

MINUTES
ZONING BOARD OF APPEALS
October 21, 2015

MEMBERS PRESENT: PATRICIA CASTELLI, ACTING CHAIRPERSON
 JOAN SALOMON
 LEONARD FEROLDI, ALTERNATE
 THOMAS QUINN

ABSENT: DAN SULLIVAN
 MICHAEL BOSCO

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 Ms. Castelli, Acting Chairperson. 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:

KUPFERSCHMID 115 Route 303 Tappan, NY 77.07 / 2 / 1; LO zone	SECTION 3.11, COL. 2 USE VARIANCE APPROVED	ZBA#15-78
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NEW ITEMS:

CLANCY GARAGE 57 Harding Street Blauvelt, NY 69.16 / 1 / 45; R-15 zone	CONTINUED	ZBA#15-87
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MARTIN 285 South Middletown Road Pearl River, NY 72.08 / 3 / 64; R-15 zone	FRONT YARD, SIDE YARD, AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#15-88
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BARANEK FENCE, GATE & PILLARS 8 Chipman Road Palisades, NY 80.06 / 1 / 9; R-40 zone	FENCE HEIGHT VARIANCE APPROVED	ZBA#15-89
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BRIGHTVIEW SENIOR LIVING 31 Hunt Road, Pearl River, NY 73.15 / 1 / 10;R-80 zone	POSTPONED	ZBA#15-90
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MALANAPHY 20 Private Delregno Court, Blauvelt, NY 70.13 / 1 / 23.10; R-15 zone	FRONT YARD VARIANCE APPROVED	ZBA#15-91
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TOWN OF ORANGETOWN
2015 NOV 9 PM 12 38
TOWN CLERK'S OFFICE

OTHER BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the Acting Chairperson executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for the State Environmental Quality Review Act (SEQRA) coordinated environmental review of actions pursuant to SEQRA Regulations § 617.6 (b)(3) the following applications: Orlando Site Plan, Critical Environmental Area, Replacement of Retaining Wall Plan 1150 Route 9W, Upper Grandview, NY; 71.05 / 1 / 9; R-22 zone; Sisters of St. Dominic of Blauvelt Subdivision Plan, 496 Western Highway, Blauvelt, NY, 74.06 / 3 / 1.1 & 1.3; R-40 zone; The Cunningham House Site Plan parking Facility and Fence, 118 Main Street, Tappan, NY 77.11 / 3 / 2; CS 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 9:30 P.M.

Dated: October 21, 2015

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
2015 NOV 9 PM 12 38
TOWN OF ORANGETOWN

DECISION

SECTION 3.11, COLUMN 2, USE VARIANCE APPROVED

To: Donald Brenner, Esq. (Kupferschmid)
4 Independence Avenue
Tappan, New York 10983

ZBA #15-78
Date: October 21, 2015

From: Zoning Board of Appeals of the Town of Orangetown

ZBA #15- 78: Application of Linda Kupferschmid (“Applicant”) for a variance from the Zoning Code (Chapter 43) of the Town of Orangetown Code, LO District, Section 3.11, Column 2 (use not permitted by right: self-storage facility proposed). The premises is located at 115 Route 303, Tappan, New York, and is identified on the Orangetown Tax Map as Section 77.07, Block 2, Lot 1 (“Premises”); located in the LO Zoning District.

Heard by the Zoning Board of Appeals of the Town of Orangetown (hereinafter sometimes referred to as “the Board”) at a meeting held on Wednesday, September 16, 2015, at which time the Board made the determination hereinafter set forth.

Donald Brenner, Esq. (attorney), Dennis Lynch, Esq. (attorney), Lawrence “Larry” McCarron, Esq. (attorney), Linda Kupferschmid, and John Collins (traffic consultant), appeared and testified.

