

MINUTES  
ZONING BOARD OF APPEALS  
October 6, 2021

MEMBERS PRESENT: DAN SULLIVAN, CHAIRMAN  
MICHAEL BOSCO  
THOMAS QUINN  
ROB BONOMOLO, JR  
BILLY VALENTINE

ABSENT: PATRICIA CASTELLI

ALSO PRESENT: Deborah Arbolino, Administrative Aide  
Katlyn Bettmann, Senior Clerk Typist  
Denise Sullivan, Deputy Town Attorney  
Anne Marie Ambrose Official Stenographer

This meeting was called to order at 7: 00 P.M. by Mr. Sullivan, Chairman.  
Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

POSTPONED ITEM:

MAURO 1079 Route 9W South Nyack, New York 71.09 / 1 / 8; R-22 zone	POSTPONED	ZBA#21-74
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NEW ITEMS:

EBENEZER FULL GOSPEL 136 Sunset Road Blauvelt, New York 70.05 / 1 / 16; R-80 zone	§3.11, COLUMN 6 #3 PARKING SPACE VARIANCE APPROVED	ZBA#21-84
DOHERTY 12 Sunrise Lane Pearl River, New York 69.18 / 3 / 21; R-15 zone	FLOOR AREA RATIO VARIANCE APPROVED	ZBA#21-85
CORTELLI 342 Blauvelt Road Pearl River, New York 69.13 / 2 / 18.2; R-15 zone	SIDE YARD VARIANCE AND REAR YARD VARIANCE FOR A POOL APPROVED	ZBA#21-86
VON OHLEN 3 First Lt. Ferris Court Pearl River, New York 69.13 / 3 / 36.1; RG zone	REAR YARD VARIANCE APPROVED	ZBA#21-87

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LEVINE  
40 Lester Drive  
Orangeburg, New York  
74.13 / 3 / 30; R-15 zone

ACCESSORY STRUCTURE  
VARIANCE APPROVED

ZBA#21-88

CONTINUED ITEM:

WPT ACQUISITIONS  
INTERPRETATION  
13 & 21 Mountainview Avenue  
and 516 Route 303  
Orangeburg, New York  
74.07 / 1 / 36; LI & LIO zones  
74.07 / 1 / 33 LI zone  
74.07 / 1 / 2; CC zone

USE VARIANCE NOT  
REQUIRED AS PRESENTED

ZBA#21-83

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 application; 1110 Route 9W, Nyack, NY, 71.05 / 1 / 20; R-22 zone; Brosna Construction Site Plan, 624 Route 303, Blauvelt NY; 65.14 / 1 / 7; LIO zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings

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: October 6, 2021

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By Deborah Arbolino

Deborah Arbolino, Administrative Aide

DISTRIBUTION:  
APPLICANT  
TOWN ATTORNEY  
DEPUTY TOWN ATTORNEY  
TOWN BOARD MEMBERS  
BUILDING INSPECTOR (Individual Decisions)  
Rockland County Planning

TOWN CLERK'S OFFICE  
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TOWN OF ORANGETOWN

**SECTION 3.11, COLUMN 6, # 3 PARKING SPACE VARIANCE APPROVED**

To: Jay Greenwell, PLS, LLC (Ebenezer Full Gospel)  
85 Lafayette Avenue  
Suffern, New York 10901

ZBA #21-85  
Date: October 6, 2021  
Permit #50525

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#21-84: Application of Ebenezer Full Gospel Assembly for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-80 District, Section 3.11, Column 6 # 3 (169 parking spaces required, 107 parking spaces provided, and 38 proposed as land banked for a total of 145 parking spaces) for a revised site plan for an existing church. The church is located at 136 Sunset Road, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 70.05, Block 1, Lot 16; in the R-80 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 6, 2021 at which time the Board made the determination hereinafter set forth.

Jay Greenwell Land Surveyor, and John Johnson, Pastor, appeared and testified.

The following documents were presented:

1. Plans labeled "Site Plan for Ebenezer Full Gospel Assembly" dated 11/12/2019 with the latest revision date of 3/19/ 2021 signed and sealed by Jay A. Greenwell L.S and Paul Gdanski, P.E..
2. Plans labeled "New Addition @Ebenezer Full Gospel Assembly" signed and sealed by Eric Knute Osborne, Architect dated July 7, 2021( 5 pages).
3. A letter dated September 13, 2021 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
4. A letter dated August 23, 2021 from Rockland County Health Department signed by Elizabeth Mello, P.E., Senior Public Health Engineering.
5. Sign-offs from Rockland County Highway Department and Rockland County Health Department.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that since the Planning Board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or did not object to the Planning Board acting as Lead Agency for these applications, pursuant to coordinated review under the State Environmental Quality Review Act Regulations § 617.6 (b)(3); and since the Planning conducted SEQRA reviews and, on May 26, 2021 (as set forth in PB# 21-31) rendered environmental determinations of no significant adverse environmental impacts to result from the proposed land use actions (i.e. a

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“Negative Declarations” of “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. Bonomolo, aye; Mr. Valentine, aye; Ms. Castelli, aye; Mr. Bosco, aye; and Mr. Sullivan, aye. Mr. Quinn was absent.

Jay Greenwell, Land Surveyor, stated that the site plan for this addition was approved about 20 years ago; that the multi-purpose room was not built at the time because of budgetary restraints; that about 18 months ago Eric Osborne developed a plan for the room and it was enlarged from the originally approved 8,000 sq. ft. to 10,000 sq. ft.; that when the Town Director of OBZPAE reviewed the plan, she determined that because of the ceiling height and elevation the basement needed to count on the floor area ratio calculation, which changes the required amount of parking for the site; that they are here to ask for a variance for parking; that they have been before the Planning Board and they are in agreement that 38 parking spaces could be land banked because the congregation does not use all of the spaces that are required; that they are proposing to add an additional 27 spaces to the existing 80 spaces and have the additional 38 land banked for a total of 145 spaces of the required 169 spaces; that the congregation’s population is stable and not growing very quickly; that without the basement they would be required to have 145 spaces and they have 107 without the land banked spaces and that the likelihood of using all those spaces at one time is near zero; and that they have no objections to addressing all of the comments from the involved agencies.

