

MINUTES
ZONING BOARD OF APPEALS
May 5, 2010

MEMBERS PRESENT: WILLIAM MOWERSON
DANIEL SULLIVAN
PATRICIA CASTELLI
JOAN SALOMON
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 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

POSTPONED ITEM:

BLAUVELT AUTO SPA
& DETAILING CENTER
70.10 / 3 / 16; CC zone

HAND WASHING ZBA #10-25
WITHOUT THE ASSISTANCE
OF AUTOMATED OR MECHANIZED
SOAP SPRAYING ARCHES OR
BLOWERS AND ONLY IN
CONJUNCTION WTH VEHICLE
DETAILING

CONTINUED ITEM:

ZAPATA RESTAURANT
OUTDOOR DINING
77.20 / 2 / 24; R-15 zone

OUTDOOR ZBA#09-85
DINING DENIED

NEW ITEMS:

NALLADARU
68.12 / 2 / 5.3; RG zone

BUILDING HEIGHT ZBA#10-28
AND REAR YARD
VARIANCES APPROVED

MAGUIRE
70.14 / 3 / 50; R-15 zone

SIDE YARD ZBA#10-29
VARIANCE APPROVED

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 5, 2010

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DECISION

APPEAL OF BUILDING PERMIT DENIAL AND INTERPRETATION: HAND WASHING IN CONJUNCTION WITH VEHICLE DETAILING SHALL BE DONE BY HAND WITHOUT THE ASSISTANCE OF AUTOMATED OR MECHANIZED SOAP SPRAYING ARCHES OR BLOW DRYERS

To: Kevin Conway (Blauvelt Auto Spa)

ZBA #10-25

51 North Broadway
Nyack, New York 10960

Date: May 5, 2010

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#10-25: Application of Blauvelt Auto Spa & Detailing Center for an interpretation including, but not limited to, review of the 12/31/2009 administrative decision of the building inspector denying application for Building Permit The premises are located at 585 Route 303, Blauvelt, New York, and are identified on the Orangetown Tax Map as Section 70.10, Block 3, Lot 16; CC zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 5, 2010 at which time the Board made the determination hereinafter set forth.

Kevin Conway, Attorney, and Donald Mayorga, owner, appeared and testified.

The following documents were presented:

1. Blauvelt Coach Diner Site plan with the latest revision date of 8/2/95.
2. Architectural plan dated 2/26/02 labeled "585 Route 303-Interior Demolition" signed and sealed by Barbara Hess, Architect.
3. A letter dated February 26, 2010 from Kevin Conway requesting an interpretation.
4. A letter dated 12/31/09 to Mr. Mayorga from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
5. ZBA Decision #07-106 dated 2/6/08.
6. A price list of the services offered at Blauvelt Auto Spa.

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

Mowerson, aye.

Kevin Conway, Attorney, testified that the previous owner of the Blauvelt Auto Spa installed a soap spraying Arch and Blow dryer without a building permit; that Mr. Mayorga would like to be able to use these two pieces of equipment in relation to the car detailing business; that there were several certificate of occupancy discrepancies; that the spray arch and blow dryer allow Mr. Mayorga to do the minimum detailing in about a half hour; that a car cannot be detailed unless it is clean and this equipment helps in that process; that this business is not like a mechanized car wash because much more detail is given to each car; that the windows are cleaned on the interior, the car vacuumed, the door jams are dried, and the tires are polished for the \$12.00 mini detail; that a mechanized car wash is less money; that Mr. Brenner's client used to get business from the original owner of this business; that Mr. Coumo used to take cars to them to be washed before he detailed them and the new owners no longer do that because they wash the cars themselves before detailing; that it would be ill advised to re-decide the previous decision; that they have provided the Board with the menu of services offered at the Spa; that there are no violations to how the business is running; that they are here for the two pieces of equipment and the decision by John Giardiello; that they can't offer hand washing without detailing; and that they would like to keep the equipment to promote better service.

Donald Mayorga, owner, testified that he does not offer just a car wash; that the minimum hand wash w/ tire shine for \$12.00 takes about a ½ hour and with that service the car interior is vacuumed the interior windows are washed; the dashboard is cleaned, the door jams are dried; and the entire car is dried by hand; that the last owner offered \$2.00 car washes, he is not doing that; that the sprayer and blower help to make the business more efficient; that the water and soap are environmentally friendly and go down into the sewer; and that he details approximately 15 cars a day but not all of them are full details.