The following documents were submitted, and reviewed by the Board:

1. Architectural plans labeled “Proposed Storage Building,” dated June 29, 2015, signed and sealed by Dennis T. Mitchell, Registered Architect (8 pages).
2. A cover letter dated August 13, 2015, from Stephen M. Honan, Esq. (attorney for Applicant), with a 1-page attachment from Sherman & Ross, CPA.
3. A bound booklet, dated September 2015, prepared by Donald Brenner, P.E., LL.B., containing the following (hereinafter “Applicant’s booklet submission”):
 - (a) Letter of transmittal, dated 09/08/2015;
 - (b) Introduction;
 - (c) Procedure;
 - (d) Secondary Data;
 - (e) Summary;
 - (f) Appendix A – Deed to the subject Premises;
 - (g) Appendix B – Reports and Statements from several commercial real estate brokers;
 - (h) Appendix C – Orangetown Zoning Code, §3.11, Table of General Use Regulations, for the LO District;
 - (i) Appendix D – Letter from attorney for Applicant to the Orangetown Building Department (i.e., Office of Building, Zoning & Planning Administration and Enforcement);
 - (j) Appendix E - Application to OBZPAE, delivered on 07/08/2015;
 - (k) Appendix F – Applicant’s attorney’s Narrative Summary to Application for Building Permit, dated 07/08/2015;
 - (l) Appendix G - Appeal to the Zoning Board of Appeals;
 - (m) Appendix H – Applicant’s Statement of Operations (2010 – 2014), IRS Form 1040 Schedule E, Supplemental Income and Loss, for years 2010 – 2014;
 - (n) Appendix I – Financial Statement (property taxes 1999 - 2015);
 - (o) Appendix J - Traffic impact report, by John T. Collins, Ph.D., P.E., of Maser Consulting, dated 08/27/2015;
 - (p) Maps - Location of Building (vicinity map) and Zoning Map.
4. A letter dated September 11, 2015, from the County of Rockland Department of Planning, signed by Douglas J. Schuetz, Acting Commissioner of Planning.
5. A memorandum, dated September 16, 2015, from John Giardiello, P.E., Director, Office of Building, Zoning & Planning Administration and Enforcement of the Town of Orangetown (“OBZPAE”).

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

2015 NOV 9 PM 12 38
TOWN OF ORANGETOWN
CLERK'S OFFICE

Dennis Lynch, Esq., attorney for the Applicant, testified that he does not agree with the determination by the Deputy Town Attorney, Dennis Michaels, that this is a Type II action and requires SEQRA review; that they are using the existing building with no change to the footprint; and he wants it noted for the record that he does not agree; that there are no objections from the neighbors that they have tried to lease and sell the property and even under Appendix C uses permitted by right and Special permits the owners have been unable to get a reasonable return on the property because no one wants to occupy the space under the uses permitted by right; that all of the plantings that were installed in the 70's at the edge of the property shall remain; that there will be no change to the exterior of the building that there is no drainage issue because there will be no change to the exterior and he does not think that any of the neighbors object to the proposed use.

Donald Brenner, Esq., attorney for the Applicant, testified that he would like to give the Board a little history on the property; that on November 20, 1970, the Orangetown Planning Board granted final approval to a map prepared by the firm of Adler, Caruso & Young for a commercial subdivision to Baum Textile Company, The existing building was used for the manufacturing of ladies garments, storage and distribution of said items, and offices; that in July 1985 the building was occupied by Grant Industries, a company that manufactured and distributed nuts and bolts; that due to the death of the primary owner, Mr. Baum, his estate sold the building to L an M. Kupferschmid in June 1991; and title was subsequently transferred to L. Kupferschmid in May 2002; that Mr. Kupferschmid operated several businesses, in which he domestically manufactured and distributed products, such as linen plastic tablecloths; that unfortunately, these products were undersold by manufacturers in Asia, which resulted in Mr. Kupferschmid businesses going into debt; that he attempted to keep the businesses running and to avoid laying off his employees, he subsidized the operation out of his own funds; that due to this economic downward spiral, he could not pay rent to the Realty Company; and accordingly, the Realty Company started to lose money as early as 2008; that several realtors and the owner attempted to rent and/or sell the facility but were unsuccessful; that the lack of tenants and the unique zoning of the property resulted in a partially vacant building; that Mr. Kupferschmid died in May 2013; that the owner of the building, the Estate of Lawrence Kupferschmid, entered into a contract with 115 Route 303 LLC to use the existing building as a self-storage facility; that the on July 8, 2015 the application was denied for a use variance and they are appearing to state their case; that the owner has not been able to use the building and obtain a reasonable return under the permitted uses since 2010; that the owners have paid realty taxes in the sum of \$2,006,888.36 since 1999; that he owner has attempted to rent/sell the building under the requirements of the Code since 2010 and has been unable to do so; that the alleged hardship relates to the fact that the property in question is unique and, by zoning, does not conform to the bordering neighborhood; that the existing building is located on the north-east corner of the intersection of New York State Route 303 and Kings Highway in the hamlet of Tappan, that the area zoning affirms that the property is located in an "LO" zone bordering an "LI" zone to the north; that a residential zone "R-15" to the south, New York State Highway Route 303 to the west and the Palisade Parkway to the east; that since this is an existing building, site plan adjustment is not an issue; and in fact, the prior permitted use of light manufacturing and distribution is a much greater use than that of the proposed storage facility; that the building is surrounded by trees and landscaping since the seventies and it is the applicants belief that there is not another property in all of Orangetown as Unique as this one; that the change in use will not alter the essential character of the neighborhood and will not have an adverse physical or environmental effect on the neighborhood; that the building is hooked up to Orangetown Sewers, that they have utilities from Orange & Rockland and United Water; that they have police protection from Orangetown Police, fire protection from Tappan Fire Department and ambulance from Orangetown Ambulance; and that drainage and wetlands are not an issue because it is an existing building; and that they would like to request a continuance until the October 21, 2015 meeting.

