

MINUTES
ZONING BOARD OF APPEALS
March 5, 2008

MEMBERS PRESENT: PATRICIA CASTELLI
 DANIEL SULLIVAN
 NANETTE ALBANESE
 JOHN DOHERTY

ABSENT: WILLIAM MOWERSON

ALSO PRESENT: Dennis Michaels, Esq. Deputy Town Attorney
 Anne Marie Ambrose, Official Stenographer
 Deborah Arbolino, Administrative Aide
 Elena Jennings Clerk Typist

This meeting was called to order at 7: 00 P.M. by Acting Chairperson Patricia Castelli.

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

CONTINUED ITEMS:

| | | |
|---------------------------------------|---------------------------------------|-----------|
| GRANT 69.16 / 2 / 15; R-15 zone | FLOOR AREA RATIO VARIANCE APPROVED | ZBA#08-11 |
| SMK RELD 69.10 / 2 / 71; R-15 zone | POSTPONED | ZBA#08-12 |

NEW ITEMS:

| | | |
|--|--|-----------|
| DWYER 69.05 / 4 / 46 R-15 zone | FLOOR AREA RATIO AND SIDE YARD VARIANCES APPROVED | ZBA#08-15 |
| FRANCO 68.15 / 5 / 46; RG zone | SIDE YARD VARIANCE APPROVED | ZBA#08-16 |
| DUFFY 74.18 / 2 / 20; R-15 zone | SIDE YARD AND REAR YARD VARIANCES APPROVED AS MODIFIED | ZBA#08-17 |
| MACKIN 74.13 / 3 / 91; RG zone | POSTPONED | ZBA#08-18 |
| ST. THOMAS AQUINAS DORMITORY 74.16 / 1 / 1; 74.12 / 1 / 29; R-40 zone | SECTION 8-2 ITEM A AND ITEM D APPROVED WITH CONDITIONS | ZBA#08-19 |

OTHER 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: Dominican College Site Plan; Dining Hall expansion plan; 470 Western Highway, Blauvelt, New York, 74.06 / 3 / 3; R-40 zone; Orangeburg Racquet Club Site Plan, 37

Ramland Road, Orangeburg, New York, 77.05 / 1 / 1; LIO zone; Sunset Homes Subdivision Plan, 45 Sunset Road, Blauvelt, New York, 70.09 / 2 / 23; R-15 zone; Barnard Site Plan; Critical Environmental Area, 922 Route 9W, Grandview, New York, 71.13 / 1 / 23; R-22 zone; Salerno Minor Subdivision Plan, 55 Kinsley Grove, Pearl River, New York, 69.19 / 1 / 4; R-40 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 foregoing resolution was presented and moved by Ms. Castelli seconded by Mr. Doherty, and carried as follows: Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Castelli, aye; and Mr. Doherty, aye. Mr. Mowerson was absent.

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 9:30 P.M.

Dated: March 5, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
ASSESSOR
HIGHWAY DEPARTMENT
SUPERVISOR
TOWN BOARD MEMBERS
BUILDING INSPECTOR (Individual Decisions)
DEPT. of ENVIRONMENTAL MGMT. and ENGINEERING
Rockland County Planning

DECISION

FLOOR AREA RATIO VARIANCE APPROVED

To: Rita and Gerard Grant
2 Michael Drive
Blauvelt, New York 10913

ZBA # 08-11
Date: 2/ 6/ 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-11: Application of Gerard and Rita Grant for a variance from Chapter 43, Section 3.12, R-15 District, Group M, Column 4 (Floor Area Ratio: .20 permitted, .22 proposed) for an addition to an existing single-family residence. The premises are located at 2 Michael Drive, Blauvelt, New York, and are identified on the Orangetown Tax Map as Section 69.16, Block 2, Lot 15; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 6, 2008 at which time the Board made the determination hereinafter set forth.

At the February 6, 2008 meeting Gerard Grant and Michael DiMartino, contractor, appeared and testified.

The following documents were presented:

1. Architectural plan dated 10/5/07 signed and sealed by Stephen Mitchell Architect.
2. Five letters from neighbors in support of the application.

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

At the February 6, 2008 meeting Gerard Grant testified that they are proposing to extend out the back of the house to enlarge the kitchen, basement and add a bedroom and bathroom; that his mother-in-law has just moved in with them and they would like to have a bedroom and bathroom for her; that they are proposing to enclose the front stoop and make it part of the house; that the property backs up to the Palisades Parkway; that on the east side of the property is the old railroad bed that is overgrown; and that Mr. Mitchell the architect is in Florida and he would like to request a continuance.

