

MINUTES  
ZONING BOARD OF APPEALS  
MAY 21, 2014

MEMBERS PRESENT:       JOAN SALOMON  
                                  PATRICIA CASTELLI (Present for last two hearings)  
                                  THOMAS QUINN  
                                  LEONARD FEROLDI, ALTERNATE  
                                  MICHAEL BOSCO  
                                  DANIEL SULLIVAN, CHAIRMAN

ABSENT:                    NONE

ALSO PRESENT:           Dennis Michaels, Esq.       Deputy Town Attorney  
                                  Jennifer Johnson,         Official Stenographer  
                                  Deborah Arbolino         Administrative Aide

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

Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

CONTINUED ITEM:

EICHNER 68.16 / 5 / 21; RG zone	LOT AREA, FRONT YARD, SIDE YARD, TOTAL SIDE YARD, AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#14-02
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HOLIHAN 74.14 / 2 / 36; R-15 zone	INTERPRETAION DENIED	ZBA#14-10
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NEW ITEMS:

FITZGERALD 69.05 / 4 / 28; R-15 zone	§ 3.11, COLUMN 2 #7 647 SQ. FT. APPROVED	ZBA#14-33
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HAYES 69.18 / 4 / 58; R-15 zone	FLOOR AREA RATIO, AND TOTAL SIDE YARD VARIANCES APPROVED	ZBA#14-34
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MC KENNA 77.06 / 3 / 31; R-15 zone	FLOOR AREA RATIO, LOT AREA, LOT WIDTH, STREET FRONTAGE, FRONT YARD, SIDE YARD, TOTAL SIDE YARD, AND BUILDING HEIGHT VARIANCES APPROVED §521 APPLIES	ZBA#14-35
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CIGANEK 77.07 / 1 / 3; R-15 zone	INTERPRETATION GRANTED IN FAVOR OF APPLICANT	ZBA#14-36
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VERIZON WIRELESS PERFORMANCE STANDARDS 68.20 / 1 / 1.30;LI zone	SECTION 4.1 GRANTED	ZBA#14-37
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CORNIELLE AMENDMENT 74.17 / 3 / 42; R-15 zone	FLOOR AREA RATIO AMENDMENT APPROVED	ZBA#14-07A
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THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 10:00 P.M.

Dated: May 21, 2014

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

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

TOWN OF ORANGETOWN  
2014 JUN 12 PM 11 14  
TOWN CLERKS OFFICE

DECISION

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

To: Louis and Tracey Eichner  
155 Braunsdorf Road  
Pearl River, New York 10965

ZBA # 14-02  
Date: January 8, 2014  
May 21, 2014

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

Original Application:

ZBA# 14-02: Application of Louis and Tracey Eichner for variances from the Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 9.34 (extension of non-conforming use: one time expansion of not more than 50% permitted; 283% expansion proposed) which would require a use variance; and from Section 3.12, CC District, Column 4 (Floor Area Ratio: .30 permitted, .425 proposed) 8 (Front Yard: 0' or 45' permitted; 27.3' existing; 19.9' proposed) 9 (Side Yard: 0' or 12' permitted; 10.1' existing on left side; 14.8' existing on right side and 7.2' proposed) and 10( Total Side Yard: 0' or 25' required; 24.9' existing; 16.9' proposed) for an addition to an existing single-family residence. Premises are located at 155 Braunsdorf Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.16, Block 5, Lot 21; CC zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, January 8, 2014 and May 21, 2014 at which time the Board made the determination hereinafter set forth.

Louis and Tracey Eichner and Kier Levesque, Architect, appeared and testified at the January 8, 2014 hearing.

The following documents were presented:

1. Architectural plans dated 05/30/2013 signed and sealed by Kier Levesque, Architect. (4 pages)
2. Survey dated 05/17/2013 signed and sealed by John A. Loch, P.E.

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

Dennis Michaels, Deputy Town Attorney advised the applicant that the requested variances would require a use variance, which is extremely difficult to make a case for; and the Zoning board advised the applicant to petition the Town Board for a zone change for several lots that border the RG and CS zones. At this time the applicant asked for a continuance.

The applicant received a zone change from the Orangetown Town Board "Local Law No. 5, 2014 Chapter 43, §2.2 of the Zoning Law of the Town of Orangetown to change the Zoning District of certain properties in the Hamlet of Pearl River" and a new referral to the Zoning Board was published.