2015 NOV 9 9:58 AM
TOWN OF ORANGETOWN
PLANNING & ZONING OFFICE

Mrs. Linda Kupferschmid testified that she has submitted tax returns from 2010 through 2014 showing how the property has lost money; that her husband put a lot of his own money into the building, trying to keep his employees in a job; that in December 2013 she had to let people go; that she still has to go there every day; that it is very hard; that her husband went through nearly a million dollars trying to keep people employed; that they tried to rent the building to Larry King, Amazon .com but that did not work; and that the property has become a burden.

John Collins Ph.D., P.E., of Maser Consulting, testified that the traffic study in the file compared the LI zone to the self- storage use and transportation engineers state 1/3 to less than 30% peak elevation for traffic; that less traffic will be introduced for the proposed use than the light industrial use; that evaluation was limited to the number of vehicular trips that would be generated by the existing square foot (93,000) of the existing and proposed uses; that the reference used was the Trip Generation Manual (9th edition) published by the Institution of Transportation Engineers.

Dan Sullivan made a motion that the Board issue a Notice of Intention to Declare the Board Lead Agency under SEQRA, and to distribute the Notice of Intention to all Involved Agencies, pursuant to coordinated review under State Environmental Quality Review Act Regulation §617.6(b)(3); which motion was seconded by Joan Salomon and carried unanimously.

Public Comment:

Charles Scholl, 87 Autumn Drive, Tappan, testified that there have been no meetings with the neighbors and he has no objection to the project as long as they do not install an entrance or exit onto Kings Highway and that the south side of the property should remain the same with all of the trees in place.

Eileen Larkin, Palisades, NY., testified that she knows Mrs. Kupferschmid from Palisades; that she understands the problems of the widow; that this is a great use for the property with no change to the sewer and that she agrees with Mr. Collins about the traffic study.

Mary Cardenas, 66 Pine Tree Lane, testified that she has been a resident for 45 years; that she agrees with Charlie regarding no exist onto Kings Highway and agrees that this is the best use for the property.

Margaret Guliano, 283 Kings Highway, testified that she is the neighbor directly to the south of the property and that she is looking forward to the project and wished the applicant luck but would like them to be careful regarding the lighting.

Paul Riccoboni, 15 Hey Hoe Woods Road, testified that he thinks this is a great use for the property that hasn't been used for fifteen years; that it is low key and low maintenance and no change in the greenway and also no neon palm trees.

October 21, 2015

Donald Brenner, Esq. (attorney for the Applicant), Dennis Lynch, Esq. (attorney for the Applicant), Steven Yassky, of Rockland Realty Commercial Real Estate Services (licensed real estate broker), Linda Kupferschmid, Lawrence "Larry" McCarron, Esq. (attorney for the applicant), and Ernest Schlesinger (licensed real estate broker), appeared and testified.

