

MINUTES
ZONING BOARD OF APPEALS
JULY 2, 2013

MEMBERS PRESENT: DANIEL SULLIVAN, CHAIRMAN
JOAN SALOMON
NANETTE ALBANESE
PATRICIA CASTELLI
LEONARD FEROLDI, ALTERNATE

ABSENT: MICHAEL BOSCO

ALSO PRESENT: Dennis Michaels, Esq. Deputy Town Attorney
Latonya Story, 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:

<u>APPLICANTS</u>	<u>PUBLISHED ITEMS</u>	<u>DECISIONS</u>
<u>NEW ITEMS:</u>		
BECKERLE 69.17 / 1 / 50; R-15 zone	REAR YARD VARIANCE APPROVED	ZBA#13-50
49 SUNSET HOT BOX 70.09 / 2 / 23.2; R-15 zone	POSTPONED	ZBA#13-51
O'BRIEN 77.08 / 3 / 3.2; R-15 zone	FRONT YARD FENCE HEIGHT VARIANCE APPROVED	ZBA#13-52
ARNO SUNROOM 68.15 / 5 / 33; CO zone	FLOOR AREA RATIO, FRONT YARD, SIDE YARD, TOTAL SIDE YARD, REAR YARD, BUILDING HEIGHT AND § 9.32 VARIANCES APPROVED	ZBA#13-53
BEITAL'S AQUARIUMS EMERGENCY GENERATOR PERFORMANCE STANDARDS 68.19 / 4 / 16; CO zone	PERFORMANCE STANDARDS APPROVED	ZBA#13-54

TOWN CLERKS OFFICE
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TOWN OF ORANGETOWN

ADDITIONAL BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the Acting Chairperson executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for the State Environmental Quality Review Act (SEQRA) coordinated environmental review of actions pursuant to SEQRA Regulations § 617.6 (b)(3) the following applications: Levine Site Plan, 39 Tweed Boulevard, upper Grandview, NY 71.09 / 1 / 40; R-22 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 7:45 P.M.

Dated: JULY 2, 2013

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

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

TOWN OF ORANGETOWN
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TOWN CLERKS OFFICE

DECISION

REAR YARD VARIANCE APPROVED

To: Michael Beckerle
223 Blauvelt Avenue
Pearl River, New York 10965

ZBA # 13-50
Date: July 2, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-50: Application of Michael Beckerle for a variance from Chapter 43 (Zoning) Town of Orangetown, Section 3.12, R-15 District, Group M, Column 11 (Rear Yard: 35' required, 10' 4" proposed) for the installation of a hot tub/pool at an existing single-family residence. The premises are located at 223 Blauvelt Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.17, Block 1, Lot 50; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Tuesday, July 2, 2013 at which time the Board made the determination hereinafter set forth.

Michael Beckerle appeared and testified.

The following documents were presented:

1. Site plan with hot tub placement drawn on it.
2. One page hot tub plan.

Mr. Sullivan, Chair, made a motion to open the Public Hearing which motion was seconded by Ms. Salomon 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. Salomon and carried as follows: Ms. Albanese, aye; Ms. Salomon, aye; Mr. Feroldi, aye; Ms. Castelli, aye; Mr. Bosco, aye; and Mr. Sullivan, aye.

Michael Beckerle testified that the plan is to install a large hot tub that sits 4 ½' high on a slab; that it is placed north to south on the property because it fits the property better this way; that to the west is a large Oak tree and to the east is a patio; that to place the structure running east to west would kill the tree and impede on the existing patio; that there are many shrubs to the north and along the property line that would be a natural screen for the hot tub.

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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 rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants' property is very sloped and this area is the most level area to place the hot tub.
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 applicants' property is very sloped and this area is the most level area to place the hot tub.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested rear yard variance, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
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. Albanese, seconded by Ms. Salomon and carried as follows: Mr. Feroldi, aye; Ms. Albanese, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Bosco 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: July 2, 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.A.O.

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

TOWN OF ORANGETOWN
2013 JUL 18 PM 1 33
TOWN CLERKS OFFICE

DECISION

FRONT YARD FENCE HEIGHT VARIANCE APPROVED

To: Daniel and Charlene O'Brien
4 Austin Way
Tappan, New York 10983

ZBA # 13-52
Date: July 2, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#13-52: Application of Daniel and Charlene O'Brien for a variance from Chapter 43 (Zoning), Section 3.12, RG District, Section 5.226 (Front Yard Fence: 4 1/2' permitted, 6' proposed) for the installation of a six foot fence surrounding an in-ground pool at an existing single-family residence, The premises are located at 4 Austin Way, Tappan, New York and identified on the Orangetown Tax Map as Section 77.08, Block 3, Lot 3.2; RG zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Tuesday, July 2, 2013 at which time the Board made the determination hereinafter set forth.