Pastor Johnson testified that services usually bring around 60 cars on a Sunday; that they proposing the addition to try to increase the programs for youth; adding youth programs and Sunday school classrooms; that the chances of using all of the required parking is very slim.

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

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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 Section 3.11, Column 6 #3 parking space variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The church has not had any problems in the past with parking and the proposed addition should not cause any parking problems. The change in the floor area ratio was caused by the ceiling height and elevation of the basement; and since there will be 27 additional striped spaces added to the site along with 38 additional land banked spaces.
2. The requested Section 3.11, Column 6 #3 parking space variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The church has not had any problems in the past with parking and the proposed addition should not cause any parking problems. The change in the floor area ratio was caused by the ceiling height and elevation of the basement; and since there will be 27 additional striped spaces added to the site along with 38 additional land banked spaces.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested Section 3.11, Column 6 #3 parking space variance is not substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The church has not had any problems in the past with parking and the proposed addition should not cause any parking problems. The change in the floor area ratio was caused by the ceiling height and elevation of the basement; and since there will be 27 additional striped spaces added to the site along with 38 additional land banked spaces.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested Section 3.11. Column 6, #3 parking space 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.

TOWN OF ORANGETOWN  
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TOWN CLERK'S OFFICE

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.


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The foregoing resolution to approve the application for the requested Section 3.11, Column 6, #3 parking space variance is APPROVED; was presented and moved by Ms. Castelli, seconded by Mr. Bonomolo, and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn 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 6, 2021

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-M.M.

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

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**FLOOR AREA RATIO VARIANCE APPROVED**

To: Daniel Doherty  
12 Sunrise Lane  
Pearl River, New York 10968

ZBA #21-85  
Date: October 6, 2021  
Permit #51760

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#21-85: Application of Daniel Doherty for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 3.12, Column 4 (Floor Area Ratio: 20% permitted, 27.4% proposed) for an addition to a single-family residence. The property is located at 12 Sunrise Lane, Pearl River, New York and is identified on the Orangetown Tax Map as Section 69.18, Block 3, Lot 21 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 6, 2021 at which time the Board made the determination hereinafter set forth.

Daniel Doherty and Dave Duff, nephew, appeared and testified.

The following documents were presented:

1. Plans labeled "Proposed Porch Addition to the Doherty Residence" dated June 17, 2021 signed and sealed by Paul Douglas Siebenaler, Architect. (4 pages).
2. Survey dated July 15, 2021 signed and sealed by Robert E. Sorace, P.L.S..
3. Zoning Board Decision #15-08 dated February 4, 2015.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan 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) (11), (12), (16) and/or (17); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; Ms. Castelli, aye.; and Mr. Valentine, aye. Mr. Quinn was absent.

Daniel Doherty testified that he has owned the house for 54 years; that he is proposing to use the flat patio in the rear of the house to make it a screened in addition or a three season room, so that they can enjoy outside more; and that they did get variances in 2015 for other improvements that were made to the house.

Public Comment:

No public comment.

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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. Sullivan 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 variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar additions have been constructed in the neighborhood.
2. The requested floor area ratio variance will 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 neighborhood.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested floor area ratio variance is not substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. 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 variance.

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TOWN CLERK'S OFFICE

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.

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The foregoing resolution to approve the application for the requested floor area ratio variance is APPROVED; was presented and moved by Mr. Bosco, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn 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 6, 2021

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-Dom.M.

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

TOWN OF ORANGETOWN  
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**SIDE YARD , SECTION 5.227 REAR YARD FOR A POOL VARIANCE APPROVED**

To: Terrence Cortelli  
342 Blauvelt Road  
Pearl River, New York 10965

ZBA #21-86  
Date: October 6, 2021  
Permit #51487

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#21-86: Application of Terrence Cortelli for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 3.12, Column 9 (Side Yard: 20' required, 10' proposed), and from Section 5.227 (Rear Yard for a pool: 20' required, 10' proposed) for an in-ground pool at an existing single-family residence. The property is located at 342 Blauvelt Road, Pearl River, New York and is identified on the Orangetown Tax Map as Section 69.13, Block 2, Lot 18.2 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 6, 2021 at which time the Board made the determination hereinafter set forth.

Terrence Cortelli and Jordan Barry, Westrock Pools, appeared and testified.

The following documents were presented:

1. Copy of survey with the pool drawn on it by Terrence Cortelli.
2. Six color pictures of the back yard and tree in the center of the yard.
3. Two letters in support of the application.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan 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) (11), (12), (16) and/or (17); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn was absent.

Jordan Barry, Westrock Pools testified that the applicant would like to install an in-ground pool in the back yard, ten feet from the south yard and ten feet from the east yard; that they have a beautiful large tree in the middle of the yard and the pool is more than eight feet from the house.

Terry Cortelli testified that the tree circumference is about 11' and it is beautiful and they do not want to lose the tree; and he submitted two letters from neighbors' in support of the application and six pictures of the tree and yard.

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested side yard and Section 5.227 rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Other pools have been constructed in the neighborhood with similar setbacks. The large tree in the middle of the yard limits where the pool could be constructed.
2. The requested side yard and Section 5.227 rear yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Other pools have been constructed in the neighborhood with similar setbacks. The large tree in the middle of the yard limits where the pool could be constructed.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested side yard and Section 5.227 Rear yard pool variances are not substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. Other pools have been constructed in the neighborhood with similar setbacks. The large tree in the middle of the yard limits where the pool could be constructed.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

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DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested side yard variance and Section 5.227 rear yard for a pool 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.

