

MINUTES
ZONING BOARD OF APPEALS
July 19, 2017

MEMBERS PRESENT: DAN SULLIVAN
THOMAS QUINN
JOAN SALOMON
MICHAEL BOSCO
LEONARD FEROLDI, ALTERNATE

ABSENT: PATRICIA CASTELLI

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

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

CONTINUED ITEM:

WERNICKI
169 Morningside Avenue
Palisades, NY
77.20 / 2 / 53; R-15 zone

FLOOR AREA RATIO, ZBA#17-42
FRONT YARD, SIDE YARD,
AND FENCE HEIGHT VARIANCES
APPROVED

NEW ITEMS:

RADIGAN
98 North Serven Street
Pearl River, NY
68.15 / 5 / 50; RG zone

TOTAL SIDE YARD ZBA#17-55
VARIANCE APPROVED

SPARKILL-TEMPORARY
PLAY AREA
1-3 Union Street
Sparkill, NY
77.08 / 5 / 48.2; CS zone

TOTAL SIDE YARD ZBA#17-56
AND REAR YARD VARIANCES
APPROVED FOR TEMPORARY PLAY
AREA FOR FIVE YEARS

DIVERSIFIED AIR PRODUCTS
PERFORMANCE STANDARDS
1 Corporate Drive
Orangeburg, NY
73.20 / 1 / 32; LIO zone

PERFORMANCE STANDARDS ZBA#17-57
APPROVED WITH CONDITIONS

DEFERRED DECISION:

SUBARU DISTRIBUTION CORP.
6 Ramland Road
Orangeburg, NY
73.20 / 1 / 25; LIO zone

BUILDING HEIGHT ZBA#17-29
VARIANCE APPROVED
AS MODIFIED
LOADING BERTHS, NOT COMPLETELY
ENCLOSED APPROVED

TOWN CLERK'S OFFICE
2017-07-19
TOWN OF ORANGETOWN

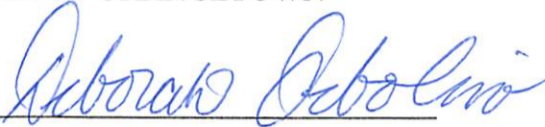
THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 9:00 P.M.

Dated: July 19, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 

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 AUG - 1 P 12: 31
TOWN CLERK'S OFFICE

DECISION

**FLOOR AREA RATIO, FRONT YARD AND SIDE YARD AND SECTION 5.225
CORNER LOT FENCE HEIGHT VARIANCES APPROVED**

To: Michael Leone (Wernicki)
60 North Harrison Avenue Suite 25
Congers, New York 10920

ZBA #17-42
Date: June 7, 2017 & July 19, 2017
Permit # 45898

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-42: Application of Chris and Anna Wernicki for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 3.12, Columns 4 (Floor Area Ratio: .20 permitted, .30 proposed), 8 (Front Yard: 30' required, 10.9' proposed for pool), and 9 (Side Yard: 20' required, 15' proposed) for a covered patio and pool at an existing single family residence. The premises are located at 169 Morningside Avenue, Palisades, New York and are identified on the Orangetown Tax Map as Section 77.20, Block 2, Lot 53; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on the following Wednesdays, June 7, 2017 and July 19, 2017 at which time the Board made the determination hereinafter set forth.

At the June 7, 2017 hearing, Chris Wernicki and Michael Leone, Prestige Pool, appeared and testified.

The following documents were presented:

1. Survey for Wernicki dated September 3, 2016 signed and sealed by Paul Gdanski, P.E..
2. A letter dated May 5, 2017 from the Rockland County Sewer District #1 signed by Joseph LaFiandra, Engineer II.
3. A letter dated May 4, 2017 from the Rockland County Health Division of Environmental Health signed by Scott McKane, P.E., Senior Public Health Engineer.
4. A letter dated May 24, 2017 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
5. A letter dated May 26, 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. 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. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Sullivan, aye; Mr. Quinn, aye; Mr. Feroldi, aye; and Mr. Bosco, aye.

Chris Wernicki testified that the front yard is being requested for Scotti Avenue, which is an abandoned road by the town; that it is only a paper road and was never built; that he needs the pool for his spinal stenosis; that he has owned the house for 37 years; that he and his wife both have spinal stenosis; that they were long distance runners but they can no longer do that.

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JUN 27 2017
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Michael Leone, Prestige Pools, testified that the Board is looking at the wrong the plan; that they have revised the plans and these are the wrong plans; that they would like a continuance to straighten this out.

July 19, 2017 REVISED REFERRAL:

ZBA#17-42: Application of Chris and Anna Wernicki for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 3.12, Columns 4 (Floor Area Ratio: .20 permitted, .30 proposed), 8 (Front Yard: 30' required, 8.5' proposed to the pool and covered patio), and 9 (Side Yard: 20' required, 11.4' proposed to covered patio) and from Section 5.225: (Corner lot fence: 30" permitted, 4' proposed) for a covered patio and pool at an existing single family residence. The premises are located at 169 Morningside Avenue, Palisades, New York and are identified on the Orangetown Tax Map as Section 77.20, Block 2, Lot 53; in the R-15 zoning district.

The following items were submitted for review:

1. Patio floor plans and elevations dated June 18, 2017 signed and sealed by Paul Gdanski, P.E.
2. Plot Plan for Wernicki dated 9/3/2016 signed and sealed by Paul Gdanski, P.E.

