

MINUTES
ZONING BOARD OF APPEALS
November 1, 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
Ann Marie Ambrose, 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

NEW ITEMS:

DEFERRED DECISION:

U.S. INFORMATION SYSTEMS 25 Ramland Road Orangeburg, NY 73.20 / 1 / 26; LIO zone	FRONT YARD, SIDE YARD, TOTAL SIDE YARD AND BUILDING HEIGHT VARIANCES	ZBA#17-65
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NEW ITEMS:

MC KENNA 35 Harold Street West Nyack, NY 69.07 / 1 / 6; R-22 zone	SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED BOARD DETERMINED BUILDING HEIGHT VARIANCE WAS NOT REQUIRED	ZBA#17-83
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JARA 9 Heather Lane Orangeburg, NY 74.14 / 2 / 18; R-15 zone	CONTINUED	ZBA#17-84
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HU (area variance) 7 Kerry Court Pearl River, NY 72.08 / 3 / 47; R-15 zone	BUILDING DEPARTMENT DETERMINED AREA VARIANCE WAS NOT REQUIRED	ZBA#17-85
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HU (use variance) 7 Kerry Court Pearl River, NY 72.08 / 3 / 47; R-15 zone	APPLICANT WITHDREW USE VARIANCE REQUEST	ZBA#17-86
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COOPERATIVE LAUNDRY
PERFORMANCE STANDARDS
400 Oritani Drive
Blauvelt, NY
70.06 / 1 / 14; R-15 zone

CONTINUED

ZBA#17-87

OTHER BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the Acting Chairperson executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for the State Environmental Quality Review Act (SEQRA) coordinated environmental review of actions pursuant to SEQRA Regulations § 617.6 (b)(3) the following applications: Anda Site Plan Amendment, 153 East Central Avenue, Pearl River, NY; 68.16 / 6 / 39; CS zone; Henry Kaufman Campgrounds Prepreliminary, Preliminary, 667 Blauvelt Road, Pearl River, N.Y.; 69.10/ 2 / 21; R-80 zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

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

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 10:00 P.M.

Dated: November 1, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By *Deborah Arbolino*

Deborah Arbolino, Administrative Aide

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

TOWN OF ORANGETOWN
2017 NOV 15 A 10:55
TOWN CLERK'S OFFICE

DECISION

FRONT YARD, SIDE YARD, TOTAL SIDE YARD, BUILDING HEIGHT, AND ZONING CODE §6.41 (NUMBER OF INTERIOR LOADING DOCK), VARIANCES APPROVED

To: JMC (Diego Villareale, P.E.)
120 Bedford Road
Armonk, New York 10504

ZBA #17-65
Date: September 18, 2017
Permit #46352

FROM: ZONING BOARD OF APPEALS of the Town of Orangetown

ZBA #17-65: Application of U.S. Information Systems for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, §3.12, Table of Bulk Regulations, LIO District, Group CC, §3.12, Column 8 (Front Yard: 100' required, 76' proposed), Column 9 (Side Yard: 100' required, 75' proposed), Column 10 (Total Side Yard: 200' required, 175' proposed), Column 11 (Rear Yard: 100' required, 95' proposed), and Column 12 (Building Height: 25' permitted, 28' proposed); and from Zoning Code §6.41(f) (Interior Loading Berths: 4 required, 3 proposed); for an addition to an existing warehouse. The premises is located at 25 Ramland Road, Orangeburg, New York, and is identified on the Orangetown Tax Map as Section 73.20, Block 1, Lot 26, in the LIO Zoning District.

Heard by the Zoning Board of Appeals of the Town of Orangetown ("Board" or "ZBA") at a meeting held on Monday, September 18, 2017, at which time the Board made the determination hereinafter set forth.

Diego Villareale, P.E., Joseph Lagana, owner, and Laura Weiss, Esq., attorney, appeared and testified on behalf of the Applicant.

The following documents were presented, and reviewed by the Board:

1. Drawings, dated April 11, 2017, with the latest revision date of May 17, 2017, labeled "USIS Warehouse Expansion" (9 pages), signed and sealed by Diego A. Villareale, P.E.
2. Architectural plans, dated April 5, 2017, signed and sealed by Barry Terach, Registered Architect (5 pages).
3. A letter dated June 14, 2017, from John Giardiello, P.E., Director of the Orangetown Office of Building, Zoning and Planning Administration and Enforcement.

