy.

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Victor Polce, 16 Winding Creek Way, Old Tappan, New Jersey, testified that he was the Mayor of Old Tappan; that he compliments the Board for their hard work and dedication; that he will not be managing the office in Palisades; that there will be an Administrative Assistant in the building and a maximum of four agents at a time; that the business upstairs operates three or four days per week; that Sotheby's operates seven days a week; that the Yonder Hill building is Iconic and Sotheby's will help to keep it that way; that the three individuals that own Yonder Hill cannot afford the mortgage without this lease; that the people upstairs think they have control over the whole building that they are depriving a livelihood from the owners of the building; that it is a travesty and the Iconic building deserves an Iconic company in it.

Jodie Tassello, 2 Aldane Lane, Nyack testified that she has been leasing in the building for over two years; that she loves being in the building; that they have been ramping up their business in Palisades and they pay \$5,400.00 a month in rent and 80% of the utilities; that in January of 2015 they offered an additional \$4,200.00 a month in rent to take over the first floor and they were told that it wasn't enough; that at the time they had Red Cord European Therapy that wanted to have Sundala as their north east representation; that they are open four days a week presently because they still have part of their practice in Manhattan; that they started off upstairs and were told by the landlord that they could add local wellness practitioners and take over the whole building; that they did have a local physical therapist working in the space for a short time and one of his patients told him that she was a Board member and that it was illegal for him to sublet; that after hearing this, she went to the Building Department and was told that she could have wellness practitioners work in the building if, and only if, they worked under the umbrella of "Sundala" as its employee; that independent wellness practitioners are not interested in operating that way; that it over a year to get Red Cord and then they were told that almost \$10,000.00 a month was not enough rent.

Lynn Sandhouse, 201 Route 9W, Palisades, testified that she and her husband have been friends with Ernie and Richard for years; that they are close friends and elegant involved neighbors; that Yonder Hill Antiques existed for many years before Weleda; that there were many antique dealers operating in the building; that Weleda had facials, massages, pharmaceutical, administrative and retail uses; that they had twelve employees and the parking lot easily holds between 12 and 14 cars; that she has never noticed the parking lot full; that the owners care about the building that they have the right to earn a living; that this building should be sustained and provide an income and she cannot think of a better tenants than Victor and Jean.

Albert Alexander, 81 Noise Street, Pearl River, NY testified that if this is a legal issue, all these public comments don't mean anything; that they do not change the legal issue.

Natalie Schutter, 73 Buckingham Court, Pomona, testified that she is a patient at Sundala and she works in the area; that the only safe way to enter Sundala is through the building downstairs; that she would not be able to continue treatments that she needs if she was not allowed access through the main stairs; that the interior building is not set up for two separate companies; that the windows run from the first floor through the second floor; that the health center is good for the area and the building would need soundproofing and she does not see how it could be safely divided and the Board should see the interior of the building.

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Seta Tunnell, 657 Oak Tree Road, Palisades, testified that she has live on Oak Tree for 16 years and recently joined Prominent Properties, Sotheby's and she passes the Yonder Hill building all the time and hardly ever sees cars there; that she does not work in the office; that she works on her laptop; that there will not be more than a few agents in the office at a time; that Sotheby's is a great addition to the neighborhood; that she does not see any bad impacts; and that the health care business use to be located over a real estate business with a narrow staircase for entry.

Lisa Comito, 7 Yadanza Court, Palisades, testified that she recently joined Sotheby's Prominent Properties; that she uses her home and her laptop for business and she never sees more than four cars in the lot; and wants to know why the parking lot would be good enough for them to expand their business but not big enough for Sotheby's.

Gabor Reichter, 13 Closter Road, testified that she is a neighbor four houses away; that 5-6 years ago antiques were sold out of the building; that there were always separate concessions for the antique dealers; that there have been multiple owners in the building for all long as she can remember; that when Weleda was coming to the building the corporate members had a meeting with the neighborhood and they answered concerns about parking and with 12 employees at Weleda they managed the parking without problems; that they managed to fit in tons of parking.

Larry Bucciarelli, 700 Oak Tree Road, Palisades, testified that he needs to rebut the last statement; that he went to the meeting and there were problems with parking when Weleda leased the space; that there has been gravel added to the triangle area that it is supposed to be forever wild and not used for parking; and parking for Weleda did at times go past the Reichter house and there were verbal confrontations regarding parking; that the triangle should not be used for parking and parking is an issue.

Louis Tharp, 515 North Midland Avenue, Nyack, NY; testified that he and his husband Jim have been friends with Ernie, Richard and Steven for years; that they are active in the community; that they helped to rebuild the church and library; that Ernie writes for the Hook Magazine; that they are very concerned with preservation and that is why they took over the Yonder hill building; that their first thought I always about preservation of property and community and antiques; that he lived in Sneden's Landing for years and they are great custodians of Yonder Hill; that they have thought about parking, foot traffic and commercial advantage and preserving the building.

Ernest Quick, 3 Closter Road, owner of Yonder Hill, testified that he has had Parkinson's Disease for 30 years; that Yonder Hill is not easy to rent; that he turned down a Korean Church, Spin Class and a restaurant; that a Hair Design wanted to move into the space and Jodie said it would not be compatible because some of the dyes are toxic; that he cares and he lives next door; that he needs to rent two floors; that this is a hardship; that he wants to keep the building and rejoice in it every day; that it takes money to heat it up; that Sotheby's is a perfect prestigious company that suits the building and he thought they could add an office like Weleda and they really care.