Revised Application:

ZBA# 14-02: Application of Louis and Tracey Eichner for variances from Chapter 43, Zoning Code of the Town of Orangetown, Section 3.12, RG District, Columns 4 (Floor Area Ratio: .30 permitted, .425 proposed), 5 (Lot Area: 10,000 sq. ft. required, 8,520 sq. ft. existing), 8 (Front Yard: 25' required,; 27.3' existing; 16.9' proposed) 9 (Side Yard: 10' required,; 10.1' existing on left side; 14.8' existing on right side and 7.2' proposed) and 10( Total Side Yard: 30' required; 24.9' existing; 16.9' proposed) and 12 (Building

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Height: 9.12' permitted, 20' existing, 25' proposed) for an addition to an existing single-family residence. Premises are located at 155 Braunsdorf Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.16, Block 5, Lot 21; RG zoning district.

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

At the May 21, 2014 hearing Louis and Tracey Eichner and Kier Levesque, Architect, appeared.

Kier Levesque, Architect, testified that since the January meeting, the Eichners' have been granted a zone change for 155 Braunsdorf Road; that the zone was changed from CS to RG and they are back to ask for variances from the RG residential zone; that the application has not changed; that the variances are different because of the zone change; that they currently have 1,294 sq. ft. of living space; that the current second floor does not count in the floor area ratio because of the ceiling height; that they are proposing to add a porch and living area to the front of the house and to add a full second floor above the entire house; that they will end up with four bedrooms and a master bedroom suite; that the lot is undersized; that the first floor addition would be 482 sq. ft.; that the house has no basement or crawl space; that they are extending out front to accommodate upstairs bedroom and that similar additions have been constructed in the neighborhood.

Tracey Eichner testified that presently the four kids are in one bedroom upstairs; that when they are finished with the construction, if approved, they will have four bedrooms and a master bedroom all on the second floor; and that presently there are six in the family.

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.

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TOWN CLERKS OFFICE

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested floor area ratio, lot area, front yard, side yard, total side yard and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant recently received a zone change from CS to RG ; that the lot is undersized for the RG zone. Because the zone change was just granted the referral from the Building Department did not consider the undersize lot in its referral and similar additions have been constructed in the area.
2. The requested floor area ratio, lot area, front yard, side yard, total side yard and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant recently received a zone change from CS to RG ; that the lot is undersized for the RG zone. Because the zone change was just granted the referral from the Building Department did not consider the undersize lot in its referral and 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, lot area, front yard, side yard, total side 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. The applicant recently received a zone change from CS to RG ; that the lot is undersized for the RG zone. Because the zone change was just granted the referral from the Building Department did not consider the undersize lot in its referral and 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.

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

General Conditions:

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

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

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

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

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


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The foregoing resolution to approve the application for the requested floor area ratio, lot area, front yard, side yard, total side yard and building height variances was presented and moved by Mr. Sullivan, seconded by Ms. Salomon and carried as follows: Mr. Feroldi, aye; Ms. Salomon, aye; Mr. Sullivan, aye; Mr. Bosco, aye; and Mr. Quinn, 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 21, 2014

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

APPLICANT  
ZBA MEMBERS  
SUPERVISOR  
TOWN BOARD MEMBERS  
TOWN ATTORNEY  
DEPUTY TOWN ATTORNEY  
OBZPAE  
BUILDING INSPECTOR -B.v.W.

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

TOWN OF ORANGETOWN  
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TOWN CLERKS OFFICE

DECISION

**INTERPRETATION UPHOLDS EXISTING CERTIFICATE OF OCCUPANCY**

To: Dwight Joyce (Holihan)  
2 Joyce Plaza  
Stony Point, New York 10980

ZBA # 14-10  
Date: January 22, 2014  
May 21, 2014

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 14-10: Application of Richard and Regina Holihan for an interpretation and/or amendment to ZBA Decision # 86-20 dated April 16, 1986 (as originally requested by Applicants), then, subsequently, Applicants revised/ changed their application so as to request the ZBA to amend a Certificate of Occupancy, dated 09/23/1987, and not the 04/16/1986 ZBA Decision, for property located at 19 Lowe Lane, Orangeburg, New York and identified on the Orangetown Tax Map as Section 74.14, Block 2, Lot 36 ; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, January 22, 2014 and May 21, 2014 at which time the Board made the determination hereinafter set forth.

At the January 22, 2014 meeting Dwight Joyce, Attorney, appeared and testified.

Members Present: Daniel Sullivan, Joan Salomon, Patricia Castelli, Leonard Feroldi. Michael Bosco and Nanette Albanese were absent.

