

MINUTES  
ZONING BOARD OF APPEALS  
November 4, 2009

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

ABSENT:                    NONE

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

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

SAUMA 70.11 / 1 / 5.1; R-80 zone	8 FOOT GATE VARIANCE APPROVED WITH A FRONT YARD SET BACK OF 60 FEET	ZBA#09-72
ELLIOT 68.18 / 1 / 14; R-15 zone	POSTPONED	ZBA#09-73
O & R CORPORATE PARK DRIVE 73.15 / 1 / 19; LIO zone	FRONT YARD, 25' BUILDING HEIGHT FOR WALL AND 41' HEIGHT FOR LIGHTNING MAST APPROVED	ZBA #09-74
O & R CORPORATE PARK DRIVE PERFORMANCE STANDARDS 73.15 / 1 / 19; LIO zone	APPROVED	ZBA #09-75
BONHEUR AMENDMENT 68.11 / 2 / 53; R-15 zone	24' FRONT YARD AMENDMENT APPROVED	ZBA#09-76

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: SMK Tweed Boulevard Site Plan, 7 Tweed Boulevard, Upper Grandview, NY 71.09 / 1 / 54;



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

Jacques Sauma testified that he has a five acre lot and the house is set back very far from the road; that he is proposing to install a decorative gate for security purposes; that the gate is 14' wide and goes from 5 ½' to 8' in the center; that it will be attached to brick/stone columns and it would be set back about 60'; that the gate was already made for him; that he moved here from Long Island and out there you did not need permission for an automated gate on the driveway; that he had the gate designed and made in Mexico and it cost \$26,000.00; that he has a building permit for the pool; that he has already planted many trees on the property and plans to add more trees on the property edge outside of the pool area.

Public Comment:

No public comment.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS:**

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested 8' gate height variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The house is set back off of the road quite a distance and the gate itself will be constructed 60' from the front property line.
2. The survey clearly defines a vegetative buffer in the area of the proposed pool. Although not a condition of this approval/grant, the Board suggests that the OBZPAE take note of this buffer area.
3. The requested 8' gate height variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The house is set back off of the road quite a distance and the gate itself will be constructed 60' from the front property line.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
5. The requested 8' gate height variance, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. The house is set back off of the road quite a distance and the gate itself will be constructed 60' from the front property line.
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 8' gate height variance is APPROVED with the SPECIFIC CONDITION that the gate is installed 60' from the front property line; 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 8' fence height variance was presented and moved by Ms. Albanese, seconded by Ms. Castelli, and carried as follows: Ms. Salomon, aye; Ms. Castelli, aye; Mr. Mowerson, aye; Mr. Sullivan, aye; and Ms. Albanese, 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 4, 2009

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

**FRONT YARD AND BUILDING HEIGHT VARIANCES APPROVED**

To: Anthony Montalbano (O&R)

ZBA # 09-74

67 North Main Street  
New City, New York 10965

Date: 11/ 4 / 09

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#09-74: Application of Orange & Rockland Utilities, Inc. for variances from Chapter 43 (Zoning) of the Code of the Town of Orangetown, LIO District, Section 3.12, Group CC, Columns 8 (Front Yard : 100' required, 70' proposed), 12 (Building Height for wall: 17.5' permitted, 25' proposed) and/or 12 (Building Height: Lightning Mast: 41' permitted, 51' proposed) and/or Section 5.23 ( Interpretation for lightning mast; no height variance necessary) for a proposed electric substation located at 2000 Corporate Drive, Orangeburg, New York, and are identified on the Orangetown Tax Map as Section 73.15, Block 1, Lot 19; LIO zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 4, 2009 at which time the Board made the determination hereinafter set forth.

Anthony Montalbano, Attorney, Chief McGoldrick, Chief Engineer, Chuck Utsig, CMX Engineer, Kevin Horan, Verizon Wireless Real Estate, appeared and testified.