Public Comment:

Lloyd Monaco, 8 Lt. Wheeler Court, Blauvelt, testified that he is the owner of the car wash down the street; that it cost him a lot of time and money to get all of the proper approvals to open his business; that they offer a full service car wash for \$15.00 and they do all of the things that Mr. Mayorga calls a mini detail; that detailing at his shop starts at \$49.95 and the car is dropped off for a half a day; that detailing and car washing are two separate things; that the original certificate of occupancy was clearly for detailing and this center doesn't meet the requirements for a car wash; that any car washing should be subject to same scrutiny and environmental requirements that he was subject to; and it should operate in the permitted zone.

James Castagna, 39 De Longis Court, testified that local businesses need competition; that this business is providing a service for the community; that it is not the Board's responsibility to provide a monopoly and the environment should be protected. 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.

Donald Brenner, Attorney, testified that this is not about competition; that this is a clear violation of Section 8.7; that the Board never gave permission for a car wash; that they would need to be at 400 feet away from any residential lot; that they do not have the number of parking/ waiting areas; that the disposal of wash water was not approved by the Planning Board; and that all of this is a violation of the statute.

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:

1. The utilization of the automated or mechanized soap spraying arch and the blow dryers are in violation and contravention of Zoning Board Decision #07-106 dated 02/06/2008 which clearly states “continued usage on premises of the existing hand car wash and auto detailing center (which shall permit car washing at the premises, provided that it is done in conjunction with vehicle detailing services): there was absolutely no mention in ZBA Decision #07-106, of washing any vehicle with the aid of any type of machinery or automation.
2. The requested use of the automated or mechanized soap spraying arch and blow dryers is in contradiction of ZBA Decision #07-106’s allowing “hand wash” in conjunction with vehicle detailing: the addition of these machines are taking the place of the hand washing (that was granted only in conjunction with auto detailing). The act of “washing”, including the use of this term in ZBA Decision #07-106 of 02/06/2008, contemplates pre-soaking with water, scrubbing with soap and rinsing with water, all by hand without using machinery or automation.
3. The benefits sought by the applicant can be achieved by other means feasible for the applicant to pursue, other than the use of the automated or mechanized soap spraying arch and blow dryers that were installed without a building permit: Hand washing in conjunction with vehicle detailing services is permitted; hand washing without vehicle detailing is not permitted at any time, not is automated or mechanized washing (including pre-soaking and drying).

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that John Giardiello, P.E., (Director of OBZPAE) 12/31/2009 denial of the applicant’s Building Permit application (dated 09/04/2009) is hereby AFFIRMED, AND THE Board finds, decides, interprets and determines that hand washing in conjunction with car detailing is permitted without the assistance of automated or mechanized soap spraying arches or blow dryers; and FURTHER RESOLVED, that the spray arches and blow dryers shall be removed within thirty days of the signing and filing of this decision; 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.

The foregoing resolution to AFFIRM the 12/31/2009 denial of John Giardiello, P.E., (Director of OBZPAE), which denied the applicant’s Building Permit application dated 09/04/2009; and to interpret, find, decide and determine that the utilization of mechanized or automated soap spraying arches and blow dryers are in violation of ZBA Decision #07-107 dated 02/06/2008 and that all soap application, pre-soaking, rinsing, washing and drying shall be done by hand in conjunction with vehicle detailing only; 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: May 5, 2010

ZONING BOARD OF APPEALS

TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

OUTDOOR DINING DENIED

To: Zapata Restaurant

ZBA # 09-85

779 Route 340

Date: January 6, 2010

Palisades, New York 10964

May 5, 2010

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#09-85: Application of Zapata Restaurant for a variance from Chapter 43 (Zoning) of the Code of the Town of Orangetown, R-15 District, Section 9.34 (Extension of a non-conforming use) for outdoor dining at an existing restaurant. The establishment is located at 779 Route 340, Palisades, New York and are identified on the Orangetown Tax Map as Section 77.20, Block 2, Lot 24; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, January 6, 2010 and May 5, 2010 at which time the Board made the determination hereinafter set forth.

At the January 6, 2010 meeting Kevin Conway, Attorney, Jay Greenwell, Land Surveyor, Robert Hoene, Architect, and Aldolpho Godinez, owner, appeared and testified.

