

MINUTES
ZONING BOARD OF APPEALS
MAY 15, 2013

MEMBERS PRESENT:

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

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:

APPLICANTS

PUBLISHED ITEMS

DECISIONS

NEW ITEMS:

LENNOX 68.12 / 1 / 38; RG zone	FRONT YARD, SIDE YARD, AND BUILDING HEIGHT VARIANCES APPROVED AS MODIFIED	ZBA#13-29
WOLANSKI 68.16 / 6 / 41; CS zone	SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED	ZBA#13-30
PIR/ LEVESQUE 78.17 / 2 / 48; R-40 zone	FLOOR AREA RATIO, FRONT YARD, AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#13-31
ONE RAMLAND ROAD 73.21 / 1 / 23 & 24; LIO zone	FRONT YARD, BUILDING HEIGHT AND LOADING BERTH VARIANCES APPROVED	ZBA#13-32
ONE RAMLAND ROAD PERFORMANCE STANDARDS 73.21 / 1 / 23 & 24; LIO zone	SECTION 4.1 PERFORMANCE STANDARDS COMPLIANCE	ZBA#13-33
155 CORPORATE DRIVE 73.19 / 1 / 1 & 73.15 / 1 / 18; LIO zone	FRONT YARD, BUILDING HEIGHT, AND LOADING BERTH VARIANCES APPROVED	ZBA#13-34
155 CORPORATE DRIVE PERFORMANCE STANDARDS 73.19 / 1 / 1 & 73.15 / 1 / 18; LIO zone	SECTION 4.1 PERFORMANCE STANDARDS COMPLIANCE	ZBA#13-35

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 10

TOWN OF ORANGETOWN

ADDITIONAL BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the Acting Chairperson executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for the State Environmental Quality Review Act (SEQRA) coordinated environmental review of actions pursuant to SEQRA Regulations § 617.6 (b)(3) the following applications:
Henry Kaufman Campgrounds, Master Plan Review,, 667 Blauvelt Road, Pearl River, NY 69.14/ 1/ 28; R-80 zone; Kopenek Subdivision Plan, 20 Steuben Avenue, Tappan, NY , 77.06/2/69; R-15 zone; School of Rock conditional use permit, 225 Erie Street, Blauvelt, NY 70.14/4/33; CS zone; Wells Lane Site Plan, 258 South Boulevard, Critical Environmental Area, 66.17/1/25.2; R-22 zone; 30 Ramland Road Internal Subdivision, 30 Ramland Road, Orangeburg, NY, 73.20/1/28; LIO zone; Hayes Site Plan, 626 Western Highway, Blauvelt, NY, 70.09 / 3/ 41.1; 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 11:10 P.M.

Dated: May 15, 2013

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 

Deborah Arbolino
Administrative Aide

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

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 10

TOWN OF ORANGETOWN

DECISION

**FRONT YARD, SIDE YARD AND BUILDING HEIGHT VARIANCES
APPROVED**

To: William Lenox
47 West Carroll Street
Pearl River, New York 10965

ZBA # 13-29
Date: May 15, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-29: Application of William Lennox for variances from Chapter 43 (Zoning) Town of Orangetown, RG District, Group Q, Columns 8 (Front Yard: 25' required, 10' and 8' existing), 9 (Side Yard: 10' required, 5' existing) and 12 (Building height: 8'8" permitted, 15' proposed) for an addition to an existing detached garage at an existing single-family residence. The premises are located at 47 West Carroll Street, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.12, Block 1, Lot 38; RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 15, 2013 at which time the Board made the determination hereinafter set forth.

William Lenox and Robert Hoene, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans dated 01/05/2012 by Robert Hoene, 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.

Robert Hoene, Architect, testified that the applicant would like to extend the existing single car garage to a two-car garage and add a room above for storage since the existing house is small; that he id not realize that there was a paper road next to the property when he drew the plans; that when they submitted for the permit, they found out that they need to meet two front yard requirements instead of a front yard and side yard; that the setback to the yards are not changing; that they plan to use part of the existing foundation and add to it in the rear and toward the existing house; that they can lower the height by making the ceiling height 7'5" and it will not be habitable space; that he proposed the deck for the second floor to add architectural interest but that can be removed; and that they will remove the slop sink.

