

MINUTES
ZONING BOARD OF APPEALS
NOVEMBER 16, 2011

MEMBERS PRESENT: WILLIAM MOWERSON
JOAN SALOMON
PATRICIA CASTELLI
DANIEL SULLIVAN
NANETTE ALBANESE

ABSENT: THOMAS WARREN, 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

NEW ITEMS:

RINGNER 69.18 / 3 / 41; R-15 zone	FLOOR AREA RATIO VARIANCE APPROVED	ZBA#11-94
NORDSTROM 74.17 / 2 / 33; R-15 zone	STREET FRONTAGE, SIDE YARD, TOTAL SIDE YARD REAR YARD AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#11-95
DOMINICAN COLLEGE HENNESSY CENTER 70.18 / 2 / 14; R-40 zone	FLOOR AREA RATIO, AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#11-96
BILL KOLB JR. SUBARU 74.11 / 1 / 22; LI zone	SIGN VARIANCE APPROVED AS MODIFIED TO 122.82 SQ. FT.	ZBA#11-97
PEARL RIVER SCHOOL DISTRICT AMENDMENT FOR PROPOSED LOT # 2 68.11 / 2 / 41.1; R-15 zone	AMENDMENT GRANTED	ZBA#11-98
PEARL RIVER SCHOOL DISTRICT PROPOSED LOT #2 68.11 / 2 / 41.1; R-15 zone	LOT WIDTH, SIDE YARD, TOTAL SIDE YARD, REAR YARD AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#11-99
VAN ORDEN 78.17 / 2 / 31; R-40	SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED	ZBA#11-100
EN-TECH CORPORATION PERFORMANCE STANDARDS 74.18 / 3 / 32; LO & LI zone	PERFORMANCE STANDARDS APPROVED WITH SPECIFIC CONDITIONS	ZBA#11-101

ADDITIONAL BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the Acting Chairperson executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for the State Environmental Quality Review Act (SEQRA) coordinated environmental review of actions pursuant to SEQRA Regulations § 617.6 (b)(3) the following applications: Lash Site Plan, 260 South Boulevard, Upper Grandview, New York 66.17 / 1 / 24; R-22 zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

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

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 11:15 P.M.

DECISION

FLOOR AREA RATIO VARIANCE APPROVED AND § 5.227 VARIANCE WITHDRAWN

To: Frank Ringner

ZBA # 11-94

56 South Nauraushaun Avenue
Pearl River, New York 10965

Date: November 16, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-94: Application of Frank Ringner for variances from Chapter 43 (Zoning) Section 3.12, R-15 District, Group M, Column 4 (Floor Area Ratio: .20 permitted, .26 proposed) for the construction of anew single family residence and from Section 5.227 Detached structures: (5' from property line required ; 0.5' from property line existing) for an existing shed. The premises are located at 56 South Nauraushaun Avenue, Pearl River, New York an identified on the Orangetown tax Map as Section 69.18, Block 3, Lot 41; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 16, 2011 at which time the Board made the determination hereinafter set forth.

Frank Ringner and Robert Hoene, Architect, appeared and testified.

The following documents were presented:

1. Site plan dated 08/16/2008 signed and sealed by Atzl, Scatassa & Zigler, P.C.
2. Architectural plans dated 05/23/2011 signed and sealed by Robert Hoene, Architect.

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

Robert Hoene, Architect, testified that the applicant has inherited the house from his family; that the house had radiant heat installed and it cracked the slab that the house was built on; that the proposal is to demolish the existing house and construct a new house; that the lot is substantially smaller than the required 15,000 sq. ft.; that the lot is only 13,000 sq. ft.; that the proposed new house is a two story, four bedroom house; that the proposed floor area ratio is .26; and that the existing old shed 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 variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has withdrawn the request for the Section 5.227 variance and will remove the existing shed. The lot is undersized by 2,000 sq. ft. and the proposed house is not out of character with the houses in the neighborhood.
2. The requested floor area ratio variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has withdrawn the request for the Section 5.227 variance and will remove the existing shed. The lot is undersized by 2,000 sq. ft. and the proposed house is not out of character with the houses in the neighborhood.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested floor area ratio variance, although substantial, affords 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 requested floor area ratio variance seems substantial but when the undersized lot is taken into consideration, it is not an unreasonable request.
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 variance is