At the July 19, 2017 hearing Michael Leone, Prestige Pool, and Chris and Anne Wernicki testified.

Michael Leone, Prestige Pool, testified that at the prior meeting, the wrong set of plans had been distributed and that new plans had been submitted to the Building "Inspector and that the correct plans are before the Board presently; that they are requesting front yard variance for a paper street and the fence height variance is also based on the paper street; that the four foot fence is required for a pool.

Chris Wernicki testified that he and his wife have spinal stenosis and the doctors recommend the pool for exercise; that Scotti Road, the paper street had become a dumping ground for people, that is why they installed the fence; and that they understand that the Board is not approving the existing fence and they know that they would have to remove it if the highway department wanted access through that 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.

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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 floor area ratio, front yard and side yard and from Section 5.225: (Corner lot fence height) variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The front yard variance is proposed for a "paper street" that has never been constructed. The pool is small and the four foot fence is required for a pool.
2. The granting of these variances shall not be deemed to be an approval of the location within the Town right-of-way of the other existing fence.
3. The requested floor area ratio, front yard and side yard and from Section 5.225: (Corner lot fence height) variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The front yard variance is proposed for a "paper street" that has never been constructed. The pool is small and the four foot fence is required for a pool.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
5. The requested floor area ratio, front yard and side yard and from Section 5.225: (Corner lot fence 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. The front yard variance is proposed for a "paper street" that has never been constructed. The pool is small and the four foot fence is required for a pool.
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 floor area ratio, front yard, side yard and Section 5.225 (corner fence 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.

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

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

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

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

The foregoing resolution to approve the application for the requested floor area ratio, front yard, side yard and Section 5.225 (corner fence height) variances was presented and moved by Ms. Salomon, seconded by Mr. Bosco and carried as follows: Mr. Sullivan, aye; Mr. Feroldi, aye; Mr. Quinn, aye; Mr. Bosco, aye; and Ms. Salomon, aye. Ms. Castelli was absent.

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

DATED: July 19, 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'S OFFICE
TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE,ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

2017 AUG - 1 P 12:31

DECISION

TOTAL SIDE YARD VARIANCE APPROVED

To: John Radigan
98 North Serven Street
Pearl River, New York 10965

ZBA #17-55
Date: July 19, 2017
Permit # 46562

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-55: Application of John Radigan for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, RG District, Group Q, Section 3.12, Column 10 (Total Side Yard: 30' required, 24.3' proposed) for an existing pool equipment room at an existing single family residence. The premises are located at 98 North Serven Street, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.15, Block 5, Lot 50; in the RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, July 19, 2017 at which time the Board made the determination hereinafter set forth.

John and Andrea Radigan appeared and testified.

The following documents were presented:

1. Plot plan not dated or signed or sealed.
2. Architectural plans with pictures of the existing house, dated August 18, 2016 by Liborio Derario, Registered Architect.

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 Ms. Salomon and carried as follows: Mr. Sullivan, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Mr. Feroldi, aye. Ms. Castelli was absent.

Andrea Radigan testified that they sold the house and were told that there is no certificate of occupancy for the pool equipment room that was built 37 years ago when the pool was installed; that the pool was installed in 1964 with the pool room and they have a certificate of occupancy for the pool and need one for the pool equipment room.

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TOWN CLERK'S OFFICE

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 total side yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The structure has existed since 1964 without incident or complaint, and it does not protrude further into the side yard than the existing house.
2. The requested total side yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The structure has existed since 1964 without incident or complaint, and it does not protrude further into the side yard than the existing house.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested total side yard variance, 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. The structure has existed since 1964 without incident or complaint, and it does not protrude further into the side yard than the existing house.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

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DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested total 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.

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The foregoing resolution to approve the application for the requested total side yard variance was presented and moved by Mr. Bosco, seconded by Mr. Quinn and carried as follows: Mr. Bosco, aye; Mr. Feroldi, aye; Mr. Quinn, aye; Mr. Sullivan, aye; and Ms. Salomon, aye. Ms. Castelli was absent.

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

DATED: July 19, 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 AUG - 1 P 12: 32
TOWN CLERK'S OFFICE

DECISION

TOTAL SIDE YARD AND REAR YARD VARIANCES APPROVED FOR FIVE YEARS FOR THE TEMPORARY PLAY AREA

To: Quinn Development (Sparkill Temporary Play Area) ZBA #17-56
127 River Road Date: July 19, 2017
Grandview, New York Permit # 45917

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-56: Application of Quinn Development (Sparkill Temporary Play Area) for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-80 District, Section 3.11, Group A, Column 4 #9 refers to CS District Section 3.12, Group FF, Section 3.12, and Column 10

(Total Side Yard: 25' required, 0' proposed) and 11 (Rear Yard: 25' required, 0' proposed) for a temporary play area at a private nursery school. The premises are located at 1-3 Union Street, Sparkill, New York and are identified on the Orangetown Tax Map as Section 77.08, Block 5, Lot 48.2; in the CS zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, July 19, 2017 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, and Liana Sargsyan Quinn appeared and testified.