TOWN CLERKS OFFICE
2015 NOV 6 PM 12 38
TOWN OF ORANGETOWN

Additional items submitted:

1. A 3-page notarized affidavit by Linda Kupferschmid, dated September 28, 2015.
2. A letter dated October 15, 2015, from the County of Rockland Department of Planning, signed by Douglas J. Schuetz, Acting Commissioner of Planning (3 pages).
3. A letter dated October 15, 2015, from the County of Rockland Drainage Agency, signed by Vincent Altieri, Executive Director.
4. A letter dated September 16, 2015, from the County of Rockland Department of Highways (received September 21, 2015), signed by Sonny Lin, P.E.
5. Lead Agency sign-off sheets, dated October 14, 2015, from Kevin Garvey, Planning Board Chairman, Town of Orangetown, and from the Rockland County Planning Department, signed by Arlene Miller, dated October 21, 2015.
6. A letter dated October 13, 2015, from Steven Yassky, of Rockland Realty Commercial Real Estate Services.

Ms. Castelli made a motion to declare the Board Lead Agency for the application of Kupferschmid (ZBA #15-78) seeking a Use Variance from Orangetown Zoning Code (Chapter 43), § 3.11, Table of General Use Regulations, LO District, Column 2, Uses Permitted by Right; which motion was seconded by Joan Salomon and carried unanimously.

Donald Brenner, Esq. (attorney for the Applicant), testified that they presented a case for the use variance at the last hearing and they believe that they have met all of the elements for a use variance; that they have submitted all of the financial returns and they have brought more real estate agents to testify; that he has no problem with the letter from Rockland County Planning Department, but would like the Board to consider over-riding several of the comments because they are not planning to change the outside of the building; that they would like the Board to over-ride Rockland County Planning Department items #5 through #10, and # 13.

Steven Yassky, Rockland Realty Commercial Real Estate Services, testified that he is very familiar with the property at 115 Route 303, Tappan, NY; that he has been a commercial real estate broker representing landlords/sellers, and tenants and buyers, in the Rockland County market for the past 28 years; that upon reviewing the zoning of the subject site, LO in the Town of Orangetown, he has never been able to work with a tenant/buyer that would be desirous of such zoning where their use fits into the following categories such as, school of general instruction, executive conference/lecture facilities or business/professional office, in that size building, or research, experiment and testing labs subject to performance standards procedures and additional use requirements; that, in his professional opinion, these permissible uses make the property practically unmarketable in this region based upon the zoning code limitations; that properties in the LIO District are easily occupied, but not in the LO District.

Dennis Lynch, Esq. (attorney for the Applicant), testified that, at the previous meeting, the Chairman had asked that they return showing that all of the uses permitted by right were not viable in the building; that if no one is interested in renting the building or purchasing the building and using it for the uses permitted, then the uses, and returns for uses, are zero return; that Mr. Yassky is the third real estate broker to testify that no one is interested in renting the building under the uses permitted in the zone; and the other agents submitted letters that were presented to the Board members.

Dennis D. Michaels, Deputy Town Attorney, read into the record Linda Kupferschmid's affidavit, dated September 28, 2015.

TOWN CLERKS OFFICE
2015 NOV 9 4 PM 12 38
TOWN OF ORANGETOWN

Public Comment:

Mary Cardenas, 66 Pine tree Lane, asked if this storage facility would be for household storage and she was told that it would be a self -storage facility for individuals.

Charles Scoll, 87 Autumn Drive, testified that he did not see a change to the plans and wanted to make sure that they did not change since the last meeting; that he does not want to see an entrance/exit to Kings Highway and that he objects to the statement that the neighbors have no problem with the proposal because he doesn't recall a meeting with all of the neighbors but he has no problem with the proposal.

The Board reviewed the Short Environmental Assessment Form, Parts I and II, and deliberated over, and rendered a, SEQRA Determination, which is appended at the back of this Decision.

The Board members made personal inspections of the premises the week before each meeting, and found it 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.

