

MINUTES
ZONING BOARD OF APPEALS
MARCH 18, 2015

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

ABSENT: MICHAEL BOSCO
 THOMAS QUINN

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

This meeting was called to order at 7: 00 P.M. by Mr. Sullivan, Chairman.
Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

CONTINUED ITEM:

WYNNE	R-22, COLUMN 5 #1	ZBA#15-14
40 Bogert Avenue, Pearl River, NY	VARIANCE APPROVED	
68.16 / 3 / 6; RG zone	(4 DOGS) WITH SPECIFIC CONDITIONS	

NEW ITEMS:

ROCKLAND CENTER FOR SPIRITUAL LIVING SIGN	POSTPONED	ZBA#15-22
30 Old Tappan Road, Tappan, NY		
77.10 / 2 / 15; R-15 zone		

GALLAGHER	SIDE YARD, REAR YARD,	ZBA#15-23
43 West Lewis Avenue,	AND BUILDING HEIGHT	
Pearl River, NY	VARIANCES APPROVED	
68.12 / 1 / 43; RG zone		

WALGREENS	62 PARKING SPACES;	ZBA#15-24
81 Route 303,	13.10B(2) VEGETATION	
Tappan, NY	LESS THAN 6' HIGH; AND	
77.15 / 1 / 24; CS zone	206.59 SQ. FT. OF SIGNAGE APPROVED	
	13.10B (4) NOT REQUIRED; SECTION 4.2 (2)	
	WITHDRAWN	

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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: March 18, 2015

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By Deborah Arbolino

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

SECTION 3.11, R-22, COLUMN 5 #1 VARIANCE APPROVED WITH SPECIFIC CONDITIONS

To: Robert Wynne
40 Bogert Avenue
Pearl River, New York 10965

ZBA #15-14
Date: February 18, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-14: Application of Robert Wynne for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.11, RG District, Group Q, Column 5 refers to R-22 Column 5 #1 (No more than 3 dogs over 6 mos. shall be kept) at a single-family residence. The premises are located at 40 Bogert Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.16, Block 3, Lot 6; RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, February 18, 2015 and March 18, 2015 at which time the Board made the determination hereinafter set forth.

Robert Wynne appeared and testified at both hearings.

The following documents were presented:

1. A copy of a survey for Wynne dated September 22, 1980 by Thomas Donovan, PLS. showing the fenced in yard.
2. Dog License renewal for five dogs dated 11/24/2014
3. Three letters in opposition to the application.
4. A petition in support of the application signed by six neighbors.
5. A handwritten note of explanation from Mr. Wynne.

Ms. Castelli, Acting Chair, made a motion to open the Public Hearing on February 18, 2015, which motion was seconded by Ms. Salomon and carried unanimously.

At the March 18, 2015 meeting, on advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Feroldi, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were absent.

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Robert Wynne testified that his family moved to 40 Bogert Avenue in Pearl River in 1980; that they brought with them two Irish Terrier dogs; that Irish Terriers are a medium sized dog weighing between 25 and 30 pounds and standing about 18" tall; that since he moved here, it has been his hobby to show and breed Irish Terriers; that all of the dogs since the original two have been born there; that all of the dogs are licensed and he has never had a problem doing so; that in the last few years he has renewed all of the licenses at the same time; that up until two years ago the dog warden lived up the street; that he had no idea that there was any regulation governing the number of dogs that one is allowed to have; that he found out this information on November 23, 2014 and since then he found a home for the youngest dog; that he has been trying to find a way to comply and is having a difficult time placing another dog; that he is asking to be allowed to keep four dogs until one passes away; that he does not intend to keep adding to their numbers; that the back half of the property is fenced; that he has not been allowing the dogs out before 9 A.M. and they have been in by 8 P.M.; that he has been letting them out for about 15 minutes at a time; that he has ordered bark stopping collars and he will try them when they come in, but he does not know if they work; that he would sign an affidavit; and that he would like a continuance until the March 18, 2015 meeting.

Public Comment:

Peter Mc Donald, 34 Bogert Avenue, testified that his eight year old daughter cannot play in the yard without getting harassed by Mr. Wynnes' dogs; that he approached Mr. Wynne to split the cost of a privacy fence with him and he was waved away; that the stench from the dog poop in the yard is disgusting; that he has a Cape Cod style house and he cannot sit on his deck without the stench or barking; that he has been the anonymous complainant; that he walks dogs, that he does not want to see the dogs harmed but he wants to be able to use the property that he pays taxes on; that if he walks out into his own rear yard the dogs follow him along the chain-link fence going crazy and barking; that he cannot allow his daughter out the back yard by herself; and that there has been no conversation and no cooperation to fix the problem.