The following documents were presented:

1. Architectural plans dated August 16, 2016 by Jonathan Hodash, Registered Architect with the latest revision date of May 26, 2016, based on a survey dated November 6, 2012 by William Youngblood, LS..
2. Planning Board decision dated April 26, 2017.
3. A letter dated July 19, 2017 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
4. A letter dated June 26, 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 since the Planning Board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or did not object to the Planning Board acting as Lead Agency for these applications, pursuant to coordinated review under the State Environmental Quality Review Act Regulations § 617.6 (b)(3); and since the Planning conducted SEQRA reviews and, on April 26, 2017 rendered environmental determinations of no significant adverse environmental impacts to result from the proposed land use actions (i.e. a "Negative Declarations" of "Neg Dec."), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulations § 617.6 (b)(3). The motion was seconded by Mr. Quinn and carried as follows: Ms. Salomon, aye; Mr. Quinn, aye; Mr. Feroldi, aye; Mr. Sullivan, aye; and Mr. Bosco, aye. Ms. Castelli was absent.

Donald Brenner testified that the applicant has stated to the Planning Board that when the third building is built they will close the playground; that they will have sufficient parking for two buildings with the play area because they are providing nine spaces and when they build the third building and dismantle the play area they will provide 13 spaces, and they would appreciate a five year approval and they would come back to renew the "temporary play area" if the third building is not built.

TOWN CLERK'S OFFICE
JUL 19 2017
TOWN OF ORANGETOWN

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 total side yard and rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The total number of required off-street parking spaces for the existing two buildings is nine spaces. The proposed play area will cease to exist when the third building is constructed and the applicant will provide 13 off-street parking spaces as required by code.
2. The temporary play area is granted for five years from the date that this Decision is stamped and filed. The applicant must apply for renewal of the temporary play area prior to expiration of the five year approval period.
3. The requested total side yard and rear yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The total number of required parking off-street spaces for the existing two buildings is nine spaces. The proposed play yard will cease to exist when the third building is constructed and the applicant will provide 13 off-street parking spaces as required by code.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
5. The requested total side yard 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. The total number of required off-street parking spaces for the existing two buildings is nine spaces. The proposed play area will cease to exist when the third building is constructed and the applicant will provide 13 off-street parking spaces as required by code.
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.

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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 total side yard and rear yard variances are APPROVED for a five year period for the temporary play area, from the date this Decision is stamped and filed; 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 total side yard and rear yard variances for the temporary play area are granted for a five year period from the date this Decision is stamped and filed, was presented and moved by Mr. Quinn, seconded by Mr. Bosco and carried as follows: Mr. Bosco, aye; Mr. Feroldi, aye; Mr. Quinn, aye; Mr. Sullivan, aye; and Ms. Salomon, aye. Ms. Castelli was absent.

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

DATED: July 19, 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 AUG -1 P 12:32
TOWN CLERK'S OFFICE

DECISION

CONFORMANCE TO PERFORMANCE STANDARDS APPROVED

To: Kerri Cunney
One Corporate Drive
Orangeburg, New York 10962

ZBA #17-57
Date: July 19, 2017
Permit # 46114

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-57: Application of Diversified Air Products requesting the Zoning Board of Appeals' review, and determination, of conformance with the Town of Orangetown Zoning Code (Orangetown Code Chapter 43) Section 4.1 Performance Standards review for manufacturing. The premises are located at 1 Corporate Drive, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 73.20, Block 1, Lot 32; in the LIO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, July 19, 2017 at which time the Board made the determination hereinafter set forth.

Kerri Cunney, Construction Manager, Michael Cunney and Tom Culley, Business Partners, Ramone Medina, Facility Manager, and Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Floor Plan for Kerri Cunney Diversified Air Prod. dated May 6, 2017 not signed or sealed and drawn by KC.
2. Use Subject to Performance Standards Resume of Operations and Equipment dated June 15, 2017 .
3. Spiral Pipe Plasma Cutter (2pages).
4. LVD Belgium 14/07 (2 pages).
5. Millermatic 350P Aluminum Wire Feeder and Gun Package(2pages).
6. 5.5 HP Chop Saw, 14" Blade Dia., 1" Arbor Size, Voltage: 120 (2pages).
7. Fire Damper Blade(4pages)
8. Fire Damper Frame (4 pages).
9. National Rivet (3 pages). Moorefeed Drive Unit Spare Parts List (4 pages) Five pictures of machines.
10. Technical Data list.
11. 40 Ton Shopmate, (1 page).
12. 25 ton workstation (1 page).
13. Fire Prevention Supplement.
14. A letter dated July 7,2017 from Joseph J. Moran, P.E., Department of Environmental Management and Engineering, Town of Orangetown.
15. A memorandum dated July 5, 2017 from the Town of Orangetown Bureau of Fire Prevention from Michael B. Bettmann, Chief Fire Inspector.
16. A letter dated July 18, 2017 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
17. A letter dated July 11, 2017 from the Rockland County Highway Department signed by Joseph Arena, Senior Engineering Technician.
18. A letter dated June 21, 2017 from the Rockland County Health Department signed by Scott McKane, P.E., Senior Public Health Engineer.

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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, based upon the testimony heard by this Board and the facts as presented in the application submissions and in the record, that since the application entails the ZBA engaging in a review to determine compliance with technical requirements the application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (28); which does not require SEQRA environmental review. The motion was seconded by Mr. Bosco and carried as follows: Mr. Quinn, aye; Mr. Sullivan, aye; Mr. Feroldi , aye; Mr. Bosco, aye; and Ms. Salomon, aye. Ms. Castelli was absent.

Donald Brenner testified that they are here for performance standards for the operation but they are not proposing any generators; that they would appreciate an override of the County's letter #5; and Michael Cunney will explain the business.

