

MINUTES
ZONING BOARD OF APPEALS
FEBRUARY 2, 2011

MEMBERS PRESENT:

JOAN SALOMON
NANETTE ALBANESE
PATRICIA CASTELLI
DANIEL SULLIVAN

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 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:

SHAW
69.13 / 3 / 36.5; RG zone

FRONT YARD ZBA#11-03
AND FENCE HEIGHT
VARIANCES APPROVED

NEW ITEMS:

HAYES
68.15 / 3 / 70; RG zone

BUILDING ZBA#11-08
HEIGHT VARIANCE APPROVED

ST. THOMAS AQUINAS COLLEGE
74.20 / 1 / 2; LO zone

FRONT YARD, SIDE ZBA#11-09
YARD, TOTAL SIDE YARD
BUILDING HEIGHT AND GRAVEL
PARKING AREA §6.36 APPROVED

MINICHELLO
70.14 / 2 / 4; R-15 zone

AMENDMENT TO ZBA#11-10
ZBA#96-40 APPROVED
WITH COVENANT

HENNESSY
74.14 / 3 / 53; RG zone

ACCESSORY ZBA#11-11
STRUCTURE DISTANCE
VARIANCE APPROVED

JLJ MANAGEMENT
77.10 / 1 / 67; CS zone

SPECIAL PERMIT ZBA#11-12
GRANTED

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 applications: Nolan Monuments Site Plan 508 Route 303, Orangeburg,, N.Y., 74.07 / 1/ 7; CC 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 9:25 P.M.

Dated: February 2, 2011

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

DECISION

FENCE HEIGHT AND FRONT YARD VARIANCES APPROVED

To: John and Helen Shaw

ZBA # 11-03

260 East Central Avenue
Pearl River, N.Y. 10965

Date: January 19, 2011
February 2, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-03: Application of John and Helen Shaw for variances from Chapter 43 (Zoning), Section 3.12, RG District, Group Q, Column 8 (Front Yard: 25' required, 26.4' existing, 18.4' proposed) for the installation of a shed and from Section 5.226 (Fence Height: 4' permitted in the front yard, 6' proposed) at an existing single-family residence. The premises are located at 260 East Central Avenue, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 69.13, Block 3, Lot 36.5; RG zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, January 19, 2011 and February 2, 2011 at which time the Board made the determination hereinafter set forth.

John and Helen Shaw appeared and testified.

The following documents were presented:

1. Two site plans showing fence and proposed shed attached to the house and one not attached.
2. Nineteen pictures of the existing conditions.
3. A certificate of compliance dated 8/1/2005 for retaining walls.
4. A memorandum dated August 9, 2010 from Jim Dean, Superintendent of

- Highways, Town of Orangetown to Bert VonWurmb, Building Inspector.
5. A memorandum dated July 25, 2010 from James Dean, Superintendent of Highways, Town of Orangetown to John Giardiello, Director, OBZPAE.

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

At the January 19, 2011 meeting John Shaw testified that the property is a corner lot that they purchased five years ago; that he got permits for the retaining walls from Jim Dean, Highway Department; that they are before the Board for the fence; that they found out the fence was in violation when they were refinancing the house; that they removed the lattice portion of the fence to conform to the 4 ½ foot fence requirement for front yards; that they want to restore the fence to the six foot height; that the house is across the street from the High School and the property has been vandalized before; that their mailbox has been knocked down; that they have three young kids and need the fence for security; that the landscaper put in the walls and never got the certificate of occupancy for them; that they have a certificate of occupancy for them now; that they also have an easement on the property; and that is why they are proposing to attach the shed to the house; and that they would like to request a continuance to supply the Board with their floor area ratio.

At the February 2, 2011 meeting Helen Shaw appeared.

Helen Shaw testified that the shed does not count in the floor area ratio of the house because of its height; and that she would really like to put the top trim back on the fence because it provides more privacy.

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 fence height and front yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The lot is a small corner lot located in a high pedestrian and car traffic area and the fence provides privacy and protection for the family.
2. The requested fence height and front yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district

The lot is a small corner lot located in a high pedestrian and car traffic area and the fence provides privacy and protection for the family.