Jean Shields, 136 Winding Creek Way, Old Tappan, testified that Sotheby's will have low impact in the area; that only eight of their agents are planning on working in Palisades; that the rest of the agents are staying in Alpine, although they are licensed for both New Jersey and New York; that there will be one adman in front and no manager; the manger from Alpine will monitor both offices.

At this time the Board went into a private session with the Deputy Town Attorney and when they returned Mr. Brenner asked for a continuance to see if Sotheby's and Sundala could come to an agreement, and he stated that they would order the transcript to bring zoning board members that were absent up to date with the progress of the application.

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April 6, 2016

New Items submitted for review:

1. Transcript from the hearing of February 3, 2016.
2. A submission from Burt Dorfman dated March 28, 2016 (representing tenants Bianca Beldini and Jodie Tassello) with a copy of a letter from Nicholas Cichanowski, Dominick R. Pilla Associates inspection labeled "Building Code Issues".
3. A memorandum dated March 1, 2016 on Mr. Brenner's letterhead to Mr. Quick regarding a meeting at Mr. Dorfman's office in Piermont with the existing tenants. (1 page)
4. A letter dated April 6, 2016 from Robert Knoebel, Jr. Attorney, representing Eugene Kohn in opposition to the application with six (6) real estate listings for renting the property.
5. A petition with 101 unverified signatures against the approval of a non-conforming use especially to a franchise business at Yonderhill building located at 1 Closter Road, Palisades. (9 pages)
6. A business print out for Sotheby's International Realty Franchise.
7. A letter from Joan Lehman and Jerome Lieberman not signed. (1 page)
8. Two pages of comments read to the Board by Nancy Bucciarelli, 700 Oak Tree Road, Palisades.
9. Three pages of comments read to the Board by Susan Nemesday, 19 Lawrence Lane, Palisades.
10. Five color photographs submitted by Burt Dorfman, Attorney, representing Bianca Beldini and Jodie Tassello.
11. Two business cards submitted by Donald Brenner for Steven A. Lonsdale, Yonderhill Associates and Ernest S. Quick, Phoenix at Yonderhill.
12. A cover letter dated July 4, 2004 from Donald Brenner with 12 affidavits and 23 statements attached that had been submitted for the September 13, 2004 Zoning Board of Appeals meeting.

Dennis Michaels, Deputy Town Attorney, asked Tom Quinn, Zoning Board member, if he read the 85 page transcript from the February 3, 2016 Zoning Board meeting and if he went over everything that was submitted for the record. Tom Quinn answered in the affirmative and stated that he was fully apprised and could participate in the continuation of the hearing.

At the April 6, 2016 hearing Donald Brenner, Attorney and Steven Lonsdale appeared and testified.

Donald Brenner, Attorney, testified that they had previously asked for a continuance in an attempt to work out an arrangement with the tenant renting the upper floor; that they made several proposals including the construction of an elevator in the entrance area of the building to resolve the access problem; constructing a walkway from the entrance area through a side room on the western side of the building and constructing a glass wall permitting natural light into the lower area from the side entrance to the existing stairway and sound proof the ceiling or have the existing tenant move to the first floor, thereby reducing the stress on their patients and sound proof the ceiling or terminating the existing lease with a buyout agreement; that all of these were turned down and their Attorney inferred that they, and only they, had the right to use the entire building for their commercial venture; that he would like to put into the record that in 2004 there were 25 applicants supporting the commercial use of the building and statements that it was used as a commercial building since 1935; that prior to issuance of the certificate of occupancy there were multiple users and there were two C of O's issued for the building one on August 1, 2000 and one on October 31, 2000; that they continue with a lawful prior use because the owners never intended to abandon the multiple users; that they never

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abandoned this right; that they had a realty office in the building and other purposes; that they sold antiques in the carriage house and other functions that were never intended to be abandoned this right; that they went to the building department and were never told only one user; that they always had the intent for multiple users; that they are trying to work this out with people; that renting the space to the realty company is a lesser use than Weleda; that legally they are entitled to multiple uses; that they were sent here improperly; that they always had multiple uses accepted by the neighborhood; that the old historic building had been verified as a commercial building; that it can be used by multiple tenants and they always had a realty office in the building; and some packaging; that this building was established as a multiple use; that this properly fits into the neighborhood and it is a handicap to the owners not to rent it to Sotheby's; and he gave the Board two business cards, one from Ernest Quick, Phoenix Antiques at Yonderhill and one from Steven Lonsdale, Yonderhill Associates; that the Board agreed in its decision that this building has a commercial use building and not to one person because the history shows it was a multiple use building; that the testimony from the audience is misleading information; that Knoebel's listings prove that they were trying to rent the space; that they turned down a cleaners and a restaurant because it would not fit into the community; that Mrs. Bucciarelli is wrong saying that this is a zone change, it is not a zone change; that the use is a pre-existing non-conforming use and not a franchise this is a beautiful building and it needs to be rented to make sure the owners can take of it; that the franchise concept belongs to all realtors, like Joyce and Sotheby's and the franchise issue is just a scare tactic; that it is a mis service; that the owners have done things properly, they got permission from the Historic Board before they painted the building; that they will go the Planning board for subdivision and the Historic Board for any exterior changes; that all these boards are for checks and balances; that Ms. Dowling is right when she says there will be less traffic and the building will be improved; that Mr. Little is wrong when he says money doesn't mean anything' that it is the board's decision to consider the money situation; that Mr. Dorfman stating that they pay 80% of the real estate taxes but didn't tell the full offer ; that no offer was put on the table; that the pictures are unbelievable; that his clients offered to soundproof; that the appearance would not change in any way that the building department would determine code and safety but they cannot get there unless you permit us to get there; that the building department, Planning Board, Historic Board do all the checks and balances; that this is not a zone change; that his client pays 20% of the electric and he put the extension cord there for a water pipe; that this is conforming to the neighborhood; that the community has all the checks and balances; and that his client needs to rent the building; and that his client told him that Mr. Cornell has multiple leases for the building if the Board wants them.