TOWN CLERK'S OFFICE  
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TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested side yard variance and Section 5,227 rear yard pool variance is APPROVED; was presented and moved by Mr. Bonomolo, seconded by Mr. Bosco and carried as follows: Mr. Valentine, aye; Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Quinn 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 6, 2021

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-G.M.

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

TOWN OF ORANGETOWN  
2021 OCT 14 A 10:45  
TOWN CLERK'S OFFICE

**REAR YARD VARIANCE APPROVED**

To: Rick Von Ohlen  
3 First Lt. Ferris Court  
Pearl River, New York 10965

ZBA #21-87  
Date: October 6, 2021  
Permit #51790

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#21-87: Application of Rick Von Ohlen for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, RG District, Group Q, Section 3.12, Column 11 (Rear Yard: 25' required, 15' existing), for an existing deck at an existing single-family residence. The property is located at 3 First Lt. Ferris Court, Pearl River, New York and is identified on the Orangetown Tax Map as Section 69.13, Block 3, Lot 36.1 in the RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 6, 2021 at which time the Board made the determination hereinafter set forth.

Rick and Charlene Von Ohlen appeared and testified.

The following documents were presented:

1. Plans labeled "Von Ohlen Deck" dated July 30, 2021 signed and sealed by Kier Levesque, Architect. (2 pages).
2. Survey dated June 28, 2021 signed and sealed by Robert R. Rahnefeld, L.S..
3. One picture of the exiting deck.
4. Letter of support signed by two neighbors.

Denise Sullivan recused herself during the testimony because she represents the applicant for the sale of the house.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan 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) (11), (12), (16) and/or (17); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn was absent.

Rick Von Ohlen testified that the deck was built in 2005 without a permit; that they are the first owners of the house; that they purchased the house 22 years ago; and that they have a letter from two neighbors in support of the application and a picture of the existing deck.

Public Comment:

No public comment.

TOWN CLERK'S OFFICE  
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TOWN OF ORANGETOWN



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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar decks have been constructed in the neighborhood.
2. The requested rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar decks 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 a variance.
4. The requested rear yard variance is not substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. Similar decks 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 variance.

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

General Conditions:

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

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

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

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

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

TOWN OF ORANGETOWN  
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TOWN CLERK'S OFFICE

The foregoing resolution to approve the application for the requested rear yard variance is APPROVED and the undersized lot is acknowledged; was presented and moved by Mr. Sullivan, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn 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 6, 2021

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-M.M.

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

TOWN OF ORANGETOWN  
2021 OCT 14 A 10:45  
TOWN CLERK'S OFFICE

**SECTION 5.227 REAR YARD VARIANCE APPROVED**

To: Ada Levine  
40 Lester Drive  
Orangeburg, New York 10962

ZBA #21-88  
Date: October 6, 2021  
Permit #51772

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#21-88: Application of Ada Levine for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 5.227 (Rear Yard for a shed: 5' required, 0' proposed) for an existing shed at an existing single-family residence. The property is located at 40 Lester Drive, Orangeburg, New York and is identified on the Orangetown Tax Map as Section 74.13, Block 3, Lot 30 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 6, 2021 at which time the Board made the determination hereinafter set forth.

Ada and Jonathan Levine appeared and testified.

The following documents were presented:

1. Plans labeled "Renovated Shed Plot Plan" dated 7/27/2021 not signed.
2. Survey dated February 13, 2015 by W.E. James Associates.
3. One letter in support of the application from neighbors at 38 Lester Drive.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan 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) (11), (12), (16) and/or (17); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn was absent.

Ada Levine testified that they purchased the house in 2005 and the shed was in its present location; that they had no problem securing a mortgage and nothing was flagged on the title search; that the shed had electricity; that during the pandemic her brother helped her renovate the shed to make a "she-shed"; that her brother added a bigger than expected awning onto the shed; that it is finished beautifully; that they are selling the house to move closer to her son in Lewiston, New York; that they did work on the house in 2015 and nothing was said about the shed; that they found out about the violation when the title search was done and they have lost two buyers already because of this; that they are trying to legalize the shed because the people interested in purchasing the house want the shed; that it cannot be moved without destroying it; and she showed the board pictures that were on her phone.

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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. Sullivan 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 Section 5.227 rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar sheds have been constructed in the neighborhood.
2. The requested Section 5.227 rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar sheds 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 a variance.
4. The requested Section 5.227 rear yard variance is very substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. Similar sheds 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 variance.

TOWN OF ORANGETOWN  
2021 OCT 14 A 10:45  
TOWN CLERK'S OFFICE

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested Section 5.227 rear yard variance is APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

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TOWN CLERK'S OFFICE

The foregoing resolution to approve the application for the requested Section 5.227 rear yard variance is APPROVED; was presented and moved by Mr. Valentine, seconded by Mr. Bosco, and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn 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 6, 2021

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- Dom. M.

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

TOWN OF ORANGETOWN  
2021 OCT 14 A 10:45  
TOWN CLERK'S OFFICE

**INTERPRETATION: USE VARIANCE NOT REQUIRED AS PRESENTED**

To: Ira M. Emanuel (WPT Interpretation)  
4 Laurel Road  
New City, New York 10956

ZBA #21-83  
Date: September 15, 2021  
continued to October 6, 2021

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#21-83: Application of WPT Acquisitions, LLC for an interpretation of the determination of Jane Slavin, RA, Director of the Orangetown Office of Building, Zoning, Planning Administration and Enforcement, that the proposed application does not comply with Town of Orangetown Zoning Code (Chapter 43) of the Town of Orangetown Code, Article XIII, Route 303 Overlay Zoning District Section 13.3(E), 13.3 (F), 13.10(B)(5) for the demolition of the existing building and house to erect a 175,760 sq. ft. warehouse/distribution space and a 2,600 sq. ft. office space accessory to the warehouse distribution use. The property is located at 13 & 21 Mountainview Avenue and 518 Route 303, Orangeburg, New York and is identified on the Orangetown Tax Map as Sections 74.07, Block 1, Lots 2, 33 & 36 in the LI, LI & LIO and CC zoning districts.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 15, 2021 at which time the Board made the determination hereinafter set forth.

