

MINUTES
ZONING BOARD OF APPEALS
NOVEMBER 7, 2012

MEMBERS PRESENT: WILLIAM MOWERSON
 JOAN SALOMON
 PATRICIA CASTELLI
 DANIEL SULLIVAN

ABSENT: NANETTE ALBANESE
 MICHAEL BOSCO, ALTERNATE

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

CONTINUED ITEM:

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| PALISADES GARDEN GROUP LLC (ESPLANADE) 78.17 / 2 / 1; R-40 zone | FLOOR AREA RATIO, AND BUILDING HEIGHT VARIANCES APPROVED | ZBA#12-33 |
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NEW ITEMS:

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| HIGHLAND MEWS AT SPARKILL 77.08 / 5 / 49; CS zone | SIDE YARD AND REAR YARD VARIANCES APPROVED | ZBA#12-73 |
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| CURCIO 74.17 / 4 / 73; R-15 zone | SIDE YARD, TOTAL SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED | ZBA#12-74 |
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| LUNDBERG 68.16 / 6 / 25; RG zone | SIDE YARD VARIANCE APPROVED | ZBA#12-75 |
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| THE SALOON 68.16 / 6 / 25; RG zone | SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED | ZBA#12-76 |
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| ST. THOMAS AQUINAS COLLEGE GENERATOR PERFORMANCE STANDARDS 74.16 / 1 / 41; R-40 zone | APPROVED | ZBA#12-77 |
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THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 9:00 P.M.

DECISION

AMENDMENT TO SPECIAL PERMIT §7.34 REQUEST WITHDRAWN;
FLOOR AREA RATIO AND BUILDING HEIGHT VARIANCES APPROVED

To: Donald Brenner (Esplanade)

ZBA # 12-33

4 Independence Avenue
Tappan, New York 10983

Date: June 6, 2012
November 7, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-33: Application of Palisades Garden Group LLC (Esplanade) for a Special Permit Section 7.34 (of Chapter 43 Zoning) to allow 205 rooms granted in ZBA#74-6: amendment to decision #74-6 is needed for the minimum yard set backs of 100 feet as filed in the restrictive covenant (number 9) and variances from Chapter 43 (Zoning), Section 3.12, R-40 District, Group H, Columns 4 (Floor Area Ratio: .15 permitted, .24 proposed), 9 (Side Yard: 100' required, 47.5' existing to existing garage; 67.3' proposed to Unit F; 81.3' proposed to Unit G), 10 (Total Side Yard: 200' required, 176.8' proposed to unit F; and 11 (Building Height: 16.83' permitted for unit F, 35' proposed to unit F) for an addition of a second floor on a portion of existing buildings and construction of a new wing at an existing independent living facility. The site is located at 640 Oak Tree Road, Palisades New York and is identified on the Orangetown Tax Map as Section 78.17, Block 2, Lot 1 in the R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, June 6, 2012 and July 25, 2012 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Marvin Ammer, Property Manager, Joseph Caruso, P.E., Michael Shilale, Architect, appeared and testified.

The following documents were presented:

1. Site plan dated 03/ 20 /2012 signed and sealed by Joseph T. Caruso, P.E..
2. Architectural plans dated 02 / 14/ 2012 by Michael Shilale, Architect.
3. Zoning Board of Appeals Decision dated February 15, 1961.
4. Planning Board Decision #09-49 dated July 27, 2011.
5. A memorandum dated July 27, 2011 from John Giardiello, Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
6. Two aerial pictures of the site.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that since the Planning Board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or id not object to the Planning

Board acting as Leas Agency for this application, pursuant to coordinated review under the State environmental Quality Review Act Regulations §617.6 (b) (3); and since the Planning Board conducted a SEQRA review and, on July 27, 2011, rendered a environmental determination of **no** significant adverse environmental impacts to result from the proposed land use action (i.e., a Negative Declaration or Neg Dec), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulations § 617.6 (b) (3). The motion was seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

Donald Brenner, Attorney, testified that the owners received permission for the first stage of development on February 15, 1961; that in 1973 the applicant returned for permission for an expansion and received permission by Special Permit for 225 resident rooms; that the bank needs to see the ultimate layout plan for financing; that they have permission for the unit expansion but they are requesting the change to enter the 100' buffer with the proposed expansion; and that they would like to request a continuance to look at the plans and see if they can accomplish what they need without encroaching on the 100' buffer.