APPROVED (the §5.227 variance request is withdrawn); 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 variance (§5.227 variance request is withdrawn) was presented and moved by Ms. Albanese, seconded by Mr. Mowerson and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DECISION

STREET FRONTAGE, SIDE YARD, TOTAL SIDE YARD, REAR YARD AND BUILDING HEIGHT VARIANCES APPROVED

To: Oscar and Salina Nordstrom

ZBA # 11-95

2 Jones Place
Tappan, New York 10983

Date: November 16, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-95: Application of Oscar and Salina Nordstrom for variances from Chapter 43 (Zoning), Section 3.12, R-15 District, Group M, Columns 7 (Street Frontage: 75' required, 67.35' existing), 9 (Side Yard: 20' required, 18.7' proposed), 10 (Total Side Yard: 50' required, 45.4 proposed), 11 (Rear Yard: 35' required, 33.2' proposed) and 12 (Building Height: 18.7' permitted, 23' proposed) for an addition to an existing single family residence. The premises are located at 2 Jones Place, Tappan, New York and are identified on the Orangetown Tax Map as Section 74.17, Block 2, Lot 33; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 16, 2011 at which time the Board made the determination hereinafter set forth.

Oscar Nordstrom Sr. and Salina Nordstrom appeared and testified.

The following documents were presented:

1. Site plan dated 10/13/2011 signed and sealed by Stephen F. Hoppe, L.S.
2. Architectural plans dated 01/08/2009 with the latest revision date of 09/07/2011 signed and sealed by Harry Goldstein, Architect.
3. Two letters from abutting property owners in support of the application.

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

Oscar Nordstrom Sr. testified that his son was ill and could not make to the meeting; that he has his permission to represent him; that his and his wife, Salina purchased this house that backs up to Orange & Rockland Utility property; that they have three children and plan to have more; that the requested yard variances for really for small triangular pieces of the proposed addition; that there is about a 1/2 acre of woods in the rear of the house; that they are adding a second floor addition that will not block any views; and that the second front door can be move to the side of the garage so that it is not noticeable from the street.

Salina Nordstrom testified that she needs the second front door for another entrance/exit from the house but that it can be moved to the side as drawn by her father-in-law.

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 street frontage, side yard, total side yard, 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 additions have been constructed in the area. The applicant has agreed to move the proposed second front door to the side of the proposed garage.
2. The requested street frontage, side yard, total side yard, 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 additions have been constructed in the area. The applicant has agreed to move the proposed second front door to the side of the proposed garage.
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 lot is oddly shaped and the infringement into the side yard, total side yard and rear yard is only for a triangular portion of the proposed addition.
4. The requested street frontage, side yard, total side yard, rear yard and building height variances, although substantial, affords 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 applicant has agreed to move the proposed second front door to the side of the proposed garage.
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 street frontage, side yard, total side yard, 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 street frontage, side yard, total side yard, rear yard, and building height variances was presented and moved by Ms. Albanese, seconded by Mr. Mowerson and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DECISION

FLOOR AREA RATIO AND BUILDING HEIGHT VARIANCES APPROVED

To: Michael Dempsey (Dominican College)

ZBA # 11-96

470 Western Highway

Date: November 16, 2011

Orangeburg, New York 10962

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-96: Application of Dominican College Hennessy Center addition for variances from Chapter 43 (Zoning), R-40 District, Group H, Section 3.12, Columns 4 (Floor Area Ratio: .15 permitted, .172 proposed), and 12 (Building Height: 25' permitted, 41' proposed) for an addition to the existing student health center. The building is located on the east side of Western Highway, 600 feet north of the intersection of Mountainview Avenue, Orangeburg, New York an identified on the Orangetown tax Map as Section 70.18, Block 2, Lot 14; R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 16, 2011 at which time the Board made the determination hereinafter set forth.

Michael Dempsey, Facilities Director, Sister Kathryn Sullivan, Chancellor, and Brian Quinn, Attorney, appeared and testified.

