

MINUTES
ZONING BOARD OF APPEALS
OCTOBER 5, 2011

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

ABSENT: THOMAS WARREN, ALTERNATE

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

NEW ITEMS:

OLSEN 78.09 / 1 / 7; R-15 zone	FLOOR AREA RATIO, LOT AREA, FRONT YARD, SIDE YARD, TOTAL SIDE YARD, AND REAR YARD VARIANCES APPROVED	ZBA#11-80
O'BRIEN & MASSETTI SUBDIVISION 68.20 / 2 / 25 & 31; RG zone	LOT AREA, LOT WIDTH, SIDE YARD, TOTAL SIDE YARD, AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#11-82
WHITE 69.18 / 4 / 14; R-15 zone	ACCESSORY STRUCTURE DISTANCE VARIANCE APPROVED	ZBA#11-83
SCHUYLER SUBDIVISION PLAN 65.15 / 1 / 7; R-40 zone	§9.34 EXTENSION OF NON- CONFORMING BULK; § 11.2 DEFINITIONS of "LOT", § 6.332 GRAVEL DRIVEWAY AND FRONT YARD VARIANCES APPROVED	ZBA#11-84
GARVEY SCULPTURE STUDIO PRFORMANCE STANDARDS 74.07 / 1 / 17; LIO zone	PERFORMANCE STANDARDS APPROVED WITH CONDITIONS	ZBA#11-85

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: Moritz Funeral Home Amendment to approved Site Plan, 98 Route 303, Tappan, New York, 77.11/1/ 34; CO zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

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

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 10:15 P.M.

Dated: October 5, 2011

DECISION

FLOOR AREA RATIO, LOT AREA, FRONT YARD, SIDE YARD, TOTAL SIDE YARD AND REAR YARD VARIANCES APPROVED

To: Edward Olsen

ZBA # 11-80

42 Van Terrace
Sparkill, New York 10976

Date: October 5, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-80: Application of Edward Olsen for variances from Chapter 43 (Zoning) Section 3.12, R-15 District, Group M, Columns 4 (Floor Area Ratio: .20 permitted, .22 proposed), 5 (Lot Area: 15,000 sq. ft. required, 9,054.57 sq. ft. existing), 8 (Front Yard: 30' required, 12' proposed), 9 (Side Yard: 20' required, 6.75' proposed), 10 (Total Side Yard: 50' required, 29.65' proposed) and 11 (Rear Yard: 35' required, 13.33' proposed) for an addition to an existing single-family residence.. The premises are located at 42 Van Terrace, Sparkill, New York an identified on the Orangetown tax Map as Section 78.09, Block 1, Lot 7; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 5, 2011 at which time the Board made the determination hereinafter set forth.

Edward Olsen and Robert Hoene, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans and site plan dated 01/16/2011 with the latest revision date of 06/20/2011 signed and sealed by Robert Hoene, Architect.
2. A letter dated September 30, 2011 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
3. A letter dated September 30, 2011 from the County of Rockland Department of Highways signed by Sonny Lin, P.E..
4. A letter dated September 28, 2011 from the County of Rockland Sewer District No. 1 signed by Joseph LaFiandra, Engineer II.
5. A letter dated October 5, 2011 from the State of New York, Department of Transportation signed by Mary Jo Russo, P.E., Rockland County Permit Engineer.

6. A letter dated October 3, 2011 from the County of Rockland Drainage Agency signed by Vincent Altieri.

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

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

Robert Hoene testified that the existing house is a one-story small dwelling that was in very poor condition when Mr. Olsen purchased it; that he has done some renovation to the existing house; that he is engaged to be married and would like to add a second floor to the existing house; that they are also adding a front porch canopy over the existing front door; that they are repairing and adding onto the existing deck in the rear of the house and making it wrap around the house; that the second floor would have two bathrooms and three bedrooms; that the first floor would be rearranged; that the fifteen foot front yard would become a twelve foot front yard to accommodate the canopy over the front door; that the lot is only 9,000 sq. ft.; that there is a slope to the property on the west side; that the remainder of the property is on grade; that there is no other way to achieve the addition; that the property is triangular shaped with the narrow part in the rear; that the majority of the variances are pre-existing conditions; that the 6.75 side yard is existing; that the total side yard is changing to 22.9 feet; and that proposal will improve the neighborhood.

