

MINUTES
ZONING BOARD OF APPEALS
January 6, 2016

TOWN OF ORANGETOWN
2016 JAN 26 PM 1 31
TOWN CLERKS OFFICE

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

ABSENT: NONE

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

This meeting was called to order at 7: 00 P.M. by Mr. 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

POSTPONED ITEM:

FIESTA MEXICO
OUTDOOR DINING
380 Route 303
Orangeburg, NY
74.11 / 1 / 7; CC zone

OUTDOOR DINING
APPROVED

ZBA#15-101

NEW ITEMS:

150 BURROWS LANE
150 Burrows Lane
Blauvelt, NY
70.09 / 3 / 22; R-40 zone

CONTINUED

ZBA#16-01

SISTERS OF ST. DOMINIC
SUBDIVISION
496 Western Highway
Blauvelt, NY
74.06 / 3 / 1.1 & 1.3; R-40 zone

REAR YARD
VARIANCE FOR LOT #1
APPROVED

ZBA#16-02

BERTUSSI
196 West Central Avenue
Pearl River, NY
68.19 / 3 / 2; R-22 zone

DENIED

ZBA#16-03

O'CONNOR
28 Duhaime Road
Pearl River, NY
69.10 / 2 / 26; R-15 zone

APPROVED AS
MODIFIED

ZBA#16-04

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: Verizon Wireless Telecommunications Facilities Site Plan and Special Permit, 68 Sickletown Road, Orangeburg, NY; 69.19 / 1 / 6; R-40 zone; Bergson 5-lot Subdivision, 56 Woods Road, Palisades, N.Y., 78.18 / 1 / 3.1 & 3.2; R-80 zone; Lee Garage/Studio Addition Site Plan-Critical Environmental Area, 910 Route 9W, Upper Grandview, N.Y., 71.17, 1, 24; R-22 zone; Hayes Minor Subdivision Plan, 624 Western Highway, Blauvelt, NY 70.09 / 3 / 40 & 41.2; R-15 zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

The verbatim minutes, as recorded by the Board's official stenographer for the above hearings, are not transcribed.

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 10:15 P.M.

Dated: January 6, 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

DECISION

TOWN OF ORANGETOWN

OUTDOOR DINING VARIANCE APPROVED

2016 JAN 26 PM 1 32

To: Alfredo Zaldivar
380 Route 303
Orangeburg, New York 10962

TOWN CLERKS OFFICE
ZBA #15-101
Date: January 6, 2016

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15- 101: Application of Fiesta Mexico for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, CC District (refers to CS District), Section 3.11, Column 7 paragraph 3 (All sales and service shall be within a completely enclosed building) for an existing outdoor dining patio at an existing restaurant. The premises will be located at 380 Route 303, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 74.11, Block 1, Lot 7; in the CC zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 6, 2016 at which time the Board made the determination hereinafter set forth.

Alfredo and Patricia Zaldivar appeared and testified.

The following documents were presented:

1. Copy of site plan (1 page).
2. Hand drawn seating plan with measurements of the tables and space between them.
3. Thirteen color pictures of the tables and the patio space.

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 applicant seek area or bulk variances for construction or expansion of 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; this application is exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (7); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye.

Patricia Zaldivar testified that her family has owned the restaurant since 1984; that they purchased the building with the existing outdoor patio; that they were told recently that they needed a permit for outdoor dining and they applied and were sent to this Board and ACABOR; that there is a three foot wall surrounding the outdoor dining space; that the building was originally a fish and chips restaurant; that there are no residences in the area; that there is an auto repair, plastic company and bank in the immediate area.

Fiesta Mexico Outdoor Dining
ZBA#15-101
Page 2 of 4

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 outdoor dining variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The patio and outdoor dining area has existed for many years without incident.
2. The requested outdoor dining variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The patio and outdoor dining area has existed for many years without incident.
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 outdoor dining 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. The patio and outdoor dining area has existed for many years without incident.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

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

Fiesta Mexico Outdoor Dining
ZBA#15-101
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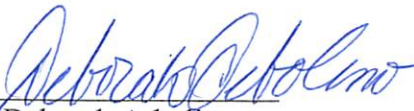
TOWN OF ORANGETOWN
2016 JAN 26 PM 1 32
TOWN CLERKS OFFICE

The foregoing resolution to approve the application for the requested outdoor dining variance was presented and moved by Mr. Bosco, seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; Ms. Castelli, 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: January 6, 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-R.A.O.

