

MINUTES  
ZONING BOARD OF APPEALS  
October 1, 2008

MEMBERS PRESENT:     PATRICIA CASTELLI  
                              WILLIAM MOWERSON  
                              DANIEL SULLIVAN  
                              JOHN DOHERTY

ABSENT:                     NANETTE ALBANESE

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

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

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

CONTINUED ITEMS:

EGAN 69.08 / 1 / 4.3; R-40 zone	FLOOR AREA RATIO, SIDE YARD, REAR YARD AND BUILDING HEIGHT VARIANCES APPROVED WITH CONDIIONS	ZBA#08-86
TRAYNOR 64.20 / 1 / 5.3; R-40 zone	POSTPONED	ZBA#08-87

NEW ITEMS:

BUTERBAUGH 78.17 / 2 / 40; R-40 zone	SIDE YARD VARIANCE APPROVED	ZBA#08-89
BARRON 69.18 / 2 / 22; R-15 zone	ACCESSORY STRUCTURE DISTANCE VARIANCE APPROVED	ZBA#08-90
FLORIO 69.20 / 1 / 10; R-15 zone	POSTPONED	ZBA#08-91

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: Erie Street Shopping Center Site Plan: Addition to existing shopping center; Blauvelt Mini Mall , Blauvelt, NY, 70.14 / 4/ 31, 34, 35, 36 & 37; CS zone; Sapienza Site Plan, 253 South Boulevard, Upper Grandview, New York, 65.20 / 1 17; R-15 zone; Luckhardt Site

Plan Critical Environmental Area; West side of Route 9W, Upper Grandview, NY 71.13 / 1/ 35; 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 8:30 P.M.

Dated: October 1, 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

**FLOOR AREA RATIO, SIDE YARD, REAR YARD AND BUILDING HEIGHT  
VARIANCES APPROVED AS MODIFIED**

To: Richard and Theresa Egan

ZBA # 08- 86

8 P.F.C. Dorsey Court

Date: 9 / 17 / 08

Orangeburg, New York 10962

10 / 1 /08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-86: Application of Richard and Theresa Egan for variances from Chapter 43, R-40 District, Section 3.12, Group E, Columns 4 ( Floor Area Ratio: .15 permitted, .16 proposed), 9 ( Side Yard: 30' required, 12.5' proposed), 11 (Rear Yard: 50' required, 16.25' proposed), and 12 (Building Height: 11'11" permitted, 14'8" proposed) for a pool cabana at a single-family residence. The premises are located at 8 P.F.C. Dorsey Court, Orangeburg, New York, and are identified on the Orangetown Tax Map as Section 69.08, Block 1, Lot 4.3; R-40 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, September 17, 2008 and October 1, 2008 at which time the Board made the determination hereinafter set forth.

Richard Egan and Barry Terach, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans dated June 10, 2008 with a revision date of 9/21/08 signed and sealed by Barry Terach, Architect.

On advice of Ms. Gionta, Acting Attorney to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA) Regulations which does not require SEQRA environmental review. The motion was seconded by Mr. Sullivan and carried as follows: Mr. Mowerson, aye; Mr. Sullivan, aye; Mr. Doherty; aye; and Ms. Castelli, aye. Ms. Albanese was absent.

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

At the meeting of September 17, 2008 Barry Terach, Architect, testified that Mr. Eagan is proposing to build a new cabana for the pool; that the center of the caana would be an open air masonry tent with brick pillars and a roof;with appendixes on each side with a bathroom and storage space; that the exterior of the structure would match the house with stucco accents; that the cabana is proposed to be set at an angel to the property line; andthey would like to request a variance to get an answer regarding the proposed height variance.

Richard Egan testified that he spoke with adjacent neighbors and showed them the plans and that he is planning on planting evergreens as a screening; and that he would like a continuance to see about moving the cabana further away from the property line and clarifying the requested height variance.

At the October 1, 2008 meeting Richard Egan and Barry Terach, Architect, appeared..

Richard Egan testified that he has owned the house for three years; that the cabana has been moved over a foot and a half closer to the pool; that he will be adding more screening for the neighbors property; and that he plans to plant approximately eight 14 to 18 foot tall blue spruce along the southern side of the property and in the corner.

Barry Terach, Architect, testified that he spoke to John Giardiello and Bert von Wurmb regarding the height variance and that they drew a diagram explaining how the height was determined; that he tried lowering the pitch of the roof from eight on twelve to seven on twelve but it only lowered the height by three inches and wasn't worth the difference in the roof for only a three inch savings on the height variance; that he measured from the midpoint of the hip or gable roof at a location equal to the distance from the property line; that if the Board wants to measure to the eve of the roof he has no problem with that either; and that he would like a determination so that the project can move forward.

