

MINUTES  
ZONING BOARD OF APPEALS  
APRIL 18, 2012

MEMBERS PRESENT: WILLIAM MOWERSON  
JOAN SALOMON  
NANETTE ALBANESE  
DANIEL SULLIVAN  
MICHAEL BOSCO, ALTERNATE

ABSENT: PATRICIA CASTELLI

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. Mowerson, Chairman.

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

CONTINUED ITEM:

DESROCHES 70.11 / 1 / 5.8; R-80 zone	FLOOR AREA RATIO, REAR YARD VARIANCES APPROVED	ZBA#12-20
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POSTPONED ITEM:

JLM HOLDINGS 68.20 / 2 / 82; CS zone	REAR YARD VARIANCE VARIANCE APPROVED	ZBA#12-22
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NEW ITEMS:

MA 73.05 / 3 / 59; RG zone	FLOOR AREA RATIO, LOT AREA, FRONT YARD AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#12-24
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TOREZAN 73.05 / 1 / 69; R-15 zone	UNDERSIZED LOT SIDE YARD VARIANCE APPROVED	ZBA#12-25
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ADDITIONAL BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the Acting Chairperson executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for the State Environmental Quality Review Act (SEQRA) coordinated environmental review of actions pursuant to SEQRA Regulations § 617.6 (b)(3) the following applications:

Temple Israel Memorial Park Roadway Extension Plan, 75 Van Wyck Road, Blauvelt, NY 69.20 / 2 / 28; R-15 zone; Miele Commercial Subdivision and Site Plan, 375 Western Highway, Tappan, NY 74.18 / 3 / 32; LI & LIO 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 8:45 P.M.

#### DECISION

.161 FLOOR AREA RATIO, 10' SIDE YARD AND 25' REAR YARD TO SHED;  
AND 27' REAR YARD TO CHANGING ROOM VARIANCES APPROVED

To: Pascal and Yvette Desroches

ZBA # 12-20

8 1<sup>st</sup> Class Marsico Court  
Blauvelt, New York 10913

Date: April 4, 2012  
April 18, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-20: Application of Pascal and Yvette Desroches for variances from Chapter 43 (Zoning), R-80 District, Group A, Section 3.12, Columns 4 (Floor Area Ratio: .15 permitted, .166 proposed), 9 (Side Yard: 30' required, 10' proposed to shed) 11 (Rear Yard; 50' required, 27' to proposed cabana; 15' to covered bar; 10' to relocated shed) [lot developed under R-40 regulations: average density subdivision] for accessory structures at an existing single-family residence. The premises are located at 8 1<sup>st</sup> Class Marsico Court, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 70.11, Block 1, Lot 5.8; R-80 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, April 4, 2012 and April 18, 2012 at which time the Board made the determination hereinafter set forth.

John Perkins, Architect, appeared and testified.

The following documents were presented:

1. Site plan dated January 31, 2012 signed and sealed by Robert E. Sorace, L.S..
2. Architectural plans dated January 10, 2012 with a revision date of February 2, 2012 signed and sealed by John Perkins, Architect.
3. Site plan signed and sealed by Robert Sorace, L.S., revised April 10, 2012.
4. A letter dated April 2, 2012 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
5. A letter dated April 2, 2012 from the Palisades Interstate Park Commission signed by Karl B. Roecker, Landscape Architect.
6. A letter dated March 16, 2012 from the New York State Department of Environmental Conservation signed by Janet Swentisky.

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

At the meeting of April 18, 2012: On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and /or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Albanese, aye; and Mr. Mowerson, aye. Ms. Castelli was absent.

At the meeting of April 4, 2012, John Perkins, Architect, testified that the applicants' are reconsidering the initially proposed two structures; that they put the job out to bid and it came in higher than they thought it would be; that they are not going to construct the pavilion and the setbacks for the existing shed can be changed because they will move it out of the restricted buffer area; that the changing room/bathroom will remain and that he would like to request a continuance to the next hearing to revise the plans to reflect the new requests.

