

MINUTES
ZONING BOARD OF APPEALS
May 20, 2009

MEMBERS PRESENT: DANIEL SULLIVAN
NANETTE ALBANESE
WILLIAM MOWERSON
JOAN SALOMON

ABSENT: PATRICIA CASTELLI

ALSO PRESENT: Denise Sullivan, 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

CONTINUED ITEM:

KOLENOVIC
77.10 / 2 / 25; R-15 zone

FLOOR AREA RATIO, ZBA#09-25
SIDE YARD AND BUILDING
HEIGHT VARIANCES APPROVED

BIONDI
75.05 / 1 / 13; R-22 zone

FLOOR AREA RATIO, ZBA#09-22
FRONT YARD, AND BUILDING
HEIGHT VARIANCES APPROVED

NEW ITEMS:

OLLEY
69.09 / 3 / 27; R-15 zone

POSTPONED ZBA#09-27

MC GOVERN
69.06 / 1 / 41; R-15 zone

FLOOR AREA RATIO ZBA#09-28
VARIANCES APPROVED
EXTENSION OF SIDE YARD DENIED

MUCHOE
72.08 / 3 / 92; R-15 zone

ONE YEAR EXTENSION ZBA#09-29
GRANTED

OTHER BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the 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 application: Art Students League Resubdivision Plan Review, 75.13/1/1 & 75.16/1/9; R-40 zone; Art Students League Site Plan Review, 75.13/1/1 & 75.16/1/9; R-40 zone; Dy-Co Management Corp. Internal Subdivision Plan, 258 Oak Tree Road, Tappan, NY 77.16 / 1 / 32; LIO zone; Parseghian Site Plan, 594 Route 303, Blauvelt, NY, 70.10 / 3 / 18; 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 11:15 P.M.

Dated: May 20, 2009

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
ASSESSOR
HIGHWAY DEPARTMENT
SUPERVISOR
TOWN BOARD MEMBERS
BUILDING INSPECTOR (Individual Decisions)
DEPT. of ENVIRONMENTAL MGMT. and ENGINEERING
Rockland County Planning

DECISION

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

To: Mark Kolenovic

ZBA # 09-25

6 Western Highway
Tappan, New York 10983

Date: 5 /20 / 09

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#09-25: Application of Mark Kolenovic 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, .276 proposed), 9 (Side Yard: 20' required, 15.2' proposed) and 12 (Building Height: 15.2' permitted, 26' proposed) for an addition to an existing single-family residence. The premises is located at 6 Western Highway, Tappan, New York, and are identified on the Orangetown Tax Map as Section 77.10, Block 2, Lot 61; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 20, 2009 at which time the Board made the determination hereinafter set forth.

Mark Kolenovic appeared and testified.

The following documents were presented:

1. Architectural plans dated 2/10/09 (6 pages) with the latest revision date of 5/28/09 not signed or sealed by Hess Architects.
2. Survey dated August 19, 2008 signed and sealed by Robert E. Sorace, L.S.
3. A letter dated May 4, 2009 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.

4. A letter dated April 22, 2009 from the County of Rockland Department of Planning signed by Salvatore Corallo, Commissioner of Planning.
5. A letter dated March 31, 2009 from the County of Rockland Department of Health signed by Scott McKane, P.E., Senior Public Health Engineer.
6. A letter dated March 31, 2009 from the County of Rockland Drainage Agency signed by Edward F. Devine, Executive Director.
7. A letter dated March 30, 2009 from Barbara Hess, Architect.
8. A letter of support from an abutting property owner.

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

On advice of Denise Sullivan, Deputy Town Attorney, acting counsel to the Zoning Board of Appeals, Mr. Sullivan 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 Mr. Sullivan and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Sullivan; aye; and Mr. Mowerson, aye. Ms. Albanese was not present for this hearing.

Mark Kolenovic testified that he purchased his house in 1991; that he has lived in Tappan for 21 years; that there are five adults and one child living in the house; that he got married and has a son; that his mother, brother and sister live with him; that he is proposing the addition because they need more room; that presently there is one bathroom and three bedrooms; that they are proposing to end up with five bedrooms and 2 1/2 bathrooms when the addition is done; and that he had been saving for this addition for four 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. 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, 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, and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought by the applicant cannot be achieved by other means feasible for

the applicant to pursue other than by obtaining variances. Similar additions have been constructed in the area.