At the September 15, 2021 hearing Amy Mele, Attorney, Jesse Cokeley, P.E., appeared and testified.

The following documents were presented at the September 15, 2021 hearing:

1. Plans labeled "Concept Plan Striping Improvements" dated March 22, 2021 not signed or sealed by Corey M. Chase and Joseph Staigar. (1 page)
2. Plans labeled "Concept Plan for WPT Industrial REIT dated 07/19/2021 signed and sealed by Jesse Barrett Cokeley, P.E..(1 page)
3. Plan labeled "Alta/NSPS Land Title Survey Lots 2, 33 & 36, Block 1, Section 74.07 dated 01/20/2021 signed and sealed by Gregory S. Gallan P.E. ( 2pages).
4. A Narrative Summary eight pages dated July 20, 2021 signed by Ira M. Emanuel, Attorney for the applicant.
5. A memorandum dated February 19, 2021 from Jane Slavin, RA, Director O.B.Z.P.A.E., Town of Orangetown.
6. A memorandum dated July 8, 2021 from Jane Slavin, RA, Director O.B.Z.P.A.E., Town of Orangetown.

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

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Amy Mele, Attorney testified that she is representing WPT Acquisitions, LLC and thanked the Board for hearing the project; that she is here because Attorney Ira Emanuel could not be present this evening because of the holiday; that the client is the contract vendee of the site; that this is an appeal of one section of the February 19, 2021 Memorandum of the Director of OBZPAE, and going forward she will refer to it as the Director's decision; that this is strictly an issue for interpretation; that this has nothing to do with the site plan, which will be, very widely and fully discussed at the Planning Board and perhaps again at this Board; that the applicant is proposing to replace the existing building with a 175,760 sq. ft. warehouse /distribution center on the parcel that is located on the north side of Mountainview Avenue; that they also have the opportunity to purchase an adjoining parcel in the CC District, but that parcel is in the 303 Overlay District; that there is no dispute that the warehouse must be built in the LI district ; that there is no dispute that the warehouse can be built in the LO District and that it is not part of the interpretation; that the applicant also does not dispute the Director's interpretation that by purchasing the property adjoining 303, that it pulls the entire site into the purview of the 303 Overlay District; that by purchasing that adjoining lot though the applicant could route most of the traffic from this site onto Route 303; that without that parcel, the applicant can still build the proposed warehouse but traffic would have to be routed onto Mountainview Avenue; that the current plan calls for some major improvements to Route 303, which Mr. Cokeley will address; that the Planning Board and the New York State DOT expressed preference for this proposed plan; however the applicant is here tonight to address a portion of the Decision of the Director of OBZPAE, dated February 19, 2021, reiterated in the Director's second memo of July 8, 2021; that this determination concluded that a use variance was required. The Director based her decision on an interpretation of Town Code (Chapter 43) Section 13.10 (B) (5), which states that "Retail warehouse uses including storage uses and distribution centers which require or utilize a structure with a total combined square footage in excess of 65,000 square foot shall be prohibited."

Ms. Mele continued and stated that the applicant disagrees that a use variance shall be required for the project; that they respectfully disagree; per Mr. Emanuel's narrative dated July 20, 2021, which was sent to the Board and is available on line prior to this evening. Their argument is based on principles and statutory construction ; that to understand the applicant's position, we have to look at the Town Board's intent with respect to enacting the overlay zone; that the 303 Overlay Zone was enacted in 2002 after very thorough study and after consultation with various state agencies including NYSDOT. Among its goals , and this is stated in the legislative intent, was to preserve commercial development opportunities, except that particular types of retail and retail warehouse uses shall be prohibited pursuant to 13.10, (which is referenced in the Director's decision). The zone also provides in 13.10 (A) that variances for retail uses are not presently permitted "as -of- right" in certain existing zoning districts, such as LI, LIO and LO and consequently required use variances; that "if there is any application after the effective date hereof for retail use in excess of 65,000 square feet gross floor area in LI, LIO or LO zone, the granting of such variance shall require a determination on the issue of the use variance and a separate determination on the issue of the area variance by the ZBA." The provision relied upon by the Director provides retail warehouse uses including many storage uses and distribution centers which require or utilize a structure with a total combined square footage in excess of

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65,000 square feet on any single parcel or an assemblage of contiguous individual parcels, or on any one parcel which has been subdivided after the date of this local law, shall be prohibited. Ms. Mele further testified that if one looks at all of these provisions together, it's clear what the drafters were trying to limit retail warehouse distribution in the Route 303 Overlay Zone. In other words, retail establishments like Lowe's, plumbing supply companies with showrooms where people can come in and purchase goods but they also have a warehouse for distribution. She said that Mr. Cokeley can describe in more detail how the site works, but it's simply not designed for a retail warehouse; that there will be no retail sales, people coming in and actually buying products at this site. There really are two issues. Section 10 (B)(5) upon which the Director relied is subject to interpretation; that we have retail warehouse use including many storage uses and distribution centers; that if the drafters had intended to have that provision apply to distribution centers in general; and not just retail distribution centers; that the section could have said retail warehouse uses many storage uses and distribution centers which required a structure greater than 65,000 square feet but they didn't. It was a subset of the retail warehouse uses. She stated that if you will look at the legislative intent, that emphasizes our position. That it's clear that the drafters were trying to limit retail use on Route 303 and those uses where public would come in to shop. This is not a retail warehouse use.

