

MINUTES
ZONING BOARD OF APPEALS
December 2, 2009

MEMBERS PRESENT: PATRICIA CASTELLI
 WILLIAM MOWERSON
 JOAN SALOMON
 DANIEL SULLIVAN

ABSENT: NANETTE ALBANESE

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

CONTINUED ITEM:

INTERPRETATION/CLARIFICATION WITH RESPECT TO BLAUVELT AUTO SPA 70.10 / 3 / 16; CC zone	DEFERRED	ZBA#09-71
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ELLIOT 68.18 / 1 / 14; R-15 zone	DENIED	ZBA#09-73
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NEW ITEMS:

BUONADONNA SUBDIVISION 68.12 / 3 / 24; RG & MFR zone	PRE-EXISTING NON-CONFORMING USE RECONFIRMED	ZBA#09-81
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DISTASO 68.20 / 2 / 62; RG zone	FRONT YARD VARIANCE APPROVED	ZBA#09-82
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KLOMBERG 70.09 / 1 / 49; R-15 zone	SIDE YARD VARIANCE APPROVED	ZBA #09-83
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SKELLY 70.09 / 3 / 29; R-40 zone	FRONT YARD VARIANCE APPROVED AS MODIFIED	ZBA #09-84
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ZAPATA RESTAURANT 77.20 / 2 / 24; R-15 zone	POSTPONED	ZBA#09-85
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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.

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 11:15 P.M.

Dated: December 2, 2009

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DECISION

SECTION 11.2 VARIANCES DENIED

To: Thomas Elliot

ZBA # 09-73

84 Old Pascack Road

Date: 12/2/09

Pearl River, New York 10965

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#09-73: Application of Thomas Elliot for variances from Chapter 43 (Zoning) of the Code of the Town of Orangetown Section 11.2 (Definitions: Home Occupation: no exterior storage of materials or equipment; no more than two (2) persons other than actual residents of the premises shall participate in home occupation) for an existing home occupation at an existing single-family residence. The premises is located at 84 Old Pascack Road, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 68.18, Block 1, Lot 14; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, December 2, 2009 at which time the Board made the determination hereinafter set forth.

Thomas Elliot, Lynn Brundage and Lisa Elliot appeared and testified.

The following documents were presented:

1. A cover letter dated April 14, 2009 from Thomas Elliot.
2. A hand drawn floor plan.
3. Two letters from Noel Heffernan in opposition of the business.
4. Eight pictures of trucks submitted by Randall Mirque.
5. A letter of opposition with a print out from a web site and 11 pictures of truck s and van deliveries dated November 1, 2009 from Scott B. Willis, 79 Old Pascack Road.

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

Lynn Brundage testified that they are before the Board for having more than two people working for the business and for outdoor storage; that the problem started when her family moved into the home in April when they sold their home; that there was stuff stored outside from her family; that there were extra cars in driveway and parked on the road; that since then they have moved out into their new home; that the business has been conducted out of the house for forty years; that there had been a lot of stuff outside of the residence but it was her families personal stuff , ladders tools and such and the mess has since been rectified; that the business is to install folding partitions and the partitions are delivered to the job sites; that sometimes the metal tracks are delivered to the house; that there are only two people working in the office, her sister and herself; that her husband and son do the installations with a part-time worker when necessary; that her son lives in the home with her sister and father; that they have no control over what size truck delivers the tracks; that sometimes they are left on the driveway because they are too heavy for her and her sister to carry; that the business takes place in a portion of the converted garage; and the house is approximately 3,000 sq. ft.

Lisa Elliot testified that there has never been any hazardous material delivered to the house; that the second van was sold eight months ago; that there are personal items delivered to the house about five times a month; that she could get a list of the freight truck deliveries for the board; that 576 sq. ft. of the house is used for the business but her father has his own personal desk in that space; that the business has been in her and her sisters name for the past ten years; that they average one or two installations a week; that the past year has been slow; that the business hours are 9-4; that no freight deliveries are made at six in the morning; that her sister's husband might come to the house to get materials out of the garage early in the morning; and that they could arrange to go pick up the freight deliveries from the terminals to avoid the tractor trailer deliveries.

