

MINUTES: ZONING BOARD OF APPEALS

June 2, 2010

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

ABSENT: NONE

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

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

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

PUBLISHED ITEMS – APPLICANTS - DECISIONS

CONTINUED ITEM:

**ZBA #10-17:** MIGGE; DENIED; 77.11 / 3 / 70; CS zone

NEW ITEMS;

**ZBA #10-33:** CHIAPPA RHOMBUS INC.- § 5.226 VARIANCE APPROVED WITH CONDITIONS; 68.16 / 6 / 18; CS zone

**ZBA #10-34:** RASCH- SIDE YARD VARIANCE APPROVED; 69.19 / 1 / 65;  
R-22 zone

**ZBA #10-35:** BIEDERMANN- FRONT YARD VARIANCE APPROVED;  
68.20 / 5 / 14; RG zone

**ZBA #10-36:** DONOVAN- FRONT YARD AND SIDE YARD VARIANCES APPROVED;  
69.06 / 2 / 26; R-40 zone

**ZBA #10-37:** ALUF PLASTICS PERFORMANCE STANDARDS- CONTINUED;  
70.18 / 2 / 16; LI zone

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: Metro PCS New York LLC, Co-location of Wireless Telecommunications Facility Plan, 568 Route 303, Blauvelt, New York, 70.14 / 1 / 19; Lo zone; 115 Route 303 Internal Commercial Subdivision Plan Review, 115 Route 303, Tappan, New York, 77.07/ 2/ 1; Li zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

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

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 11:20 P.M.

Dated: June 2, 2010

TOWN OF ORANGETOWN

Deborah Arbolino

Administrative Aide

#### DECISION

#### **ZBA # 10-17**

Date: April 21, 2010

May 19, 2010

June 2, 2010

#### SIGN SET BACK VARIANCE DENIED

To: Tom Migge; 98 Main Street; Tappan, New York 10983

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

**ZBA#10-17:** Application of Thomas Migge for a variance from Chapter 43 (Zoning) of the Code of the Town of Orangetown Section 3.11, CS District, Column 5 #6 B (2) Signs not attached to a building shall be setback 20' from the front lot line; 0' setback proposed) for a sign for an existing business.. The premises is located at 98 Main Street, Tappan New York, and are identified on the Orangetown Tax Map as Section 77.11, Block 3, Lot 70; CS zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on the following Wednesdays, April 21, 2010, May 19, 2010, and June 2, 2010 at which time the Board

made the determination hereinafter set forth.

At the April 21, 2010 meeting Donald Brenner, Attorney, and Tom Migge appeared and testified.

The following documents were presented to the Board over the course of all of the meetings:

1. A copy of the proposed signs.
2. A street plan showing the proposed location of the pylon sign.
3. A letter dated March 1, 2010 from the County of Rockland Department of Planning signed by Salvatore Corallo, Commissioner of Planning.
4. Two letters dated March 3, 2010 and May 19, 2010 (with map attachment) from the Tappantown Historical Society signed by Carol LaValle, President, in opposition to the signs.
5. Eight photographs of the area submitted by Carol LaValle.
6. A memorandum dated 4/12/10 from Leonard C. Post, Deputy Building Inspector.
7. Historic Areas Board of Review Decision #10-02 dated February 9, 2010 and a draft Historic Areas Board of Review Decision #10-02a dated May 11, 2010.
8. Historic Areas Board of Review Decision #10-02a dated May 11, 2010.
9. A memorandum dated 5/26/10 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
10. Two letters from the Tappantown Historical Society dated May 26, 2010 and June 2, 2010 from Carol La Valle, president.

At the April 21, 2010 meeting Mr. Mowerson made a motion to open the Public Hearing which motion was seconded by Ms. Castelli and carried unanimously.

At the meeting of May 19, 2010 on advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (7); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Ms. Albanese, aye; Mr. Sullivan, aye; and Mr. Mowerson, aye.

At the meeting of April 21, 2010 Donald Brenner, Attorney testified that the applicant received approval for the larger sign at the Historic Board meeting in February; that the pylon sign is 24 sq. ft.; that 40 sq. ft. is permitted in the CS zone; and that they would like a continuance to get clarification from the Building Department.

Public Comment:

No public comment.

At the meeting on May 19, 2010 Tom Migge appeared.