Edward Olsen testified that all of the other houses in the area are two story houses; that his house is the oldest house in the area; that it has not been touched in over thirty years; that the person he purchased the house from had thirty cats and seven dogs and the house was a wreck.

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 floor area ratio, lot area, front yard, side yard, total side yard and rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The lot area and side yard variances are existing conditions that are not changing. Similar additions have been constructed in the neighborhood.

2. The requested floor area ratio, lot area, front yard, side yard, total side 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 lot area and side yard variances are existing conditions that are not changing. Similar additions have been constructed in the neighborhood.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The lot is undersized and triangular in shape and the existing house is not conforming.
4. The requested floor area ratio, lot area, front yard, side yard, total side yard and rear yard variances, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. The lot area and side yard variances are existing conditions that are not changing. Similar additions have been constructed in the neighborhood.
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 floor area ratio, lot area, front yard, side yard, total side yard and rear 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 lot area, floor area ratio, front yard, side yard, total side yard and rear yard variances was presented and moved by Ms. Albanese, seconded by Ms. Salomon and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Mr. Warren was absent.

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

DATED: October 5, 2011

DECISION

LOT AREA, LOT WIDTH, FRONT YARD, SIDE YARD, TOTAL SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED

To: Peter O'Brien

ZBA # 11-82

160 Franklin Avenue

Date: October 5, 2011

Pearl River, New York 10965

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-82: Application of O'Brien & Massetti Subdivision for variances from Chapter 43 (Zoning), Section 3.12, RG District, Group Q, Columns 5 (Lot Area: 10,000 sq. ft. required, 4,000 sq. ft. existing & 6,940 proposed for lot 25 and 12,130 sq. ft. existing, 9,190 sq. ft. proposed for lot 31), 6 (Lot Width: 75' required, 65.5' existing for lot 31), 8 (Front Yard: 20' required, 19.3' existing for lot 25; 16.9' existing for lot 31), 9 (Side Yard 10' required, 2.7' existing for lot 25; 7.7' existing for lot 31), 10 (Total Side Yard: 30' required, 20.3' existing for lot 25) and 12 (Building Height: 3.60' permitted for lot 25 and 23' existing; 10.27' permitted for lot 31, 15; existing) for a lot line change between two existing residences. Premises are located at 160 Franklin Avenue and 163 Prospect Place, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.20, Block 2, Lots 25 & 31; RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 5, 2011 at which time the Board made the determination hereinafter set forth.

Peter O'Brien and James Reilly, Attorney, appeared and testified.

The following documents were presented:

1. Lot line change map for O'Brien & Massetti dated June 15, 2011 signed and sealed by Joseph Haller, P.L.S.
2. A memorandum dated July 27, 2011 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
3. A letter dated September 2, 2011 from Joseph Haller, P.L.S. concerning the existing height of the houses.
4. Planning board Decision #11-33 dated July 27, 2011.
5. A letter dated September 21, 2011 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
6. A letter dated September 1, 2011 from the County of Rockland Department of Health signed by Scott McKane, P.E., Senior Public Health Engineer.

7. A letter dated September 28, 2011 from the County of Rockland Sewer District No. 1 signed by Joseph LaFiandra, Engineer II.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that 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 the application, 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 27, 2011 rendered environmental determinations of No significant adverse environmental impacts to result from the proposed land use actions (i.e., a "Negative Declaration" or "Neg Dec"), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulations §617.6 (b)(3). The motion was seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Mr. Warren was absent.

James Reilly, Attorney, testified that the proposal before the Board is an attempt to bring the O'Brien lot back to its original dimensions; that the existing front yards are in accord with other houses in the neighborhood; that side yard is in place already; that modifying the rear yard is appropriate to the neighborhood; that it is a de minimus application; that neighbors are here in support of the application and that restoring the rear lot line to its original location is in keeping with the character of the neighborhood.

Public Comment:

Mr. Mc Aree, 735 Franklin Avenue, testified that he is present to support the application.