Michael Shilale, Architect, testified that the existing buildings finger out and reach into the landscape; that the rooms all have views of the landscape; that they already used as much of the second floor as possible in Phase I and in Phase II and III they need to add two more wings; that they need to keep the wings as close to the center core as possible for the aging population; that the elevation grade of the property needs to be considered in the design; that the frail and elderly need to close to the common area.

Joseph Caruso, P.E., testified that this use has a stricter height requirement than a residential unit; that section G cannot be moved because it becomes a construction issue; that the existing garage is part of the original estate; that the property becomes very hilly moving further away from the core; that keeping everything as close to the core as possible is essential because it is a challenge for some of the seniors being too far away from the center; and that all the levels must meet at the interior for easy access for the residents.

Public Comment:

Rex Lalire, 16 Heyhoe Woods Road, Palisades, testified that he is closest to wing F, that he is an Architect with his own firm; that there are many ways to design the building without encroaching on the set backs; that the size of the lot permits altering the design to respect zoning; that his proposal devalues his property by encroaching on the setbacks; that he has 4 ½ acres of property on Heyhoe Woods road that could be subdivided and this proposal devalues the worth of the property; and that the wings do not have to be identical to the original proposal.

Richard Rasmussen, 644 Oak Tree Road, Palisades, testified that this proposal will be eye level with his patio; that he will be looking at parking lot, lights and wing F will impact his house; that all of the woods would be gone when this proposal is implemented; that he would want to see large Pines planted now.

Paul George, 46 Heyhoe Woods Road, Palisades testified that he is not opposed to the facility, that it provides a good necessary service; that the parking lot is being quadrupled; that he agrees with Mr. Lalire regarding the negative impact on his home; that he is really close to section G and his privacy will be impacted.

Lisette George, 46 Heyhoe Woods Road, testified that she agrees with her husband and that they should have to respect the setbacks.

At the meeting of November 7, 2012 the following items were submitted for review:

1. Architectural plans with the latest revision date of 10/04/2012 signed and sealed

- by Michael Richard Shilale, Architect.
2. Preliminary Layout Plan for Esplanade Palisades with the latest revision date of 07/06/2012 by Joseph T. Caruso, P.E.

Donald Brenner, Attorney, Joseph Caruso, P.E., Michael Shilale, Architect, and Marvin Ammer appeared and testified.

Donald Brenner, Attorney, testified that the original design for the Esplanade was started in the 1960's; that modifications have been made since the last appearance before the Zoning Board; that the request to enter into the 100' buffer has been removed; that the plan does not infringe on the buffer; that everything has been shifted a little to avoid the buffer and several rooms were reconfigured; and the applicant has offered to plant white pines along the easterly property line.

Michael Shilale, Architect, testified that he has preliminary sketched of the proposed buildings; that the proposed addition will harmonize with the existing building and embellish it; that they have relocated all of the units outside the 100' buffer; that the pediments on the corners will have the new units harmonize and compliment the existing units; and the height of the building was measured at various points to show the best and worse case scenarios for the height of the building.

Joseph Caruso, P.E., submitted an aerial view picture of the site; and explained to the Board that the darker areas are complete vegetation and much wooded areas; that a landscape plan has been prepared for the Architectural Board of Review; that they are offering to screen the easterly property line with white pines.

Marvin Ammer, testified that the exiting garage can be removed.

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 floor area ratio 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 withdrawn the requests for the amendment to the Special Permit and the side yard and total side yard variances. The existing garage shall be removed. The applicant has offered to screen the easterly property line with white pines.
2. The requested floor area ratio and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has withdrawn the requests for the amendment to the Special Permit and the side yard and total side yard variances. The existing garage shall be removed. The applicant has offered to screen the easterly property line with white pines.

3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The applicant has withdrawn the requests for the amendment to the Special Permit and the side yard and total side yard variances. The existing garage shall be removed. The applicant has offered to screen the easterly property line with white pines.
4. The requested floor area ratio and building height variances, although substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area 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 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 floor area ratio and building height variances was presented and moved by Mr. Mowerson, seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Mr. Sullivan was not present for his hearing. Ms. Albanese was absent.

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.