William Lennox testified that the existing garage was built in 1912; that the driveway goes directly to Carroll Street; that he lives alone; that he has three cars and motorcycles; and that he has no intention of creating an apartment.

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 10

TOWN OF ORANGETOWN

Public Comment:

Mary Gabalski, 54 West Crooked Hill Road, Pearl River, testified that she has concerns that the structure will become an apartment; and that there are a lot of children in the neighborhood.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested front yard, side yard and building height variances as modified will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has agreed to reduce the ceiling height of the storage area to 7' 5", remove the deck from the second floor and replace the door with a window; and that the proposed slop sink will be removed. The height of the proposed garage will be reduced to 14' and the front yard and side yard conditions are not changing.
2. The requested front yard, side yard and building height variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has agreed to reduce the ceiling height of the storage area to 7' 5", remove the deck from the second floor and replace the door with a window; and that the proposed slop sink will be removed. The height of the proposed garage will be reduced to 14' and the front yard and side yard conditions are not changing.
3. The benefits sought by the applicant cannot be achieved by other means feasible to the applicant to pursue other than by obtaining variances. The applicant has agreed to reduce the ceiling height of the storage area to 7' 5", remove the deck from the second floor and replace the door with a window; and that the proposed slop sink will be removed. The height of the proposed garage will be reduced to 14' and the front yard and side yard conditions are not changing.
4. The requested front yard, side yard and building height variances as modified are not substantial.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

TOWN OF ORANGETOWN
2013 JUN 10 PM 1 11
TOWN CLERKS OFFICE

DECISION: In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for the requested front yard, side yard and building height (reduced from the proposed 15' to 14') variances are **APPROVED** with the Specific Condition that (1) the ceiling height of the proposed storage area shall be reduced to 7' 5"; (2) the upper deck shall be removed; the door to the deck shall be replaced with a window; and (3) the slop sink in the garage shall be removed; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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


TOWN CLERKS OFFICE
2013 JUN 10 PM 1:11
TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested front yard, side yard and building height (reduced to 14') variances with the following Specific Conditions that: (1) the slop sink shall be removed; (2) the upper deck shall be removed and the door to the deck shall be replaced with a window; (3) the ceiling height of the proposed storage area shall be reduced to 7' 5"; was presented and moved by Ms. Salomon, seconded by Ms. Albanese and carried as follows: Mr. Bosco, aye; Mr. Feroldi, aye; Ms. Albanese, aye ; Ms. Salomon, aye; and Mr. Sullivan, aye. Ms. Castelli was absent for this hearing.

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 15, 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

TOWN CLERKS OFFICE
2013 JUN 10 PM 1 14
TOWN OF ORANGETOWN

DECISION

SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED

To: Anthony Wolanski
145 East Central Ave.
Pearl River, New York 10965

ZBA # 13-30
Date: May 15, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-30: Application of Anthony Wolanski for variances from Chapter 43 (Zoning) Town of Orangetown, Section 3.12, CS District, Columns 9 (Side Yard: 0' or 12' required, 11' proposed), and 10 (Total Side Yard: 0' or 25' required, 21.7' proposed) for a covered entry to a Bilco door at an existing two-family residence. The premises are located at 145 East Central Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.16, Block 6, Lot 41; CS zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 15, 2013 at which time the Board made the determination hereinafter set forth.

Anthony Wolanski and Theresa O'Rourke appeared and testified.

The following documents were presented:

1. Site plan.

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

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

Anthony Wolanski testified that they purchased the house in November; that the basement had some water damage near the bilco doors; that he wanted to replace them and add a covered entryway to circumvent the water problem; that he doesn't understand the zoning because he could build to the property line without a variance.

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2013 JUN 10 PM 1 21
TOWN OF ORANGETOWN

Public Comment:

No public comment.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested side yard and total side yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The requested variances are prompted by the CS zone requirements and the house is a pre-existing two-family residence. The covered entryway into the basement may help to prevent any further water damage to the basement.
2. The requested side yard and total side yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The requested variances are prompted by the CS zone requirements and the house is a pre-existing two-family residence. The covered entryway into the basement may help to prevent any further water damage to the basement.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The requested variances are prompted by the CS zone requirements and the house is a pre-existing two-family residence. The covered entryway into the basement may help to prevent any further water damage to the basement.
4. The requested side yard and total side yard variances are not substantial.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 11

TOWN OF ORANGETOWN

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

General Conditions:

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

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 11

TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested side yard and total side yard variances was presented and moved by Mr. Bosco, seconded by Ms. Albanese and carried as follows: Ms. Salomon, aye; Mr. Bosco, aye; Mr. Feroldi, aye; Ms. Albanese, aye; and Mr. Sullivan, aye. Ms. Castelli was absent for this hearing.