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 fence height and front yard variances, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. The lot is a small corner lot located in a high pedestrian and car traffic area and the fence provides privacy and protection for the family.
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 fence height and front 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 fence height and

front yard variances were presented and moved by Ms. Salomon, seconded by Mr. Sullivan and carried as follows: Ms. Albanese, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Ms. Salomon, 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 2, 2011

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

DECISION

BUILDING HEIGHT VARIANCE APPROVED

To: Fergal and Elizabeth Hayes

ZBA # 11-08

94 Center Street
Pearl River, New York 10965

Date: February 2, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-08: Application of Fergal and Elizabeth Hayes for a variance from Chapter 43 (Zoning), Section 3.12, RG District, Group Q, Column 12 (Building Height: 14' permitted, 26.5' proposed) for an addition to an existing single-family residence. The premises are located at 94 Center Street, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 68.15, Block 3, Lot 70; RG zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 2, 2011 at which time the Board made the determination hereinafter set forth.

Fergal Hayes and Douglas Siebenaler, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans dated 12/2/2010 signed and sealed by Douglas Siebenaler, Architect, (4 pages).
2. Plot plan taken from survey prepared by Robert Rahnefeld, P.L.S., dated April 17, 1982.
3. One letter of concern regarding leaves from Bill and Hannah Clark.
4. Three letters of support for 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: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Ms. Albanese, aye. Mr. Mowerson was absent.

Douglas Siebenaler, Architect, testified that the house was purchased last summer; that it is a small house; that they are planning to add a garage with the master bedroom above it and to bump out in the back for a family room and playroom; that the existing porch would be saved; that the height variance is caused by the side yard; that the height of the

proposed addition will not be higher than the existing house; that it will be slightly lower than the existing roof line; that the floor area ratio will be .2773 and .30 permitted.

Fergal Hayes testified that they are planning to use as much of the existing house as possible; that the addition was planned to accommodate the family and save and use as much of the existing facility as possible; and submitted pictures of other houses in the area that have done similar additions at 103 North Pearl Street, 182 Magnolia Street and 141 Center Street.

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 building height variance 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 building height variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar additions 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 a variance.
4. The requested building height variance, 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 building height 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 building height variance was presented and moved by Ms. Castelli, seconded by Mr. Sullivan and carried as follows: Ms. Albanese, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Ms. Salomon, 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 2, 2011

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

DECISION

**FRONT YARD, SIDE YARD, TOTAL SIDE YARD, BUILDING HEIGHT AND
§ 6.36 GRAVEL PARKING AREA VARIANCES APPROVED**

To: John Atzl (St. Thomas Athletic Field)

ZBA # 11-09

234 North Main Street
New City, New York 10956

Date: February 2, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-09: Application of St Thomas Aquinas College for variances from Chapter 43 (Zoning), Section 3.12, LO District, Group X, Columns 8 (Front Yard: 100' required, 10' proposed), 9 (Side Yard: 100' required, 7' proposed), 10 (Total Side Yard: 200' required, 17' proposed), 12 (Building Height: 2 ½' permitted, 14' proposed) and from Section 6.36 (All open parking areas shall be paved: gravel is proposed) for athletic field plans. The property is located at 280 Route 340 Sparkill, New York and are identified on the Orangetown tax Map as Section 74.20, Block 1, Lot 2; LO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 2, 2011 at which time the Board made the determination hereinafter set forth.

John Atzl appeared and testified.

The following documents were presented:

1. Site Plans (3pages) labeled "Athletic Field St. Thomas Aquinas College" dated June 30, 2010 with the latest revision date of November 17, 2010 signed and sealed by John Atzl, Land Surveyor and Raymond Amadi, P.E..
2. Field House floor plan and elevation by Arcari Iovino Architects dated 1/31/11.
3. A letter dated September 15, 2010 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
4. Planning Board Decision #10-41 dated December 8, 2010.
5. A letter dated January 21, 2011 from the County of Rockland Department of Planning signed by Arlene Miller, Deputy Commissioner of Planning.
6. A letter dated December 29, 2010 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.
7. A letter dated August 27, 2010 from the County of Rockland Drainage Agency signed by Shajan S. Thottakara, P.E.
8. A letter dated January 25, 2011 from the State of New York Department of Transportation signed by Mary Jo Russo, P.E., Rockland County Permit Engineer.