DECISION

§14.5 F(5) SIDE YARD VARIANCES FOR LOTS #1, #2, #3 & #4 AND REAR YARD VARIANCE FOR LOT #1 APPROVED

To: Robert Prier, Esq. (Highland Mews)

ZBA # 12-73

17 South Broadway (P.O. Box 205)
Nyack, New York 10960-0205

Date: November 7, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-73: Application of Highland Mews at Sparkill for variances from Chapter 43 (Zoning), Sparkill Overlay District, Section 14.5 F(5) (Side Yard: 0' or 15' required, 10.8' existing for lot #1; 9.5' existing for lot #2, 6.2' existing for lot #3; 0.4' existing for lot #4); F (6) (Total Side Yard: 15' required: 12.7' existing for lot #4)) and F (7) (Rear Yard: 25' required, 19.8' existing for lot #1) to existing decks at the rear of the buildings. (The decks were shown on the approved site plan but have been modified) The site is located on the south side of Washington Avenue approximately 500' north of the intersection of Union Street, Sparkill, New York and are identified on the Orangetown Tax Map as Section 77.08, Block 5, Lot 49 in the CS zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 7, 2012 at which time the Board made the determination hereinafter set forth.

Robert Prier, Esq., and John Mascia appeared and testified.

The following documents were presented:

1. Copy of site plan by William Youngblood, L.S. dated October 1, 2012.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that since the Planning Board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or did not object to the Planning Board acting as Lead Agency for these applications, pursuant to coordinated review under the State Environmental Quality Review Act Regulations §617.5 (b) (3); and since the Planning Board conducted SEQRA review on October 27, 2012 and rendered environmental determination of no significant adverse environmental impacts to result from the proposed land use actions (i.e., Negative Declarations" or "Neg Decs"), the ZBA is bound by the Planning Board's Neg Decs and the ZBA cannot require further SEQRA review pursuant to SEQRA regulations §617.5 (b) (3). The motion was seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Mr. Sullivan was not present for this hearing. Ms. Albanese was absent.

Robert Prior, Attorney, testified that the applicant was originally before the Zoning Board in January 2011; that he decks were shown on the plan at that time but no variances were requested for them; that the project is presently being constructed and the Building Inspector picked up the need for the rear yard variance on Lot #1; that since then the Building Department did a further review and discovered that other side yard variances were needed for the space between each deck.

John Mascia, builder, stated that the decks were built two feet wider and longer than originally proposed.

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 side yard and rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed decks do not interfere with other properties in the area.
2. The requested side yard and rear yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed decks do not interfere with other properties 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 and rear yard variances, although substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for the requested side yard and rear yard variances are **APPROVED**; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the

Board of the minutes of which they are a part.

General Conditions:

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

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

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

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

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

The foregoing resolution to approve the application for the requested side yard and rear yard variances was presented and moved by Mr. Mowerson, seconded by Ms. Salomon and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Mr. Sullivan was not present for this hearing. Ms. Albanese was absent.

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.

DECISION

SIDE YARD, TOTAL SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED

To: John and Fran Curcio

ZBA # 12-74

103 Howard Avenue
Tappan, New York 10983

Date: November 7, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-74: Application of John and Fran Curcio for variances from Chapter 43 (Zoning), Section 3.12, R-15 District, Group M, Columns 9 (Side Yard: 20' required, 10.73' proposed), 10 (Total Side Yard: 50' required, 33.12' proposed) and 12 (Building Height: 10.73' permitted, 15' proposed) for an addition of a two car garage at an existing single-family residence. The premises are located at 103 Howard Avenue, Tappan, New York and are identified on the Orangetown Tax Map as Section 74.17, Block 4, Lot 73; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 7, 2012 at which time the Board made the determination hereinafter set forth.

John and Fran Curcio appeared and testified.

The following documents were presented:

1. Architectural plans and site plan dated 08/28/2012 signed and sealed by Robert Hoene, Architect.
2. Two letters from abutting property owners in support of the application.

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

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

John Curcio testified that their middle child was the catalyst for this proposed addition; that she is 18 years old and not ambulatory; that the renovations include making the existing two-car garage into living space and adding the two-car garage; that the change to the footprint is the proposed two-car garage; that it is getting harder to get her up the stairs and life will be easier with more living space on the ground level of the house; that the property is not wide in the front; that it is a long narrow lot which is causing the need for the side yard and total side yard variances.