The following documents were presented:

1. Site plan dated 07/1/2011 signed and sealed by Joseph Corless, P.E. & P.L.S.
2. Plans dated 03/24/2008 with the latest revision date of 04/7/2008 labeled "Hennessy Center Proposed Expansion Dominican College".
3. A letter dated November 14, 2011 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
4. A letter dated October 3, 2011 from the County of Rockland Department of Health signed by Scott McKane, P.E., Senior Public Health Engineer.
5. A letter dated November 14, 2011 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.
6. A letter dated November 14, 2011 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 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 § 617.6 (b)(3); and since the Planning conducted SEQRA reviews and, on July 13, 2011 rendered environmental determinations of no significant adverse environmental impacts to result from the proposed land use actions (i.e. a "Negative Declarations" of "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.

Brian Quinn, Attorney, testified that the existing Hennessy center is not large enough to accommodate all of the students; that the college is proposing to expand the gymnasium and add office space; that the campus is 35 acres; that the floor area ratio permitted is .15 and proposed is .172; that the building height will match the existing building height; that the application has appeared before the Planning Board and received a "neg Dec" ; that the director requested a parking consensus for the whole campus, which will be provided at the next Planning Board meeting.

Michael Dempsey, Facilities Director testified that the number of spaces that will be lost because of the expansion will be picked up across the street.

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 proposed addition will match the existing building height and the expansion will match the existing building which is set back from the street.

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 proposed addition will match the existing building height and the expansion will match the existing building which is set back from the street.
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 35 acres owned by the College have been subdivided into smaller lots in order to obtain financing; if not for this subdivision, variances would not be required.
4. The requested floor area ratio and building height variances, although substantial,, affords 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 proposed addition will match the existing building height and the expansion will match the existing building which is set back from the street.
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. Sullivan, seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Albanese, 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.

DECISION

§3.11, Column #7: SIGNAGE VARIANCE APPROVED AS MODIFIED

To: Donald Brenner (Bill Kolb Jr. Subaru)

ZBA # 11-97

4 Independence Avenue
Tappan, New York 10983

Date: November 16, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-97: Application of Bill Kolb Jr. Subaru for a variance from Chapter 43 (Zoning), LI District, Section 3.11 Column #7 same as CC zone (Signage not to exceed 60 sq. ft. and the illuminated portion shall not exceed 30 sq. ft. : 90 sq. ft. existing, 168.82 sq. ft. proposed) for signage at an existing car dealership. The premises are located at 252 Route 303, Orangeburg, New York an identified on the Orangetown Tax Map as Section 74.11, Block 1, Lot 22; LI zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 16, 2011 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Barbara Marks, Architect, and Bill Kolb Jr. appeared and testified.

The following documents were presented:

1. Architectural plans for proposed signs, not dated signed and sealed by Barbara Marks, Architect.
2. A letter dated November 15, 2011 from C. David Simmons, President and CEO, Subaru Distributors Corp.
3. A letter dated November 16, 2011 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
4. A letter dated November 14, 2011 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.

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) (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. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

Donald Brenner, Attorney, testified that Mr. Kolb owned the Ford dealer on Route 303 in Blauvelt for years and was very successful; that he owns the Subaru dealer on Route 303 in Orangeburg for a few years, and is also successful selling Subaru's; that when he first took over the Subaru site, the walking bridge over Route 303 had not been constructed; that Subaru is requiring changes to renovate and update the site; that the site is hard to see if you are traveling south on Route 303 because of the bridge and traveling north, visibility is not great because of some large trees on that side of the site; that increased visibility is necessary for the business and would also make entering and existing the site safer; that the sign as shown is 24" with a 36" logo; that the north elevation could be reduced by making Bill Kolb Jr. 18", which reduces the sq. ft. of the sign by 25 sq. ft.; and that the word Subaru could be removed from the area with parts & service further reducing the square footage to 122.82 sq. ft.

Barbara Marks, Architect, showed the Board pictures that were taken of the site from different locations across Route 303 and north and south of the site. She testified that the existing signs are not that visible because of the existing trees and the walking bridge.

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 §3.11 Column #7 signage variances as modified will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The property is located adjacent to the rails to trails bridge that crosses over Route 303 and the signs are necessary for customers to find the site. There are no residential houses in the area and the site is across the street from the County Sewer Department.
2. The requested §3.11 Column #7 signage variances as modified will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The property is located adjacent to the rails to trails bridge that crosses over Route 303 and the signs are necessary for customers to find the site. There are no residential houses in the area and the site is across the street from the County Sewer Department.

