

MINUTES  
ZONING BOARD OF APPEALS  
October 7, 2015

TOWN OF ORANGETOWN  
2015 OCT 29 PM 12 33  
TOWN CLERKS OFFICE

MEMBERS PRESENT: DAN SULLIVAN  
JOAN SALOMON  
LEONARD FEROLDI, ALTERNATE  
THOMAS QUINN  
PATRICIA CASTELLI  
MICHAEL BOSCO

ABSENT: NONE

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

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

KELLY  
186 Center Street,  
Pearl River, NY  
68.15 / 3 / 3; R-15 zone

REAR YARD  
VARIANCE APPROVED

ZBA#15-80

STEINBERG  
10 Murphy Court  
Blauvelt, NY  
70.14 / 2 / 47.9; R-15 zone

SIDE YARD AND  
REAR YARD VARIANCES APPROVED

ZBA#15-81

GUARINO  
223 Old Tappan Road  
Tappan, NY  
77.10 / 3 / 3; R-15 zone

FLOOR AREA RATIO,  
REAR YARD, AND BUILDING HEIGHT  
VARIANCES APPROVED

ZBA#15-82

LEE  
54 Marycrest Road  
West Nyack, NY  
69.06 / 2 / 36; R-22 zone

FLOOR AREA RATIO  
VARIANCE APPROVED

ZBA#15-83

VALERIO  
174 Rutgers Road East  
Orsangeburg, NY  
74.13 / 2 / 61; R-22 zone

FLOOR AREA RATIO,  
AND REAR YARD VARIANCES  
APPROVED

ZBA#15-84

SUPERIOR CRANE RENTALS  
375 Western Highway  
Tappan, NY  
74.18 / 3 / 32; LI zone

(ABOVE GROUND STORAGE  
OF PETROLEUM) § 4.44 AND  
§ 8.10 STORAGE WITHIN 150' OF LOT LINE  
VARIANCES APPROVED

ZBA#15-85

Minutes

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SUPERIOR CRANE RENTALS      PERFORMANCE STANDARDS      ZBA#15-86  
PERFROMANCE STANDARDS      REVIEW APPROVED  
375 Western Highway  
Tappan, NY  
74.18 / 3 / 32; LI zone

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: 7 Welles Lane Site Plan, Critical Environmental Area Site Plan for Pool (258 South Boulevard Subdivision), Nyack, NY; 66.17 / 1 / 25.2; R-22 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 10:30 P.M.

Dated: October 7, 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 OCT 29 PM 12 33  
TOWN OF ORANGETOWN

DECISION

**REAR YARD VARIANCE APPROVED**

To: James and Mary Kelly  
186 Center Street  
Pearl River, New York 10965

ZBA #15-80  
Date: October 7, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-80: Application of James and Mary Kelly for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, R-15 District, Group M, Column 11 (Rear Yard: 35' required, 29.5' existing) for an existing deck at an existing single-family residence. The premises are located at 186 Center Street, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.15, Block 3, Lot 3; 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 7, 2015 at which time the Board made the determination hereinafter set forth.

James Kelly appeared and testified.

The following documents were presented:

1. Architectural plans labeled "Kelly Deck" dated September 9, 2015 signed and sealed by John Anthony Ferraro P.C., Registered Architect (1 page).

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

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

James Kelly testified that 27 years ago he replaced the existing deck and enlarged it a little bit without getting a permit; that he did not realize he needed a permit because he was replacing the deck boards and only making it slightly larger; that they found out that it was too large and needed a variance because they are in the process of selling the house.

TOWN CLERKS OFFICE

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TOWN OF ORANGETOWN

Public Comment:

No public comment.

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

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

Mr. Sullivan made a motion to close the Public Hearing which motion was seconded by Ms. 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 rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The deck has existed in its present location for many years without incident.
2. The requested rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The deck has existed in its present location for many years 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. The deck has existed in its present location for many years without incident.
4. The requested rear 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 variances.