Kathleen Mc Gaurdy, 47 Hunt Avenue, testified that she would not want to see anything happen to the dogs; that the barking should be taken care of; and the dogs should not be euthanized.

Patrick Finnegan, 26 Brightwood Avenue, testified that he knows both Pete and Bobby and he hopes the Board allows him to live out the time with the dogs that he loves.

Michael Mc Gaurdy, 47 Hunt Avenue, testified that he does not see a big difference between three and four dogs; that sometimes his own dog fires the neighbors dogs up; that he has sympathy and the applicant is stuck between a rock and a hard place.

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.

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

At the March 18, 2015 meeting Mr. Wynne testified that nothing substantial has changed; that he still has four dogs; that he only allowing them out for fifteen minutes at a time and that he is cleaning up after them.

There was no public comment at the March 18, 2015 meeting.

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested Section 3.11, R-22 District, Column 5 #1 variance to allow four dogs (three are permitted) will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant testified that he already found a home for one of his dogs and cannot place the last dog because of its age and is requesting a variance to keep the dog until it expires, after which the applicant will not have more than the three remaining dogs.
2. The Zoning Board of Appeals acknowledged the fact that several neighbors find the dogs' barking objectionable as well as the odor of the feces remaining in Mr. Wynne's yard. In order to minimize these objectionable aspects, Mr. Wynne has agreed to bring the dogs indoors as soon as they begin barking and will clean up after them on a daily basis.
3. The requested Section 3.11, R-22 District, Column 5 #1 variance to allow four dogs (three are permitted) will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant testified that he already found a home for one of his dogs and cannot place the last dog because of its age and is requesting a variance to keep the dog until it expires, after which the applicant will not have more than the three remaining dogs. Mr. Wynne has agreed to bring the dogs indoors as soon as they begin barking and will clean up after them on a daily basis.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. Mr. Wynne has tried to find a home for two of the dogs but was only able to place one of them, leaving him with four dogs.
5. The requested Section 3.11, R-22 District, Column 5 #1 variance, although somewhat substantial, affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. Mr. Wynne has agreed to bring the dogs inside if they are barking and to clean up their feces daily to minimize the objections from the neighbors.

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6. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing to keep four dogs, 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 Section 3.11, R-22 District, Column 5 #1 variance is APPROVED with the Specific Condition that (1) Upon the death or giving away or selling of any of the four dogs identified on Mr. Wynne's four dog license renewals, issued by the Town Clerk on November 24, 2014, respectively numbered 1185 (Bronte), 1186 (Darci), 1187 (Arwen) and 1188 (Dalton), the applicant may only keep a maximum of three dogs more than six months old; (2) approval is further contingent upon the representation of the applicant that the dog described in dog license renewal numbered 1184 (Sheila) has been given away and is no longer being kept at Mr. Wynne's home; 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 be in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

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(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 Section 3.11, R-22 District, Column 5 #1 variance with the Specific Condition that (1) Upon the death or giving away or selling of any of the four dogs identified on Mr. Wynne's four dog license renewals, issued by the Town Clerk on November 24, 2014, respectively numbered 1185 (Bronte), 1186 (Darci), 1187 (Arwen), and 1188 (Dalton), the applicant may only keep a maximum of three dogs more than six month old; (2) approval is further contingent upon the representation of the applicant that the dog described in dog license renewal numbered 1184 (Sheila) has been given away and is no longer being kept Mr. Wynne's home; was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Mr. Feroldi, aye; Ms. Castelli, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were absent.

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

DATED: March 18, 2015

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR - R.A.O.

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

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DECISION
**SIDE YARD, REAR YARD AND BUILDING HEIGHT VARIANCES
APPROVED**

To: Brendan and Ava Gallagher
43 W. Lewis Avenue
Pearl River, New York 10965

ZBA #15-23
Date: March 18, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-23: Application of Brendan Gallagher for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, RG District, Group Q, Columns 9 (Side Yard: 10' required, 7.2' proposed), 11 (Rear Yard: 25' required, 19.8' proposed) and 12 (Building Height: 9.6' permitted, 15.67' proposed) for an addition to an existing single-family residence. The premises are located at 43 West Lewis Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.12, Block 1, Lot 43; in the RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, March 18, 2015 at which time the Board made the determination hereinafter set forth.

Brendan Gallagher appeared and testified.