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 walking bridge over Route 303 was not present when the applicant purchased the business.
4. The requested §3.11 Column #7 signage variances, although substantial, affords 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 property is located adjacent to the rails to trails bridge that crosses over Route 303 and the signs are necessary for customers to find the sight. There are no residential houses in the area and the site is across the street from the County Sewer Department.
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 § 3.11 Column #7 signage variances are APPROVED as MODIFIED (1) the lettering "Bill Kolb Jr." on the north elevation of the building shall be reduced to 18"; (2) the words "Subaru" shall be removed from the side building with "Parts & Service"; (3) total square footage shall be 122.82; 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 § 3.11 Column #7 signage variances as modified to 122.82 sq. ft. was presented and moved by Ms. Salomon, seconded by Mr. Sullivan and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DECISION

AMENDMENT TO ZBA DECISION #79-03 GRANTED

To: Donald Brenner (Pearl River School)

ZBA # 11-98

4 Independence Avenue
Tappan, New York 10983

Date: November 16, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-98: Application of Pearl River School District for an amendment to Zoning Board of Appeals Decision # 79-03 dated March 26, 1979 for lot #2 of a proposed two lot subdivision. Located on the north side of West Crooked Hill Road, 0 feet west of the intersection of Margaret Keahon Drive, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.11 , Block 2, Lot 41.1; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 16, 2011 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Quinton Van Wynen Jr. appeared and testified.

The following documents were presented:

1. Site plan dated 04/18/2011 with the latest revision date of 10/19/2011 signed and sealed by Robert Rahnefeld, P.L.S.
2. A letter dated July 13, 2011 from John Giardiello, P.E., Director, Office of Building, zoning and Planning Administration and Enforcement, Town of Orangetown.
3. Zoning Board Decision #79-03 dated March 26, 1979.
4. Ten certificate of Occupancies for the buildings.
5. A letter dated November 14, 2011 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
6. A letter dated November 14, 2011 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.
7. A letter dated November 14, 2011 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 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 § 617.6 (b)(3); and since the Planning conducted SEQRA reviews and, on July 13, 2011 rendered environmental determinations of no significant adverse environmental impacts to result from the proposed land use actions (i.e. a “Negative Declarations” of “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.

Quinton Van Wynen Jr. testified that there are still two posters hanging; that the school district wants to subdivide the property and sell the apartments as condominium units.

Donald Brenner, Attorney, testified that the Pearl river School District purchased the property from the African Inland Mission; that they are proposing to subdivide the property; that they would like to keep the administration buildings to use for the school district and sell the condominiums; that in 1979 there were certain conditions added to the zoning board decision to protect the school district; that the first condition that they are requesting to be amended is #1 of the Decision: “That the proposed dwelling will be used exclusively for staff and personnel and their children, of the African Inland Mission and will not be rented, leased or occupied by any other persons other than as aforesaid”; that this condition is no longer applicable because of the change in ownership; that the other condition that an amended is being sought is #3 of the Decision: “That in the event that any unit within the premises is occupied by a child who attends a public school located within the Town, the applicant agrees to contribute to the school district wherein the child is in attendance, the net cost tot hat school district of educating each such child, and this shall apply to any such child residing on the parcel wherein the premises are located.”; that this condition would no longer be applicable because the property would be sold and be back on the tax rolls; that the individual condominium owners would be paying property and Pearl River School District taxes.

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 amendment to ZBA#79-03 will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Condition #1 & #3 of ZBA Decision #79-03 dated March 26, 1979 would no longer be applicable to the property, when such property is subdivided the portion with the condominium units will return to the tax rolls and the owners will be paying property taxes.
2. The ZBA has struck a balance between the important contribution made to society by educational institutions and the inimical consequences of their presence in residential neighborhoods, and recognizes that the Pearl River School District is an educational institution which is presumed to have a beneficial effect on the community and benefits from special treatment with respect to zoning ordinances and regulations; and, consequently, is not required to satisfy the four criteria to obtain a use variance mandated by NYS Town Law § 267-b(2)(b), as held by controlling NYS courts' judicial decisions.
3. The requested amendment to ZBA#79-03 will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Condition #1 & #3 of ZBA Decision #79-03 dated March 26, 1979, would no longer be applicable to the property, when such property is subdivided the portion with the condominium units will return to the tax rolls and the owners will be paying property and school taxes.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining amendments to the conditions placed on the variances that were granted in ZBA Decision #79-03 dated March 26, 1979.
5. The requested amendment to ZBA#79-03, is not substantial, , affords 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. Condition #1 & #3 of ZBA Decision #79-03 dated March 26, 1979, would no longer be applicable to the property, when such property is subdivided the portion with the condominium units will return to the tax rolls and the owners will be paying property and school taxes.
6. 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.
7. Since the original application that resulted in ZBA#79-03 of 03/26/1979 was reviewed under Orangetown Zoning Code §9.34 ("extension or enlargement " of a nonconforming use), the Board additionally finds that, if the current proposals are deemed to be existing nonconforming uses, then the instant application may also be considered a request for an extension of same, as per Zoning Code § 9.34, and. For all of the reasons set forth in Findings "1" through "6" above, the requested extension is granted and approved.