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, total side yard and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants' lot is oddly shaped, narrow in the front and about 175' deep. The additional space is needed in order to accommodate their 18 year old that is not ambulatory.
2. The requested side yard, total 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. The applicants' lot is oddly shaped, narrow in the front and about 175' deep. The additional space is needed in order to accommodate their 18 year old that is not ambulatory.
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, total side yard and building height variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested side yard, total side 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 side yard, total side yard and building height variances was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Mr. Sullivan was not present for this hearing. Ms. Albanese was absent.

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.

DECISION
UNDERSIZED LOT SIDE YARD VARIANCE APPROVED

To: Ken and Linda Lundberg

ZBA # 12-75

11 Eastbourne Drive
Chestnut Ridge, New York 10977

Date: November 7, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-75: Application of Ken and Linda Lundberg for a variance from Chapter 43 (Zoning), RG District, Group M, Section 5.21(d) Undersized lot side yard: (10' required, 9.1' existing & proposed) for a front porch an existing single-family residence. The premises are located at 134 East Washington Avenue, Pearl River, New York and identified on the Orangetown Tax Map as Section 68.16, Block 6, Lot 25, in the RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 7, 2012 at which time the Board made the determination hereinafter set forth.

Ken and Linda Lunberg and Karl Ackermann, Architect, appeared and testified.

The following documents were presented:

1. Survey dated August 27, 2012 signed by William James, P.E., P.L.S.
2. Architectural plans dated 9/5/2012 signed and sealed by Karl Ackermann, Architect.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA),

pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and /or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Mr. Sullivan was not present for this hearing. Ms. Albanese was absent.

Karl Ackermann, Architect, testified that Linda's mother owned the house for fifty years; that she has passed away and the house is under contract to sell; that in 2004 the existing stoop was extended to allow for a small covered area before entering the house; that it was extended along the existing setback; and that they are before the Board to legalize the existing condition.

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 side yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants' lot is undersized and the 9.1' side yard was extended in 2004 without complaint.
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. The applicants' lot is undersized and the 9.1' side yard was extended in 2004 without complaint.
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 is not substantial.
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 §5.21 (d) Undersized lot 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 § 5.227 (d) Undersized lot side yard variance was presented and moved by Ms. Salomon, seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Mr. Bosco, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Ms. Castelli was absent. 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.

DECISION

SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED WITH SPECIFIC CONDITIONS

To: Bridgen Killen

ZBA # 12-76

45-49 West Central Avenue
Pearl River, New York 10965

Date: November 7, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-76: Application of The Saloon for variances from Chapter 43 (Zoning), CC District, Group JJ, Columns 9 (Side Yard: 12' required, 6.7' proposed) and 12 (Building Height: 22' permitted, 26' existing, 31.5' proposed) for new framing and re-building the second floor of an existing restaurant. The premises are located at 45-49 West Central

Avenue, Pearl River, New York and identified on the Orangetown Tax Map as Section 68.16, Block 1, Lot 9, in the CC zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 7, 2012 at which time the Board made the determination hereinafter set forth.

Bridgen Killen and Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Architectural plans dated September 11, 2012 by Barbara Marks, Architect, (8 pages).
2. A letter dated October 24, 2012 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
3. A letter dated October 23, 2012 from the County of Rockland Sewer District No. 1 signed by Joseph LaFiandra, Engineer II.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (7); which does not require SEQRA environmental review. The motion was 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.

Donald Brenner, Attorney, testified that he will get letters from the County Highway Department and the Drainage Agency stating that they do not need to be involved because this project is not interfering with any ground work; that this project is to raise the roof to accommodate the air-conditioning and generator; that the existing roof is very weak; that the building is old and renovations have been on-going since the last storm; that the side yard is not changing; that it is a pre-existing non-conforming condition; that in the future they will be applying for a permit to do work in the rear of the property; that presently they need to install steel beams and raise the roof slightly to accommodate the generator and air-conditioning units.

Bridgen Killen testified that the generator and air-conditioning units have been moved to the roof and the proposed roof will not be higher than the existing concrete block.