TOWN CLERKS OFFICE  
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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 rear 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  
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Kelly  
ZBA#15-80  
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The foregoing resolution to approve the application for the requested rear yard variance was presented and moved by Mr. Bosco, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye ;Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: October 7, 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 OCT 29 PM 12 33  
TOWN OF ORANGETOWN

DECISION

**SIDE YARD AND REAR YARD VARIANCES APPROVED**

To: Ira and Viki Steinberg  
10 Murphy Court  
Blauvelt, New York 10913

ZBA #15-81  
Date: October 7, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-81: Application of Ira and Viki Steinberg for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Section 3.12, Group M, Columns 9 (Side Yard: 20' required, 10' proposed) and from Section 5.227 (Rear Yard: 20' required, 11' proposed) for the installation of an in-ground pool at an existing one-family residence. The premises are located at 10 Murphy Court, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 70.14, Block 2, Lot 47.9 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 7, 2015 at which time the Board made the determination hereinafter set forth.

Ira Steinberg and Mike Insignares, Cool Pool, appeared and testified.

The following documents were presented:

1. Copy of site plan (1 page) showing the proposed placement of the pool.
2. A picture of the proposed pool imposed onto the property.

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

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

Ira Steinberg testified that he would like to install the pool in the rear yard because he had a nine year old son and a four year old daughter that would use the pool all season; and that he has a small ¼ acre lot that is very heavily landscaped on the left side of the property.

Mike Insignares, Cool Pool, testified that the rear yard has a significant slope in the rear; that there is approximately 11' difference from one side to the other; that they placed the proposed pool on the most level section of the yard that would also permit a small green area next to the pool for a recreational space; that the pool is 12' from the raised wooden deck; and the entire yard is very well screened.

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Public Comment:

No public comment.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested side yard and §5.227 rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar pools have been constructed in the area. The entire rear yard is well screened and the pool is being constructed on the most level section of the yard.
2. The requested side yard and §5.227 rear yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar pools have been constructed in the area. The entire rear yard is well screened and the pool is being constructed on the most level section of the yard.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested side yard and §5.227 rear yard 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 pools have been constructed in the area. The entire rear yard is well screened and the pool is being constructed on the most level section of the yard.
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  
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DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested side yard and § 5.227 rear 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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The foregoing resolution to approve the application for the requested side yard and § 5.227 rear yard variances was presented and moved by Ms. Salomon, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye ;Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: October 7, 2015

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

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

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

TOWN OF ORANGETOWN  
2015 OCT 29 PM 12 34  
TOWN CLERKS OFFICE

DECISION

**§ 5.12 (LOTS DIVIDED BY DISTRICT BOUNDARY), FLOOR AREA RATIO, REAR YARD AND BUILDING HEIGHT VARIANCES APPROVED**

To: John Guarino  
223 Old Tappan Road  
Tappan, New York 10983

ZBA #15-82  
Date: October 7, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-82: Application of John Guarino for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 5.12 (lots divided by district boundary applies) Section 3.12, R-15 District, Group M, Columns 4 (Floor Area Ratio: .20 permitted, .25 proposed), 11 (Rear Yard: 35' required, 8.5' existing, 19.9' proposed), and 12 (Building Height: 19.9' permitted, 24.5' proposed) for an addition to a single-family residence. The premises are located at 223 Old Tappan Road, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.10, Block 3, Lot 3; 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 7, 2015 at which time the Board made the determination hereinafter set forth.

John Guarino, Melissa Lopez and Carmen Delacruz, Architects, appeared and testified.

The following documents were presented:

1. Copy of site plan based on survey prepared by Jack D. Boswell & Associates dated 10/2/1975 and signed and sealed by Jorge L Lopez, R.A. dated 8/12/2015 (1 page).
2. Architectural plans labeled "Proposed Addition & Renovation for Mr. & Mrs. Guarino" dated April 25, 2014 with the latest revision date of August 10, 2015 signed and sealed by Jorge L. Lopez, Registered Architect (6 pages).
3. A letter dated September 28, 2015 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
4. A letter dated September 9, 2015 from the County of Rockland Department of Health signed by Scott Mc Kane, P.E..

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that 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. Bosco, aye; Mr. Quinn, aye; and Mr. Sullivan, aye.

Carmen Delacruz, Architect, testified that they are proposing to keep the foundation and they are raising the roof for a second story and adding a garage and about seven feet around the house; that they spoke to the building inspector in Northvale and he said they have no comment on work being done in New York; and that no one is living in the house presently.