The Board further finds that where property is issued a certificate of occupancy ("CO") for a use that is not conforming to the zoning regulations in that property's zoning district (e.g., a CO was issued prior to municipal proscription of that use or a use variance was granted by a ZBA), such, "non-conforming" use has been rendered legally conforming for that property by reason of the CO. In other words, a building constructed under a variance is not a nonconforming use within the meaning of the ordinances limiting nonconforming buildings and uses. Hence, a building that which does not conform to the use restrictions of the area in which it is located, but which was constructed pursuant to a variance, may be altered without regard to limitations on the alteration of nonconforming buildings. And the right to continue a nonconforming use runs with the land, i.e., the transfer of ownership does not destroy a legal nonconforming use, and a change in the ownership of a nonconforming structure does not affect the right to continue the use.

The property that is the subject of this application has been issued numerous COs between 1961 and 1997, including several of which that grant permission for the premises to be occupied and used as a "Multiple Dwelling", "Office/Multiple Residence". "Missionary Group", "Pool Building and Storage", "Business Office", with accessory living and dining for Employees", "Sleeping Accommodations for More than 5 persons", and "New Commercial swimming pool, filter house and dressing rooms", consequently, assuming no uses that conflict with the existing COs are being proposed for the subject property (on either of the proposed two new subdivided lots) then no use variances are necessary. Additionally, if the proposed two new subdivided lot #1 will be utilized for "School of General Instruction" purposes, then such new use will also not require a use variance, since a "School of General Instruction" is a Use Permitted by Right in the R-15 Zoning District, and "Any other accessory use not inconsistent with the uses permitted herein "are also allowed as "General Accessory Uses."

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested amendment to ZBA#79-03, dated March 26, 1979, 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 amendment to ZBA#79-03, dated March 26, 1979, was presented and moved by Mr. Mowerson, seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Albanese, 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.

DECISION

LOT WIDTH, SIDE YARD, TOTAL SIDE YARD, REAR YARD, BUILDING
HEIGHT VARIANCES APPROVED
R-80 DISTRICT, COLUMN 6 #1 (PARKING VARIANCE NOT REQUIRED)

To: Donald Brenner (Pearl River School District)

ZBA # 11-99

4 Independence Avenue
Tappan, New York 10983

Date: November 16, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-99: Application of Pearl River School District for variances from Chapter 43 (Zoning), Section 3.12, R-15 District, Group O, Column 6 (Lot Width: 250' required, 168' existing for lot #2), 9 (Side Yard: 75' required, 26.8' proposed), 10 (Total Side Yard: 200' required, 55.7' proposed), 11 (Rear Yard: 100' required, 61' existing), 12 (Building Height: 6.7' permitted, 17.5' existing) and from Section 3.11, R-15 District, refers to R-80 District, Column 6 #1 (Residences: 20 spaces required, 17 existing) for proposed lot #2 of a two lot subdivision. Located on the north side of West Crooked Hill Road, 0 feet west of the intersection of Margaret Keahon Drive, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.11 , Block 2, Lot 41.1; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 16, 2011 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Quinton Van Wynen Jr. appeared and testified.