4. The requested floor area ratio, side yard, and building height variances although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area.
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, and building height variances are APPROVED with the SPECIFIC CONDITION that the applicant update the bulk table to correct the floor area ratio request; 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, and building height variances was presented and moved by Mr. Sullivan, seconded by Ms. Castelli, and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye;

Ms. Castelli, aye; and Mr. Mowerson, aye. Ms. Albanese was absent for this hearing.

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: May 20, 2009

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -B.vW.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE,ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

DECISION

**FLOOR AREA RATIO, LOT AREA, FRONT YARD, AND BUILDING HEIGHT
VARIANCES APPROVED WITH CONDITIONS**

To: Donald Brenner (Biondi)

ZBA # 09-22

4 Independence Avenue
Tappan, New York 10983

Date: 4 / 22 / 09
5 / 20 / 09

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#09-22: Application of Biondi Tweed Boulevard Site Plan for variances from Chapter 43, Section 3.12, R-22 District, Columns 4 (Floor Area Ratio: .20 permitted, .257 requested, .36 granted in ZBA# 06-101 dated 10/4/06), 5 (Lot Area: 22,500 sq. ft. required, 18,905 sq. ft. provided and 17,483.50 granted in ZBA#06-101), 8 (Front Yard: 40' required, 18.7' requested, 8.4' granted in ZBA#06-101) and 12 (Building Height: 14.03' permitted, 22.25' proposed, 18' 10" granted in ZBA#06-101) for the construction of a new single-family residence. The property is located at 311 Tweed Boulevard , Upper Grandview, New York, and are identified on the Orangetown Tax Map as Section 75.05, Block 1, Lot 13; R-22 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, April 22, 2009 and May 20, 2009 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Brian Brooker, Engineer, and Bruno Biondi appeared and testified.

The following documents were presented:

1. Architectural plans dated 2/1/06 (6 pages) with the latest revision date of 4/28/07 signed and sealed by James Tanner, Architect.
2. Engineering plans dated 3/3/06 with the latest revision date of 1/26/09 (5 pages) signed and sealed by Brian Brooker, P.E.
3. Topographic survey dated 2/22/05 with the latest revision date of 12/5/08 signed and sealed by William Youngblood, L.S.
4. A cover letter dated February 11, 2009 from Kenneth DeGennaro, P.E. ,Brooker

Engineering.

5. A memorandum dated January 14, 2009 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement.
6. Zoning Board of Appeals Decision #06-101 dated 10/4/06.
7. A letter dated April 20, 2009 from the County of Rockland Department of Planning signed by Salvatore Corallo, Commissioner of Planning.
8. A letter dated April 20, 2009 from the County of Rockland Department of Highways signed by Sonny Lin, P.E.
9. A letter dated April 13, 2009 from the County of Rockland Department of Health signed by Scott Mc Kane, P.E., Senior Public Health Engineer.
10. A letter dated April 10, 2009 from the County of Rockland Sewer District No.1 signed by Joseph LaFiandra, Engineer II.

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

Bruno Biondi testified that he resides at 132 Highview Avenue, that he is an American citizen, that he hired professionals James Tanner and Brooker Engineering; that he was previously approved by the Zoning Board for variances and went back to the Planning Board for final approval and did not get it; that he has returned with plans to the Planning Board and they requested that he flip the house around to please an abutting property owner; that he can do that but it increases the height request; that all of these postponements have been costly and the property values are down now.

Donald Brenner, Attorney, testified that the applicant has received preliminary approval and a negative declaration for SEQRA; that the findings of fact from the board's decision in ZBA#06-101 dated October 4, 2006 still stand; that the house has been reduced in length by fifteen feet; that the height was reduced; that similar houses have been constructed in the area; that they will meet all of the requirements of the Rockland County Highway Department; that Mr. Biondi has spent over \$165,000.00 to develop this property; that the proposed building height is 22.25; that the garage was flipped to the lower grade of the property and this increased the height request; that Mr. Green said the same things when the application was before the Board in October of 2006; that this is not a use variance; that hardship is a serious problem; that Mrs. Weber should address her environmental concerns to the Planning Board; that the Planning Board already did an environmental review and issued a "neg dec"; that this proposal does fit into the neighborhood; that they will do everything that needs to be done to obtain the Rockland County Highway permit; that the drainage requirements will be met and the existing condition will be corrected; that Mrs. Goodrich's house was built in 1960; that Mr. Shapiro's house is selling for 4.5 million and he has not lowered the price and that is the reason why the house is not selling; and that they would like to request a continuance to allow time to provide the original approved house plans to the Board.