The following documents were presented:

1. Architectural plans dated 9/9//09 (1 page) not signed or sealed by Robert Hoene, Architect.
2. Site plan dated July 24, 2009 with the latest revision date of 8/18/09 signed and sealed by Jay A. Greenwell, L.S.
3. A letter dated November 25, 2009 from the County of Rockland Department of Highways signed by Sonny Lin, P.E.
4. A letter dated November 18, 2009 from the County of Rockland Department of Planning signed by Salvatore Corallo, Commissioner of Planning.
5. A letter dated October 26, 2009 from the County of Rockland Department of Health signed by John G. Stoughton, Senior Public Health Sanitarian.
6. A letter dated September 21, 2009 from the State of New York Department of Transportation signed by Mary Jo Russo, P.E., Rockland County Permit Engineer.
7. A letter dated January 10, 2009 from Celeste Bester, abutting property owner, objecting to the proposal.
8. A petition in support of the application with 163 signatures of customers of Zapata Restaurant.
9. Two pictures of the rear yard of houses on the hill above the restaurant.
10. A two page letter in opposition to the proposal signed by Katrina Hertzberg, Diane Langmuir and Peter Fruchtman.
11. Zoning Board decision # 07-38 dated 4/18/07.

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

Kevin Conway, Attorney, testified that the restaurant is a pre-existing non-conforming use; that they would like a special use permit for outdoor dining and would go before ACABOR for review; that they are offering self-imposed restrictions on the dining that would incorporate the neighbors concerns; that they would propose a partial wall, landscaping and a canopy that would tamp down the sounds; that they would like to seat 40 people and use the area from June to October; that there would not be outside bar or any outdoor music; that they would not have catered events outside and would limit service on weekdays from 6 p.m. to 9 p.m. and week-ends from 6 p.m. to 10 p.m.; that they welcome the concerns of the neighbors; that they would like to submit a petition that has 160 signatures in support of the application by patrons of the restaurant; and they would like to request a continuance until the January 20, 2010 meeting.

Robert Hoene, Architect, testified that the outdoor dining is proposed to take place in an open pavilion type roofed structure with columns; that a six foot fence is proposed in the back with six foot high evergreen plantings; that the roof is octagon shaped and the patio area would be constructed with pavers; that the lighting would be installed under the roof structure; that the covered service counter could be eliminated; that the counter area was proposed for use as a busing/serving station; that the outdoor dining area would be detached from the building; that there is a proposed walk from the building in the bar area to the proposed outdoor seating area; and that the drawing could be revised to show only forty seats.

Jay Greenwell testified that the patrons would have to enter the main entrance to the restaurant and go through the building to get seated in the outdoor dining area; and that they just saw the letter from the Health Department and they have enough bathroom facilities to meet the requirements.

Public Comment:

Celeste Bester, Route 340, Palisades, testified that she lives four houses away from the restaurant and has lived there for thirty years; that Palisades is quiet, woody, and peaceful; that noises carry through the night; that the restaurant is surrounded by single family residences with families; that the proposed outdoor dining would take away the serenity of the area; that along with outdoor dining comes outdoor drinking and noise; that the restaurant exists in a residential zone and the location is not good for outdoor dining.

Viatchesla Promkine, 39 Iroquois Ave., testified that he supports the business but not at the expense of the neighbors; that sound travels uphill and the music from inside the restaurant can already be heard at his house; that permitting forty more people outside would be unbearable; that the restaurant is noisy now and would only get worse.

Peter Fruchtman, 35 Iroquois Ave., submitted a two document in opposition to the application; and testified that he agrees with his neighbors; that they all live uphill from the restaurant and the noise carries; that they hear everything loudly because of the topography in the neighborhood; that he would echo that the owner of the restaurant is a great guy and should stay in the neighborhood; that what he is asking for is a quantum leap and no one wants outdoor dining in their backyard; and he would ask the Board to deny this application.

Tom Walter, 6 Yadanza Court, testified that he lives two houses from the corner and his deck overlooks Zapata Restaurant; that when the employees played soccer out in the parking lot he could hear their conversations; that the topography lends itself to any noise

carrying uphill; that he has two bedroom windows that face the restaurant; that everyone has mentioned people making noise but add to that the clashing of dishes and silverware and it is too much; that he gets up at 5:30 in the morning for work and retires at 9:00P.M.; that outdoor dining would drastically affect his quality of life.

