

MINUTES  
ZONING BOARD OF APPEALS  
November 4, 2020

MEMBERS PRESENT: DAN SULLIVAN  
PATRICIA CASTELLI  
ROB BONOMOLO, JR.  
~~BILLY VALENTINE~~  
MICHAEL BOSCO

ABSENT: THOMAS QUINN  
BILLY VALENTINE

ALSO PRESENT: Deborah Arbolino, Administrative Aide  
Denise Sullivan, Deputy Town Attorney  
Anne Marie Ambrose Official Stenographer

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:

LIDL SUPERMARKET 3-58 Route 303 Tappan, New York 77.15 / 1 / 33-37 & 41; CS & LIO zone	BUILDING HEIGHT, PARKING, AND ROUTE 303 OVERLAY VARIANCES APPROVED	ZBA#20-72
SQ PROPERTIES 8 Olympic Drive Orangeburg, New York 73.15 / 1 / 16; LIO zone	OUTDOOR STORAGE VARIANCE APPROVED	ZBA#20-73
BALAGUER 144 Howard Avenue Tappan, New York 74.17 / 3 / 2; R-15 zone	INTERPRETAION GRANTED IN FAVOR OF APPLICANT	ZBA#20-74
GROCHOWSKI 170 Rutgers Road East Orangeburg, New York 74.13 / 2 / 57; R-22 zone	FLOOR AREA RATIO VARIANCE APPROVED; BOARD FOUND APPLICATION FOR A SINGLE-FAMILY DWELLING WITH TWO KITCHENS: NO SEPERATION BETWEEN LIVING SPACES: NO VARIANCE REQUIRED	ZBA#20-75
TROIA 1110 Route 9W South Nyack, New York 71.05 / 1 / 20; R-22 zone	INTERPRETATION REQUEST WITHDRAWN	ZBA#20-76

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CONTINUED ITEM:

BROWN  
6 Gage Court  
Tappan, New York  
77.05 / 1 / 24; R-22 zone

CONTINUED

ZBA#19-104

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 application: Dominican College Athletic Complex, 470 Western Highway, Orangeburg, NY, 74.06 / 3 / 1.1 & 1.3; R-40 zone; Sansone Subdivision plan – 4 lots, 483 Kings Highway, Sparkill, NY 74.20/3/5; RG 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 9:30 P.M.

Dated: November 4, 2020

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 CLERK'S OFFICE

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TOWN OF ORANGETOWN

DECISION

**BUILDING HEIGHT, PARKING SPACES, OUTDOOR LOADING BERTH, & ROUTE 303 OVERLAY §13.10 (B)(2) no longer needed: plans provide 25' vegetative buffer; § 13.10 (B) (3); § 13.10 (B) (10) VARIANCES APPROVED**

To: Donald Brenner (Tappan Plaza Lidl)  
4 Independence Avenue  
Tappan New York 10983

ZBA #20-72  
Date: November 4, 2020  
Permit #49664

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#20-72: Application of Tappan Plaza Lidl Supermarket for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, CS District, Group FF, Column 12 (Building Height: 22' permitted, 25.58' proposed); From Section 3.11, Column 6 #4 (129 parking spots required for supermarket; 120 parking spots proposed); refers to LO zone, Column 7 #2 (All off-street loading berths shall be completely enclosed: one outdoor loading berth proposed); and from Section 13.10 B(2) (Twenty-five foot wide vegetative buffer required, no buffer is proposed); Section 13.10 B (3) ( Any nonresidential use that is adjacent to a residential zoning district shall include a 25-foot wide vegetative buffer: no buffer is provided for residential lot #33); and 13.10B (10)(not more than 35% of all parking shall be located within the front yard of any lot or parcel: 121 stalls to be located in front yard for the overall site: 79 stalls for the supermarket lot & 17 stalls for the restaurant lot) for a proposed 25,656 sq. ft. supermarket and site work within the Tappan shopping center. The property is located at 3-58 Route 303, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.15, Block 1, lots 33-37 & 41 in the CS and LIO zone and Route 303 Overlay zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 4, 2020 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Ben Plumb, P.E., & Kristen DeLuca, P.E., Bohler Engineering; Ethan Schukoske, Atlantic Traffic Design, and Matthew Canale, Real Estate Manager for LIDL Supermarkets, appeared and testified.

The following documents were presented:

1. Plans labeled "The Site Development Plans for LIDL U.S. Operations LLC Proposed Grocery Store #1456" dated December 4, 2019 with the latest revision date of 08/04/2020 signed and sealed by Kristin M. Deluca, P.E.. (3 pages).
2. A letter dated October 9, 2020 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
3. A form stating that the application is out of the jurisdiction of the "Rockland County Highway Department signed by Dyan Rajasingham, P.E,

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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On advice of Denise Sullivan, 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 June 10, 2020 (as set forth in PB#20-18). 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 Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Quinn and Mr. Valentine were absent.