Ms. Castelli, Acting Chair of the Board, 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, Ms. Castelli moved for a Board determination that since the Planning Board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or did not object to the Planning Board acting as Lead Agency for this application, pursuant to coordinated review under the State Environmental Quality Review Act Regulation §617.6 (b)(3); and since the Planning conducted a SEQRA review and, on June 14, 2017, rendered an environmental determination of **no** significant adverse environmental impacts to result from the proposed land use action (i.e., a "Negative Declaration" or "Neg Dec"), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulation §617.6 (b)(3). The motion was seconded by Ms. Salomon, and carried as follows: Mr. Quinn, aye; Mr. Feroldi, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Bosco, aye. Mr. Sullivan was absent.

Diego Villareale, P.E., engineer for the Applicant, testified that the proposed addition to the building is designed metal that is 24' above the first floor; that the roof is pitched, and at the average grade the building is 28' in height; that volume was a consideration, and the measurement is from the ridge line to the eave of the building; that the rendering shows the site plan and the property line; that the lot is 5.3 acres in the LIO Zone; that they are located on Ramland Road at the roundabout; that the site plan has been adjusted to conform with the Planning Board's request, and two curb cuts have been added; that the driveway continues around the back of the building; that there are 43 off-street spaces for parking; that the addition is 33,000 sq. ft.; that this site slopes

down from the residential area in the rear of the building, and the 100' buffer is not being touched; that the new proposed addition matches up to the existing building without going any further into the rear yard; that there is still a 95' rear yard and a 100' buffer between the building and the abutting residential properties; that the existing outdoor components will be moved inside the new addition; that there are twenty off-street parking spaces on the southern side of the building; that South Ramland Road has additional curb cuts; that the loading docks that exist are enclosed, and the third loading dock will be enclosed; that one entrance has been eliminated; that the third loading dock will have a roll up door, and the area inside will be 100' wide and 125' long; that the operation is from 7 a.m. to 5 p.m. usually; and that the box trucks in the rear of the building will be directed to park with the headlights facing toward the building.

Public Comment:

Bob Gorglione, 142 Valley Forge, testified that he gets woken up at 5:23 in the morning by noise from this facility; and showed the Board an aerial view of the building and the surrounding houses; that this operation has become a trucking terminal; that there are four blowers on the roof in the rear of the building that go 24 hours a day seven days a week; that the noise is horrible; that there is a reason that the size building exists on the lot; that the proposal is too big for the lot; that they outgrew their space in Pearl River and moved here and they have outgrown this space; that there is plenty of room at the other end of the park, they should move there.

Xiaofeng Jung, 143 Valley Forge, testified that he agrees with everything that his neighbor said; that the local environment is changing; that the Board should minimize the impact on the residential area; that he purchased in 2005 and it was a very quiet are; that now there is constant noise; that he works from home often and the noise is very annoying; and the Board should estimate the acoustic impact on the local environment.

Gerald Verdicchio, 137 Penn Court, testified that his in-laws purchased the house in 1986 and it was a very quiet are; that eighteen years ago he purchased the house from them; that it was still quiet; that since this truck leasing company moved in, it is extremely noisy; every 14' box truck has to have a backup alarm by law; and they are always hearing the beep, beep, beep; that they are directly behind this building and they cannot open the windows without hearing yelling, cursing and beeping and banging on the metal door; that the headlights are seen clearly coming up the hill and he pays \$14,000.00 in taxes.

Jerry Berger, 141 Valley Forge, testified that he agrees with his neighbors; that he can't open his windows; that the expansion will be unbearable; that the trucking noises and back up noises and noise from the blowers off the side of the building are horrible and really affect the quality of life.

Steve DelSavio, 262 Trenton Place, testified that the Board has already devalued all of their properties when they approved the variances for Subaru; that a few years ago it was Crestron, then the Tennis Courts; that the Tennis Courts are very visible from Cowpens; that all of these variances have devalued their properties; that the previous building was approved with a 36' height and 10 outdoor loading docks; that the houses on Betsy Ross, Penn Court, Trenton Place and Valley Forge are all devalued; that 34 years ago he checked the laws before he purchased his property and he knew that buildings should be built at 25' heights; that all the loading docks had to be enclosed and now he has Subaru washing cars on a Sunday; that this shouldn't go on; that the truck traffic and noise is constant.

