

MINUTES
ZONING BOARD OF APPEALS
SEPTEMBER 5, 2012

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

ABSENT: DANIEL SULLIVAN

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

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

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

DEFERRED ITEM:

MIELE-TEPLITZ 74.18 / 3 / 32; LI zone	INTERPRETATION	ZBA#12-48
--	----------------	-----------

CONTINUED ITEM:

PALISADES GARDEN GROUP (ESPLANADE) 78.17 / 2 / 1; R-40 zone	POSTPONED	ZBA#12-33
---	-----------	-----------

NEW ITEMS:

SUBWAY SIGN 70.14 / 4 / 13; CC zone	DENIED	ZBA#12-57
--	--------	-----------

CURRAN 74.13 / 3 / 47; RG zone	FRONT YARD AND REAR YARD VARIANCES APPROVED	ZBA#12-58
-----------------------------------	---	-----------

MC GRATH 68.16 / 5 / 12; RG zone	SIDE YARD AND ACCESSORY STRUCTURE DISTANCE VARIANCES APPROVED	ZBA#12-59
-------------------------------------	---	-----------

BORGESE 74.18 / 2 / 58; R-15 zone	ACCESSORY STRUCTURE DISTANCE VARIANCES APPROVED	ZBA#12-60
--------------------------------------	--	-----------

THOMAS 68.12 / 4 / 15; CC zone	AMENDMENT TO ZBA#12-21 DENIED	ZBA#12-61
-----------------------------------	----------------------------------	-----------

TRACEY SUBDIVISION 70.18 / 2 / 6; R-15 zone	47.27' STREET FRONTAGE AND 12.3' FRONT YARD VARIANCES RE-AFFIRMED	ZBA#12-62
--	---	-----------

STOKES
69.17 / 2 / 7; RG zone

FRONT YARD VARIANCE
APPROVED

ZBA#12-63

ADDITIONAL BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the Acting Chairperson executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for the State Environmental Quality Review Act (SEQRA) coordinated environmental review of actions pursuant to SEQRA Regulations § 617.6 (b)(3) the following applications: Roshong Site Plan-Critical Environmental Area, 909 Route 9W, Upper Grandview, N.Y., 71.17/1/8; R-15 zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

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

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 11:00 P.M.

DECISION

INTERPRETATION WITH CONDITIONS

To: Donald Tracy (Miele-Teplitz)

ZBA # 12-48

317 Little Tor Road South

Date: July 11, 2012

New City, New York 10956

July 25, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-48: Application of Joseph Miele and Anthony Teplitz appealing the Orangetown Office of Building, Zoning & Planning Administration & Enforcement's issuance of Zoning Code Violations and Stop Work Order, and requesting the Zoning Board of Appeals' reversal of same, on the basis that the violations mischaracterize the work as "concrete crushing" and there exists a variance permitting the work. Premises are located at 375-377 Western Highway, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 74.18, Block 3, Lot 32 in the LI zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, July 11, 2011 and July 25, 2012. The decision was deferred until September 5, 2012 at which time the Board made the determination hereinafter set forth.

At the July 11, 2012 meeting, Donald Tracy, Esq., attorney for the Applicants, appeared and requested a postponement to appear before a full Board.

At the July 25, 2012 meeting Donald Tracy, Esq., Joseph Miele, Anthony Teplitz, and Tom Jahnes appeared and testified.

The following documents were presented:

1. Decision dated April 27, 1955 signed by W.W. McKenzie, Secretary Zoning Board of Appeals for application of Edwyn H. Roland, (6 pages).
2. Schedule A
3. Commercial subdivision plat & site plan Joseph Miele dated 2/14/2012 signed and sealed by Brian A. Brooker, P.E.
4. A letter dated July 9, 2012 from the County of Rockland Department of Planning signed by Thomas B. Vanderbeek, P.E., Commissioner of Planning.
5. A letter dated June 25, 2012 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.
6. A letter dated June 11, 2012 from the State of New York Department of Transportation signed by Mary Jo Russo, P.E., Rockland County Permit Engineer.

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

At the July 25, 2012 hearing 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 foregoing application is requesting an interpretation of an existing code, rule or regulation, this application is exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (31). The motion was seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Albanese, aye; Mr. Bosco, aye; and Mr. Mowerson, aye. Ms. Castelli was absent on July 25, 2012.