Ms. Castelli 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 Applicant has shown that applicable the zoning regulations and restrictions of the LO Zoning District have caused unnecessary hardship to the Applicant, and has demonstrated to the Board that, for each and every permitted use, under the zoning regulations for the LO Zoning District, (a) the Applicant has been unable to realize a reasonable return as demonstrated by the Applicant's competent financial evidence, (b) the hardship relating to the subject premises is unique, and does not apply to a substantial portion of the LO Zoning District or neighborhood, (c) the requested use variance, if granted, will not alter the essential character of the neighborhood, and (d) the Applicant's hardship has not been self-created; for the following reasons:

1. The Applicant has shown, by competent financial evidence, that it cannot realize a reasonable return on the property without the use variance, as supported by (but not limited to) the Applicant's booklet submission, the testimony and reports of several licensed commercial real estate brokers, and Linda Kupferschmid's affidavit of 09/28/2015.
2. The Applicant has not been able to use the Premises and obtain a reasonable return as a permitted use since 2010; and has tried to rent/sell the building as any permissible use under the Zoning Code since 2010, and has been unable to do so.
3. The Applicant's unnecessary hardship also relates to the Premises being unique, and, by virtue of the Zoning Map, does not conform to the bordering neighborhood. The Premises is located on the northeast corner of the intersection of New York State Route 303 and Kings Highway, in the hamlet of Tappan, within an LO Zone that borders an LI Zone to the north, and a residential Zone (R-15) to the south, and New York State Highway Route 303 to the west, and the Palisades Parkway to the east.

TOWN CLERKS OFFICE

2015 NOV 9 PM 12 38

TOWN OF ORANGETOWN

4. The requested Zoning Code Section 3.11, Column 2, use variance will not alter the essential character of the neighborhood, and will not have an adverse physical or environmental effect on the neighborhood (see SEQRA Determination appended hereto).
5. The Applicant's hardship has not been self-created. Mr. Kupferschmid operated several businesses, in which he domestically manufactured and distributed products, such as linen plastic cloths. Unfortunately, these products were undersold by manufacturers in Asia, which resulted in Mr. Kupferschmid's businesses going into debt. He attempted to keep the businesses running and to avoid layoffs, and subsidized the operation with his own personal funds. Due to this economic downward spiral, he could not pay rent to the Realty Company and accordingly, the Realty Company started to lose money as early as 2008. The change in manufacturing products being supplied from Asia was not in the control of Mr. Kupferschmid.

DECISION: For the foregoing reasons, the Board RESOLVED that the Application for the requested Use Variance from Orangetown Zoning Code (Chapter 43), §3.11, Table of General Use Regulations, LO District, Column 2, Uses Permitted by Right, so as to allow a self-storage business, is APPROVED/GRANTED; 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

2015 NOV 9 PM 12 38

TOWN OF ORANGETOWN


Ms. Castelli made a motion to override Modifications #5, #6, #7, #8, #9, #10, #13 and #14 of the Rockland County Department of Planning's letter dated October 15, 2015, signed by Douglas J. Schuetz, Acting Commissioner of Planning; which motion was seconded by Ms. Salomon, and carried unanimously.

The foregoing Resolution to approve/grant the Application for the requested Use Variance from Orangetown Zoning Code (Chapter 43), §3.11, Table of General Use Regulations, LO District, Column 2, Uses Permitted by Right, so as to allow a self-storage business was presented and moved by Ms. Castelli, seconded by Ms. Salomon, and carried as follows: Mr. Feroldi, aye; Mr. Quinn, aye; Ms. Castelli, aye; and Ms. Salomon, aye. Mr. Sullivan and Mr. Bosco were absent.

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

DATED: October 21, 2015

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
ORANGETOWN DEPARTMENT OF TOWN
ENVIRONMENTAL MANAGEMENT & ENGINEERING
FILE, ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

TOWN CLERKS OFFICE
2015 NOV 9 PM 12 38
7
TOWN OF ORANGETOWN

SEQRA DETERMINATION OF NEGATIVE DECLARATION

Patricia Castelli made a motion that, pursuant to the State Environmental Quality Review Act (SEQRA) Regulation §617.7, the Board, as Lead Agency, for the reasons articulated in the Board's analysis of Part 2 of the SEQRA Short Environmental Assessment Form (EAF) — which reasons are summarized in this motion (which constitutes the Board's Part 3 of the SEQRA Short EAF) — hereby determines that the proposed action will **not** have a significant adverse environmental impact, and a Draft Environmental Impact Statement will **not** be prepared.

