

MINUTES
ZONING BOARD OF APPEALS
October 18, 2017

MEMBERS PRESENT: DAN SULLIVAN
JOAN SALOMON
MICHAEL BOSCO
JOAN SALOMON
THOMAS QUINN

ABSENT: PATRICIA CASTELLI
LEONARD FEROLDI, ALTERNATE

ALSO PRESENT: Dennis Michaels, Esq. Deputy Town Attorney
Ann Marie Ambrose, Official Stenographer
Christian Catania, Senior Clerk Typist

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

NEW ITEMS:

O'HARA
77 Lark Street
Pearl River, NY
69.14 / 2 / 27; R-15 zone

SIDE YARD AND BUILDING HEIGHT VARIANCES
APPROVED ZBA#17-78

ASKENAS CHIROPRACTIC
67 South Main Street
Pearl River, NY
68.20 / 1 / 48; CO zone

SIGN SIZE VARIANCE APPROVED ZBA#17-79

SKAE TRAINING
CENTER ANTENNA
337-330 Blaisdell Road
Orangeburg, NY
76.08 / 1 / 3 & 4; LIO zone

§8.15 F-4 VARIANCE APPROVED ZBA#17-80

DEFIANT BREWERY
6 East Dexter Plaza
Pearl River, NY
68.20 / 1 / 1; LI zone

PARKING VARIANCE APPROVED ZBA#17-81

DURSO
132 Lester Drive
Tappan, NY
74.18 / 1 / 14; R-15 zone

FLOOR AREA RATIO AND REAR YARD VARIANCES APPROVED ZBA#17-82

DEFERRED DECISION:

U.S. INFORMATION SYSTEMS
25 Ramland Road
Orangeburg, NY
73.20 / 1 / 26; LIO zone

TOWN CLERK'S OFFICE
DEFERRED
NOV 15 2017
TOWN OF ORANGETOWN

ZBA#17-65

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 8:30 P.M.

Dated: October 18, 2017

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 OF ORANGETOWN
2017 NOV - 3 P 12: 03
TOWN CLERK'S OFFICE

DECISION

SIDE YARD AND BUILDING HEIGHT VARIANCES APPROVED

To: Noreen O'Hara
77 Lark Street
Pearl River, New York 10965

ZBA #17-78
Date: October 18, 2017
Permit # 46703

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-78: Application of Noreen O'Hara for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Chapter 43, R-15 District, Section 3.12, Columns 9 (Side Yard: 20' required, 10.78' proposed) and 12 (Building Height: 10.78' permitted, 15.67' proposed) for an addition to an existing single-family residence. The Premises are located at 77 Lark Street, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.14, Block 2, Lot 27 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 18, 2017 at which time the Board made the determination hereinafter set forth.

Ed and Noreen O'Hara appeared and testified.

The following documents were presented:

1. Architectural plans dated March 5, 2013 by Robert Hoene, Registered Architect (4 pages).
2. A letter in support of the application signed by eight neighbors.
3. A letter dated October 11, 2017 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
4. A letter dated October 6, 2017 from the Rockland County Highway Department signed by Joseph Arena, Senior Engineering Technician.
5. A letter dated September 22, 2017 from the Rockland County Drainage Agency signed by Vincent Altieri, Executive Director.
6. A letter dated October 6, 2017 from the Rockland County Sewer District #1 signed by Joseph LaFiandra, Engineer II.
7. A letter dated September 21, 2017 from the Rockland County Health Department signed by Scott Mckane, P.E., Senior Public Health Engineer.

Mr. Sullivan, Chairman, 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. 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) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Mr. Bosco and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Mr. Bosco, aye; and Mr. Quinn, aye. Mr. Feroldi and Ms. Castelli were absent.

Noreen O'Hara testified that they are proposing to expand the kitchen; that there is no pool in the rear yard; that they would have to reconfigure the house to move the kitchen; and that she spoke to her closest neighbor, Kathleen Richards and she has no problem with the proposed addition.

Ed O'Hara testified that that the existing kitchen is 8' x 10', that the property is shaped like a V and they would need a variance anywhere they bumped out into the rear because of the shape of the property.

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 side yard and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The property is oddly shaped, and a variance would be required anywhere that an addition would be proposed.
2. The requested side yard and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The property is oddly shaped, and a variance would be required anywhere that an addition would be proposed.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances. The property is oddly shaped, and a variance would be required anywhere that an addition would be proposed.
4. The requested side yard and building height variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

TOWN CLERK'S OFFICE
2017 NOV - 3 P 12:03
TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested side yard and building height 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.