At July 25, 2012 hearing Donald Tracy, Esq., testified that he has submitted to the Board copies of antique variances that were granted to Ed Rohland in 1954 for excavation regarding sand and gravel; that excavating equipment was permitted on the lot; that they are taking the position that the building department erred when it said that concrete crushing operation is taking place; that there is no crusher on the site; that Mr. Miele worked hand in hand with Ed Rohland separating paper bales; that the taxes on the property are \$115,000.00 a year; that Mr. Rohland showed the variances at the time of the sale; that everything being done there today is legal; that there are four motorized cranes inside one of the buildings and an antique crane on the property has a certificate of occupancy; that they are separating concrete from the steel beams; that they are not crushing the concrete; that they are appealing the "concrete crushing" because they have a variance for what they are doing; and that they are before the Planning Board for review and approval for the additional landscape storage.

Tom Jahnes testified that his familiar with the site; that in the early 1970's Ed Rohland hauled paper from Federal Paper and separated it; that Grossman Steel cut up metal and steel girders and the scrap was shipped out; that he has parking his vehicles on the property for twenty seven years; that the concrete is being taken off the metal and it is broken up but not crushed.

Anthony Teplitz testified that he has a scrap recycling business and he leases from Mr. Miele; that he stores equipment and has the contract for removing decking from the Tappan Zee Bridge; that the decking is brought to the site and dropped on the ground; a contractor's grapple is used to separate the steel from the concrete; that the steel is recycled and the pieces of concrete are shipped out; that sometimes the concrete separates from the steel when it is dumped and what concrete remains on the steel is removed with the grapple; that the concrete from the bridge should be completed by the end of October or November; that the work is sporadic depending on the weather; that some days there could be five to seven trucks and other days no

trucks; and that the concrete is not being crushed on the site.

Public Comment:

Vickie Cooper, owner of 360 Western Highway, testified that she bought this rental property from her parents six years ago; that her parents owned the property for thirty years; that it was always a quiet area; that this business is very noisy and there is no excuse for permitting this when it is so close to a residential zone.

Norman Cooper, owner of 360 Western Highway, testified that the vibrations from this operation are very annoying; that the noise varies and can be very loud; that he wouldn't complain if they wanted to purchase his property but this operation lowers the value of his property.

Alice Taylor, 318 Western Highway, testified that she has lived in her house since 1955; that last summer she was deafened by the noise from this site; that the use is too controversial; that this should not be permitted to continue.

Donald Brenner, representing FADB Realty Company, testified that this property has had many tenants over the years; that the motorized crane was installed in 1967, that an addition was done on the building in 1966 and a Certificate of occupancy was issued; that the factory building had a certificate of occupancy that there was a messenger service located there in 1979 with a certificate of occupancy that Mr. Rohland ran a junk yard and sold this section of the property to Bridge steel Aluminum who merged with Grossman; that there was no outside storage; that everything was contained within the two buildings; that the variance was terminated when the property was subdivide for sale; that Mr. Miele brought in tenants and needs to get site plan approval from the Planning Board; that Mr. Rohland did store massive amounts of paper and the Tappan Fire Department said no more; that they have no right to crush concrete; that this is a prohibited use; and that correct certificate of occupancies for the entire site need to be issued.

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. Albanese 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:

1. The Applicants are appealing the Orangetown Office of Building, Zoning and Planning Administration and Enforcement's ("OBZPAE") issuance of several violations of the Orangetown Zoning Code (Chapter 43 of the Orangetown Code – hereinafter "Zoning Code"), and a Stop Work Order related to those violations, regarding certain work conducted by Applicant Teplitz at the subject real property, which property is owned by Applicant Miele; and the Applicants are requesting the Board's reversal of the violations and the Stop Work Order.
2. The said violations, that are the subject of the Applicant's appeal to the Board, charge the Applicants with "screening and crushing of concrete" and "crushing of sections of concrete," in contravention of Zoning Code §4.46, which prohibits "Quarries, stone crushers, screening plants and storage of quarry screenings accessory to such uses" within the Town ("the Violations").
3. The crux of the Applicants' appeal is that the Violations mischaracterize Applicant Teplitz's work as "concrete crushing" and that the 04/27/1955 Decision

of this Board, in which Edwyn H. Rohland was the applicant (“the 04/27/1955 ZBA Decision”) granted a variance that permits this work at the subject real property.