Tom Migge testified that he went to the Historic Areas Board of Review and got a 7-0 vote to approve the sign with a modification to the height of the sign and a recommendation to set it back two feet from the wall; that he needs the two signs to showcase his products and to use if he can rent his other space to another business; that he is licensed to sell securities and cannot combine that on the same sign as the insurance products that he sells; that he is frustrated because he doesn't feel that it is fair that he has to justify the need for a sign to do business in this town; that the Tack Box has 80 sq. ft. glass windows to showcase her goods; that he doesn't have that ability; that Joe's Barber Shop has four signs; that he had a sign that the County Highway Department removed when they were doing the work on Main Street; that the sidewalks were built within the last two years; that he purchased his building ten years ago; that he has renovated it; that he supports the community; that there is a clause in the code that states "If in existence" note #6 General Accessory Uses in CS District that should apply to his sign because he had a sign before the work was done on Main Street; that he is before the Zoning board for the set back of the sign because he already got approval for the sign and its' size from the Historic Board; that he has no objecting neighbors or other businesses complaining about his proposed sign; that he cannot hang a sign like the wine store because there is no place to hang it; that he has never seen the minutes of the meeting of the Tappantown Historic Society that shows that they are against his sign; and that he would like a continuance.

Public Comment:

Tom LaValle, Main Street, Tappan, stated that the Building Inspector asked the historic Board to make a decision whether the size of the sign was based on the R-15 or the CS District; and that the memorandum from the Inspector seemed to lean on the side of the R-15 District.

Carol LaValle, Tappantown Historic Society President, stated that she is speaking for the Society; that they are clearly against the monument sign being permitted under the CS District when the code say that the R-15 District should be used for the Historic District; that there still isn't any clarification as to why they chose to go with community shopping instead of R-15 requirements; that they didn't determine what takes precedent in the area; that Gulio's is under new ownership and they might come in next to change their sign; that one of the Historic Board members stated that the two signs were redundant; that the corner buildings in the Historic District have multiple signs to be seen from several roads; that she would ask the Board to

concur with the County letter and deny the application.

At the June 2, 2010 meeting Donald Brenner, Attorney appeared.

Donald Brenner, attorney, testified that the applicant has appeared before the Historic Board, Town of Orangetown twice and the proposed sign was approved; at the May 11, 2010 meeting the size of the sign was discussed and voted 7-0 for approval; that the decision stated that the application was referred back to the Board because of "Town Code section 12.5 entitled Uses permitted in the Tappan Historic Area"; that this section at subpart A "CS Districts, at subsection (3) states as follows: "Permitted: All uses and regulations described and permitted in columns 5, 6 and 7 of the table of general use regulations, except that signs shall conform to the requirements of an R-15 district unless otherwise permitted by the Board of Review"; that the attorney for the Historic Board further stated that the Migge site is located in the CS zone, pursuant to the Town Code, if the Historic Board wishes, the Board can permit Mr. Migge to follow the CS district regulations; that the Historic Board discussed the size, placement and height of the sign and voted 7-0 to approve the sign while lowering the height of the sign; and they even commented that they were aware that the applicant was seeking a setback of two feet from the Zoning board; that the Historic Areas Board of Review is the deciding board for aesthetics in this area, not the Tappantown Historic Society; that these two groups do not always agree; that there are no minutes of any meeting of this group to prove that the person complaining is representing a group; that it could be personal opinion; that the County Planning Board denies every sign application because they feel the code should be revised rather than granting sign variances; that the original proposal was for a 0' set back and they are requesting a 2' setback now; that as far as setting precedent, every case stands on its own.

#### Public Comment:

Carol LaValle, President of the Tappantown Historic Society, testified that the historic board revisited the height of the sign based on signs that she submitted; that Gulio's is 15 sq. ft., and the dentist is 12 sq. ft.; that whether 40 sq. ft. is permitted in the CS zone does not change the impact of the proposed sign; that we feel that it is a bad decision for the whole district; that it sets a terrible precedent; that they are looking for a way to protect the area from further proliferation of signs in the Historic Area; that the County denied the setback and the granting of the variance would have a serious negative impact on the area.

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

A satisfactory statement in accordance with the provisions of Section 809 of the General

Municipal Law of New York was received.