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 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 (SEQRA), pursuant to SEQRA Regulations §617.6 (b) (3); and since the Planning Board conducted SEQRA environmental review on December 8, 2010, rendered an environmental determination of **no** significant adverse environmental impacts to result from the proposed land use action (i.e., a "Negative Declaration" or "Neg Dec"), the ZBA cannot require further SEQRA review pursuant to SEQRA Regulations 617.6 (b) (3). The motion was seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Salomon, aye; Ms. Albanese, aye. Mr. Mowerson was absent.

John Atzl testified he needs to add an additional variance for height of the storage shed; that it was some how overlooked at the Planning Board review; that he would like to ask the Board to add it; that the proposed building is a maintenance building with a men and woman's lavatory; that sports equipment will be stored in the building and the storage sheds; that the bleachers are movable; that the parking area is proposed as gravel because of the proximity to the wetlands; that the fields are turf fields, not requiring fertilizer; and that they are waiting for approval from the Army Corps. and the DEC.

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 front yard, side yard, total side yard, building height and §6.36 gravel parking area variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The area has been used as a practice field and the change is to make it meet NCAA requirements for an official playing field. The addition of the designated gravel parking lot and facilities will enhance the use of the property and safely resolve parking problems for spectators.
2. The requested front yard, side yard, total side yard, building height and § 6.36 gravel parking area variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The area has been used as a practice field and the change is to make it meet NCAA requirements for an official playing field. The addition of the designated gravel parking lot and facilities will enhance the use of the property and safely resolve parking problems for spectators.
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, side yard, total side yard, building height and §6.36 gravel parking area variances, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. The area has been used as a practice field and the change is to make it meet NCAA requirements for an official playing field. The addition of the designated gravel parking lot and facilities will enhance the use of the property and safely resolve parking problems for spectators.
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, side yard, total side yard, building height and § 6.36 gravel parking area 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, side yard, total side yard, building height and §6.36 gravel parking area variances was presented and moved by Mr. Sullivan, seconded by Ms. Salomon and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye;. Ms. Albanese, aye; and Ms. Salomon, 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 2, 2011

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

DECISION

AMENDMENT TO VARIANCE GRANTED IN ZBA #96-40 APPROVED WITH COVENANT

To: Robert Minichiello

ZBA # 11-10

28 E. Erie Street
Blauvelt, New York 10913

Date: February 2, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-10: Application of Robert Minichiello for an amendment to Zoning Board Decision #96-40 which granted the conversion of an existing studio to an apartment for family member use only; the applicant is proposing to use the existing unit as a rental unit. The premises are located at 28 E. Erie Street, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 70.14, Block 2, Lot 4; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 2, 2011 at which time the Board made the determination hereinafter set forth.

Charles Minichiello appeared and testified.

The following documents were presented:

1. Hand drawn layout of existing apartment.
2. Zoning Board Decision #96-40 dated June 5, 1996.
3. Building permit application for the proposed studio dated 6/12/95.
4. Certificate of Occupancy for Studio dated 10/29/96.
5. Eight letters in support of the application.
6. A letter from Robert Minichiello dated January 10, 2011

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

The following letter from Robert Minichiello was read into the record:

I am a veteran of World War II, wounded in combat in France on November 10, 1944. I was honorably discharged on March 30, 1945 and three years later moved from Boston, Massachusetts to Orangeburg, New York. In 1951 I purchased the Blauvelt home where my family and I have lived for 58 years. My wife Mary and I want to remain in our Blauvelt home until our deaths. We know that with the ever increasing tax burden this will be impossible without the income derived from the rental of our barn/studio 3 room apartment presently occupied by our daughter and her family. Since my daughter and her family plan to move out in the near future we respectfully request this Board to lift the restriction of rental to "family members only" (ZBA#94-40 June 5th 1996) and allow rental to Non family members.

The premises both within and without the rental unit will not be changed in any way whatsoever. Further this change will not alter the character of the neighborhood or impact on neighboring properties.