TOWN CLERK'S OFFICE
2017 NOV - 3 P 12:03
TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested side yard and building height variances was presented and moved by Mr. Sullivan, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Mr. Sullivan, aye; and Ms. Salomon, aye. Ms. Castelli and Mr. Feroldi were 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 18, 2017

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 CLERK'S OFFICE
2017 NOV - 3 P 12:03
TOWN OF ORANGETOWN

DECISION

SIGN SIZE VARIANCE APPROVED

To: Brian O'Connor (Askenas sign)
711 Executive Blvd. Suite G
Valley Cottage, New York 10989

ZBA #17-79
Date: October 18, 2017
Permit #46708

FROM: ZONING BOARD OF APPEALS Town of Orangetown

ZBA#17-79: Application of Askenas Chiropractic Gramercy Pain and Rehabilitation for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, CO District, Section 3.11, Column 5 #6 (Sign: 12 sq. ft. permitted, 35 sq. ft. proposed) for a sign at a new business. The premises are located at 67 South Main Street, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.20, Block 1, Lot 48; in the CO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 18, 2017 at which time the Board made the determination hereinafter set forth.

Brain O'Connor, Frohling Signs, appeared and testified.

The following documents were presented:

1. Site plan.
2. Sign plans dated October 16, 2017 from Frohling Sign Company.
3. A letter dated October 6, 2017 from the Rockland County Highway Department signed by Joseph Arena, Senior Engineering Technician.
4. A letter dated October 13, 2017 from the Rockland County Department of Planning signed by Douglas J. Schuetz, acting Commissioner of Planning.
5. A letter dated September 22, 2017 from the Rockland County Drainage Agency signed by Vincent Altieri, Executive Director.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application seeks area or bulk variances for construction or expansion of primary, or accessory or appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls; this application is 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. Salomon and carried as follows: Mr. Quinn, aye; Mr. Sullivan, aye; Ms. Salomon, aye; and Mr. Bosco, aye. Mr. Feroldi and Ms. Castelli were absent.

Brian O'Connor, Frohling Sign Company, testified that the proposed sign is internally illuminated; that there are two doctors in the building; that the circular logo is for the chiropractic portion of the practice and the lower part of the sign is for the rehabilitation portion of the practice; that the area is almost all commercial; that they are asking for a 35 sq. ft. sign; that down the street is a gym and other tenants, towards Central is Mehl Electric, laundromat and bars; and that no residential properties are in the area.

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. Salomon and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that 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 sign size variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Other similar signs exist in the area, which is predominately a commercial area.
2. The requested sign size variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Other similar signs exist in the area, which is predominately a commercial 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 sign size variance, although somewhat substantial, afford benefits to the applicant that is not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

TOWN OF ORANGETOWN
2017 NOV - 3 P 12:03
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 sign size 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.

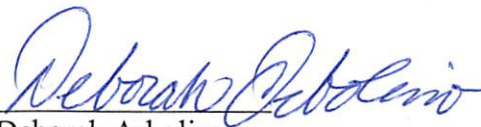
TOWN OF ORANGETOWN
2017 NOV - 3 P 12:03
TOWN CLERK'S OFFICE

The foregoing resolution to approve the application for the requested sign size variance was presented and moved by Mr. Sullivan, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Mr. Sullivan, aye; and Ms. Salomon, aye. Mr. Feroldi and Ms. Castelli were 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 18, 2017

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
2017 NOV - 3 P 12: 03
TOWN CLERK'S OFFICE

DECISION

§8.15F-4 COMMUNICATION ANTENNA LOCATION VARIANCE APPROVED

To: Donald Brenner (Skae)
4 Independence Avenue
Tappan, New York 10983

ZBA #17-80
Date: October 18, 2017
Permit #46014

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-80: Application of Skae Training Center Antenna for variances from Chapter 43 of the Town of Orangetown Code, LIO District, Section 8.15 F-4 (bars new wireless communications facilities from being sited within 500 feet of any existing wireless communication antenna). The site is located at 337-330 Blaisdell Road, Orangeburg, New York and is identified on the Orangetown Tax Map as Section 76.08, Block 1, Lots 3 & 4; in the LIO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 18, 2017 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Survey dated November 11, 2016 by Sporaco & Youngblood, L.S..
2. Planning Board Decision #17-09 dated July 26, 2017.
3. A letter dated October 12, 2017 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
4. A letter dated September 15, 2017 from the Rockland County Highway Department signed by Joseph Arena, Senior Engineering Technician.
5. A memorandum dated September 14, 2017 from Bruce Peters, PE., Engineer III Orangetown.

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

On advice of Dennis Michaels, 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 this application, pursuant to coordinated review under the State Environmental Quality Review Act Regulation § 617.6 (b)(3); and since the Planning Board conducted a SEQRA reviews and, on July 20, 2017 rendered an environmental determination of no significant adverse environmental impacts to result from the proposed land use action (i.e. a "Negative Declaration" or "Neg Dec."), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulation § 617.6 (b)(3). The motion was seconded by Mr. Quinn and carried as follows: Mr. Quinn, aye; Mr. Bosco, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Feroldi and Ms. Castelli were absent.