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

#### FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the variance(s) are granted do not outweigh the detriment to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested sign set back variance for the proposed monument sign will produce an undesirable change in the character of the neighborhood and a detriment to nearby properties. The proposed monument sign would be the only monument sign in this portion of the historic district that is positioned above the sidewalk and, as proposed at two feet from the walkway, would be imposing.
2. The requested sign set back variance will have an adverse effect or impact on the physical and environmental conditions in the neighborhood or district. The proposed monument sign would be the only monument sign in this portion of the historic district that is positioned above the sidewalk and, as proposed at two feet from the walkway, would be imposing.
3. The benefits sought by the applicant can be achieved by other means feasible for the applicant to pursue other than by obtaining the sign set back variance. The applicant has sufficient signage on the building.
4. The requested sign set back variance is substantial and would have an adverse effect or impact on the physical and environmental conditions of the area. . The proposed monument sign would be the only monument sign in this portion of the historic district that is positioned above the sidewalk and, as proposed at two feet from the walkway, would be imposing.

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

The foregoing resolution to deny the application for the requested sign set back variance was presented and moved by Ms. Castelli, seconded by Ms. Salomon, and carried as follows: Mr.

Sullivan, nay; Ms. Albanese, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, nay.

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: June 2, 2010  
ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN  
Deborah Arbolino  
Administrative Aide

#### DECISION

#### **ZBA #10-33**

Date: June 2, 2010

#### SECTION 5.226 VARIANCES APPROVED

To: Joe Chiappa, P.E.; 11 N. John Street; Pearl River, New York 10965  
FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#10-33: Application of Joe Chiappa for variances from Chapter 43 (Zoning) of the Code of the Town of Orangetown, Section 3.11, CS District, Column 5, General Accessory Uses, #5, Column 7, #3; and Article 5, Section 5.226, Fences & Walls ( 6' permitted, 12' proposed) for temporary storage.. The premises is located at 11 John Street, Pearl River New York, and are identified on the Orangetown Tax Map as Section 68.16, Block 6, Lot 18; CS zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 2, 2010 at which time the Board made the determination hereinafter set forth.

Joseph Chiappa and Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Hand drawing of site plan based on plot plan by Barboue & Jost 10/4/1961 signed and sealed by Joseph D. Chiappa, P.E. dated 4/6/10, with a picture of the existing temporary storage & screening.
2. A letter dated May 28, 2010 from the County of Rockland Department of Planning signed by Salvatore Corallo, Commissioner of Planning.

3. A letter dated April 23, 2010 from the County of Rockland Department of Health signed by Scott McKane, P.E.
4. A letter dated April 27, 2010 from the County of Rockland Department of Highways from Joseph Arena, Principal Engineering Technician.
5. A letter dated May 21, 2010 from the County of Rockland Sewer District No. 1 from Joseph LaFiandra, Engineer II.
6. A letter dated May 24, 2010 from the County of Rockland Drainage Agency signed by Edward F. Devine, Executive Director.
7. Four pictures submitted by neighbor of the site.

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

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

Donald Brenner, Attorney, testified that Mr. Chiappa purchased the old Burns Glass property which dates back to the 1950's; that there is one residence and one commercial use on the property; that when Mr. Chiappa went for his C.O. on the property he was told that he needed a variance for the storage units and the fencing; that he is a professional engineer and has a consulting company; that he needs the storage to keep some of the tools used for his business out of the weather; that Mr. Burns put the storage back there but there was so much brush that it was probably more hidden; that his client is prepared to put up a new stockade fence for more screening; that there is an electronic store with four parking spaces and the engineer's space with storage in the rear like Burns Glass; that the map submitted by the neighborhood cannot be used over the Building Inspector's determination; that there is no contamination of Cherry Brook; and the property is in a CS zone and these uses are permitted in the zone.

Joseph Chiappa testified that he worked for Mr. Burns when he was in High School and that storage was always out in the back, as least since 1986; that he has been cleaning up the property since he acquired it last fall; that the property has been neglected for a several years; that in an effort to clean it up he removed two old wooden sheds and took out a lot of brush; that he moved one of the storage containers to make room for another one; that he created a screen over it that

matches the roof line of the container and when he spoke to the neighbor about this he seemed to like the idea; that the vehicles are used for his business and if the economy was better several of them would have been sold; that one of the vehicles is a cherry picker and the other is a boring truck , an auger, a highway safety truck and a pick-up truck; that there are tall pine trees and shrubbery in the area and that there is not enough room or sunlight to plant more shrubbery as a screening.

#### Public Comment:

Niall Kenny, 102 East Washington Avenue, testified that he is objecting to the variance; that he complained last November about the view from his family room; that he met the applicant last November and was told that he was doing renovations and after that four trucks showed up; that a portion of the property is zoned residential; that 60' from those trucks is the creek and he worries about the environmental impact of the trucks on the creek; that is unsafe for children; that this impacts the value of his property; that the trucks are over ½ ton and that he should get a violation for accessory parking; that this property detracts from the neighborhood; that Burns parked his trucks in the front, never in the rear for his neighbors; and that he objects to the variance.