Mr. Carley testified that he supports the application.

Michael Oats, 168 Franklin Avenue, testified that he supports the application.

Jim Reilly, 145 Franklin Avenue, testified that he supports the application.

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 lot area, lot width, front yard, side yard and building height variances for lots 25 & 31 and total side yard variance for lot 25 will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed lot line change is restoring an original lot line. The change in the rear yard is in accord with the other lots in the area.
2. The requested lot area, lot width, front yard, side yard and building height variances for lots 25 & 31 and total side yard variance for lot 25 will not have an

adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed lot line change is restoring an original lot line. The change in the rear yard is in accord with the other lots in the area.

3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The applicant is attempting to restore a historical line.
4. The requested lot area, lot width, front yard, side yard, and building height variances for lots 25 & 31 and total side yard variance for lot 25, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Most of the requested variances are for existing conditions that have existed in the neighborhood for 100 years.
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 lot area, lot width, front yard side yard, building height variances for lots 25 & 31 and total side yard variance for lot 25 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 lot area, lot width, front yard, side yard, and building height variances for lots 25 & 31 and total side yard variance for lot 25 was presented and moved by Mr. Sullivan, seconded by Ms. Castelli and carried as follows: Ms. Albanese, aye; Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Mr. Warren was absent.

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

DATED: October 5, 2011

DECISION

§ 5.153: ACCESSORY STRUCTURE DISTANCE VARIANCE APPROVED

To: Charles and Barbara White
36 Haven Terrace
Pearl River, New York 10965

ZBA # 11-83
Date: October 5, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 11-83: Application of Charles and Barbara White for variances from Chapter 43 (Zoning), R-15 District, Group M, Section 5.153 (Accessory Structure distance from Principal Building: 15’ required, 8’ & 10’2” proposed) for a shed at an existing single-family residence. The premises are located at 36 Haven Terrace, Pearl River, New York an identified on the Orangetown tax Map as Section 69.18, Block 4, Lot 14; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 5, 2011 at which time the Board made the determination hereinafter set forth.

Charles White appeared and testified.

The following documents were presented:

1. Survey with hand drawn proposed garage/shed.
2. Three page drawing of the proposed garage/shed.

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

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

Charles White testified that he is proposing to install a pre-fabricated shed/garage; that

this is the smallest size that would fit in this area; that he needs the shed/garage for storage; that the house is small three bedroom ranch with very small closets; that they need an area for storage of lawn mowers, bikes and gardening equipment and one midsize car would fit; that there will be an overhead garage door on the building; that the property is pie shaped with the pointed area in the rear; that the shed is being proposed where the driveway is located; that they have two grown children that have moved back home; that there will be four cars and this building will help with the parking of cars off the street in bad weather; that the building cannot be re-located on the other side because there is a storm drain on that side and the driveway can't go over the storm drain.

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 accessory structure distance variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The shed is being located at the end of the existing driveway. There is a storm drain on Haven Terrace which would prevent the driveway from being re-located to that side of the property.
2. Due to non-compliance with Section R-309.3 (New York State Building Code), structure cannot be used as a garage. Structures used to garage a vehicle must have non-combustible flooring.
3. The requested §5.153 accessory structure distance variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The shed is being located at the end of the existing driveway. There is a storm drain on Haven Terrace which would prevent the driveway from being re-located to that side of the property.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance. There is no other area on the property to re-locate the driveway or place the shed.
5. The requested §5.153 accessory structure distance variance is not substantial.
6. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested §5.153 Accessory Structure Distance variance is APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

The foregoing resolution to approve the application for the requested § 5.153 Accessory Structure Distance variance was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Albanese, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Mr. Warren was absent.