Steven Lonsdale testified that he has done a lot of work to the building and it needs more work; that he was friends with the previous owner; that he wanted them to have the building because they would take care of it; that they have tried to make it better, that Sotheby's and Jodie and Bianca could fit into the community; that he is very compassionate about the building and does not want to see it deteriorate and the pipes were going to burst.

Public Comment:

Robert Knoebel, Attorney, testified that he is representing Eugene Kohn, a Palisades residence, who cannot appear and asked him to provide the Board with some information concerning the application; that Mr. Kohn is concerned about commercial use of the first floor of the property; that he has reviewed the prior decision as well as recent information about the property and concluded that any non-conforming use of the first floor of the building has been discontinued; that after reviewing the facts, they are requesting the Board to deny the requested interpretation; that is the applicant wished to establish a commercial use of the first floor , it should require a use variance or a zone change; that according to the public notice, the application seeks an interpretation as to whether the

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proposed business use on the property is a lawful nonconforming use and as to whether the new proposed use on the property can be considered a continuation of such use; that in the notice the Building Inspector has determined that in any event this is a second, separate use on the property and that the application also requires commercial subdivision approval from the Planning board; that a review of the file indicates that the Building Department has recognized that only the second floor of the building is occupied and that is the only active use associated with the property; that Article IX of the Zoning Ordinance addresses nonconforming uses; that Section 9.33 specifically addresses discontinuation of a nonconforming use as "Cessation of use. If active operations are not carried on with respect to nonconforming use during a continuous period of one year, the building or land where such non-conforming use previously existed shall thereafter be occupied and use only for conforming use. Intent to resume active operations shall not affect the foregoing." And further testified that the clear purpose of this section is to gradually phase out uses that are not permitted in certain zoning districts, such as residential zones' that the zoning ordinance also provides that the nonconforming use cannot be changes to another use unless such use is specifically permitted in the zoning district; that the subject property is located in an R-40 zoning district which does not permit commercial office and retail uses; that he would like to provide the Board with documentary evidence that after Weleda vacated the space in April 2012, it was listed for rent and remained vacant through the present; and submitted six separate multiple listings demonstrating that the first floor was vacant as of April 2012 and has remained listed and continuously vacant through the present; that his client is also concerned by the overutilization of the site and the lack of adequate parking facilities; that even if this property were located in a commercial district, if it fails to meet most of the analogous requirements for commercial uses; that a proposed real estate office would need to comply with the requirements of one required parking space per 200 square feet; that this building is approximately 7,000 sq. ft. and would require 35 parking spaces; that the parking shown for the site is woefully inadequate and will encourage people to pull off the road on to private property or back out on to Closter Road, creating hazardous condition and effecting the local residents; and that he appreciates the consideration of the this information by the Board.

Nancy Bucciarelli, 700 Oak Tree Road, started her testimony by stating that this application is not about the character of Ernie, Richard or Stephen; that it has nothing to do with that; that these gentlemen are an asset to Palisades and we all applaud their efforts in keeping the Yonderhill building an attractive and prominent historical treasure in the community; that she and her husband Larry have been their neighbors quite happily for over thirty years and hope that continues to be the case; that this application is all about a zoning change that will remain in the Town of Orangetown as a precedent forever, a precedent that can be used dis favorably to alter the nature of and the neighborhoods we call home; that it would allow multiple businesses and franchises to conduct themselves in a residential zoning district; that the case against the issuance of dual use variance for Yonderhill must be looked at from a construction perspective; the construction of the building dates to the mid 1800's; that a dual commercial use would require the applicant to bring the structure up to current construction codes as warranted by the Town of Orangetown Building Codes; that there would be required a minimum of a one and one-half hour fire separation between floors; that this would require that the stairwell and doors on top and bottom be fire rated, as they are the only means of egress provided to the upstairs tenant; that a sprinkler system may or may not be required as per the judgment of John Giardiello, head of the Building Department; that Yonderhill is listed on the National Registry of Historic Buildings, This designation places the stewardship of the historic nature of the building in the hands of the local governing bodies; that decisions made by the local governing bodies should take this National designation into account; that it is also important to know that this building lies within the Historic District of Palisades; that when the building was constructed many years ago a significant gap in the floor structure between the first and second floors occurs at the intersection of the large windows that run nearly the entire vertical height of the sides of

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the building; that here are six large windows in the main area of the building and an additional two in the end portion for a total of eight; and that this is a most prominent architectural detail; that to make this building fire code compliant this gap, the large windows would have to be removed and replaced with a widow that would provide a separation between the floors to permit the fire stopping at this junction; that from a historical point, the removal of these windows would be considered undesirable; that she does not believe that Ernie and Richard and Stephen would want to alter the character and appearance of the building in this fashion; that it is also debatable whether the historic board would even approve such a visible change to the building; that the costs involved to bring this building into fire code compliance on ceilings, stairs, doors with closures and most importantly windows are substantial; that a significant reason to grant a variance application concerns itself with hardship and to retro fit the building for a dual use commercial space, these costs cannot be ignored; and that she does not know whether Ernie, Richard and Stephen have considered these costs or if they are eve aware of the need for all these changes to the building as we know it but it is a very real consideration that cannot be ignored.

