

MINUTES
ZONING BOARD OF APPEALS
January 20, 2010

MEMBERS PRESENT: PATRICIA CASTELLI
 JOAN SALOMON
 NANETTE ALBANESE

ABSENT: DANIEL SULLIVAN
 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 Acting Chairperson Ms. Castelli.

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:

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| ZAPATA RESTAURANT 77.20 / 2 / 24; R-15 zone | POSTONED | ZBA#09-85 |
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POSTPONED ITEMS:

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| GEORGE 78.13 / 1 / 5; R-40 zone | GRAVEL DRIVEWAY VARIANCE APPROVED | ZBA#10-01 |
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| JLM HOLDING 68.20 / 2 / 82; CS zone | EXTENSION OF NON- CONFORMING USE VARIANCE APPROVED | ZBA#10-05 |
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NEW ITEMS:

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| NUGENT 69.05 / 2 / 48; R-15 zone | FLOOR AREA RATIO, FRONT YARD, SIDE YARD, BUILDING HEIGHT VARIANCES APPROVED | ZBA#10-06 |
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| MANHATTAN WOODS ENTERPRISES 69.11 / 1 / 1; R-80 zone | POSTPONED | ZBA #10-07 |
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| PEARL RIVER CAR WASH 64.17 / 1 / 77; CO zone | CONTINUED | ZBA #10-08 |
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THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 9:15 P.M.

Dated: January 20, 2010

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DECISION

GRAVEL DRIVEWAY VARIANCE APPROVED

To: Paul and Lizette George

ZBA # 10-01

P.O.Box 577

Date: January 20, 2010

Palisades, New York 10964

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#10-01: Application of Paul and Lizette George for a variance from Chapter 43 (Zoning) of the Code of the Town of Orangetown, Section 6.332 (Driveways of single-family residences shall be paved: gravel driveway proposed) for a driveway at an existing single-family residence. The premises is located at 46 Heyhoe woods Road, Palisades, New York, and are identified on the Orangetown Tax Map as Section 78.13, Block 1, Lot 5; R-40 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 20, 2010 at which time the Board made the determination hereinafter set forth.

Lizette George appeared and testified.

The following documents were presented:

1. A partial site plan showing the driveway.

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

Lizette George testified that they purchased the property two or three years ago; that they always intended to have a gravel driveway but the surveyor showed a paved driveway on the plan; that they found out that they are not allowed to have a gravel driveway without getting a variance; that the house is on Heyhoe Road and it is a very woody area with many houses on the road with gravel driveways; that it would be a very large area to asphalt and gravel would be better for the environment; and that aesthetically gravel

would look better.

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 variance for a gravel driveway, Section 6.332, will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Many houses in the area have gravel driveways. The area is very wooded and the gravel driveway is more permeable.
2. The requested gravel driveway variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Many houses in the area have gravel driveways. The area is very wooded and the gravel driveway is more permeable.
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 gravel driveway variance, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of 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 Zoning Code § 6.332 gravel driveway 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 Zoning Code § 6.332 gravel driveway variance was presented and moved by Ms. Castelli, seconded by Ms. Salomon, and carried as follows: Ms. Albanese, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Mr. Mowerson and Mr. Sullivan 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: January 20, 2010

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

EXTENSION OF NON-CONFORMING USE VARIANCE APPROVED

To: Vincent Acocella (JLM Holding)

ZBA #10-05

P.O.Box 181
Pearl River, New York 10965

Date: January 20, 2010

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#10-05: Application of JLM Holding Corporation for a variances from Chapter 43 of the Code of the Town of Orangetown (Zoning), CS District, Section 9.34 (Extension of the existing non-conforming residential use) for a residential apartment in an existing multiple use building. The premises are located at 40 Franklin Avenue, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 68.20, block 2, Lot 82; CS zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 20, 2010 at which time the Board made the determination hereinafter set forth.

Vincent Acocella, Architect, and Rocco Petruzelli, owner, appeared and testified.

The following documents were presented:

1. Architectural plans dated 5/6/09 (1 page) with the latest revision date of 10/13/09 signed and sealed by Vincent M. Acocella Architect.
2. Site plan dated June 21, 2004 with the latest revision date of 11/11/09 signed and sealed by Dennis M. Letson, P.E.

