

MINUTES
ZONING BOARD OF APPEALS
November 19, 2008

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

ABSENT: NONE

ALSO PRESENT: Dennis D. Michaels, Esq. Deputy Town Attorney
 Rick Pakola, Deputy Town Attorney
 Ann Marie Ambrose, Official Stenographer
 Deborah Arbolino, Administrative Aide

This meeting was called to order at 7: 00 P.M. by Chairman William Mowerson.

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

NEW ITEMS:

CENTER STREET SUBDIVISION 75.05 / 1 / 10; R-22 zone	FRONT YARD VARIANCE ZBA#08-95 FOR LOT #1 & #2 APPROVED BUILDING HEIGHT VARIANCES FOR LOT #1 & #2 APPROVED AS MODIFIED
SUNSET HOMES SUBDIVISION 70.09 / 2 / 23; R-15 zone	STREET FRONTAGE ZBA#08-98 FOR LOT #2, SIDE YARD FOR LOT #1 TOTAL SIDE YARD FOR LOT #1 APPROVED
CHUNG 78.17 / 1 / 44; R-15 zone	POSTPONED ZBA#08-99
ORANGEBURG RACQUET CLUB 77.05 / 1 / 1; LIO zone	BUFFER VARIANCE ZBA#08-100 APPROVED

OTHER BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the Chairperson executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for the State Environmental Quality Review Act (SEQRA) coordinated environmental review of actions pursuant to SEQRA Regulations § 617.6 (b)(3) the following application: Amendment of a negative declaration for Orangeburg Chase Bank Resubdivision Plan – PB# 08-64, 333 Route 303, Orangeburg, New York, 74.11/2/51 & 52; CC zone

; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

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

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 10:30 P.M.

Dated: November 19, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

DECISION

**FRONT YARD AND BUILDING HEIGHT VARIANCES FOR LOT #1 AND #2,
APPROVED**

To: Donald Brenner (Center Street Corporation) ZBA # 08-95

4 Independence Avenue
Tappan, New York 10983

Date: 11 / 5 / 08
11 / 19 / 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-95: Application of Center Street Subdivision for variances from Chapter 43, R-22 District, Section 3.12, Columns 8 (Front Yard: 40' required, 0' proposed for Lot #1, 5' proposed for Lot #2), and 12 (Building Height: 0' permitted, 37' proposed for Lot #1; 3.75' permitted, 27' proposed for Lot #2) for a proposed two lot subdivision. The premises are located on the east side of Tweed Boulevard, 20 feet south of the intersection of Town Park Road, Upper Grandview, New York, and are identified on the Orangetown Tax Map as Section 75.05, Block 1, Lot 10; R-22 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, November 5, 2008 and November 19, 2008 at which time the Board made the determination hereinafter set forth.

At the meeting of November 5, 2008 Brian Brooker, Engineer and Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Subdivision plans dated 3/14/06 with the latest revision date of 8/12/08 signed

- and sealed by Brian Brooker, P.E.
2. Architectural drawing of houses proposed for lot #1 and Lot #2 dated March 24, 2004 with the latest revision date of March 28, 2005 signed and sealed by Robert Hoene, Architect.
 3. Orangetown Planning Board decision #06-54 dated September 6, 2007.
 4. A cover letter dated August 25, 2008 from Ken DeGennaro, P.E., Brooker Engineering, P.L.L.C.
 5. A memorandum dated September 6, 2007 from John Giardiello, Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
 6. A letter dated November 20, 2007 from Den DeGennaro, P.E., Brooker Engineering.
 7. A letter dated October 9, 2008 from the County of Rockland Department of Planning signed by Salvatore Corallo, Commissioner of Planning.
 8. A letter dated October 15, 2008 from the State of New York Department of Transportation signed by Mary Jo Russo, P.E., Rockland County Permit Engineer.
 9. A letter dated August 19, 2008 from the County of Rockland Department of Highways signed by Sonny Lin, P.E.
 10. A letter dated September 29, 2008 Chris Sanders, Mayor of the Village of Piermont.