Michael Cunney testified that they use sheet metal to fabricate pieces for air conditioning; that they do the majority of the work for Johnson Controls Northeast U.S.; that they make dampers and vents ; and they use spot welding; that the distribution area is NYC, Long Island, Westchester, Rockland and North Jersey; that #9 & # 10 on the performance standards form was answered that the doors would be closed because they operate with central air and the doors are closed year round; and that they are not proposing any emergency generators.

The Board reviewed the Performance Standards and Fire Supplement forms.

Public Comment:

Mike Policastro, 4 Lone Cedar Way, Old Tappan, NJ questioned what was being reviewed; and stated that he was happy to hear that all of the work being done was interior and that there were no emergency generators being reviewed.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

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

Based upon the information contained in the applicant's Resume of Operations and Equipment and the Fire Prevention Supplement; the report dated July 7, 2017 from Joseph J. Moran, P.E., Commissioner of the Orangetown Department of Environmental Management and Engineering (D.E.M.E.); the report dated July 5, 2017 from Michael B. Bettmann, Chief Fire Inspector, Town of Orangetown Bureau of Fire Prevention (B.F.P.); and the report dated July 18, 2017 from Douglas J. Schuetz, Acting Commissioner of Planning, Rockland County Department of Planning; the other documents submitted to the Board and the testimony of Applicant's representatives, the Board finds and concludes that the application conforms with the Performance Standards set forth in Zoning Code Section 4.1, subject to compliance with the orders, rules and regulations of the Orangetown Office of Building, Zoning & Planning Administration & Enforcement, D.E.M.E., and B.F.P., and all other departments having jurisdiction of the premises.

DECISION: In view of the foregoing and the testimony and documents submitted, the Board: **RESOLVED**, that the Application for Performance Standards Conformance, pursuant to Zoning Code § 4.1, is **APPROVED** with the following **SPECIFIC CONDITIONS:** (1) No emergency generators were reviewed or approved as part of this application; (2) the report dated July 7, 2017 from Joseph J. Moran, P.E., Commissioner of the Orangetown Department of Environmental Management and Engineering (D.E.M.E.); (3) the report dated July 5, 2017 from Michael B. Bettmann, Chief Fire Inspector, Town of Orangetown Bureau of Fire Prevention (B.F.P.); and (4) the report dated July 18, 2017 by Douglas J. Schuetz, Rockland County Department of Planning; shall be complied with; **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.

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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 conformance to Performance Standards with the following conditions: (1) No emergency generators were reviewed or approved as part of this application; (2) the report dated July 7, 2017 from Joseph J. Moran, P.E., Commissioner of the Orangetown Department of Environmental Management and Engineering (D.E.M.E.); (3) the report dated July 5, 2017 from Michael B. Bettmann, Chief Fire Inspector, Town of Orangetown Bureau of Fire Prevention (B.F.P.); and (4) the report dated July 19, 2017, from Douglas J. Schuetz, Acting Commissioner of Planning, Rockland County Department of Planning; shall be complied with; was presented and moved by Mr. Sullivan, seconded by Ms. Salomon and carried as follows: Mr. Feroldi, aye; Mr. Salomon, aye; Mr. Quinn, aye ; Mr. Sullivan, aye; and Mr. Bosco, aye. Ms. Castelli was absent.

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

DATED: July 19, 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-G.M.

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

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DECISION

ENCLOSED LOADING BERTHS AND BUILDING HEIGHT (36') VARIANCES APPROVED

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

ZBA #17-29
Date: April 19, 2017
June 21, 2017
Permit # 46124

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-29: Application of Subaru Distribution Corporation for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, LIO District, Group CC, refers to LO District, Column 7, Note 2 of the General Use Table (off street loading berths shall be within completely enclosed buildings) and from Section 3.12, Column 12 (Building Height: 25' permitted, 44' proposed) The business is located at 6 Ramland Road, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 73.20, Block 1, Lot 25; in the LIO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, April 19, 2017 at which time the Board made the determination hereinafter set forth.

David Sammons, President & CEO, Subaru Corporation, Barry Wells, Vice President, Subaru Corporation, David Bilow, Architect, Diego Villareale, P.E., and Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Plans labeled "Preliminary Site Plan Approval Drawings Subaru Distribution Center Expansion" (12 pages) dated December 22, 2016 not signed or sealed by JMC Planning, Engineering, landscape Architecture & Land Surveying, PLLC.
2. A letter dated April 17, 2017 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Commissioner of Planning.
3. A letter dated April 7, 2017 from the Rockland County Sewer District #1 signed by Joseph LaFiandra, Engineer II.
4. A letter dated March 22, 2017 from the Rockland County Health Department signed by Scott McKane, P.E., Senior Public Health Engineer.
5. A letter dated March 22, 2017 from the Rockland County Highway Department signed by Joseph Arena, Senior Engineering Technician.
6. Fifteen pictures of the area submitted by an abutting property owner.

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 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 conducted SEQRA review and, on April 12, 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 Regulations § 617.6 (b)(3). The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Ms. Salomon, aye; Mr. Quinn, aye; Mr. Feroldi, aye; Ms. Castelli, aye; and Mr. Sullivan, aye.

Donald Brenner, Attorney, testified that they were before the Planning Board last week and received a preliminary approval and a neg. dec, for Seqra; that they did look for other available spaces in Town to expand into, but nothing was suitable so they purchased the adjacent property; that they have drawings that are showing the changes the Planning Board asked for that the engineer will explain; that the building next door to the west is 60 feet tall; that this is the LIO zone; that Subaru has been good in the community and is a good tax ratable; and that the building will not be seen from Minuteman.