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 15, 2013

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

TOWN OF ORANGETOWN
2013 JUN 10 PM 1 11
TOWN CLERKS OFFICE

DECISION

**FLOOR AREA RATIO, FRONT YARD, AND BUILDING HEIGHT
VARIANCES APPROVED**

To: Shawn Levesque and Sara Pir
14 Swan Street
Palisades, New York 10964

ZBA # 13-31
Date: May 15, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-31: Application of Shawn Levesque and Sara Pir for variances from Chapter 43 (Zoning) Town of Orangetown, Section 3.12, R-40 District, Group E, Columns 4 (Floor Area Ratio: .15 permitted, .20 proposed), 8 (Front Yard: 50' required, 29.8' and 37.2' existing & 30' proposed), and 12 (Building Height: 23.25' permitted, 24.25' existing, and 29.33' proposed) for an addition to an existing single-family residence. The premises are located at 14 Swan Street, Palisades, New York and are identified on the Orangetown Tax Map as Section 78.17, Block 2, Lot 48; R-40 zoning district.

Held by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 15, 2013 at which time the Board made the determination hereinafter set forth.

Shawn Leveque and Donald Brenner appeared and testified.

The following documents were presented:

1. Architectural plans dated April 1, 2013 signed and sealed by Kier B. Levesque, 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) (7); 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.

Shawn Levesque testified that he and his wife built the house 13 years ago; that he grew up on the block; that they have two children and would like to expand the kitchen and add an office space to the rear of the house; that they work out of the house; that they would also like to extend the second floor to add a bathroom and walk-in closet; that he is not related to the architect; that the surname "Levesque" is a common Canadian name; and that the stream on the property is a trickling stream that has not overflowed for the 35 years that he has lived on the block.

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 11

TOWN OF ORANGETOWN

Public Comment:

No public comment.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested floor area ratio, front yard, 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 area.
2. The requested floor area ratio, front 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 area.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested floor area ratio, front yard 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 area.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 11

TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested floor area ratio, front yard 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.

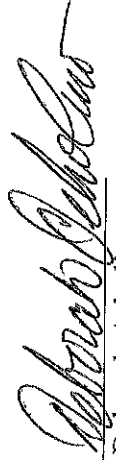
TOWN CLERKS OFFICE
2013 JUN 10 PM 1 11
TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested floor area ratio, front yard and building height variances was presented and moved by Mr. Bosco, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Mr. Feroldi, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Ms. Castelli was absent for this hearing.

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 15, 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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2013 JUN 10 PM 1 11

TOWN OF ORANGETOWN

One Ramland Road
ZBA#13-32
Page 2 of 4

Donald Brenner, Attorney, testified that the client received a preliminary approval and a neg dec on March 23, 2013 for the application; that they have moved the new portion of the building closer to the commercial property line and away from the residential zone; that this is the cause for the increase in the building height; and that this type of business, a data center, does not need as many loading berths as a warehouse.

Jay Greenwell, L.S., testified that the Planning board looked at the application very carefully and they have kept the buffer; that they are planting and screening the retaining wall in the rear of the building which is housing some of the chillers; that they cannot continue the planting along the parking lot because that is federal wetland and cannot be touched; and the existing tree line in the buffer area is tall and provides screening.

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 front yard, building height and outdoor loading berth variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The property is located in an LIO zone which abuts with a residential zone and the applicant has maintained the required buffer and increased the height of the building in order to stay as far away from the residential zone as possible. The Board viewed the decrease in the required number of loading berths positively because there would be less impact on the abutting residential properties.
2. The requested front yard, building height and loading berth variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The property is located in an LIO zone which abuts with a residential zone and the applicant has maintained the required buffer and increased the height of the building in order to stay as far away from the residential zone as possible. The Board viewed the decrease in the required number of loading berths positively because there would be less impact on the abutting residential properties.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.