The following documents were presented:

1. A certificate of occupancy dated September 23, 1987 signed by Leonard Post, Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
2. Zoning Board Decision # 86-20 dated April 16, 1986 signed by Robert Hunt, Clerk.
3. Publication notice for April 16, 1986 Zoning board of Appeals.

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

At the meeting held on January 22, 2014 and 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 requests an interpretation of an existing code, rule or regulation, and this type of application is exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (31); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Ms. Castelli, aye; Mr. Feroldi, aye; and Mr. Sullivan, aye. Mr. Bosco and Ms. Albanese were absent.

Dwight Joyce, Attorney, testified that they are appealing the denial by Mr. Giardiello for a certificate of occupancy for premises located on Lowe Lane back in 1986; that the applicant has two structures on one lot each containing a residence; that he has the public notice that was issued in April 1986 and published in the newspaper that shows that the applicant was requesting a variance from three sections of the zoning code; that an application was made by Richard and Regina Holihan to erect a detached garage with a second dwelling unit on the lot in the R-15 zoning district; that the applicants' requested

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a use variance from section 3.11, R-15 district, column 2 refers back to R-80 district, allowed use, single-family detached residence and two detached structures each with a single-family residence are proposed; and they requested a variance from paragraph 2, section 1.26 defined words, lot, not more than a single family dwelling is permitted on any one lot and a second dwelling unit is proposed on a single residential lot; and the decision reads: in view of the foregoing and the testimony before this Board, the application for the use variance be and hereby is approved; and Robert Hunt signed the minutes dated April 30, 1986; that the certificate of occupancy was issued by Lenny Post and he is no longer here; that there was testimony regarding the mother-in-law but it was not part of the approval; that the building department doesn't have the power to overrule the Zoning Board of Appeals that gave the variance in the first place; that the variance ruins with the land; and that he is appealing the denial of the building inspector's decision not to change the certificate of occupancy to comply with the 1986 zoning board decision.

Dennis Michaels stated that Mr. Joyce is saying, and asked Mr. Joyce to correct him if he was wrong, that the ZBA's 1986 use variance Decision says what it says, and Mr. Joyce wants you to interpret it in a manner that should be reflected in a corrected certificate of occupancy that is not conditioned or restricted to an immediate family member.

Dwight Joyce continued: to interpret it another way would be to allow the Board, to allow people to construct a separate dwelling unit for one specific person; that if that person passes away, then the building becomes uninhabitable?; that this almost defies logic to say the life of unit is only as long as a person lives; that the applicants are not selling the property; that an issue came up with the building department and they are looking to get it straightened out; that they probably will rent out the unit; that even though the mother is mentioned in the findings of fact; the actual conclusion they reached is that they are approving the variance granted and they did not provide a limitation in the decision; that he believes that one of the neighbors has a separate dwelling unit on their property that is rented out; that he believes there is a "for rent sign" on the property; that they are not trying to change anything that is existing; that two structures have existed since 1986 and he has applied to get the documentation corrected or modified; that I am asking the Board to say that the decision of the Zoning Board back in 1986 permitted the use as two separate detached structures without limitation put on the building department at that time; that he has no problem with the Zoning board of Appeals Decision and doesn't want that amended or changed and that he would like to request that the certificate of occupancy be changed to reflect the decision; that Mr. Giardiello did not want to go back and try to rethink why it was done back in 1986, why the limitation was put back in 1986, so he asked that we come here; and that he would like to request a continuance for a full board.

No public comment.

Meeting of May 21, 2014

Present: Dan Sullivan, Joan Salomon, Michael Bosco, Thomas Quinn, Leonard Feroldi. Patricia Castelli was not present for this hearing.

Additional information provided to the Board:

1. Transcript from the Zoning Board meeting held on January 22, 2014.
2. Building permit application dated 10/01/1985 signed by Regina Holihan.
3. Application of certificate of occupancy dated June 4, 1986 and dated December 26, 1986 signed by Richard Holihan.

Dwight Joyce appeared and testified.

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Dwight Joyce, Attorney for the applicant, testified that he could recap from the last hearing; stating that the Holihan's were granted a use variance in ZBA#86-20 dated April 16, 1986 for a second dwelling unit on a single lot in the R-15 zoning district; that the applicants requested a use variance for two detached dwellings on a single lot and the use variance was granted; that the Building Department issued a certificate of occupancy which limited the use by stating "garage with dwelling for immediate family (mother)"; that the variance approval did not have a limitation; that Mr. Giardiello would not change the certificate of occupancy and sent the application to the Board for interpretation; that he is not seeking to amend the use variance, just the certificate of occupancy; that there was testimony regarding the mother living in the garage structure but it would be unreasonable to think that a structure would be created for one persons life expectancy; and that he is seeking to amend the certificate of occupancy.