4. The Applicants are requesting the Board to interpret Applicant Teplitz’s work as not constituting “concrete crushing” within the meaning of Zoning Code §4.46, and to interpret the work as an activity that falls within the uses permitted by the 04/27/1955 ZBA Decision.
5. The 04/27/1955 ZBA Decision, which approved the 04/15/1955 Petition (i.e., application) of Mr. Rohland, stated:

“It is the decision [sic] of this Board that the application of EDWYN H. ROHLAND, so as to permit the applicant to use the premises hereafter described for the conduct of business as an excavating contractor BE HEREBY GRANTED and use of the land for storage of excavating material and equipment, and that he (the applicant) can erect a garage for the storage of his equipment and may erect a sign three (3) feet square.”

6. Applicant Teplitz testified that his work consists of the removal or separation of steel “I-beams” and steel bars (“re-bars”) from concrete slabs, of varying sizes, which concrete slabs are discarded, as waste material, from the Tappan Zee Bridge and delivered to the Applicants’ subject property. This removal and separation work is performed with heavy construction vehicles/equipment, namely, a claw or grapple tool mounted or connected to a backhoe or excavator.
7. Zoning Code §4.46, which prohibits “Quarries, stone crushers, screening plants and storage of quarry screenings accessory to such uses,” is ambiguous to the extent only as §4.46 pertains to Applicant Teplitz’s said specific work that is the subject of the Violations.
8. Upon the advice of the Board’s legal counsel, “since zoning regulations are in derogation of the common law, they must be strictly construed against the municipality which has enacted and seeks to enforce them. Any ambiguity in the language used in such regulations must be resolved in favor of the property owner.”¹
9. The Applicants voluntarily offered (which was reiterated by their attorney, Donald Tracy, Esq.) to cease, terminate and desist from all work that is the subject of the Violations, by November 30, 2012, as a condition of the Board’s approval or grant of the Applicants’ application.

DECISION

On the basis of the foregoing Findings of Fact and Conclusions, the Board RESOLVED the following interpretations:

- (i) Applicant Teplitz’s work does **not** constitute “conduct of business as an excavating contractor,” nor “**use** of the land for storage of excavating material and equipment,” as permitted by the 04/27/1955 ZBA Decision.

¹ Allen v. Adami, 39 N.Y.2d 275, 277, 383 N.Y.S.2d 565, 567, 347 N.E.2d 890, 892 (1976). See also, Toy’s “R” Us v. Silva, 89 N.Y.2d 411, 421, 654 N.Y.S.2d 100, 106, 676 N.E.2d 862, 868 (1996) (“zoning restrictions, being in derogation of common-law property rights, should be strictly construed and any ambiguity resolved in favor of the property owner”); Mamaroneck Beach & Yacht Club v. Zoning Board of Appeals of Village of Mamaroneck, 53 A.D.3d 494, 498, 862 N.Y.S.2d 81, 85 (2nd Dept. 2008) (“Ambiguities [of zoning codes], if any, are to be resolved in favor of the property owner”); Hoag v. Zoning Board of Appeals of Town of Clinton, 27 A.D.3d 742, 815 N.Y.S.2d 603, 604 (2nd Dept. 2006) (“any ambiguity [of zoning restrictions must be] resolved in favor of the property owner”).

- (ii) Since Zoning Code §4.46 is ambiguous, to the extent only as §4.46 pertains to Applicant Teplitz's said specific work that is the subject of the Violations, and strictly construing §4.46 against the Town and resolving §4.46's ambiguity in favor of the Applicants, the said Violations appealed from **cannot** be enforced and are hereby **reversed** (and the Stop Work Order, related to those Violations, is lifted and reversed), with the following CONDITION:

The Applicants must cease, terminate and desist from all work that is the subject of the Violations by November 30, 2012.

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 with conditions, on the requested interpretation was presented and moved by Mr. Mowerson, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Ms. Castelli was absent for the July 25, 2012 hearing and did not vote. Mr. Sullivan 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: September 5, 2012

DECISION

CHAPTER 43 (ZONING), SECTION 4.23(C), SIGN SETBACK VARIANCE, AND SECTION 3.11, COLUMN 5 #3 TOTAL SIGN AREA VARIANCE, DENIED

To: Sheraz Chaudhry (Subway)

ZBA # 12-57

580 Route 303 Bldg C
Blauvelt, New York 10913

Date: September 5, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-57: Application of Subway for variances from Chapter 43 (Zoning), Section 4.23(c) (Sign setback: 75' required, 16' existing & proposed) and from Section 3.11, CC District, Column 5 #3 (Signage: 40 sq. ft. permitted, 53 sq. ft. proposed) for signs for an existing business. The site is located at 580 Route 303, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 70.14, Block 4, Lot 13 in the CC zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 5, 2012 at which time the Board made the determination hereinafter set forth.