TOWN OF ORANGETOWN
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4. The requested front yard, building height, and loading berth variances, although 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 is located in an LIO zone which abuts with a residential zone and the applicant has maintained the required buffer and increased the height of the building in order to stay as far away from the residential zone as possible. The Board viewed the decrease in the required number of loading berths positively because there would be less impact on the abutting residential properties.
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 front yard, building height, and loading berth 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, Performance Standards Approval, 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, Performance Standards Approval, 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.

TOWN CLERKS OFFICE
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TOWN OF ORANGETOWN

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

(v) Any foregoing variance, Performance Standards Review, 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 front yard, building height and loading berth variances was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; and Ms. Albanese, 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 15, 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 -ra

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

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2013 JUN 10 PM 1 11

TOWN OF ORANGETOWN

DECISION

§4.1 PERFORMANCE STANDARDS CONFORMANCE APPROVED

To: Donald Brenner (One Ramland Road)
4 Independence Avenue
Tappan, New York 10983

ZBA # 13-33
Date: May 15, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#13-33: Application of One Ramland Road for review from Chapter 43 (Zoning), Section 4.1 Performance Standards for a Data Storage Facility with chillers & generators. The premises are located at 1 Ramland Road, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 73.21, Block 1, Lots 23 & 24; LIO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 15, 2013 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Stephen Tepperman Consultant, Patrick Hynes, Owner, Joseph Modafferi, P.E., Brett Crossland, MEP Engineer, and Brook Crossan , Sound Engineer, appeared and testified.

The following documents were presented:

1. Architectural plans dated 02/15/2013 with the latest revision date of 04/02/2013, signed and sealed by Diego A. Villareale, P.E, (11 pages).
2. A letter dated March 13, 2013 from John Giardiello, P.E., Director, Office of Building, Zoning, Planning Administration and Enforcement, Town of Orangetown.
3. A report dated March 22, 2013 from MACK Associates, LLC, signed by Brook Crossan, P.H.D., P.E.. concerning noise study (6 pages).
4. Generator Specifications.
5. Air cooled chiller specifications.
6. Substation specifications.
7. Fuel tank specifications.
8. Diesel fuel material safety data sheets.
9. EPA Certificate of Conformity.
10. Performance Standards Resume of Operations and Equipment form dated April 1, 2013 and signed by Patrick Hynes.
11. Fire Prevention Supplement.
12. A letter dated April 19, 2013 from Joseph J. Moran, P.E., Commissioner, Department of Environmental Management and Engineering, Town of Orangetown.
13. A letter dated May 3, 2013 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
14. A memorandum dated May 15, 2013 from Michael Bettmann, Chief Fire Inspector, Town of Orangetown.

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

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 11

TOWN OF ORANGETOWN

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination based upon the testimony heard by this Board, and the facts as presented in the application submissions and in the record, since the application entails the ZBA engaging in a review to determine compliance with technical requirements, that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (28); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Castelli, aye; Mr. Bosco, aye; and Ms. Albanese, aye.

Donald Brenner, Attorney, testified that the client received a preliminary approval and a neg dec on March 23, 2013 for the application; that they have moved the new portion of the building closer to the commercial property line and away from the residential zone; that is the cause for the increase in the building height; that four generators were previously approved and they have added 13 more generators; that he is also a resident of Orangetown and appreciates the tax ratable of this business and noted that a factory could operate at this location and that would be more intrusive to the residential neighbors; that the sound attenuation walls and increase to the buffer will help with any noise from the chillers; and that the application meets the Town's standards for noise.

Joe Modafèrri, Engineer, testified that the site has 32.7 acres and is located on the corner of Blaisdale and Ramland Roads; that there is no access to the site from Blaisdale Road that the existing building is 230,000 sq. ft. that they are providing 764 parking spaces; that this is an LIO District that abuts a residential zone; that they were previously approved for four generator; that they are proposing to add 13 more generators and 8 chillers; that they have designed a sound attenuation wall and the sub station is being designed by O & R; that they are maintaining the two to three hundred foot vegetative buffer between the residential zone and the LOI zone; that the 60' height of the building is necessary to maximize the distance from the residential zone; that the new building will house some of the generators and the chillers will be on the roof; that there will be four 40,000 gallon subsurface tanks, two for water and two for fuel for the generators; that they will employ 20 -22 people over three shifts; that the operation is a 24 hour operation; that the emergency generators will be tested during the day; and that the loading docks have been reduced from ten to four.