Susan Nemesdy, 19 Lawrence Lane, testified that she would like to start by saying that the last thing anybody want is hurt Ernie or cause him distress in any way, that the is a respected and beloved member of the community; that however this issue is about zoning changes that effect all of Palisades, our community and its character and once changed, there's no going back; that the first proposal for the dual usage variance on the 6,000 sq. ft. historic building brings up the constant problem of parking; that this building sits on a small quarter acre lot; that it should have 30 parking spaces for this us and only has 2 fifteen spaces; that two different businesses cannot limit themselves to 7 or 8 cars each; that parking on Closter Road, 9W and the public triangle is not an option and has for many years caused problems; that according to the December issue of 10964 "may agents will be taken from the Alpine and Hillsdale offices"; that this historic building would also have to meet the current codes; that Sotheby's is a franchise; that palisades has three commercial properties within its residential zoning; that allowing a franchise to occupy any of these three commercial properties opens the door to all franchises- Starbucks, Dunkin Donuts or even a seven Eleven; that if this variance is approved the precedence will be set and just as Sotheby's is looking for the smallest detail in a previously granted C of O to justify its move, so will Dunkin Donuts; that a franchise of any kind would destroy the character of this community as they do everywhere- look what happened to Nyack when Starbucks moved in; that a few days ago a petition was started and there are over 100 signatures asking the ZBA to deny both the dual usage and nonconforming variance requests and especially the franchise request for fear of the precedence they will set for Palisades; that she would also like to address the aggressive manner in which Sotheby's Prominent Properties has been forcing their way onto Palisades as not only offensive but unwelcome; that Prominent Properties has been publicly advertising for over 4 months their "new office" in Palisades, desperately waiting to expand their network to a luxury marketplace with water; that she thinks that about 95% of Palisades would agree that a "Luxury marketplace with water" is not what we want for our hamlet; that this company's claims of honesty, integrity and knowledge of real estate very questionable when they sign a lease back in October on an occupied building zoned for single commercial use; that Prominent Properties either does not know zoning laws or does not care; that they are not even in Palisades yet and this is the arrogance and disrespect they show towards the community they want to do business in; that Palisades and Tappan have historic districts and she would be wary of what Prominent Properties would tell clients they bring to Orangetown; that their lack of knowledge about our zoning and historic codes are frightening; that they are asking to Board to make a decision tonight and not allow another continuation, there is no hardship on the owner that his historic building would lose its character if subdivided and a franchise would be devastating to the future of Palisades; and she would like to submit papers showing that

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Sotheby's is a franchise and to submit the petition that reads " With regard to the Yonderhill building located at 1 Closter Road in Palisades, NY, we the undersigned are against the approval of the requested variance, to allow for two completely different businesses to operate in this building that is zoned single use and ask that the Zoning Board of Appeals deny this request. Among the many problems what dividing the building will create, one important issue is that it will set a precedent for the other businesses in the hamlet of Palisades to divide, which we know has had a significant and detrimental effect on the quality of life and value of real estate in other towns including the Town of Ramapo. We are also asking that the Zoning Board of Appeals uphold the established zoning code, which clearly states what businesses are permitted in Palisades. These regulations of the use of the building were set to protect our community. We are against the approval of a non-conforming use especially to a franchise business which will also set a precedent for other businesses in Palisades. It would significantly change the character of our community. We ask that the Zoning Board of Appeals make a swift decision and not accept a continuation because it would prolong the agony and divisiveness that the community is experiencing." And this petition has 101 unverified signatures.

Allan Townsley, 7 Closter Road, Palisades, testified that he lives 50 yards away from the building; that he has lived there for 23 years; that the building has had multiple uses forever; that he has no issue with cars in the driveway and Weleda left for larger premises; that the owners require full usage of the building or it will fall into disrepair and this is an opportunity for the owner of the building.

Fred Little, 71 Woods Road, Palisades, testified that he would like to get back to Mr. Brenner's words that this building had a pre-existing nonconforming use that was continuously in effect except when it wasn't; that they always had the intention to continue the pre-existing nonconforming use; that this is a capitalistic society and sometimes your investments pay off and sometimes they do not; that an additional use in the building is not a benefit to the neighborhood and the attitude is toxic and cavalier and he would urge the Board to deny the expansion.

Burt Dorfman, Attorney for Jodie Tassello and Bianca Beldini, testified that he had submitted a letter from an engineer at Dominic Pilla's office showing that the building would be almost impossible to retrofit for multiple uses; that the 23 letters from the last hearing are not relevant; that in September 2004 the Board granted a single use for the building based on the testimony from Ernest Quick which was " that he has tried very hard to find the appropriate tenant for the building; that it had to be a business that large enough for the building but small enough for the parking lot" and Weleda was approved; that the owners have not provided any leases proving multiple tenants; that a card is not intention of use; that they met with Mr. Brenner and Keith Cornell and they have an engineer report stating what would need to be done to have two businesses in the building; that as an alternative Prominent Properties could get out of the lease and his clients offered to pay all the taxes for the building and to rent the entire building; that his clients are not looking to hurt the landlords but they have a current lease; that the recent Palisades 10964 paper published a newsletter that he read into the record that Prominent Properties will keep the building as original but that won't be possible; and he submitted pictures showing that the landlord is running extension cords for electricity to the barn, that his clients pay 80% of the utilities for the building and that the windows do not touch the existing second story floor boards; and that his clients are in court trying to hold onto their lease.