Carlos Herdaria, 785 Route 340, testified that he lives right next door to the restaurant; that his bay window faces the restaurant and he sees deer, turkeys and birds and if this outdoor dining is permitted he would have to sell his house because all of his privacy would be lost.

Susan Walter, 6 Yadanza Court, testified that she took pictures of the restaurant from her deck to show the Board how close it is; that outdoor dining would be terrible for all of the neighbors and she is opposed to it in a residential zone; and everything that everyone else said is true.

Roger Baster testified that the site is well utilized; that the restaurant enhances the area; that he enjoys seeing the success but cannot support the outdoor dining for the same reason that the neighbors stated.

Thomas Irizarry, 789 Route 340, testified that his house is two houses away from the restaurant; that his family use to own Tony Lobster House; that he would like to know if there is enough parking for outdoor dining; that every time the back door opens the neighborhood hears the music; that if this is allowed the area will eventually be used for parties and catered events; that he is opposed to outdoor dining.

Claudia Aparicio, 552 Western Highway, Blauvelt, testified that she supports the outdoor dining application; that the owners are honest and have lived in the area for many years; that the music in the restaurant cannot be heard outside; that she believes that the owners will adhere to all the regulations; that there is plenty of parking and the number of tables could be reduced.

Tim O'Connor, 20 Avenue C, Tappan, testified that he is supportive of the application; that the pictures submitted were taken in the winter and the trees are bare; that no outdoor dining would be taking place when the trees are bare; that Mr. Godinez has always responded in a positive manner to any requests of the neighbors; that the restaurant has existed for well over 20 years and the community should support a successful business.

Linda McErlean, 769 Route 340, testified that she cannot support the application because of noise and light concerns; that she hears noise now every time the doors open; that she doesn't want it escalated; that the rear yard is like Shea Stadium.

Kathleen O'Connor, 20 Avenue C, Tappan, testified that she is a regular customer at Zapata Restaurant and she supports the application for outdoor dining; that if someone buys a house next to a restaurant they should put up curtains; that the restaurant has been there for over twenty years and the owner is a responsible business owner.

Hannes Brucknes, 768 Route 340, testified that the people that have spoke in support of the application are loyal friends and customers but they do not live there; that there has been a restaurant there for twenty years but it has not been permitted to have outdoor dining; that it exists in a residential zone and the residents should be considered.

Thomas Naddeo, 58 Prospect Road, Blauvelt, testified that he understands the legitimate concern for quiet; he lives in a quiet neighborhood in Blauvelt; that he has known Mr. Godinez for years and he wouldn't exploit the rules; that he would stand true to the guideline restriction; that he wouldn't want to harm the area; that in this struggling economy to hold someone back is not good and he is in support of the outdoor dining.

Lyca Hadaria, 785 Route 34, testified that on Thanksgiving she could hear the music inside the restaurant in her bedroom; that expanding the restaurant means more truck traffic; that every time the fence breaks, her husband has to fix it; that when the restaurant is busy the over flow parking goes to Yadanza Court; and the employees door is by our room and it is dark out there.

George Peters, 55 Eimer Street, Tappan, testified that he has known the owner since he owned LaBamba; that he knows his work ethic; that it is a large site that is under utilized; that he would suggest additional landscaping on the bare hillside; that something fast growing to fill in the area and enhance the visual buffer; that dense planting might be compromise that would minimize the impact of the outdoor dining for the neighbors.

Celeste Bester testified for the second time that the other people speaking in support of the application do not live there; that this will affect the lives of the neighbors; that palisades should remain a serene and peaceful place.

Aldolpho Godinez, 45 Bennington Drive, Tappan, testified that he understands the issue but Route 340 has corporate parks and buses traveling along it; and that this business is his parents' investment and they are trying to improve the property.

At this time Dennis Michaels, Attorney for the Zoning Board of Appeals, stated that the application would be continued at 7:00 P.M. on January 20, 2010 in the Greenbush Auditorium and no new notices would be mailed.

The applicant requested a longer continuance.

At the May 5, 2010 meeting the following items were submitted for review:

1. A report dated April 27, 2010 from Russell Acoustics (10 pages).
2. A letter dated April 28, 2010 from Celeste Bester, abutting property owner in opposition to the application.