Public Comment:

No public comment.

The Board members made personal inspections of the premises the week before the hearings 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.

Dan Sullivan moved to remove the immediate family (mother) restriction added to the Certificate of Occupancy because it contradicts the 1986 ZBA Decision, and that the 1986 ZBA Decision was granted with an unconditional approval, which motion was seconded by Tom Quinn, but did not carry.

**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 intent of the ZBA to restrict the use and occupancy of the dwelling unit above the garage limited to the Applicants' mother was in the Findings of Fact of the ZBA Decision dated April 16, 1986, (ZBA#86-20), which states "there is no other way that the applicant's mother could afford to remain local. Both the Building Permit, dated 06/04/1986, signed by Applicant Regina Holihan, and the Application for Certificate of Occupancy, signed by Richard Holihan on December 26, 1986, state "for (immediate family Mother)".

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DECISION: In view of the foregoing Findings of Fact and conclusions, and the testimony and documents presented, the Board RESOLVED that the application for the requested interpretation to amend the existing Certificate of Occupancy, dated September 23, 1987, is DENIED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

The proposed resolution to approve the application for the requested amendment to the Certificate of Occupancy dated September 23, 1987 was presented and moved by Mr. Sullivan, seconded by Mr. Quinn and FAILED to carry as follows: Ms. Salomon, nay; Mr. Bosco, nay; Mr. Feroldi, nay; Mr. Quinn, aye; and Mr. Sullivan, aye. Ms. Castelli was absent for this hearing.

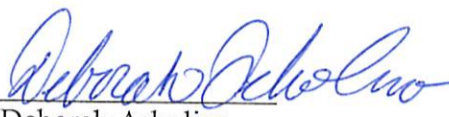
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The foregoing Resolution to Deny the application for the requested interpretation to amend the Certificate of Occupancy, dated September 23, 1987, was presented and moved by Ms. Salomon, seconded by Mr. Bosco and carried as follows: Ms. Salomon, aye; Mr. Bosco, aye; Mr. Feroldi, aye; Mr. Quinn, nay; and Mr. Sullivan, nay. 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 21, 2014

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 -

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

TOWN CLERKS OFFICE  
2014 JUN 12 PM 11 14  
TOWN OF ORANGETOWN

DECISION

**ZONING CODE § 3.11, COLUMN 2 #7, AND § 4.5 (SINGLE-FAMILY CONVERSION) VARIANCES APPROVED**

To: John and Margaret Fitzgerald  
30 Robertson Drive  
Pearl River, New York 10965

ZBA # 14-33  
Date: May 21, 2014

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#14-33: Application of John and Margaret Fitzgerald for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Section 3.11, Column 2 refers to R-80 District, Column 2 #7 (600 sq. ft. permitted, 647 sq. ft. existing) for an existing second dwelling unit in an owner occupied two-family residence (Local Law 7). The premises are located at 30 Robertson Drive, Pearl River, New York and are identified the Orangetown Tax Map as Section 69.05, Block 4, Lot 28; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 21, 2014 at which time the Board made the determination hereinafter set forth.

John and Margaret Fitzgerald appeared and testified.

The following documents were presented:

1. Partial Architectural plans showing the existing apartment signed and sealed by Barbara Hess, Architect.

Mr. Sullivan, Chairman, 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 Mr. Bosco and carried as follows: Ms. Salomon, aye; Mr. Feroldi, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye. Ms. Castelli was absent for this hearing.

John Fitzgerald testified that the apartment has existed since they purchased the house; that they have always rented the apartment; that over the years they have had four different long term tenants; that they pay taxes for a two-family residence; that the rent pays the taxes on the property; and that they would like to get a certificate of occupancy for an owner-occupied two-family residence.

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Public Comment:

No public comment.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested §3.11 Column 2 #7 variance permitting 647 sq. ft. accessory dwelling (Zoning Code § 4.5 –Single-Family conversion) will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The apartment has existed since 1986 without incident.
  
2. The requested §3.11 Column 2 #7 variance permitting 647 sq. ft. accessory dwelling (Zoning Code § 4.5 –Single-Family conversion) will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The apartment has existed since 1986 without incident.
  