Sheraz Chaudhry appeared and testified.

The following documents were presented:

1. Copy of survey for Westshore Plaza LLC with existing pylon sign.
2. Picture of existing pylon sign with ne proposed subway sign shown on it.
3. Page labeled "Total sign are before the sign".
4. Page labeled "Total sign are after the sign".
5. Page labeled "Total sign are of the store sign".
6. Page labeled "Existing small sign".
7. Copy of proposed sign measuring 24" x 108".
8. A letter dated August 15, 2012 from the County of Rockland Department of Planning signed by Thomas B. Vanderbeek, P.E., Commissioner of Planning.
9. A letter dated August 6, 2012 from the State of New York Department of Transportation signed by Mary Jo Russo, P.E., Rockland County Permit Engineer.

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 since the foregoing application seeks to construct or expand a primary or accessory/ appurtenant, **non-residential** structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or use variance and consistent with local land use controls; this application is exempt from environmental review under the State Environmental Quality Review Act pursuant to SEQRA Regulations §617.5 (c) (7). The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Ms. Salomon, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Mr. Sullivan was absent.

Sheraz Chaudhry testified that the existing sign on the pylon is quite small and the traffic along Route 303 moves quickly; that people do not know that the business is located in the shopping center; that the economy is effecting all business's and he is requesting the larger sign to bring more people in to his business; that a new Subway opened in the Tappan Shopping center and he needs more visibility to be competitive; and that he would remove the smaller sign if he gets approval for the larger sign.

Mr. Mowerson stated that the Dunkin Donuts sign was approved larger than the other

store signs at the time the pylon was approved with the condition that the “other” store signs would be smaller and fit into the provided slots on the sign.

Public Comment:

Mary Flood stated “Let him have it”.

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;

1. The existing pylon sign was designed with the name of the shopping center “Westshore Plaza” at the top of the sign with the anchor store sign “Dunkin Donuts” directly below it and 16 spaces for smaller store signs. Permitting the applicant to add an additional large sign to the existing pylon would be unfair to all of the other businesses in the shopping center, since the pylon was not designed to hold additional large signs.
2. The proposal to add the larger “Subway” sign to the existing pylon altered the previously approved pylon and would have increased its height by two additional feet.
3. The granting of this variance can set a precedent and encourage other businesses in the shopping center, as well as nearby commercial uses along the State highway to request similar exemptions. The resulting proliferation of oversized signs will have an adverse effect on the safe and efficient flow of traffic along the State highway.
4. For the reasons aforesaid, the requested variances will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties and could have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The benefits sought by the applicant can be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The requested variances are substantial and the applicant purchased the property subject to Orangetown’s Zoning Code (Chapter 43).

DECISION: In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for the requested Zoning Code Section 4.23(c) set back and total sign area variances are **DENIED**; 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 DENY the application for the requested Zoning code Section 4.23(c) set back and total sign area variances was presented and moved by Mr. Mowerson, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Ms. Castelli, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Mr. Sullivan 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: September 5, 2012

DECISION

FRONT YARD AND REAR YARD VARIANCES APPROVED

To: Brian Curran

ZBA # 12-58

50 Cypress Lane
Orangeburg, New York 10962

Date: September 5, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-58: Application of Brian Curran for variances from Chapter 43 (Zoning), Section 3.12, RG District, Columns 8 (Front Yard: 25' required, 18' 2" proposed), and 11 (Rear Yard: 25' required, 18' 4" proposed) for an existing screened deck at an existing single-family residence. The premises are located at 21 Horn Street, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 74.13, Block 3, Lot 47; RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 5, 2012 at which time the Board made the determination hereinafter set forth.

Brian Curran and Kier Levesque, Architect, appeared and testified.