Michael Di Martino, contractor testified that the second floor over hang was done to add more room to the existing bedrooms and for aesthetic reasons.

At the March 19, 2008 hearing Rita and Gerard Grant and Michael DiMartino appeared and testified.

The following items were submitted:

1. A letter dated March 5, 2008 from Nyack Pediatric signed by Dr. Louise Jovino.
2. A picture of the existing front entrance to the house.
3. An e-mail dated February 12, 2008 from Stephen Mitchell, AIA.

Gerard Grant testified that he and his wife have three sons aged 15, 14, 10; that one of his sons has spina bifida; that they need a room for therapy for their son; that the Jacuzzi tub is proposed for his use; that his mother-in-law lives with too; that they could shorten the back of the house by 3' but it would make the exercise room less useful; that the covered front entryway is important because the existing front entryway is not safe.

Rita Grant testified that the architect is in Florida but he faxed the square footage and they are requesting to be 314 sq. ft. over the permitted floor area ratio; that her son is mobile but unsteady; that part of the addition is to accommodate his therapy; that they are proposing to add an extra bedroom with a bathroom, an exercise room and to cover the front entryway; that the house has no closet space; that currently the laundry room is in the utility room; that there is not adequate space in the house; that they also have many relatives in Ireland that visit three or four times a year and they would like space to accommodate them; that the backyard backs up to the Palisades Parkway; that to the right of the house are woods and to the left is another house that is a reasonable distance from their house; that they have five letters from neighbors in support of the application; and that the proposed addition is in the rear of the house and will not intrude on anyone.

Michael DiMartino testified that the front entryway cannot accommodate two people at the same time; that there is not enough clearance; that they would like to keep the changes for safety reasons and for the extra needed 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.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents presented, the Board found and concluded that the benefits to the applicant if the variances 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 variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed addition is in the rear of the house which backs up to the Palisades Interstate Parkway.
2. The requested floor area ratio variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar additions have been constructed in the area.
3. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining a variance.
4. The requested floor area ratio variance is not substantial.
5. The applicant purchased the property so the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested floor area ratio 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 floor area ratio variance was presented and moved by Mr. Doherty, seconded by Mr. Sullivan, and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Mr. Doherty, aye; and Ms. Albanese, aye. Mr. Mowerson 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: March 5, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -J.P.

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

DECISION

FLOOR AREA RATIO AND SIDE YARD VARIANCES APPROVED

To: Robert Dwyer
234 Ehrhardt Road
Pearl River, New York 10965

ZBA # 08-15
Date: 3/ 5/ 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-15: Application of Robert Dwyer for variances from Chapter 43, Section 3.12, R-15 District, Group M, Columns 4 (Floor Area Ratio: .20 permitted, .2069 proposed) to add a roof over an existing deck and from Column 9 (Side Yard: 20' required, 3' existing for an existing above-ground pool) at an existing single-family residence. The premises are located at 234 Ehrhardt Road, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 69.05, Block 4, Lot 46; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, March 5, 2008 at which time the Board made the determination hereinafter set forth.

Robert and Dawn Dwyer appeared and testified.

The following documents were presented:

1. Survey dated July 2, 2001 signed and sealed by Jeffrey W. Donnellon, L.S..
2. Architectural plans dated January 25, 2007 with the latest revision date of October 30, 2007 signed and sealed by Kier Levesque, Architect.
3. One letter in support of the application from an abutting property owner.

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

Robert Dwyer testified that they found out that there was no certificate of occupancy for the existing above-ground pool when they put their application in to cover the existing deck; that they had a fire at the house and are in the process of fixing the damage; that the existing pool is three feet from the property line; that they purchased the house in July 2001; and that he does not know what it would cost to move the pool.

Dawn Dwyer testified that there are five people in her family; that she did have papers on the pool but they were lost in the fire; that the pool was put in two years prior to their purchasing the house; that the fire happened in 2006; that they are not living in the house yet but they hope to be back in the house soon; that if they had to move the pool they would but they hope to be able to keep it where it is; and that the deck that they want to roof over is already existing.

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.

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested floor area ratio and side yard variances would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The existing deck is not being enlarged just roofed over and the above-ground pool has been in existence since at least 1999 without any complaints from neighbors.
2. The requested floor area ratio and side yard variances would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

3. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining variances.
4. The requested floor area ratio variance is not substantial and side yard variance for the above-ground pool existed prior to the applicants' purchase of the property.
5. The applicant purchased the property so the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance(s).