At the April 16, 2012 ZBA meeting, John Perkins, Architect testified that the plans have been revised to reflect the changes; that there will not be a pavilion over the hot tub; that the existing shed is being moved out of the buffer area; that they are requesting a 10' side yard and a 25' rear yard set back for the shed; that the floor area ratio has been revised to reflect a request of .161 floor area; and that the changing room still needs a rear yard variance of 27'.

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. Mowerson 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, side yard and rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The shed has been moved out of the designated buffer area and the pavilion has been removed from the plans. These changes address the concerns of the Palisades Park Commission and the County Planning Department.
2. The requested floor area ratio, side yard and rear yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The shed has been moved out of the designated buffer area and the pavilion has been removed from the plans. These changes address the concerns of the Palisades Park Commission and the County Planning Department.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.

4. The requested floor area ratio, side yard 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. . The shed has been moved out of the designated buffer area and the pavilion has been removed from the plans. These changes address the concerns of the Palisades Park Commission and the County Planning Department.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested floor area ratio, side yard and rear yard variances as modified 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.

The foregoing resolution to approve the application for the requested floor area ratio, side yard and rear yard variances, as modified, was presented and moved by Mr. Mowerson, seconded by Mr. Sullivan and carried as follows: Mr. Sullivan, aye; .Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Ms. Castelli was absent from the April 16, 2012 meeting.

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.

## DECISION

### REAR YARD VARIANCE APPROVED

To: JLM Holdings

ZBA # 12-22

36-40 Franklin Avenue

Date: April 18, 2012

Pearl River, New York 10965

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-22: Application of JLM Holdings for variances from Chapter 43 (Zoning), CS District, Section 3.12 Group FF, Columns 9 (Side Yard: 0/12 permitted: 1.33' proposed) and 11 (Rear Yard: 25' required, 0' proposed) for an existing garage that will demolished and rebuilt in connection with the commercial use on the property. The premises are located at 36-40 Franklin Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.20, Block 2, Lot 82; CS zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, April 18, 2012 at which time the Board made the determination hereinafter set forth.

Rocco Petruzelli appeared and testified.

The following documents were presented:

1. Site plan dated January 25, 2012 signed and sealed by Dennis M. Leston, P.E..
2. Architectural plans dated January 31, 2012 signed and sealed by Kier Levesque, Architect.
3. Eight 4x6 color print photos of the existing garage.
4. Rako product flyer which applicant sells to QVC.

Mr. Mowerson 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. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (7); which does not require SEQRA environmental review. The motion was seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Albanese, aye; and Mr. Mowerson, aye. Ms. Castelli was absent.

Rocco Petruzelli testified that the snow storm in October damaged the existing old garage and he has lifts holding it up; that it is not in good shape; that he is making an application to replace the garage with a slightly larger three car garage; that the garage will be used in conjunction with the existing office in the building; that he imports from China and sells on QVC and a portion of the garage will be used for storage of these items; that he can move the garage to comply with the zero foot side yard but will need a variance for the rear yard; and that he will move the garage up from feet from the rear yard.

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

#### FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested side yard variance has been withdrawn and the requested rear yard variance has been modified to a five foot rear yard setback which will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The garage has existed in this area of the property for many years and the new garage will be an aesthetic improvement.
2. The requested side yard variance has been withdrawn and the requested rear yard variance has been modified to a five foot rear yard setback will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The garage has existed in this area of the property for many years and the new garage will be an aesthetic improvement.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested 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.

**DECISION:** In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for the requested rear yard variance as amended to a 5' setback is **APPROVED**; with the **SPECIFIC CONDITION** that "The new 3-car garage shall only be utilized, occupied and used as an accessory structure exclusively for the commercial use of the subject premises; non-commercial (i.e., residential) utilization, use or occupancy of the new 3-car garage shall not be permitted"; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

#### General Conditions:

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

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

which are hereinbefore set forth.

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

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

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

The foregoing resolution to approve the application for the rear yard variance as modified to a 5' setback with the specific condition set forth on the previous page, was presented and moved by Mr. Mowerson, seconded by Mr. Sullivan and carried as follows: Ms. Albanese, aye; Mr. Sullivan, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Ms. Castelli was absent.