Ms. Mele stated that she actually got on the internet and searched retail warehouse and it was easy to come with a definition for "retail warehouse" that means "a building or part of a building with storage and display of goods, merchandise or materials that may include carrying out of commercial transactions involving the sale of such goods, merchandise or materials by retail sale to the general public". That was not this case- that retail warehouse means a building or part thereof in which goods and merchandise are displayed, stored and sold in a warehouse format; that the warehouse format means a configuration where there is an integrated display, storage and sale of goods or merchandise or a showroom with an associated warehouse component, also not hem; that retail warehouse is a building or structure or part thereof where commodities are stored and sold, and includes home furnishings and garden furniture, decorating supplies, catalog sales, sporting goods, home improvement products such as appliances, electrical fixtures, carpets, floor coverings, building supplies or plumbing supplies and also not what they are proposing. She said that the United States Court of Appeals in the Second Circuit has given its guidance in this regard; that as along with statutory construction cases, begins the language of the statute, the first step is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case, and while unless otherwise defined, statutory words can be interpreted as taking their ordinary, contemporary and common meaning and that's US vs Piervinanzi and that's 23F. 3<sup>rd</sup> 678 1994; that it should also be pointed out that New York law is clear when interpreting the Zoning Code provision it is well settled that must be strictly construed against the enacting municipality in favor of the property owner; and that is our narrative, FGL Property Corp vs City of Rye.

Ms. Mele stated that what we are dealing with is a determination from the Building Director that is contrary to a plain reading of the statute but is also contrary to other big projects that were approved here in Town, where that interpretation was not applied, one is Fed Ex which is in the LO zone and in the 303 Overlay and that is 220,000 square foot and in a review of the file reveals this issue was never invoked; and two is Linen Choice which Mr. Cokeley worked on, which is approximately 170,000 square feet again, and this issue was never invoked; that had it been they would have had to go for a use variance and possibly an area variance to be greater

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than 65,000 square feet, but they did not; that we submit that we should be treated the same way; and she turned it over to Mr. Cokeley.

Jesse Cokeley, Engineer for the project, testified that they have been before the Planning Board for informal discussions on the project; that the first time was back in February, and we received some comments about traffic in the area among other things; that the project team began opening communications with the New York State Department of Transportation to talk about traffic, both in the area and what can be done to improve that; that also the possibility came up to purchase this additional parcel which would give the site access to Route 303; that the site plan itself has not been formally submitted to the Planning Board but they did go back in July for a second time after that access was incorporated into the plan and shown to be straightened out, per some comments submitted to DOT, and they provided some comments back to the Planning Board; then another submission was done taking into account some feedback from the DOT; that a full traffic study was submitted to DOT, and they provided some comments back to the Planning Board; then another submission was done taking into account some of the comments, some of the feedback received at the Planning board and essentially what they are proposing, you can see on the colored exhibit; that there is really a set of two types of improvements that are proposed on Route 303; that one is involving re-striping in the northbound and southbound directions on Route 303; that essentially generates a dedicated left turn and a shared through slash right turn lane for both northbound and southbound approaches at the intersection of Mountainview Avenue; that the striping would extend to provide a two way center turn lane northerly in this section of Town, progressing up past the site, the proposed site driveway and about 200 feet past the property; that additionally proposed and modified is a signal phase-in to provide a protected or permitted left turn phase-in for Route 303 approaches; that with these modifications, the intersection can operate at a similar or better than no build levels of service without significantly affecting the other intersection movements; that the overall intersection delay would be reduced and the two way turning lane would improve the driveway operations for the existing commercial developments along 303 in that vicinity; that they are remaining in regular communication with NYSDOT about the project, and have resubmitted the updated traffic study on August 20<sup>th</sup> based on their comments to the Planning Board; that traffic study included an examination of some of the other intersections North and South of Mountainview at the request of the Planning Board; that in general they found that those would continue to operate at no build levels of service with the addition of the site generated traffic from this project, as well as the proposed improvements for the striping and the signal; that's where Route 303 stands; that the Board has the conceptual plan as well in the packet, which shows the main driveway access going out to Route 303; that there is driveway to Mountainview that was discussed also with the Planning Board with re-striping the truck turn to utilize Mountainview Avenue; that should this progress beyond tonight, a formal application will be made to the Planning Board for site plan approval and those things would be further developed including the storm water design which is a concern in the area.

He further testified that he was the engineer of record for the Linen Choice project that was approved in 2018; it is also in the LI zone and relies on access through Glenshaw Street, which is in the Route 303 Overlay District and at the time was never brought up; that it was in fact before this Board for setback variances and the Route 303 Overlay was not brought up.

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Mr. Bosco stated that Mr. Cokeley mentioned the traffic, no affect to traffic, and asked was that based on ten trucks as proposed in the application?

Ms. Mele, Attorney, replied that the traffic study does take into account the Use Code for this property, and the square footage of the building; that the standards are set forth by the Institute of Transportation Engineers; and it's a certain factor that New York State DOT requires you to use; that it's not just the ten trucks, it's what would a building this size be expected to generate, based on studies that they have done across the United States; so it is not based on ten trucks.

Mr. Bosco asked if they have 56 bays?

Mr. Cokeley responded that there are thirty three bays.

Mr. Bosco replied thirty-three bays and other storage areas with other trucks being stored, was that the plan that was submitted?

Mr. Cokeley responded yes.