Brook Crossan, PH.D., P.E., Sound engineer, testified that he looked at all the resources on the site including the roof top units that exist and the proposed chillers and the 26 foot wall from the base of the ground chillers and the 8' wall for the roof chillers and the standards for Orangetown noise has been met; that each generator is in a sound attenuation bin; and that the 41 existing air conditioning units on the original building will be replaced with newer more efficient units.

Jay Greenwell, L.S., testified that the Planning board looked at the application very carefully and they have kept the buffer; that they are planting and screening the retaining wall in the rear of the building which is housing some of the chillers; that they cannot continue the planting along the parking lot because that is federal wetland and cannot be touched; that the engineer designed the attenuation walls in multiple layers of walls and the existing tree line in the buffer area is tall and provides screening.

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

TOWN CLERKS OFFICE
2013 JUN 10 PM 1:11
TOWN OF ORANGETOWN

Public Comment:

Steve Del Salvio, 262 Trenton Place, testified that the generators are not an issue; that the chillers and the noise they generate are of great concern; that the application went from 2 to 8 and 8 on the roof; that the building should be redesigned to move the chillers away from the residential zone; that they should be placed on the corporate side of the building; that they will have to live with a constant humming noise; that a data center will need to have the chillers running constantly; and 16 chillers will produce a lot of noise; that they should be put on the Blaisdale side; he asked that all of the chillers be placed on the roof; and he also requested that the applicant continue the planting of evergreens along the entire parking lot area.

Laura Del Salvio, 262 Trenton Place, testified that she has lived in her home for thirty years; that she enjoys the peace and quite of her yard; that she would like to continue to enjoy it and asked the Board to consider this is real life terms.

Laura Diercks, 255 Betsy Ross Drive, testified that last year the proposal was for one generator; that the community should be made aware of these changes.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents presented, the Board found and concluded that:

Based upon the information contained in the applicant's Resume of Operations and Equipment, the Fire Prevention Supplement, the letter dated April 19, 2013 from Joseph J. Moran, P.E., Commissioner of the Orangetown Department of Environmental Management and Engineering (D.E.M.E.) concluding that there is no reasonable doubt as to the likelihood of applicant's conformance to the Zoning Code § 4.1 Performance Standards, and the memorandum dated May 15, 2013 from Michael Bettmann, Chief Fire Inspector, Town of Orangetown Bureau of Fire Prevention (B.F.P.); the other documents presented to the Board and the testimony of applicant's representatives, the Board finds and concludes that conformance with the Performance Standards set forth in Zoning Code Section 4.1 will result sufficient to warrant the issuance of a Building Permit and/or Certificate of Occupancy, subject to compliance with the orders, rules and regulations of the Orangetown Office of Building, Zoning & Planning Administration & Enforcement, DEME, and Orangetown B.F.P., and all other departments having jurisdiction of the premises.

TOWN CLERKS OFFICE
2013 JUN 10 PM 1 11
TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for Performance Standards Conformance, pursuant to Zoning Code § 4.1, are APPROVED with the SPECIFIC CONDITION that the applicant adhere to all of the requirements set forth by the Chief Fire Inspector, Town of Orangetown B.F.P.; AND FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

TOWN CLERKS OFFICE
2013 JUN 10 PM 1:11
TOWN OF ORANGETOWN

One Ramland Road
ZBA#13-33
Page 5 of 5

The foregoing resolution to approve the application for Zoning Code § 4.1 Performance Standards Conformance was presented and moved by Ms. Albanese, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; and Ms. Albanese, 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 15, 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 -na

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

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2013 JUN 10 PM 1 13

TOWN OF ORANGETOWN

DECISION

FRONT YARD, BUILDING HEIGHT, AND LOADING BERTH VARIANCES APPROVED

To: Douglas Bartels (155 Corporate Drive)
570 Commerce Boulevard
Carlstadt, New Jersey 07072