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Joan Lehman, 43 Woods Road, testified that the proposed zoning changes to the property at 1 Closter Road are not welcome by many residents in this community and might realistically open up inappropriate commercial zoning precedents which might impact negatively on this entire neighborhood in years to come; that this area where Route 9W, Oak tree Road and Closter meet now is surprisingly still rural, which is one reason why it is so special; that it remains almost commercial free, despite the "Filling Station" and "Market" restaurant further up on Route 9W, which are relatively discrete; that there are important and intelligent reasons why our zoning are in effect as they are now, and a large part of that has to do with protecting quality of life for residents, and retaining unusual characteristics of neighborhoods; that one question is would this proposed zoning change benefit; that certainly not the residents living here now; that it might very well open a gate to future zoning changes which would create a miserable repetition of everything we see in so many other areas of the county, which have created a boring and predictable series of real estate signs, Starbucks and 7-11's. that the residents do not want that; that another issue comes to mind such as parking and traffic; that those who live here already know that finding a parking spot at the post office and library can be problematic and opening the door to this type of zoning change could have a most negative impact on the hamlet of Palisades.

Carol Baxter, 34 Lawrence Lane, Palisades, testified that this is very emotional for the entire community; that they love Ernie and are against the dividing of the building; that this has pitted neighbor against neighbor; that they have yearly meetings and invite state, county and local representatives to these meetings and the last one talked about zoning issues and how community response can make sure the community is protected against negative changes; that the community needs to watch zoning carefully and not allow things to be subdivided to change neighborhoods and divide neighborhoods.

Lisa Comito, 7 Gadanza Court, Palisades, testified that she is a local resident and a realtor for Prominent Properties, that Charlie Opler has integrity and he shows New Jersey Association of Realtors also; that there will not be an increase in traffic; that there are usually not more than two agents in the office at a time; that the franchise concern is ridiculous; that they are not Starbucks; that she is also an attorney and there are no other commercial properties in Palisades and the Board should read the letters of support from July 14, 2004.

Fred Little, 71 Woods Road, Palisades, testified that he has an issue with statements made by Mr. Brenner; concerning what he said about money; that the language in the Board decision 2004 stated that a single use would take place by Weleda; that the Board has an affirmative obligation to make that clear; that multiple uses did not continue; that the residents have seen increasingly aggressive realtors pressuring to sell properties; that the community needs stability, not aggressive flipping of properties and the Board should read the testimony from ZBA#04-117.

The Board members made personal inspections of the premises the week before each of the meetings 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.

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FINDINGS OF FACT AND CONCLUSIONS:

After personal site inspections of the premises by members of the ZBA;

after hearing and considering all the testimony from the Applicant, the Applicant's representatives, from the public and representatives of the public, as summarized above; and

after reviewing and considering all the documentation, reports, materials, communications and correspondence submitted to the ZBA, as inventoried above;

the ZBA considered the Applicant's interpretation request for the ZBA to reverse the determination of John Giardiello, P.E., Director of the Orangetown Office of Building, Zoning and Planning Administration and enforcement ("OBZPAE"), who determined that the Applicant's proposal, to occupy the Premises with two, separate, commercial establishments operated by different businesses, was not a lawful continuation of the pre-existing non-conforming use and requires internal subdivision approval by the Orangetown Planning board, and the ZBA found and concluded that:

1. ZBA Decision #04-117, dated 09/13/2004, approved, by way of the ZBA's interpretation, the use of the building at the Premises for a commercial retail/office operator to be an extension of the pre-existing non-conforming commercial use of the Premises.
2. ZBA Decision #04-117, dated 09/13/2004, resulted in OBZPAE's issuance of Certificate of Occupancy ("CO") #35113, dated 11/07/2005, which CO#35113 made explicit reference to ZBA Decision #04-117, dated 09/03/2004, and which Decision #04-117 and CO#35113 established the legal use and occupancy of the Premises at that time, and abrogated all prior pre-existing non-conforming uses, whatever they may have been.
3. The current use per CO # 35113 and Decision#04-117 is for retail/commercial operations related to a spa.
4. The Town of Orangetown Local Law that prescribes Subdivision approval by the Planning Board for "internal subdivisions," such as the circumstances proposed by the Applicant's request to use and occupancy the Premises with two, separate businesses operated by different tenants, was enacted long before 2004, and certainly prior to the subject Application. *See, e.g.*, Orangetown Code § 21-8 definition of "Subdivision:" "The division of any parcel of land into two or more... sites or other division of land .. for the purpose of... building development, and shall include resubdivision and the division of a commercial structure or parcel into two or more units or areas for ...rental purposes." Consequently, and furthermore, even if the Applicant's evidentiary documents and testimony demonstrated that two or more businesses were operating at the same time, prior and during this Application, any such pre-existing non-conforming use is abrogated by the new, previously absent, never before obtained land use of an internal Subdivision.

