

MINUTES
ZONING BOARD OF APPEALS
December 6, 2017

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

ABSENT: NONE

ALSO PRESENT: Dennis Michaels, Esq. Deputy Town Attorney
Melissa Pezzullo, Official Stenographer
Deborah Arbolino, Administrative Assistant

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

POSTPONED ITEM:

LINEN CHOICE 57 North Troop Road Orangeburg, NY 70.18 / 2 / 17; LI zone	STREET FRONTAGE AND OUTDOOR LOADING BERTHS, VARIANCES APPROVED AS MODIFIED NYS TOWN LAW §280-a EXCEPTION/ VARIANCE GRANTED	ZBA#17-74
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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 10:10 P.M.

Dated: December 6, 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

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DECISION

**STREET FRONTAGE, AND OUTDOOR LOADING BERTHS, VARIANCES
APPROVED AS MODIFIED; NYS TOWN LAW §280-a EXCEPTION/VARIANCE
GRANTED**

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

ZBA #17-74
Date: December 6, 2017
Permit #50133

FROM: ZONING BOARD OF APPEALS of the Town of Orangetown

ZBA #17-74: Application of Linen Choice (“applicant”) for the following variances from Zoning Code (Chapter 43) of the Town of Orangetown Code:

- Section 3.12, LI District, Group QQ, Column 7 (Street Frontage: 150’ required, 0’ proposed); and
- Section 3.11, LI District, Column 7 refers to CS District, Column 7 #6 (No Outdoor Loading Docks permitted: 19 proposed); and

for an exception/variance pursuant to New York State Town Law, §280-a (access and/or relation of structure to public street or highway);

for a proposed warehouse. The property is located at 57 North Troop Road, Glenshaw Street, Orangeburg, New York, and is identified on the Orangetown Tax Map as Section 70.18, Block 2, Lot 17, in the LI Zoning District.

Heard by the Zoning Board of Appeals (“Board” or “ZBA”) of the Town of Orangetown at a meeting held on Wednesday, December 6, 2017, at which time the Board made the determination hereinafter set forth.

Donald Brenner, Esq., attorney for the applicant, and Jesse B. Cokeley, P.E., of Maser Consulting, engineer for the applicant, appeared and testified.

The following documents were presented:

1. Site plan, dated 04/21/2017, labeled “Preliminary & Final Site Plan for Linen Choice,” signed and sealed by Jesse B. Cokeley, P.E., Maser Consulting (5 pages).
2. Boundary and Topographic Survey for Aluf Real Property, Inc., dated 03/31/2017, not signed or sealed.
3. Planning Board Decisions PB #04-103, dated October 13, 2004, and PB #03-51, dated October 8, 2003.
4. A letter dated September 28, 2017, from the Rockland County Department of Planning, signed by Douglas J. Schuetz, Acting Commissioner of Planning.
5. A letter dated August 31, 2017, from the Rockland County Sewer District #1, signed by Joseph LaFiandra, Engineer II.
6. A letter dated August 29, 2017, from the Rockland County Highway Department, signed by Joseph Arena, Senior Engineering Technician.
7. A letter dated August 23, 2017, from the Rockland County Health Department, signed by Scott McKane, P.E., Senior Public Health Engineer.
8. An e-mail dated December 4, 2017, from Brenda Petry.
9. An e-mail dated December 4, 2017, from Scott Petry.
10. An e-mail dated December 4, 2017, from Dimitri Laddis (with attachments).
11. An e-mail dated November 3, 2017, from Ira Steinberg.
12. Two e-mails dated November 3, 2017, from Allyson Sullivan (with attachments).

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13. A letter dated December 5, 2017, from Thomas and Ellen Woods (with an attachment).
14. A four-page statement, handed-in by Mr. Gadd at the Board meeting, with 131 names attached.
15. A two-page statement handed-in by Mrs. Witek at the Board meeting.
16. A Clean Air for Orangetown statement (2 pages, with 260 names attached).