David Sammons, President and CEO, Subaru Corporation, testified that they supply Independent franchise dealers with cars, parts, accessories and training; that since 1981 the growth of Subaru has been huge; that they have increased sales from 20,000 units to 60,000 units and expect more growth with the next 7-8 years; that triple sales has led to more cars on the road' that parts sales are expanding and they need to supply the dealers with parts and to anticipate future growth; that the truck traffic will see a moderate increase; that the new expansion will allow for more efficient loading and unloading of trucks; that Subaru of America contract franchise requires a 300,000 sq. ft. warehouse with certain heights; that they need a 38' clearance for storing and if they lowered the building they would need a bigger foot print; that they cannot excavate down ten or fifteen feet because of the water table; that the warehouse would not be efficient if it had two levels; and that they could berm the property and add more evergreen plantings.

Diego, Villareale, P.E., went over revised plans, showing the changes that the Planning Board requested; showing the red highlight limit; that cul-de-sac at the end of Ramland road; the perimeter of the building, the two driveways; the parking in the front, east and west; that the rear portion is currently undeveloped; that they are proposing to build a 130,000 sq. ft. warehouse and distribution with the access road around the building from Ramland Road; that the upper parking area is at a higher elevation on the eastern side; that the property slopes down to the west; that they are cutting the building into the hillside to allow the building to be at the same elevation of the existing building; that truck circulation will be more efficient; that all docks will be moved to the western side of the building, closer to the Data Center; the east side docks will be eliminated and the south side docks will not be used; that all loading will be done on the western side of the building and trucks will no longer have to go around the building; that typically the loading takes place between 7 A.M. and 7 P.M.; that the natural 100' buffer will remain and an additional 100' will be available on the northern property line with 70 additional evergreen trees; that the upper parking area has been eliminated which allow the 200' buffer; that the additional buffer space to the north eliminated drive aisle and elimination of 60 parking spaces from the original 364 to 321; that in order to increase and use the land banked spaces they would need to appear before the Planning Board; that the grading and topography plan show the changes from 130 to 250'; that the noise should be mitigated by the design of the building; the trucks will load closer to the data center; that there are no mechanicals behind the building; no chillers; that they could supplement the evergreen plantings more and create berms in certain areas; that at one portion the retaining wall covers 18' of the building; that the additional 76 parking spaces will accommodate conferences, sales and technician training classes.

Barry Wells, Vice President, Subaru Corporation, testified that the facility is a distribution center with offices and it is also a training center for technicians and sales people; that the technical training classes are presently limited to 8 people with one or two classes per day or sixteen people; that the sales training is approximately 25 to 30 people with four classes per week but only a few times per year; technical training is all year and training is usually Monday thru Thursday; that the bays being moved closer to the Data Center will limit noise for the neighbors; that four doors will be for receiving and six trucks can be loaded to leave every evening; that the they own 7 trucks and get deliveries from UPS and A. Duiy Pile; and that having the trucks loaded and ready to leave every evening will be more efficient.

Public Comment:

Joseph Palmieri, 78 Minuteman Circle, testified that he has concerns about noise; that the open bays allow for high lows and noise all day; that the forklifts have noise alarms on them for safety purposes but they can easily be heard all day long from his residence; that the requested height variance is 80% above what is permitted; that they can probably figure out another style addition and that the existing woods are like toothpicks; that the existing buffer is see-through; that presently he see the top of the existing building but a=if this is permitted he will be looking at a solid wall.

Scott Hanson 158 Cowpens Drive, testified that the Planning Board requested that the applicant compromise on the height but they did not budge; they insisted that it was absolutely necessary that they have a forty foot building; that they showed no proof of this; that this abuts residential property and the residents of Betsy Ross knew they were purchasing property abutting a commercial zone but that zone had restrictions of 25' height; that allowing this to move forward devalues our properties; and the bays should have to be enclosed; also the drawings are misleading.

Steve DelSavio, 262 Trenton Place, testified that he has been a resident for 34 years; that he was aware that he purchased residential property near a light industrial zone but that zone does not allow a 44' building; that the applicant knew the zoning restrictions when they purchased the property and they should have been smarter and come to the Board prior to purchase as a contract purchaser and asked if this building could be built; that the hardship is self-created; that if they need this height they should have to build down into the ground 15 or 20 feet to accommodate their needs; that they are more than doubling the traffic, and noise; that there are wetlands back there; that a berm with six foot evergreens won't grow in wetlands; and today there were eight trucks and 3 trailers.

Nicole Schuster, 165 Cowpens Drive, testified that she is very concerned about noise pollution and played a recording from her phone of the air conditioning units behind the Tennis Match; that at 11:00 at night there are no buffers for the noise; that they addressed buffers at the meeting in 2008 but there are no year round buffers; and that noise pollution should be addressed.

Michael Weir, 79 Minuteman Circle, testified that he was never notified of the first meeting; that he did get a notice for this meeting and that is why he is present.

Laura DelSavio, 262 Trenton Place, testified that she is a 34 year resident; that the Data Center has a much larger buffer; that she is concerned about the deterioration of quality of life; that the neighborhood used to be very quiet; that they enjoyed their sunroom, pool and backyard; that she is concerned about security and the increase of strangers to the neighborhood; that property values will change if this causes drainage problems; that she would like to know if a traffic study has been done and she would appreciate it if the Board would defer decision until a study could be done; that the she would like to see the height lowered, the loading docks enclosed and adequate time for the public to review the plans before a decision is made.