Daniel O'Brien appeared and testified.

The following documents were presented:

1. Site plan showing the placement of the fence.

Mr. Sullivan, Chair, made a motion to open the Public Hearing which motion was seconded by Ms. Salomon 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. Albanese, aye; Ms. Salomon, aye; Mr. Feroldi, aye; Ms. Castelli, aye; and Mr. Sullivan, aye. Mr. Bosco was absent.

Daniel O'Brien testified that he found out that he needed a variance for the fence when the building inspector came out to the house for the final inspection of the pool; that he has installed a six-foot fence in the back yard for the pool and found out after the fence company installed it that it should have been 4 ½' high; that his property sits along Austin Way, which is a private road; that he has one neighbor to the rear of him and they share the maintenance of the private road, which is more like a long driveway; that the shed existed when he moved in and the fence does not interfere with any sight lines for the road.

TOWN CLERKS OFFICE

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TOWN OF ORANGETOWN

Public Comment:

No public comment.

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

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

Mr. Sullivan made a motion to close the Public Hearing which motion was seconded by Ms. 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 front yard fence height variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The requested front yard fence height variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The fence is 19' back from the private road and does not obstruct sight from the road.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested front yard fence height variance although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
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 variance.

TOWN CLERKS OFFICE

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TOWN OF ORANGETOWN

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

General Conditions:

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

TOWN CLERKS OFFICE
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The foregoing resolution to approve the application for the requested front yard fence height variance was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Feroldi, aye; Ms. Albanese, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Bosco 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: July 2, 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
OEZPAE
BUILDING INSPECTOR -M.M.

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

TOWN CLERKS OFFICE
2013 JUL 18 PM 1 34
TOWN OF ORANGETOWN

DECISION

**FLOOR AREA RATIO, FRONT YARD, SIDE YARD, TOTAL SIDE YARD,
REAR YARD, BUILDING HEIGHT AND § 9.34 VARIANCES APPROVED**

To: Andrew Arno
16 N. Serven Street
Pearl River, New York 10965

ZBA # 13-53
Date: July 2, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-53: Application of Andrew Arno for variances from Chapter 43 (Zoning) Town of Orangetown, Section 3.12, CO District, Columns 4 (Floor Area Ratio: .20 permitted, .52 existing, .62 proposed), 8 (Front Yard: 30' required, 10' existing & proposed), 9 (Side Yard: 35' required, 1' & 4' 9" existing, 6' 1" & 7' 5" proposed) 10 (Total Side Yard: 90' required, 5' 9" existing & proposed), 9 (Rear yard: 50' required, 37' 4" proposed) and 12 (Building Height: 6.4' permitted, 19' proposed) and § 9.34 variance for an addition of a non-heated sunroom to an existing single-family residence. The premises are located at 16 N. Serven Street, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.15, Block 5, Lot 33; CO zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Tuesday, July 2, 2013 at which time the Board made the determination hereinafter set forth.

Karl Ackermann, Architect, and Andrew Arno appeared and testified.

The following documents were presented:

1. Architectural plans dated 04/20/ 2013 signed and sealed by Karl Ackermann, Architect.

Mr. Sullivan, Chair, made a motion to open the Public Hearing which motion was seconded by Ms. Salomon 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. Albanese, aye; Ms. Salomon, aye; Mr. Feroldi, aye; Ms. Castelli, aye; and Mr. Sullivan, aye. Mr. Bosco was absent.

Karl Ackerman, Architect, testified that this is a small lot that is across from an RG zone; that the deck exists and was given a certificate of occupancy for the RG zone; that when the application to enclose the deck with a sunroom was submitted, it was discovered that the property is in the CO district; that they are planning to re-do the footings and place the sunroom in the exact place as the deck; that the hardship is that the property is zoned CO and is undersized; and that they have no objection including the variance from Section 9.34.

Andrew Arno testified that they are not planning on heating the room presently; that they may eventually add a pellet or wood burning stove to the room.

TOWN CLERKS OFFICE

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TOWN OF ORANGETOWN

Public Comment:

No public comment.