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

Donald Brenner, Esq., attorney for the applicant, testified that Linen Choice is a contract purchaser of the property from Aluf Real Property, Inc.; that the previous approval, which is still valid, was for a 231,000 sq. ft. warehouse; that the applicant would like to build a smaller 170,000 sq. ft. warehouse; that they appeared before the Planning Board on July 12, 2017, and received a SEQRA Negative Declaration and Preliminary Site Plan Approval for the smaller warehouse space; that there will be no odors from this facility, because it will be a warehouse only, with some seamstress work being done to repair materials; that the operation will run from 8:00 a.m. to 6:00 p.m., Monday through Friday; that the facility will be closed on weekends; that the LI Zoning District is limited; that VW on North Greenbush has all open bays towards the residences; that almost all of the bays in the LI District have been approved as open; that the new closures are modern sealed and vacuum pack the closure; that he is an attorney, representing his client; that there is a fear problem because of next door; that this has been reviewed by the Planning Board and did receive a SEQRA Negative Declaration; that this use will not affect air quality, noise, water or external traffic patterns; that the person buying the property is proposing a smaller warehouse with a better buffer area; that this is the best use in the LI Zoning District, and they are not trying to hurt anyone; that the traffic study shows no significant adverse impact; that the property is landlocked, because the Troop entrance can only be used by emergency vehicles as required by the Planning Board; that they are speaking to the client to see if he would enclose any of the loading berths; and that the applicant has agreed to enclose all of the loading docks that were proposed for Phase I of the building -- 13 loading docks will be enclosed.

Jesse Cokeley, P.E., engineer for the applicant, testified that the applicant is a bedding import supplier for hotel and retail; that no manufacturing will take place on site; that the address is 57 North Troop Road; that the site has no street frontage and access is through an easement from Glenshaw Street to Route 303; that emergency vehicles may enter through Murphy Court; that the company would have operating hours from 8:00 a.m. to 6:00 p.m., Monday through Friday; that he has an image of the lot from Google Earth, showing the parcel is landlocked, with the left side showing the existing warehouse, right side is the rail trail, and to the north are the residences; that the applicant is proposing all outside loading berths to avoid trucks inside, because of the necessary venting and health issues; that only large government facilities do this; that 90% of the loading berths in the Town are outside; that they are estimating about 12 to 15 trips per day, in and out with trucks; that this size warehouse typically has three times that amount; that the primary facility is in Brooklyn, and they are anticipating that some containers may stay in the loading area for a couple of days; that the Planning Board allowed a 35% reduction to the rear yard setback; that this is listed on sheet 3 of the plans; that the last 6 loading

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docks are for future build-out in Phase II; that trucks come in at different angles, right or left, and the current order retail or hotel are at different ends of the warehouse; that it is designed for optimal use of the space; that the O & R Utilities easement on the east side of the building prevents any permanent structures from being built there, and that is why the loading docks were proposed on the opposite side; that water and gas are on the rail trail side; that indoor bays would push the building to the west; that circulation would be difficult in that area; that the Planning Board and DEMA want the stream maintained; that screening pushed it closer to the rail trail, church and school; that it looks like the building could be rotated easily, when it is two dimensional, but the reality of the terrain makes it more difficult; that the slope rises up by the access road, and more disturbance would take place with many more trees being removed; that in 2004 there were 252 parking spaces, and presently there are 75 proposed; that moving the building in that direction will cause more land disturbance; that they are proposing heavy fencing and many trees on the west side of the building; that the loading docks are proposed on both sides of the building because it will allow the flow of the business to work better; that he is texting with the applicant, and he said that they can enclose eight bays on the west side and five on the north side, and would like to request to keep six open bays on the southeast side at the Phase II build out.

Public Comment:

Alex Gadd, 8 Murphy Court, Blauvelt, testified that he has a petition 132 names and would request more than two minutes to speak; that he is an immediate neighbor to this proposal since 2012; that he is concerned about a number of impacts this project may have on the character of the neighborhood, on the property values and his family's quality of life; that the touchstone of an application for a variance is an alleged hardship the applicant would suffer if the zoning law was strictly applied; that the area variance request involves weighing the variances benefit to the applicant against the detriment to the health, safety and welfare the variance would place on the neighborhood and community; that the Board must consider five factors related to the alleged hardship; an undesirable change will be produced in the character of the neighborhood or a detriment of nearby properties will be created by the granting of the area variance; that the benefit sought by the applicant can be achieved by a method feasible for the applicant to pursue, other than an area variance; that the requested variance is substantial; that the proposed variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood and whether the alleged difficulty was self-created; that he is unable to address fully the applications because the documents on file with the Town do not contain some basic information from the applicant; the applicant has not explained the nature of the hardship or the extent to which it examined other sites for its warehouse or if the operation or if the site can be modified to avoid the need for variances; that the that because the documentation has not been submitted, this hearing should be continued until all of the affected residents can review the information and provide input; that the applicant has not demonstrated that the issuance of these variances is warranted; that the ZBA should find against this applicant; that if the application is approved, the impact would be extensive to the entire neighborhood, including the Cottage Lane School, Tappan Zee High School, Dominican College and St. Catherine's church and school; that the impact of noise from tractor trailers and open loading bays with trailers pulling in and out all hours and revving engines and airbrakes with the woods removed would leave no buffer from the trail or yards; that air pollution is a concern and most of all property values and your job as a zoning board is to protect our property values first and foremost; that Linen Choice is not a victim of the zoning law; that created their problem by pursuing a project knowing that the aspects of it were prohibited by law; and that condition 10 of the at page 7 of the July 12, 2017 Planning board decision reads "The Planning Board recommends to the Zoning Board of Appeals that the loading berths be enclosed within the building".

