

MINUTES  
ZONING BOARD OF APPEALS  
FEBRUARY 16, 2011

MEMBERS PRESENT:

JOAN SALOMON  
NANETTE ALBANESE  
PATRICIA CASTELLI

ABSENT:

WILLIAM MOWERSON  
DANIEL SULLIVAN

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 Chair.

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:

CONTINUED ITEM:

EDEN PLACE ENTERPRISES	POSTPONED	ZBA#11-06
70.18 / 2 / 2; CS zone		

NEW ITEMS:

QUINN	FRONT YARD	ZBA#11-13
77.08 / 5 / 48; CS zone	AND REAR YARD VARIANCES	
	APPROVED FOR LT #1, #2, & #3	

SULLIVAN	FLOOR AREA RATIO,	ZBA#11-14
77.05 / 1 / 3; R-22 zone	FRONT YARD, SIDE YARD,	
	TOTAL SIDE YARD, AND	
	BUILDING HEIGHT VARIANCES	
	APPROVED	

GALLAGHER	SIDE YARD & REAR YARD	ZBA#11-15
69.09 / 4 / 18.3; R-15 zone	VARIANCES APPROVED	

BRADISH	FRONT YARD, SIDE YARD	ZBA#11-16
74.05 / 1 / 8; RG zone	AND §5.153 VARIANCES APPROVED	

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 8:15 P.M.

Dated: February 16, 2011

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino  
Administrative Aide

DECISION

**FRONT YARD AND REAR YARD VARIANCES FOR LOTS #1, #2 & #3  
APPROVED**

To: Donald Brenner (Quinn)

ZBA # 11-13

4 Independence Avenue  
Tappan, New York 10983

Date: February 16, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-13: Application of Sean Quinn for variances from Chapter 43, Section 3.12, CS District, Group FF, Columns 8 (Front Yard: 0' or 25' permitted, Sparkill Hamlet Overlay Zone: 1.9' proposed for lot #1, 1.8' proposed for lots #2, & #3) and 11 (Rear Yard: 25' required, 0' proposed for lots #1, #2, & #3) for the proposed development with residential units above commercial or business use. The site is located at 3 Union Street, Sparkill, New York, and are identified on the Orangetown Tax Map as Section 77.08, Block 5, Lot 48; CS zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 16, 2011 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Plans labeled "Minor Subdivision for Quinn" signed and sealed by William D. Youngblood, Land Surveyor dated October 5, 2010.
2. Planning Board Decisions #10-60 dated December 8, 2010 Quinn Subdivision and Decision #10-61 dated December 8, 2010 Quinn Site Plan.
3. A memorandum dated December 8, 2010 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
4. A letter dated February 14, 2011 from the County of Rockland Department of Planning signed by Arlene Miller, Deputy Commissioner of Planning.
5. A letter dated January 24, 2011 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.
6. A memorandum dated February 14, 2011 from James Dean, Superintendent of Highways, Town of Orangetown.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Ms. Catelli moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and /or (13); which does not

require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Albanese, aye; Ms. Castelli, aye; and Ms. Salomon, aye. Mr. Sullivan and Mr. Mowerson were absent.

Donald Brenner, attorney, testified that he was before the Board with this project years ago and was told to go to the Town Board regarding a overlay zone; that the Town Board has passed the overlay zone; that this project has received a preliminary approval from the Planning Board and they are before the Zoning board for front yard and rear yard set backs; that the front yard variances are proposed to keep the buildings lined up with the street; that the Planning Board approved the 13 parking spaces and the one way entrance/exit; and that the zero rear yard permits parking for all three lots with cross easements.

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 rear yard variances for lots #1, #2 & #3 will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The front yard set backs for lots #1,#2 & #3 allow better sight lines from the property because they match the curvature of the road and the rear yard variance is necessary to allow for the 13 parking spaces approved by the Planning Board.
2. The requested front yard and rear yard variances for lots #1, #2 & #3 will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The front yard set backs for lots #1,#2 & #3 allow better sight lines from the property because they match the curvature of the road and the rear yard variance is necessary to allow for the 13 parking spaces approved by the Planning Board.
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 front yard and rear yard variances for lots #1, #2, & #3, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. The front yard set backs for lots #1,#2 & #3 allow better sight lines from the property because they match the curvature of the road and the rear yard variance is necessary to allow for the 13 parking spaces approved by the Planning Board.
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 rear yard variances for lots #1, #2 & #3 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 front yard and rear yard variances for lots #1, #2, & #3 was presented and moved by Ms. Albanese, seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Albanese, aye; and Ms. Salomon, aye. Mr. Sullivan and Mr. Mowerson were 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 16, 2011

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

## DECISION

### **FLOOR AREA RATIO, FRONT YARD, SIDE YARD, TOTAL SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED**

To: Michael Sullivan

ZBA # 11-14

10 Red Coat Lane  
Tappan, New York 10983

Date: February 16, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-14: Application of Michael Sullivan for variances from Chapter 43, Section 3.12, R-22 District, Group I, Columns 4 (Floor Area Ratio: .20 permitted, .21 proposed), 8 (Front Yard: 40' required, 34.8' existing, 39.8' proposed), 9 (Side Yard: 25' required, 18' proposed), 10 (Total Side Yard: 60' required, 48.4' proposed) and 12 (Building Height: 13.5' permitted, 25' proposed) for the addition of a covered porch to an existing single-family residence. The premises are located at 10 Red Coat Lane, Tappan, New York and are identified on the Orangetown tax Map as Section 77.08, Block 1, Lot 3; R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 16, 2011 at which time the Board made the determination hereinafter set forth.