We thank the Board for their kind consideration of this vital matter.

Sincerely, Robert P. Minichiello

Charles Minichiello testified that his sister Maria will be staying for a few more years; that his Dad would like to know that whenever she chooses to move that he would have the ability to rent the unit immediately for the income; that there would be no problem with the Board making family ownership a condition; that the neighbor that was here was concerned because his property backs up to the barn; that his father is a smart about

tenants; that they have no problem with the unit converting back an artist studio if the principal home is no longer owned by a family member.

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 amendment to variances granted in ZBA Decision #96-40 will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has agreed to file a restrictive covenant in the Rockland County Clerk's Office, acceptable in form and substance to the Town Attorney, to the effect that for as long as occupancy/ ownership of the subject property remains in the immediate family of the applicant, the accessory structure may be rented as a dwelling unit; at the time ownership of the property is transferred out of the immediate family, the additional dwelling unit reverts back to an "Artist Studio" which shall not be for dwelling purposes.
2. The requested amendment to variances granted in ZBA Decision #96-40 will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has agreed to file a restrictive covenant in the Rockland County Clerk's Office, acceptable in form and substance to the Town Attorney, to the effect that for as long as occupancy/ ownership of the subject property remains in the immediate family of the applicant, the accessory structure may be rented as a dwelling unit; at the time ownership of the property is transferred out of the immediate family, the additional dwelling unit reverts back to an "Artist Studio" which shall not be for dwelling purposes.
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 amendment to variances granted in ZBA Decision #96-40, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. The applicant has agreed to file a restrictive covenant in the Rockland County Clerk's Office, acceptable in form and substance to the Town Attorney, to the effect that for as long as occupancy/ ownership of the subject property remains in the immediate family of the applicant, the accessory structure may be rented as a dwelling unit; at the time ownership of the property is transferred out of the immediate family, the additional dwelling unit reverts back to an "Artist Studio" which shall not be for dwelling purposes.
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 amendment to variances granted in ZBA Decision #96-40 are APPROVED with the following SPECIFIC CONDITION that the applicant file a restrictive covenant in the Rockland County Clerk's Office, acceptable in form and substance to the Town Attorney, to the effect that for as long as occupancy/ ownership of the subject property remains in the immediate family of the applicant, the accessory structure may be rented as a dwelling unit; at the time ownership of the property is transferred out of the immediate family, the additional dwelling unit reverts back to an "Artist Studio" which shall not be for dwelling purposes; 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 amendment to variances granted in ZBA Decision #96-40 with the aforementioned restrictive covenant

as a condition was presented and moved by Ms. Albanese, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Albanese, aye; and Ms. Salomon, 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 2, 2011

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

DECISION

ACCESSORY STRUCTURE DISTANCE VARIANCE APPROVED

To: William and Joanne Hennessy
11 Kevin Drive
Orangeburg, New York 10962

ZBA # 11-11

Date: February 2, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-11: Application of William and Joanne Hennessy for a variance from Chapter 43 (Zoning), RG, District, Section 5.153 (Accessory Structure Distance: 15' required, 5' proposed) for a roof over an existing patio at an existing single-family residence. The premises are located at 11 Kevin Drive, Orangeburg, New York, and are identified on the Orangetown Tax Map as Section 74.14, Block 3, Lot 53; RG zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 2, 2011 at which time the Board made the determination hereinafter set forth.

Joanne Hennessy appeared and testified.

The following documents were presented:

1. Copy of survey with hand drawn patio.

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

Joanne Hennessy testified that she applied for a building permit to add a roof over her existing patio and got the permit; that when the building inspector came out to inspect the footings they said they were too close to her existing detached garage; that the original plan was drawn on a survey that did not show the garage; that the building inspector drew the patio on the plan and said that there was five feet between the patio and garage; that she would like a roof over the existing patio because she has had to replace two umbrellas and a shade tent; that she would like to go home and measure it again and make sure that there are five feet; and asked the Board's permission to do so.

After returning from her house, Joanne Hennessy testified that there are three feet

between the patio and the garage and requested a three foot separation variance.