Donald Brenner, Attorney, testified that for one and a half years the company has been making observations for location of this antenna; that the antenna is not a cell tower but a receiver; that is a private system that gets signals from Europe but does not transmit; that they already received a preliminary approval from the Planning Board and a neg. dec. for Seqra; that this application has nothing to do with the Town Board ordinance on cell towers because it is not a cell tower; that it is like a Hamm radio receiver of financial institution goes into the system on the property; and that it is only 75' high.

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 §8.15 F-4 antenna location variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The location of the 75' antenna will not have an adverse impact on the area.
2. The Board made a motion to override the first and second sentences only of the County Planning Department's modification #3 in its 10/12/2017 NYS General Municipal Law (GML) letter, for the reason that these matters are addressed as part of the Planning Board's review, and the application must return to the Planning Board for Final review. The third sentence was satisfactorily addressed by the applicant: the antenna receives transmissions only, and is not a "cell tower".
3. The requested §8.15 F-4 antenna location variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The location of the 75' antenna will not have an adverse impact on the area.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
5. The requested §8.15 F-4 antenna location variance, although somewhat substantial, 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.
6. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

TOWN CLERK'S OFFICE
2017 NOV - 3 P 12:03
TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested §8.15 F-4 antenna location variance is APPROVED; and to override the first and second sentences only of the County Planning Department's modification #3 in its 10/12/2017 (GML) letter, for the reason that these matters are addresses as part of the Planning Board's review, and the application must return to the Planning Board for Final review, and the third sentence was satisfactorily addressed by the applicant: the antenna receives transmissions only, and is not a "cell tower"; 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.


2017 NOV - 3 12 AM
TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested §8.15 F-4 antenna location variance and to override the first and second sentences only of the County Planning Department's modification #3 in its 10/12/2017 (GML) letter, for the reason that these matters are addressed as part of the Planning Board's review, and the application must return to the Planning Board for Final review, and the third sentence was satisfactorily addressed by the applicant: the antenna receives transmissions only, and is not a "cell tower"; was presented and moved by Mr. Quinn, seconded by Mr. Bosco and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Mr. Sullivan, aye; and Ms. Salomon, aye. Ms. Castelli and Mr. Feroldi were 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 18, 2017

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-R.A.O.

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

TOWN OF ORANGETOWN
2017 NOV - 3 P 12: 04
TOWN CLERK'S OFFICE

DECISION

OFF-STREET PARKING VARIANCES APPROVED

To: Donald Brenner (Defiant Brewery)
4 Independence Avenue
Tappan, New York 10983

ZBA #17-81
Date: October 18, 2017
Permit # 46527

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-81: Application of Defiant Brewery for a variance from Zoning Code (Chapter 43) Section 3.11, refers to CS District, (1 off-street parking space per 1.5 occupants from 9 p.m. to 6 a.m.: 162 parking spaces required: 71 off-street parking spaces exist for Dexter Plaza), for Defiant Brewery Co. to expand their services and operate a cabaret facility. The premises are located at 6 East Dexter Plaza, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.20, Block 1, Lot 1; LI zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 18, 2017 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Survey for 4-6 East Dexter Plaza Condominium dated March 16, 2015 with latest revision date of June 23, 2017 signed and sealed by Jay Greenwell, L.S..
2. Architectural plans dated May 11, 2017 by Lorin J. Sonenshine, Registered Architect.
3. A letter dated October 13, 2017 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
4. A letter dated September 21, 2017 from the Rockland County Department of Health signed by Scott McKane, PE., Senior public health Engineer.
5. A letter dated October 6, 2017 from the Rockland County Highway Department signed by Joseph Arena, Senior Engineering Technician.

Mr. Sullivan, Chairman, 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. 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 this application, pursuant to coordinated review under the State Environmental Quality Review Act Regulations § 617.6 (b)(3); and since the Planning Board conducted a SEQRA review and, on July 20, 2017, rendered an environmental determination of no significant adverse environmental impacts to result from the proposed land use action (i.e. a "Negative Declarations" or "Neg Dec."), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulations § 617.6 (b)(3). The motion was seconded by Mr. Quinn and carried as follows: Mr. Quinn, aye; Mr. Bosco, aye; Ms. Salomon, aye; and Mr. Sullivan, aye. Mr. Feroldi and Ms. Castelli were absent.