Public Comment:

No public comment.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS:**

After personal observation of the property, hearing all the testimony and reviewing the

documents presented, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested floor area ratio, side yard, rear 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. Other pool cabanas have been constructed in the area and the applicant has agreed to plant eight 14' to 18' tall blue spruce trees along the southern and rear property lines for screening.
2. The requested floor area ratio, side yard, rear yard and building height variances as modified would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining variances.
4. The requested floor area ratio, side yard, rear yard and building height variances are not substantial.
5. The applicant purchased the property so the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested floor area ratio, side yard, rear yard and building height variances is APPROVED; with the SPECIFIC CONDITION that eight 14' to 18' blue spruce trees are planted as screening on the southern and rear of the property; 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 .16 floor area ratio, 12.5' side yard, 16.25' rear yard and building height as determined by John Giardiello variances was presented and moved by Mr. Mowerson, seconded by Mr. Sullivan, and carried as follows: Mr. Mowerson, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Doherty, aye. Ms. Albanese was absent.

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

DATED: October 1, 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 -B.vw.

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

DECISION

**SIDE YARD VARIANCE APPROVED**

To: Keith and Sarah Buterbaugh

ZBA # 08-89

47 Closter Road

Date: 10 / 1 / 08

Palisades, New York 10964

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-89: Application of Keith and Sarah Buterbaugh for a variance from Chapter 43, R-40 District, Section 3.12, Group E, Column 9 (Side Yard: 30' required, 20.8' existing non-conforming, 20' proposed) for the construction of deck at an existing single-family residence. The premises are located at 47 Closter Road, Palisades, New York, and are identified on the Orangetown Tax Map as Section 78.17, Block 2, Lot 40; R-40 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 1, 2008 at which time the Board made the determination hereinafter set forth.

Keith Buterbaugh and Wayne Garrison appeared and testified.

The following documents were presented:

1. Proposed deck plans not signed or sealed.

On advice of Ms. Gionta, Acting Attorney to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA) Regulations which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Mr. Mowerson, aye; Mr. Doherty; aye; and Ms. Castelli, aye. Ms. Albanese was absent.

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

Wayne Garrison testified that the Buterbaugh's applied for and received a side yard variance for the addition at the rear of the house; that the addition is finished and the original plan called for a small stoop at the back of the house but the Buterbaugh's thought that they would prefer to build a rear deck off the new addition; that to keep the proposed deck symmetrical to the rest of the house they will have to encroach a little further into the side yard; that they would have to remove or move the deck over more than the eight inches to build the proposed deck without a variance because of the placement of the house on the lot and the way the property line runs.

Keith Buterbaugh testified that the neighbor's house is fifty feet from the property line; that the house is not set straight on the lot; that he would like to keep the deck as proposed but if he has to cut it down in size he will; that the house is very symmetrical and he proposed the deck to keep that symmetry; and that he would cut it back if he has to.

Public Comment:

No public comment.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested side yard variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The requested side yard variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining a variance.
4. The requested side yard variance is not substantial.

5. The applicant purchased the property so the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested side yard variance is APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

The foregoing resolution to approve the application for the requested side yard variance was presented and moved by Mr. Doherty, seconded by Ms. Castelli, and carried as follows: Mr. Mowerson, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Doherty, aye. Ms. Albanese was absent.

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

DATED: October 1, 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 – J.P.

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

**DECISION**

**ACCESSORY STRUCTURE DISTANCE VARIANCE APPROVED**

To: Richard Barron

ZBA # 08-90

80 Noyes Street  
Pearl River, New York 10965

Date: 10 / 1 / 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-90: Application of Richard Barron for a variance from Chapter 43, R-15 District, Section 5.153 (Accessory Structure Distance: 15' required, 5' existing) for a deck at an existing single-family residence. The premises are located at 80 Noyes Street, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 69.18, Block 2, Lot 22; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 1, 2008 at which time the Board made the determination hereinafter set forth.

Richard and Katherine Barron appeared and testified.

The following documents were presented:

1. Two survey drawings.

On advice of Ms. Gionta, Acting Attorney to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA) Regulations which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Mowerson, aye; Mr. Sullivan, aye; Mr. Doherty; aye; and Ms. Castelli, aye. Ms. Albanese was absent.

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

Richard Barron testified that they were replacing their existing deck with a smaller deck; that they got the permit in August and paid the contractor to build a deck that is five feet smaller than the old deck; that when Bert came out to inspect the deck he told them that they needed a variance because the deck is too close to the garage; that the contractor applied for the permit with a survey that did not show the garage; that they are here to get



the variance for the distance between the garage and the deck.

Kathleen Barron testified that they needed a new deck because they couldn't walk up or down the old steep steps; that this deck has much better steps.

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 presented, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested accessory structure distance variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The requested accessory structure distance variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining a variance.
4. The requested accessory structure distance variance although substantial will not create an undesirable change in the character of the neighborhood because the property is sloped.
5. The applicant purchased the property so the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

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

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

DATED: October 1, 2008

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

DISTRIBUTION:

APPLICANT  
ZBA MEMBERS  
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FILE,ZBA, PB  
CHAIRMAN, ZBA, PB, ACABOR