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

At the meeting of November 5, 2008 Donald Brenner, Attorney testified that the application started out a proposed three lot subdivision but the Planning Board suggested that the applicant come back with a two-lot subdivision; that the applicant was granted a preliminary approval and a negative declaration for SEQRA on September 16, 2007; and that Brian Brooker can explain the proposal to the Board.

Brian Brooker, Engineer, testified that the proposal will have 0% additional runoff after development; that the drainage has been reviewed by the Town's drainage consultant, Harvey Goldberg and the proposed drainage calculations have been accepted; that the drywells will permit the water to leach out slowly into the ground; that there will be no increase in peak discharge; that the height was measured and discussed with the building inspector; that he doesn't know why there is a difference in the measurements; that the house is a one story structure from the street; that from the back it is 57' from ridge to bottom; that very few trees are being disturbed to build the houses; that most of the house will be below the tree line when looking up from the river; that the stream is an undefined stream; that the conservation easement on the plan complies with condition #13 of the preliminary approval but the conservation easement as shown could be extended; that the roof pitch could be changed from 12 on 12 to 8 on 12; that the house on lot #2 can be shifted five feet to the south; that this shift will change the stream easement to thirty feet wide at the top; and that they would like a continuance to bring these changes back to the Board and to get clarification on the height of the proposed houses.

At the meeting of November 19, 2008 the following items were submitted for review:

1. Architectural plans dated March 24, 2005 with a revision date of March 28, 2008 signed and sealed by Robert Hoene, Architect.
2. Engineering plans (5 pages) dated 10/17/05 with the last revision date of 11/11/08 signed and sealed by Brian Brooker, P.E.
3. A letter dated November 19, 2008 from John Giardiello, Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.

Donald Brenner, Attorney and Ken DeGennaro, P.E., appeared for the application.

Donald Brenner, Attorney, testified that the last time the application was here the Board requested changes to the plan such as moving the house five feet further south and

adjusting the height by changing the slope; and the engineer can explain the other changes.

Ken DeGennaro, Engineer, testified that the height interpretation was answered in the letter from John Giardiello; that the building inspector had interpreted the code to mean an average of all the roof lines and then calculated a mean height; that John Giardiello states that the height is calculated to the man height of the highest roof line; that the pitch of the roof has been lowered to a 8 on 12 slope; which is reflected in the reduction of the height ; that the additional changes are the shift of the house on lot #2 five feet to the south; that the retaining wall was shifted south to allow for a thirty foot conservation easement which widens out to forty-two feet further sown the hill and ties into the other one that the Planning Board requested.

In view of the Planning Board having previously notified the ZBA of its intention to act as Lead Agency under the State Environmental Quality Review Act, and the Planning Board having previously determined, as Lead Agency, that the project will not have a significant adverse environmental impact through coordinated review under SEQRA, in other words a Negative Declaration by the Planning Board, the ZBA is bound by the Planning Board's SEQRA Negative Declaration and the ZBA cannot require any further environmental review under SEQRA, pursuant to SEQRA Regulations § 617.6(b)(3)(iii).

Public Comment:

No public comment.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

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

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents made part of the record, 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 front yard and building height variances as modified would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The modified building height and the conservation easement in the rear yard will ensure that the proposed houses are not intrusive to the neighboring communities.
2. The requested front yard and building height variances would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Shifting the house on lot #2 further south and increasing the size of the conservation easement will protect the undefined stream.
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 front yard and building height variances, although substantial, cause less impact on the environmental conditions of the area by saving trees and are in keeping with the character of the neighborhood as many houses are built close to the road.

5. The applicant purchased the property so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not 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 front yard and building height variances is APPROVED as MODIFIED by lowering the pitch of the roof and recalculating the height: (lot #1: 18.17' building height; Lot #2: 20.42' building height); 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 front yard and building height variances as modified (building height:18.17' for lot #1 and 20.42' for lot #2) was presented and moved by Ms. Castelli , seconded by Mr. Sullivan, and carried as follows: Mr. Mowerson, aye; Ms. Albanese, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Doherty, aye.