Public Comment:

Noel Heffernan, 92 Old Pascack Road, testified that the Elliot's are good neighbors; but that he needs clarification if they are requesting a zone change; that they are conducting a commercial business; that for fifteen years there has been truck deliveries; that large materials are dropped off; that school buses can't get around these tractor trailer trucks; that there is lot of noise and commercial traffic; that he objects to the stock in the driveway and the commercial activity in a residential neighborhood; that there are more than two employees, that they meet there collect stuff and leave in the van while leaving their cars parked along the road; that there is no hardship for operating this type of commercial business out of a residence; that this is self-created and should operate in a zone that permits such operation.

Randall Mirque, 8 Burdick, testified that he supports everything Mr. Heffernan has stated; that there are two service vehicles parked and they start making noise between 5:30 and 6:00 A.M.; that he has an issue with the umber of large truck deliveries, the number of employees and would like to submit pictures of tractor trailer deliveries to the house; and that he had a business for years which he operated out of a commercial zone on Greenbush Road and his neighbors should locate the business in the proper zone; that this is more than a home office.

Barbara Mirque testified that she has objections to the 18 wheelers and that this is not an appropriate home business, this business should be operating out of a warehouse.

James Stierlen, 91 Old Pascack Road, testified that cars are parked on the side of the road all day while they are out on their jobs; that they are loading and unloading materials as early as six A.M.; that they should get a warehouse for their storage; and that another neighbor could not come tonight but submitted a letter and pictures for the Board members.

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 do not outweigh the detriment to the health, safety and welfare of the neighborhood or community that would result from a grant of the variances, for the following reasons:

1. The requested variances from the Zoning Code Section 11.2 (Definitions) will produce an undesirable change in the character of the neighborhood and a detriment to nearby properties. The applicant testified that they have no control over the types of trucks that deliver to the home and “eighteen wheeler” vehicles delivering in a residential neighborhood would be a detriment to nearby properties and an undesirable change to the neighborhood.
2. The requested variances from the Zoning Code Section 11.2 (Definitions) will have an adverse effect and impact on the physical and environmental conditions in the neighborhood and/or district as testified to by the four neighbors present at the hearing and the letter from another neighbor that could not be present for the hearing, which testimony and letter the Board found credible.
3. The benefits sought by the applicant can be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The applicant could operate the business in a zone that permits exterior storage of materials and more than two persons, other than actual residents of the premises, to participate in the home occupation.
4. The requested variances from the Zoning Code Section 11.2 (Definitions) are substantial, and will have an adverse effect or impact on the physical or environmental conditions of the neighborhood and/or district for the reasons described in paragraphs “1”-“3” above and “5” below.
5. The applicant purchased the property subject to Orangetown’s Zoning Code (Chapter 43) and is proposing: to operate a home occupation with greater than two persons, who are not actual residents, who will be participating in the home occupation; to use, more interior space for the home occupation than is permitted; and utilizing exterior storage of materials, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, and was a factor in this denial of the variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for the requested variances from the Zoning Code Section 11.2 (Definitions) are **DENIED**; 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 deny the application for the variances from the Zoning Code Section 11.2 (Definitions) was presented and moved by Mr. Sullivan, 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: December 2, 2009

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

PRE-EXISTING NON-CONFORMING USE RECONFIRMED

To: Donald Brenner (Buonadonna)

ZBA # 09-81

4 Independence Avenue
Tappan, New York 10983

Date: 12/ 2 / 09

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#09-81: Application of Buonadonna Subdivision for a reconfirmation of a pre-existing non-conforming use on lot #2 of a single-family residence and business on the lot remaining in the MFR Zoning District. (Applicant received a zone change for a portion of the lot to the RG zone and a preliminary approval from the Planning Board for the subdivision). The site is located at 283 North Middletown Road, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 68.12, Block 3, Lot 24; RG & MFR zones.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, December 2, 2009 at which time the Board made the determination hereinafter set forth.