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

#### DECISION

#### FLOOR AREA RATIO, LOT AREA, FRONT YARD AND BUILDING HEIGHT VARIANCES APPROVED

To: Michael and Katherine Ma  
250 Gilbert Avenue  
Pearl River, New York 10965

ZBA # 12-24

Date: April 18, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-24: Application of Michael and Katherine Ma for variances from Chapter 43 (Zoning), RG District, Group Q, Section 3.12, Columns 4 (Floor Area Ratio: .30 permitted, .341 proposed), 5 ( Lot Area: 10,000 sq. ft. required, 9,000 sq. ft. proposed), 8 (Front Yard: 25' required, 18.9' existing) 12 (Building Height: 16.6' permitted, 20.6' existing) for an addition to an existing single-family residence. The premises are located at 19 Derderer Street, Tappan, New York and are identified on the Orangetown Tax Map as Section 74.20, Block 3, Lot 59; RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, April 18, 2012 at which time the Board made the determination hereinafter set forth.

John Perkins, Architect, appeared and testified.

The following documents were presented:

1. Survey dated March 9, 2012 signed and sealed Robert Sorace, PLS..
2. Architectural Plans dated January 6, 2012 with the latest revision date of March 7, 2012 signed and sealed by John Perkins, Architect.
3. Three letters in support of the application.

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

John Perkins, Architect, testified that the proposal is to expand the existing second floor over the existing family room, adding additional closets and a bedroom; that the family has three children and would like each child to have his/her own bedroom; that the addition would be cantilevered out in the front and the back of the house by two feet; that the lot is undersized and that effects the floor area ratio; and that when all is said and done the house with the detached garage will be 2,000 sq. ft..

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested floor area ratio and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The lot area and front yard variances are being recognized and granted as existing conditions. The proposed addition is for a second floor over an existing family room with cantilevers. The foot print of the house is not changing.



2. The requested floor area ratio and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The lot area and front yard variances are being recognized and granted as existing conditions. The proposed addition is for a second floor over an existing family room with cantilevers. The foot print of the house is not changing.
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 lot is undersized.
4. The requested floor area ratio and building height variances are not substantial, and the lot area and front yard variances are being recognized and granted as existing conditions.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

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

General Conditions:

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

project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute “substantial implementation” for the purposes hereof.

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

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

## DECISION

### SIDE YARD VARIANCE APPROVED

To: Peter Torezan

ZBA # 12-25

250 Gilbert Avenue  
Pearl River, New York 10965

Date: April 18, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-25: Application of Peter Torezan for a variances from Chapter 43 (Zoning), R-15 District, Group M, Section 5.21 (c) Undersized lot: (Side Yard: 15’ required, 10’ proposed) for a proposed deck at an existing single-family residence. The premises are located at 250 Gilbert Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 73.05, Block 1, Lot 69; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, April 18, 2012 at which time the Board made the determination hereinafter set forth.

Peter Torezan appeared and testified.

The following documents were presented:

1. Copy of survey with deck drawn on it.
2. A hand drawing of the proposed deck.

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

Peter Torezan testified that he and his wife have owned the house for 37 years; that the house was built in 1947; that a few years back they added a small addition in the back middle portion of the house; that they pulled in the proposed deck two feet from the existing line of the house and found out that they still required a variance; that they tried to stay within the code; that his lot is wider than most of the lots in the area; that the proposed deck will be 22" off the ground; and that presently it is just he and his wife in the house, that his daughter lives in Brooklyn.

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested side yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed deck is only 22" off of the ground and is stepped in two feet from the edge of the house.
2. The requested side yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed deck is only 22" off of the ground and is stepped in two feet from the edge of the house.
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 lot is undersized.
4. The requested side 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.

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

The foregoing resolution to approve the application for the side yard variance was presented and moved by Mr. Mowerson, seconded by Mr. Sullivan and carried as follows: Ms. Albanese, aye; Mr. Sullivan, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Ms. Castelli was absent.

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

DATED: April 18, 2012