Kevin Conway, Attorney, testified that the last time the applicant was before the Board the neighbors expressed concerns regarding noise from the proposed out dining area; that the plans have been revised and abatement material used to answer the noise concerns; that they are still offering limited hours of operation, no outdoor parties and limited seating; that Mr. Dotti is an engineer specializing in acoustics; that he can explain the study that was conducted; that the applicant would be pleased with a special permit with conditions being issued on a trial basis; that the noise study has been completed; that the science shows that this application is within the parameters of the Town Ordinance for noise; that the study shows that there will be no discernable additional noise from the proposed outdoor dining; and that because of the location the characteristics of the neighborhood would not change.

Norman Dotti, P.E.P.P., testified that he is an acoustical engineer, a planner, and that he teaches classes; that he conducted a study of the property for a 48 hour period; that the study was conducted on Friday afternoon, March 19th for the following 48 hours; that monitors were placed in the right front and rear, the left front and rear; that readings were taken specifically during the hours of operation between 5p.m. and 10 p.m.; on the right the reading was 52.8 on the left it was 80 and the average was in the low 50's; that Saturday the reading was slightly lower; with 55 on the right, 52 on the left, and 49 in the rear; that acoustical engineering methods use equations, data and standard recognized equations to compute sound levels; that the model used for these calculations includes the terrain elevations, soft and hard ground covers, the patio wall and gazebo, and is based on twenty of the forty proposed patrons talking at the same time; that restaurant noises are also included in the calculations; that at the neighboring houses on each side the expected noise levels from the patio conversations are expected to be around 40 to 42 dBA; at the rear the closest homes up the hill behind the site are expected levels around 35 dBA; that in comparison the ambient sounds in the area, principally traffic average 50 – 62 dBA; that comparing these sound levels to the measurements of existing sounds in the area, the existing sounds are all louder than what is expected from the restaurant; and because of this they will mask the patio dining activity.

Robert Hoene, Architect, testified that the dining area is enclosed with a six foot high solid stone wall that would be filled with a perlite material to help insulate the sound; that the service area has been removed from the plans; that the gazebo roof has been modified to a flat ceiling that will also help alleviate noise travel.

Jay Greenwell Land Surveyor, testified that along the outside of the six foot wall there will be planting that will range in height from 6 to 8 feet; that the wall will be 16" thick stucco with terra cotta planters along the top and at each post; that there were no plans for the dumpster but it could be enclosed with a wall; and that there would be seating outside after 10 p.m.

Public Comment:

Ann Savattieri, 162 Park Ave. Palisades, testified that she lives down the street from the restaurant; that she is speaking in support of the restaurant; that it is a family run business and they are willing to have restrictions for the outdoor dining; that there aren't too family owned restaurants in the area; that the science states that there will not be any increased noise above the existing traffic noise; and that she is sure that the owners would ask customers to move inside after ten.

Felicia Geraldi, 12 Sioux Court, Palisades, testified that she is 51 year resident of Palisades; that it is a neighborhood with neighborhood noises but even the children are inside and quiet by eight; that there are a lot of animals in area, coyotes, skunks, rats and outdoor dining will add to the number of animals in the area; that she would like to know if the sheds are being removed; and that noise travels up hill; that she read in the file that they are also proposing to build a four bedroom house on the site.

Roger Bester, 793 Route 340, Palisades, testified that there is a difference between noise levels like traffic noise and hearing voices; that these are very specific sounds; that traffic is ambient noise; that laughter is a specific noise; that this is not what we want to hear in our back yards; that the owner of the restaurant knows how we feel as his neighbors and he is not respecting any of us; that a group of people having dinner and a few drinks are going to be heard above the ambient noise.

Walter Schuler, 10 Mahroney Avenue, testified that he has lived in his home for 43 years; that there is not enough parking for the restaurant as it exists now; that customer's park along Morningside and Mahroney already; and the noise will travel to our properties.

Linda McErlean, 769 Route 340, Palisades, testified that she lives north of the building; that it is already noisy when she has her windows open; that outdoor dining will escalate the noise; and lights will be an issue; that presently there are two spot lights that shine into the house all night; that if they were thinking about proposing outdoor dining she wonders why they would clear cut the property first.

Susan Walter, 6 Yadanza Court, testified that the proposal is disrespectful; that the noise will travel uphill; that the property is not zoned for a restaurant and expanding it would not be good for the neighborhood.

Viatcheslav Pronkin, 39 Iroquois Avenue, testified that he is an electrical engineer with experience in acoustics, that he worked for a major consumer company for six years; that he knows physics very well; that he has to question the numbers in the study; that they are very subjective; that there will be 40 people in close quarters and they will talk louder to be heard; that the talk will probably be around 80-90 decibels; that the measurements were taken at a slow response; that peak level needed to be measured; that the talking and laughing will be louder than the ambient noise; that these calculations will fail; that once this is granted it can't be closed; that he would like to know who would enforce the 10 o'clock rule; that the restaurant is not going to make paying customers leave; and that this has the potential to be very bad.

Tom Walter, 6 Yadanza Court, Palisades, testified that when he sits on his deck in his back yard he can hear the three employees outside when they are taking a break; that he is waiting to get hearing aids on Monday; that the topography of this site is like a Greek

amphitheatre; that the last hearing at supporters that lived in Blauvelt and Tappan; and that he used to think the owner was a nice man but isn't so sure any more because he is disrespectful to his neighbors.

Carlos Hedaria, 75 Route 340, Palisades, testified that he lives south of the restaurant; that he is the closest to the restaurant and hears everything; that with his windows shut he hears them at 10:30 throwing out the bottles and garbage; that he has a wife and kids that need to be awake in the morning for school and work; that if the existing building is not enough than the owner should buy another in the right zone for outdoor dining.

Charles Geraldi, 12 Sioux Court, Palisades testified that he has questions about the technical aspect of the report; that March 19 &20 was the week-end after the last big storm when trees were down all over town; that he isn't so sure how great the test would be given the weather conditions; that this proposal will add a lot of noise to the residential neighborhood and change the character of it; and more than that it will effect the quality of live for all of its neighbors.

Tina Chang, 795 Route 340 testified that she is a 16 year old student; that she needs her home to be quiet; that the restaurant gets loud sometimes now and everything is inside; that people eating and drinking outside are going to be noisy; that this should not be permitted in a residential zone.

Diane Langmuir, 37 Iroquois Avenue, Palisades, testified that she lives above the parking lot; that the Greek stadium is a great comparison; that she can hear everything now; that noise travels uphill; that it is also a privacy issue' that having 40 diners looking uphill at her backyard deck; that every time the restaurant doors open she hers the music and talking and laughter; that placing forty people outside with alcohol and they will be loud; that this proposal will negatively effect all of residential housing prices in the area; that this is residential single-family community; that we deserve privacy and quiet; and that there will also be 40 cell phones going off.

The Board members made personal inspections of the premises the week before both meetings 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:

1. The requested special permit for outdoor dining will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Testimony by many of the neighbors regarding topography and noise traveling uphill cannot be ignored; the report submitted by the applicant's expert does not show worst/best case scenario and was credibly contested by another expert, Viatcheslav Pronkin, who challenged the applicant's expert's calculations and conclusions, which challenge was not rebutted by the applicant.
2. Privacy afforded neighbors in an R-15 single family residential neighborhood should be considered; the restaurant sits down hill from many of the neighbors rear yards and permitting an additional 40 people to dine outside would directly and adversely impact the surrounding properties.
3. The requested special permit for outdoor dining will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Testimony by many of the neighbors regarding topography and noise traveling uphill cannot be ignored; the report submitted by the applicant's expert

does not show worst/best case scenario and was credibly contested by another expert, Viatcheslav Pronkin, who challenged the applicant's expert's calculations and conclusions, which challenge was not rebutted by the applicant. The restaurant sits down hill from many of the neighbors rear yards and permitting an additional 40 people to dine outside would directly and adversely impact the surrounding properties.