Mr. Valentine stated that when he reads 13.10 (5), he read it as retail warehouse which includes a retail distribution center; that he does not read that as necessarily requiring the sale of goods on site; that it a retail distribution center and plain meaning of that would be a distribution center that's services retail stores, not necessarily sell items on site; and asked for a counter on that; and stated that he googled the terminology that Ms. Mele did. He searched retail warehouse at the same website and he also googled retail distribution center and the definition is retail distribution center normally distributes goods to retail stores; so there is a plain reading, a reading if you google like you said to do, that does not require retail sales on site; and that the difficulty in making a decision is that we don't actually know what is going to be happening there.

Ms. Mele responded that if you read the legislative intent before you read that section, you'll see that the drafters intended was to limit retail sales; that if we take the definition that you are just shipping to retail end user, that we could bring a lot of the uses on 303 into that definition that are already there; that Linen Choice might be shipping to a retail establishment but it doesn't make them a retail warehouse use; and the variance we probably will be looking for is to decrease the number of parking spaces because we know that we are not going to have any retail customers coming to any of our end users; that a last stop in the distribution chain or a second stop in the distribution chain does not make a difference; that what the Code intended to do was to limit retail sales; and again this interpretation wasn't an issue with other similar projects that were almost identical in terms of the zoning; that it is ironic, if you take that interpretation, that the response would be, not to buy the parcel on Route 303 and then if the project is not in the Route 303 Overlay District the question doesn't come up anymore; that the Town would lose out on a lot of improvements and the Planning board and NYSDOT wants these improvements.

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Mr. Valentine stated that he understands the applicant's point but it's hard to look at this in a vacuum because the Board would be setting a precedent; that if they interpret it the way the applicant is saying, he can't look at the case and say, this may happen where you cut off the Route 303 and push everything towards Mountainview Road; that his interpretation would think the intent was to not allow someplace where there is tons of traffic and that if you have retail distribution center, he fears that there is going to be a lot of traffic going in and out; that it's not necessarily that someone is buying something in there; that it's the volume of traffic; that he gets what she is saying, that if you are just in the LI District, you may have the right to build; that the other way we are setting a precedent.

Ms. Mele responded that she would argue that there has already been a precedent set; that it wasn't invoked for Fed Ex and it wasn't invoked for Linen Choice; that it was already a determination by the Director at the time these other facilities were built.

Mr. Valentine stated that he doesn't know if Fed Ex could be considered a distribution center in the way that they are talking about; that he is not familiar with what went into the Linen Choice decision because he was not on the Board at the time that was decided; that he does understand precedent is important but he is not bound by precedent and if a mistake was made they do not have to perpetuate it; it should be considered but not something to be bound by.

Ms. Mele responded that she is pointing out the fact that this debate is taking place leads to the conclusion that there is at least an ambiguity; and if there is an ambiguity, it has to be construed in favor of the applicant because that's where the Court is going to look at.

Mr. Bosco asked if the applicant ever looked at or presented a traffic plan for Mountainview without 303?

Mr. Cokeley responded that they did not discuss that because of the feedback that they got from the Planning Board and the Public at those informal discussions; that they would not be the preference at all.

Mr. Bosco stated that it's not what he asked; that the point is, the applicant should show what the traffic would be, within your right, that the people that are here are concerned and it would be something to think about.

Mr. Cokeley responded sure.

The Chairman called for a short recess to discuss legal questions with the Attorney for the Board Denise Sullivan.

When they returned the Chairman opened it up to public comment and asked the Public to keep the comments to two minutes and to try not repeating what the person before you said and that this hearing is relating to the interpretation and no variances are being determined tonight; no variances are being addressed tonight; that it is just an interpretation to settle a disagreement between the Director and the applicant; so I ask that you come up one at a time; you'll be sworn

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in, come up to the microphone behind the applicant; state your name and address for the Court Reporter, you will be sworn in; I will ask that you keep your comments to approximately 2 minutes and try to hit the high points; there is a lot of people her tonight; usually when there is a lot of people it's not necessary to repeat everything and one should take that into consideration; that no variances will be determined tonight; that this is just an interpretation of the code for the Applicant which is disagreeing with the decision that he Building Director made; that as the Attorney stated there is a lot of ambiguity and a lot of the time it goes to the Applicant, but I don't think that is the case ; that I think we have a clear interpretation legally how to specifically interpret the code; so with that point I will open it up.

Public Comment:

Liz Dudley, 250 South Greenbush Road, testified that the interpretation of the 303 Overlay is important for the framework that was created over 20 years ago when the community and the Town realized there was an immediate need for development to be managed and well planned; that the framers were attempting keep the high tax paying homeowners in harmony with the businesses and corporations; that it appalling that this project has the audacity to take one word, retail, and twist its meaning; are we to believe the applicant is confused on the size requirements of a commercial use building? That according to the logic of the applicant there would be no limit on warehouse size; that the size requirement for all retail or just say commercial at this point be limited to 65,000 sq. ft.; that it does not belong here; that the information and claims that they have semi approvals from the DOT should have to be immediately submitted; that she contacted the DOT today and they said there is a very small chance that this would be approved and she asked that the hearing be held open additional three weeks to accommodate neighbors that could not be present because of Yom Kippur.

Thomas Finsterwald, 15 Mountainview Avenue, Orangeburg, testified that he owns the property directly in front of this applicant's property; that this project would totally impact his property; that he did some investigation and there are warehouse spaces available in Bradly Park and Hudson Industrial Park and it doesn't make sense that a 175,000 sq. ft. warehouse would only have ten trucks; what kind of products? That Route 303 is already congested; that sometimes it takes two traffic light changes to get onto Route 303; and please deny this application.

Dan Sullivan, Chairman, stated that: before the next person speaks, again I want to reiterate, this is an interpretation of what's needed; the Building Director is saying they need a use variance and they are saying they don't; that is really all we are deciding tonight; that we are not deciding on a project; that if they wanted to build 175,000 sq. ft. project right now and a warehouse in this area, they can as right; without sitting here; that the determination tonight is whether or not they have to go through a use variance process or potentially, if it's warranted an area variance; that's the only determination that we are making; that a lot in the LI zone permits a 175,000 sq. ft. warehouse entering onto Mountainview Avenue; that they are trying to work with and say hey maybe we need Mountainview; that is all we are going to be discussing here tonight is a use variance or an area variance.