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Donald Brenner testified that the brewery has been in operation for twelve years and is very successful; that in March 2017 they were fined for using additional space that the fire inspector said was not approved; that they originally got the approval because that was the only way to permit the use in this area; that they have an abundance of parking at night when they are open because the other businesses in the area do not operate the same hours as the brewery; that they would like to expand to have parties and food; that this operation does not

hurt anyone; that there is additional parking along East Central Avenue and in the MTA lot during their hours of operation; and that they receive mail at the address that was advertised and they would like an override to the Rockland County Planning letter dated October 13, 2017 number 1 and 2; that they have shown that there is additional parking available to them because of their hours of operation and they do get mail at the published address.

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 off-street parking variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. This business operates during hours after the existing businesses in the area are closed, allowing it to use all 151 parking spaces that are allotted for the industrial park. In addition, there is extra parking available on East Central Avenue and in the MTA lot.
2. The requested off-street parking variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This business operates during hours after the existing businesses in the area are closed, allowing it to use all 151 parking spaces that are allotted for the industrial park. In addition, there is extra parking available on East Central Avenue and in the MTA lot.
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. This business operates during hours after the existing businesses in the area are closed, allowing it to use all 151 parking spaces that are allotted for the industrial park. In addition, there is extra parking available on East Central Avenue and in the MTA lot.
4. The Board voted to override modifications #1 and #2 of the Rockland County Planning Department's General Municipal Law (GML) letter dated October 1, 2017 because the applicant does receive mail at the published address, and the business operates during hours after the existing businesses in the area are closed, allowing it to use all 151 parking spaces that are allotted for the industrial park. In addition, there is extra parking available on East Central Avenue and in the MTA lot.
5. The requested parking variance, although somewhat substantial, affords benefits to the applicant that is not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.

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

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested off-street parking variance is APPROVED, and the Board voted to override modifications #1 and #2 of the Rockland County Planning Department's (GML) letter dated October 1, 2017 because the applicant does receive mail at the published address, and the business operates during hours after the existing businesses in the area are closed, allowing it to use all 151 parking spaces that are allotted for the industrial park. In addition, there is extra parking available on East Central Avenue and in the MTA lot ; 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 off-street parking variance to override modifications #1 and #2 of the Rockland County Planning Department's (GML) letter dated October 1, 2017 because the applicant does receive mail at the published address, and the business operates during hours after the existing businesses in the area are closed, allowing it to use all 151 parking spaces that are allotted for the industrial park. In addition, there is extra parking available on East Central Avenue and in the MTA lot ;was presented and moved by Mr. Quinn, seconded by Mr. Bosco and carried as follows: Mr. Sullivan, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Ms. Salomon, aye. Ms. Castelli and Mr. Feroldi were 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 18, 2017

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-R.A.O.

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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TOWN CLERK'S OFFICE

DECISION

FLOOR AREA RATIO AND REAR YARD VARIANCES APPROVED

To: John Durso
132 Lester Drive
Tappan, New York 10983

ZBA #17-82
Date: October 18, 2017
Permit #46125

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-82: Application of John and Erica Durso for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, R-15 District, Group M, Columns 4 (Floor Area Ratio: .20 permitted, .23 existing, .247 proposed) and 11 (Rear Yard: 35' required, 22.25' proposed) for an addition to an existing single-family residence. The premises are located at 132 Lester Drive and or 7 Mallory Lane, Tappan, New York and are identified on the Orangetown Tax Map as Section 74.18, Block 1, Lot 14; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 18, 2017 at which time the Board made the determination hereinafter set forth.

John and Erica Durso appeared and testified.

The following documents were presented:

1. Architectural plans dated March 5, 2013 with the latest revision date of January 7, 2017 by Robert Hoene, Registered Architect.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. 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) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Mr. Bosco, aye; and Mr. Quinn, aye; and Mr. Feroldi and Ms. Castelli were absent.

John Durso testified that they have owned the house for eleven years; that they would like to push out the back of the house to make the kitchen and dining area larger; that they have six kids and need a larger kitchen and dining area; that they have no neighbors to rear because their backyard meets up to the baseball field.

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Public Comment:

Paul Borghese, 95 Lester Drive, Tappan, spoke in support of the application.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested floor area ratio and rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant's property backs up to the baseball fields, and other similar additions have been constructed in the area.
2. The requested floor area ratio and rear yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant's property backs up to the baseball fields, and other similar additions 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 floor area ratio and rear yard variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

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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 floor area ratio and rear yard variances are APPROVED; and FURTHER RESOLVED that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

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The foregoing resolution to approve the application for the requested floor area ratio and rear yard variances was presented and moved by Ms. Salomon, seconded by Mr. Bosco and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Mr. Sullivan, aye; and Ms. Salomon, aye. Ms. Castelli and Mr. Feroldi were 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 18, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
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