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested floor area ratio and side yard variances 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 floor area ratio and side yard variances was presented and moved by Ms. Castelli, seconded by Ms. Albanese, and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Mr. Doherty, aye; and Ms. Albanese, aye. Mr. Mowerson 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: March 5, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -J.P.

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

DECISION

SIDE YARD VARIANCE APPROVED

To: Sara and Anthony Franco
80 North Serven Street
Pearl River, New York 10965

ZBA # 08- 16
Date: 3/ 5/ 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-16: Application of Sara and Anthony Franco for a variance from Chapter 43, Section 3.12, RG District, Group Q, Column 9 (Side Yard: 10' required, 4.55' existing and proposed) for the addition of a dormer at an existing single-family residence. The premises are located at 80 North Serven Street, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 68.15, Block 5, Lot 46; RG zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, March 5, 2008 at which time the Board made the determination hereinafter set forth.

Sara and Anthony Franco appeared and testified.

The following documents were presented:

1. Architectural plans labeled "Proposed Second Floor Dormer" not dated, signed and sealed by Robert Murphy, Architect.
2. Bulk table.
3. Copy of survey dated October 29, 2007 by Frank M. Hoens, P.L.S., Goshen, N.Y..

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

Sara Franco testified that she and her husband purchased the house in November of this year; that they have a ½ bath downstairs and that the bathroom upstairs has slanted ceilings; that they plan to dormer out the back of the house and have a bedroom and full bath upstairs; and that the 5.44 side yard is not changing.

Anthony Franco testified that the property is small; that the 4.55 side yard is an existing condition and that it is not being changed; that the proposed addition is at the rear of the house; and that the sheds belong to them.

Public Comment:

No public comment.

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

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested side yard variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The dormer addition is in the rear of the house and is not extending beyond the existing non-conforming side yard.
2. The requested side yard variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining a variance.
4. The requested side yard variance although substantial is an existing condition that is not changed by the addition of the proposed dormer.
5. The applicant purchased the property so the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

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

General Conditions:

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

(ii)

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

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

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

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

The foregoing resolution to approve the application for the requested side yard variance was presented and moved by Mr. Sullivan, seconded by Ms. Albanese, and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; Mr. Doherty, aye; and Ms. Albanese, aye. Mr. Mowerson 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: March 5, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -B.v.w.

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

DECISION

SIDE YARD AND REAR YARD VARIANCES APPROVED AS MODIFIED

To: Matthew and Tracie Duffy
24 Berry Court
Tappan, New York 10983

ZBA # 08-17
Date: 3/ 5/ 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-17: Application of Matthew and Tracie Duffy for variances from Chapter 43, Section 3.12, R-15 District, Group M, Column 9 (Side Yard: 20' required, 8' proposed) and from Section 5.227 (Required Rear Yard for Swimming Pool: 20' required, 8' proposed) for an above-ground pool at an existing single-family residence. The premises are located at 24 Berry Court, Tappan, New York, and are identified on the Orangetown Tax Map as Section 74.18, Block 2, Lot 20; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, March 5, 2008 at which time the Board made the determination hereinafter set forth.

Matthew and Tracie Duffy appeared and testified.

The following documents were presented:

1. Survey.
2. Site plan showing proposed placement of the pool.

Tracie Duffy testified that they would like to construct a 15' x 26' above-ground pool in the back corner of the property; that they picked this spot because it is the least sloped area of the yard; and that if they had to move the pool two feet up and over they could to give a 10' rear and 10' side yard.

Matthew Duffy testified that they have owned the house for 4 ½ years; that they have two children aged 6 and 4; that they live on a traditional cul-de-sac; that their house sits caddie corner on the lot; that the property is sloped; that the yard is fenced in; that they included a 9' x9' deck with the building permit for the pool; that the neighbors driveway abuts the side the property where they are proposing to place the pool; that the neighbors are not too close to them because of the layout of the cul-de-sac; and that they could move the pool two feet forward and two feet closer to the house to permit a ten foot rear yard and a ten foot side yard.

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

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.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents presented, the Board found and concluded that the benefits to the applicant if

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

1. The requested side and rear yard variances as modified would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The requested side and rear yard variances as modified would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining variances.
4. The requested side and rear yard variances as modified are substantial but are being granted as modified for a proposed above-ground pool.
5. The applicant purchased the property so the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested rear yard and side yard variances as modified to a 10' rear yard and a 10' side yard is APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

which legally permits such occupancy.