Joseph Parker, 61 Minuteman Circle, testified that the applicant just stated that the number of employees is 125; that he questions why they need 365 parking spaces; that he did not attend the last meeting but he watched it on you tube; that he is concerned about traffic; that when he drives his kids to school it can take 7 to 10 minutes to get out to Blaisdale; that they should have to reduce the number of parking spaces; that the berms with planting were promised for Crestron and the tennis facility and nothing ever was done; that this is too much too high; and that the applicant should provide a letter from North America Subaru proving that they must have a 300,000 sq. ft. space.

Christine Wood, 78 Minuteman Circle, submitted 14 pictures from several backyards abutting the area; and testified that the 44' building is twice the distance from the residential houses; that the Board should deny extreme buildings; that the applicant has passively threatened moving from the Town; that they fail all five criteria for granting a variance; that it is not the resident's fault that they need an additional 19' in height; that the requested variance is 76% greater than the code permits; the business is intrusive enough with their loading docks not being enclosed and all day long we hear beeping; that losing the 8 acres of forestry and replacing it with a sea of white wall and land banking some parking is not buffering anything at ground level; that the Planning board did not lessen the impact with a berm and plantings; that the residents were never notified about the first meeting; that I informed the Town and then the second notice was sent out during Spring Break and many neighbors had just come home from vacation to the notices; and there was not enough time for many people to make it to the Planning board meeting.

Mitch Shalom, 76 Minuteman Circle, testified that the Board should use common sense; that it doesn't make any sense to have the highest building the closest to residents; and that if they are not anticipating more employees, why do they need so much more parking.

John Borucianski, 77 Minuteman Circle, read an article about Subaru supporting National Wildlife.

Heather Hurley, 202 Hobart Street, Pearl River, testified that she would like to know why they need so much parking with such a little change in the number of employees.

The applicant requested a continuance.

June 21, 2017

The following members were present: Mr. Sullivan, Mr. Bosco, Mr. Quinn, Ms. Salomon, Mr. Feroldi, and Ms. Castelli.

ZBA#17-29: Application of Subaru Distribution Corporation for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, LIO District, Group CC, refers to LO District, Column 7, Note 2 of the General Use Table: (off street loading berths shall be within completely enclosed buildings) and from Section 3.12, Column 12 (Building Height: 25' permitted, 36' proposed) The business is located at 6 Ramland Road, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 73.20, Block 1, Lot 25; in the LIO zoning district.

The following items were submitted for review:

1. SP-5: Preliminary Site Grading Plan dated 02/13/2017 with the latest revision dated of 05/19/2017 signed and sealed by Diego A. Villareale, P.E.
2. SP-1: Cover Sheet with bulk table dated 02/13/2017 with the latest revision date of 05/19/2017 signed and sealed by Diego A. Villareale, P.E.
3. SP-4: Site Layout Plan dated 02/13/2017 with the latest revision date of 05/19/2017 signed and sealed by Diego A. Villareale, P.E.
4. A statement on behalf of Stephen and Laura DelSavio (5 pages).
5. Two computer generated pictures of the property line from north elevation 105 and east elevation 142 submitted at hearing.

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David Sammons, President & CEO, Subaru Corporation, Ben Woods, President, Subaru Corporation, Anthony Garrett, Architect, Diego Villareale, P.E., and Donald Brenner, Attorney, appeared and testified.

Donald Brenner testified that the record should show that the statement form DelSalvio was unsigned; that the applicant has received preliminary approval and a neg dec from the Planning Board; that the Zoning board asked the applicant to re-study the layout and they have done that; that there has been a lot of fear and misinformation going around to worry people; that the notices were sent out wrong at no fault of the applicant and the first hearing was immediately continued; that they have been upfront with the public; that the property is zoned for commercial use; that the use is permitted by right and the hardship is that they are demanded by Subaru to meet the requirements of their agreement; that they did look for other buildings but they did not want to leave the community; and that many of the noise complaints are not related to this applicant.

Diego Villareale, P.E., testified that after the last meeting, they sat down and looked at the overall site plan; that they listened to the Board and the public and worked with the owners and the design team to address your comments; that they have maintained the 100 foot buffer and eliminated the drive aisle and parking along the northern property line; that the eastern side parking lot has been eliminated and increased the buffer substantially from 135 feet to 260 feet; that the green space has been maintained; that to mitigate and screen they have lowered the roof line and adjusted the grade so that the building height has been lowered to 36 feet; that reduction in the grading and berming the north eastern portion of the building, while burying the back portion of the eastern portion of the building where the grade rises the building is 32' and the grade continues to rise and the northeast corner of the building is 17 feet high and the balance of the building is below grade until it meets existing grade with the average height being 27 feet; creative berming on the north eastern side of the building along with additional landscaping with a ten berm and ten feet evergreen plantings on the entire north portion of the building and the eastern side retaining wall and additional evergreen screening of ten foot height will make the building blend in.