The following documents were presented:

1. Site plan and Existing covered deck plan & Elevations dated June 14, 2012 signed and sealed by Kier Levesque, R. A..
2. A cover letter dated July 26, 2012 signed by Kier Levesque, Architect.
3. Four computer generated pictures of the house, deck and sunroom.

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. Bosco, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Mr. Sullivan was absent. Ms. Albanese was absent for this hearing.

Brian Curran testified that the house belonged his parents; that they have passed, that his Dad built the screened in room and deck without a permit in 1993; that he is charged with selling the property and is before the Board to legalize the structures and get certificate of occupancy for them.

Kier Levesque, Architect, testified that he was hired to inspect he building and certify that the building meets building code requirements; that it will need hurricane clips and the posts for the deck will be dug up and footing inspections will be done when the building permit is issued; that a handrail will be added to the deck to make it meet code; and the fence can be modified to meet the code or removed.

Public Comment:

No public comment.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested front yard and rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The deck and screened in porch have existed for a number of years without complaint and the architect has evaluated both and finds them to be in general compliance with the construction code. The fence in the front yard will be lowered to meet the requirements of the Zoning Code or removed.

2. The requested front yard and rear yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The deck and screened in porch have existed for a number of years without complaint and the architect has evaluated both and finds them to be in general compliance with the construction code.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested front yard and rear 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 front yard and rear yard variances are APPROVED with the SPECIFIC CONDITION that the fence in the front yard will be lowered to meet the requirements of the Zoning Code or removed; 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 rear yard variances with specific conditions was presented and moved by Mr. Bosco, seconded by Ms. Salomon and carried as follows: Ms. Castelli, aye; Mr. Bosco, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Mr. Sullivan was absent. Ms. Albanese was absent for this hearing.

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 5, 2012

DECISION

SIDE YARD AND ACCESSORY STRUCTURE DISTANCE VARIANCES APPROVED

To: Tricia and Michael McGrath

ZBA # 12-59

106 Hunt Avenue

Date: September 5, 2012

Pearl River, New York 10965

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-59: Application of Michael and Tricia Mc Grath for variances from Chapter 43 (Zoning), RG District, Group M, Section 5.21(d) Undersized lot side yard: (10’ required, 9’ proposed) and from Section 5.153 (Accessory structure distance: 15’ required, 8.7’ proposed) for a deck at an existing single-family residence. The premises are located at 106 Hunt Avenue, Pearl River, New York and identified on the Orangetown Tax Map as Section 68.16, Block 5, Lot 12, in the RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 5, 2012 at which time the Board made the determination hereinafter set forth.

Michael McGrath appeared and testified.

The following documents were presented:

1. Plot plan with proposed deck dated June 15, 2012 signed and sealed by Robert E. Sorace, PLS.
2. Deck plans.
3. A letter in support of the application signed by three abutting property owners.

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. Bosco, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Mr. Sullivan was absent. Ms. Albanese was absent for this hearing.

Michael McGrath testified that he and his wife have three children and a dog; that the deck would be beneficial to observe the kids from the house; that the variance is needed because the deck will be too close to the existing garage; that the garage has been there since 1938; that it is used for storage; the car has not seen the inside of the garage; that the neighbors to the right, left and rear of the property have decks; and that many of the houses in the neighborhood are similar.

Public Comment:

Peter Lavan, 114 Hunt Avenue, Pearl River, abutting property owner, testified that he is in full support of the project; that he has no objection; that the McGrath's are great neighbors and the deck will enhance the property.

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 § 5.21(d) Undersized lot: side yard, and § 5.153 accessory structure distance, variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants' lot is undersized and the proposed deck is directly behind the house and does not encroach further into the side yard than the existing house.
2. The requested § 5.21(d) Undersized lot: side yard, and § 5.153 accessory structure distance, variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicants' lot is undersized and the proposed deck is directly behind the house and does not encroach further into the side yard than the existing house.
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 § 5.21(d) Undersized lot: side yard, and § 5.153 accessory structure distance, variances, are not substantial, and 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 § 5.21(d) Undersized lot: side yard, and § 5.153 accessory structure distance, 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 § 5.21(d) Undersized lot: side yard, and § 5.153 accessory structure distance, variances was presented and moved by Mr. Mowerson, seconded by Mr. Bosco and carried as follows: Ms. Castelli, aye; Mr. Bosco, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Ms. Albanese was absent for this hearing. Mr. Sullivan 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: September 5, 2012