After having identified the relevant areas of environmental concern, namely: NONE;

after having taken a hard look at said environmental issues, and after having deliberated regarding such concerns over the course of two meetings;

and having heard from the Applicant, and the Applicant's professional representatives, namely Donald Brenner, Esq., Dennis Lynch, Esq., Steven Yassky, real estate broker, Ernest Schlesinger, real estate broker, John T. Collins, Ph.D. P.E., traffic consultant, Lawrence McCarron, Esq.; and

having heard from the following officials or consultants of the Town of Orangetown - John Giardiello, P.E., Director of OBZPAE, and Dennis D. Michaels, Esq., Deputy Town Attorney;

and having reviewed the following documents:

1. The Applicant's completed Part 1 of the SEQRA Short EAF.
2. A letter dated October 15, 2015, from the County of Rockland Department of Planning, signed by Douglas J. Schuetz, Acting Commissioner of Planning (3 pages).
3. A letter dated October 15, 2015, from the County of Rockland Drainage Agency, signed by Vincent Altieri, Executive Director.
4. A letter dated September 16, 2015, from the County of Rockland Department of Highways (received September 21, 2015), signed by Sonny Lin, P.E.
5. Architectural plans labeled "Proposed Storage Building," dated June 29, 2015, signed and sealed by Dennis T. Mitchell, Registered Architect (8 pages).
6. A cover letter dated August 13, 2015, from Stephen M. Honan, Esq. (attorney for Applicant), with a 1-page attachment from Sherman & Ross, CPA.
7. Applicant's booklet submission, dated September 2015, prepared by Donald Brenner, P.E., LL.B.
8. A memorandum dated September 16, 2015, from John Giardiello, P.E., Director, OBZPAE.

a summary of the reasons supporting this determination are, and the Board finds that the proposed action:

- Will **not** significantly effect existing air quality or noise levels;
- Will **not** significantly effect existing surface water quality or quantity or drainage;
- Will **not** significantly effect existing ground water quality or quantity;
- Will **not** significantly effect existing traffic levels;
- Will **not** create a substantial increase in solid waste production;
- Will **not** create a potential for erosion, flooding, leaching or drainage problems;

TOWN OF ORANGETOWN
2015 NOV 9 PM 12 38
TOWN CLERK'S OFFICE

- Will **not** have a significant adverse impact on the environmental characteristics of our critical environmental area or environmentally sensitive sites or features;
- Will **not** have an impairment of the character or quality of important historical, archeological or architectural resources; Kupferschmid
- Will **not** have an impairment of the character or quality of important aesthetic resources;
- Will **not** have an impairment of existing community or neighborhood character;
- Will **not** remove or destroy large quantities of vegetation or fauna;
- Will **not** remove or destroy large quantities of wildlife species or migratory fish;
- Will **not** have a significant adverse impact to natural resources;
- Will **not** have adverse economic or social impacts upon Orangetown;
- Will **not** create a hazard to human health;
- Will **not** create a substantial change in the use of land, open space or recreational resources; and
- Is consistent with Orangetown's comprehensive/master plan.

THEREFORE, pursuant to SEQRA, the Board hereby issues a

“NEGATIVE DECLARATION” (i.e., no significant adverse environmental impact).

Seconded by: Joan Salomon

Aye/Yes: Tom Quinn, Leonard Feroldi, Joan Salomon, and Patricia Castelli.

Dan Sullivan and Michael Bosco were absent.

Date: October 21, 2015

DECISION

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

To: Edward and Cara Martin
285 South Middletown Road
Pearl River, New York 10965

ZBA #15-88
Date: October 21, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-88: Application of Edward and Cara Martin for variances from the Zoning Code of the Town of Orangetown Chapter 43, R-15 District, Section 3.12, Group M, Columns 8 (Front Yard: 30' required, 21'8" proposed), 9 (Side Yard: 20' required, 14.8' proposed) and 12 (Building Height: 14.8' permitted, 28'1" proposed) for an addition to an existing one-family residence. The premises are located at 285 South Middletown Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 72.08, Block 3, Lot 64 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 21, 2015 at which time the Board made the determination hereinafter set forth.