TOWN OF ORANGETOWN  
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TOWN CLERK'S OFFICE

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 §5.12 (lots divided by district boundary), floor area ratio, rear yard and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar additions have been constructed in the neighborhood, and the non-conforming bulk is mainly due to the property being split by the State Line.
2. The requested §5.12 (lots divided by district boundary), floor area ratio, rear yard and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar additions have been constructed in the neighborhood, and the non-conforming bulk is mainly due to the property being split by the State Line.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. Similar additions have been constructed in the neighborhood, and the non-conforming bulk is mainly due to the property being split by the State Line.
4. The requested §5.12 (lots divided by district boundary), floor area ratio, rear yard and building height variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
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

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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 for the requested §5.12 (lots divided by district boundary), floor area ratio, rear yard and building height variances are APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

TOWN CLERKS OFFICE

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TOWN OF ORANGETOWN


Guarino  
ZBA#15-82  
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The foregoing resolution to approve the application for the requested §5.12 (lots divided by district boundary), floor area ratio, rear yard and building height variances was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye ;Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: October 7, 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 OCT 29 PM 12 34  
TOWN OF ORANGETOWN

DECISION

**FLOOR AREA RATIO VARIANCE APPROVED**

To: Robert Lee  
54 Marycrest Road  
West Nyack, New York 10994

ZBA #15-83  
Date: October 7, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15-83: Application of Robert Lee for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-22 District, Group I, Section 3.12, Column 4 (Floor Area ratio: .20 permitted, .24 existing) for a basement that was finished without a permit at an existing single-family residence. The premises are located at 54 Marycrest Road, West Nyack, New York and are identified on the Orangetown Tax Map as Section 69.06, Block 2, Lot 36; in the R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 7, 2015 at which time the Board made the determination hereinafter set forth.

Robert Lee and Min Park appeared and testified.

The following documents were presented:

1. Copy of site plan (1 page).
2. Architectural plan labeled Basement plan not signed or sealed and not dated.
3. A letter dated September 21, 2015 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.

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

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

Min Park testified that they purchased the house in 2002 and did not realize that the existing finished basement did not have a certificate of occupancy; that they are in the process of selling the house and found out that they need a certificate of occupancy for the basement; that there is a bathroom in the basement but no kitchen.

TOWN CLERKS OFFICE  
2015 OCT 29 PM 12 34  
TOWN OF ORANGETOWN

Public Comment:

No public comment.

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

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

Mr. Sullivan made a motion to close the Public Hearing which motion was seconded by Ms. 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. Other houses in the area have finished basements.
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. Other houses in the area have finished basements.
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. Other houses in the area have finished basements.
4. The requested floor area ratio variance, 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.
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  
2015 OCT 29 PM 12 34  
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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 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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Lee  
ZBA#15-83  
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The foregoing resolution to approve the application for the requested floor area ratio variance was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye ;Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: October 7, 2015

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

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

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

TOWN OF ORANGETOWN  
2015 OCT 29 PM 12 34  
TOWN CLERKS OFFICE

DECISION

**FLOOR AREA RATIO AND REAR YARD VARIANCES APPROVED**

To: Bart Valerio  
174 East Rutgers Road  
Orangeburg, New York 10962

ZBA #15-84  
Date: October 7, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15- 84: Application of Bart and Helene Valerio for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, R-22 District, Group I, Column 4 (Floor Area Ratio: .20 permitted, .23 proposed) and 11 (Rear Yard: 45' required, 40.8' proposed to deck and 39.1' to stairs) for an existing deck/ screened in porch at an existing single-family residence. The premises are located at 174 Rutgers Road East, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 74.13, Block 2, Lot 61; in the R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 7, 2015 at which time the Board made the determination hereinafter set forth.

Bart Valerio and Karl Ackerman appeared and testified.

The following documents were presented:

1. Architectural plans labeled "Proposed Screened Porch for Valerio Residence" dated August 9, 2015 with the latest revision date of August 31, 2015 signed and sealed by Karl Ackerman, Registered Architect (2 pages).

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

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

Bart Valerio testified that they have lived in the house for 40 years; that the deck existed when they purchased the house; that he enclosed part of it and added to the deck and extended the stairs.

Karl Ackerman testified that the structure has been certified safe and inspected; that the rear yard is 20'8" to the deck and 39/1' to the stairs; and that the room is not heated and is a three season room.

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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 and rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The screened in porch and deck have existed for many years without incident.
2. The requested floor area ratio and rear yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The screened in porch and deck have existed for many years 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 variances. The screened in porch and deck have existed for many years without incident.
4. The requested floor area ratio and rear yard 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.
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 and rear 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.