The following documents were presented:

1. Copy of site plan and bulk table not dated. (1 page).
2. Architectural elevation drawings dated 3/5/2013 revised 10/08/2014 by Robert Hoene, Architect.
3. A letter dated February 18, 2015 from the County of Rockland Department of Health signed by Scott McKane, P.E., Senior Public Health Engineer.
4. A letter dated March 6, 2015 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning,
5. A letter dated February 23, 2015 from the County of Rockland Sewer District No.1 signed by Joseph LaFiandra, 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 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. Feroldi, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were absent.

Brendan Gallagher testified that they are proposing to add a living room and dining room with storage area above it; that they have owned the house for ten years; that they have four children ages 18, 13, 6 and 3; that they need more living space; that similar additions have been constructed in the area; and that the proposed addition is in keeping with the character of the neighborhood.

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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 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. Similar additions have been constructed in the neighborhood.
2. The requested 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. Similar additions have been constructed in the neighborhood.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested side yard, 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. . Similar additions have been constructed in the neighborhood.
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 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 side yard, rear yard and building height variances was presented and moved by Mr. Feroldi, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Mr. Feroldi, aye; Ms. Castelli, aye; and Ms. Salomon, aye. Mr. Quinn and Mr. Bosco were absent.

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

DATED: March 18, 2015

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

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DECISION

§3.11, COLUMN 5 #6A: SIGN SIZE APPROVED AS MODIFIED (206.59 SQ. FT.)

§ 3.11, COLUMN 6: PARKING SPACES APPROVED

§13.10 B (2): VEGETATION LESS THAN 6' HIGH APPROVED

§ 13.10B (4): SIGN LOCATION OVERLAY DISTRICT NOT NECESSARY;

§ 4.2(2): SIGN ILLUMINATION VARIANCE WITHDRAWN

To: Antimo Del Vecchio, Esq. (Walgreens)
c/o Beattie Padovano, LLC
50 Chestnut Ridge Road Suite 208
Montvale, New Jersey 07645

ZBA #15-24
Date: March 18, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15- 24: Application of Walgreen Site Plan for variances from the Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.11, CS District, Columns 5 #6 a (Signage: 40 sq. ft. permitted, 257.4 sq. ft. proposed); 6 (Parking Spaces: 66 required, 62 proposed); and from the Route 303 Overlay Zone Section 13.10B (4) (No signage is permitted within the 25' vegetative buffer: signage is 20' from the right-of-way line); Section 13.10B (2) Vegetation less than 6' high; and from Section 4.2 (2) (An illuminated sign visible through a transparent panel is prohibited). The premises shall be located at 81 Route 303, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.15, Block 1, Lot 24; in the CS Zoning District.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, March 18, 2015 at which time the Board made the determination hereinafter set forth.

Antimo Del Vecchio, Esq., Dan Dougherty, Chuck Dietz and Richard Preiss appeared and testified.

The following documents were presented:

1. Copy of site plan dated February 5, 2015 by Dynamic Engineering (15 pages).
2. Floor Plans prepared by The Dietz Partnership dated January 28, 2015 (2 pages).
3. Drainage Report for A Landmark Tappan, LLC prepared by Dynamic Engineering dated January 2015.
4. Stormwater Pollution Prevention Plan prepared by Dynamic Engineering last revised January 2015.
5. A letter dated March 11, 2015 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning (2 pages).
6. A letter dated March 17, 2015 from the County of Rockland Department of Highways signed by Sonny Lin, P.E..
7. A letter dated February 18, 2015 from the County of Rockland Department of Health signed by Scott Mc Kane, P.E..

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 February 11, 2015, rendered an environmental determination of **no** significant adverse environmental impacts to result from the proposed land use action (i.e., a "Negative Declaration" "Neg. Dec"), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot

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require further SEQRA review pursuant to SEQRA Regulation § 617.6 (b)(3). The motion was seconded by Ms. Castelli and carried as follows: Mr. Feroldi, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Quinn and Mr. Bosco were absent.

Antimo Del Vecchio, Attorney, testified that the project has been before the Planning Board for some time; that they have completed several traffic studies; that they recently received a preliminary approval and a neg dec and were given permission to proceed to the Zoning Board; that they differ on a few of the variances that are required; the sign setback in the Route 303 Overlay for example; that the sign setback is dimensioned at 20' from Oak Tree Road and is not part of the Route 303 buffer because it is 35' away from Route 303; that he has several people with him that will testify to parking requirements, architecture and planning analysis.

