

MINUTES
ZONING BOARD OF APPEALS
MAY 1, 2013

MEMBERS PRESENT:

DANIEL SULLIVAN, CHAIRMAN
JOAN SALOMON
NANETTE ALBANESE
PATRICIA CASTELLI
MICHAEL BOSCO

ABSENT:

LEONARD FEROLDI, ALTERNATE

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:

APPLICANTS

PUBLISHED ITEMS

DECISIONS

NEW ITEMS:

FLEMING	SECTION 5.227	ZBA#13-26
68.19 / 1 / 40; R-22 zone	REAR YARD (SWIMMING POOL)	
	VARIANCE GRANTED AS MODIFIED	

O'BRIEN	FLOOR AREA RATIO,	ZBA#13-27
68.20 / 2 / 25; RG zone	SIDE YARD, BUILDING HEIGHT, AND ACCESSORY STRUCTURE	
	DISTANCE VARIANCES APPROVED	

TONKOSCHKER	POSTPONED	ZBA#13-28
77.08 / 2 / 30; RG zone		

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 9:30 P.M.

Dated: May 1, 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

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DECISION

SECTION 5.227 REAR YARD SWIMMING POOL VARIANCE APPROVED AS MODIFIED

To: Denis and Karen Fleming
264 West Central Avenue
Pearl River, New York 10965

ZBA # 13-26
Date: May 1, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-26: Application of Denis and Karen Fleming for a variance from Chapter 43 (Zoning) Town of Orangetown, Section 5.227, R-22 District, (Rear Yard for a swimming pool: 20' required, 5' & 7' proposed) for the installation of an in-ground swimming pool at an existing single-family residence. The premises are located at 264 West Central Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.19, Block 1, Lot 40; R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 1, 2013 at which time the Board made the determination hereinafter set forth.

Denis Fleming and Steve Landau, Landau Pools, appeared and testified.

The following documents were presented:

1. Site plan with proposed pool drawn on it.
2. Three letters from abutting property owners in favor of the application.
3. Two letters from 13 Jan Court, abutting property owner to the rear property line, in opposition to the application.
4. A computer generated photograph of the yard.

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; Ms. Castelli, aye; Mr. Bosco, aye; and Mr. Sullivan, aye.

Steve Landau, Landau Pools, testified that the Flemings' would like to install an in-ground pool in their backyard; that the property drops off in the rear and there is an existing rock wall running through the property; that the pool is positioned parallel to the wall; that he would not feel comfortable moving the pool closer to the house because he needs to have enough room for a two foot overdig in order to install the pool; that there is a 20' easement in the rear of this property which cannot be built on; that it is approximately 60' to the neighbors' house in the rear of this property; and that if they need to reduce the rear yard, they would change the pool size from 18' x 24' to 18' x 32'.

Denis Fleming testified that he purchased his house in 2000; that he has lived in the house with his wife and three children for thirteen years; that ideally he would like to install the 18' x 34' pool; that he does not want to disturb the existing wall because it was expensive to install; and that the house to the rear of his property is set far back.

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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 § 5.227 rear yard variances, as modified to 7' and 9' setbacks, will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The property to the rear of the applicant's house is a conservation area that cannot be developed. The granting of the rear yard variance to permit construction of the in-ground pool will not impose on any of the neighbors.
2. The requested § 5.227 rear yard variances, as modified to 7' and 9' setbacks, will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The property to the rear of the applicant's house is a conservation area that cannot be developed. The granting of the rear yard variance to permit construction of the in-ground pool will not impose on any of the neighbors.
3. The Board has requested, as a condition of the approval, that the applicant submit a drainage plan that shall be submitted to the Department of Environmental Management and Engineering (D.E.M.E.) for their review and approval.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
5. The requested Section 5.227 rear yard variances, as modified to 7' and 9' setbacks, 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 property to the rear of the applicant's house is a conservation area that cannot be developed. The granting of the rear yard variance to permit construction of the in-ground pool will not impose on any of the neighbors.
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 Section 5.227 rear yard variances, as modified to 7' and 9' setbacks, are APPROVED with the Specific Condition that the applicant submit a drainage plan to be reviewed and approved by the Department of Environmental Management and Engineering, Town of Orangetown ; 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.