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

DECISION TOWN OF ORANGETOWN

REAR YARD VARIANCE FOR LOT #1 APPROVED JRN 26 PM 1 32

To: Michael Dempsey (Sisters of St. Dominic)
470 Western Highway
Orangeburg, New York 10962

TOWN CLERK'S OFFICE
ZBA #16-02
Date: January 6, 2016

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#16-02: Application of Sisters of St. Dominic of Blauvelt for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, R-40 District, Group E, Column 11 (Rear Yard: 100' required, 30' proposed) for lot #1 of a three lot subdivision. The property is located at 496 Western Highway, Blauvelt, New York and is identified on the Orangetown Tax Map as Section 74.06, Block 3, Lots 1.1 & 1.3; in the R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 6, 2016 at which time the Board made the determination hereinafter set forth.

Michael Dempsey, Sister Catherine Howard, and Brian Quinn, Attorney, appeared and testified.

The following documents were presented:

1. Site plan labeled "Sisters of St. Dominic of Blauvelt Realty Subdivision 2016" dated 11/5/2015 with the latest revision date of 11/11/2015 signed and sealed by P. Joseph Corless, L.S.. (1 page).
2. A memorandum dated November 9, 2015 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
3. A letter dated November 11, 2015 from Michael Dempsey stated that there are no current plans for construction.
4. Planning Board Decision #15-55 dated November 9, 2015.
5. A letter dated December 21, 2015 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
6. A letter dated December 29, 2015 from the County of Rockland Department of Highways signed by Sonny Lin, P.E..
7. A letter dated December 1, 2015 from the County of Rockland Department of Health signed by Scott Mc Kane, P.E..
8. A letter dated December 18, 2015 from the County of Rockland Sewer District No.1 signed by Joseph La Fiandra, Engineer II.

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 Planning board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or did not object to the Planning Board acting as Lead Agency for this application, pursuant to coordinated review under the State Environmental Quality Review Act Regulations §617.6 (b) (3); and since the Planning Board conducted a SEQRA review and on November 9, 2015, rendered an environmental determination of no significant adverse environmental impacts to result from the proposed land use action (i.e., a "Negative Declaration" or "Neg. Dec"), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulation § 617,6 (b)(3). The motion was seconded by Ms. Castelli and carried as follows: Mr. Quinn, aye; Ms. Salomon, aye; Mr. Bosco, aye; Ms. Castelli, aye; and Mr. Sullivan, aye.

Brian Quinn, Attorney, testified that on the east side of Western Highway is the College Campus and the Sisters own the property on the west side of Western Highway that they lease to the college; that they are proposing the subdivision because they would like to sell areas to the college; that the Sisters will retain the cemetery and some of the buildings; that they would like to sell the very westerly side of the property to the college which includes the athletic fields; that they need one rear yard variance for an existing building; that there is no new development presently proposed; that the subdivision is necessary to allow the college to finance; and he submitted an aerial view of the property.

Public Comment:

No public comment.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested rear yard variance for lot #1 will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. No construction is proposed and the subdivision will allow the college to purchase the property from the Sisters, and allow the college to finance improvements on existing buildings.
2. The requested rear yard variance for lot #1 will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. No construction is proposed and the subdivision will allow the college to purchase the property from the Sisters, and allow the college to finance improvements on existing buildings.
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 for lot #1, 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. No construction is proposed and the subdivision will allow the college to purchase the property from the Sisters, and allow the college to finance improvements on existing buildings.

5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested rear yard variance for lot #1 is APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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


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

The foregoing resolution to approve the application for the requested rear yard variance for lot #1 was presented and moved by Ms. Castelli, seconded by Ms. Salomon 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: January 6, 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-N.A.