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

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

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

#### FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested Zoning Code Section 5.226 variances, with the imposed conditions, will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant shall replace the damaged stockade fence with a new stockade fence, with the good side facing out, within 30 days of the filing of this Decision; the Office of Building

Planning Zoning and Administration shall determine if the ½ ton vehicles parked on the lot are in compliance with code requirements for this zone; and the applicant has agreed to remove three such trucks within one year from the filing of this Decision. The applicant shall remove all items that are on top of the temporary storage units and no items shall be higher than the black geotech style fencing that is screening the rear of the lot.

2. The requested Zoning Code Section 5.226 variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant shall replace the damaged stockade fence with a new stockade fence, with the good side facing out, within 30 days of the filing of this Decision; the Office of Building Planning Zoning and Administration shall determine if the ½ ton vehicles parked on the lot are in compliance with code requirements for this zone; and the applicant has agreed to remove three such trucks within one year from the filing of this Decision. The applicant shall remove all items that are on top of the temporary storage units and no items shall be higher than the black geotech style fencing that is screening the rear of the lot.

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 Section 5.226 variances, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. The applicant shall replace the damaged stockade fence with a new stockade fence, with the good side facing out, within 30 days of the filing of this Decision; the Office of Building Planning Zoning and Administration shall determine if the ½ ton vehicles parked on the lot are in compliance with code requirements for this zone; and the applicant has agreed to remove three such trucks within one year from the filing of this Decision. The applicant shall remove all items that are on top of the temporary storage units and no items shall be higher than the black geotech style fencing that is screening the rear of the lot.

5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested Zoning Code Section 5.226 variances are APPROVED with the following SPECIFIC CONDITIONS: (1) the applicant shall replace the damaged stockade fence with a new stockade fence, with the good side of the fence facing out, within 30 days of the stamping and filing of this Decision; (2) the applicant shall remove all

items and materials on top of the outdoor storage units within thirty days of the stamping and filing of this Decision and no items shall be higher than the geotech style fence screening; (3) the applicant shall remove the following three vehicles: the boring/auger truck, cherry picker and highway safety truck within one year of the stamping and filing of this Decision; 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 Section 5.226 variances with specific conditions was presented and moved by Ms. Salomon, seconded by Ms. Castelli, and carried as follows: Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

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

DATED: June 2, 2010  
ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN  
Deborah Arbolino  
Administrative Aide

#### DECISION

#### **ZBA # 10-34**

Date: June 2, 2010

#### **SIDE YARD VARIANCE APPROVED**

To: Stuart Rasch; 40 Sickletown Road; Pearl River, New York 10965  
FROM: ZONING BOARD OF APPEALS: Town of Orangetown

**ZBA#10-34:** Application of Stuart Rasch for a variance from Chapter 43 (Zoning) of the Code of the Town of Orangetown Section 3.12, R-22 District, Group I, Column 9 (Side Yard: 25' required, 16.5' proposed) for the installation of a pool at an existing single-family residence. The premises is located at 40 Sickletown Road, Pearl River New York, and are identified on the Orangetown Tax Map as Section 69.19, Block 1, Lot 65; R-22 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 2, 2010 at which time the Board made the determination hereinafter set forth.

Stuart and Caroline Rasch appeared and testified.

The following documents were presented:

1. Copy of survey showing the pool.
2. A letter dated May 28, 2010 from the County of Rockland Department of Planning signed by

Salvatore Corallo, Commissioner.

3. A letter dated May 24, 2010 from the County of Rockland Drainage Agency signed by Edward F. Devine, Executive Director.

4. A letter dated May 21, 2010 from the County of Rockland Sewer District No. 1 signed by Joseph LaFiandra, Engineer II.

5. A letter dated April 30, 2010 from the County of Rockland Department of Health signed by Scott McKane, P.E.

6. A letter dated May 17, 2010 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.

7. A letter dated May 14, 2010 from the County of Rockland Department of Highways signed by Joseph Arena, Principal Engineering Technician.

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

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

Stuart Rasch testified that they were re-doing the deck and pool and decided that they would like to add a spa; that they found out that they needed a variance for the side yard for the spa when they were going to get the certificate of occupancy; that the pool was there when they purchased the house; that they have owned the house since 1993 and they have a C.O. for the pool; that on the pool side of the house there is an existing retaining wall that was there when they purchased the house; that the house on that side is much higher than they are and no one enters the yard from that area; and that the other side of the yard has a shed.

