

MINUTES  
ZONING BOARD OF APPEALS  
SEPTEMBER 19, 2012

MEMBERS PRESENT:           WILLIAM MOWERSON  
                                  JOAN SALOMON  
                                  NANETTE ALBANESE  
                                  PATRICIA CASTELLI  
                                  DANIEL SULLIVAN  
                                  MICHAEL BOSCO, ALTERNATE

ABSENT:                       NONE

ALSO PRESENT:           Dennis Michaels, Esq.           Deputy Town Attorney  
                                  Melissa Pezzullo,               Official Stenographer  
                                  Deborah Arbolino,               Administrative Aide  
                                  Elizabeth Decort,               Clerk-Typist

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

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

NEW ITEMS:

SAMMON 69.19 / 1 / 53; R-15 zone	REAR YARD VARIANCE APPROVED	ZBA#12-64
ENGLEMANN 74.10 / 1 / 37; RG zone	REAR YARD VARIANCE APPROVED	ZBA#12-65
POPPE 69.15 / 2 / 10; R-15 zone	SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED	ZBA#12-66
FORTESCUE 64.20 / 1 / 25; R-40 zone	SIDE YARD VARIANCE APPROVED AS MODIFIED TO 9' BUILDING HEIGHT VARIANCE APPROVED	ZBA#12-67

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.

DECISION

**REAR YARD VARIANCE APPROVED**

To: Margaret Sammon

ZBA # 12-64

39 Kinsley Grove  
Pearl River, New York 10965

Date: September 19, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-64: Application of Margaret Sammon for a variance from Chapter 43 (Zoning), Section 3.12, R-15 District, Column 11 (Rear Yard: 35' required, 16' proposed) for a deck surrounding an existing pool at an existing single-family residence. The premises are located at 39 Kinsley Grove, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.19, Block 1, Lot 53 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 19, 2012 at which time the Board made the determination hereinafter set forth.

Margaret and Patrick Sammon appeared and testified.

The following documents were presented:

1. Copy of site plan with pool and proposed deck drawn on it.
2. Six letters in support of the application.

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

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

Margaret Sammon testified that they installed a 15' x 30' above-ground pool in June with a deck half way around the pool; that they would like to continue the deck around the remainder of the pool; that there are a lot of small kids on the block and they would like to have adult supervision on both ends of the pool for safety reasons; that the deck is four feet wide around the pool and is wide enough for an adult to sit in a chair and supervise any kids in the pool; that they have letters of support from six of their neighbors; and that the north side of the yard is well screened with trees.

Patrick Sammon testified that the rear door of the house has an alarm and the pool does have the proper safety gates to meet code.

Public Comment:

No public comment.

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

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

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

#### FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The rear property line is well screened with trees and the proposed deck extension is only four feet wide, just wide enough to accommodate a chair for an adult to sit and supervise the children in the pool.
2. The requested rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The rear property line is well screened with trees and the proposed deck extension is only four feet wide, just wide enough to accommodate a chair for an adult to sit and supervise the children in the pool.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested rear yard variance, although somewhat substantial, affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The deck extension will provide an additional area for an adult to supervise children in the pool.
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 variance.

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

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

#### DECISION

#### REAR YARD VARIANCE APPROVED

To: Michael Englemann

ZBA # 12-65

36 Highview Avenue

Date: September 19, 2012

Orangeburg, New York 10962

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-65: Application of Michael Englemann for a variance from Chapter 43 (Zoning), Section 3.12, RG District, Columns 11 (Rear Yard: 25' required, 21.7' proposed) for an existing deck at an existing single-family residence. The premises are located at 36 Highview Avenue, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 74.10, Block 1, Lot 37; RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 19, 2012 at which time the Board made the determination hereinafter set forth.

Michael Englemann appeared and testified.

The following documents were presented:

1. Survey dated July 31, 2012 signed and sealed by Stephen F. Hoppe, L.S.
2. Cover letter dated July 26, 2012 signed and sealed by Joseph Corless, P.E., with attachments (15 pages).

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application

is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and /or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

Michael Englemann testified that he has owned the house for ten years; that five years ago he built a deck over an existing patio without a permit; that he is in the process of selling the house; that when he came in to get a certificate of occupancy for the deck, he found out that he needed a variance for the deck; that the south side of his property meets the parking lot for Cortwood Village Senior Housing; that there is approximately fifty feet between his deck and the nearest apartment.

Public Comment:

No public comment.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The deck has existed for five years without complaint and there is approximately fifty feet between the deck and the nearest building on the adjacent lot.
2. The requested rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The deck has existed for five years without complaint and there is approximately fifty feet between the deck and the nearest building on the adjacent lot.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested rear yard variance is not substantial.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

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

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

DECISION

SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED

To: Edwin and Pamela Poppe

ZBA # 12-66

83 Wilson Street  
Blauvelt, New York 10913

Date: September 19, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-66: Application of Edwin and Pamela Poppe for variances from Chapter 43

(Zoning), R-15 District, Group M, Section 3.12, Column 9 (Side Yard: 20' required, 15.7') and 10 ( Total Side Yard: 50' required, 40.7' proposed) for an existing deck and Tiki Hut at an existing single-family residence. The premises are located at 83 Wilson Street, Blauvelt, New York and identified on the Orangetown Tax Map as Section 69.15, Block 2, Lot 10, in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 19, 2012 at which time the Board made the determination hereinafter set forth.

