

MINUTES  
ZONING BOARD OF APPEALS  
November 5, 2008

MEMBERS PRESENT:      PATRICIA CASTELLI  
                                 WILLIAM MOWERSON  
                                 DANIEL SULLIVAN  
                                 JOHN DOHERTY  
                                 NANETTE ALBANESE

ABSENT:                      NONE

ALSO PRESENT:          Robert Magrino, 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 William Mowerson.

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

NEW ITEMS:

CENTER STREET SUBDIVISION 75.05 / 1 / 10; R-22 zone	CONTINUED	ZBA#08-95
BARNETT 68.15 / 5 / 79; R-15 zone	FLOOR AREA RATIO, SIDE YARD, TOTAL SIDE YARD, BUILDING HEIGHT VARIANCES APPROVED	ZBA#08-96
OAK TREE INN 77.15 / 1 / 30.1; CO zone	SPECIAL PERMIT FOR OUTDOOR DINING GRANTED FOR ONE YEAR WITH CONDITIONS	ZBA#08-97
SUNSET HOMES SUBDIVISION 70.09 / 2 / 23; R-15 zone	CONTINUED	ZBA#08-98

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: Ramsey Subdivision Plan, 4 residential lots, one to be dedicated to the Town, 110 Sparkill Avenue, Southeast corner of the intersection of Sparkill Avenue and William Street, Sparkill, NY; 77.08 / 5/ 33; RG zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 9:30 P.M.

Dated: November 5, 2008

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

DISTRIBUTION:

Deborah Arbolino  
Administrative Aide

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, TOTAL SIDE YARD, AND BUILDING HEIGHT VARIANCES APPROVED**

To: Robert and Maureen Barnett

ZBA # 08-96

152 N. Magnolia Street  
Pearl River, New York 10965

Date: 11 / 5 / 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-96: Application of Robert and Maureen Barnett for variances from Chapter 43, Section 3.12, R-15 District, Group M, Columns 4 (Floor Area Ratio: .20 permitted, .23 proposed), 9 (Side Yard: 20' required, 8.67' proposed), 10 (Total Side Yard: 50' required, 28.07' proposed) and 12 (Building height: 8.67' permitted, 22.3' proposed) for an addition to an existing single-family residence. Premises are located at 152 N. Magnolia Street, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.15, Block 5, Lot 79; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 5, 2008 at which time the Board made the determination hereinafter set forth.

Robert and Maureen Barnett and Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Architectural plans dated 7/25/08 with the latest revision date of 8/24/08 signed and sealed by Stephan C. Brander, Architect.

On advice of Mr. Magrino, Attorney 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) Regulations which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Mowerson, aye; Ms. Albanese, aye; Mr. Doherty; aye; and Ms. Castelli, aye. Mr. Sullivan was not present for this hearing.

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

Maureen Barnett testified that they are proposing an addition to the house; that they have two daughters with special needs and they want to have more children; that her mother-in-law is moving in with them; that there are several other houses with additions in the area; that there are two houses diagonally #14 and #15 that have replica additions; and #10 also has an addition but it is a different style house; that the original submission was larger than this proposal; That Rick Oliver, building inspector called our architect, Steve Brandon and the proposal was scaled down; that they have owned the house for 4 ½ years; that she is a principal in East Ramapo and her husband is a New York City Police Officer; and that after the addition they will have five bedrooms.

Donald Brenner, Attorney testified that the application has already been cut back; that the Barnett's have four members in their family and the addition of Mr. Barnett's mom; that they are planning to have more children; and that the rear of the house backs onto the Muddy Creek conservation easement.

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 the documents presented, 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, total side yard and building height variances would 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, total side yard and building height variances would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining variances.
4. The requested floor area ratio, side yard, total side yard and building height variances although substantial will not be a detriment to the neighborhood.
5. The applicant purchased the property so the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily 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, total side yard and building height variances 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 floor area ratio, side yard, total side yard and building height variances was presented and moved by Ms. Albanese, seconded by Ms. Castelli, and carried as follows: Mr. Mowerson, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Doherty, aye. Mr. Sullivan 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: November 5, 2008

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 –RO.