The following documents were presented:

1. Orange & Rockland Corporate Drive Substation Amended Site Plan with the latest revision date of 9/21/09 signed and sealed by W. Charles Utschig, Jr. P.E.
2. A memorandum dated September 28, 2009 from John Giardiello, Director of OBZPAE, Town of Orangetown.
3. Planning Board Decision #09-26 dated September 16, 2009 with a negative declaration for SEQRA.
4. A letter dated

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that 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 this application, pursuant to coordinated review under the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.6 (b) (3); and since the Planning Board conducted SEQRA review and on September 16, 2009, rendered an environmental determination of no significant adverse environmental impacts to result from the proposed land use action (i.e., a "Negative Declaration" or "Neg Dec"), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulations § 617.6 (b)(3). The motion was seconded by Ms. Salomon and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Ms. Albanese, aye; Mr. Sullivan; aye; and Mr. Mowerson, aye.

Anthony Montalbano testified that this application has been reviewed by the Planning

Board three times, starting in April, again in July and received a preliminary approval and a negative declaration in September; that the preliminary approval was conditioned upon getting the required variances from the Zoning Board; that the proposed substation has been relocated on the lot to satisfy concerns of the neighbors in New Jersey; that the station has been relocated closer to the existing sewer district property; that the screening wall is being proposed at the request of the neighbors; that the wall is being proposed at 25' with a lightning pole higher than that; that they are requesting either a height variance for the proposed lighting pole or a variance for it; that the area will be landscaped with trees at the height of 8 to 10' and that at this location it is impossible to meet the 100' front yard setback requirement; that meeting the setback places the substation in an area that the neighbors are opposed to; and that they would appreciate the Board considering the granting of the variances.

Peter McGoldrick, Chief Engineer, testified that these variances will not produce an undesirable change in the neighborhood or be a detriment to nearby properties; that these variances will allow the construction of an electrical substation that will harmonize with the neighboring properties as well as protect the station; that the walls and extensive landscape screening were requested by the neighboring community at the Planning Board meeting; that the station is proposed to be located on the property owned by Verizon in the LIO zone and will be located in an area of the site that allows it to be shielded from the view of the residential properties in both New York and New Jersey; that none of the commercial property owners objected to the proposed substation; that the front yard depth variance and wall height can be eliminated by moving the station to the northeast and away from the southerly lot line; that this would push the station closer to the residential properties in Orangetown by about 30 feet; that the Planning Board and the company felt that the proposed placement of the station benefited the neighbors; that the wall height was proposed by the residential neighbors to the south to shield any views of the station; that the height of the lightning masts is dictated by engineering design to protect the station equipment from lightning strikes; that the entire substation would have to be moved approximately 70' to the north in order to attain the minimum 204' from the property line from two lightning masts that this would result in the substation being approximately 65' closer to the neighbors in New York; that in general there is no reasonable alternative to the location of the station because of the need to be in the proximity of the Verizon complex in order to serve their growing loads; that the site has to be as close to the Verizon complex as possible to reliably serve their loads; that the original location and design met with neighbor's objections and the present location and design was accepted by the surrounding neighbors at the Planning board meeting; that the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; that these variances will allow O&R to construct the station to serve a critical customer, Verizon and provide for greater reliability for the surrounding area; that the station location will allow the station to be hidden from views from the adjacent residences making the requested variances having no impact on the area; and the site proposed location was carefully chosen based on where the station had to be located to provide the size and type of service required by Verizon as well as the overall ORU electric distribution service territory; that as it is located, the station, will be the main feed to Verizon Complex as well as the surrounding area to provide reliable backup for the surrounding substation that currently do not have the capacity to feed this area of the ORU system in Orangetown.

Chuck Utzig, EMX Engineer, testified that the existing retaining wall will be rebuilt a little higher to avoid disturbing the existing vegetative buffer on that side; that the grade goes up and the screen wall will be built on three sides ; that the setback meets the code of 100' setback on other sides but not the front; and that it is understood that if the reserved parking needs to be built, it would require a rear yard variance; and they would return to the Board at that time.

