

MINUTES  
ZONING BOARD OF APPEALS  
NOVEMBER 21, 2012

MEMBERS PRESENT: WILLIAM MOWERSON  
JOAN SALOMON  
PATRICIA CASTELLI  
DANIEL SULLIVAN  
MICHAEL BOSCO, ALTERNATE

ABSENT: NANETTE ALBANESE

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

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

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

PUBLISHED ITEMS

APPLICANTS

DECISIONS

NEW ITEMS:

ASFENDIS 74.14 / 2 / 31; R-15 zone	FRONT YARD VARIANCE APPROVED	ZBA#12-78
TOBIN 69.16 / 3 / 7; R-40 zone	§ 5.226 FENCE HEIGHT VARIANCE APPROVED	ZBA#12-79

OTHER BUSINESS:

Consideration by the ZBA whether or not to **re-hear/re-open** its Decision ZBA #12-75, decided on 11/07/2012, regarding the Application of Ken and Linda LUNDBERG, which said Decision granted/approved a variance from Chapter 43 (Zoning), RG District, Group M, §5.21(d) (undersized lot side yard), for a front porch at an existing single-family residence located at 134 East Washington Ave., Pearl River, NY (Orangetown Tax Map Designation - 68.16—6—25), in the RG Zoning District.

The administrative aide explained to the Board that there had been a mix up in the OBZPAE office concerning a phone call that was received from a Mrs. Parseghian and the Lundberg application; that the aide thought the call concerned a different application by a different Parseghian which latter application had been postponed until December 5, 2012; the aide did not realize that Mrs. Parseghian was calling because she is an abutting property owner of the Lundberg application. A call was made later in the day to Mrs. Parseghian, and a voice mail was left for her, stating that the Parseghian application was going to be heard on December 5, 2012.

On November 8<sup>th</sup> at around 11:30 a.m., Mrs. Parseghian called again, after a few minutes on the phone the name Lundberg was used and she was told that Lundberg was indeed heard, and approved, the previous evening. Mrs. Parseghian was quite annoyed and the aide called the Zoning Board members and asked if they would consider voting to re-hear/re-open the Lundberg Decision because of the misunderstanding.

The Zoning Board recessed into an attorney/client confidential meeting because the Board had legal questions to ask of the Deputy Town Attorney concerning the above subject.

The Board returned to the Public meeting room, and after the ZBA's attorney quoted Chapter 43, Section 10.322 Paragraph B " Failure of a property owner whose name appears on the affidavit of property owners to receive the notice shall not affect the validity of the public hearing or any action taken by the Board," a motion was made by Ms. Salomon to re-hear/re-open the Lundberg Hearing, which motion was seconded by Ms. Castelli and failed to carry as follows: Mr. Sullivan, nay; Mr. Bosco, nay; Ms. Salomon, aye; Ms. Castelli, aye; and Mr. Mowerson, nay.

ADDITIONAL 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: One Ramland Road Site Plan Amendment Review, 1 Ramland Road, Tappan, New York, 73.20 / 1 / 23 & 24; LIO zoning district; Columcille Properties, LLC Site Plan Review, 348 Route 9W, Palisades, New York, 78.09 / 1 / 26 & 27; LO zoning district.; 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 8:30 P.M.

DECISION

FRONT YARD VARIANCE APPROVED

To: Andrew Asfendis

ZBA # 12-78

2 North Mary Francis Street  
Tappan, New York 10983

Date: November 21, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#12-78: Application of Andrew Asfendis for a variance from Chapter 43 (Zoning), Section 3.12; R-15 District; Group M, Column 8 (Front Yard: 30' required, 14.2' existing, 12.5' proposed) for a front porch at an existing single-family residence. The premises are located at 2 North Mary Francis Street, Tappan, New York and are identified on the Orangetown Tax Map as Section 74.14, Block 2, Lot 31 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 21, 2012 at which time the Board made the determination hereinafter set forth.

Andrew Asfendis appeared and testified.

The following documents were presented:

1. Copy of site plan with proposed front porch drawn on it.
2. Zoning Board of Appeals Decision #98-11 dated February 18, 1998.

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

Joseph Asfendis testified that he would like to demolish the existing concrete stoop in the front of the house and build a small front porch with steps going out toward the road; that the Building Inspector told him that the set back is measured from the third step; that this is what creates the 12.5' set back and that the existing stoop has a 14.5' set back.

Public Comment:

No public comment.

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

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

Mr. Mowerson made a motion to close the Public Hearing which motion was seconded by Ms. 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 front yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed porch is actually set back further than the stoop that is being replaced.
2. The requested front yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed porch is actually set back further than the stoop that is being replaced.
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. The existing house encroaches on the front yard setback.

4. The requested front yard variance, although somewhat substantial, affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

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

General Conditions:

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

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

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

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

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

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

DECISION

§ 5.226 SIX- FOOT FENCE HEIGHT FRONT YARD VARIANCE APPROVED

To: Patricia Tobin

ZBA # 12-79

187 Van Wyck Road  
Blauvelt, New York 10913

Date: November 21, 2012

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 12-79: Application of Patricia Tobin for a variance from Chapter 43 (Zoning), Section 5.226 (Height of Fence in the Front Yard: 4 ½' permitted, 6' proposed) for the installation of a six foot fence at an existing single-family residence. The premises are located at 187 Van Wyck Road, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 69.16, Block 3, Lot 7; R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 21, 2012 at which time the Board made the determination hereinafter set forth.

Patricia Tobin appeared and testified.

The following documents were presented:

1. Copy of survey with proposed fence drawn on it.
2. Picture of two privacy fences that could be installed, Juniper & Arrowwood.

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

Patricia Tobin testified that she would like to fence in her back yard with a white privacy fence; that she recently installed a pool and would like the fence for safety and privacy; and that the rear of the property fronts onto Diane Drive.

Public Comment:

No public comment.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested § 5.226 six-foot fence height variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants' lot fronts onto two streets and she recently had a pool installed and the six-foot fence will afford safety and privacy.
2. The requested § 5.226 six-foot fence height variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicants' lot fronts onto two streets and she recently had a pool installed and the six-foot fence will afford safety and privacy.
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 § 5.226 six-foot fence height variance, although somewhat substantial, affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
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 § 5.226 six-foot fence height variance is **APPROVED**; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

**General Conditions:**

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

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

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

(iv) A building permit as well as any other necessary permits must be obtained within a

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

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

The foregoing resolution to approve the application for the requested §5.226 six-foot fence height variance was presented and moved by Mr. Mowerson, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Mr. Bosco, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Mowerson, aye. Ms. Albanese 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.