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 side yard and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants' side yard is not changing, it is a pre-existing non-conforming side yard and the building height increase is minimal and will permit the air-conditioning units and generator to be located on the roof.
2. The requested 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. The applicants' side yard is not changing, it is a pre-existing non-conforming side yard and the building height increase is minimal and will permit the air-conditioning units and generator to be located on the roof.
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 and building height variances, although somewhat substantial, and afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The side yard variance request is for a pre-existing non-conforming condition that is not changing and the height variance will accommodate the air-conditioning units and generator on the roof.
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 and building height variances are APPROVED with the SPECIFIC CONDITION that (1) A review by the County of Rockland Department of Highways be completed and all required permits be obtained; (2) A review by the County of Rockland Drainage Agency be completed and any required permits obtained; 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 and building height variances with the specific conditions that (1) A review by the County of Rockland Department of Highways be completed and all required permits be obtained; (2) A review by the County of Rockland Drainage Agency be completed and any required permits obtained; was presented and moved by Mr. Mowerson, seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Ms. Albanese was absent.

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.

DECISION

PERFORMANCE STANDARDS REVIEW APPROVED

To: Donald Brenner (St. Thomas Generator)

ZBA # 12-77

4 Independence Avenue
2012

Date: November 7,

Tappan, New York 10983

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-77: Application of St. Thomas Aquinas College pursuant to Section 4.1, Chapter 43 (Zoning) Use subject to Performance Standards Conformance Review with respect to a generator. The premises are located at 125 Route 340, Sparkill, New York and identified on the Orangetown Tax Map as Section 74.16, Block 1, Lot 1, in the R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 7, 2012 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, and Patrick Lambert appeared and testified.

The following documents were presented:

1. Generator Site Plan dated September 14, 2012 signed and sealed by John R. Atzl, P.L.S..
2. Olympian Diesel Generator Sets Spec sheets (4 pages).

3. Certificate of Occupancy of the building dated August 1, 1999.
4. Performance Standards Resume of Operations and Equipment form dated September 17, 2012 and signed by Peter Skae.
5. Fire Prevention Supplement.
6. A letter dated September 20, 2012 from Joseph J. Moran, P.E., Commissioner, Department of Environmental Management and Engineering, town of Orangetown.
7. A letter dated October 3, 2012 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
8. A memorandum dated November 7, 2012 from Douglas Sampath, Assistant Fire Inspector, Town of Orangetown.
9. A letter dated October 11, 2012 from the State of New York Department of Transportation signed by Mary Jo Russo, Rockland County Permit Engineer.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination based upon the testimony heard by this Board, and the facts as presented in the application submissions and in the record, since the application entails the ZBA engaging in a review to determine compliance with technical requirements, 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) (28); which does not require SEQRA environmental review. The motion was 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.

The Performance Standards Resume of Operations and Equipment, and the Fire Prevention Supplement completed by the applicant were thereupon reviewed in detail.

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:

Based upon the information contained in the applicant's Resume of Operations and Equipment, the Fire Prevention Supplement, the letter dated September 20, 2012 from Joseph J. Moran, P.E., Commissioner of the Orangetown Department of Environmental Management and Engineering (D.E.M.E.) concluding that there is no reasonable doubt as to the likelihood of applicant's conformance to the Zoning Code § 4.1 Performance Standards, and the memorandum dated November 7, 2012 from Douglas Sampath, Assistant Fire Inspector, Town of Orangetown Bureau of Fire Prevention (B.F.P.); the other documents presented to the Board and the testimony of applicant's representatives, the Board finds and concludes that conformance with the Performance Standards set forth in Zoning Code Section 4.1 will result sufficient to warrant the issuance of a Building Permit and/or Certificate of Occupancy, subject to compliance with the orders, rules and regulations of the Orangetown Office of Building, Zoning & Planning Administration & Enforcement, DEME, and Orangetown B.F.P., and all other

departments having jurisdiction of the premises.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for Performance Standards Conformance, pursuant to Zoning Code § 4.1 are APPROVED with the SPECIFIC CONDITION that the applicant adhere to all of the requirements set forth by the Chief Fire Inspector, Town of Orangetown B.F.P.; 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, Performance Standards Approval, 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, Performance Standards Approval, 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, performance standards approval, 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, Performance Standards Review, 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 Zoning Code § 4.1 Performance Standards Conformance was presented and moved by Mr. Mowerson, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Ms. Albanese was absent.

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.

