

MINUTES  
ZONING BOARD OF APPEALS  
January 6, 2010

MEMBERS PRESENT:       PATRICIA CASTELLI  
                                  WILLIAM MOWERSON  
                                  JOAN SALOMON  
                                  DANIEL SULLIVAN  
                                  NANETTE ALBANESE

ABSENT:                    NONE

ALSO PRESENT:           Dennis Michaels, Esq.       Deputy Town Attorney  
                                  Ann Marie Ambrose,        Official Stenographer  
                                  Deborah Arbolino,         Administrative Aide

This meeting was called to order at 7: 00 P.M. by Chairman Mr. Mowerson.

Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

POSTPONED ITEMS:

ZAPATA RESTAURANT 77.20 / 2 / 24; R-15 zone	CONTINUED	ZBA#09-85
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NEW ITEMS:

GEORGE 78.13 / 1 / 5; R-40 zone	POSTPONED	ZBA#10-01
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PIERRE 74.13 / 1 / 19; R-22 zone	APPROVED	ZBA#10-02
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CLERKIN 68.12 / 5 / 52; RG zone	APPROVED AS MODIFIED	ZBA #10-03
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KENDAL 74.11 / 1 / 17; LI zone	APPROVED	ZBA #10-04
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J LM HOLDING 68.20 / 2 / 82; CS zone	POSTPONED	ZBA #10-05
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THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

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

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

Dated: January 6, 2010

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino  
Administrative Aide

DECISION

**ACCESSORY STRUCTURE VARIANCE APPROVED**

To: Antonio and Anne Marie Pierre

ZBA #10-02

38 Dutchess Drive  
Orangeburg, New York 10962

Date: January 6, 2010

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#10-02: Application of Antonio and Anne Marie Pierre for variances from Chapter 43 (Zoning) of the Code of the Town of Orangetown, Section 3.12, R-22 District, Group I, Section 5.227 (Accessory Building must be set back 5' from any property line: 3' existing) for an existing shed at a single-family residence. The residence is located at 38 Dutchess Drive, Orangeburg, New York, and are identified on the Orangetown Tax Map as Section 74.13, Block 1, Lot 19; R-22 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 6, 2010 at which time the Board made the determination hereinafter set forth.

Anne Marie Pierre and Jessie Pierre appeared and testified.

The following documents were presented:

1. Two copies of the survey with the shed drawn as proposed and as existing.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and /or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Ms. Castelli, aye; Ms. Albanese, aye; Mr. Sullivan; aye; and Mr. Mowerson, aye.

Jessie Pierre testified that the shed exists in its present location; that they submitted a building permit application for the shed in 2004 and five years later they got a letter that said they needed a certificate of occupancy for the shed; that they came in to get it and

found out that the original drawing and the drawing of the shed are different and that they need a variance to keep the shed where it is; that it is on a concrete pad and was always planned for that spot; that no one ever complained about the shed and they would like to legalize and keep the shed where it is.

Public Comment:

No public comment.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested accessory structure variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The shed was installed on a concrete pad at the present location in 2004 to house garden tools and bicycles without any complaints from neighboring properties.
2. The requested accessory structure variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The shed was installed on a concrete pad at the present location in 2004 to house garden tools and bicycles without any complaints from neighboring properties.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance. The shed was installed on a concrete pad at the present location in 2004 to house garden tools and bicycles without any complaints from neighboring properties, and to avoid the variance the concrete pad would have to be removed at substantial cost.
4. The requested accessory structure variance although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. The shed was installed on a concrete pad at the present location in 2004 to house garden tools and bicycles without any complaints from neighboring properties.
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 accessory structure 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 accessory structure variance was presented and moved by Ms. Albanese, seconded by Mr. Sullivan, and carried as follows: Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

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 6, 2010

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

**FRONT YARD VARIANCE APPROVED AS MODIFIED**

To: Brian and Caroline Clerkin

ZBA # 10-03

45 Brightwood Avenue  
Pearl River, New York 10965

Date: January 6, 2010

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#10-03: Application of Brian and Caroline Clerkin for a variance from Chapter 43 (Zoning) of the Code of the Town of Orangetown, Section 3.12, RG District, Group Q, Column 8 (Front Yard: 25' required, 19.9' proposed) for a porch at an existing single-family residence. The premises is located at 45 Brightwood Avenue, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 68.12, Block 5, Lot 52; RG zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 6, 2010 at which time the Board made the determination hereinafter set forth.