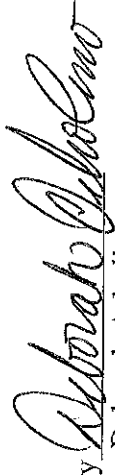
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The foregoing resolution to approve the application for the requested § 5.227 rear yard variances, as modified to 7' and 9' setbacks, with the Specific Condition that the applicant submit a drainage plan to be reviewed and approved by D.E.M.E., was presented and moved by Mr. Bosco, seconded by Mr. Sullivan and carried as follows: Mr. Bosco, aye; Ms. Albanese, aye; Ms. Castelli, nay; Ms. Salomon, nay; 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: May 1, 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 –M.M.

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

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DECISION

**FLOOR AREA RATIO, SIDE YARD, BUILDING HEIGHT AND ACCESSORY
STRUCTURE DISTANCE VARIANCES APPROVED**

To: Peter O'Brien
160 Franklin Avenue
Pearl River, New York 10965

ZBA # 13-27
Date: May 1, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-27: Application of Peter O'Brien for variances from Chapter 43 (Zoning) Town of Orangetown, Section 3.12, RG District, Group Q, Columns 4 (Floor Area Ratio: .30 permitted, .42 proposed), 9 (Side Yard: 10' required, 6.6' proposed), and 12 (Building Height: 8.6' permitted, 25' 10" proposed) and from Section 5.153 (Accessory structure distance: 15' required, 6.7' proposed) { Section 5.21 (d) Undersized lot applies} for an addition to an existing single-family residence. The premises are located at 160 Franklin Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.20, Block 2, Lot 25; RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 1, 2013 at which time the Board made the determination hereinafter set forth.

Peter O'Brien and Jane Slavin, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans dated 08/13/2012 signed and sealed by Jane Slavin, 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; Ms. Castelli, aye; Mr. Bosco, aye; and Mr. Sullivan, aye.

Jane Slavin, Architect, testified that there was a two-story addition added to the rear of the house, which is being removed; that a new two story addition is proposed; that the proposed first floor will provide a new kitchen and ½ bath, with new stairs to the basement; that the second floor would provide a bathroom, bedroom and walk-in closet; that the lot is undersized; that the O'Brien's purchased some property from their rear neighbor but the lot is still undersized; that the total addition is adding an additional 78 square feet; that the existing house has a wrap around porch which adds 260 sq. ft. to the house and the existing garage adds 162 sq. ft.; that these structures exist and are not being changed or modified, but they effect the floor area ratio without providing the additional living space that the applicant needs; that the existing basement is an old rubble foundation and the basement gets wet; that they are not going any higher than the existing house but they are extending the roof line to accommodate the addition to the rear; they also have portion of the attic space that counts toward the floor area ratio even though it is not livable space; that the distance to the garage can be addressed with fire separation; and similar additions have been constructed in the area.

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Denis Fleming testified that they have owned the house for 3 ½ years; that there will be three in the family in a few weeks; that the existing garage is not large enough to house a car but they use it for storage because the basement gets wet.

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, side yard, building height and accessory structure distance variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The lot is undersized, the side yard is not changing; the building height is being extended to tie in the proposed addition to the rear of the house but it is not getting higher. The accessory structure distance variance is being addressed with fire separation. The actual change to the structure is an additional 78 sq. ft. which will make the flow of the house work more successfully.
2. The requested floor area ratio, side yard, building height and accessory structure distance variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The lot is undersized, the side yard is not changing; the building height is being extended to tie in the proposed addition to the rear of the house but it is not getting higher. The accessory structure distance variance is being addressed with fire separation. The actual change to the structure is an additional 78 sq. ft. which will make the flow of the house work more successfully.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.

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4. The requested floor area ratio, side yard, building height and accessory structure distance variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The lot is undersized, the side yard is not changing; the building height is being extended to tie in the proposed addition to the rear of the house but it is not getting higher. The accessory structure distance variance is being addressed with fire separation. The actual change to the structure is an additional 78 sq. ft. which will make the flow of the house work more successfully.

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, side yard, building height and accessory structure variances are APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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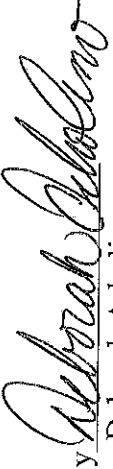
(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown 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, side yard, building height and accessory structure distance variances was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Ms. Albanese, 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: May 1, 2013

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
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TOWN CLERK
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FILE,ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

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