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DECISION: On the basis of the foregoing Findings of Fact and Conclusions, and the testimony and documents presented, ZBA Chairman, Daniel Sullivan, hereby moves that the interpretation Application be **DENIED**, which Motion was seconded by Joan Solomon, and carried as follows: Leonard Feroldi, aye; Patricia Castelli, aye; Tom Quinn, nay, Mike Bosco, aye (vote does not count due to absence from April 6, 2016 Public Hearing), Joan Salomon, aye; and Daniel Sullivan, aye; 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 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: April 20, 2016

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

TOWN OF ORANGETOWN
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TOWN CLERKS OFFICE

DECISION

**FLOOR AREA RATIO, SIDE YARD, TOTAL SIDE YARD, REAR YARD AND
BUILDING HEIGHT VARIANCES APPROVED**

To: Rick and Elizabeth Oliver
134 Prospect Place
Pearl River, New York 10965

ZBA #16-24
Date: April 20, 2016

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 16-24: Application of Rick and Elizabeth Oliver for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, RG District, Group Q, Column 4 (Floor Area Ratio: .30 permitted, .31 proposed), 9 (Side Yard: 10' required, 1.8' existing & proposed) 10 (Total Side Yard: 30' required, 23.1' proposed), 11 (Rear Yard: 25' required, 3' existing, 9" proposed) and 12 (Building Height: 1' permitted, 14' proposed) for an addition to an existing garage that will make it an attached garage at an existing single-family residence. The premises are located at 134 Prospect Place, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.20, Block 2, Lot 41; RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, April 20, 2016 at which time the Board made the determination hereinafter set forth.

Rick Oliver appeared and testified.

The following documents were presented:

1. Survey dated June 16, 1996 by William Youngblood Associates.
2. Survey dated June 16, 1996 by William Youngblood Associates with the proposed improvements drawn on it.
3. Two computer generated pictures of the proposed addition/connection.
4. Drawings of the proposed inside of the cabana and entryway.
5. Drawing of the existing lower yard.
6. Drawing of the right elevation and front elevation.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye.

Rick Oliver testified that he got variances from the Board to build the cabana onto the existing garage but circumstances have changed since that time; that he is changing his proposal to make the cabana attached to the house by a walkway and lowering the roof from the last plan because he needs to have his mom come and stay with them; that he and his wife have been in the house for about twenty years; that the grade of the garage is at least 3 ½ feet lower than the house; that he would like to install a wet bar and refrigerator, but no cooking facilities; that he would also like to have an open living area and a private bathroom and he would like to add a window over the sink in the bathroom for air and light.

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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 floor area ratio, side yard, total side yard, rear yard and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposal to connect the existing garage/ proposed cabana to the existing house is tastefully designed and, because of the existing grade of the property, will not be noticeable from the street. There are no significant changes in requested variances from the last submission, and allowing the connection to the main house provides a space for the applicant's mother to stay.
2. The requested floor area ratio, side yard, total side yard, rear yard and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposal to connect the existing garage/ proposed cabana to the existing house is tastefully designed and, because of the existing grade of the property, will not be noticeable from the street. There are no significant changes in requested variances from the last submission, and allowing the connection to the main house provides a space for the applicant's mother to stay.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested floor area ratio, side yard, total side yard, rear yard and building height variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The proposal to connect the existing garage/ proposed cabana to the existing house is tastefully designed and, because of the existing grade of the property, will not be noticeable from the street. There are no significant changes in requested variances from the last submission, and allowing the connection to the main house provides a space for the applicant's mother to stay.
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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TOWN CLERK'S OFFICE

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

General Conditions:

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

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

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

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

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

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

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

DATED: April 20, 2016

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

TOWN CLERKS OFFICE
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TOWN OF ORANGETOWN

DECISION

FLOOR AREA RATIO, LOT AREA, LOT WIDTH, FRONT YARD, SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED

To: Jane Slavin (Bowman Builders)
200 Erie Street
Blauvelt, New York 10913

ZBA #16-25
Date: April 20, 2016

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#16-25: Application of Bowman Builders for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 3.12, Columns 4 (Floor Area Ratio: .20 permitted, .217 proposed), 5 (Lot Area: 15,000 sq. ft. required, 11,284 sq. ft. existing non-conforming and 10,871 sq. ft. proposed), 6 (Lot Width: 100' required, 58.68' existing non-conforming), 8 (Front Yard: 30' required, 17.2' proposed), 9 (Side Yard: 20' required, 10.9' proposed) and 12 (Building Height: 10.9' permitted, 23.1' proposed) for a new single-family residence. The premises are located at 174 South Middletown Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 73.05, Block 1, Lot 1; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, April 20, 2016 at which time the Board made the determination hereinafter set forth.

Jane Slavin, Architect, Bryan Bowman and Robert Bowman appeared and testified.

The following documents were presented:

1. Survey dated December 7, 2015 signed and sealed by James E. Drumm, L.S..
2. Architectural plans dated January 15, 2016 with the latest revision date of February 8, 2016 signed and sealed by Jane Slavin, Architect.
3. A letter dated March 31, 2016 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Commissioner of Planning.
4. A letter dated March 15, 2016 from Rockland County Division of Environmental Health signed by Scott McKane, P.E., Senior Public Health Engineer.
5. A letter dated March 31, 2016 from Rockland County Sewer District #1 signed by Joseph LaFiandra, Engineer II.
6. A letter dated April 20, 2016 from Ann Traitor, abutting property owner.
7. A letter not dated from Mary Jo Wilde, abutting property owner.
8. Rockland Base Map.
9. Two google map pictures of houses in the area.
10. Planting plan with color pictures of proposed plants.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye.