ZBA # 13-34
Date: May 15, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-34:Application of 155 Corporate Drive for an amendment to ZBA # 10-92: Chapter 43 (Zoning), Section 3.12, LIO District, CC Group, Columns 8 (Front Yard: 100' required, 50' previously approved, 48' proposed), 12 (Building Height: 12' permitted for front yard, 33.4' proposed; previously 12.5' was permitted, 38' was approved) [no height variances are required for the western or southern elevations because the rear and side yards are sufficient]; Section 6.41 b & f : (7 loading berths required; 3 proposed) and LIO District refers to LO District Column 7 #2 (Loading Berths shall be within completely enclosed buildings: 15 outdoor loading berths were previously approved; 2 outdoor berths are proposed) for an office/data center. The premises are located at 155 Corporate Drive, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 73.19, Block 1, Lot 1 & Section 73.15, Block 1, Lot 18; LIO Zoning District.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 15, 2013 at which time the Board made the determination hereinafter set forth.

Andy Del Vecchio, Attorney, Edward Russo, Principal, and Douglas Bartels, P.E., appeared and testified.

The following documents were presented:

1. Architectural plans dated 03/16/2013 signed and sealed by Michael Buldo, Architect (4 pages).
2. Engineered plans (20 pages) signed and sealed by Douglas Bartels, P.E with the latest revision date of 02/15/2013.
3. A letter dated April 4, 2013 from Richard Berger.
4. Exterior sound evaluation of proposed data center operations by Lewis S. Goodfriend & Associates (22 pages).
5. ZBA Decision #10-92 with a final date of July 20, 2011.
6. Diesel engine generator set(4 pages).
7. A letter dated March 27, 2013 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
8. Color plans (11 pages dated may 15, 2013 not signed or sealed).

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 since the Planning board noticed its intent to declare itself Lead Agency for this application and distributed those notices 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 SEQRA review on March 27, 2013, rendered environmental determinations of **no** significant adverse environmental impacts to result from the proposed land use actions (i. e., A "Negative Declaration" or "Neg. Dec."), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot

TOWN OF ORANGETOWN
2013 JUN 10 PM 1 12

TOWN CLERKS OFFICE

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

Andrew Del Vecchio, Attorney, testified that this is an amended application; that the site was previously approved for a warehouse with loading docks and the front yard setback was needed to keep the project as far away as possible from the residential neighbors in Old Tappan, New Jersey; that this project is smaller than the last proposal that was approved, by 12,000 sq. ft.; that they were previously approved for seven outdoor loading docks and would like to reduce that to only three; that they were also previously approved for a 36' height and would like to ask for only 33 feet; and that they will discuss the generators and chillers in the next application for performance standards.

Public Comment:

No public comment.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested front yard, building height and loading berth variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The front yard setback request allows the proposed data center to be as far as possible away from the abutting New Jersey residential neighbors. The data center needs less loading berths and a lower height than the previously approved plans and the consensus of the Board is that these reductions are a desirable change.
2. The requested front yard, building height and loading berth variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The front yard setback request allows the proposed data center to be as far as possible away from the abutting New Jersey residential neighbors. The data center needs less loading berths and a lower height than the previously approved plans and the consensus of the Board is that these reductions are a desirable change.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 12

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4. The requested front yard, building height and loading berth 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 front yard setback request allows the proposed data center to be as far as possible away from the abutting New Jersey residential neighbors. The data center needs less loading berths and a lower height than the previously approved plans and the consensus of the Board is that these reductions are a desirable change.
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 front yard, building height and loading berth 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.

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 12

TOWN OF ORANGETOWN

(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 front yard, building height and loading berth variances was presented and moved by Mr. Sullivan, seconded by Ms. Castelli 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 15, 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
OEBZPAE
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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2013 JUN 10 PM 1 12

TOWN OF ORANGETOWN

DECISION

SECTION 4.1 PERFORMANCE STANDARDS CONFORMANCE APPROVED

To: Douglas Bartels (155 Corporate Drive)
570 Commerce Boulevard
Carlstadt, New Jersey 07072

ZBA # 13-35
Date: May 15, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#13-35: Application of 155 Corporate Drive for review from Chapter 43 (Zoning), Section 4.1 Performance Standards for a Data Storage Facility with three water-cooled chiller plants and up to eight diesel powered generators. The premises are located at 155 Corporate Drive, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 73.19, Block 1, Lot 1 & Section 73.15, Block 1, Lot 18; LIO Zoning District.

