

MINUTES
ZONING BOARD OF APPEALS
FEBRUARY 1, 2012

MEMBERS PRESENT: JOAN SALOMON
 PATRICIA CASTELLI
 DANIEL SULLIVAN
 NANETTE ALBANESE
 THOMAS WARREN, ALTERNATE

ABSENT: WILLIAM MOWERSON

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 Ms. Castelli, Acting Chairperson.

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:

MORAN 70.18 / 1 / 32; R-15 zone	REAR YARD VARIANCE APPROVED	ZBA#12-06
------------------------------------	--------------------------------	-----------

NEW ITEMS:

LHOTAK 75.05 / 1 / 6; R-22 zone	FRONT YARD AND BUILDING HEIGHT VARIANCES APPROVED WITH SPECIFIC CONDITIONS	ZBA#12-08
------------------------------------	---	-----------

WOODS 68.11 / 2 / 68;R-15 zone	§5.227 REAR YARD:POOLS AND SIDE YARD VARIANCES APPROVED	ZBA#12-09
-----------------------------------	---	-----------

DOLPHIN 74.17 / 1 / 76; R-22 zone	§5.227 REAR YARD:POOLS AND SHEDS AND § 5.153 VARIANCES APPROVED	ZBA#12-10
--------------------------------------	---	-----------

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 application: 28 Route 303 Auto Parking Plan, 28 Route 303, Tappan, New York, Section 77.15, Block 1, Lot 44; CS 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 8:30 P.M.

Dated: February 1, 2012

DECISION

REAR YARD VARIANCE APPROVED

To: Michael and Mary Moran

ZBA # 12-06

29 East Road

Date: February 1, 2012

Blauvelt, New York 10913

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-06: Application of Michael and Mary Moran for a variances from Chapter 43(Zoning), Section 3.12, R-15 District, Group M, Column 11 (Rear Yard: 35' required, 21.5' existing) for a pre-existing non-conforming deck to be converted to a three season room at an existing single-family residence. The premises are located at 29 East Road, Blauvelt, New York, and are identified on the Orangetown Tax Map as Section 70.18, Block 1, Lot 32; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 1, 2012 at which time the Board made the determination hereinafter set forth.

Michael and Mary Moran appeared and testified.

The following documents were presented:

1. Copy of survey not signed or sealed by Barbour, Jost & Boswell dated August 22, 1966.
2. Architectural plans dated 06/29/2011 signed and sealed by Barbara Hess, Architect.

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

Mary Moran testified that she would like to replace the enclosed deck with a three season room and keep the other existing outdoor deck.

Michael Moran drew the existing deck, garage and shed onto the survey.

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.

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants' rear yard is oddly shaped and the nearest part of the rear yard to the existing deck is 21 ½', and the jut out in the rear yard, directly behind the deck, is an additional 23' deep. The proposed sunroom will be constructed on the existing footprint of the deck and will not extend beyond it.
2. The requested rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicants' rear yard is oddly shaped and the nearest part of the rear yard to the existing deck is 21 ½', and the jut out in the rear yard, directly behind the deck, is an additional 23' deep. The proposed sunroom will be constructed on the existing footprint of the deck and will not extend beyond it.
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, although somewhat 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 sunroom is being constructed over the existing closed-in deck and the footprint is not being increased.
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 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 rear yard variance was presented and moved by Mr. Warren, seconded by Ms. Albanese and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Warren, aye. Mr. Mowerson 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: February 1, 2012

DECISION

FRONT YARD AND BUILDING HEIGHT VARIANCES APPROVED

To: Donald Brenner (Steven Lhotak)

ZBA # 12-08

4 Independence Avenue
Tappan, New York 10983

Date: February 1, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-08: Application of Steven Lhotak for variance from Chapter 43 (Zoning), Section 3.12, Group I, Columns 8 (Front Yard: 40' required, 25.35' proposed) and 12 (Building Height: 19' permitted, 51' proposed) for the construction of a new single-family residence. The premises is located at 867 Route 9W, Upper Grandview, New York an identified on the Orangetown tax Map as Section 75.05, Block 1, Lot 6; R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 1, 2012 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Rhonda Smith, P.E., Leonard Jackson Associates, and Steven Lhotak appeared and testified.