John Buonadonna and Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Survey dated August 9, 2007 signed and sealed by Robert Rahnefeld, L.S.
2. A letter dated November 18, 2009 from the County of Rockland Department of Planning signed by Salvatore Corallo, Commissioner of Planning.
3. Planning Board Decision #09-27 dated April 29, 2009.

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 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, pursuant to coordinated review under the State Environmental Quality Review Act Regulations § 617.6 (b)(3) (iii); and since the Planning Board conducted SEQRA review on April 29, 2009 and rendered environmental determination of no significant adverse environmental impacts to result from the proposed land use actions (i.e., a "Negative Declaration" or "Neg Dec"), the ZBA is bound by the Planning Board's Neg Decs and the ZBA cannot require further SEQRA review pursuant to SEQRA regulations § 617.6 (b)(3) (iii). The motion was seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Ms. Castelli, aye; Mr. Sullivan; aye; and Mr. Mowerson, aye. Ms. Albanese was absent.

Donald Brenner, Attorney, testified that Mr. Buonadonna purchase the property in 1973; that the zone changed from CO to MFR ; that recently Mr. Buonadonna went to the Town Board for a zone change for the second lot in the rear; that it was changed from MFR to RG; that the "RG zone only requires 10,000 sq. ft. and this lot has 23,000 sq. ft.; that Mr. Buonadonna is planning on building his house on the western lot and keeping the existing house and business on the east lot; that 220 notices were sent out for this hearing and no one came out to voice any concerns; that the holiday floats are being prepared on the site; that the site can be cleaned up; and that Mr. Buonadonna gave a drainage easement to the town for the Cherry Brook drainage project..

John Buonadonna testified that he was 23 years old when he purchased this lot; that he will be turning 60 this summer; that his son is in the Police Academy in the city and wants to stay in Orangetown; that he wants to rent the existing house when he builds the

new house; that he purchased the back lot from Howard Johnson; that there is a lot of stuff in the yard presently; that some of the clutter could be cleaned up; that the truck from East Coast Towing parks in his lot when he has equipment that needs to be moved to a job site; that the firewood needs to be cut up, split and stacked against the fence; that he does have a friends trailer with a truck body in the back yard presently but he will be moving that soon; that he gets along with all of his neighbors; and that he has no objection to cleaning up the property.

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 confirmation of the pre-existing non-conforming use will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has agreed to clean-up the property and submit a plan with a designated outdoor storage location.
2. The requested confirmation of the pre-existing non-conforming use will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has agreed to clean-up the property and submit a plan with a designated outdoor storage location.
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 applicant has agreed to clean-up the property and submit a plan with a designated outdoor storage location.
4. The requested confirmation of the pre-existing non-conforming use, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. The applicant has agreed to clean-up the property and submit a plan with a designated outdoor storage location.
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 confirmation of the existing non-conforming use is **CONFIRMED**; with the **SPECIFIC CONDITION** that the applicant submit a plan that shows where specific outdoor storage items are located; 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 confirmation of the pre-existing non-conforming use is granted 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: December 2, 2009

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

FRONT YARD VARIANCE APPROVED

To: Phyllis DiStaso

ZBA # 09-82

57 John Street

Date: 12/ 2 / 09

Pearl River, New York 10965

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#09-82: Application of Phyllis DiStaso for variances from Chapter 43 (Zoning) of the Code of the Town of Orangetown Section 3.12, RG District, Group Q, Column 8 (Front Yard: 25' required, 8.58' existing and 3.98' proposed) for the installation of a roof structure over an existing porch at an existing single-family residence. The premises is located at 57 John Street, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 68.20, Block 2, Lot 62; RG zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, December 2, 2009 at which time the Board made the determination hereinafter set forth.

Patrick DiStaso appeared and testified.

The following documents were presented:

1. Plot plan by Morton Marcus with porch covering drawn in.
2. Drawing of proposed roof covering.
3. Picture of proposed columns.

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.

Patrick DiStaso testified that he is representing his mom because she broke both of her arms and could not make it to the meeting; that she would like to be able to cover the 4'x5' landing in front of the house; that his mom purchased the house in 1968 and would like to have an awning to make entering and existing the house safer in inclement weather; that it would also be helpful when she is carrying in groceries.

