

MINUTES  
ZONING BOARD OF APPEALS  
JUNE 6, 2012

MEMBERS PRESENT:           WILLIAM MOWERSON  
  JOAN SALOMON  
  PATRICIA CASTELLI  
  NANETTE ALBANESE  
  DANIEL SULLIVAN  
  MICHAEL BOSCO, ALTERNATE

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 Mr. Mowerson, Chairman.

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

NEW ITEMS:

ESPLANADE 78.17 / 2 / 1; R-40 zone	CONTINUED	ZBA#12-33
THEODOROPUOLOS 69.06-1-13; R-15	10' SIDE YARD, 10' REAR YARD VARIANCES APPROVED	ZBA#12-34

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: Blazedale Inc. Site Plan, 336 Blaisdell Road, Orangeburg, NY 76.08 / 1 / 1; LIO zone; Organic Recycling-Outside Commercial Subdivision of Space plan, 117A Route 303, Tappan, NY 74. 19 / 1 / 3; LI 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 9:15 P.M.

Dated: June 6, 2012

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

DECISION

SIDE YARD AND §5.227 REAR YARD VARIANCES APPROVED AS MODIFIED

To: Mary and Eric Theodoropoulos

ZBA # 12-34

27 Villa Drive

Date: June 6, 2012

Nanuet, New York 10954

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-34: Application of Eric and Mary Theodoropoulos for variances from Chapter 43 (Zoning), R-15 District, Group M, Section 3.12, Column 9 (Side Yard: 20' required, 10' proposed) and from Section 5.227 (Rear Yard: 20' required, 5' proposed) for the installation of an above-ground pool at an existing single-family residence. The premises are located at 27 Villa Drive, Nanuet, New York and are identified on the Orangetown Tax Map as Section 69.06, Block 1, Lot 13; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 6, 2012 at which time the Board made the determination hereinafter set forth.

Eric and Mary Theodoropoulos appeared and testified.

The following documents were presented:

1. Copy of site plan with proposed pool drawn on it.
2. Zoning board of Appeals Decision #06-25 dated March 1, 2006.
3. Two pictures of the back yard.

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

Eric Theodoropoulos testified that they would like to install a 15' wide above-ground pool in their back yard; that they have three children aged 6,4 and 3; that they chose this are for the pool because it is sunny; that the other side of the yard has play equipment and a brick patio; that they are requesting the five foot rear yard because the area behind pool will be dead space; that they have a raised patio on the left side of the property and they have air conditioners in the back of the house; that they cannot move the pool closer to the house because of the basement stairs and the air conditioners; that there is at least 80 feet from their property line to the neighbors house in the rear; and there are many trees and bushes behind the fence.; that they have not had any problems with their neighbors; that the house was built legally; that they are before the Board to install an above-round pool legally; and that the lot is undersized.

Mary Theodoropoulos testified that she does not have problems with her neighbors; that she would like to install the pool for her children; that she has a doctor's note that explains her son's medical condition but she does not want to make it part of the public record; that her son attends Nanuet School but they are not permitted entrance to Lake Nanuet because they are Orangetown residents; that the pool would alleviate that problem.

Public Comment:

Janice Desmond, 50 Robertson Drive, Pearl River, testified that her attorney, told her that Orangetown was looking at a lawsuit if they did not grant the variances for this house because the permit had already been issued; that she has suffered since this house was built; that she and her neighbors have had water problems and drainage issues; that granting a 15' variance would not be fair; that she has a right to privacy and should not be punished because she has a large rear yard; that they have small lot that they are cramming everything on; that they think they can get away with it because they have in the past; that these out of scale structures ruin the ambiance of the street; and that the Board should not allow a pool to be constructed five feet from their fence.

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) as modified, are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested side yard variance and § 5.227 rear yard variance as modified to 10' rather than requested 5' will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants' lot is undersized and the rear yard set back has been modified to 10'.
2. The requested side yard variance and § 5.227 rear yard variance as modified to 10' rather than requested 5' will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicants' lot is undersized and the rear yard set back has been modified to 10'. The neighbor to the rear of the property has a large rear yard with eight to ten feet of trees and bushes separating the properties.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested side yard variance and § 5.227 rear yard variance as modified to 10' rather than requested 5', are not substantial, and afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
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 variance

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested 10' side yard variance and § 5.227 rear yard variance as modified to 10' rather than requested 5' 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 10' side yard variance and § 5.227 rear yard (as modified to 10' rather than requested 5') variance was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Albanese, aye; Ms. Salomon, 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: June 6, 2012

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN