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

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

DATED: October 7, 2015

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

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

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

TOWN OF ORANGETOWN  
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TOWN CLERKS OFFICE

DECISION

**BULK STORAGE OF PETROLEUM ABOVE GROUND AND STORAGE OF COMBUSTIBLE MATERIALS WITHIN 150' OF LOT LINE VARIANCES APPROVED**

To: Ken DeGennaro (Superior Crane)  
Brooker Engineering, PLLC  
76 Lafayette Avenue  
Suffern, New York 10901

ZBA #15-85  
Date: October 7, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15- 85: Application of Superior Crane Rentals for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, LI District, Section 4.44 (Bulk Storage of petroleum products above ground is prohibited) and Section 8.10 paragraph c (Storage of any combustible materials within 150' of any lot line is prohibited) for a 550 gallon fuel tank and equipment storage. The premises is located at 375 Western Highway, Tappan, New York and are identified on the Orangetown Tax Map as Section 74.18, Block 3, Lot 32; in the LI zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 7, 2015 at which time the Board made the determination hereinafter set forth.

Brian and Dave Marcason and Ken DeGennaro, P.E., appeared and testified.

The following documents were presented:

1. Copy of site plan labeled " Superior Crane commercial subdivision Plat, tenant site plan" (1 page).
2. A cover letter dated August 2, 2015 from Kenneth DeGennaro, P.E., Brooker Engineering, P.L.L.C..
3. Zoning Board Decision # 14-18 dated March 19, 2015.
4. A letter dated September 21, 2015 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that since the Planning Board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or did not object to the Planning Board acting as Lead Agency for the Miele Commercial Subdivision and Miele Site Plan application (which included the subject Applicant's site and its potential uses), pursuant to coordinated review under the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (b) (3) and since the Planning Board conducted a SEQRA review, and on March 13, 2013, rendered an environmental determination of **no** significant adverse environmental impacts to result from the proposed land use action (i.e., "Negative Declaration" of "Neg. Dec"), the ZBA is bound by the Planning board's Neg. Dec. and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulation §617.6 (b) (3); **Alternatively**, since this Application seeks to construct or expand a primary or accessory/ appurtenant, **non-residential** structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, this Application is exempt from environmental review under the State Environmental Quality Review Act pursuant to SEQRA Regulations §617.5 (c)(7); which motion was seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Bosco, aye; and Mr. Quinn, aye; and Mr. Sullivan, aye.

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Ken DeGennaro, P.E., testified that the parcel is part of the Miele Subdivision; that the variance required is for the Bulk storage of diesel fuel above ground and its location is too close to the property line; that the property line is at the rear of the Miele subdivision that abuts the railroad tracks; that the applicant must meet all the requirements from the Health Department, Fire Inspector, Department of Environmental Management before they could move forward; that the next application is for Performance Standards review for the tank; that this application is for the location of the proposed above-ground tank; that they cannot meet the requirements of the code unless they placed the tank in front of another tenants building; and that they would not be permitted to place anything on another tenants property.

Brian Marcason testified that many of the other business's leasing property on the site have above-ground fuel tanks; that they are doing everything right and getting all the necessary approvals; that the tank is double-walled and self- contained and supplied by SOS Fuel for as long as they purchase fuel from them; and that he has a pallet of blankets and pads that could be used to contain any spill.

Dave Marcason testified that he needs to have the above ground storage on site because he is paying high salaries to his crane operators and would like to be able to fuel them on site instead of paying top dollar for them to fuel up elsewhere; and that the trains going by in the rear of the property are carrying millions of gallons of diesel fuel.

Public Comment:

Vicky and Norman Cooper, owners of 350 Western Highway, Tappan, testified that they own the three-family residence across the street from the Miele property and they are concerned about the hazards of above-ground fuel storage so close to the railroad tracks; that it will have an adverse effect on their property; that flammable material above – ground is dangerous and the loss of property value is a concern; and that things can go wrong.

Heather Hurley, 202 Hobart Street, Pearl River, testified that she was looking at the plans and she did not see a gate to enter the property; that there are houses and businesses across the street that would be effected by an explosion; that she would like to know if one person would be in charge of the fueling; that she has concerns about an accident or train derailment; that she would like to know who regulates the station and monitors it and how often is fuel delivered; and how does this tank relate to other sites in the area such as the welder next door; and what is the revision date since the denial?

Ken DeGennaro, P.E. testified that the tank is 440 feet away from Western Highway and it is 40 feet lower than the three family house on Western Highway; that it cannot be seen from the street; that there are regulatory agencies that are involved in the installation of the take; that the tank has to meet the requirements of these agencies and he does not remember all of the questions.

Brian Marcason testified that the tank will be fences and under surveillance cameras which will be connected to his cell phone; that there is no welding done outside by his neighbor; that they have seven vehicles that hold about 100to 150 gallons of fuel; that SOS is there every day on the Miele property filling up other tanks.

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

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CIVIL ENGINEERING OFFICE



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 § 4.44 Bulk Storage of petroleum above ground, and §8.10 par. c Storage of combustible materials within 150' lot line, variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The lot lines are within an existing commercial lot and the distance to other residential and commercial properties outside of the commercial lot is 400' and greater .
2. The requested § 4.44 Bulk Storage of petroleum above ground, and §8.10 par. c Storage of combustible materials within 150' lot line, variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The lot lines are within an existing commercial lot and the distance to other residential and commercial properties outside of the commercial lot is 400' and greater.
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 § 4.44 Bulk Storage of petroleum above ground, and §8.10 par. c Storage of combustible materials within 150' lot line, variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The lot lines are within an existing commercial lot and the distance to other residential and commercial properties outside of the commercial lot is 400' and greater.
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 § 4.44 Bulk Storage of petroleum above ground, and §8.10 par. c Storage of combustible materials within 150' lot line, 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.

TOWN CLERKS OFFICE

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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.

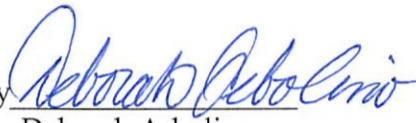
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The foregoing resolution to approve the application for the requested § 4.44 Bulk Storage of petroleum above ground, and §8.10 par. c Storage of combustible materials within 150' lot line, variances was presented and moved by Mr. Sullivan, seconded by Mr. Quinn and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: October 7, 2015

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

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

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

TOWN CLERKS OFFICE  
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TOWN OF ORANGETOWN

DECISION

**PERFORMANCE STANDARDS COMPLIANCE APPROVED**

To: Ken DeGennaro (Superior Crane)  
Brooker Engineering, PLLC  
76 Lafayette Avenue  
Suffern, New York 10901

ZBA #15-86  
Date: October 7, 2015

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#15- 86: Application of Superior Crane Rentals requesting approval of Performance Standards pursuant to Zoning Code (Chapter 43) of the Town of Orangetown Code, LI District, Section 4.1 Performance Standards review of a 550 gallon fuel tank and equipment storage. The premises is located at 375 Western Highway, Tappan, New York and are identified on the Orangetown Tax Map as Section 74.18, Block 3, Lot 32; in the LI zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 7, 2015 at which time the Board made the determination hereinafter set forth.

Brian Marcason and Ken DeGennaro, P.E., appeared and testified.

The following documents were presented:

1. Copy of site plan labeled " Superior Crane commercial subdivision Plat, tenant site plan" (1 page).
2. A cover letter dated August 2, 2015 from Kenneth DeGennaro, P.E., Brooker Engineering, P.L.L.C..
3. Zoning Board Decision # 14-18 dated March 19, 2015.
4. Performance Standards Resume of Operations and Equipment dated 9/18/2015.
5. Fire Prevention Supplement.
6. Hazardous Material Permit Application material list (2 pages)
7. A letter dated September 21, 2015 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
8. A Memorandum dated September 22, 2015 from the Orangetown Fire Inspector Michael Bettmann with attachments.
9. A letter dated October 6, 2015 from Joseph Moran, P.E., Commissioner, Department of Environmental Management and Engineering, Town of Orangetown with an attachment dated September 22, 2015 from Bruce Peters, P.E., Engineer III, DEME, Town of Orangetown.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination, based upon the testimony heard by this Board and the facts as presented in the application submissions and in the record, that since the application entails the ZBA engaging in a review to determine compliance with technical requirements the 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: Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; Mr. Sullivan , aye; and Ms. Castelli, aye.