Edwin Poppe and Jonathan Hodash, Architect, appeared and testified.

The following documents were presented:

1. Site plan dated July 30, 2012 signed and sealed by Jonathan Hodash, Architect.
2. Six computer generated pictures of the rear yard, deck and Tiki Structure.
3. Three Google maps pictures of site.

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

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

Jonathan Hodash, Architect, testified that there is an existing permit issued for renovation work on the house; that when the Building Inspector came to do an inspection he determined that the Tiki structure was a permanent structure built into the deck and that he needed variances because it is considered attached to the primary residence; that it is built into the existing deck and cannot be moved; that it was built without a permit; that they are before the Board to legalize the existing structure; and that the deck is not being extended, he labeled it proposed but it does exist and is not being changed.

Edwin Poppe testified that he has owned the house for ten years; that there are four people in his family; that the Tiki hut and deck were built without a permit and he wants to legalize them.

Public Comment:

No public comment.

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

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

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

#### FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested side yard and total side yard variances will not produce an

undesirable change in the character of the neighborhood or a detriment to nearby properties. The Tiki hut and deck have existed for several years without complaint and are an enhancement to the property. The structure is a permanent structure that is attached to the deck and would be quite costly to remove and there have been no complaints lodged against the structures.

2. The requested side yard and total side yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Tiki hut and deck have existed for several years without complaint and are an enhancement to the property. The structure is a permanent structure that is attached to the deck and would be quite costly to remove and there have been no complaints lodged against the structures.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested side yard and total side yard variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

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

General Conditions:

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

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

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

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

which legally permits such occupancy.

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

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

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

#### DECISION

#### SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED AS MODIFIED, AND WITH SPECIFIC CONDITION

To: James and Heather Fortescue

ZBA # 12-67

1 W.O. Bauer Lane

Date: September 19, 2012

Orangeburg, New York 10962

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-67: Application of James and Heather Fortescue for variances from Chapter 43 (Zoning), R-40 District, Group E, Section 3.12, Column 9 (Side Yard: 30’ required, 6’ proposed for gazebo) and 12 ( Building Height: 5.41’ permitted, 16.25’ proposed) for a pool house at an existing single-family residence. The premises are located at 1 W.O. Bauer Lane, Orangeburg, New York and identified on the Orangetown Tax Map as Section 64.20, Block 1, Lot 25, in the R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 19, 2012 at which time the Board made the determination hereinafter set forth.

James Fortescue and Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Plot plan for Building Permit Proposed Cabana Land Survey for Fortescue dated July 9, 2012 revised July 12, 2012 signed and sealed by Robert E. Sorace, PLS.
2. Architectural plans for proposed cabana dated July 12, 2012 with the latest revision date of August 1, 2012 signed and sealed by Barry Terach, Architect.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and /or (13); which does not

require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

James Fortescue testified that the house was nine years old when he purchased it five years ago; that he and his wife did not have children when they purchased the house; that they have two young children now; that his wife is from south Jersey; that he wants to stay in this area; that his wife put a lot of work into the design and location of the proposed cabana; that the rear yard does substantially slope down; that it is located so that everything in rear yard can easily be viewed from the kitchen window; that the neighbor next door in Clarkstown also has an odd shaped property and sits well below their own; that he would like to be able to build the cabana as presented but if he has to reduce it or move it to permit a nine foot side yard, he will make those adjustments.

Donald Brenner, Attorney testified that the property is shaped like a trapezoid and the pool was built before the applicant purchased the property; that it is a difficult back yard; that the property drops down in the rear; and it is difficult to comply with the zoning requirements because of the topography and shape of the lot; that the proposal is a great tax ratable; and the applicant can plant trees along the side yard; that a lot of time and effort were put into the plan; and that they could consider a nine foot side yard and re-configure the cabana to permit a nine foot side yard.

Public Comment:

No public comment.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested side yard (as modified to a 9' setback) and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants' lot is oddly shaped and the pool existed in its present location prior to their purchase of the house. The applicant has agreed to modify the side yard variance to a 9' setback.
2. The requested side yard as modified to 9' and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicants' lot is oddly shaped and the pool existed in its present location prior to their purchase of the house. The applicant has agreed to modify the side yard variance to a 9' setback.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.

4. The requested side yard as modified to a 9' setback and building height variances, although substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested side yard (as modified to a 9' setback) and building height variances are APPROVED with the SPECIFIC CONDITION that the floor area ratio of the cabana/pool house cannot exceed the floor area as proposed in the submission to the Board, however, its floor plan as layout may be reconfigured; 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 as modified to 9' setback and building height variances with the specific condition that the floor area ratio of the cabana/pool house cannot exceed the floor area as proposed in

the submission to the Board, however, its floor plan as layout may be reconfigured; was presented and moved by Mr. Sullivan, seconded by Mr. Mowerson and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye.

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

DATED: September 19, 2012





