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 front yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The steps and landing already exist and the applicant is proposing a roof over them.
2. The requested front yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. . The steps and landing already exist and the applicant is proposing a roof over them.
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 steps and landing already exist and the applicant is proposing a roof over them.
4. The requested front yard variance, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Several other houses on John Street have similar front yard setbacks and the steps and landing already exist and the applicant is proposing a roof over them.
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 front yard variance is **APPROVED**; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

(iv) A building permit as well as any other necessary permits must be obtained within a

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

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

The foregoing resolution to approve the application for the requested front yard variance was presented and moved by Mr. Salomon, seconded by Mr. Sullivan, 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.

DATED: December 2, 2009

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

AMENDED PLANS AND VARIANCES APPROVED

To: Michael and Susan Klomberg

ZBA # 09-83

91 Old Western Highway

Date: 12/ 2 / 09

Blauvelt, New York 10913

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#09-83: Application of Michael and Susan Klomberg for an amendment to ZBA#09-05: for a variance from Chapter 43 (Zoning) of the Code of the Town of Orangetown, R-15 District, Section 3.12, Group M, Column 9 (Side Yard: 15' required, 8' proposed) (Section 5.21C Undersized lot with a pre-existing non-conforming side yard of 6' for the existing house) for the installation of an in-ground pool (changed to an above-ground pool) at an existing single-family residence. The premises are located at 91 Old Western Highway, Blauvelt, New York, and are identified on the Orangetown Tax Map as Section 70.09, Block 1, Lot 49; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, December 2, 2009 at which time the Board made the determination hereinafter set forth.

Susan Klomberg and Jillian Klomberg appeared and testified.

The following documents were presented:

1. Plot plan.
2. Architectural plans signed and sealed by Bruce Parker, Architect.

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

Susan Klomberg testified that they are back before the Board because they are changing the in-ground pool that they were approved for to an above-ground pool; that for financial reasons they have changed their plans; that they are requesting the same side yard that they were granted last time; that they will meet all of the safety measures that are needed for the pool; that if the Board wants the pool moved further into the rear yard by three feet they will do it; and that they can gate the pool and add pool alarms.

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. No significant change in circumstances has occurred since the variances were granted in ZBA #09-05 that would warrant Board reconsideration of their approval.
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. No significant change in circumstances has occurred since the variances were granted in ZBA #09-05 that would warrant Board reconsideration of their approval.

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 variance, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. No significant change in circumstances has occurred since the variances were granted in ZBA #09-05 that would warrant Board reconsideration of their approval.
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.

pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and /or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Salomon and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Sullivan; aye; and Mr. Mowerson, aye. Ms. Albanese was absent.

Michael Skelly testified that the house is a side facing house without any garage; that they would like to add a two-car garage and laundry room on the street side of the house; that there is a two level deck and above ground pool on the other side of the house, which is not close to the street; that the rear yard slopes; that this location is the flat section of the property and makes the most sense for a garage; that presently the washer and dryer are in the kitchen and they would like the mudroom/ laundry room to accommodate them; that they could reduce the addition by four feet to provide a forty foot front 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. 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 front yard variance, as modified, will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar front yard setbacks exist on Burrows Lane and the lot is long and narrow and this is the logical place to construct a garage because its proposed location permits easy access from the street with the least amount of impact on the neighboring properties.
2. The requested front yard variance, as modified, will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The lot is long and narrow and this is the logical place to construct a garage because its proposed location permits easy access from the street with the least amount of impact on the neighboring properties.
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 front yard variance, as modified, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. The lot is long and narrow and this is the logical place to construct a garage because its proposed location permits easy access from the street with the least amount of impact on the neighboring properties, and similar front yard setbacks exist on Burrows Lane.
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 front yard variance is APPROVED as MODIFIED by reducing the proposed addition by four feet to permit a 40' front 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 front yard variance, as modified, to provide a 40' front yard, was presented and moved by Ms. Castelli, seconded by Mr. Sullivan, and carried as follows: Ms. Salomon, aye; Mr. Sullivan, 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: December 2, 2009

ZONING BOARD OF APPEALS

TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