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The applicant had two applications before the Zoning Board and the testimony for both applications overlapped each other:

Ken DeGennaro, P.E., testified that the parcel is part of the Miele Subdivision; that the variance required is for the Bulk storage of diesel fuel above ground and its location is too close to the property line; that the property line is at the rear of the Miele subdivision that abuts the railroad tracks; that the applicant must meet all the requirements from the Health Department, Fire Inspector, Department of Environmental Management before they could move forward; that the next application is for Performance Standards review for the tank; that this application is for the location of the proposed above-ground tank; that they cannot meet the requirements of the code unless they placed the tank in front of another tenants building; and that they would not be permitted to place anything on another tenants property.

Brian Marcason testified that many of the other business's leasing property on the site have above-ground fuel tanks; that they are doing everything right and getting all the necessary approvals; that the tank is double-walled and self-contained and supplied by SOS Fuel for as long as they purchase fuel from them; and that he has a pallet of blankets and pads that could be used to contain any spill.

Dave Marcason testified that he needs to have the above ground storage on site because he is paying high salaries to his crane operators and would like to be able to fuel them on site instead of paying top dollar for them to fuel up elsewhere; and that the trains going by in the rear of the property are carrying millions of gallons of diesel fuel.

Public Comment:

Vicky and Norman Cooper, owners of 350 Western Highway, Tappan, testified that they own the three-family residence across the street from the Miele property and they are concerned about the hazards of above-ground fuel storage so close to the railroad tracks; that it will have an adverse effect on their property; that flammable material above-ground is dangerous and the loss of property value is a concern; and that things can go wrong.

Heather Hurley, 202 Hobart Street, Pearl River, testified that she was looking at the plans and she did not see a gate to enter the property; that there are houses and businesses across the street that would be effected by an explosion; that she would like to know if one person would be in charge of the fueling; that she has concerns about an accident or train derailment; that she would like to know who regulates the station and monitors it and how often is fuel delivered; and how does this tank relate to other sites in the area such as the welder next door; and what is the revision date since the denial?

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Ken DeGennaro, P.E. testified that the tank is 440 feet away from Western Highway and it is 40 feet lower than the three family house on Western Highway; that it cannot be seen from the street; that there are regulatory agencies that are involved in the installation of the take; that the tank has to meet the requirements of these agencies and he does not remember all of the questions.

Brian Marcason testified that the tank will be fences and under surveillance cameras which will be connected to his cell phone; that there is no welding done outside by his neighbor; that they have seven vehicles that hold about 100to 150 gallons of fuel; that SOS is there every day on the Miele property filling up other tanks.

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

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 of the documents submitted, the Board found and concluded that:

Based upon the information contained in the applicant's Resume of Operations and Equipment and the Fire Prevention Supplement; the report dated October 6, 2015 from Joseph J. Moran, P.E., Commissioner of the Town of Orangetown Department of Environmental Management and Engineering (D.E.M.E.) with the attachment dated September 22, 2015 from Bruce Peters, P.E., Engineer III; the memorandum of Michael Bettmann, Chief Fire Inspector, Town of Orangetown Bureau of Fire Prevention (B.F.P.) dated September 2, 2015; the other documents submitted to the Board and the testimony of Applicant's representatives; the Board finds and concludes that the application conforms with the Performance Standards set forth in Zoning Code Section 4.1, subject to compliance with the orders, rules and regulations of the Orangetown Office of Building, Zoning & Planning Administration & Enforcement, D.E.M.E., and 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 submitted, the Board RESOLVED that the Application for Performance Standards Conformance, pursuant to Zoning Code § 4.1, is APPROVED with the following SPECIFIC CONDITIONS: (1) the Applicant shall adhere to all of the requirements and/or conditions that may be required by Chief Fire Inspector Bettmann, B.F.P.; and (2) the Applicant shall adhere to all of the requirements set forth in the report dated October 6, 2015 from Joseph J. Moran, P.E., Commissioner, DEME; 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 Conformance to Zoning Code §4.1 Performance Standards Review with the Specific Conditions that (a) the Applicant adhere to all of the requirements and/or conditions that may be required by Chief Fire Inspector Bettmann, B.F.P.;(b) the Applicant adhere to all of the requirements set forth by the report dated October 6, 2015 from Joseph J. Moran, P.E., Commissioner, DEME; was presented and moved by Mr. Sullivan, seconded by Mr. Bosco and carried as follows: Mr. Quinn, aye; Mr. Bosco, aye; Ms. Salomon, aye; Mr. Sullivan, aye; and Ms. Castelli, 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: October 7, 2015

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

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

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

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