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
  
4. The requested §3.11 Column 2 #7 variance permitting 647 sq. ft. accessory dwelling (Zoning Code § 4.5 –Single-Family conversion) is 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  
2014 JUN 12 PM 11 14  
TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested Zoning Code §3.11 Column 2 #7 variance permitting 647 sq. ft. accessory dwelling (Zoning Code § 4.5 –Single-Family conversion) is APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

TOWN CLERKS OFFICE

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The foregoing resolution to approve the application for the requested Zoning Code §3.11 Column 2 #7 variance permitting 647 sq. ft. accessory dwelling (Zoning Code § 4.5 – Single-Family conversion) was presented and moved by Mr. Bosco, seconded by Mr. Quinn and carried as follows: Mr. Feroldi, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, 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 21, 2014

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  
2014 JUN 12 AM 11 14  
TOWN CLERKS OFFICE



DECISION

**FLOOR AREA RATIO AND TOTAL SIDE YARD VARIANCES APPROVED**

To: Michael and Bernadette Hayes  
571 Gilbert Avenue  
Pearl River, New York 10965

ZBA # 14-34  
Date: May 21, 2014

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#14-34: Application of Michael and Bernadette Hayes for variances from Chapter 43 (Zoning) of the Orangetown Code, Section 3.12, Group M, Columns 4 (Floor Area ratio: .20 permitted, .22 proposed), and 10 (Total Side Yard: 50' required, 47.5' proposed) for an addition to an existing single-family residence. The premises are located at 571 Gilbert Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.18, Block 4, Lot 58; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 21, 2014 at which time the Board made the determination hereinafter set forth.

Michael and Bernadette Hayes and Barry Terach, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans dated 04/02/2014 with the latest revision date of 04/08/2014 signed and sealed by Barry Terach, Architect. (5 pages)
2. A letter dated May 16, 2014 from the County of Rockland Department of Planning signed by Thomas B. Vanderbeek, Commissioner of Planning.
3. A letter dated May 21, 2014 from the Rockland County Highway Department signed by Sonny Lin, P.E.
4. A letter in support of the applicant signed by three abutting neighbors.

Mr. Sullivan, Chairman, 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 Mr. Bosco and carried as follows: Ms. Salomon, aye; Mr. Feroldi, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye. Ms. Castelli was absent for this hearing.

Barry Terach, Architect, testified that the Hayes family has owned the house for fourteen years; that they need a little more space; that they are proposing to add more living space to the first floor of the home and a new bedroom and bath to the second floor; that they have shown the plans to the neighbors and there are no objections; that they have a small lot for the neighborhood and that there are many houses in the neighborhood that have similar additions.

Bernadette Hayes testified that there are six in the family and that her mom is moving in with them; that they are not adding a second kitchen but they need more space.

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 and total side yard 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 and total side yard 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 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 OF ORANGETOWN  
2014 JUN 12 PM 11 13  
TOWN CLERKS OFFICE

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

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TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested floor area ratio and total side yard variances was presented and moved by Ms. Salomon, seconded by Mr. Bosco and carried as follows: Mr. Feroldi, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, 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 21, 2014

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  
2014 JUN 12 AM 11 13  
TOWN OF ORANGETOWN

DECISION

**FLOOR AREA RATIO, LOT AREA, LOT WIDTH, STREET FRONTAGE, FRONT YARD, SIDE YARD, TOTAL SIDE YARD, AND BUILDING HEIGHT VARIANCES APPROVED (SECTION 5.21 UNDERSIZED LOT APPLIES)**

To: Chris McKenna  
12 Schreiber Street  
Tappan, New York 10983

ZBA # 14-35  
Date: May 21, 2014

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#14-35: Application of Chris McKenna for variances from Chapter 43 (Zoning) of the Town of Orangetown Code, R-15 District, Group M, Columns 4 (Floor Area Ratio: .20 permitted, .28 existing, .308 proposed), 5 (Lot Area: 15,000 sq. ft. required, 6113 sq. ft. existing), 6 (Lot Width: 100' required, 50' existing), 7 (Street Frontage: 75' required, 50' existing), 8 (Front Yard: 30' required, 25.6' existing), 9 (Side Yard: 15' required, 10.6' existing), 10 (Total Side Yard: 30' required, 23.9' existing) and 12 (Building Height: 20' permitted, 21.5' existing) (note: section 5.21 undersized lot applies) for an addition to an existing single-family residence. The premises are located at 12 Schreiber Street, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.06, Block 3, Lot 31; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 21, 2014 at which time the Board made the determination hereinafter set forth.