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Anthony Loterfido, 30 North Troop Road, Blauvelt, testified that in 2004 when the warehouse was approved there was no Lowes, Stop & Shop, Fed Ex, houses on Murphy Court, or Rail Trail; that he worked in a 29,000 sq. ft. warehouse in Bradley Park and they could empty a trailer with a forklift in hours; that they amount of storage space versus the amount of proposed bays don't add up; that they could potentially have twelve trucks parked there; and he questions if they are trying to expand Aluf.

Liz Dudley, 250 South Greenbush, Blauvelt, testified that she is a parent, a community members and since the rail trail has been opened they are dealing with odors from Aluf; that before further development is allowed, environmental testing should be done for the soil and air; that more traffic in the industrial area is more pollution and she was very concerned when she saw that Mr. Brenner is representing the project because she is concerned about the truth coming out and the Board should dig deeper.

Thomas Woods, 10 Chestnut Oval, Orangeburg, testified that the variation of zero would be one or two and nineteen is a great deviation; that ventilation is a problem for interior docks but diesel fumes and back up noises are worse; that the 2004 application does not account for the property that was sold to Hegarty Homes and all variances should be denied and the old approval should have expired.

Raphael Caniza, 18 Spruce Street, Orangeburg, testified that the building department is struggling to enforce codes in the industrial area and how can new company be allowed if the Town Officials can't handle what exists.

Tanya Witek testified that she has two considerations for the private homes, St. Catherine's Library, Rail Trail regarding noxious odors and chemicals in the air; that these areas are used weekdays by the families in that area and the community and these conditions are a tragedy for the community; and she would like to submit two statements for the record and wants the Board to consider denying these substantial variances.

Sister Mary Eileen O'Brien, President, Dominican College, asked if the property has been sold and expressed her concerns regarding the environment; that there are 2,000 students attending college, 7 days a week; and the streams changing direction and would like the Board to look at where the water will end up to avoid any adverse effect.

Kate Johnson, 15 Theodore Roosevelt Drive, Blauvelt, testified that it is intolerable to live near 19 loading docks; that the DEC should investigate the exposure to emissions from the tractor trailers; that the noxious odors from the trail are awful and the new facility will make it worse; that the health, safety and welfare of the community should be considered.

Janine Fiala Davis, Preschool Playhouse, 557 Western Highway, Blauvelt, testified that the state mandates that the kids play outside everyday weather considered and she is concerned about health and safety issues.

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Father Francis McAree, St. Catherine's Pastor testified that he is concerned about the health of the religious education students, CYO, nursery school, and Dominican College students and doesn't want anything taken for granted.

Heather Hurley, 202 Hobart Street, Pearl River, testified that the Board should deny all variances; that the Rockland County Planning Board letter dated June 19th to the Planning Board stated that the applicant must obtain air division approval; what light manufacturing will take place; that at the July 12th Planning Board, Mr. Garvey, said that they should put the loading docks inside; that all of this development should be considered pertinent to air quality issues; that ambient air testing and chemical concentrations should be taken into account; that Section 21A-14 D states that that final site plans can be rescinded if not implemented within two years, so the applicant should stop threatening to build a bigger building that was approved because that approval is no longer good.

Dimitri Laddis, 13 Liberty Street Piermont, testified that it is important to read into the record that the factory adjacent is a toxic source of air; that he is not impressed with the plan; that he is a doctor and a landscape architect and the plan is not impressive; that the building abuts a residential area and a residential walking trail; that the impact the building will cause without any rea; mitigation does not make the applicant a good neighbor; and coming in threatening to build a bigger building doesn't either.