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Susan Nemesdy, 19 Lawrence Lane, Palisades, testified that she opposes this application; that the Town should consider a moratorium on the number of warehouses being built in Orangetown; especially along the 303 corridor; ; that according to Mr. Emanuel his client's right to build this monstrous warehouse simply because you let FedEx and Linen Choice do it is bullshit; that there is no end and when will the town say enough is enough; that a moratorium should be put into place until the new comprehensive plan is completed.

Cornelius Lynady, 14 Kevin Drive, Orangeburg, testified that he is the Chief of the Orangeburg Fire Department and he has questions about what will be stored there; what will the hours of operation be; will there be trucks coming in and out 24 hours a day; that it's a residential area and they hear Shop Rite trucks unloading all the time; and that the people on Mountainview will never sleep.

Allyson Sullivan, 42 Arthur Street, testified that comparing the two projects, the Linen Choice project which is on Glenshaw Street, which street was created prior to the Overlay Zone being created; that the really can't compare that because that is already grandfathered in; that the same thing with Fed Ex; that Al Foxie Street was there prior to the Overlay Zone; that there is no comparison; that this applicant is building a completely different road; that he doesn't see how the projects can be compared; that the oppose it; that she hopes the Board keeps this open for three weeks because of the holiday; that this is sad and we need to look over the comprehensive plan and there should be a moratorium on any sort of warehouse being built.

Vincent Lupi, 106 Spruce Street, Blauvelt, testified that he agrees with all of the previous comments and emails; that the drafters of the Route 303 Overlay zone were protecting the town and its residents; that the focus should be on traffic and damage to the road and the culvert under Mountainview; that the Sparkill Creek flows there and if it is stopped up, it backs to many homes of residents; that no variances should be granted for this project, no matter how they interpret it; that he interprets the Overlay as put there by the drafters to protect residents and protect the Town; that is this is approved, it is not protecting the residents; that there will be heightened traffic and tractor trailers and damage that tis going to be done to the roads; and that the Sparkill Creek goes under Mountainview; and I agree with everything that was said by everyone else; and this project is ridiculous.

Nicole Palitti, 467 North Greenbush Road, testified that she agrees with everything the Winkler email said; that she appreciates Mr. Valentine's comments about not following a bad precedent with more mistakes; that if mistakes were made in the past they should not be repeated; and that she knows this is just for the two, use and area variances, but she disagrees with how the lawyer is interpreting the intent and just wanted that on the record.

Sister Mary Eileen O'Brien, 463 Western Highway, Orangeburg, testified that the Town needs a good plan for this area; that there is so much already going on here; the shopping center with Calabria and Marty's bagels and the one across the street with another busy restaurant; that right

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above this outlet is Dominican College with hundreds of students and faculty using the roads; probably about 1,000 people a day and this should be considered.

Robert Stabile, 516 Route 303, Orangeburg, testified that his driveway is directly across from this proposed driveway on Route 303; that this is a recipe for danger; that the tractor trailers will make a dangerous road more dangerous; that the turning lanes will not make things better.

Maria Jose Romero, 577 Western Highway, testified that the interpretation is a standard legal strategy, questioning the interpretation and talking about original intent as though we should live in tyranny over original intent regardless of the time and place; that the argument is enough to open up a crack sufficiently wide enough that allows a day in court; that I am saying to the applicant here no, simply no; that you're not going to play that game with us; that I agree with all of the arguments presented today; that I think the Planning Board Decision will send, we have seen the negative impact of Linen Choice; that I am glad the engineer here mentioned his expertise with it; that they promised to keep a buffer between the warehouse and the bike path; that the ink was not dry when the applicant completely destroyed the greenery; that it's horrible; that even 48 hours past when they just cut everything else; that there is no buffer; that those that reside west of that site have to put up with their pollution; and it is a horrible site, the bike path that all of use for exercise and to entertain ourselves; that you have to protect the quality of our community and the quality of our property; that the applicant talks about the rights of the property owner, but he should be aware there is thousands of property owners in the community who are going fight to protect the quality of our property.

Nicholas Tannenbaum, 577 Western Highway, Blauvelt, asked what steps to prevent excessive pollution were put in place before you had accepted that, you were going to put all these warehouses up? And the other question is how you guys are going to move forward with preventing more pollution; that I go out a lot and what I see is you are guys are polluting a lot. The air quality has changed and the lot of the trees have been cut down and I have that question for you; thank you.

Una McHugh, 6 Green Hedges Lane, Blauvelt, stated that she agrees with every comment everyone else said so far tonight and more; that because of the Jewish holiday and on top of that Hurricane IDA and the other storm, there is a lot of people that aren't here; like my street also got flooded with the stream; the Sparkill Creek came up all the way up the property.

Dan Sullivan, Chairman stated that the decision would be kept open until next time; until October 6, 2021 same time, same place; and he asked the applicant if they wanted to rebut anything.

Ms. Mele stated no and thanked him for the opportunity. She stated that the majority of the comments, while certainly valid were more for the Planning Board and not really related to the issue before the board tonight.

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Continued hearing of October 6, 2021

Members present at the October 6, 2021 hearing: Mr. Sullivan, Mr. Bosco, Mr. Bonomolo, Mr. Valentine and Ms. Castelli. Mr. Quinn was absent. Also present: Denise Sullivan, Deputy Town Attorney, Anne Marie Ambrose, Official Court Stenographer, Deborah Arbolino, Administrative Aide, and Katlyn Bettmann, Senior Clerk Typist.