Cara Martin and Karl Ackerman, Architect, appeared and testified.

The following documents were presented:

1. Copy of site plan W.E. James Engineering and Land Surveying, PLLC. Dated August 15, 2015(1 page).
2. Architectural plans labeled Proposed Addition /Alteration for Martin Residence dated 6/24/2015 with the latest revision date of 8/24/2015 signed and sealed by Karl Ackermann, Registered Architect (3 pages).

Ms. Castelli, Acting 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, Ms. Castelli 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: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Feroldi, aye; and Mr. Quinn, aye. Mr. Sullivan and Mr. Bosco were absent.

Karl Ackerman, Architect, testified that the Martin family have lived in Pearl River for 20 years; that they have children in the school district and want to stay in the home; that they need more space; that the hardship is that this property has more than one front yard; that it is a modest home that fronts on South Middletown Road and second fronts onto Elizabeth Street; that they would like to continue on the existing side yard of 14.8 on one side and add a second story to the structure; that they have an existing side yard of 22.9 feet on the other side and would like to bump in to 21.8 feet on that side; and that they are conforming to what is existing.

Cara Martin testified that they have lived in the house for 20 years and that they have four children and really need the extra space.

2015 NOV 9 PM 12 38
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.

Ms. Castelli 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 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 and this house has a hardship of being located on a corner lot with two front yards.
2. The requested front yard, 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. Similar additions have been constructed in the area and this house has a hardship of being located on a corner lot with two front yards.
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 front yard, 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. Similar additions have been constructed in the area and this house has a hardship of being located on a corner lot with two front yards.
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

2015 NOV 6 PM 12 38

TOWN OF ORANGETOWN

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 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

2015 NOV 9 PM 12 38

TOWN OF ORANGETOWN


Martin
ZBA#15-88
Page 4 of 4

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

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

DATED: October 21, 2015

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

TOWN CLERKS OFFICE
2015 NOV 9 PM 12 38
TOWN OF ORANGETOWN

DECISION

FRONT YARD FENCE HEIGHT VARIANCE APPROVED

To: Michael Leone (Baranek)
60 N. Harrison Avenue
Congers, New York 10920

ZBA #15-89
Date: October 21, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-89: Application of Matthew Baranek for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 5.226 (Front Yard fence height: 4 ½' permitted, 5' proposed for fence and 6' proposed for columns) for a front yard at a single-family residence. The premises are located at 8 Chipman Road, Palisades, New York and are identified on the Orangetown Tax Map as Section 80.06, Block 1, Lot 9; in the R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 21, 2015 at which time the Board made the determination hereinafter set forth.

Michael Leone, Contractor, appeared and testified.

The following documents were presented:

1. Copy of site plan showing location of proposed fence labeled: Pool Plan for Baranek dated 4/29/2014 with the latest revision date of 9/28/ 2015 by Gdanski Consultants Inc. signed and sealed by Paul Gdanski, P.E.. (1 page).
2. A letter objecting to the fence from Linda Falcone.
3. Two pictures of the site submitted by Linda Falcone at the meeting.

Ms. Castelli, Acting Chairperson, 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. Castelli, aye; Ms. Salomon, aye; Mr. Feroldi, aye; and Mr. Quinn, aye. Mr. Sullivan and Mr. Bosco were absent.

Michael Leone, contractor, testified that the holes in those pictures were from the columns that were removed during the construction of the pool; that they were on the right-of-way; that a survey has been done and the new fence and columns will be installed on the Baranek property and the old holes will be filled in.

Public Comment:

Linda Vezzetti, 58 Closter Road, testified that she lives at the corner of Chipman Road and that she was concerned that the fence was going to block the right-of-way to the swim club and she is pleased to hear that the new fence will be entirely on Mr. Baranek's property and that the holes in the right-of-way will be filled in.