Anthony Garrett, Architect, testified that the roof line was lowered from a gable roof with a shallow pitch of 5' slope and redesigned with a steel structure with roof drains that compress it and combined with the berming reduces the height from 44' to 36' and maintained the footprint of the building; that the footprint is required by the clients to meet the interior layout of the building for loading and unloading of materials; that this plan is environmentally sensitive and has no adverse environmental effects; that the northeast corner had the most significant grade change and a 260' buffer which allows the existing trees to remain; and showed the Board a series of photos northern looking south, created by site line sections from east side looking southerly the building façade is exposed at 23 feet; that he had computer generated pictures of what the building would look like from the second story window of existing houses; that two site line sections were done from western tees to the building and with the berm planted with evergreens; that the east portion of the building in sunk into the ground and screened by the buffer and new evergreen berm; that he north east elevation is significantly lower and the second issue of the loading docks being exterior, this design accommodates the exterior docks further away from the residences; that enclosing the loading docks would make the drive and building closer to the residences; that the code calling for enclosing them was because of idling laws; that the loading docks have seals now and this reduces noise tremendously; that the enclosed docking stations for 75' long trucks would limit the buffer line because the turn around and back up areas would have to be increased and it the trucks would be more difficult to maneuver back into the space; that the open loading dock is faster and 10 to 12 trucks a day is not an intense use and the outdoor docks allow the loading doors on the east to not be used; that the new loading area on the west side are further away from the residences and the dock seals instead of shelter and better sound entenuating; that the trucks seal against the door to a closed container truck and there will be very little sound increase; that the changes to the loading docks if they went further down into the ground would mean that they were creating a dysfunctional warehouse from day 1; that the planters are part of the stormwater management system at

grade behind the retaining wall; that they will treat the roof top drainage, very similar to the way a rain garden works; and that these are approved by NYSDEC.

Barry A. Wells, Vice President, testified that there are about 16 trucks a day now in and out of the facility, including vans, fed ex, and other freight trucks; that the limited L & L freight can go out not completely full right now, and in the future they will probably go full; that the size of the trucks might change from 2.4.or 6' ,but the number of trucks won't change by more than one truck if the business increases by 33%; that the primary supplier has three trucks per day presently; and that their sister company also uses North Atlantic Trucking Co.; that these trucks belong to them and their deliveries leave the warehouse in the evening and return between the hours of 4 A.M. and 7A.M.; that there are usually three spare trucks on site at night and 9 trucks when everyone returns.

Public Comment:

Laura DelSavio, 262 Trenton Place, testified that she is the property adjacent to the proposed project; that their house is on a quiet cul-de-sac; that they have extremely good memories of quiet peacefulness in their yard; that she is concerned about property values decreasing; that the residents should have an expectation that the 25 foot height requirements would be enforced; that the enclosed loading docks should be expected for the noise protection for the neighbors; that the owners of the property should have investigated all of the codes before purchasing the property; that they have no practical hardship, only inconvenience; that the Town Code is law and should be enforced and she is concerned about the impact of noise and traffic and the burden should be placed on the applicant as to why they purchased property that they knew they could not build a 36' building on; that this is too close to the houses and the variance request should be denied.

Joseph Palmieri, 78 Minuteman Circle, testified that he is insulted by the bait and switch; that the height is not really being lowered, they are just raising the grade around the building; that the pictures they produced are photo shopped; that 60 to 70 foot trees have foliage in the spring and summer but under the trees there is no growth and there is a clear view to the building; for at least 8 months; that the surrounding parking lots is an improvement; that there is still a problem with lighting and they go on at 4 P.M. in the winter; that the noise from the forklifts are terrible and constant; that the beep beep all day is horrible; that the docks should be enclosed.

Bob Gorglion, 42 Valley Forge, testified that he would like to know how more box trucks will there be?; that for 25 years the use seemed to be light duty to truck terminal and the noise is unnerving; that the noise on Cowpens too from the Tennis Court building with its' white roof; that the noise from the forklifts back up alarms are constant and he would in construction for 40 years; that two weeks ago iron workers were banging steel; that the buffers are not enough; that he is located where the 250 foot proposal is and won't see it but the noise now is already horrible, at night they have air ratchets going.

Scott Hansen, 158 Cowpens Drive, Orangeburg, testified that he heard another applicant be told that their request for a sign variance exceeds the permitted amount and that the County is worried about precedent and a requests for similar exemptions; that this request far exceeds the permitted height and a proliferation of buildings like the tennis court that are not compliant the Town Zoning Codes are not reasonable; that the zoning codes are reasonable and should be followed.

Steve DelSavio, 262 Trenton Place, testified that he submitted the written statement and is handing in a signed statement; that the applicant has not proven a hardship; that they have stated several inconveniences; that they have stated that Subaru is demanding a certain size warehouse but have provided no proof of that; that they have offered no proof that they exhausted all alternatives; that he variances should not be granted because compliance would decrease the applicants profits; that the Board should consider the rights of the public and the community before considering granting he variances.

Peggy Jordon, 189 Rutgers Road, provided two pictures for the Board to consider; and stated that they say a thousand words; one is an aerial view of Constitution with Crestron, Ramland Road and 100' buffer and 100' rear yard with full foliage and another is a house seeing down the driveway to Crestron looming behind the house and it shows that it is not advantageous to the houses on that street; that it decreases property values and the photos are exactly what they are afraid of.

Christine Wood, 78 Minuteman Circle, testified that she tired of being lied to ; the number of trucks, raising the grade to change the height of the building, doesn't solve anything; that many of the houses are high ranches and looking out of a second story window is looking out of the living space in most of these houses; that the ZBA has five factors to decide and they fail on all of them; it is noise, ugly and will lower the property values; this proposal is a detriment to all of the residences; that they don't want it or a 40' retaining wall and other areas are available; that notices were put on her shed; that they are lying all the time; that it see through below the high trees; that the majority of people do not want this to happen; Mr. Brenner keeps talking about a 60' building that was approved in May 2013 and since it was not built within a year they lost that variance; and neighbors will be out if it ever comes back.