DECISION

SECTION 5.153 & 5.227 VARIANCES APPROVED

To: Antonia Borgese

ZBA # 12-60

95 Lester Drive
Tappan, New York 10983

Date: September 5, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-60: Application of Antonia Borgese for variances from Chapter 43 (Zoning), R-15 District, Group M, Section 5.153 (Accessory Structure Distance: 15' required, 8' proposed) and from Section 5.227 (Accessory structure distance from property line: 5' required, 1' proposed) for the installation of a 12' x 24' shed at an existing single-family residence. The premises are located at 95 Lester Drive, Tappan, New York and identified on the Orangetown Tax Map as Section 74.18, Block 2, Lot 58, 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 5, 2012 at which time the Board made the determination hereinafter set forth.

Paul Borgese appeared and testified.

The following documents were presented:

1. Copy of site plan with proposed shed drawn on it.

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. Bosco, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Ms. Albanese was absent for this hearing. Mr. Sullivan was absent.

Paul Borgese testified that the house was built as part of Hilltop Homes on Lester Drive; that the back yards of these properties are large but are steep slopes; that he would like to install a large shed in the back of the house close to the top of the hill; that if installed in this area it would not require retaining walls; that it would be eight feet from the end of the house and four feet from the property line; that it cannot be moved further way from the property line without encroaching on the cement walkway that leads to the existing patio; that he recently ripped out the giant hedges that were overgrown between his house and the neighbors; that he shed is a pre-fabricated 24' x 12' building with windows and siding to match the house; that it will be much nicer to look at the ugly bushes that were there; and that the house does not have a basement and the attic is a crawl space.

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 § 5.153 and § 5.227 variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants' lot is steeply sloped in the rear of the house and the proposed shed is located on the portion of the property above the sharp slope.
2. The requested § 5.153 and § 5.227 variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicants' lot is steeply sloped in the rear of the house and the proposed shed is located on the portion of the property above the sharp slope.
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 § 5.153 and § 5.227 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 § 5.153 (8' set back) and § 5.227 (1' setback) 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 § 5.153 (8' setback) and § 5.227 (1' setback) variances was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Ms. Albanese was absent for this hearing. Mr. Sullivan 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: September 5, 2012

DECISION

REQUEST TO KEEP SECOND FRONT DOOR DENIED

To: George Thomas

ZBA # 12-61

180 East Lewis Avenue
Pearl River, New York 10965

Date: September 5, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-61: Application of George Thomas for an amendment to ZBA Decision #12-21, which decision required as a condition of the Zoning Code (Chapter 43) Section 9.34 extension of non-conforming use that the existing second front door be removed and the applicant is requesting permission to keep the second front door at an existing single-family residence. Premises are located at 180 East Lewis Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.12, Block 4, Lot 15 in the CC zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 5, 2012 at which time the Board made the determination hereinafter set forth.

George Thomas and Bobby Thomas appeared and testified.

The following documents were presented:

1. Survey dated December 16, 2011.
2. Existing first floor house plan signed and sealed by Peter Klein, Architect.
3. A picture of the existing house.

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

George Thomas testified that he would like to ask to keep the second door that is near the driveway for his entrance into the house; that he has health issues and cannot always make it up the stairs at the other door; that he and Bobby use this entrance into the house and his other son and wife and kids use the other entrance; that there is only one kitchen in the house and his daughter-in-law many times brings his meals down to him; that they spoke to Mike Manzare and he suggested that they do something to camouflage the second door; and that they planted a Cherry Blossom Tree in the front of the door.

Bobby Thomas testified that at the hearing he agreed to remove the door without speaking to his father about it; that he should not have made that agreement without speaking to his dad; that he and his father use that entrance; that this entrance is easier for his dad; that if they moved the door to the back it would be a longer walk; that there are natural gas pipes and water pipes on the side but they might be able to move the door to that corner; and that they would like the Board to consider permitting them to keep the door where it is.

Public Comment:

Nick Spadaccini, 168 East Lewis Ave., testified that for 21 years the Thomas property was an eyesore; that since the Thomas family purchased the house, they have improved the property immensely; that Mr. Thomas needs the second entrance for health reasons; that there always was a second door on the house; that the house looks beautiful because of the work that they have done on it; and that he fully supports allowing them to have the second door.