The following documents were presented:

1. Site plan dated 04/18/2011 with the latest revision date of 10/19/2011 signed and sealed by Robert Rahnefeld, P.L.S.
2. A letter dated July 13, 2011 from John Giardiello, P.E., Director, Office of Building, zoning and Planning Administration and Enforcement, Town of Orangetown.
3. Zoning Board Decision #79-03 dated March 26, 1979.
4. Ten certificate of Occupancies for the buildings.
5. A letter dated November 14, 2011 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
6. A letter dated November 14, 2011 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.
7. A letter dated November 14, 2011 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 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 § 617.6 (b)(3); and since the Planning conducted SEQRA reviews and, on July 13, 2011 rendered environmental determinations of no significant adverse environmental impacts to result from the proposed land use actions (i.e. a "Negative Declarations" of "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 area variances being requested are for existing conditions; that there shall be no construction on the site; that the change in the lot line for the subdivision is causing the need for the variances; that they are really here to codify the existing conditions; and that they have three future parking spaces banked on the property.

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 lot width, side yard, total side yard, rear yard and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The requested parking space variance is withdrawn; there are 17 spaces existing and three more spaces are banked. The requested area variances are for existing conditions that are being recognized because of the proposed subdivision: No new construction is planned for the site.
2. The Board has struck a balance between the important contribution made to society by educational institutions and the inimical consequences of their presence in residential neighborhoods, and recognizes that the Pearl River School District is an educational institution which is presumed to have a beneficial effect on the community and benefits from special treatment with respect to zoning ordinances and regulations; and, consequently, is not required to satisfy the four criteria to obtain a use variance mandated by NYS Town Law § 267-b(2)(b), as held by controlling NYS courts' judicial decisions.
3. The requested lot width, side yard, total side yard, 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. The requested parking space variance is withdrawn; there are 17 spaces existing and three more spaces are banked. The requested area variances are for existing conditions that are being recognized because of the proposed subdivision. No new construction is planned for the site.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The Pearl River School District purchased the property to utilize the administration buildings on the lot; they do not desire to own the residential portion of the property.

5. The requested lot width, side yard, total side yard, rear yard and building height variances, although substantial, affords 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 requested parking space variance is withdrawn; there are 17 spaces existing and three more spaces are banked. The requested area variances are for existing conditions that are being recognized because of the proposed subdivision. No new construction is planned for the site.
6. 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 lot width, side yard, total side yard, 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 lot width, side yard, total side yard, rear yard and building height variances was presented and moved by Mr. Mowerson, seconded by Ms. Albanese and carried as follows: Ms. Salomon, aye; Mr. Sullivan, aye; Ms. Castelli, aye;. Ms. Albanese, 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.

DECISION

SIDE YARD AND TOTAL SIDE YARD VARIANCE APPROVED

To: Jonathan and Marisa Van Orden

ZBA # 11-100

667 Oak Tree Road
Palisades, New York 10964

Date: November 16, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-100: Application of Marisa and Jonathan Van Orden for variances from Chapter 43 (Zoning), Section 3.12, R-40 District, Group E, Columns 9 (Side Yard: 30' required, 14.6' proposed), 10 (Total Side Yard: 60' required, 43.31 proposed) for an addition to an existing single family residence. The premises are located at 667 Oak Tree Road, Palisades, New York and are identified on the Orangetown Tax Map as Section 78.17, Block 2, Lot 31; R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 16, 2011 at which time the Board made the determination hereinafter set forth.

Jonathan and Marisa Van Orden and Raymond Hartwick, Architect, appeared and testified.

The following documents were presented:

1. Site plan dated 10/18/2011 signed and sealed by Raymond Hartwick, Architect.
2. Architectural plans dated 10/ 18/2011 signed and sealed by Raymond Hartwick, Architect.
3. Zoning Board decision #11-60 dated July 20, 2011.

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: Mr. Warren, aye; Ms. Salomon, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Mr. Sullivan was absent.

Jonathan Van Orden testified that they had been before the Board earlier in the year and were approved for the requested variances; that they have hanged Architect's since they were approved; that the plans have changed; that they are extending out into the rear by 8'; that the piers for the carport had to be moved over slightly to accommodate the cars

and these changes affected the side yard and total side yard.

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 and total side yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed change from the previously approved plan is minor.
2. The requested side yard and total side yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed change from the previously approved plan is minor.
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 total side yard variances, are not substantial, affords 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 proposed change from the previously approved plan is minor.
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 total side 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 total side yard variances was presented and moved by Ms. Castelli, seconded by Ms. Salomon, and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye;.Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DECISION

§ 4.1 PERFORMANCE STANDARDS APPROVED WITH CONDITIONS

To: Geno Camali (En-Tech Corp.)