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

DATED: October 5, 2011

DECISION

§ 9.34 EXTENSION OF NON-CONFORMING BULK, §11.2 DEFINITIONS:"LOT", §6.332 GRAVEL DRIVEWAY AND FRONT YARD VARIANCES APPROVED

To: Donald Brenner (Schuyler Subdivision)

ZBA # 11-84

4 Independence3 Avenue
Tappan, New York 10983

Date: October 5, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-84: Application of Schuyler Road Subdivision Plan for variances from Chapter 43 (Zoning), Section 11.2, Definitions: "Lot", "Not more than one (1) single family detached residence shall be permitted on any one (1) lot." The applicant has two (2) houses on lot 1; Section 9.34 (Extension of Non-Conforming Bulk) and from Section 3.12, R-40 District, Group E, Column 8 (Front Yard: 50' required, 10.4' existing for lot 1) and from Section 6.332 (Driveway shall be asphalt and gravel is existing for lot 1) for a proposed four lot subdivision. The premises are located at 45 Schuyler Road, Nyack, New York and are identified on the Orangetown Tax Map as Section 65.15, Block 1, Lot 7 in the R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 5, 2011 at which time the Board made the determination hereinafter set forth.

Daniel Foley and Donald Benner, Attorney, appeared and testified.
The following documents were presented:

1. Site plan dated 05/14/2011 with the latest revision date of 08/19/2011 signed and sealed by Jay Greenwell, P.L.S.
2. A memorandum dated August 29, 2011 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
3. Planning Board Decisions :PB#10-27 dated June 23, 2010 and PB#11-36 dated July 27, 2011.
4. A letter dated September 29, 2011 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
5. A letter dated September 1, 2011 from the County of Rockland Department of Health signed by Scott McKane, P.E., Senior Public Health Engineer.
6. A letter dated September 29, 2011 from the County of Rockland Department of Highways signed by Sonny Lin, P.E...
7. A letter dated August 31, 2011 from the Shirley Thormann, Chairwoman, Clarkstown Planning Board.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that 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 the application, 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 27, 2011 rendered environmental determinations of No significant adverse environmental impacts to result from the proposed land use actions (i.e., a "Negative Declaration" or "Neg Dec"), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulations §617.6 (b)(3). The motion was seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye;

Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Mowerson, aye. Mr. Warren was absent.

Donald Brenner, Attorney, testified that Mr. Foley and his family are town residents; that Mr. Foley's brother use to live down the street from this property; that he has purchased the property and is proposing to subdivide the property into four lots; that the largest lot

is the one that he plans to keep and it is the lot with two houses; that the houses are in bad disrepair presently but Mr. Foley plans to renovate them; that he needs the second dwelling to rent for extra income to be able to off set the cost of the renovations and the upkeep of the property; that the neighbors are in support of the application; that the lot that Mr. Foley is keeping is a four acre lot, which is the minimum size required by code in order to have horses; that he can have one horse per acre of property; that his wife and children ride; that Buttermilk falls is on lots 4 & 6; and that he has no objection to adding section 9.34, extension of a pre-existing non-conforming bulk to the requested variances.

Daniel Foley testified that he has an attachment to the property because his brother use to live down the street; that his brother died in the twin towers; that the cottage was rented last August; that he is a contractor and feels confident that these two structures can be restored; that the property has well water; that he has left the pumps going because his neighbor needs his pumps to get water; and that Nyack couldn't provide enough water pressure to provide public water to the properties.

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 §9.34 extension of non-conforming bulk, § 11.2 definition of "lot", § 6.332 gravel driveway and front yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Allowing the applicant to restore the two existing structures and keep them on one lot that will be four acres, in a one acre zoning district, will enhance the neighborhood. The buildings will be restored and the change is to the size of the lot, not the location of the buildings. The front yard is not changing and the gravel driveway has existed for many years.
2. The requested §9.34 extension of non-conforming bulk, § 11.2 definition of "lot", § 6.332 gravel driveway and front yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Allowing the applicant to restore the two existing structures and keep them on one lot that will be four acres, in a one acre zoning district, will enhance the neighborhood. The buildings will be restored and the change is to the size of the lot, not the location of the buildings. The front yard is not changing and the gravel driveway has existed for many years.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The buildings exist in their present location and the change proposed is to reduce the size of the lot from nine acres to four acres.
4. The requested §9.34 extension of non-conforming bulk, § 11.2 definition of "lot",

§ 6.332 gravel driveway and front yard variances, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Allowing the applicant to restore the two existing structures and keep them on one lot that will be four acres, in a one acre zoning district, will enhance the neighborhood. The buildings will be restored and the change is to the size of the lot, not the location of the buildings. The front yard is not changing and the gravel driveway has existed for many years.