Brian Brooker, Engineer testified that the Planning Board looked at drainage intently; that the DOT Engineer's are also looking at drainage; that water runs down from the high side and there are bids from contractors to bring the water down in a controlled manner into the storm drains; that right now the water runs down in an un-controlled manner because the pipe ends on Mr. Biondi's property; that he is willing to continue the pipe and provide an easement safely to the stormdrain on Route 9W; that the drainage must be approved by the DOT; that the landscaping must be approved by ACABOR; that there is a proposed concrete retaining wall that will be filled in and on the northside of the property is the septic system and a grassy area; that the south grade slopes away and the roof pitch is a 6 on 12 and from the street the highest point is 22'; that flipping the house increased the height because of the grade and this was done to accommodate the neighbor.

Public Comment:

Bigelow Green, 240 Tweed Blvd., read a letter into the record.

Ruth Weber, 55 Tweed Blvd., testified that she represents the Upper Grandview Association which has 500 members; that this is critical environmental area; that she objects to an 80' long parallel at a minimal set back; that it is a jarring interruption; that it is multi storied from below; that the narrowness of the road at the Biondi site should be considered; that the construction vehicles will be an intolerable hazard; that there are no fire hydrants and if there were emergency one couldn't get out.

Judy Goodrich, 125 Tweed Blvd., testified that she wants to re-enforce the concerns of her neighbors; that she appreciates the concerns of the developer but this is an environmentally sensitive area; that Tweed is a 2 mile road and elevates to Clausland Mountain; that the road has different contours; that it goes from a single to double lane road; that you can not compare the double lane to the part that Mr. Biondi wants to build on; that she would appreciate the Board working with them and Mr. Biondi; that this is something that will effect the future and she submitted pictures for the Board to view.

At the meeting of May 20, 2009 Mr. Biondi, Brian Brooker, Engineer and Donald Brenner, Attorney appeared

The following items were submitted for review:

1. Architectural plans revised 4/28/07 with hand markings by Brian Brooker dated 5/20/09.
2. Original house plans dated 2/1/06.
3. Boundary/topographic survey for Biondi last revised 12/5/08 signed and sealed by William Youngblood, L.S.
4. Biondi Tweed Boulevard Residence site plan signed and sealed by Brian Brooker, P.E, 5/19/09.
5. A cover letter dated May 19, 2009 signed by Ken DeGennaro, P.E.
6. Twelve pictures of abutting property.

Brian Brooker, P.E., handed out plans of the original proposal and the new submission; that the original house had a 9 on 12 pitch for the total height of 24' from the front stairs; that the 9 on 12 pitch was reduced to a 6 on 12 pitch to reduce the ridge at the stairs to 20'; the original house was shortened; that the garage is now on the northside of the property; that the house was flipped at the request of the neighbor and the Planning Board; that the road slopes down 4' and changes the average grade of the house and the house height from the road; that the garage on the south side measured lower in height because of the grade of the property; that as the road slopes more of the house is above road level; that the house appeared smaller from the road before it was flipped at the Planning Board's request; that the house is in the same location as the last time and is 24' from the edge of the pavement; that the distance changed because the right-of-way location changed; that the building height is measured from the average grade of the property which in this case is 431.25 which calculates to a building height of 22.25; that the previous submission was 4' higher to the ridge than this submission; that if the house was moved back it would be dropping away from the front but would appear much large from the rear; that it would be extremely costly to move the house back and would mean re-designing the septic and drainage; that it would be like starting all over again; and more importantly move the house back would mean removing more trees and more slope disturbance in the critical environmental area.

Bruno Biondi testified that all of the water from Tweed Boulevard, Clausland and the mountain is being channeled to his property; that the water enters the property uncontrolled and travels down slope violently; that he is spending a fortune to repair this problem' that he is paying to control water that does not originate from his property; that this problem was not his creation and he will be making the drainage better.