ZBA # 11-101

377 Western Highway
Tappan, New York 10983

Date: November 16, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-101: Application of En-Tech Corporation for Performance Standards Review, Chapter 43 (Zoning), LIO District, Section 4.1, for mechanical repairs and preparation of pipe and cured in place liners for municipal sewers. The property is located at 375-377 Western Highway, Tappan, New York and is identified on the Orangetown Tax Map as Section 74.18, Block 3, Lot 32 in the LO & LI zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 16, 2011 at which time the Board made the determination hereinafter set forth.

Eugene Camali and Sean Morgan, appeared and testified.

The following documents were presented:

1. Architectural plans (9 pages) dated 8/2/2011 signed and sealed by Sean Michael Morgan, P.E.
2. A booklet titled "Entech Corp Chemical & petroleum Bulk Storage" dated July 20, 2011, (8 pages).
3. Material Safety Data Sheets.
4. Use Subject to Performance Standards Resume of Operations and Equipment form dated August 31, 2011.
5. Fire Prevention Supplement.
6. A letter dated November 14, 2011 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
7. A letter dated July 6, 2011 from Douglas Sampath, Assistant Chief Fire Inspector, Town of Orangetown.
8. A letter dated September 26, 2011 from Keneck Skibinski, Acting Chief Operator, Department of Environmental Management and Engineering, Town of Orangetown.
9. A letter dated November 14, 2011 from the County of Rockland Department of Highways signed by Sonny Lin, P.E.
10. A letter dated November 14, 2011 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) (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. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

Eugene Camali testified that EnTech specializes in sewer rehabilitation; that they have a process of lining pipes with resin and a catalyst; that these pipes are installed within the original pipe; that they service municipalities all over the area; that the injected pipes are stored in refrigerated trucks and taken to the site; and that the pipe is heated on site.

Sean Morgan, P.E., testified that there are two tankers with concrete container that the fire monitor is a 2 hour rated fire box; that there is vehicle repair done on site; that there is a second spill containments back-up; that they use organic peroxide; that there is a second container for the resins; that they store in 55 gallon drums and small amounts are brought in to work with; that all of the drums are kept in enclosed units and the smaller amounts are kept in small enclosed units; that the Fire Inspector, Douglas Sampath, has inspected these items and they have complied with all of his requests.

Gene Camali testified that they started doing pipe rehabilitation in the mid to late 80's; that they are not manufacturing; that they are mixing resins and catalysts that is turned inside out inside a sock with hydro-pressure boiler trucks on site; that this system is saving tax payers a lot of money because it costs about \$75.00 per foot.

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

Public Comment:

Donald Brenner, Attorney, testified that this use is a prohibited use under Section 4.4 of the Zoning Code; that the Board should send this application out to an independent engineer for their review; that he is representing the Home for Disabled Veterans; that this is not a simple case, that it is complicated and should be reviewed; that they are processing chemicals on site and these chemicals could explode and release odors.

Vicky Cooper, owner of 360 Western Highway, testified that she owns the three-family house across the street from the proposed application; that she has fears of the chemicals; and that she is concerned about fire.

Norman Cooper testified that he has concerns regarding pollution, sewers and water contamination; and that there are other homes in the area.

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:

1. Based upon the information contained in the applicant's Resume of Operations and Equipment, the Fire Prevention Supplement, the letter dated September 26, 2011 from Keneck Skibinski, Acting Chief Operator of the Orangetown Department of Environmental Management and Engineering concluding there is no reasonable doubt as to the likelihood of applicant's conformance to the Zoning Code § 4.1 Performance Standards, the memorandum dated July 6, 2011 from Douglas Sampath, Assistant Chief Fire Inspector, Orangetown Bureau of Fire Prevention, the letter dated November 14, 2011 from Thomas Vanderbeek, Commissioner of Planning, County of Rockland Department of Planning, 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 Building Department 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, is **APPROVED** with the **SPECIFIC CONDITION** that the applicant adhere to all of the requirements set forth by the Assistant Chief Fire Inspector, Orangetown Bureau of Fire Prevention, letter dated July 6, 2011; **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 was presented and moved by Mr. Mowerson, seconded by Ms. Albanese and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Albanese, aye; and Mr. Mowerson, aye. Ms. Salomon abstained, stating that she did not feel qualified to vote on the item.

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.

