

MINUTES  
ZONING BOARD OF APPEALS  
April 7, 2010

MEMBERS PRESENT:        WILLIAM MOWERSON  
                                 DANIEL SULLIVAN  
                                 PATRICIA CASTELLI  
                                 JOAN SALOMON  
                                 NANETTE ALBANESE

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 Chairman Mr. Mowerson.

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

POSTPONED ITEM:

MIGGE 77.11 / 3 / 70; CS zone	CONTINUED	ZBA#10-17
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NEW ITEMS:

CAREY 69.05 / 2 / 59; R-15 zone	SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED	ZBA#10-23
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MORGAN'S PUB OUTDOOR DINING 77.10 / 3 / 17; CS zone	OUTDOOR DINING APPROVED WITH CONDITIONS	ZBA#10-24
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BLAUVELT AUTO SPA & DETAILING CENTER 70.10 / 3 / 16; CC zone	POSTPONED	ZBA #10-25
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THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

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

OTHER BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the Chairman executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for SEQRA coordinated environmental review of actions pursuant to the following applications: Thorpe Village

Wetlands Remediation Project Site Plan, 125 Route 340, Sparkill, New York 74.16 / 1 / 23; R-40 zoning district; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 9:20 P.M.

Dated: April 7, 2010

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino  
Administrative Aide

DECISION

**SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED**

To: Matthew and Allison Carey

ZBA # 10-23

9 Brown Drive

Date: April 7, 2010

Pearl River, New York 10965

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#10-23: Application of Matthew and Allison Carey for variances from Chapter 43 (Zoning) of the Code of the Town of Orangetown, R-15 District, Group M, Section 3.12, Columns 9 (Side Yard: 20' required, 6' proposed), and 10 (Total Side Yard: 50' required, 22.4' proposed) for a deck at an existing single-family residence. The premises are located at 9 Brown Drive, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 69.05, Block 2, Lot 59; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, April 7, 2010 at which time the Board made the determination hereinafter set forth.

Allison Carey appeared and testified.

The following documents were presented:

1. Survey dated May 17, 1951 by Robert Jost, L.S. with hand drawing of proposed deck added.
2. A computer generated deck plan.
3. Revised computer generated plan submitted at meeting.
4. A letter in support of the application from John Quigley, 3 Brown Drive.

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 Mr. Sullivan and

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

Allison Carey testified that they would like to cover the existing porch at the side of the house that is crumbling and replace it with a deck that wraps around the back of the house; that the lot is undersized and the side yard are already non-conforming; that they are proposing this width deck at the side of the house so that they can cover the existing patio and dig the footings on the outside of the existing concrete; that the lot is 132' x 76'; that they can cut the width of the deck to permit an 8.5' side yard; that there are four members of the family and that the deck at the rear of the house will be 16' wide.

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 side yard and total side yard variances as modified will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar decks have been constructed in the area.
2. The requested side yard and total side yard variances as modified will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar decks have been constructed in the area.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested side yard and total side yard variances as modified, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Similar decks have been constructed in the area.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

**DECISION:** In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for the requested side yard and total side yard variances are **APPROVED** as **MODIFIED** to provide an 8.5' side yard and a 24.9' total side yard; 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 side yard and total side yard variances as modified to provide an 8.5' side yard and a 24.9' total side yard was presented and moved by Ms. Salomon, 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.

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 7, 2010

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

**OUTDOOR DINING APPROVED WITH CONDITIONS**

To: Steve Morgan

ZBA # 10-24

79 Old Tappan Road  
Tappan, New York 10983

Date: April 7, 2010

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#10-24: Application of Morgan's Pub for a variance from Chapter 43 (Zoning) of the Code of the Town of Orangetown, Section 3.11, CS District, Column 7, No. 1, refers to R-80 District, Column 7, No. 6 (All restaurant serving facilities shall be within completely enclosed buildings: outside dining proposed) at an existing restaurant. Premises are located at 79 Old Tappan Road, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.10, Block 3, Lot 17; CS zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, April 7, 2010 at which time the Board made the determination hereinafter set forth.

Steve Morgan appeared and testified.