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

The foregoing resolution to approve the application for the requested rear yard and side yard variances as modified to a 10' rear yard and 10' side yard was presented and moved by Mr. Doherty, seconded by Mr. Sullivan, and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye; Mr. Doherty, aye; and Ms. Albanese, aye. Mr. Mowerson 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: March 5, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -J.P.

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

DECISION

SECTION 8-2 ITEM A (NUMBER OF BEDS) and ITEM D (BUILDING HEIGHT) VARIANCES APPROVED with CONDITIONS

To: John Atzl (St. Thomas Dormitories)
234 N. Main Street
New City, New York 10956

ZBA # 08-19
Date: 3/ 5/ 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-19: Application of St. Thomas Aquinas College Dormitory Addition for a variance from Chapter 43, R-40 District, Section 8-2 item A (Number of Beds: 274 beds permitted, 624 beds existing, 656 beds proposed), and 8-2 item D (Building Height: 25' permitted, 33.5' proposed) for an addition to an existing dormitory. The premises are located at 125 Route 340, Sparkill, New York, and are identified on the Orangetown Tax Map as Section 74.12, Block 1, Lot 29; and Section 74.16, Section 1, Lot 1; R-40 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, March 5, 2008 at which time the Board made the determination hereinafter set forth.

John Atzl, Land Surveyor, Joe Donina, Vice President, St. Thomas Aquinas College and Sister Margaret Fitzpatrick appeared and testified.

The following documents were presented:

1. Site plan dated July 20, 2007 with the latest revision date of December 28, 2007 signed and sealed by John Atzl, Land Surveyor.
2. Architectural plans not dated signed and sealed by Anthony Joseph Iovino, Architect.
3. A memorandum dated December 12, 2007 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
4. Draft Planning Board decision dated January 23, 2007 (PB#07-71).
5. Zoning Board decision #03-70 dated 6/18/03.

On recommendation by Mr. Michaels, Deputy Town Attorney, Ms. Castelli made a motion that St Thomas Aquinas College (ZBA#08-19) is an Unlisted Action and that the Zoning Board consents to the Planning Board as Lead Agency for the State Environmental Quality Review Act (SEQRA) review purposes with respect to this application; which motion was seconded by Ms. Albanese and carried unanimously.

John Atzl testified that in 2003 the College built a dormitory building that required variances for both height and the number of beds; that they are building a mirror image of half that dormitory now; that they are asking for the same height variance and a variance for 32 beds; and that they are also adding another 33 parking spaces; that currently the paved island and entrance is quite curved; that with the changes it will be smoother and there will be additional parking spaces opposite the existing spaces.

Sister Margaret Fitzpatrick testified that enrollment keeps going up; that they are trying to prudently build residence facilities; that they are trying to accomplish this in a carefully planned way; that Fall occupancy is at 90%; that most students take 4 ½ years to graduate and are graduating in December; that the Spring occupancy is usually less than the Fall occupancy; that they do not want to have 100% occupancy because when you have young adults living together you need to have room to move students around if the living arrangements are not working; that there are approximately 600 students living on campus and about 1500 undergrad students enrolled presently; and to address the letter from Rockland County Planning, she and Sister Mary Eileen from Dominican College went to the Town Board last October and were told that they do not want to change the Zoning Code and that they would rather each individual application be reviewed and left to the wisdom of the Zoning Board.

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.

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested number of beds and building height variances would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.

2. The requested number of beds and building height variances would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining variances.
4. The requested number of beds and building height variances are not substantial.
5. The applicant purchased the property so the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variances.

The Board hereby rejects and determines not to accept or adopt, and hereby overrides the Rockland County Department of Planning's Approval Modification #1 set forth in its letter dated February 27, 2008, pursuant to NYS General Municipal Law §239-M (5), for the following reasons: (1) testimony presented by Sister Margaret Fitzpatrick that she and Sister Eileen from Dominican College went before the Town Board last October and were told that they do not want to change the zoning code and that they would rather each individual application be reviewed by the Zoning board; (2) that there is sufficient open space between the buildings; (3) the application includes improved roadways and additional parking.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested number of beds and building height variances is APPROVED with the SPECIFIC CONDITIONS that (1) A review shall be completed by the New York State Department of Transportation and all required permits obtained; (2) A permit from the Rockland County Drainage Agency shall be required; 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 number of beds and building height variances and rejecting and overriding modification #1 of the letter dated February 27, 2008 from the County of Rockland Department of Planning was presented and moved by Ms. Albanese, seconded by Mr. Sullivan, and carried as follows: Ms. Castelli, aye; Mr. Sullivan, aye; Mr. Doherty, aye; and Ms. Albanese, aye. Mr. Mowerson 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: March 5, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
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