Dan Dougherty will speak to the parking requirements; he testified that the Institute of Transportation Engineers parking requirements for pharmacies are lower than the local municipalities requirements; that he has worked on several Walgreen sites and for the proposed building, 40 to 50 parking stalls would be more than sufficient for customers; that the Town requires 66 spaces and the site is providing 62 spaces; that there will be no need for customers to park off site; that according to the Institute studies 2.39 spaces would be needed for 1,000 sq. ft.; that the 62 spaces provided are well over what the institute studies show are needed; that the buffer required along Route 303 adds to the aesthetics of the site and the area will be bermed up 2 to 3 feet and planting 2 to 3 feet in height will be planted on the berm; that the ADA requires a sidewalk connection that complies with the handicap accessibility and the sidewalk will comply; that the grading in the Route 303 overlay will have the ADA sidewalk in it and the proposed berm with plantings will not cause a site distance problem.

Chuck Dietz, Architect, testified that he has designed 40 Walgreens; that the company has certain design criteria that they want for all of their stores; that they want a corner location with a signal at the corner; that they want to have entrances on two roads; that they have a tower element to the building design which designates the entrances to the store; that they like the parking to face along those sides of the store that have the entrances; that they have nationally recognized logos and script for their "W" and "Walgreens Pharmacy" that these stores are not only pharmacies but also sell food, photo, makeup, and other goods; that Walgreens buildings are constructed of maintenance free material such as stone or brick in earth tones that will hold up maintenance free for fifty years; that the lettering on the building is proportionate to the building; that the west elevation is a major roadway and needs more than one identifying sign; that without the building sign, the entrance might be missed, depending only on the pylon sign; that there are also two directional signs for the drive thru; and that the lettering on the building can be made smaller but not too small that it would change the font.

Richard Preiss, Professional Planner, Master Urban Planning in New York and New Jersey for both developers and municipal planners; testified that he has done an analysis of the requested variances for the site; that the number of parking spaces being requested to be waived are only four spaces and the 25' vegetative buffer with less than 6' high plantings, that is being bermed to two or three feet with at least two feet plantings are both minimal requests; the ITE parking generation data states that at the peak of business no more than 43 spaces would be used and the applicant is providing 62 spaces; that adding an additional four space that would not be used does not benefit the site; that less impervious surface is better; that the berm with the less than six foot height plantings is much more substantial than the buffers of adjoining lots in New York and nearby New Jersey; that the berm and its plantings meet the intent and purpose of the law; that there has been substantial testimony regarding the signage; that proportionality analysis was

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done for comparative properties; that the area has several shopping plazas with multiple stores, which are all permitted 40 sq. ft. of signage each; that the Tappan Plaza has 13 stores plus Wendy's and the large restaurant space; that the Stateline Plaza has nine stores and Stateline Plaza II has six stores; that comparatively they have much more signage per sq. ft. than is permitted for Walgreens; that the proposed Walgreens Store is 14,000 sq. ft. and they are only permitted 40 sq. ft. of signage; that if the comparison were done by square footage, Walgreens would be permitted about 200 sq. ft. of signage; that the store is a new anchor and gateway into the area; that the Dentist Office across the street is 2,020 sq. ft. building compared to 14,000 sq. ft. building for Walgreens; and that the development is a re-investment in the area for economic strength.

After the testimony from all of the Walgreens' experts, Mr. Del Vecchio offered to poll the Board for a consensus of where they stood on the application, knowing that he had a negative letter from Rockland County Planning and would need all four members present to vote in favor of the application. After polling the Board, and considering a continuation; the following reductions were discussed: (1) the reader section of the pylon sign would be removed, reducing that sign to 21 sq.; (2) the west elevation or Route 303 side of the building would remain as proposed: Walgreens script 65.03 sq. ft., Pharmacy 13.20 sq. ft. and the "W" would be 30.54 sq. ft.; (3) the drive thru directional signs are removed from the calculations because they are directional signs without a logo; (4) the north elevation of the building or Oak Tree Road side is reduced as follows: Walgreens script: 38.98 sq. ft.; Pharmacy 7.3 sq. ft.; and the "W" remains at 30.54; (5) for a total signage of 206.59 sq. ft..

Public Comment:

John Quevedo, 33 Lexington Road, Tappan testified that he has two objections to Walgreens; safety and quality of life on Lexington; that the delivery by box trucks in and out converts a residential neighborhood to Times Square; that this is the only spot in Tappan that has a shopping center emptying into a residential neighborhood; that all the signs should face Route 303, not the residences; that the illuminating lights should be shining into residences; that you would not allow explosives next to a school and this should not be put in his backyard; that there will be 3,000 cars a day on Lexington; one car every 30 seconds during rush hour; another type of store should be built there; would you like this in your backyard?