Caroline Clerkin appeared and testified.

The following documents were presented:

1. Architectural plans dated 9/18/09 (2 pages) with the latest revision date of 10/15/09 not signed or sealed by George Hodash Associates, Architects.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and /or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Albanese, aye; Ms. Castelli, aye; Ms. Salomon, aye; Mr. Sullivan; aye; and Mr. Mowerson, aye.

Caroline Clerkin testified that they would like to add a front porch onto the house to provide some outdoor covered space; that there are no steps at the front of the house and a covered area could be used by her 72 year old mother and her two children; that this space would also provide a covered outdoor area for any smokers; and a place for the children to wait for the bus; and that she could make the porch eight feet wide instead of the proposed ten feet by ten feet.

Public Comment:

No public comment.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

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

#### FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested front yard variance as modified 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 front yard variance as modified 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 front yard 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 front yard variance is APPROVED as modified by reducing the depth of the front porch by two feet, providing a 21.9' front yard; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

#### General Conditions:

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

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

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

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated

hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

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

The foregoing resolution to approve the application for the requested front yard variance as modified by reducing the front porch by two feet providing a front yard of 21.9' was presented and moved by Ms. Castelli, seconded by Ms. Salomon, and carried as follows: Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

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 6, 2010

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

**EXTENSION OF NON-CONFORMING USE, LOT AREA, LOT WIDTH,  
STREET FRONTAGE, FRONT YARD, SIDE YARD, TOTAL SIDE YARD AND  
REAR YARD VARIANCES APPROVED**

To: Thomas and Mary Anne Kendall

ZBA # 10-04

13 Greenbush Road  
Orangeburg, New York 10962

Date: January 6, 2010

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#10-04: Application of Thomas and Mary Ann Kendall for variances from Chapter 43 (Zoning) of the Code of the Town of Orangetown, LI District, Section 9.2 (Degree of non-conforming bulk not to be increased; Section 9.34 (Extension of non-conforming use) and Section 3.12, Group QQ, Columns 5 ( Lot Area: 2 acres required, .13 acre existing), 6 (Lot Width: 150' required, 50.08 existing), 7 (Street Frontage:150' required, 50.08 existing), 8 (Front Yard: 50' required, 29.5' existing), 9 (Side Yard: 50' required, 21.8' existing, 27' proposed) , 10 (Total Side yard: 100' required, 49.1' proposed) and 11 (Rear Yard: 50' required, 43.6' proposed) for an addition to an existing single-family

residence. The premises are located at 11 Greenbush Road, Orangeburg, New York, and are identified on the Orangetown Tax Map as Section 74.11, Block 1, Lot 17; LI zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 6, 2010 at which time the Board made the determination hereinafter set forth.

Thomas and Mary Anne Kendall appeared and testified.

The following documents were presented:

1. Architectural plans dated 11/20/09 (3 pages) signed or sealed by Kier B. Levesque, Architect.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and /or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Ms. Castelli, aye; Ms. Albanese, aye; Mr. Sullivan; aye; and Mr. Mowerson, aye.

Thomas Kendall testified that they would like to add a second bathroom and a laundry room on the first floor of their home; that they have a 10' x 10' shed in the rear corner of the lot and that they have owned their home for many years.

Public Comment:

No public comment.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested extension of non-conforming use, lot area, lot width, street frontage, front yard, side yard, total side yard and rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed construction of the second bathroom and laundry room on the first floor is not creating any new non-conforming setbacks, bulk or dimensional requirements.
2. The requested non-conforming use, lot area, lot width, street frontage, front yard, side yard, total 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. The proposed construction of the second bathroom and laundry room on



the first floor is not creating any new non-conforming setbacks, bulk or dimensional requirements.

3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The applicants' house is in an LI zoning district, therefore any change would require a variance.
4. The requested non-conforming use, lot area, lot width, street frontage, front yard, side yard, total 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. The construction of the second bathroom and laundry room on the first floor is not creating any new non-conforming setbacks, bulk or dimensional requirements.
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 non-conforming use, lot area, lot width, street frontage, front yard, side yard, total 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 non-conforming use, lot area, lot width, street frontage, front yard, side yard, total side yard and rear yard variances was presented and moved by Mr. Mowerson, seconded by Ms. Castelli, and carried as follows: Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

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 6, 2010

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide