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

DECISION

**OUTDOOR DINING SPECIAL PERMIT APPROVED FOR ONE YEAR AS  
CONDITIONED**

To: Oak Tree Inn

ZBA # 08-97

205 Oak Tree Road  
Tappan, New York 10983

Date: 11 / 5 / 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-97: Application of the Oak Tree Inn for a Special Permit from Chapter 43, CO District, Section 3.11, Column 7 #1 refers to R-80 Column 7 #1 (All restaurants or food service facilities shall be within completely enclosed buildings unless by Special Permit of the Zoning board of Appeals). The premises are located at 205 Oak Tree Road, Tappan, New York, and are identified on the Orangetown Tax Map as Section 77.15, Block 1, Lot 30.1; CO zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 5, 2008 at which time the Board made the determination hereinafter set forth.

Jane Slavin, Architect, Francis Rooney, and Matt Estevez appeared and testified.

The following documents were presented:

1. Site plan dated 9/14/08 signed and sealed by Jane Slavin, Architect.
2. Architectural plan dated 8/18/08 signed and sealed by Jane Slavin, Architect.
3. Five letters in support of the application.

On advice of Mr. Magrino, Attorney 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) Regulations which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Mowerson, aye; Ms. Albanese, aye; Mr. Doherty; aye; and Ms. Castelli, aye. Mr. Sullivan recused himself.

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

Jane Slavin testified that the applicant is proposing to use the 18' x 49' deck for outdoor

dining; that the deck would accommodate a server area and 42 seats; that the deck is being proposed for the rear of the existing bar/restaurant; that the building has been a restaurant/bar for approximately 80 years; that all of the adjacent neighbors sent letters in support of the application; that the requirements of Section 4.31 of the code regarding the granting of special permits can be met; that the deck will be appropriately located in the rear of the restaurant and will not effect transportation, water supply, waste disposal, fire or police protection or other public facilities; that the granting of the special permit will not cause undo traffic congestion or create a traffic hazard; that the restaurant has more than enough parking; that the granting of the special permit will not create at any point of determination set forth in §§ 4.16, 4.17 or 4.18 any more dangerous and objectionable elements referred to in § 4.11 than is characteristic of the uses expressly permitted as of right in the same district; that the granting of the special permit will not adversely affect the character of or property values in the area; that the applicant has five letters in support of the application from abutting neighbors; that plan shows the location of the deck; that the deck will not change the drainage in the area; that the applicant has planted a row of hedges between the restaurant and the adjacent property; that the applicant has signed a lease committing to the hours of operation for the proposed outdoor dining stating that the outdoor service would end at 10:00 P.M. and that there would be no live music outside; and that the applicant is asking to use the deck from March to October.

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 Mr. Doherty and carried unanimously.

**FINDINGS OF FACT AND CONCLUSIONS:**

After personal observation of the property, hearing all the testimony and reviewing the documents presented, 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 Special Permit for Outdoor Dining would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has agreed to limit the outdoor dining to the hours of 11:30 a.m. to 10:00 p.m. and use of the outdoor dining area would be limited to March through October.
2. Outdoor Service will be allowed only for one year to permit evaluation of its actual impact during this test period.
3. The applicant has agreed that at no time would live music would be played for outdoor diners.
4. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining a Special Permit.
5. The requirements of Section 4.31 of the code regarding the granting of special permits can be met; that the deck will be appropriately located in the rear of the restaurant and will not effect transportation, water supply, waste disposal, fire or police protection or other public facilities; that the granting of the special permit will not cause undo traffic congestion or create a traffic hazard; that the granting of the special permit will not create at any point of determination set forth in §§ 4.16, 4.17 or 4.18 any more dangerous and objectionable elements referred to in §

4.11 than is characteristic of the uses expressly permitted as of right in the same district; that the granting of the special permit will not adversely affect the character of or property values in the area.

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 APPROVED with the following SPECIFIC CONDITIONS: (1) The outdoor dining hours of operation shall be 11:30 a.m. to 10:00 p.m. for the months of March through October; (2) There shall be no live music or disc jockey music permitted outside the building ; 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 Special Permit for Outdoor Dining was presented and moved by Mr. Mowerson , seconded by Mr. Doherty, and carried as follows: Mr. Mowerson, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Doherty, aye. Mr. Sullivan recused himself.

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: November 5, 2008

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

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FILE.ZBA, PB  
CHAIRMAN, ZBA, PB, ACABOR