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

DATED: November 19, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DISTRIBUTION:

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

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

DECISION

**STREET FRONTAGE FOR LOT#2 AND SIDE YARD AND TOTAL SIDE
YARD FOR LOT #1 VARIANCES APPROVED**

To: John Atzl (Sunset Homes)

ZBA # 08-98

234 North Main Street

Date: 11 / 19 / 08

New City, New York 10956

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-98: Application of Sunset Homes Subdivision for variances from Chapter 43, R-15 District, Section 3.12, Group M, Columns 7 (Street Frontage: 75' required, 25.08' proposed for Lot # 2), 9 (Side Yard: 20' required, 19.2' existing for Lot # 1) and 10 (Total Side Yard: 50' required,43.9' proposed for Lot #1) for a proposed two lot subdivision. The site is located at 45 Sunset Road, Blauvelt, New York, and are identified on the Orangetown Tax Map as Section 70.09, Block 2, Lot 23; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 19, 2008 at which time the Board made the determination hereinafter set forth.

John Atzl, Land Surveyor, Frank Phillips, Attorney and Sean Moldow appeared and testified.

The following documents were presented:

1. Subdivision Plat for Sunset Homes dated Jan. 28, 2008 with the latest revision date of October 8, 2008 signed and sealed by John Atzl, Land Surveyor.
2. Orangetown Planning Board Decision #08-17 dated October 6, 2008.
3. A memorandum dated June 11, 2008 from John Giardiello, Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
4. A memorandum dated February 22, 2008 from the County of Rockland Department of Planning.
5. Applicant's memorandum dated November 19, 2008 signed by Frank J. Phillips, Esq..
6. A picture submitted by Barbara Ryan.
7. A letter dated November 14, 2008 from Wayne Gavioli, P.C.

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

Frank Phillips testified that on October 6, 2008 the application was granted a preliminary approval and a negative declaration for SEQRA; that the preliminary approval was for a subdivision of 1.20 acre lot into two lots; that lot #1 contains an existing dwelling and paved driveway with double access from Sunset Road that will remain; that Lot #2 will contain a proposed new dwelling and driveway with access from Sunset Road at the same location as one of the existing points for lot #1; that the Town's engineer has reviewed the drainage plan and advised on the wetlands; that there will be 0% net increase from stormwater after the construction of the new residence; that there will be a conservation easement in the rear of the property that shall protect the wetlands; that the applicant can easily establish the factors set forth in Town Law section 267-b (3) to warrant the granting of the area variances; that flag lots are permitted in the Town; that the limited street frontage does not change the character of the neighborhood; that the existing dwelling needs two area variances that do not cause an undesirable change to the character of the neighborhood; and all of the issues raised by the neighbors have been raised before the Planning Board and have been addressed.

John Atzl, Land Surveyor, testified that the drainage plan has been accepted by the Town Engineer and the Town's consulting Engineer; that there will be 0% net increase in stormwater water when the construction is complete; that the storm tech drainage system holds water and allows it to trickle out slowly to a basin in Sunset Road; that there will be a swale for Holly Court and the catch basin will be piped into the storm tech system; that the wetlands are not being touched; that there will be a 110 foot conservation easement in the rear of lot #2; that the 19.2' is existing on the westerly lot line; that there are deficiencies in the municipal drainage system in this area; that the plan before the Board will provide 0% net increase in run-off but cannot correct the problems on Holly Court; that State Law requires a fire truck to be able to get with 150 feet from a house unless the house is sprinklered that it can get within 300 feet of the house, so width is not an issue.

Sean Moldow, owner of the property, testified that he originally consulted with Mr. Gavioli regarding the subdivision.

In view of the Planning Board having previously notified the ZBA of its intention to act as Lead Agency under the State Environmental Quality Review Act, and the Planning Board having previously determined, as Lead Agency, that the project will not have a significant adverse environmental impact through coordinated review under SEQRA, in other words a Negative Declaration by the Planning Board, the ZBA is bound by the Planning Board's SEQRA Negative Declaration and the ZBA cannot require any further environmental review under SEQRA, pursuant to SEQRA Regulations § 617.6(b)(3)(iii).