Donald Brenner, Attorney, testified that the Zoning Board reviewed this project three years ago and granted variances on a larger house; that the County Highway Department requires a permit for any work done on this property because Tweed is a county road; that the construction cannot block the road because the county won't permit that to happen; that the drainage has gone extensive review by the Planning Board; that the Town Engineer and consulting engineer have both given drainage approval for 0 discharge; that the Planning Board has declared a "neg dec" for all of the environmental concerns; that

the applicant has permission from the Department of Transportation to tie into the drains on Route 9W; that the applicant is spending thousands and thousands of dollars to correct a problem that does not originate on his property; that Mr. Green consistently states the same concerns at every meeting; that many new houses have been on Tweed Blvd. closer to the road than Mr. Biondi's proposal; that the house is consistent with the designs of the houses uphill from his property; that Mrs. Weber lives miles away from this proposal and is showing only the pictures of houses that agree with her argument; that this proposal is not going to create an undesirable change in the character of the neighborhood; that it is harmonious in a number of other houses that exist on the street; that the proposal is going to correct an on going adverse environmental condition that exists on the property with the uncontrolled water that has been directed through the property from uphill; that the variances requested are no more substantial than many others that have been granted on other properties on Tweed Blvd.; that the benefits have been demonstrated by the correction of the existing drainage problems; that Mr. Biondi has owned and paid taxes on this property for a long time and when the house is built it will be another tax ratable for the town; that Mr. Lewis said thank-you for flipping the house after the Planning Board meeting; that Mr. Biondi has bent over backwards to move the house for him; that the road must remain open during construction; that the county would not issue a permit until all of the construction details are worked out; that the Board has given 0 front road variance on Tweed Blvd; and if this house was moved further back the downhill neighbors would complain that they were looking at too large a house.

Public Comment:

Frank Comiskey, 119 Tweed Blvd., testified that the various testimony was hard to follow; that the set back and location on the one lane road is of great concern; that the one lane road is going to be blocked during construction; that if the house was set back further there could be better truck access; that emergency vehicle access for the residents of Tweed should be considered during the construction.

Pat Esgate, 733 Route 9W, a member of the Piermont Planning Board, testified that she understands that the Board has to consider development; that drainage is a very serious consideration for all of the downhill neighbors; that all of the asphalt berms on Tweed have added to the drainage issues that downhill residents deal with; that she has already spent thousands of dollars to mitigate water damage done to her property from uphill water; that it is a very serious problem that insurance does not cover; and if this project causes more water damage for her property she will be in court.

Bigelow Green, 240 Tweed Blvd., read a prepared statement and submitted a petition signed by 32 residents against the granting of the set back and building height variances.

Ruth Weber, 55 Tweed Blvd., read from a prepared statement and gave the Board pictures of surrounding properties which were not entered into the file.

Judy Goodrich, 125 Tweed Blvd., submitted pictures for the record; testified that the overlay of the neighborhood shows that the road narrows at Mr. Biondi's property; that the immediate houses in the area were built without variances and in consideration of the area; that her house was built in 1996 and her property has as much slope as Mr. Biondi's and was built without any variances; that if this house met the setbacks the visual impact of it wouldn't be as bad; and that drainage is an issue and negatively impacts properties below.

Mark Lewis, 151 Tweed Blvd., testified that he is the owner of the house directly to the south of Mr. Biondi's; that the last time this was before the board he had to hire an attorney, Mr. Lynch; that his house sits 20' below the road; that this house is going to look like a five story apartment house from his vantage point; that he has an 18 mo. old daughter and a wife that is five months pregnant and they should not have to look at this eyesore; that the house is too big and should be set back 50'; and that he urges the Board to pay close attention and not make mistakes that are not appropriate for the neighborhood.

James Goodrich, 125 Tweed Blvd., testified that the other house that was built too close

to the road has been sitting on the market and won't sell; that this house should be set back further; that the parkland on Tweed has become a recreational haven for hikers, walkers and bicyclists and the proposal is for an unsafe portion of the road; that snow plowing issues are involved at that section of the road; that safety concerns are the issue; that setting the house back would be safer for Mr. Biondi and his neighbors.

Andrew Wiley, Pearl River, testified that he would like to know how the height is being determined because it seems that height can be determined by backfilling of property; that this trend in Orangetown is not in keeping with the character of neighborhood; that snow plowing on this road is a real concern; that he would like to know if this house will be hooked up to sewer or septic; that height is a major issue that drainage is a major concern in this area; that there have been problems in the area because of drainage like Bergstohls's wall collapsing.