The following documents were presented:

1. Architectural plans dated 12/08/2011 signed and sealed by Leonard Jackson, P.E..
3. A memorandum dated October 12, 2011 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
4. Planning Board Decision #11-45 dated October 12, 2011.
5. A letter dated February 1, 2012 from the State of New York Department of Transportation signed by Mary Jo Russo, P.E., Rockland County Permit Engineer.
6. A letter dated January 27, 2012 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
7. A letter undated from the Village of Grand-View –on –Hudson signed by Donald Vernon, Chairman, Planning Board.
8. A letter dated January 23, 2012 from the County of Rockland Sewer District No. 1, signed by Joseph LaFiandra, Engineer II.
9. A letter dated December 28, 2011 from the County of Rockland Department of Health signed by Scott McKane, P.E., Senior Public Health Engineer.
10. A letter dated February 1, 2012 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.

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

Donald Brenner, Attorney, testified that this project has appeared before the Planning Board and received a preliminary approval and a negative declaration for SEQRA; that the Planning Board helped locate the house on the lot because of the steep slope of the property; that from Route 9W the house will appear to be one level; that the other levels of the house will be built into the slope of the property; that the level of the house on the street will house the garage and a stairwell, the next level will house the kitchen and below that the bedrooms and then the basement level, which will be buried in the front of the house and exposed at the rear; that the closest house in the rear is on River Road; and that the railroad right-of way is in-between.

Rhonda Smith, P.E., testified that the house needed to close to the right-of-way to avoid any disturbance to the south which is all steep slope; that the house was designed to fit the site; that the other houses have similar front yard setbacks and that this location will impact the critical environmental area the least.

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.

Ms. Castelli 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 and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The location of the house on the lot is similar to the other houses on the street. The steep slope of the properties in this area dictate the location of the houses, and although the building height variance request is substantial, at street level the house is one story. The closest neighbor in the rear of the property is below the rails-to-trails walk and located on River Road in Grandview.
2. The requested front yard and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The location of the house on the lot is similar to the other houses on the street. The steep slope of the properties in this area dictate the location of the houses, and although the building height variance request is substantial, at street level the house is one story. The closest neighbor in the rear of the property is below the rails- to-trails walk and located on River Road in Grandview.
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 property is located in a critical environmental area and the placement of the house was chosen to preserve the steep slope.
4. The requested front yard and building height variances, although 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 location of the house on the lot is similar to the other houses on the street. The steep slope of the properties in this area dictate the location of the houses, and although the building height variance request is substantial, at street level the house is one story. The closest neighbor in the rear of the property is below the rails-to-trails walk and located on River Road in Grandview.
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 and building height variances are APPROVED with the following SPECIFIC CONDITIONS: (1) A permit must be obtained from the Village of Grand View-on-Hudson to connect to the sewer located in the Village; (2) Application is to be made to the Rockland County Department of Health for review of the stormwater management system for compliance with the County Mosquito Code; (3) Items #2 through #10 of the letter dated February 1, 2012 from the State of New York Department of Transportation, signed by Mary Jo Russo, P.E., Rockland County Permit Engineer, must be addressed; 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 and building height variances was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Warren, aye. Mr. Mowerson 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: February 1, 2012

DECISION

ZONING CODE SECTION 5.227 (REAR YARD: SWIMMING POOL) AND SIDE YARD VARIANCES APPROVED

To: Michael Woods

ZBA # 12-09

7 Salina Road
Pearl River, New York 10976

Date: February 1, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-09: Application of Michael Woods for variances from Chapter 43 (Zoning), Section 3.12, Group M, Columns 9 (Side Yard: 20' required, 8' proposed) and from Section 5.227 (Rear Yard for Swimming Pools: 20' required, 13' proposed) for the construction of an in-ground pool at an existing single-family residence. The premises is located at 7 Salina Road, Pearl River, New York and identified on the Orangetown tax Map as Section 68.11, Block 2, Lot 68; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 1, 2012 at which time the Board made the determination hereinafter set forth.

Michael Woods and Steve Landau, pool contractor, appeared and testified.

The following documents were presented:

1. Copy of survey with pool drawn on it.
2. One page pool plan.
3. A letter dated January 27, 2012 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, Commissioner of Planning.
4. A letter dated January 27, 2012 from the Village of Chestnut Ridge signed by Allan Rubin, Chairman, Planning Board.
5. A letter dated January 23, 2012 from the County of Rockland Sewer District No. 1 signed by Joseph Lafiandra, Engineer II.
6. A letter dated February 1, 2012 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.
7. A letter dated December 28, 2011 from the County of Rockland Department of Health signed by Scott McKane, P.E., Senior public Health Engineer.
8. Six letters in support of the application by abutting property owners.