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 accessory structure distance variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar structures have been constructed in the area.
2. The requested accessory structure distance variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar structures 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 a variance.
4. The requested accessory structure distance variance, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Similar structures 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 3 foot accessory structure distance 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 three foot accessory structure distance variance was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Albanese, aye; and Ms. Salomon, 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 2, 2011

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

DECISION

SPECIAL PERMIT APPROVED

To: Donald Brenner (JLJ Management)

ZBA # 11-12

4 Independence Avenue
Tappan, New York 10983

Date: February 2, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-12: Application of JLJ Management for a Special Permit under Chapter 43 (Zoning), CS District, Section 3.11, Column 3 Uses by Special Permit, #8 (other retail / services) for a reflexology studio in an empty storefront. The property is located in the

Orangetown Shopping Center on the south side of Orangeburg Road at the intersection of Dutch Hill Road, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 77.10, Block 1, Lot 67; CS zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 2, 2011 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Lucy He and Haitao Guo appeared and testified.

The following documents were presented:

1. Floor Plan by Elizabeth Parks, Architect.
2. Three photographs of the set up of the proposed space.
3. Three page explanation of Chinese reflexology and the proposal.
4. University of New York Education Department Massage Therapist License.

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) (7); which does not require SEQRA environmental review. The motion was seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Ms. Albanese, aye. Mr. Mowerson was absent.

Lucy He testified that in the world where we all walk, run and stand, our feet support us the entire way; that while being stifled in shoes and socks all day, they have restricted circulation and air contact; that although machines that massage feet are becoming popular, there is no replacement for what the human touch can do; that Chinese foot reflexology originated from China over 5,000 years ago; that its concepts are based on the theory that there are reflex points in the feet that linked to the body; that by applying pressure to the reflex points, you may be able to stimulate the flow of Chi and body energies; that it is suitable for anyone who is interested in his or her well-being; that it is generally accepted that this reflexology can provide some benefits and it has no side effects; that it helps the body to get rid of toxins, improves circulation and body functions, and even improves memory; that the business will be set up as an open space, no individual rooms; that it is less private and easy to monitor; that there will be four cameras on the ceiling to monitor everywhere; that they will hire 6 to 8 well trained therapists, half female and half male; that many customers like to have strong massage and male therapists are very helpful; that the service would include a 10 minute foot soak in a wooden barrel with warm water; that after that the feet get washed and dried and a thick layer of lotion or oil is applied to the feet and calves; that pressure is applied to 62 "reflection points" on the feet; and that the charge is \$28.00 for the one hour service.

Donald Brenner, Attorney testified that the previous use in the presently unoccupied space had been a Pilipino Market; that the proposed use requires one parking space per 200 sq. ft., which is half of the previous tenant requirement; that the space is appropriately located with respect to transportation along an existing bus route and with plenty of parking; that it will not cause undue traffic congestion or create a traffic hazard; that it will not create at any point of determination set forth in §§ 4.16, 4.17 and 4.18 any more dangerous and objectionable elements referred to in § 4.11 than is characteristic of the uses expressly permitted as of right in the same district; that it will not adversely affect the character of or property values in the area; that the space is provided water by United Water; that the Orangeburg Fire District is responsible for the space; that the Orangetown Police are across the street; that there is an existing sidewalk in front of the store; that the official address is 18 Orangetown Center; and that they have met all of the requirements for a Special Permit.

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

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 Special Permit is 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 Special Permit will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed business has met all of the requirements set forth in Chapter 43 (Zoning) §4.31 Special Findings for granting a special permit.
2. The requested Special Permit will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed business has met all of the requirements set forth in Chapter 43 (Zoning) §4.31 Special Findings for granting a special permit.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a Special Permit.
4. The requested Special Permit will not have an adverse effect or impact on the physical or environmental conditions of the area. The proposed business has met all of the requirements set forth in Chapter 43 (Zoning) §4.31 Special Findings for granting a special permit.
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 special permit.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for the requested Special Permit 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 Special Permit for a Reflexology Studio was presented and moved by Mr. Sullivan, seconded by Ms. Castelli and carried as follows: Ms. Albanese, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Ms. Salomon, 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 2, 2011

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

