

MINUTES
ZONING BOARD OF APPEALS
APRIL 4, 2012

MEMBERS PRESENT: WILLIAM MOWERSON
JOAN SALOMON
PATRICIA CASTELLI
DANIEL SULLIVAN

ABSENT: NANETTE ALBANESE
MICHAEL BOSCO, ALTERNATE

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

NEW ITEMS:

DESROCHES 70.11 / 1 / 5.8; R-80 zone	CONTINUED	ZBA#12-20
THOMAS 68.12 / 4 / 15; CC zone	EXTENSION OF NON- CONFORMING USE APPROVED WITH THE SPECIFIC CONDITION THAT THE SECOND FRONT DOOR BE REMOVED	ZBA#12-21
JLM HOLDINGS 68.20 / 2 / 82; CS zone	POSTPONED	ZBA#12-22
SCHMIDT 80.07 / 1 / 8; R-40 zone	SECTION 5.151 APPROVED WITH SPECIFIC CONDITION: EVERGREEN PLANTINGS	ZBA#12-23

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.

Dated: April 4, 2012

DECISION

EXTENSION OF NON-CONFORMING USE VARIANCE APPROVED

To: George Thomas

ZBA # 12-21

180 East Lewis Avenue
Pearl River, New York 10965

Date: April 4, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-21: Application of George Thomas for a variances from Chapter 43 (Zoning), CC District, Section 9.34 (Extension of Non-Conforming Use) to change doctor's office section of house to residential space at an existing single-family residence. The premises are located at 180 East Lewis Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.12, Block 4, Lot 15; CC zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 4, 2012 at which time the Board made the determination hereinafter set forth.

George Thomas and Bobby Thomas appeared and testified.

The following documents were presented:

1. Survey by Summit Land Surveying, not signed or sealed dated December 16, 2011.
2. Architectural plans dated January 12, 2012 signed and sealed by Peter Klein, Architect.

Mr. Mowerson 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. 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. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Ms. Albanese was absent.

Bobby Thomas testified that they purchased the home from his Doctor; that they were told by the building inspector that they need to go to the Zoning Board in order to make the doctors office into living space for the house; that they do not need an office; that there are five members of the family; that his brother recently married and has a baby and that they come to stay with the family frequently; that East Lewis Avenue is al single-family residences; that next door is a condominium complex and across the street is Key Bank and a Day Care Center; and that if they have to, they will remove the second front door from the doctors 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. 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 § 9.34 extension of non-conforming use variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant is aware that Section 9.34 provision may be used only once for each such use and has agreed to remove the second front door from the doctor office section of the house. The surrounding area is a mix of existing single-family residences on East Lewis Avenue, a condominium complex, a bank and a daycare center; converting the doctor office space to residential use is not detrimental to the character of the neighborhood.
2. The requested § 9.34 extension of non-conforming use variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant is aware that Section 9.34 provision may be used only once for each such use and has agreed to remove the second front door from the doctor office section of the house. The surrounding area is a mix of existing single-family residences on East Lewis Avenue, a condominium complex, a bank and a daycare center; converting the doctor office space to residential use is not detrimental to the character of the neighborhood.
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 ex§ 9.34 tension of non-conforming use variance, although somewhat substantial, affords benefits to the applicants that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The applicant is aware that Section 9.34 provision may be used only once for each such use and has agreed to remove the second front door from the doctor office section of the house. The surrounding area is a mix of existing single-family residences on East Lewis Avenue, a condominium complex, a bank and a daycare center; converting the doctor office space to residential use is not detrimental to the character of the neighborhood.
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 § 9.34 extension of non-conforming use variance is **APPROVED** with the **SPECIFIC CONDITION** that the front door on the doctor's office section of the house be removed; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

The foregoing resolution to approve the application for the requested § 9.34 extension of non-conforming use variance was presented and moved by Ms. Salomon, seconded by Mr. Sullivan and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Albanese, absent; Ms. Salomon, aye; and Mr. Mowerson, 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.

DECISION

SECTION 5.151 VARIANCE APPROVED WITH SPECIFIC CONDITION

To: Walter Lee (Schmidt)

ZBA # 12-23

105 Larchdale Avenue
2012

Date: April 4,

Upper Nyack, New York 10960

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-23: Application of Michael Schmidt and Alice Kim for a variance from Chapter 43 (Zoning), R-40 District, Section 5.151 (No residential building which is within 100 feet of a front lot line at any point shall occupy a distance of more than 100 feet: 135.22 feet is proposed) for a proposed single-family residence. The premises are located at 18 Lawrence Lane, Palisades, New York and are identified on the Orangetown Tax Map as Section 80.07, Block 1, Lot 8; R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 4, 2012 at which time the Board made the determination hereinafter set forth.

Michael Schmidt, Jay Greenwell, Land Surveyor, and Walter Lee, Construction Manager, appeared and testified.

The following documents were presented:

1. Survey and Topographic map dated 04/11/11 with the latest revision date of 08/01/11 signed and sealed by William Norton L.S., and John Tarolli, P.E..
2. Architectural plans, Turkel Design, Lindal Cedar Homes, not signed or sealed (10 pages).
3. A color etching of the proposed dwelling.
4. A letter dated March 13, 2012 from Jay Greenwell, PLS.

Mr. Mowerson 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. 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. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. ; Ms. Albanese was absent.

Jay Greenwell testified that the applicant originally submitted plans in August 2011 and went before the Historic Board in October and the house was approved; that the plans have not changed; that they have approval for the septic system from the Rockland County Health Department; that the existing house has been demolished; that they were in the process of getting the building permit, when it was discovered that the house needs a variance for its length; that the house does not encroach on the side yards; that the problem is caused by the connecting breezeway between the proposed garage and the house; that they do not want to change the house plans because they would have to go back before the Historic Board; that it is an issue of time; the Schmidt family is renting until they can finish the house and move in; that they have children and would like to complete the project as soon as possible; that the house is only one story from the upland side of the site; and that they have no objection to planting an evergreen screening between the garage/carport and the north property line.

Walter Lee, construction manager, testified that the property is surrounded by the Sears on the right which is a huge old mansion, the Galinsky old carriage house and the Tonetti contemporary on the north; that the existing retaining wall is being utilized; and they would have no problem planting evergreens.

Public Comment:

Joseph Tonetti, 14 Lawrence Lane, testified that the project respects the side yard setbacks; that he is looking at the flat roof of the garage from his property and would request an evergreen screening be planted between the carport/ garage and his property.

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 Section 5.151 variance for a house length of 135.22 feet will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed house is built into the slope of the property and does not intrude into the side yard setbacks. The applicant has agreed to plant 10 mixed evergreens (8' to 10' tall) between the north face of the garage and the northern property line.
2. The requested Section 5.151 variance for a house length of 135.22 feet will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed house is built into the slope of the property and does not intrude into the side yard setbacks. The applicant has agreed to plant 10 mixed evergreens (8' to 10' tall) between the north face of the garage and the northern property 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.
4. The requested Section 5.151 variance for a house length of 135.22 feet, although substantial, affords 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 proposed house is built into the slope of the property and does not intrude into the side yard setbacks. The applicant has agreed to plant 10 mixed evergreens (8' to 10' tall) between the north face of the garage and the northern property line.
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 Section 5.151 variance for the house length of 135.22 feet is **APPROVED**; with the **SPECIFIC CONDITION** that the applicant plant ten (10) mixed evergreens eight (8) to ten (10) feet in height between the north face of the garage and the north property line; 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 Section 5.151 variance for a house length of 135.22 feet was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Ms. Albanese 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.