Pat McIlmurray, 138 Penn Court, testified that he purchased this house in 1990, after living in Tappan for ten years; that in the winter time there were 40' trucks and engines running with back up lights and his windows shake; that they start earlier than 7 am; that there are not enough answers from the last meeting; that the parking spots on the plan face the houses; that the business operates sometimes at 4:30 in the morning; that the noise they make is unbelievable; that they were dumping boulders into the big bins a week ago; that the problem with a third loading bay is the total noise on the neighborhood; and the blowers are terrible.

In Response:

TOWN OF ORANGETOWN
NOV 15 2017

Joseph Laguna, owner, testified that he purchased the property from the previous owner, knowing that the previous owner had a spill on the property; that he inherited the spill provision for mitigation with the purchase of the property; that there are stages to a clean-up from a spill; that everything is monitored by the DEC and the fans are part of the remediation; that the location of the underground pipes and the fans are decided by the DEC; that the wells around the property are monitored by the same group; that, when he purchased the property, this clean-up was part of the deal; that they are monitored every 6 months; that the fans have to stay until the DEC says they are no longer needed; that he has no control where the fans are placed or where the pipes are drilled into the ground; that they are adding between 20 and 30 new employees when the building is done; that they will not have air-conditioning in the new addition; that this will be an area that is used for staging jobs; that they moved the dumpster to the front of the building to eliminate some of the noise; that they have widened the curb cut to prevent some back up noise, and the new space allows the loading dock to open and drive through, with easier access from the circle; that leaving early in the morning for staging in the city means picking up and going because the loading would be done the day before.

Laura Weiss, Esq., attorney for the Applicant, testified that her client has no control over the mitigation for the spill from the previous owner; that her client purchased the property with a registered spill and this happened two owners prior; that it was an oil spill underground; that the DEC will close it out when they are satisfied and, until then, her client must abide by their mitigation plans; that they recently had to upgrade the fans, and they cannot be surrounded by anything because they need to ventilate, and the DEC determines where the vent pipes goes in the ground, and these things are checked by a certified engineer for compliance.

Diego Villareale, P.E., engineer for the Applicant, testified that the expansion is taking care of existing demand and moving some of the outdoor activity indoors, which should decrease some of the noise; that the house operation as they exist today, and the buffer, between the building and the abutting residential properties, is not being touched; that the existing pavement on the east side will remain the same; that the proposed expansion is in line with the existing building; that the trucks have full circulation around the building and are not encroaching into the buffer; that there will not be any additional air conditioning units; that the third loading bay will allow work to be done completely within the building; and that the fans must stay in operation until the spill is closed out by the DEC.

The Board asked to speak in a confidential attorney-client privileged session with the Board's legal counsel, Dennis Michaels, Esq., and, when they returned to the Public Hearing, Ms. Castelli made a motion to defer the decision until the October 18, 2017, meeting; which motion was seconded by Ms. Salomon, and carried unanimously.

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.

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

At the October 18, 2017, Zoning Board of Appeals meeting there were only three members present that could have participated in the vote for this application. The Board decided in favor of deferring the decision until more members were present to vote.

At the November 1, 2017, Zoning Board of Appeals meeting all members were present.

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested front yard, side yard, total side yard, building height, and §6.41 (number of interior loading berth), variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar sized buildings have been constructed in the area; operations for the facility have been moved to the front of the building, away from the residences, which should reduce noise; the operations that took place outside the building are being relocated inside the new building; the requested height variance is minimal, and similar variances were granted to other companies in the area; and the additional interior loading berth shall allow for transfer of products and loading taking place inside, cutting down on noise outside of the building.
2. The requested front yard, side yard, total side yard, building height, and §6.41 (number of interior loading berth), variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar sized buildings have been constructed in the area; operations for the facility have been moved to the front of the building, away from the residences, which should reduce noise; the operations that took place outside the building are being relocated inside the new building; the requested height variance is minimal, and similar variances were granted to other companies in the area; and the additional interior loading berth shall allow for transfer of products and loading taking place inside, cutting down on noise outside of the building.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested front yard, side yard, total side yard, building height, and §6.41 (number of interior loading berth), 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. Similar sized buildings have been constructed in the area; operations for the facility have been moved to the front of the building, away from the residences, which should reduce noise; the operations that took place outside the building are being relocated inside the new building; the requested height variance is minimal, and similar variances were granted to other companies in the area; and the additional interior loading berth shall allow for transfer of products and loading taking place inside, cutting down on noise outside of the building.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested front yard, side yard, total side yard, building height, and §6.41 (number of interior loading berth), variances are APPROVED; and FURTHER RESOLVED that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

- (i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.
- (ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.
- (iii) The Board gives no approval of any building plans, including, without limitation,

the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

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

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

The foregoing resolution to approve the application for the requested front yard, side yard, total side yard, building height, and §6.41 (number of interior loading berth), variances was presented and moved by Mr. Quinn, seconded by Ms. Salomon, and carried as follows: Mr. Bosco, aye; Ms. Castelli, aye; Mr. Quinn, aye; Mr. Feroldi, aye; and Ms. Salomon, aye. Mr. Sullivan did not vote because he was not present for the hearing on September 18, 2017.