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 Mr. Sullivan 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, lot area, front yard, and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has decreased the size of the proposed variances since the original application in 2006. The property is subject to Section 10.223 (g) [4],[5], & [6] (a),(b),(c) & (d) of the Zoning Code of the Town of Orangetown which applies to all applications for permits within designated critical environmental area and will ensure the protection and/or effect of removal of any and all trees on the site.
2. Before the start of any construction on the site a permit from the Rockland County Highway Department must be obtained and all requirements of the Rockland County Highway Department shall be met before the issuance of said permit. The concerns of the neighbors regarding emergency vehicle access during construction shall be addressed by the County Highway Department because Tweed Blvd. is a county road.
3. The requested floor area ratio, lot area, 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. The property is subject to Section 10.223 (g) [4],[5], & [6] (a),(b),(c) & (d) of the Zoning Code of the Town of Orangetown which applies to all applications for permits within designated critical environmental area and will ensure the protection and/or effect of removal of any and all trees on the site.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The applicant offered testimony on the cost of the proposed drainage system, septic system and additional cost of construction of moving the house further back from the road; which led to a discussion of the additional impact the proposed construction

would have on the critical environmental area if the house was constructed further back from the road.

5. The requested floor area ratio, lot area, 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. The present location of the proposed house leaves more undisturbed vegetation on the mountain side and reduces the visual impact from the Village of Piermont and the application shall be reviewed by the Architecture and Community Areas Board of Review for aesthetic review.
6. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new single family residence, 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, lot area, front yard, and building height variances are APPROVED with the SPECIFIC CONDITIONS that the applicant comply with all of the requirements set forth in the letter dated April 20, 2009 from the Rockland County Department of Highways and the conditions noted in the December 2, 2008 letter from the New York State Department of Transportation and obtain all required permits; 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, lot area, front yard, and building height variances was presented and moved by Mr. Mowerson, seconded by Ms. Salomon, and carried as follows: Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Solomon, 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: May 20, 2009

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR –N.A.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE.ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

DECISION

**FLOOR AREA RATIO AND ACCESSORY STRUCTURE VARIANCES
APPROVED
EXTENDED SIDE YARD VARIANCE DENIED**

To: Michael and Patricia McGovern
1 Cleveland Street
Pearl River, New York 10965

ZBA # 09- 28

Date: 5 /20 / 09

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#09-28: Application of Michael and Patricia McGovern for variances from Chapter 43, Section 3.12, R-15 District, Group M, Columns 4 (Floor Area Ratio: .20 permitted, .236 proposed), 9 (Side Yard: 20’ required, 12’ existing and proposed) for an addition to an existing single-family residence, and from Section 5.227 (Accessory Structure: 5’ side yard required, 3.6’ existing) for the existing detached garaged. The premises is located at 1 Cleveland Street, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 69.06, Block 1, Lot 41; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 20, 2009 at which time the Board made the determination hereinafter set forth.

Michael McGovern and Jane Slavin, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans dated 2/2/09 with a revision date of 3/31/09 (1 page) signed and sealed by Jane Slavin, Architect.
2. Site plan dated 3/23/09 signed and sealed by Jane Slavin, Architect.
3. Zoning Board of Appeals Decisions #02-77 dated 9/4/02, #02-115 dated 1/2/03 and 02-115A dated 2/5/04.

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

On advice of Denise Sullivan, Deputy Town Attorney, acting 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 Mr. Sullivan and carried as follows: Ms. Castelli, aye; Ms. Albanese, aye; Ms. Salomon, aye; Mr. Sullivan; aye; and Mr. Mowerson, aye.

Michael McGovern testified that he would like to extend the kitchen; that he and his wife have three children aged 14, 10 and 8; that they need a larger kitchen and are proposing a 14' x 17' expansion at the rear of the kitchen; and that they are also would like a deck at the side of the kitchen expansion.

Jane Slavin, Architect, testified that the house is on an undersized lot; that other larger floor area ratio's have been granted in the area; that 11 Villa Drive received a .255 floor area ratio and a 22' front yard; that 13 Villa got a .245 floor area ratio and building height; that 10 Venter got a .266 floor area ratio with a side yard, total side yard, rear yard and building height; that 12 Venter was granted a .257 floor area ratio, side yard, total side yard and building height; that 8 and 9 Summit were granted floor area ratio variances; that 16 Duhaime was granted a .268 floor area ratio; that the requested floor area ratio being requested .236 is in keeping with the character of the neighborhood; that the addition is only 278 sq. ft.; that the existing kitchen is very small and the family cannot sit at the kitchen table together; that the lot should be 15,000 sq. ft. and is undersized by almost 3000 sq. ft.; that the existing garage is used for storage because there is not a full basement in the house; that the applicant has agreed to plant 6' arborvitae as a screening for the proposed deck; that he is considering a solid fence also for additional screening; that a patio could be installed in the same area without a variance; that the convenience of a deck is that there is no step down onto a patio from the kitchen; and that the proposed deck would only be two feet above grade.