Chris McKenna and Jane Slavin, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans dated 10/21/2013 with the latest revision date of 03/04/ 2014 signed and sealed by Jane Slavin, Architect. (2 pages)
2. Site plan dated 12/03/2013 based on survey by Robert Sorace, dated November 29, 2013 signed and sealed by Jane Slavin, Architect.
3. Three pictures of the house and the area were submitted.
4. A letter dated May 6, 2014 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
5. A letter dated May 21, 2014 from the Rockland County Highway Department signed by Sonny Lin, P.E..
6. A letter dated from the Rockland County Health Department signed by Scott McKane, P.E., Senior Public Health Engineer.

Mr. Sullivan, Chairman, 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 Mr. Bosco and carried as follows: Ms. Salomon, aye; Mr. Feroldi, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye. Ms. Castelli was absent for this hearing.

Jane Slavin, Architect, testified that all but one of these variances are existing; that they are proposing to expand the bedroom and bathroom at the rear of the existing second floor; that the lot is 40% smaller than required; that the proposed addition is 168 sq. ft.; that this is the smallest house on the block and there is no increase in the footprint.

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, lot area, lot width, street frontage, front yard, side yard, total side yard and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The lot area, lot width, street frontage, front yard, side yard, total side yard and building height variances are being acknowledged as existing conditions; the proposed addition is 168 sq. ft.; and similar additions have been constructed in the area.
2. The requested floor area ratio, lot area, lot width, street frontage, front yard, side yard, total side yard and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The lot area, lot width, street frontage, front yard, side yard, total side yard and building height variances are being acknowledged as existing conditions; the proposed addition is 168 sq. ft.; and 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, lot area, lot width, street frontage, front yard, side yard, total side yard and building height variances, although somewhat substantial, afford benefits to the applicants that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The lot area, lot width, street frontage, front yard, side yard, total side yard and building height variances are being acknowledged as existing conditions; the proposed addition is 168 sq. ft.; and 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.

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

General Conditions:

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

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

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

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

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


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TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested floor area ratio, lot area, lot width, street frontage, front yard, side yard, total side yard and building height variances was presented and moved by Mr. Feroldi, seconded by Ms. Salomon and carried as follows: Mr. Feroldi, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye. Ms. Castelli was absent.

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

DATED: May 21, 2014

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

APPLICANT  
ZBA MEMBERS  
SUPERVISOR  
TOWN BOARD MEMBERS  
TOWN ATTORNEY  
DEPUTY TOWN ATTORNEY  
OBZPAE  
BUILDING INSPECTOR -B.vw.

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

TOWN CLERKS OFFICE  
2014 JUN 12 PM 11 13  
TOWN OF ORANGETOWN



DECISION

**CERTIFICATE OF OCCUPANCY ISSUED JANUARY 6, 1956 DOES NOT SPECIFY OWNER OCCUPANCY IS REQUIRED OF EITHER THE RESIDENTIAL UNIT OR THE PROFESSIONAL OFFICE, AND IS SUFFICIENT FOR THE PRESENT USE**

To: Walter Sevastian (Ciganek)  
3 Main Street Suite 1  
Nyack, New York 10960

ZBA # 14-36  
Date: May 21, 2014

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA: #14-36: Application of Sadie Ciganek for an interpretation pursuant to Chapter 43 (Zoning) of the Town of Orangetown Code, Section 10.331 "General Powers," hearing a matter referred to it by the Building Inspector for an interpretation of an existing Certificate of Occupancy regarding the premises located at 100 Route 303, Tappan, New York, and identified on the Orangetown Tax Map as Section 77.07, Block 1, Lot 3; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 21, 2014 at which time the Board made the determination hereinafter set forth.

Walter Sevastian, Attorney, and Sadie Ciganek appeared and testified.

The following documents were presented:

1. A letter dated March 31, 2014 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown requesting an interpretation.
2. Certificate of Occupancy dated January 6, 1956.

Mr. Sullivan, Chairman, 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 requesting interpretation of an existing code, rule or regulation, this application is exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (31); which does not require SEQRA environmental review. The motion was seconded by Mr. Quinn and carried as follows: Ms. Salomon, aye; Mr. Feroldi, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye. Ms. Castelli was absent from this hearing.