Irene Spadaccini, 168 East Lewis Ave., testified that she agrees with the husband; that they looked at a crap house for years; that the Thomas family has improved the house and it looks beautiful now; that Mr. Thomas needs the second door for health reasons and he should be allowed to have it.

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:

1. At the prior hearing (ZBA #12-21), on April 12, 2012 the applicant agreed to the condition "removal of the second front door" and there has been no significant difference in circumstances since that date to warrant the removal of this condition.

2. The applicant failed to make sufficient claims that would warrant the requested amendment to ZBA #12-21 (removal of second front door).
3. The requested amendment to ZBA #12-21 (removal of second front door) will make the house appear from the street as a multi-family dwelling.
4. The benefits sought by the applicant can be achieved by other feasible means, such as re-locating the second door to the adjacent side of the house.
5. For the reasons aforesaid, the requested variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties and could have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The benefits sought by the applicant can be achieved by other means feasible for the applicant to pursue other than by obtaining an amendment to ZBA Decision # 12-21. The requested amendment is 1 substantial and the applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43).

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested amendment to ZBA #12-21 (removal of the second front door) is DENIED; 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 DENY the application for the requested amendment to ZBA #12-21 (removal of the second front door) was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Ms. Albanese, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Mr. Sullivan 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: September 5, 2012

DECISION

47.27' STREET FRONTAGE AND 12.3' FRONT YARD VARIANCES RE-AFFIRMED

To: Donald Brenner (Tracey Subdivision)

ZBA # 12-62

4 Independence Avenue
Tappan, New York 10983

Date: September 5, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-62: Application of Tracey Subdivision to reaffirm (approved/granted in ZBA#10-86; dated November 3, 2010) variances granted on April 13, 2007 in ZBA#07-32: Application of Tracey Subdivision for variances from Chapter 43 (Zoning), Section 3.12, R-15 District, Group M, Columns 7 (Street Frontage: 75' required, 47.27' proposed for lot #2) and 8 (Front Yard: 30' required, 21' proposed for lot #1 {corrected in this Decision to 12.3' }) of a proposed two-lot residential subdivision. Premises are located at 525 Western Highway, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 70.18, Block 2, Lot 6; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 5, 2012 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Plans labeled "Final Subdivision for Tracey" dated 9/20/2006 with the latest revision date of January 10, 2011 signed and sealed by William D. Youngblood, L.S.
2. Zoning Board of Appeals Decision # 10-86 dated November 3, 2012.
3. Planning Board Decision #12-36 dated July 18, 2012.

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 since the Planning Board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or did not object to the Planning Board acting as Lead Agency for these applications, pursuant to coordinated review under the State Environmental Quality Review Act Regulations §617.6 (b) (3); and since the planning Board conducted SEQRA reviews and, on July 18, 2012, rendered environmental determinations of **no** significant adverse environmental impacts to result from the proposed land use actions, the ZBA is bound by the Planning Board's Neg Decs and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulations §617.6 (b) (3). The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Ms. Salomon, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Mr. Sullivan was absent.

Donald Brenner, Attorney, testified that the subdivision had received all of the necessary approvals but ran into some financial difficulties and did not file the map in the permitted time; that they went before the Planning Board on July 18, 2012 and were reaffirmed with the condition that they apply to the Zoning Board to get an extension of time to implement the variances; that they are not requesting any additional variances but would like to reaffirm the front yard for lot #1 and the street frontage for lot #2; that the requested front yard was always 12.3' and not the 21' that is stated in the Zoning Board decision #10-86.

The Board pulled the previous files and found the error and confirms that the existing front yard for the house on lot #1 is 12.3'.

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 reaffirmation of variances granted in ZBA #10-86 (47.27' street frontage for lot #2 and 12.3' front yard for lot #1) is approved. No significant change in circumstances has occurred since the instant variances were granted which would warrant Board reconsideration of their approval.
2. Applicants stated that they expect to file the final subdivision plat in the near future.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for the requested reaffirmation of the variances granted in ZBA #10-86 (47.27' street frontage for lot #2 and 12.3' front yard for lot #1) is **APPROVED**; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

The foregoing resolution to approve the application for the requested reaffirmation of variances granted in ZBA#10-86 (47.27' street frontage for lot #2 and 12.3' front yard for lot #1) was presented and moved by Mr. Mowerson, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Ms. Castelli, aye; Ms. Albanese, nay; Ms. Salomon, aye; and Mr. Mowerson, aye. Mr. Sullivan 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: September 5, 2012