Eileen Larkin, 15 Horne Tooke Road, Palisades, testified that the Board should take direction from the Rockland County letter; that they clearly state your responsibilities; that the pylon sign that is twenty feet in the air has to go; that you would have to be visually impaired not to see the signs on the building; that she sat on the comprehensive plan and the applicant needs to show a hardship to get variances and Walgreens does not have hardship; that this application changes Orangetown, it is 24 hour 7 day a week business that sells beer; that Oak Tree Road is a Historic Road that meets both historic districts in the Town; that the berm will create a site problem for people pulling out of the parking lot; that this is an important issue for us; that you need a majority plus one to pass this; that since I moved here in 1971 the Zacharachis property was a vital busy shopping center' that we do not need these people putting a spin on things' they need to meet today's zoning standards.

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.

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FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested: §3.11, Column 5 #6a sign size, as modified to 206.59 sq. ft.; § 13.10B (2) Overlay District vegetation less than 6' high; § 3.11, Column 6- parking spaces (62); variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has reduced the requested signage on the north side of the building facing the Residential District, and removed the "reader" section from the proposed pylon sign, i.e., the electronic illuminated message board has been eliminated.
2. The Board determined that § 13.10B(4) sign location Overlay District variance was not applicable and the applicant withdrew the request for a variance from § 4.2(2) sign illumination.
3. The requested: §3.11, Column 5 #6a sign size, as modified to 206.59 sq. ft.; § 13.10B (2) Overlay District vegetation less than 6' high; § 3.11, Column 6- parking spaces (62) variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has reduced the requested signage on the north side of the building facing the Residential District and removed the reader section from the proposed pylon sign, i.e., the electronic illuminated message board has been eliminated.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. . The applicant has reduced the requested signage on the north side of the building facing the residential district and removed the reader section from the proposed pylon sign.
5. The requested: §3.11, Column 5 #6a sign size, as modified to 206.59 sq. ft.; § 13.10B (2) Overlay District vegetation less than 6' high; § 3.11, Column 6- parking spaces (62) 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 applicant has reduced the requested signage on the north side of the building facing the Residential District and removed the reader section from the proposed pylon sign, , i.e., the electronic illuminated message board has been eliminated.
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 variances, namely: §3.11, Column 5 #6a sign size as modified to 206.59 sq. ft. as follows: (1) the reader section (the electronic illuminated message board)of the pylon sign would be removed, reducing that sign to 21 sq. ft.; (2) the west elevation or Route 303 side of the building shall remain as proposed, Walgreens script 65.03 sq. ft., Pharmacy 13.20 sq. ft., and the “W” shall be 30.54 sq. ft.;(3) the drive-thru directional signs are removed from the calculations because they are directional signs without a logo; (4) the signage on the north elevation of the building (or Oak Tree Road side) is reduced as follows: Walgreens script, 38.98 sq. ft.; Pharmacy ,7.3 sq. ft., and the “W” remains at 30.54 sq. ft.; (5) for a total signage of 206.59 sq. ft.; § 13.10B(2) Overlay District vegetation less than 6’ high ; § 3.11, Column 6- parking spaces (62) ; 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 variances, namely: §3.11, Column 5 #6a sign size as modified to 206.59 sq. ft. as follows: (1) the reader section (the electronic illuminated message board)of the pylon sign would be removed, reducing that sign to 21 sq. ft.; (2) the west elevation or Route 303 side of the building shall remain as proposed, Walgreens script 65.03 sq. ft., Pharmacy 13.20 sq. ft., and the "W" shall be 30.54 sq. ft.;(3) the drive-thru directional signs are removed from the calculations because they are directional signs without a logo; (4) the signage on the north elevation of the building (or Oak Tree Road side) is reduced as follows: Walgreens script, 38.98 sq. ft.; Pharmacy ,7.3 sq. ft., and the "W" remains at 30.54 sq. ft.; (5) for a total signage of 206.59 sq. ft.; § 13.10B(2) Overlay District vegetation less than 6' high ; § 3.11, Column 6- parking spaces (62) ; and override the letter from the County of Rockland Department of Planning dated March 11, 2015; was presented and moved by Mr. Sullivan, seconded by Ms. Castelli and carried as follows: Mr. Feroldi, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Ms. Salomon, aye. Mr. Bosco and Mr. Quinn were absent.

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

DATED: March 18, 2015

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

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