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. 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)(7), (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.

Vincent Acocella testified that the original building had retail space on the lower level and an apartment on the upper level; that the applicant went before the Planning Board to expand the office space in the rear of the building; that after it was built the applicant realized the addition would be an ideal space for him to downsize to; that he would like to use the addition in the rear as a residence; that the addition is two stories and the upstairs could be used as a bedroom; that there is a separate entrance for this space; that two commercial spaces could remain in the front and the existing apartment would remain; that part of the commercial space is a beauty salon and the other space was just recently vacated; that the addition was just under a 50% expansion; that the addition is 740 sq. ft. per floor; and that there is enough parking to exceed the parking requirements.

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 extension of non-conforming use variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The neighborhood consists of many mixed use buildings and this use conforms to the neighborhood.
2. The requested extension of non-conforming use variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The neighborhood consists of many mixed use buildings and this use conforms to the neighborhood.
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 extension of non-conforming use variance although substantial, will not have an adverse effect or impact on the physical or environmental conditions of 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 extension of non-conforming use 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 extension of non-conforming use variance was presented and moved by Ms. Albanese, seconded by Ms. Castelli, and carried as follows: Ms. Salomon, aye; Ms. Albanese, aye; and Ms. Castelli, 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: January 20, 2010

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

VARIANCES APPROVED

To: Francis and Ann Nugent

ZBA # 10-06

50 Secor Boulevard
Pearl River, New York 10965

Date: January 20, 2010

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#10-06: Application of Francis and Ann Nugent for variances from Chapter 43 (Zoning) of the Code of the Town of Orangetown, Section 3.12, R-15 District, Group M, Columns 4(Floor Area Ratio:.20 permitted, .31 proposed), 8 (Front Yard: 30’ required, 23.21’ proposed), 12 (Building Height: 14.51’ permitted, 25.5’ proposed) and from Section 5.21 (c) (Undersized lot side yard: 15’ required, 14.51’ proposed) for an addition to an existing single-family residence. The residence is located at 50 Secor Boulevard, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 69.05, Block 2, Lot 48; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 20, 2010 at which time the Board made the determination hereinafter set forth.

Francis and Anne Nugent and Peter Provenza, contractor, appeared and testified.

The following documents were presented:

1. Architectural plans dated 10/8/09 (3 pages) with the latest revision date of 12/9/09 signed or sealed by Harold J. Goldstein, Architect.
2. Survey dated July 11, 1992 by Adler & Young, P.C..

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

Anne Nugent testified that they purchased their home 17 years ago; that it is an older style Cape Cod style house; that there was an 11' x 16' addition added to the house prior to their purchase; that it was constructed poorly; that they have had leaks in the roof that they have tried to repair and they continue to leak; that the second floor has terrible ventilation; that they love their neighbors and the neighborhood; that they saw the improvements that the house down the street did and they would like to do something very similar; that they would like to remove the poorly built addition and add five feet onto the existing garage, to make it usable; that they would like to rip off the existing second floor and add a full second floor with a master bedroom above the garage; that they would like to have their daughters ages 17 & 12 in bedroom upstairs with them and keep one bedroom on the first floor with a full bathroom on the first floor also; that they are staying within the existing framework of the house; and they will end up with three bathrooms and four bedrooms.

Francis Nugent testified that there are three drivers in the family; that there is a modular house in the neighborhood that is the same height as they are proposing; that two houses up street are a little higher than they are proposing and the house across the street is higher; and that all of the houses in the neighborhood are being upgraded.

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 floor area ratio, side yard, front 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, side yard, 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. 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 variances.
4. The requested floor area ratio, side yard, front yard and building height variances although substantial, will not have an adverse effect or impact on the physical or environmental conditions of 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, side yard, front 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, side yard, front yard and building height variances was presented and moved by Ms. Salomon, seconded by Ms. Castelli, and carried as follows: Ms. Albanese, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Mr. Mowerson and Mr. Sullivan 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: January 20, 2010

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