DECISION

FRONT YARD VARIANCE APPROVED

To: Kevin and Jane Stokes

ZBA # 12-63

52 Grotke Road
Chestnut Ridge, New York 10977

Date: September 5, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-63: Application of Kevin and Jane Stokes for a variance from Chapter 43 (Zoning), Section 3.12, RG District, Group Q, Column 8 (Front Yard: 25' required, 20.91' existing, 16.91' proposed) for an addition to an existing single-family residence. Premises are located at 40 Mountainview Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.17, Block 2, Lot 7 in the RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 5, 2012 at which time the Board made the determination hereinafter set forth.

Kevin and Jane Stokes and Andy McKeon, Contractor, appeared and testified.

The following documents were presented:

1. Architectural plans dated 7/25/2012 signed and sealed by Clifford A. Herbst, P.E..

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

Kevin Stokes testified that he would like to add affront porch to the existing house to give the house more curb appeal; that the existing portico intrudes into the front yard leaving a 22.91' front yard that they would like to add two feet further out to accommodate a six foot front porch and are requesting a 20.91' front yard set back; that did have trouble with tenants in the house that they own down the street; that they have owned that two-family house for 27 years; that recently they had bad tenants that he vacated the residence recently; that they have no intention of making this house a two-family house; that it is a single-family residence and will remain a single-family residence; that they have owned it for two years and plan to sell it when the work is complete.

Public Comment:

Brian Coleman, 41 Mountainview Avenue, directly across the street from this proposal; that the block is a narrow block; that the proposed porch will create a narrow front yard; that presently all of the houses on the block are similar and set back evenly from the curb; that this proposal will negatively impact the neighborhood by changing its character; that the owner of the property does not live in the house; that the architectural review board should look at this proposal; that he has concerns regarding who will live in the house; and that as the neighbor across the street he opposes the application.

Richard Turk, 44 Mountainview Avenue, testified that the block flows nicely now; that this house is located to the left of his house; that all of the front yards are the same on the block and this small change will ruin the charm of the block.

Michael McGuire, 80 Mountainview Avenue, testified that he agrees with Mr. Coleman; that Mr. Stokes does not live on the block; that he owns a two-family house down the street that has been occupied by druggies; that he could rent this house to more people that do not belong in a neighborhood with small children.

Thomas McCarry, 30 Mountainview Avenue, testified that he is speaking in support of his neighbors; that the Stokes' are not stating what their plan is for the house after they expand it and fix it up; that the neighborhood is concerned that it might turn into a multi family with more drug abuse tenants; that the neighborhood is concerned regarding the plans they have for this property.

Josephine Coleman, 41 Mountainview Avenue, testified that the proposed improvement is fine; the real concern is for the future and what they proposed to do with the property; that the rest of the neighbors all live in the neighborhood and do not want to see another rental property with people that are not a good influence on the neighborhood; that the

police are called all of the time because of the other property that the Stokes own and the element of renters that have had in the house; that drug deals were taking place right out in the street.

Ray Fisher, 34 Mountainview Avenue, testified that he lives right next door and is happy to see the property being cleaned up but does not want to see it turned into a three family rental.

Shirley Christie, 8 Mountainview Avenue, testified that she has lived in Rockland all of her life; that she purchased this house from her grandmother; that she does not want to see a multi-family house; that all of the houses in the neighborhood are similar and the footprint should not be changed.

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. Albanese 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 variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed change to the front yard is minimal and the proposed front porch would be a nice enhancement to the structure. The house directly across the street has a similar front porch. Most of the objections expressed by neighbors were not relevant to the NYS Town Law §267-b(3) consideration.
2. The requested front yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed change to the front yard is minimal and the proposed front porch would be a nice enhancement to the structure. The house directly across the street has a similar front porch. Most of the objections expressed by neighbors were not relevant to the NYS Town Law §267-b(3) consideration.
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. The existing front yard does not meet the minimum front yard requirement.
4. The requested front yard variance, 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. Most of the objections expressed by neighbors were not relevant to the NYS Town Law §267-b(3) consideration.
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 front 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 front yard variance was presented and moved by Mr. Bosco, seconded by Ms. Albanese and carried as follows: Mr. Bosco, aye; Ms. Castelli, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Mr. Sullivan 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: September 5, 2012