Carolyn Rasch testified that they have owned the house since 1993 and that they have two children aged 15 and 10.

Public Comment:

No public comment.

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

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

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

#### FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested side yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar pools/ spas have been constructed in the area.
2. The requested side yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar pools/ spas have been constructed in the area.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested side yard variance, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Similar pools/ spas have been constructed in the area.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

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

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

DATED: June 2, 2010  
ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN  
Deborah Arbolino  
Administrative Aide

DECISION

**ZBA # 10-35**

Date: June 2, 2010

FRONT YARD VARIANCE APPROVED

To: Leo and Elaine Biedermann; 119 South William Street; Pearl River, New York 10965  
FROM: ZONING BOARD OF APPEALS: Town of Orangetown

**ZBA#10-35:** Application of Leo and Elaine Biedermann for a variance from Chapter 43 (Zoning) of the Code of the Town of Orangetown, Section 3.12, RG District, Column 8 (Front Yard: 25' required, 15.2' existing and proposed) for the addition of a carport at an existing single-family residence. The premises is located at 119 South William Street, Pearl River New York, and are identified on the Orangetown Tax Map as Section 68.20, Block 5, Lot 14; RG zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 2, 2010 at which time the Board made the determination hereinafter set forth.

Leo Biedermann appeared and testified.

The following documents were presented:

1. Survey dated October 1, 2009 revised October 10, 2009 by Robert R. Rahnefeld, L.S.
2. Five pages of plans and notes for the proposed new carport.
3. Three letters in support of the application.

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

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

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

Leo Biedermann testified that they would like to remove the existing cheap carport and rebuild a nice new one that would look better; that the house was purchased with the existing carport; that they have owned the house since 1987 but they do not live in it; that they would like to replace the carport for the tenant that has lived there for quite a while; and that they would like to rebuild along the same line of the house.

Public Comment:

No public comment.

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

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

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

#### FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested front yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar garages and carports have been constructed in the area.
2. The requested front yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar garages and carports have been constructed in the area.

3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested front yard variance, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Similar garages and carports have been constructed in the area.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

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

General Conditions:

- (i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.
- (ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.
- (iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.
- (iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be

obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

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

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

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

DATED: June 2, 2010  
ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN  
Deborah Arbolino  
Administrative Aide

DECISION  
**ZBA # 10-36**  
Date: June 2, 2010  
FRONT YARD AND SIDE YARD VARIANCES APPROVED

To: Steven and Deborah Donovan; 23 Marycrest Road; West Nyack, New York 10994  
FROM: ZONING BOARD OF APPEALS: Town of Orangetown

**ZBA#10-36:** Application of Steven and Deborah Donovan for variances from Chapter 43 (Zoning) of the Code of the Town of Orangetown, Section 3.12, Column 1, R-40 District, Group E, Columns 8 (Front Yard: 50' required, 42.8' existing non-conforming) and 9 (Side Yard: 30' required, 21.4' existing non-conforming) for the addition of a garage. The premises is located at

23 Marycrest Road, West Nyack, New York, and are identified on the Orangetown Tax Map as Section 69.06, Block 2, Lot 26; R-40 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 2, 2010 at which time the Board made the determination hereinafter set forth.

Steven and Deborah Donovan appeared and testified.

The following documents were presented:

1. Architectural plans dated April 21, 2010 (2 pages) signed or sealed by Harold J. Goldstein, Architect.
2. Survey dated 10/7/09 with the latest revision date of 4/22/10 signed and sealed by Anthony R. Celentano, L.S.
3. Four pictures of the existing structure.

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

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

Steven Donovan testified that this structure was on the property when they were in the process of building the house; that they want to keep it and make it more usable; that they would like to add onto it on the side of the house that will not require a variance; that they are planning to put a new door on the garage and to side it to match the house.

Deborah Donovan testified that the addition would permit the space to hold a car; that the present size is too small and it is used for storage; that there are three people in the family; and this space would be her husbands' space.

Public Comment:

No public comment.

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

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

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

#### FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested front yard and side yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar garages exist in the area.
2. The requested front yard and side yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar garages exist in the area.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested front yard and side yard variances, although substantial, will not have an adverse effect or impact on the physical or environmental conditions of the area. Similar garages exist in the area.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board:

RESOLVED, that the application for the requested front yard and side yard variances are APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute “substantial implementation” for the purposes hereof.

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

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

DATED: June 2, 2010  
ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN  
Deborah Arbolino  
Administrative Aide