Walter Sevastian testified that they are here for an interpretation of the existing certificate of occupancy to permit what has been going on for the last 40 or 50 years; that the certificate of occupancy says "New one-family dwelling containing office space for professional offices incidental to residence of premises"; that there has been an attorney in the office space for many years; that in 1980 the Stebbins' tried to get a zone change for the property from residential to commercial and were turned down; that presently there is an insurance agent; that he put a sign up and drew the attention of the Code Enforcement Officer and that is how they ended up here; that the Webster dictionary clearly states that "incidental" is accessory or subordinate to; that if there is any ambiguity it should be resolved in favor of the applicant; and that they would like the Board to find the 1956 certificate of occupancy is in compliance with the existing occupancy.

TOWN OF ORANGETOWN

Sadie Ciganek testified that she is the owner of the property and that the office has been occupied by several different attorneys; that she has never lived in the building and has always rented out the residential space; and that since her ex-husband's death both portions of the building have been occupied by tenants.

Dennis Michaels, Deputy Town Attorney, answered a question posed by Ms. Salomon concerning pre-existing non-conforming use and Mr. Michaels explained that this is not a pre-existing non-conforming use situation because there is an existing certificate of occupancy and that is why the matter is before the Board for an interpretation.

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 present use is found to be in compliance with the 1956 Certificate of Occupancy, outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, and answered John Giardiello, P.E.'s (Director of OBZPAE) ZBA referral inquiries set forth in his March 31, 2014 letter to the ZBA, and rendered the following interpretation, for the following reasons:

1. The Board found that the Certificate of Occupancy, issued on January 6, 1956, does not require owner occupancy of either the residential dwelling unit or the professional office portions of the building.
2. The professional office space is incidental to the residence on the premises.
3. The existing tenants are in compliance with the Certificate of Occupancy issued on January 6, 1956.

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TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application which was a referral from John Giardiello, P.E., Director of OBZPAE, via his letter of March 31, 2014, is answered by the ZBA's interpretation that the Certificate of Occupancy, issued 01/06/ 1956, is consistent with the existing uses, and the owner of the property does not need to occupy the professional office or the residential dwelling unit, and the professional office space is incidental to the residence; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

TOWN CLERKS OFFICE

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TOWN OF ORANGETOWN

The foregoing resolution to approve the application the application which was a referral from John Giardiello, P.E., Director of OBZPAE, via his letter of March 31, 2014, is answered by the ZBA's interpretation that the Certificate of Occupancy, issued 01/06/1956, is consistent with the existing uses, and the owner of the property does not need to occupy the professional office or the residential dwelling unit, and the professional office space is incidental to the residence; was presented and moved by Mr. Quinn, seconded by Mr. Bosco and carried as follows: Mr. Feroldi, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, 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 21, 2014

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 -J.G.

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

TOWN CLERKS OFFICE  
2014 JUN 12 PM 11 13  
TOWN OF ORANGETOWN

**DECISION**  
**PERFORMANCE STANDARDS APPROVED**

To: Leslie Snyder (Verizon Wireless Generator)  
94 White Plains Road  
Tarrytown, New York 10591

ZBA # 14-37  
Date: May 21, 2014

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#14-37: Application of Verizon Wireless pursuant to Chapter 43 (Zoning) of the Town of Orangetown Code, Section 4.1 Use Subject to Performance Standards review with respect to an emergency generator. The property is located at 60-70 West Dexter Plaza, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.20, Block 1, Lot 1./30; LI zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 21, 2014 at which time the Board made the determination hereinafter set forth.

Michael Sheridan, Attorney, and Anthony Beta, P.E., Tectonic Engineering, appeared and testified.

The following documents were presented:

1. Plans prepared by Tectonic Engineering and Surveying Consultants, P.C. last revised 04/02/ 2014 signed and sealed by Antonio Alberto Gultier, P.E...
2. Summary narrative.
3. Manufacturer specification sheet for the generator.
4. Performance standards resume of operation and equipment form dated April 9, 2014.
5. Fire prevention supplement form.
6. A report dated April 9, 2014 from Tectonic (8 pages) signed by Tammy L. Nosek, Senior Project Manger.
7. A cover latter dated April 11, 2014 from Snyder & Snyder, LLP signed by Leslie, J. Snyder (2 pages)
8. A letter dated April 16, 2014 from the Town of Orangetown, Department of Environmental Management and Engineering signed by Joseph J. Moran, P.E., Commissioner.
9. A letter dated May 12, 2014 from the Town of Orangetown, Bureau of Fire Prevention signed by Michael B. Bettmann, Chief Fire Inspector.
10. A letter dated May 8, 2014 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
11. A letter dated May 21, 2014 from the County of Rockland Department of Highways signed by Sonny Lin, P.E..
12. GM 5.OL Genset Airborne Noise Analysis (5 pages) as requested by Board member Michael Bosco.