Held by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 15, 2013 at which time the Board made the determination hereinafter set forth.

Andy Del Vecchio, Attorney, Edward Russo, Principal, and Douglas Bartels, P.E., appeared and testified.

The following documents were presented:

1. Architectural plans dated 03/16/2013 signed and sealed by Michael Buldo, Architect (4 pages).
2. Engineered plans (20 pages) signed and sealed by Douglas Bartels, P.E with the latest revision date of 02/15/2013.
3. A letter dated April 4, 2013 from Richard Berger.
4. Exterior sound evaluation of proposed data center operations by Lewis S. Goodfriend & Associates (22 pages).
5. ZBA Decision #10-92 with a final date of July 20, 2011.
6. Diesel engine generator set(4 pages).
7. A letter dated March 27, 2013 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
8. Color plans (11 pages) dated May 15, 2013 not signed or sealed.
9. Performance Standards review form and fire supplement.
10. A letter dated 05/15/2013 from Michael Bettmann, Chief, Bureau of Fire Prevention, Town of Orangetown.
11. A letter dated April 19, 2013 from Joseph J. Moran, P.E., Commissioner, Department of Environmental Management and Engineering, town of Orangetown.
12. A letter dated May 3, 2013 from the County of Rockland Department of Planning signed by Thomas B. Vanderbeek P.E., Commissioner of Planning.
13. A letter dated April 10, 2013 from the County of Rockland Department of Health signed by Scott McKane, P.E., Senior Public "Health Engineer.
14. A letter dated May 6, 2013 from the County of Rockland Department of Highways signed by Sonny Lin, P.E..

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

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 12

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On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination based upon the testimony heard by this Board, and the facts as presented in the application submissions and in the record, since the application entails the ZBA engaging in a review to determine compliance with technical requirements, that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (28); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Castelli, aye; Mr. Bosco, aye; and Ms. Albanese, aye.

Edward Russo testified that this application has changed, the west side is now open; that the emergency generators are inside the building; that the chillers will be installed within cooling towers and there will be a 26' high wall; that the equipment has ultra quiet fans, that they have hospital grade quiet silencers; that there will be three 50,000 tanks installed underground; and that there is no onsite substation.

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

Public Comment:

No public comment.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents presented, the Board found and concluded that:

Based upon the information contained in the applicant's Resume of Operations and Equipment, the Fire Prevention Supplement, the letter dated April 16, 2013 from Joseph J. Moran, P.E., Commissioner of the Orangetown Department of Environmental Management and Engineering (D.E.M.E.) concluding that there is no reasonable doubt as to the likelihood of applicant's conformance to the Zoning Code § 4.1 Performance Standards, and the memorandum dated May 15, 2013 from Michael Bettmann, Chief Fire Inspector, Town of Orangetown Bureau of Fire Prevention (B.F.P.); the other documents presented to the Board and the testimony of applicant's representatives, the Board finds and concludes that conformance with the Performance Standards set forth in Zoning Code Section 4.1 will result sufficient to warrant the issuance of a Building Permit and/or Certificate of Occupancy, subject to compliance with the orders, rules and regulations of the Orangetown Office of Building, Zoning & Planning Administration & Enforcement, DEME, and Orangetown B.F.P., and all other departments having jurisdiction of the premises.

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 12

TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for Performance Standards Conformance, pursuant to Zoning Code § 4.1, are APPROVED with the SPECIFIC CONDITION that the applicant adhere to all of the requirements set forth by the Chief Fire Inspector, Town of Orangetown B.F.P.; AND FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

TOWN CLERKS OFFICE

2013 JUN 10 PM 1 12

TOWN OF ORANGETOWN


155 Corporate Drive
ZBA#13-35
Page 4 of 4

The foregoing resolution to approve the application for Zoning Code § 4.1 Performance Standards Conformance was presented and moved by Mr. Sullivan, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; and Ms. Albanese, 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 15, 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 -N/A.

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

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2013 JUN 10 PM 1 12

TOWN OF ORANGETOWN