Ira Steinberg, 10 Murphy Court, testified that they took a 25% reduction in the buffer along the rail trail and north portion of the building; that they need variances for this and no reduction was granted.

Vincent Lupi, 16 Spruce Street, asked if the contract for sale for through do the variances get transferred ; that the loading docks are a hazard to the neighborhood; that interior loading if done properly is not a hazard to people working inside; that he works in the landscape industry and a 30' building is not going to be screened by fences and trees; that it would take a 12' tree years to grow enough to shield that building; and he would like to know the distance between the rail trail and the trucks and what hours they are going to work and what holidays they close down for, because many holidays occur between Monday and Friday.

Denise McGuire, 31 Arthur Street, Blauvelt, testified that she would like to know if the town Police and Highway have been notified about the increase traffic on Western Highway; that the smells are horrific and the plan is terrible and should be shut down.

Jimmy O'Flynn, 75 Blauvelt Road, Blauvelt, testified that this facility is proposed at 119,000 sq. ft.; that he worked in a 20,000 sq. ft. warehouse that had six trailer a day delivered that space was never full; that the applicant testified that they will have six trucks a day for this space, that it is a poor business plan if they are only using six trucks a day for this amount of warehouse space.

Allyson Sullivan, 42 Arthur Street, testified that that knocking down more trees to build this facility will allow more odors into the neighborhood; that the old approval should not be valid; that the required parking is confusing, is it one parking spot per two employees or 300 sq. ft. of warehouse space; that the Town should decide what direction they are going in because she is going to sell her house.

John Harrigan, 6 Spruce Street, testified that he agrees with all of the previous statements; that traffic is concern from Glenshaw to Route 303 because of the rise of the road on Route 303; that it is a high density traffic area; and that they have not been good neighbors.

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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 §809 of the General Municipal Law of the State 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 street frontage and outdoor loading dock variances (as modified) will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The New York State Town Law §280-a exception/variance was granted, because the lot is landlocked. The applicant has agreed to enclose all 13 of the proposed loading docks that were proposed for Phase I of the project, and has been granted an outdoor loading dock variance for the remaining 6 loading docks for Phase II of the construction, which are further away from the residential area.
2. The requested street frontage and outdoor loading dock variances (as modified) will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The New York State Town Law §280-a exception/variance was granted, because the lot is landlocked. The applicant has agreed to enclose all 13 of the proposed loading docks that were proposed for Phase I of the project, and has been granted an outdoor loading dock variance for the remaining 6 loading docks for Phase II of the construction, which are further away from the residential 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, for the reasons described in the foregoing #1 and #2 in these Findings of Fact and Conclusions.
4. The requested street frontage and outdoor loading dock variances (as modified) are not substantial; and the New York State Town Law §280-a exception/variance was granted, because the lot is landlocked.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43), and is proposing a new building, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board, 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 street frontage and outdoor loading dock variances (as modified) are APPROVED, and the exception/variance to New York State Town Law §280-a is GRANTED; 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.

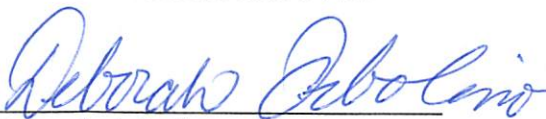
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The foregoing Resolution, to APPROVE the application for the requested street frontage and outdoor loading dock variances (as modified), and to GRANT the exception/variance pursuant to New York State Law §280-a, was presented and moved by Mr. Sullivan, seconded by Ms. Castelli, and carried as follows: Mr. Bosco, nay; Mr. Quinn, aye; Mr. Sullivan, aye; Ms. Salomon, aye; and Ms. Castelli, aye.

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

DATED: December 6, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By: 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT; TOWN CLERK; ZBA MEMBERS; HIGHWAY DEPARTMENT;
SUPERVISOR; ASSESSOR; TOWN BOARD MEMBERS; DEPT. of ENVIRONMENTAL
MANAGEMENT & ENGINEERING; TOWN ATTORNEY; DEPUTY TOWN ATTORNEY;
FILE; ZBA; PB; OBZPAE; CHAIRMEN of ZBA, PB and ACABOR; BUILDING
INSPECTOR-M.M.

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