Public Comment:

Lorraine Hartigan read a document into the record that was prepared by Wayne Gavioli, their attorney; (9 pages) which mentioned the SEQRA determination not being adequate; that factual findings were inadequate as required by law; that after the fact a post construction agreement was required which is recognition of the adverse environmental impact of the proposal; that this is self created and not necessary for the applicant; that there will be adverse impact during construction; that there will be more impervious surfaces; that this area constantly floods; that this is gross negligence; that all of these conditions will be exacerbated by more impervious surfaces; that there has been testimony given by the neighbors; and that there is no need to grant these variances.

Barbara Ryan, 6 Holly Court, submitted a picture of Holly Court during a storm; and testified that she is opposed to the proposed subdivision because it will change the character of the neighborhood; that the woods will be removed and change the area; and that all of the water from this proposal will be displaced onto lower ground.

Dennis Hartigan, abutting property owner testified that everything from the proposed

property flows to the lower ground on his property, Holly Court, Burrows Lane and Sunset; that the proposed house and driveway will be a barrier to the natural flow; that parts of his property are higher than the proposed subdivision but parts are also lower; and that disturbing the natural flow of the water will create problems for existing home owners.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

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

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents made part of the record, 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 variance for lot #2 and the side yard and total side yard variances for lot #1 would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The requested street frontage variance for lot #2 and the side yard and total side yard variances for lot #1 would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested street frontage variance for lot #2 and the side yard and total side yard variances for lot #1 are not substantial.
5. The applicant purchased the property so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not necessarily preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested street frontage variance for lot #2 and side yard and total side yard variances for lot #1 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 street frontage variance for lot #2 and the side yard and total side yard variances for lot #1 was presented and moved by Mr. Doherty, seconded by Mr. Sullivan, and carried as follows: Mr. Mowerson, aye; Ms. Albanese, nay; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Doherty, aye.

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

DATED: November 19, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DISTRIBUTION:

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

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

DECISION

BUFFER VARIANCE GRANTED

To: Donald Brenner (Orangeburg Racquet Club) ZBA # 08- 100

4 Independence Avenue
Tappan, New York 10983

Date: 11 / 19 / 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA #08-100: Amendment to ZBA#08-73: Application of Orangeburg Racquet Club for a variance from Chapter 43, Section 3.12, LIO District, Group CC, Notes to Use and Bulk Tables #2 (A minimum buffer of 100 feet (in addition to the 100 feet side yard requirement, is required and 0 feet is provided for the buffer) for a proposed racquet club. The site is located at Ramland Road South, Orangeburg, New York, and are identified on the Orangetown Tax Map as Section 77.05, Block 1, Lot 1; LIO zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 19, 2008 at which time the Board made the determination hereinafter set forth.

Barry Poskanzer, Architect and Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Proposed site plan dated 7/17/06 revised 1/16/08 signed and sealed by Barry Poskanzer, Architect.
2. Plans signed and sealed by Peter Jon Wilner, P.E. (9 pages) dated 1/16/09, 3/17/08 with the latest revision dated of 4/2/08.
3. Cover letter dated November 6, 2008 from Donald Brenner.
4. Planning board decision #08-14.
5. A picture submitted by Beth DeCoursey.

In view of the Planning Board having previously notified the ZBA of its intention to act as Lead Agency under the State Environmental Quality Review Act, and the Planning Board having previously determined, as Lead Agency, that the project will not have a significant adverse environmental impact through coordinated review under SEQRA, in other words a Negative Declaration by the Planning Board, the ZBA is bound by the Planning Board's SEQRA Negative Declaration and the ZBA cannot require any further environmental review under SEQRA, pursuant to SEQRA Regulations § 617.6(b)(3)(iii).