Jane Slavin, Architect, testified that the lot is significantly undersized at 10,871 sq. ft. compared to the required 15,000 sq. ft.; that the measurement for the property is from the designated street line; that it is 20% undersized; that the proposed house is 2,360 sq. ft., which is 103 feet over what is permitted; that the lot width is what it is; that the house is pushed back more than the existing house that the undersized lot requires a 15' side yard and they are asking for a 10.9' side yard, which is only a 4.3' variance; that they are permitted a 20' height for an undersized lot and they are asking for 2.17' above that; that

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the grade of the street should be taken into consideration also; that they have the smallest lot in the area and she submitted a map that shows the size of the lots and the multi-family house in the neighborhood; that the houses behind this one, on Highview are quite large; that the proposed house will not create an undesirable change in the character of the neighborhood; that it is in scale with the houses in the area; that the width of the lot is undersized; that the lot is undersized by 28%; that the letters from the county were not negative; that they will reduce the height by one foot; and that most of the variances being requested are for existing conditions.

Mr. Bowman testified that he is purchasing the lot from Mr. Ferriello's brother.

Public Comment:

John Ferriello, 128 South Middletown Road, Pearl River, testified that this house is a few houses away from his; that it has been an eyesore for quite a while and anything put there will be an improvement over the boarded up house with holes in the roof.

Mary Jo Wilde, 189 South Middletown Road, Pearl River, testified that she agrees the house is an eyesore now, because the latest owner of the property allowed the fire department to use the house for a drill, when he found out the sills were rotted, and just left it that way; that he finally boarded it up after complaints about kids entering the house and its dangerous; that the latest owner also chopped down trees and left the property a mess; that community is shared space; that shoe-horning a large single-family residence into a building lot intended for a smaller structure leaves minimal space for property enhancing shrubs/ trees and lawn; that it shows lack of respect for both the land as well as an important harmonizing with the surrounding established homes; that she has lived at 189 South Middletown for almost 40 years; that her house was built in 1912 and is directly opposite the proposed structure; that she would welcome a single family dwelling that fits the confines of the given lot size and is in keeping with the houses in the close neighborhood; that comparisons to houses in the area, but not visible, seems not valid evidence of the suitability of the particulars of this specific structure; that she would like to suggest the size of the footprint be reduced by eliminating one of the garages or make the garage free standing; that the number of bedrooms could be reduced from 5 to 3; that the height should be reduced to keep in line with the existing houses in the neighborhood; that this application by Mr. Ferriello is clearly a business venture and not for a case of an expanding family in need; that the existing lot and width are too small, while the front and side yard required footage each are being halved to fit his proposed plan; that the requested variance for increased building height is double the permitted height according to code; and the onus should no fall on the Board for his ambitious business venture; that it is also worth mentioning that the spacious lawn opposite said lot on the north side was bought years ago by a resident on Highview Avenue, Mr. Traitor (deceased) for the express purpose to give enjoyment to this neighbors; that children sleigh ride on it and play ball and others just have their mood lifted in its uncluttered and well maintained space; and his generosity to share this bit of greenery is in stark contrast to the profit driven motive of the recent buyer of 174 to re-sell his holding at a large profit; and this taints his request for said variances and she submitted photos of the immediate neighboring area.

Tom Kilkenny, 208 Ann Street, Pearl River, testified that he passes this house often; that it is an eyesore the way it is; that it was used for training purposes and was left a mess and raises health concerns; that the town should have done something; that he would like to see a raise of hands from the Board members about who would object to living next to this and who thinks it is an eyesore; and stated that something needs to be done; and permitting the variances allows something nice to be built.

TOWN CLERK'S OFFICE

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested floor area ratio, lot area, lot width, front yard, side yard and building height (as modified lower to 21.17') variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The lot area and lot width are not changing and the applicant has lowered the building height by one foot. The neighborhood is a mixture of modest size older houses on South Middletown Road and larger houses on Highview Avenue and this house will blend with the existing houses.
2. The requested floor area ratio, lot area, lot width, front yard, side yard and building height (as modified lower to 21.17') variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The lot area and lot width are not changing and the applicant has lowered the building height by one foot. The neighborhood is a mixture of modest size older houses on South Middletown Road and larger houses on Highview Avenue and this house will blend with the existing houses.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested floor area ratio, lot area, lot width, front yard, side yard and building height (as modified lower to 21.17') variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The lot area and lot width are not changing and the applicant has lowered the building height by one foot. The neighborhood is a mixture of modest size older houses on South Middletown Road and larger houses on Highview Avenue and this house will blend with the existing houses.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

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DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested floor area ratio, lot area, lot width, front yard, side yard and building height (as modified lower to 21.17') variances are APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

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The foregoing resolution to approve the application for the requested floor area ratio, lot area, lot width, front yard, side yard and building height (as modified lower to 21.17') variances was presented and moved by Mr. Quinn, seconded by Mr. Bosco and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: April 20, 2016

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

TOWN CLERKS OFFICE
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DECISION

ALL REQUESTED VARIANCES APPROVED (SEE BELOW)

To: Donald Brenner (Club signs)
4 Independence Avenue
Tappan, New York 10983

ZBA #16-26, ZBA#16-27
ZBA #16-28
Date: April 20, 2016

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#16-26: Application of the Club at Pearl River for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.11, OP Column 5, paragraph 3, referred to LO District, Column 5, paragraph 11: one(1) Business sign permitted; 10 signs proposed Section 4.26 (a) one (1) advertising sign at entrance permitted, 2 sq. ft. max/ 10 signs & 224 sq. ft. proposed; Section 4.26 (c) 4 directional advertising signs allowed/ proposed and Section 4.28 (f) one (1) temporary advertising sign allowed 4 sq. ft.; 10 signs and 224 sq. ft. proposed for temporary leasing signs. The premises are located at 662 West Blue Hill Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 73.10, Block 1, Lot 4; in the OP & PAC zoning district.