The following items were submitted for review:

1. An email with objections from Stephanie Cunningham dated October 2, 2021.
2. An email dated October 4, 2021 from Elizabeth Dudley (CUPON) with objections to the project.
3. An emailed letter dated October 6, 2021 from Steven N. Mogel, Attorney for CUPON with objections to the project.(4 pages)
4. An email dated October 6, 2021 from Vanesa Lapins with an attachment of a petition against the application with attached electronic signatures from 312 residents.
5. An emailed letter dated October 6, 2021 from Ira M. Emanuel, Esq. Attorney for the applicant.
6. Transcript of the September 15, 2021 hearing of the Zoning Board of Appeals.

Ira Emanuel, Attorney appeared and testified: Jesse Cokeley, Engineer appeared for the application.

Dan Sullivan, Chairman, opened the continued meeting by asking if anyone from the public, that did not speak at the prior hearing would like to speak tonight.

Vanessa Lapins, 659 Western Highway, Blauvelt, member of CUPON (Citizens United to Protect Our Neighborhoods), testified that the decision has a very narrow scope and the lawyer at the last hearing made their position very clear; that there are many residents opposed to the application; that 1,800 residents weighed in against the other mega warehouse in the area; that other companies in the area are trying to get a redesign tot Route 303; that there is too much traffic pollution, that the high school and college are in very close proximity to this proposed project; that she does not understand how the attorney for the applicant was permitted access to the letter from their attorney prior to the meeting and she would like the meeting to stay open long enough for their attorney to respond to his response.

The Chairman asked if anyone else would like to speak and there was no response; upon no response he made a motion to close the public portion of the hearing, which motion was seconded by Mike Bosco, carried unanimously.

The Chairman then asked Mr. Emanuel for any rebuttal.

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Ira Emanuel, attorney for the applicant, testified that at the last meeting they stated that Fed Ex and Linen Choice are in the Route 303 Overlay District; that the opposing attorney (for CUPON) agrees with them that Fed-Ex and Linen Choice are in the Route 303 Overlay District; that the opposing attorney agrees that a use variance is not required.

The Chairman asked for a client/attorney break and stated that they would return shortly.

The Board returned.

The Board members made personal inspections of the premises the week before each of the meetings 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.

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that based upon the testimony heard by this Board, and the facts as presented in the application submissions and in the record, since this application requests your interpretation of an existing code, rule or regulation, this application is exempt from environmental review under the State Environmental Quality Review Act pursuant to SEQRA Regulations 617.5 (c) (37); which motion was seconded by Ms. Castelli and carried as follows: Mr. Valentine, aye; Mr. Bonomolo, aye; Ms. Castelli, aye; Mr. Bosco, aye; and Mr. Sullivan, aye. Mr. Quinn was absent.

Mr. Sullivan made a motion that the applicant is permitted by right to build a warehouse in the LI Zone within limits of the Code; if the OD Zone is introduced to the project the possibility exists that an area variance may be required, the Board does not have enough information at this point, but a use variance is not required as presented; which motion was seconded by Mr. Valentine and carried as follows: Mr. Bonomolo, aye; Ms. Castelli, aye; Mr. Bosco, aye; Mr. Valentine, aye; and Mr. Sullivan, aye. Mr. Quinn was absent for this hearing.

FINDINGS OF FACT AND CONCLUSIONS:

After personal site inspection of the premises by the member of the ZBA; after hearing and considering all of the testimony from the Applicant's representatives, from the public, and representatives of the public, as summarized above, and after reviewing and considering all the documentation, reports, materials, communications and correspondence submitted to the ZBA, as inventoried above, the ZBA found and concluded that:

The ZBA considered the Applicant's interpretation request for the ZBA to determine whether the determination of Jane Slavin, R.A., Director of the Orangetown Office of Building, Zoning and Planning, Administration and Enforcement (OBZPAE), that the Applicant's proposal for a warehouse/distribution center required a use variance under Town Code Chapter 43, Section 13.

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The Board found and concluded that the applicant is permitted by right to build a warehouse in the LI zone within the limits of the Town Code. If the Route 303 Overlay District Zone is introduced to the project, the possibility exists that the application could require an area variance. However, the Zoning Board of Appeals does not have enough information concerning the proposed project at this point. A use variance is not required for the application as presented.

DECISION: On the basis of the foregoing Findings of Facts and Conclusion, and the testimony and documents presented, Chairman Daniel Sullivan moved that the applicant is permitted by right to build a warehouse in the LI Zone within the limits of the Code; if the OD Zone is introduced to the project the possibility exists that an area variance may be required; as presented, the Board does not have enough information at this point; and a use variance is not required as presented; which motion was seconded by Mr. Valentine and carried as follows: Mr. Bonomolo, aye; Ms. Castelli, aye; Mr. Bosco, aye; Mr. Valentine, aye; and Mr. Sullivan, aye. Mr. Quinn was absent for this hearing; 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.

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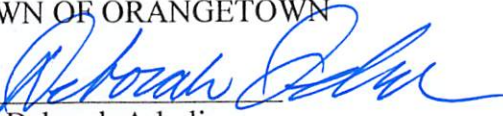
(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown 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 of Interpretation that the applicant is permitted by right to build a warehouse in the LI zone within the limits of the Town Code; that if the Route 303 Overlay District is introduced to the project, the possibility exists that the application could require an area variance; that the Zoning Board of Appeals does not have enough information concerning the proposed project at this point; and that the application as presented does not require a use variance was presented and moved by Chairman Daniel Sullivan, seconded by Mr. Valentine, and carried as follows: Mr. Bonomolo, aye; Ms. Castelli, aye; Mr. Bosco, aye; Mr. Valentine, aye; and Mr. Sullivan, aye. Mr. Quinn was absent for this hearing.

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

DATED: October 6, 2021

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-N.A.

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

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