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

Michael Woods testified that he would like to install an in-ground pool at his house; that

he has owned the home for seventeen years; that he and his wife have three daughters aged 7 to 15; that they are all avid swimmers; that he has two front yards on his property; that the pool is not permitted in the front yard; that the existing shed and swing set are being removed; that the proposed area of the yard is the only place that the proposed pool can fit; and that the pool would not cause any drainage problems for his new neighbors in Chestnut Ridge because drainage berms were added at the time of construction of the four new houses behind him.

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.

Ms. Castelli 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 and § 5.227 (Rear Yard for swimming pool) variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The property is a corner lot with two front yards and the proposed location is the only area that the proposed pool would fit onto the property.
2. The requested side yard and § 5.227 (Rear Yard for swimming pool) variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The property is oddly shaped with two front yards.
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 property is oddly shaped with two front yards.
4. The requested side yard and § 5.227 (rear yard for swimming pool) variances, although somewhat 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 property is a corner lot with two front yards and the proposed location is the only area that the proposed pool would fit onto the property.
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 § 5.227 (Rear Yard for swimming pools) and side yard variances are **APPROVED**; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a

part.

General Conditions:

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

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

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

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

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

The foregoing resolution to approve the application for the requested side yard and § 5.227 (Rear Yard for swimming pools) variances was presented and moved by Ms. Albanese, seconded by Ms. Salomon and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Warren, aye. Mr. Mowerson 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: February 1, 2012

DECISION

REAR YARD, ZONING CODE SECTION 5.227, AND SECTION 5.153 VARIANCES APPROVED

To: Martin and Donna Dolphin
135 Penn Court
Orangeburg, New York 10962

ZBA # 12-10

Date: February 1, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-10: Application of Martin and Donna Dolphin for variances from Chapter 43 (Zoning), Section 3.12, Group I, Column 11 (Rear Yard: 45' required, 6.5' existing) to an existing deck and from Section 5.227 (Rear Yard for Pools: 20' required, 10' proposed) and from Section 5.227 (Sheds: 5' from property line required, 4.8' and 1' proposed) and from Section 5.153 (Distance between accessory buildings: 15' required, 1.8' proposed) for two sheds at an existing single-family residence. The premises is located at 135 Penn Court, Orangeburg, New York an identified on the Orangetown tax Map as Section 74.17, Block 1, Lot 76; R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 1, 2012 at which time the Board made the determination hereinafter set forth.

Martin Dolphin appeared and testified.

The following documents were presented:

1. Site plan dated 09/24/2011 based on survey by Gdanski Consultants, Inc., signed and sealed by Paul Gdanski, P.E..

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

Martin Dolphin testified that he would like to install an above ground pool in his backyard; that he is also legalizing an existing deck that was there when he purchased the house in 1997; that he also has two sheds that he would like to keep in the corner of the lot because that portion of the property is not used for anything else because of its odd shape; that there are woods behind that section of the property; and that the proposed pool is nine feet away from the deck.

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.

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested rear yard, §§ 5.227 (two) & 5.153 variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The property is situated on a cul-de-sac and is oddly pie-shaped.
2. The requested rear yard and §§ 5.227 (two) & 5.153 variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The property is situated on a cul-de-sac and is oddly pie-shaped.
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 property has a 30' wide easement running through it for the Rockland State Hospital outfall easement, and the proposed sheds are situated in the pie-shaped corner of the property that is not large enough to be used for anything else.
4. The requested rear yard and §§ 5.227(two) & 5.153 variances, although 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 property has a 30' wide easement running through it for the Rockland State Hospital outfall easement and the proposed sheds are situated in the pie-shaped corner of the property that is not large enough to be used for anything else.
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 and §§ 5.227 (two) & 5.153 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 requested rear yard and §§ 5.227 (two) & 5.153 variances was presented and moved by Mr. Sullivan, seconded by Ms. Castelli and carried as follows: Ms. Albanese, aye; Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Warren, aye. Mr. Mowerson 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: February 1, 2012