Public Comment:

Steve Laczynski, 9 Cleveland Street, testified that this is difficult for him; that the McGovern's are good neighbors; that five or six years ago they supported the addition with the encroachment into the 20' required side yard; that they did not expect that side yard to be extended again; that the property is on a hill and they are above them already; that the new bump out with the deck will be directly opposite their backyard; that they are already 4 or 5 feet higher than him and when you add a deck 3 or 4 feet off the ground, it becomes a privacy issue; that all of the sound of outdoor gatherings are closer to his yard; that they did an extension 22 years ago and kept within the scope of what is permitted; and that the proposed trees would have to be large to provide any kind of privacy.

Anita Laczynski, 9 Cleveland Street, testified that this isn't easy; that she likes her neighbors; that they moved up here from Queens and loved the property and the privacy; that it was difficult the last time that their neighbors asked them to support the eight foot encroachment into the side yard, but they did it; that to extend it now with a deck that sees completely into their backyard is difficult; that their bedroom is on that side of the house and the noise from the deck would be an intrusion; that this would effect her living space and she asked the Board to consider rejecting the extension of the side yard for the deck.

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 floor area ratio and accessory structure 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 and the existing side yard is not being extended for the deck.
2. The requested floor area ratio and accessory structure variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
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 and accessory structure 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 and accessory structure variances are APPROVED and the extension of the side yard variance is DENIED; 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 and accessory structure variances and to deny the extension of the existing side yard variance was presented and moved by Ms. Castelli, seconded by Mr. Sullivan, and carried as follows: Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, abstained; 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: May 20, 2009

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -R.O.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE,ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

DECISION

**FLOOR AREA RATIO, FRONT YARD, REAR YARD, AND BUILDING
HEIGHT VARIANCES GRANTED IN ZBA #04-144 RENEWED FOR ONE
YEAR**

To: Michael and Maria Muchoe

ZBA # 09-29

6 Ladik Place

Date: 5 /20 / 09

Pearl River, New York 10965

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 09-29: Application of Michael and Maria Muchoe for a second extension of time to implement variances extended in ZBA#07-92 and originally granted in ZBA#04-144, Chapter 43 (Zoning) of the Code of the Town of Orangetown, R-15 District, Group M, Columns 4 (Floor Area Ratio: .20 permitted, .248 proposed), 8 (Front Yard: 30' required, 24.659' proposed), 11 (Rear Yard: 35' required, 1.488' existing for an existing structure, without a certificate of occupancy, that encroaches past state line by 2.939'), 12 (Building Height: 1.488' permitted 20.3' proposed for the addition to the house; -2.939 permitted for existing gazebo over state line: 13.5' existing) for an addition to an existing single family residence.. Premises are located at 6 Ladik Place, Pearl River, New York and are identified on the Orangetown Tax Map as Section 72.08, Block 3, Lot 92; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 20, 2009 at which time the Board made the determination hereinafter set forth.

Maria Muchoe appeared and testified.

The following documents were presented:

1. A letter of explanation dated April 5, 2009 and Zoning Board of Appeals Decisions #04-144 and #07-92.

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

On advice of Denise Sullivan, Deputy Town Attorney, acting 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 Mr. Sullivan and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Sullivan; aye; and Mr. Mowerson, aye. Ms. Albanese was not present for this hearing.

Maria Muchoe testified that they hired a builder to do the addition and he kept putting off their job; that they finally confronted him for a start date and he told them that he wasn't going to do the job because he was having financial problems; that they started the bidding process again but their time to start construction ran out; and that they have a builder lined up to start the job in June if they get another extension; and that a one year extension should be sufficient.

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. No significant change in circumstances has occurred since the instant variances were granted which would warrant Board reconsideration of their approval.
2. Applicants stated that they have a contractor ready to start construction in June and a one year extension should be sufficient.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested extension of time in which to implement the variances originally granted in ZBA#04-144 is GRANTED and shall expire on June 30, 2010; 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 time to implement the variances granted in ZBA 04-144 dated 12/1/04 was presented and moved by Ms. Salomon, seconded by Ms. Castelli, and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Ms. Albanese was not present for this hearing.

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: May 20, 2009

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
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