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 §9.34 extension of non-conforming bulk, § 11.2 definition of "lot", § 6.332 gravel driveway and front 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 §9.34 extension of

non-conforming bulk, § 11.2 definition of “ lot”, § 6.332 gravel driveway and front yard variances was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Ms. Albanese, aye; Ms. Castelli, aye; Mr. Sullivan, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Mr. Warren was absent.

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

DATED: October 5, 2011

DECISION

§ 4.1 PERFORMANCE STANDARDS APPROVED WITH CONDITIONS

To: Donald Brenner (James Garvey)

ZBA # 11-85

4 Independence Avenue
Tappan, New York 10983

Date: October 5, 2011

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#11-85: Application of Garvey Sculpture Studio Plan for Performance Standards Review, Chapter 43 (Zoning), LIO District, Section 4.1, for a sculpture studio forging metal. The property is located at 103 South Greenbush Road, Orangeburg, New York and is identified on the Orangetown Tax Map as Section 74.07, Block 1, Lot 17 in the LIO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 5, 2011 at which time the Board made the determination hereinafter set forth.

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

The following documents were presented:

1. Site plan not dated or signed.
2. Hand drawing of the proposed work space including outdoor courtyard.
3. A memorandum dated July 13, 2011 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
4. Use Subject to Performance Stands Resume of Operations and Equipment form dated July 18, 2011
5. Fire Prevention Supplement.
6. A letter dated September 13, 2011 from the County of Rockland Department of Planning signed by Thomas Vanderbeek, P.E., Commissioner of Planning.
7. A letter dated July 25, 2011 from the County of Rockland Department of Health signed by Gregory Price, P.E., Public Health Engineer.
8. A letter dated July 28, 2011 from Michael B. Bettmann, Chief Fire Inspector, Town of Orangetown.
9. A letter dated October 5, 2011 from Keneck Skibinski, Acting Chief Operator, Department of Environmental Management and Engineering, Town of Orangetown.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA),

pursuant to SEQRA Regulations §617.5 (c) (28); 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. Mr. Warren was absent.

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

Public Comment:

No public comment.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents presented, the Board found and concluded that:

1. Based upon the information contained in the applicant's Resume of Operations and Equipment, the Fire Prevention Supplement, the letter dated October 5, 2011 from Keneck Skibinski, Acting Chief Operator of the Orangetown Department of Environmental Management and Engineering concluding there is no reasonable doubt as to the likelihood of applicant's conformance to the Zoning Code § 4.1 Performance Standards, the memorandum dated July 28, 2011 from Michael B. Bettmann, Chief Fire Inspector, Town of Orangetown, the letter dated July 25, 2011 from Gregory Price, P.E., Public Health Engineer, County of Rockland Department of Health, the letter dated September 13, 2011 from Thomas Vanderbeek, Commissioner of Planning, County of Rockland Department of Planning, the other documents presented to the Board and the testimony of applicant's representatives, the Board finds and concludes that conformance with the Performance Standards set forth in Zoning Code Section 4.1 will result sufficient to warrant the issuance of a Building Permit and/or Certificate of Occupancy, subject to compliance with the orders, rules and regulations of the Building Department and all other departments having jurisdiction of the premises.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for Performance Standards Conformance, pursuant to Zoning Code § 4.1, is **APPROVED** with the **SPECIFIC CONDITION** that the applicant adhere to all of the requirements set forth by the Chief Fire Inspector, Town of Orangetown, letter dated July 28, 2011 and the letter dated July 25, 2011 from Gregory Price, P.E., Public Health Engineer, Rockland County Department of Health ; **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, Performance Standards Approval, 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, Performance Standards Approval, 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, performance standards approval, 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, Performance Standards Review, 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 Zoning Code § 4.1 Performance Standards was presented and moved by Mr. Mowerson, 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.

DATED: October 5, 2011

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By _____
Deborah Arbolino

Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR

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