The following documents were presented:

1. Copy of the outdoor seating area.
2. Zoning Board Decisions # 02-89 dated 10/2/02 and #04-89 dated July 7, 2004.

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

Steve Morgan testified that he owned a business in this location 25 years ago; that he has been back in business in this location for over a year; that he did not apply for outdoor dining sooner because he wanted to show the neighbors that his business was not anything like the last business that was located there; that he has absolutely no problem with the conditions that were imposed on the previous owner as far as music, time of operation or the outside bar; that he would like to request the use of a barbeque for the outside area; that presently the restaurant seats 42 people and on Friday and Saturday nights there is about a 1 ½ hour wait for a table; that serve between 100 and 150 dinners on Friday and Saturday nights; that they have a really good family business; that large parties with their kids come in for dinner on week-ends; and the kitchen can handle the 42 seats at a time but the kitchen is tiny and would not be able to accommodate the extra seats for outside; that he was hoping to have a different menu outside, such as burgers, steaks, hotdogs; that he was planning on hiring a cook for the outside service area that would do the grilling; that otherwise people would be sitting outside and waiting too long for their dinner because the kitchen can only produce so much because of its size; that the property is located between the railroad tracks and the building that houses the restaurant; that the closest residential property is about 200' feet from the rear of this property; that

Chase Bank is across the street; that it took him and his son a year to make the renovations to open the business; that 70% of his business is burgers and steaks; and that he has no problem with a one year approval to make sure he abides by the rules.

Public Comment:

Ted Baker, 11 Stevens Road, Tappan, testified that his backyard abuts the parking lot of Morgan's; that he met Steve during the renovation of the building; that the business is definitely family oriented; that there has not been any problem with noise in the neighborhood; that he is here to speak in support of the application including the barbeque grill; that he had a problem with the previous owner cooking because of the enormous amount of food that was being served to hundreds of people at his concerts; that he doesn't think it is necessary to limit the approval to one year; and that this business is not a detriment to the neighborhood.

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. Applicant seeks authorization to provide outdoor dining in an open area immediately adjacent to a bar / restaurant he operates on Old Tappan Road in the hamlet of Tappan, New York.
2. The property is located in a community shopping (CS) zoning district immediately north and east of a cluster of one-family homes on Stephens Street and immediately adjacent to a number of residential tenancies on Old Tappan Road.
3. Included in the regulations applicable to the CS zoning district are those referred to in Orangetown Code Chapter 43 (Zoning), Section 3.11, CS District, Column 7, No. 1 which provide, inter alia, as set forth in Section 3.11, R-80 District, Column 7, No. 6, that: "All restaurants or food serving facilities shall be within completely enclosed buildings, unless by special permit of the Zoning Board of Appeals."
4. The zoning regulations for the CS zone also provide in Chapter 43, Section 3.11, Column 7, No. 3, that: "All retail sales and services establishments and accessory storage, either on a temporary or interim basis [ sic], shall be within a completely enclosed building, except as provided for in Local Law No. 15, 1993. ( Local Law No. 15 deals with sidewalk cafes; see Orangetown Code, Ch. 31B).
5. Authorization to provide outdoor dining at the subject property was originally granted to a previous applicant by the Board in January, 2001 (ZBA Decision # 01-06) subject to the general conditions applicable to all applicants that the approval of any variance is granted in accordance with and subject to the plans submitted, and, because of the close proximity of the site to residential properties, subject also to specific conditions requiring that all food and beverages be prepared indoors, that no

bar be installed in the outdoor area, that any music must cease by 10 P.M. and that the outdoor area be vacated at midnight. These conditions were drawn in part from the Town's local law regulating sidewalk cafes; although the prohibition in that law of any live or mechanical music was not invoked (see Orangetown Code, Chapter 31 B-3).

6. The plans submitted by the applicant to the Board provided for a total of nine dining tables in the outdoor area with a total seating capacity of thirty-six people.
7. The Board's authorization was limited to one-year to enable the Board to ascertain the impacts of the proposed operation on the surrounding neighborhood.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for a special permit for outdoor dining is APPROVED with the SPECIFIC CONDITIONS that all food and beverages be prepared within the building housing Morgan's Pub and be served only to and consumed only by patrons seated at dining tables, that in accordance with the plans previously submitted by applicant, those patrons be limited to a maximum number of 36 to be seated at no more than nine tables, each accommodating no more than four persons; that no bar or beverage dispensing facility (including any beer truck) or cooking facility (including any grill or barbecue) of any kind be installed or utilized in any part of the outdoor area; that there shall be no outdoor music, entertainment or amplified sound of any kind played anywhere on the premises; that the doors of the bar/restaurant shall be closed whenever music is played inside; that the outdoor area must be vacated by 10:00 P.M Sunday through Thursday, and by 12 midnight on Friday and Saturday and on the eves of the national holidays; and that the permit herein granted as conditioned shall be limited to a term of one year from the date of filing of this decision; 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 outdoor dining variance was presented and moved by Mr. Mowerson, seconded by Ms. Salomon, and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Castelli, 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.

DATED: April 7, 2010

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide