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

Michael Sheridan, Attorney, testified that they applied for a permit for an emergency generator at a co-location for antennas; that they were referred to the Zoning Board for performance standards review; that the generator will be located at the base and have buildings on three sides and the fourth side with have equipment; that the area that the work is being performed is small when compared to the size of the lot; that he does not think he will need a permit from the Highway Department but he will comply with all of the letters.

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Anthony Botta, P.E., stated that the sound attenuation tests were performed and he will submit the generator specs for the record to back up the Tectonic letter.

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. Quinn, aye; and Mr. Bosco, aye.

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, 2014 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 Zoning Code § 4.1 Performance Standards, and the memorandum dated May 12, 2014 from Michael Bettmann, Chief Fire Inspector, Town of Orangetown Bureau of Fire Prevention (B.F.P.); the letter dated May 21, 2014 from the County of Rockland Department of Highways signed by Sonny Lin, P.E., stating that the applicant must obtain a Rockland County Highway Department Work Permit before any construction on site; the other documents presented to the Board and the testimony of applicant's representatives, the Board finds and concludes that conformance with the Performance Standards set forth in Zoning Code Section 4.1 will result sufficient to warrant the issuance of a Building Permit and/or Certificate of Occupancy, subject to compliance with the orders, rules and regulations of the Orangetown Office of Building, Zoning & Planning Administration & Enforcement, D.E.M.E., and Orangetown B.F.P., and all other departments having jurisdiction of the premises.

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

General Conditions:

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

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

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

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

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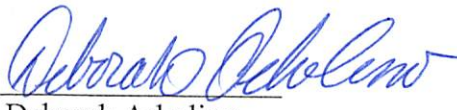
(v) Any foregoing variance, Performance Standards, or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board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

The foregoing resolution to approve, with aforesaid conditions, 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. Quinn, aye; and Mr. Bosco, 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 21, 2014

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. O.

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

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DECISION

**AMENDMENT TO ZBA #14-07 FLOOR AREA RATIO APPROVED**

To: Jorge and Elba Cornielle  
102 Princeton Drive  
Tappan, New York 10983

ZBA # 14-07A  
Date: May 21, 2014

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA #14-07A: an amendment to ZBA #14-07: Application of Jorge and Elba Cornielle, which granted a floor area ratio variance of .238 and the applicant is increasing the floor area ratio to .246 by adding an additional 100 sq. ft. to the upstairs dormer. The premises are located at 102 Princeton Drive, Tappan, New York and are identified on the Orangetown Tax Map as Section 74.17, Block 3, Lot 42; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 21, 2014 at which time the Board made the determination hereinafter set forth.

Jorge and Elba Cornielle appeared and testified.

The following documents were presented:

1. Architectural plans showing just the front elevation and the area of the proposed changes.
2. A letter dated May 8, 2014 from Bert von Wurmb regarding the changes to the plan.
3. A letter from the applicant requesting the additional 100 sq. ft. of space.

Mr. Sullivan, Chairman, 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 Mr. Bosco and carried as follows: Ms. Salomon, aye; Ms. Castelli, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye.

Elba Cornielle testified that they realized when they started the second floor expansion to the bathroom that they should have taken the advice from the Board at their hearing and added onto the bedroom at the same time; that they are back to make that request now because it will look better from outside keeping the addition balances and they really can use that extra space.

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Public Comment:

No public comment.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested floor area ratio variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant is seeking to add an additional 100 sq. ft. to the second floor dormer which will balance the proposed addition.
2. The requested floor area ratio variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant is seeking to add an additional 100 sq. ft. to the second floor dormer which will balance the proposed addition.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining an amendment to the previously granted floor area ratio variance.
4. The requested amendment to the previously granted floor area ratio variance is 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.

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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 amendment to the floor area ratio variance is APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

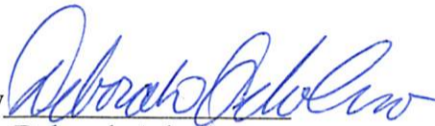
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The foregoing resolution to approve the application for the requested floor area ratio variance was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, 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 21, 2014

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

APPLICANT  
ZBA MEMBERS  
SUPERVISOR  
TOWN BOARD MEMBERS  
TOWN ATTORNEY  
DEPUTY TOWN ATTORNEY  
OBZPAE  
BUILDING INSPECTOR -B.v.W.

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

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