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: November 1, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By:



Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR-R.A.O.

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

TOWN CLERK'S OFFICE
2017 NOV 15 10:55
TOWN OF ORANGETOWN

DECISION

**SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED; AND
AS PER ZONING CODE §5.111 USING THE FRONT LINE AS THE DESIGNATED
STREET LINE: NO BUILDING HEIGHT VARIANCE IS REQUIRED**

To: Kier Levesque (McKenna)
49 Third Avenue
Nyack, New York 10960

ZBA #17-83
Date: November 1, 2017
Permit #46854

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-83: Application of Conor McKenna for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Chapter 43, R-22 District, Group I, Section 3.12, Columns 9 (Side Yard: 25' required, 17.6' proposed), 10 (Total Side Yard: 60' required, 50.9' proposed) and 12 (Building Height: 13.2' permitted, 28.25' proposed) for an addition to an existing single-family residence. The Premises are located at 35 Harold Street, Nanuet, New York and are identified on the Orangetown Tax Map as Section 69.07, Block 1, Lot 6 in the R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 1, 2017 at which time the Board made the determination hereinafter set forth.

Conor McKenna and Kier Levesque, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans dated September 5, 2017 by Kier. Levesque, Registered Architect with a site plan based on a survey by W.E. James Associates dated May 1, 2017 (7 pages).

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: Mr. Feroldi, aye; Mr. Sullivan, aye; Ms. Salomon, aye; Mr. Bosco, aye; Mr. Quinn, aye; and Ms. Castelli, aye.

Kier Leveque, Architect, testified that the lot is irregularly shaped; that they are proposing three additions; that they are removing the fireplace in the family room; that they are adding a front porch that is conforming; that they are adding onto the south side for a larger living area and a playroom in the rea of this space; that because of the location of the houses on the properties and the pie shaped lots, the distance between this addition and the existing house on the south side is not encroaching on the house; that he would also request the Board interpret how a height variance is determined; that according to Section 5.111 all required front yard depths in Bulk Table, Column 8, and all maximum building heights based on front lot lines in Bulk Table , Column 12, shall be measured from a line hereby established as the designated street line which is parallel to the street center line and at distance from such street center line specified for each street classification as established in Section 1.4; that the building inspector determined his permitted building height by the closest yard, which was the 17.8' side yard; that there is no street on the side yard and his height to the midpoint of the gable is 28.25'; which would not require a variance if measured according to the code; and that because of the shape of the lot,

and the location of the house on the lot, any additions would require variances.

Conor McKenna, testified that he spoke to the neighbors and they are happy to hear that he will be working on the house; that the additions will allow the layout in the house to change enough to allow him to raise his family in the house; that there is a 50' wooded lot designation at the rear of the house and the property to the north is owned by the town.

Public Comment:

No public comment.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested side yard and total side yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar additions have been constructed in the area.
2. The house faces Harold Street, which is a cul-de-sac and the designated street line, as per Zoning Code §5.111, not the side yard, along which side yard there is no street; therefore, using the front line as the designated street line, there is no necessity for a height variance for the home as designed and submitted.
3. The requested side yard and total side yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar additions have been constructed in the area.
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 side yard and total side 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. Similar additions have been constructed in the area.
6. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

TOWN CLERK'S OFFICE
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TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested side yard and total side yard variances are APPROVED; and since the house faces Harold Street, which is a cul-de-sac and the designated street line, as per Zoning Code §5.111, not the side yard, along which side yard there is no street; therefore, using the front line as the designated street line, there is no necessity for a height variance for the home as designed and submitted; and FURTHER RESOLVED that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

TOWN CLERK'S OFFICE
2017 NOV 15 10:56
TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested side yard and total side yard variances and to find and resolve that, since the house faces Harold Street, which is a cul-de-sac and the designated street line, as per Zoning Cod §5.111, not the side yard, along which side yard there is no street; therefore, using the front line as the designated street line, there is no necessity for a height variance for the home as designed and submitted; was presented and moved by Mr. Quinn, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; 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: November 1, 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