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

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

Mr. Sullivan made a motion to close the Public Hearing which motion was seconded by Ms. 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 floor area ratio, front yard, side yard, total side yard, rear yard, building height, and § 9.34 variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed addition is 306 sq. ft. and the residence is in the CO zoning district; which is the reason most of the variances were necessary.
2. The requested floor area ratio, front yard, side yard, total side yard, rear yard, building height, and § 9.34 variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed addition is 306 sq. ft. and the residence is in the CO zoning district; which is the reason most of the variances were necessary.
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, front yard, side yard, total side yard, rear yard, building height, and § 9.34 variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

TOWN CLERKS OFFICE
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TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested floor area ratio, front yard, side yard, total side yard, rear yard, building height, and § 9.34 variances are APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

TOWN CLERKS OFFICE

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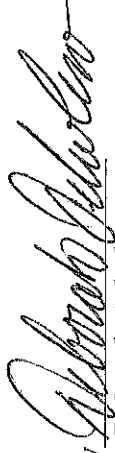
TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested floor area ratio, front yard, side yard, total side yard, rear yard, building height and § 9.34 variances was presented and moved by Mr. Sullivan, seconded by Ms. Castelli and carried as follows: Mr. Feroldi, aye; Ms. Albanese, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Bosco 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: July 2, 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 -B.v.W.

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

TOWN CLERKS OFFICE
2013 JUL 18 PM 1 34
TOWN OF ORANGETOWN

DECISION
PERFORMANCE STANDARDS APPROVED

To: Donald Brenner (Beital's Aquariums)
4 Independence Avenue
Tappan, New York 10983

ZBA # 13-54
Date: July 2, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#13-54: Application of Beital's Aquariums for review pursuant to Chapter 43 (Zoning), Section 4.1, Performance Standards for an emergency generator. The premises are located at 73 Route 304, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.19, Block 4, Lot 16; CO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Tuesday, July 2, 2013 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, and Craig Beital appeared and testified.

The following documents were presented:

1. Site plan.
2. Generator Specification sheets.
3. Performance standards resume of operation and equipment form dated June 3, 2013.
4. Fire prevention supplement form.
5. A letter dated June 19, 2013 from the Town of Orangetown, Department of Environmental Management and Engineering signed by Joseph J. Moran, P.E., Commissioner.
6. A letter dated June 21, 2013 from the Town of Orangetown, Bureau of Fire Prevention signed by Michael B. Bettmann, Chief Fire Inspector.

Mr. Sullivan, Chair, made a motion to open the Public Hearing which motion was seconded by Ms. Salomon 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 based upon the testimony heard by this Board, and the facts as presented in the application submissions and in the record, since the application entails the ZBA engaging in a review to determine compliance with technical requirements, 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) (28); 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 Ms. Albanese, aye. Mr. Bosco was absent.

Donald Brenner testified that Beital Aquariums recently moved to the location at Jefferson and Route 304; that the emergency generator is needed for the business; that the fish tanks need a constant flow of oxygen and the loss to the business in the case of a power outage would be devastating; that the proposed emergency generator would be installed on the ground in the cove with the high wall behind it; that it would be hooked up to a natural gas line from the utility company; and that it meets all of the requirements of the Orangetown Code.

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

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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 the documents presented, the Board found and concluded that:

Based upon the information contained in the applicant's Resume of Operations and Equipment, the Fire Prevention Supplement, the letter dated June 19, 2013 from Joseph J. Moran, P.E., Commissioner of the Orangetown Department of Environmental Management and Engineering (D.E.M.E.) concluding that there is no reasonable doubt as to the likelihood of applicant's conformance to the Zoning Code § 4.1 Performance Standards, and the memorandum dated June 21, 2013 from Michael Bettmann, Chief Fire Inspector, Town of Orangetown Bureau of Fire Prevention (B.F.P.); the other documents presented to the Board and the testimony of applicant's representatives, the Board finds and concludes that conformance with the Performance Standards set forth in Zoning Code Section 4.1 will result sufficient to warrant the issuance of a Building Permit and/or Certificate of Occupancy, subject to compliance with the orders, rules and regulations of the Orangetown Office of Building, Zoning & Planning Administration & Enforcement, D.E.M.E, and Orangetown B.F.P., and all other departments having jurisdiction of the premises.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for Performance Standards Conformance, pursuant to Zoning Code § 4.1, is **APPROVED** with the **SPECIFIC CONDITION** that the applicant adhere to all of the requirements set forth by the Chief Fire Inspector, Town of Orangetown B.F.P.; **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, Performance Standards, 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.

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(ii) Any approval of a variance, performance Standards, 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, Performance Standards, 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, Performance Standards, 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 Zoning Code § 4.1 Performance Standards Conformance was presented and moved by Mr. Sullivan, seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Salomon, aye; Mr. Feroldi, aye; and Ms. Albanese, aye. Mr. Bosco 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: July 2, 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 -B.v.W.

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

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