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

DECISION TOWN OF ORANGETOWN

ACCESSORY STRUCTURE WITHOUT PRINCIPAL BUILDING ON SAME
LOT VARIANCE DENIED

2016 JAN 26 PM 1:32
TOWN CLERKS OFFICE

To: Thomas Bertussi
60-70 Dexter Plaza
Pearl River, New York 10965

ZBA #16-03
Date: January 6, 2016

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#16-03: Application of Thomas Bertussi for a variance from Zoning Code (Chapter 43) of the Town of Orangetown, Section 3.12 R-22 District, Group I, Definitions: (Accessory Buildings require a Principal Building on same lot) and the applicant is requesting to remove the existing one-family residence and construct /erect a new accessory building. The premises are located at 196 West Central Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.19, Block 3, Lot 2 in the R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 6, 2016 at which time the Board made the determination hereinafter set forth.

Thomas Bertussi, Donald Brenner, Attorney, and Sarah Torrens, Attorney, appeared and testified.

The following documents were presented:

1. Site plan labeled " Site Plan for Proposed Accessory Building Bertussi" dated 10/31/2014 with the latest revision date of 05/13/2015 signed and sealed by Jay A. Greenwell, PLS, LLC. (1 page).
2. A letter dated January 5, 2016 from Donald Brenner to the Board stating that the property would be used for residential requirements and not commercial – warehouse purposes.

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.

Donald Brenner testified that the applicant appeared before the Planning board and told them that his intention was to build a gym for his children and to remove the existing house when the gym was complete to install a field in its place; that he needs a variance to remove the existing house because according to the code you cannot have an accessory building without a primary building.

Tom Bertussi testified that his intention was always to remove the existing house and have a large grass area for a field for sports for his five children; that the house he wants to remove was probably built around 1950; that he would like to have spotlights for the field that would not face the neighbors; that he could build a tiny house to go with the gym but would rather not; that he does not want to merge the lots because in the future one of his children might decide to build a house on the lot; and that he has no problem with the suggested condition that " The use and purpose of the proposed accessory structure or building will be for a gym, or other recreational use/purpose, for the Applicant's family, which use/purpose will be solely single-family residential in nature and character" as quoted by Dennis Michaels.

Public Comment:

Cliff Herbst, 2 Martha Lane, testified that he likes the idea of the open land but is concerned about future development of the property without a residential building; and inquired if the building has a certificate of occupancy, asking if it has sewer and electric and gas; and that it is a very large accessory building at 5,000 square feet.

Marino Niconich, 11 Evergreen Lane, testified that his property borders Mr. Bertussi's property; that he has concerns regarding traffic from all the kids being dropped off and picked up and wonders where all the parents will park.

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 is granted do not outweigh the detriment to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested accessory structure building without a principal building on the same lot variance could produce an undesirable change in the character of the neighborhood and a detriment to nearby properties. The Board is concerned that granting a variance for such a large accessory building without a principal building could establish a precedent that increases traffic in the neighborhood.
2. The requested accessory structure building without a principal building on the same lot variance could have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought by the applicant can be achieved by other means feasible for the applicant to pursue other than by obtaining a variance. The applicant could build a small structure with sleeping quarters, a kitchen and bathroom as the principal structure, or he could merge the subject residential lot with his abutting residential lot that is contiguous with the subject lot.
4. The requested accessory structure building without a principal building on the same lot variance, is substantial, and could be detrimental 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.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested accessory structure building without a principal building on the same lot variance is DENIED; 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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TOWN CLERKS OFFICE


Mr. Sullivan made a motion to Approve the application for the requested accessory structure building without a principal building on the same lot variance; which motion was seconded by Ms. Salomon and then withdrawn.

The foregoing resolution to DENY the application for the requested accessory structure building without a principal building on the same lot variance was presented and moved by Ms. Salomon, seconded by Mr. Bosco and carried as follows: Ms. Castelli, aye; Mr. Bosco, aye; Mr. Quinn, aye; Ms. Salomon, aye; and Mr. Sullivan, nay.

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

DATED: January 6, 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-R.A.O.