Public Comment:

Tom Herten, Attorney for the residents in Old Tappan, New Jersey, testified that the residents he represents are in support of the variances; that his application before the Board is being held in abeyance until these variances are granted; that there is a consensus that this location with the wall and landscaping achieve most of the goals of the neighbors; and protects the character of the neighborhood.

Melody Fiore, 99 Hunt Road, testified that she has been an Orangetown resident for 40 years; that her property was rezoned LIO from residential; that she is supporting the 25' retaining wall that will be built 500' from her property; that she still has environmental concerns but is happy with this proposal.

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

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

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

#### FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested front yard, and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The height variance for the screening wall is necessary to screen the electric substation for the neighbors.
2. The applicant has not requested, in this application ZBA#09-74, that the ZBA grant variances for the encroachment by the future reserved parking area into the rear yard and side yard setbacks located in the southwestern portion of the lot, and the ZBA has not reviewed, granted or denied such variances as part of this application. At such future time that the applicant or property owner installs, constructs or builds, or seeks a building permit to install, construct or build, this future reserved parking area, than, at such time, the applicant or property owner shall first obtain variances from the ZBA for said encroachments.
3. The requested front 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 height variance for the screening wall is necessary to screen the electric substation for the neighbors.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
5. The requested front yard and building height variances, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. The height variance for the screening wall is necessary to screen the electric substation for the neighbors.
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 front yard and building height variances are **APPROVED** with the **SPECIFIC CONDITION** that the applicant has not

requested, in this application ZBA#09-74, that the ZBA grant variances for the encroachment by the future reserved parking area into the rear yard and side yard setbacks located in the southwestern portion of the lot, and the ZBA has not reviewed, granted or denied such variances as part of this application. At such future time that the applicant or property owner installs, constructs or builds, or seeks a building permit to install, construct or build, this future reserved parking area, than, at such time, the applicant or property owner shall first obtain variances from the ZBA for said encroachments; 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 was presented and moved by Mr. Sullivan, seconded by Ms. Salomon, and carried as follows: Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

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

DATED: November 4, 2009

ZONING BOARD OF APPEALS



TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

**PERFORMANCE STANDARDS VARIANCE APPROVED**

To: Anthony Montalbano (O&R)

ZBA # 09-75

67 North Main Street

Date: 11/ 4 / 09

New City, New York 10965

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#09-75: Application of Orange & Rockland Utilities, Inc. for variances from Chapter 43, LIO District, Column 4, # 4 Section 4.12 Performance Standards Review for a proposed electric substation located at 2000 Corporate Drive, Orangeburg, New York, and are identified on the Orangetown Tax Map as Section 73.15, Block 1, Lot 19; LIO zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 4, 2009 at which time the Board made the determination hereinafter set forth.

Anthony Montalbano, Attorney, appeared and testified.

The following documents were presented:

1. Orange & Rockland Corporate Drive Substation Amended Site Plan with the latest revision date of 9/21/09 signed and sealed by W. Charles Utschig, Jr. P.E.
2. A memorandum dated September 28, 2009 from John Giardiello, Director of OBZPAE, Town of Orangetown.
3. Use Subject to Performance Standards Resume of Operation.
4. Fire Prevention Supplement.
5. Material Data Sheets (13 pages).
6. Analysis of Acoustical Impact prepared by John Erdreich, P.D. dated July 7, 2009 (26 pages).
7. Magnetic Field Modeling Assessment dated September 1, 2009 by Eneritech Consultants (20pages).
8. Planning Board Decision #09-26 dated September 16, 2009 with a negative declaration for SEQRA.
9. A letter dated

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 exempt from the State Environmental Quality Review Act (SEQRA) pursuant to SEQRA Regulations §617.5 (c) (28) engaging in a review to determine compliance with technical requirements which does not require SEQRA environmental review. The motion was seconded by Ms. Salomon and carried as follows: Mr. Mowerson, aye; Ms.