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

Donald Brenner, attorney, testified that the application received variances in July, that they went to the Architectural Review Board on October 7, 2008 and were preparing for go to the Planning Board for final approval when the director of the Building Department stated that they needed to get clarification on the buffer; that prior approval was granted on this parcel in ZBA#03-16a on March 3, 2005 and no buffer variance was necessary; that the previous plan had parking and lighting on the outside of the building, closer to the residences; that there is a 100' buffer on this plan that is undisturbed except in some areas by neighbors that have built playgrounds and sheds on the applicant's property; that the 100' side yard or buffer will not be disturbed; that there is a 100' buffer shown on the drawing plus it is being reinforced by adding additional trees; that we are talking about a side yard differential; that five years ago the same area would have been a parking lot with lights and it was approved; that a full environmental study has been done; that drainage has approval; that if 200' was imposed a building couldn't be built in these economic times; that all of the large trees in the buffer area are staying; and that no other building in this area conforms to the 200'.

Barry Poskanzer, Architect, testified that the tennis facility is proposed to be constructed

on a five acre lot; that previously the building that was approved had parking on three sides of it; that they were aware of the residential area when this plan was designed; that the parking is designed away from the residential area; and that if the building was turned around the parking lot would be facing the residences and there would be a 100' buffer but that wouldn't necessarily be better for the neighborhood.

Public Comment:

Patrick Weir, 159 Cowpens testified that this application does not belong in our neighborhood; that there are regulations and coeds that should be met; that the is code is 200' and now it is 0' and this does not belong on this site; and he would ask the Board to please not grant this variance.

Dominic Crispino, 19 Recoat Lane, stated that adverse procession could be claimed for that property; that the playground area and shed were there when he purchased his property; that Brenner brought up our property; that they should comply with the code.

Michael Sullivan, 10 Redcoat Lane, Tappan testified that there area already flooding problems in the area; that six feet trees can't replace hundred year old trees; that lighting is a problem; that they can already see the lights on Veterans field.

Rudy Dupy, 1 Tory Circle, testified that noise an pollution are a concern; that the if the buffer is reduced these items will impact more; that in 1984 when he purchase his house he was told that the woods would remain and that no one could ever build there.

Beth DeCoursey, 9 Tory Circle, testified that 14 years ago the real estate told her that the woods might be developed for more residences; that she knew that there had to be a 200' buffer that was o-k; that now there will be no buffer and a variance can be granted; and she submitted a picture of the mature tall trees that will be removed.

Dunsheng Yang testified that he bought his house three years ago for top dollar and he hopes the Board will consider how close this building is to their homes.

Melissa Stone, 35 Constitution Drive, testified that she echo's what her other neighbors said and that this will diminish property values; that she was told that town houses would be constructed on the site not this gigantic building.

Bridget Sullivan, 10 Redcoat Lane testified that she doesn't understand how something like this could be overlooked; that it seems weird; that the economy is isn't good; that the building is enormous; that this facility will not be used by Orangetown residents; that Orangetown residents don't play tennis; that Bergen people play tennis; no one in Orangetown plays tennis and this facility does not belong in a working class neighborhood.

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 made part of the record, 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 buffer variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposal maintains a 100' side yard that the applicant is treating as a buffer area with tree planting and a fire lane.
2. The requested buffer variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant could potentially reconfigure the plan and construct the parking lot on the outside of the building facing neighboring residences and meet the required minimum side yard and buffer requirements, but this alternative would be more intrusive to the surrounding residences because of parking lot lights and headlights from cars.
3. The requested buffer variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has agreed to treat the required minimum 100' side yard as a buffer area, and the proposed tennis facility will have much less of an impact on the area than other conforming alternative proposals that could be built on this lot.
4. The requested buffer variance, although substantial, is less detrimental, and more desirable, than other potentially approvable plans that would conform to zoning regulations, as mentioned in paragraphs "2" and "3" above.
5. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance for the required buffer.
6. The applicant purchased the property so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not 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 buffer 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 buffer variance was presented and moved by Mr. Mowerson, seconded by Mr. Sullivan, and carried as follows: Mr. Mowerson, aye; Ms. Castelli, nay; Mr. Doherty, aye; Mr. Sullivan, aye; and Ms. Albanese, nay.

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

DATED: November 19, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -L.P.

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