ZBA#16-27: Application of the Club at Pearl River for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, , Section 3.11, OP Column 5, paragraph 3, referred to LO District, Column 5, paragraph 11: one(1) Business sign allowed/ 15 Directional signs proposed and Section 11.2: Definitions: (2 sq. ft. per directional sign permitted; 4 sq. ft. and 4.66 sq. ft. proposed) for one business sign and 15 directional signs. The premises are located at 662 West Blue Hill Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 73.10, Block 1, Lot 4; in the OP & PAC zoning district.

ZBA#16-28: Application of the Club at Pearl River for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.11, OP Column 5, paragraph 3, referred to LO District, Column 5, paragraph 11: one(1) Business sign 60 sq. ft. permitted; 103.8 sq. ft. proposed and Section 4.26 (b) Subdivision signs to be non-illuminated/ illumination proposed) for a monument sign. The premises are located at 662 West Blue Hill Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 73.10, Block 1, Lot 4; in the OP & PAC zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, April 20, 2016 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Al Savencki, Project Manager and Sarah Torrens, Attorney, appeared and testified.

The following documents were presented:

1. Packet of Temporary Leasing Signs (7 pages) ZBA#16-26
2. Packet of Directional Signs (13 pages). ZBA#16-27
3. Packet of Monument Sign (2 pages). ZBA# 16-28
4. Three letters dated April 11, 2016 from the County of Rockland Department of Planning signed by Arlene Miller for Douglas J. Schuetz, Deputy Commissioner of Planning. (1. Temporary Leasing Signs, 2. Directional Signs and 3. Monument Sign)
5. A letter dated April 13, 2016 received in office on April 20, 2016 from the County of Rockland Highway Department signed by Sonny Lin, P.E.

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

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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 applications (ZBA#16-26, ZBA# 16-27 & ZBA# 16-28) seek to construct or expand a primary, or accessory or appurtenant non-residential structure or facility involving less than 4,000 square feet of gross floor area, and not involving a change in zoning or a use variance and consistent with local land use controls, these applications are exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (7). The motion was seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye.

Donald Brenner testified that the application has received preliminary approval from the Planning Board; that the Planning Board also granted the temporary signs two years and if they need to stay longer the applicant would go back to the Planning Board to extend the time; that the property is large and they expect about 350 people living in the complex; that the directional signs are necessary to keep people moving in the proper direction; that the temporary leasing signs will be necessary until the facility is full; and the entrance monument sign is not in the right of way and is completely located on the private property of the complex and will not interfere with sight lines, easement or designated street lines; the monument sign is not internally lit; that there will be spotlights on the sign; that the property to the east is wooded residential and to the west is 11 acres of property that belongs to the development that will not be developed; to the south is the water company property and to the north is the road and reservoir.

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 temporary lease signs, directional signs and monument sign variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The temporary leasing signs are necessary for potential renters to know who to contact for information regarding the rentals and the Planning Board permitted these signs for up to two years. The directional signs are all located on the interior of the property and since there could potentially be 350 people living in the complex, giving clear directions will permit safe ingress/egress. The monument sign is located inside the property line and will not affect the sight line, easement line or designated street line.

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2. The requested temporary lease signs, directional signs and monument sign variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The temporary leasing signs are necessary for potential renters to know who to contact for information regarding the rentals and the Planning Board permitted these signs for up to two years. The directional signs are all located on the interior of the property and since there could potentially be 350 people living in the complex, giving clear directions will permit safe ingress/egress. The monument sign is located inside the property line and will not affect the sight line, easement line or designated street line.
3. The Board acknowledged that the proposed monument sign will be constructed on the property of the development, and away from the designated street line and inside the easement line and its location will not affect the sight lines. It is also surrounded by woods to the west, residential undeveloped land to the east, water company property to the south and the road and reservoir to the north; therefore the spotlights on the sign will not negatively impact anyone and the Board chose to override the comments from the Rockland County Planning Department letter dated April 11, 2016 signed by Arlene Miller for Douglas J. Schuetz, Deputy Commissioner of Planning.
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 temporary lease signs, directional signs and monument sign variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The temporary leasing signs are necessary for potential renters to know who to contact for information regarding the rentals and the Planning Board permitted these signs for up to two years. The directional signs are all located on the interior of the property and since there could potentially be 350 people living in the complex, giving clear directions will permit safe ingress/egress. The monument sign is located inside the property line and will not affect the sight line, easement line or designated street line.
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.

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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 temporary leasing signs (which shall comply with the time limit set forth by the Planning Board of two years, or they shall return to the Planning Board for an extension of time), directional signs and monument sign variances are APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

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The foregoing resolution to approve the application for the requested temporary leasing sign variances, which shall comply with the time limit set forth by the Planning Board of two years, or they shall return to the Planning Board for an extension of time; was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye ;Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

The foregoing resolution to approve the application for the requested directional sign variances, which will promote safe travel within the development to the 350 people that shall reside there; was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye ;Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

The foregoing resolution to approve the application for the requested monument sign variance, and override the Rockland County letter dated April 11, 2016 signed by Arlene Miller for Douglas J. Schuetz, Deputy Commissioner of Planning; was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye ;Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: April 20, 2016

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

TOWN CLERK
HIGHWAY DEPARTMENT
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MGMT. and ENGINEERING
FILE,ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

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