TOWN OF ORANGETOWN
2017 NOV 15 A 10:56
TOWN CLERK'S OFFICE

DECISION

USE VARIANCE REQUEST WITHDRAWN BY APPLICANT

To: Lin Hu
7 Kerry Court
Pearl River, New York 10965

ZBA #17-86
Date: November 1, 2017
Permit #46648

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-86: Application of Lin Hu for a variance from Chapter 43 (Zoning Code) of the Town of Orangetown Code, R-15 District, Group M, Section 3.11, refers to R-80 Column 2 (Use not permitted by Right); applicant is proposing to use house for sleep over students for extended periods of time for tutoring during school breaks. The premises are located at 7 Kerry Court, Pearl River, New York and is identified on the Orangetown Tax Map as Section 72.08, Block 3, Lot 47; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 1, 2017 at which time the Board made the determination hereinafter set forth.

Lin Hu and Xiaowu Wang appeared and testified.

The following documents were presented:

1. Copy of survey dated June 29, 1994 signed and sealed by Joseph Haller L.S..
2. Architectural plans labeled "The Wang-Hu Residence" Existing basement Plan, dated June 13, 2017 by George Hodash Associates not signed or sealed.
3. A letter dated November 1, 2017 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
4. A letter dated October 11, 2017 from the Rockland County Sewer District #1 signed by Joseph La Fiandra, Engineer II.
5. A letter dated October 13, 2017 from the Rockland County Highway Department signed by Joseph Arena, Senior Engineering Technician.
6. A letter dated October 3, 2017 from the Rockland County Health Department signed by Scott McKane, P.E., Senior Public Health Engineer.
7. A letter dated October 25, 2017 from Eileen and John Breslin, 8 Kerry Court, with attachments (4 pages).
8. Orangetown Justice Court September 27, 2017 summary of summonses.
9. Letter sent by e-mail dated October 27, 2017 in support of applicant from David Gray, 123 E. Washington Avenue, Pearl River, NY.
10. Letter sent by e-mail stamped in November 1, 2017 from Tom Diviny, Orangetown Councilman.
11. E-mail dated October 30, 2017 from Brian Terry, 2 Kerry Court, Pearl River, NY.
12. A letter by e-mail from Chris Day, 171 Hardwood Drive, Orangeburg, NY.
13. E-mails from Brian Kenney, Gerald Bottari, and Paul Valentine answering John Breslin's letter.
14. A letter of opposition signed by 24 residents.

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

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Lin Hu testified that they have a tutoring service for short periods of time for a maximum of ten students but sometimes they only have two or three students; that some of the students come from long distances out of state and sleep over, that this part is like a guest for convenience of

parents; that there is no fee to sleep over; that they are doing a service; that they cannot claim that they cannot make a reasonable return on the property if it was sold; that they talked to a lawyer; and that they will withdraw the application for the use variance.

Xiaowu Wang testified that they have tutored students that went on to be #1 and #2 in fields of Chemistry and Science; that they are like a School of Special Instruction, that he would be able to operate in the house; and a school is permitted in the residential zone; and they would like to honor the students that they have booked already and then withdraw the application

Mr. Sullivan explained to the applicant's that a use variance is extremely difficult to get; that here are four criteria for a use variance and they would have to meet all four criteria and the first is that they cannot realize a reasonable return –substantial as shown by competent financial evidence; and that they cannot meet that first requirement because houses in Pearl River sell fast at a profit; that they would have to prove that they have looked elsewhere to find a place to do this and couldn't find one; and that the Board cannot give them permission to continue this use because it is not a permitted use and they must stop it now.

Public Comment:

There was no public comment because the applicants withdrew the request for a use variance to allow the temporary boarding of students in relation to a home tutoring occupation.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

The **applicants withdrew their request for a use variance** to allow the temporary boarding of students in relation to a home tutoring occupation because they did not believe that they would be able to meet all four of the criteria that would demonstrate unnecessary hardship for each and every permitted use in the Zoning District:

1. Cannot realize a reasonable return that is substantial as shown by competent financial evidence;
2. Alleged hardship relating to the premises is unique and does not apply to a substantial portion of the district or neighborhood;
3. Requested variance will not alter the essential character of the neighborhood; and
4. Alleged hardship has not been self-created

Applicants withdrew their request for a Use Variance; therefore, the Board did not Decide the application: No Decision was rendered on the merits.

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Hu (use variance)
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Permit#46648

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: November 1, 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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