Deirdre O'Hagan, 54 White Avenue, South Nyack, testified that she is President of the Palisades Swim Club and she was in the building department office for two hours today and at the end of her visit Michael Manzare, Building Inspector came in and told them

TOWN OF ORANGETOWN
2015 NOV 9 PM 12:39
TOWN CLERK'S OFFICE

that he spoke to the contractor and found out that the new fence was going in behind the survey lines and the original holes are being filled in; and that she came to the meeting to make sure that this is what will be approved.

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.

Ms. Castelli 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 fence height variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The brick posts for the fence are six-feet tall, however the fence is five-feet tall and it is a black wrought iron fence, that is not a solid fence, and blends into the surrounding area.
2. The fence and the brick pillars will be constructed within the property line of the Baranek property as shown on the site plan labeled "Pool Plan for Baranek" dated 4/29/2014 with the latest revision date of 9/28/ 2015 by Gdanski Consultants Inc., signed and sealed by Paul Gdanski, P.E..
3. The requested front yard fence height variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
5. The requested front yard fence height variance is not substantial. The brick posts for the fence are six-feet tall, however the fence is five-feet tall and it is a black wrought iron fence ,that is not a solid fence, and blends into the surrounding area.
6. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

TOWN CLERKS OFFICE

2015 NOV 9 PM 12 39

TOWN OF ORANGETOWN

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

TOWN CLERKS OFFICE
2015 NOV 9 PM 12 39
TOWN OF ORANGETOWN


Baranek
ZBA#15-89
Page 4 of 4

The foregoing resolution to approve the application for the requested front yard fence height variance was presented and moved by Ms. Salomon, seconded by Mr. Quinn and carried as follows: Mr. Feroldi, aye; Mr. Quinn, aye ; Ms. Castelli, aye; and Ms. Salomon, aye. Mr. Sullivan and Mr. Bosco were absent.

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

DATED: October 21, 2015

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

TOWN CLERKS OFFICE
2015 NOV 9 PM 12 39
TOWN OF ORANGETOWN

DECISION

FRONT YARD VARIANCE APPROVED

To: Charles and Patricia Malanaphy
20 Private Delregno Court
Blauvelt, New York 10913

ZBA #15-91
Date: October 21, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15- 91: Application of Charles and Patricia Malanaphy for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, R-15 District, Group M, Column 8 (Front Yard: 30' required, 26' 6" proposed) for a front porch at an existing single-family residence. The premises is located at 20 Private Delregno Court, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 70.13, Block 1, Lot 23.10; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 21, 2015 at which time the Board made the determination hereinafter set forth.

Charles and Patricia Malanaphy appeared and testified.

The following documents were presented:

1. Architectural plans labeled Porch Addition to The Malanaphy Residence dated August 3, 2015 signed and sealed by Eugenia Masucci, Registered Architect (3 pages).
2. Survey dated March 30 1998 signed and sealed by Theodore F. Atzl.

Ms. Castelli, Acting 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, Ms. Castelli 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: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Feroldi, aye; and Mr. Quinn, aye. Mr. Sullivan and Mr. Bosco were absent.

Charles Malanaphy testified that he would like to remove the existing porch and replace an extend it by four feet so that it would be a usable space; that presently it does not hold a chair; that he was looking at the zoning code and he does not think he needs a variance because if you go to column 8, Group M R-15 District you can go to notes 6 and 7 which states that the front yard requirements are less and he would not need a variance; that they have lived in the house for 16 years and have two children.

The Board looked at the code and agreed that this section would be for average density.

TOWN CLERKS OFFICE

2015 NOV 9 PM 12 39

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.

Ms. Castelli 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 variance 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 front yard variance 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 front yard 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 variance.

TOWN CLERKS OFFICE
2015 NOV 9 PM 12 39
TOWN OF ORANGETOWN

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

TOWN CLERKS OFFICE

2015 NOV 9 PM 12 40

TOWN OF ORANGETOWN


Malanaphy
ZBA#15-91
Page 4 of 4

The foregoing resolution to approve the application for the requested front yard variance was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Feroldi, aye; Mr. Quinn, aye; Ms. Castelli, aye; and Ms. Salomon, aye. Mr. Sullivan and Mr. Bosco were absent.

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

DATED: October 21, 2015

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
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TOWN OF ORANGETOWN
2015 NOV 9 PM 12 40
TOWN CLERKS OFFICE