Michael Sullivan appeared and testified.

The following documents were presented:

1. Architectural plans not dated signed and sealed by Stephen Mitchell, Architect.

Ms. Castelli 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. Catelli 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; and Ms. Albanese, aye. Mr. Sullivan and Mr. Mowerson were absent.

Michael Sullivan testified the existing concrete porch is in disrepair; that he is in the process of siding the house and would like to construct a porch to improve the curb appeal of the house; that they are located on a cul-de-sac and have four children; the porch would be used to sit on and watch the children play; that the shape of the property is strange; it is a very irregular shape; and that they have owned the house for ten years.

#### 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 floor area ratio, front yard, side yard, total side yard and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar additions have been constructed in the area.
2. The requested floor area ratio, front yard, side yard, total side yard and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar variances 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 floor area ratio, front yard, side yard total side yard and building height variances, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Similar additions 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 floor area ratio, front yard, side yard, total side yard and building height variances are **APPROVED**; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

**General Conditions:**

- (i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.
- (ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.
- (iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

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

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

The foregoing resolution to approve the application for the requested floor area ratio, front yard, side yard, total side yard and building height variances was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Ms. Albanese, aye; Ms. Castelli, aye; . Ms. Salomon, aye. Mr. Sullivan and Mr. Mowerson were 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 16, 2011

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

DECISION

**SIDE YARD AND REAR YARD VARIANCES APPROVED**

To: Jimmy and Theresa Gallagher

ZBA # 11-15

3 Glen Court

Date: February 16, 2011

Pearl River, New York 10965

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-15: Application of Jimmy and Theresa Gallagher for variances from Chapter 43, Section 3.12, R-15 District, Group M, Column 9 (Side Yard: 20’ required, 18’ proposed) and from Section 5.227 (Swimming pools rear yard: 20’ required, 6’ proposed) for the installation of an in-ground pool/ waterfall at an existing single-family residence. The premises are located at 3 Glen Court, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.09, Block 4, Lot 18.3; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 16, 2011 at which time the Board made the determination hereinafter set forth.

Jimmy Gallagher and Ken DeGennaro, P.E., appeared and testified.

The following documents were presented:

1. Site plan 1/11/11 signed and sealed Brian A. Brooker, P.E..
2. Five letters from abutting property owners in support of the application.

Ms. Castelli 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. Catelli 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. Albanese, aye Ms. Castelli, aye; and Ms. Salomon, aye. Mr. Sullivan and Mr. Mowerson were absent.

Ken DeGennaro, P.E., testified that the proposal is for a new in-ground pool, waterfall feature and gazebo; that the lot was part of an average density subdivision; that the lot is undersized for the zone and trapezoid/triangular in shape; that the pool would have to be about ten feet from the house in order to meet the set back requirements; that it would not function well with the house or the yard at that location; that the proposed pool/ gazebo and waterfall would be approximately 90 feet from the two houses to the east; that the structures align with neighbor to the north driveway; that the house to the south is close to the property line and the pool would be close to their house if constructed on that side of the property; and that the pool would be lower than the retaining wall.

Jimmy Gallagher testified that there are four members of the family; that they have owned the house for seven years; and that he has been a life long resident of Pearl River.

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 rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar pools have been constructed in the area.
2. The requested side yard and rear yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar pools 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 rear yard variances, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Similar pools 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 rear 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 rear yard variances was presented and moved by Ms. Albanese, seconded by Ms. Salomon and carried as follows: Ms. Castelli, aye; Ms. Albanese, aye; and Ms. Salomon, aye. Mr. Sullivan and Mr. Mowerson were 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 16, 2011

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

DECISION

**FRONT YARD, REAR YARD AND § 5.153 VARIANCES APPROVED**

To: Ellen Bradish

ZBA # 11-16

14 Chestnut Oval

Date: February 16, 2011

Orangeburg, New York 10962

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-16: Application of Ellen Bradish for variances from Chapter 43, RG, District, Section 3.12, Group Q, Columns 8 (Front Yard: 25' required, 22' proposed) and 11 (Rear Yard: 25' required, 8' proposed) and from Section 5.153 ( Accessory structures are not permitted in front yard) for a deck platform and pool at an existing single-family residence. The premises are located at 14 Chestnut Oval, Orangeburg, New York, and are identified on the Orangetown Tax Map as Section 74.05, Block 1, Lot 8; RG zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 16, 2011 at which time the Board made the determination hereinafter set forth.

Ellen Bradish appeared and testified.

The following documents were presented:

1. Site plan with pool and deck drawn on it.

Ms. Castelli 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. Catelli 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; and Ms. Albanese, aye. Mr. Sullivan and Mr. Mowerson were absent.

Ellen Bradish testified that she is replacing the pool and making the deck around it a little bit larger; that the first pool was installed thirty years ago; that this is the third time it is being replaced and the first time that she was told she needed a permit and variances; that the location of the pool is not being changed; that the area is surrounded by tall bushes and no one can see her when she is getting I the pool; and that she needs the stairs to more run and less rise because of her arthritis.

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, rear yard and Section 5.153 variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. A pool has been located in this area for approximately 30 years and similar pools have been constructed in the area.
2. The requested front yard, rear yard and Section 5.153 variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar pools 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 front yard, rear yard and Section 5.153 variances, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Similar pools 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 front yard, rear yard and Section 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 front yard, rear yard and Section 5.153 variances was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Ms. Albanese, aye; Ms. Castelli, aye; and Ms. Salomon, aye. Mr. Sullivan and Mr. Mowerson were 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 16, 2011

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino





