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

Chuck Utsig, CMX Engineer, testified that the substation will only be manned during its construction; that once it is completed it is controlled by an operator in Spring Valley seven days a week, 24 hours a day; that maintenance crews will visit periodically; and that it can be shut down from the Spring Valley offices.

Peter McGoldrick, Chief Engineer, testified that the noise study for the tree transformers was completed and the conclusion was that the ambient noise in the area was greater than the noise from all three transformers; and that the proposed wall helped this study.

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

Public Comment:

No public comment.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS:**

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. Based upon the information contained in applicants' Resume of Operations and Equipment, the Fire Prevention Supplement, the letter dated 11/5/2009 from Michael Bettmann, Chief Fire Inspector, Bureau of Fire Prevention of the Town of Orangetown, the letter of the Director of the Orangetown Department of Environmental Management and Engineering dated 10/15/09, concluding there is no reasonable doubt as to the likelihood of applicant's conformance, 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 the Orangetown Zoning Code (Chapter 43) 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 is **APPROVED** with the **SPECIFIC CONDITION** that the applicant adhere to all of the requirements set forth by the Bureau of Fire Prevention; 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 Performance Standards Conformance Approval as conditioned was presented and moved by Mr. Mowerson, seconded by Ms. Salomon, and carried as follows: Ms. Salomon, aye; Mr. Mowerson, aye; Ms. Castelli, aye; Mr. Sullivan, aye; and Ms. Albanese, 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 4, 2009

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DECISION

**ACCESSORY STRUCTURE FRONT YARD VARIANCE APPROVED**

To: Charles and Caroline Bonheur

ZBA # 09-76

211 West Crooked Hill Road  
Pearl River, New York 10965

Date: 11/ 4 / 09

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#09-76: Application of Charles and Caroline Bonheur for an amendment to ZBA#09-54 which requested variances from Chapter 43 (Zoning) of the Code of the Town of Orangetown Section 5.227, R-15 District (Accessory Structure Height in side or rear yard: 15' permitted, 16' 4" proposed) for a two-car garage at an existing single-family residence. The premises is located at 211 West Crooked Hill Road, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 68.11, Block 2, Lot 53; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 4, 2009 at which time the Board made the determination hereinafter set forth.

Charles and Caroline Bonheur appeared and testified.

The following documents were presented:

1. Survey dated July 8, 2008 with the latest revision date of June 30, 2009 signed and sealed by Robert R. Rahnefeld, L.S.
2. A survey dated November 21, 1986 signed and sealed by William Yuda, L.S.
3. ZBA Decision #09-54 dated September 23, 2009.
4. A letter of explanation dated October 23, 2009 from the Bonheur family.

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

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

Charles Bonhuer testified that he needs an amendment from his approval because he took the measurements off of an older survey; that the new survey gives him one foot less property than the original survey; that the foundation digging was done and Rick Oliver, the building inspector came to inspect and stopped the work because the measurements were off by two feet; that the structure is encroaching two more feet into the front yard; that he would like to apologize for any problems that he may have created.

Public Comment:

No public comment.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS:**

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested amendment to the front yard placement of the accessory structure will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar accessory structure buildings have been constructed in the area.
2. The requested amendment to the front yard placement of the accessory structure will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar accessory structure buildings have been constructed in the area.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. Similar accessory structure buildings have been constructed in the area.
4. The requested amendment to the front yard placement of the accessory structure is not substantially different from the approval granted in ZBA# 09-54 and will not have an adverse effect or impact on the physical or environmental conditions of the area. Similar accessory structure buildings have been constructed in the area.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

**DECISION:** In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for the requested amended front yard placement of the accessory structure 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 amended front yard placement of the accessory structure was presented and moved by Ms. Salomon, seconded by Ms. Castelli, and carried as follows: Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

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

DATED: November 4, 2009

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide



