4. The requested special permit for outdoor dining will have an adverse effect or impact on the physical or environmental conditions of the area. The outdoor dining in a residential zoning district diminishes the expected quiet of a residential neighborhood and because of the topography of this area the outdoor dining would intrude on the surrounding homeowners' privacy.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing outdoor dining in a residential zone, so the alleged difficulty was self-created.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested special permit for outdoor dining 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 DENY the application for the requested special permit for outdoor dining was presented and moved by Mr. Sullivan, 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: May 5, 2010

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

REAR YARD AND BUILDING HEIGHT VARIANCES APPROVED

To: Donald Brenner (Nalladaru)

ZBA # 10-28

4 Independence Avenue
Tappan, New York 10983

Date: May 5, 2010

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#10-28: Application of Hiroiz Nalladaru for variances from Chapter 43 (Zoning) of the Code of the Town of Orangetown, RG District, Group Q, Section 3.12, Columns 11 (Rear Yard: 25’ required, 14.7’ proposed) and 12 (Building Height: 19.3’ permitted, 24’ 1” existing) for an existing single family residence. The premises are located at 40 East Crooked Hill Road, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 68.12, Block 2, Lot 5.3; RG zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 5, 2010 at which time the Board made the determination hereinafter set forth.

Hiroiz Nalladaru, Deborah Brenner and Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Architectural plans, As-Built dated 3/20/10 (3 pages) signed or sealed by John Perkins, Architect.
2. Survey labeled “Driscoll Subdivision Lot No. 3” dated 5/24/05 revised 6/9/05 signed and sealed by Theodore Atzl L.S.
3. A letter dated May 4, 2010 from the County of Rockland Department of Highways signed by Sonny Lin, P.E.
4. A letter dated May 3, 2010 from the County of Rockland Department of Planning signed by Salvatore Corallo, Commissioner of Planning.
5. A letter dated April 12, 2010 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.

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

Donald Brenner, Attorney, testified that the house was built by a contractor that subdivided the property into three lots; that after the house was framed and much of the external work completed and some of the interior work the project was abandoned; that it sat abandoned for two and half years; that the client acquired the house and found out that he needed a variance for the height of the house and since he coming to the Zoning Board for that variance he decided to ask for the rear yard variance for the deck that he would like to build; that he doesn't know how the house was built this much higher than it should have been except that the grading of the property might have something to do with it; that the back yard drops off significantly; that in order to fill the property enough to change the requested height variance a ten foot re-enforced wall would have to be engineered and back filled; that the wall could cost any where from fifty to seventy thousand dollars; and that none of this was the fault of his client.

Hiroit Nalladaru testified that he purchased his house on February 16, 2010; that he has a wife and two children and they are living in a small apartment and would like to be able to move into the house as soon as possible.

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 rear yard, and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar structures have been constructed in the area.
2. The requested rear 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 structures have been constructed in the area.

3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. Similar structures have been constructed in the area.
4. The requested rear yard and building height variances, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Similar structures have been constructed in the area.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested rear 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 rear yard and building height variances was presented and moved by Ms. Salomon, 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: May 5, 2010

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

SIDE YARD VARIANCE APPROVED

To: Vincent and Denise Maguire

ZBA # 10-29

31 Arthur Street
Blauvelt, New York 10913

Date: May 5, 2010

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#10-29: Application of Vincent and Denise Maguire for a variance from Chapter 43 (Zoning) of the Code of the Town of Orangetown, R-15 District, Group M, Section 3.12, Column 9 (Side Yard: 20' required, 13' proposed) for the installation of an above-ground pool at an existing single family residence. The premises are located at 31 Arthur Street, Blauvelt, New York, and are identified on the Orangetown Tax Map as Section 70.14, Block 3, Lot 50; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 5, 2010 at which time the Board made the determination hereinafter set forth.

Vincent and Denise Maguire appeared and testified.

The following documents were presented:

1. Copy of the existing above-ground pool picture.
2. Copy of survey dated April 30, 1998 by Edward G. Mihalczko, L.S. with the proposed pool location drawn on it.

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

Vincent Maguire testified that they would like to install an above-ground pool in their rear yard; that the place they proposed to place the pool is the most level section of the yard that can be seen from the kitchen and deck; that the upper portion of the yard has a pitch to it; that they can't give a 15' side yard without changing the grade of the property and that would entail hiring a landscaper; that they have a 16' x 18' addition on the rear of the house and they have a shed in the rear yard.

Denise Maguire testified that they have owned the house for twelve years and that they have three children ages 17, 14 and 10.

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 side yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar pools have been constructed in the area.
2. The requested side yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar pools 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 side yard variance, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Similar pools have been constructed in the area.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for the requested side yard 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 side yard variance was presented and moved by Ms. Albanese, 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: May 5, 2010

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL

TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -J.P.

MGMT. and ENGINEERING
FILE.ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