Demetri Rakas, 266 Trenton Place, testified that he agrees with all of his neighbors; that the moved into his house six months ago; that the hopes to create memories with his family in his back yard; that the pictures are reality and they do show how clearly the building is visible and he hopes the Board does not pass this.

John Borucinski, 77 Minuteman Circle, testified that he support everything his neighbor have said; that he can see the top of the other building from his house and the new one will be even closer.

Pat CcIlmurray, 138 Cowpens Drive, testified that there are trucks parked overnight all the time; that sometimes there are two dozen trucks there; that the trucks waiting to unload in the middle of the night are noisy; that she can see the top of the building from her house; that the lighting is too much; that the 36 foot height is 11 feet higher than permitted; that the Atlantic Trucking Company is parked there at night; that she wonders about the hours of operation; that they should have to switch sites because what is there now is not appropriate.

Margaret Skvorec, 263 Trenton Place, testified that he supports everything his neighbors have said; that he has lived her for 59 years and seen many changes; that he concerned about the wildlife and water and run-off.

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.

At the June 21, 2017 meeting Mr. Sullivan made a motion to close the Public Hearing which motion was seconded by Ms. Castelli and carried unanimously.

At this time the Board announced that they had legal questions for the Board's legal counsel, Deputy Town Attorney, Dennis Michaels, which counsel they stated to be discussed in an attorney/client confidential meeting, and the Board then convened in private with Mr. Michaels. After the private attorney/client confidential session, the Board announced that they were going to defer decision until a future meeting.

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TOWN OF ORANGETOWN

July 19, 2017

Present for the July 19, 2017 meeting: Mr. Sullivan, Mr. Bosco, Ms. Salomon, Mr. Quinn, and Mr. Feroldi. Absent: Ms. Castelli. Also present: Dennis Michaels, Deputy Town Attorney, Ann Marie Ambrose, Stenographer, and Deborah Arbolino, Administrative Aide.

The Board announced that they had legal questions for the Board's legal counsel, Deputy Town Attorney, Dennis Michaels, which counsel they requested be discussed in an attorney/client confidential meeting, and the Board then convened in private with Mr. Michaels.

Mr. Sullivan made a motion to approve the variances as presented in the submission for the June 21, 2017 Zoning Board of Appeals meeting, because similar height variances, and variances for outdoor loading berths, have been granted in the immediate area, and the applicant reduced the proposed height of the building, reduced the visual impact with adequate screening and lowered the height of the roof by making it flatter, and also reduced the traffic nearest the residences by changing the traffic flow; which motion was seconded by Ms. Salomon, adding that she does not remember the Board ever refusing an applicant unenclosed loading berths, that most of the companies in the park have unenclosed loading berths and that she has never seen a company bend over so far to accommodate the requests and concerns of the neighbors; and the rest of the Board agreed with these findings; Mr. Quinn added that he was impressed with the second set of plans that were submitted, because the applicant pulled things in closer to the existing building, changed the grading, and moved the loading areas further away from the neighbors; and the rest of the Board agreed with these findings; and Mr. Bosco added that he did not think that that the neighbors would have been happy if the building were lowered but spread out more, because it would be closer to the neighbors; and the Board agreed with these findings; Mr. Quinn, aye, Mr. Feroldi, aye; Mr. Bosco, aye, Ms. Salomon, aye; and Mr. Sullivan, aye.

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 enclosed loading berths and building height variances, as modified from the requested 44' to 36', will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has addressed many of the issues expressed by the public, such as noise from the loading berths, by changing the traffic pattern and loading and unloading further away from the residences. The building height has been lowered by eight feet, and the applicant has added several layers of screening between itself and the buffer. The proposed additional parking that was closest to the residences has been eliminated, and additional screening has been added in that area.
2. The requested enclosed loading berths and building height variances, as modified from the requested 44' to 36', will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has addressed many of the issues expressed by the public, such as noise from the loading berths, by changing the traffic pattern and loading and unloading further away from the residences. The building height has been lowered by eight feet, and the applicant has added several layers of screening between itself and the buffer. The proposed additional parking that was closest to the residences has been eliminated, and additional screening has been added in that 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 enclosed loading berths and building height variances, as modified from the requested 44' to 36', 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. The applicant has addressed many of the issues expressed by the public, such as noise from the loading berths, by changing the traffic pattern and loading and unloading further away from the residences. The building height has been lowered by eight feet, and the applicant has added several layers of screening between itself and the buffer. The proposed additional parking that was closest to the residences has been eliminated, and additional screening has been added in that 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 enclosed loading berths and building height (36') 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.

TOWN OF ORANGETOWN
OFFICE OF BUILDING, ZONING AND PLANNING ADMINISTRATION AND ENFORCEMENT
300 N. ORANGE AVENUE
ORANGETOWN, FL 32966
781.762.1100


(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 enclosed loading berths and building height (36') variances was presented and moved by Mr. Sullivan, seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Mr. Feroldi, aye; Mr. Quinn, aye; Mr. Bosco, aye; and Ms. Salomon, aye. Ms. Castelli was absent.

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

DATED: April 19, 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