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

FLOOR AREA RATIO, LOT AREA, LOT WIDTH, FRONT YARD, REAR YARD FOR POOL, AND REAR YARD FOR CABANA, VARIANCES APPROVED: SIDE YARD AND TOTAL SIDE YARD APPROVED AS MODIFIED

To: James O'Connor
28 Duhaime Road
Pearl River, New York 10965

ZBA #16-04
Date: January 6, 2016

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#16-04: Application of James O'Connor 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, .284 existing {ZBA#08-46}. .301 proposed) 5 (Lot Area; 15,000 sq. ft. required, 10,955 sq. ft. existing), 6 (Lot Width: 100' required, 75' existing), 8 (Front Yard: 40' required, 30.2' existing), 9 (Side Yard: 20' required, 8' proposed; modified to 16'), 10 (Total Side Yard: 50' required, 32.3' proposed: modified to 40.4'), 11 (Rear Yard: 35' required, 9' proposed for cabana) and from Section 5.227: (Rear yard for pool: 20' required, 9' proposed) for an in-ground pool and cabana at a single-family residence. The premises are located at 28 Duhaime Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.10, Block 2, Lot 26; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 6, 2016 at which time the Board made the determination hereinafter set forth.

James O'Connor, owner, Dana Diamond, girlfriend, and John Beaudry, Curtis Landscaping, appeared and testified.

The following documents were presented:

1. Copy of site plan dated 9/16/ 15 with the latest revision date of 10/24/2015 (1 page) signed and sealed by Paul Gdanski, P.E..
2. Deck plan for O'Connor dated October 24,2015 signed and sealed by Paul Gdanski, P.E..
3. Cabana Plan & Elevation for O'Connor dated October 24, 2015 signed and sealed by Paul Gdanski, P.E. (3 pages).
4. Two page drawing of proposed cabana not signed or sealed.
5. Zoning Board decision #08-46 for 28 Duhaime Road.
6. Certificate of Occupancy.
7. Three letters in support of the application from abutting property owners.

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.

John Beardry, Curtis Landscaping, testified that they are proposing to install a retaining wall, in-ground pool and cabana; that the yard is small and they situated the pool to one side of the property so that there would still be some yard for the two little girls to play

in; that the house was built with variances and then sold to Mr. O'Connor shortly after; and that the fire pit has been eliminated from the plans.

Dan Diamond testified that the cabana is necessary because she needs an outdoor facility for the girls that are aged 4 and 5; that the fire pit was eliminated because it was too close to the existing basement stairs; that it is very important to her to have a yard for the girls to play in when the pool is closed; that the deck could be reduced on the side of the house to reduce the requested side yard and total side yard variances; that the proposed cabana is really only a little larger than a shed; that there is an overhang on it to provide shade; and that they have done many improvements to the property since purchasing it.

Public Comment:

Daniel Casey, 147 South Reld Drive, testified that he is the neighbor to the rear of the applicant; that he is here to speak in support of the applicant; that they have made drastic improvements to the property since purchasing it; that there is another house with a pool and cabana at 22 Duhaime and he hopes the Board grants the necessary variances.

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, and rear yard for the pool and cabana variances, and the side yard and total side yard variances as modified to 16' and 40.4' respectively, will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The requested floor area ratio, lot area, lot width, front yard, and rear yard for the pool and cabana variances, and the side yard and total side yard variances as modified to 16' and 40.4' respectively, will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
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, and rear yard for the pool and cabana variances, and the side yard and total side yard variances as modified to 16' and 40.4' respectively, 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.

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5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested floor area ratio, lot area, lot width, front yard, side yard as modified to 16', total side yard as modified to 40.4', and rear yard for the pool and cabana variances, are APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

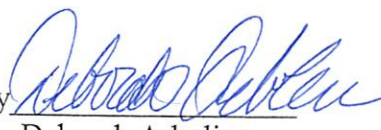
(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown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

The foregoing resolution to approve the application for the requested floor area ratio, lot area, lot width, front yard, side yard as modified to 16', total side yard as modified to 40.4', and rear yard for the pool and cabana variances, was presented and moved by Mr. Quinn, 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: January 6, 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

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