Donald Brenner, Attorney for the applicant, testified that the property has always been a shopping center and up until recently it has an anchor grocery store as part of the center; that it is commonly known as the Zacharakis property; that the application to appear before the Board was submitted on February 20, 2020 and the Planning Board heard the application on June 10, 2020 and granted a Preliminary approval and a Neg. Dec.; that many of the requested variances are for pre-existing conditions; that the residences next to the proposed grocery store are in the LIO zone; and that they would be happy with the Zoning Board granting a variance for the outdoor loading berth.

Ben Plumber, P.E., Bohler Engineering, testified that the application to subdivide the 2 ½ acre site and to construct the Supermarket; that they are providing access easements for the subdivision; that there is adequate parking for the shopping center; that they have provided a 25’ vegetative planting buffer along Route 303 and a 20’ vegetative buffer between the shopping center and the residences; that they agree that the buffer will help with headlight glare onto Route 303; that the residential lot and supermarket are under the same ownership; that cross easements are being drawn up for all of the properties; and that the vegetative buffer between the supermarket and house should block the views of the outdoor loading dock.

Matthew Canale, Real Estate Manager for LIDL, testified that the store would operate 7 days a week from 8:00A.M to 10:00 P.M. and employ between 50 and 100 employees ; and that deliveries to the store are usually made in the morning before the store opens.

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

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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 building height, parking spaces, outdoor loading berth and Section 13.10 (B) (3) & (10) variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposed building height is not substantial and one outdoor loading berth is a reasonable request for a grocery store and the proposal will enhance the existing shopping center. The existing shopping center has all of the parking in the front yard and cannot be changed without knocking all the existing buildings down and the applicant is meeting the 25' vegetative requirement of the Route 303 Overlay zone along the Route 303 corridor. Lot 77.15-1-33 which has a residential house on it, is in the LIO zone and is owned by the applicant.
2. The requested building height, parking spaces, out door loading berth and Section 13.10 (B)(2), (3), & (10) variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed building height is not substantial and one outdoor loading berth is a reasonable request for a grocery store and the proposal will enhance the existing shopping center. The existing shopping center has all of the parking in the front yard and cannot be changed without knocking all the existing buildings down and the applicant is meeting the 25' vegetative requirement of the Route 303 Overlay zone along the Route 303 corridor. Lot 77.15-1-33 which has a residential house on it, is in the LIO zone and is owned by the applicant.
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 building height, parking spaces, out door loading berth and Section 13.10 (B) (3), & (10) variances although substantial, and 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. The proposed building height is not substantial and one outdoor loading berth is a reasonable request for a grocery store and the proposal will enhance the existing shopping center. The existing shopping center has all of the parking in the front yard and cannot be changed without knocking all the existing buildings down and the applicant is meeting the 25' vegetative requirement of the Route 303 Overlay zone along the Route 303 corridor. Lot 77.15-1-33 which has a residential house on it, is in the LIO zone and is owned by the applicant.

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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.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested building height, parking spaces, outdoor loading berth and Section 13.10 (B) (3), & (10) variances are APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

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The foregoing resolution to approve the application for the requested building height, parking spaces, outdoor loading berth, and Section 13.10 (B) (3), & (10) variances are APPROVED; was presented and moved by Ms. Castelli, seconded by Mr. Bosco and carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; and Ms. Castelli, aye. Mr. Quinn and Mr. Valentine were absent.

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

DATED: November 4, 2020

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-Dominic M.

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

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TOWN OF ORANGETOWN

DECISION

**OUTDOOR STORAGE AREA VARIANCE APPROVED**

To: Jay Greenwell (SQ Properties)  
85 Lafayette Avenue  
Suffern New York 10901

ZBA #20-73  
Date: November 4, 2020  
Permit #49655

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#20-73: Application of SQ Properties for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.11 Column 7 refers to LO District, Column 7 #2 (All accessory storage shall be within completely enclosed buildings: applicant proposing outdoor storage area) for an addition to and existing one-story commercial building. The property is located at 8 Olympic Drive, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 73.15., Block 1, Lot 16 in the LIO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 4, 2020 at which time the Board made the determination hereinafter set forth.

Jay Greenwell Land Surveyor, and Sean Quinn, owner, appeared and testified.

The following documents were presented:

1. Plans labeled "Site Plan for SQ Properties, LLC" dated October 14, 2019 with the latest revision date of December 11, 2019 signed and sealed by Jay A. Greenwell <L.S., and Glenn Donald McCreedy, P.E.. (3 pages).
2. Plan labeled SQ Properties Planting Plan dated December 11, 2019 signed and sealed by Blythe Yost, Registered Landscape Architect.

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

On advice of Denise Sullivan, 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 June 15, 2020 (as set forth in PB#20-18). 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 Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Quinn and Mr. Valentine were absent.

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Jay Greenwell, Land Surveyor, testified that Diversified Glass owns a 7 acre lot at Rockland Corporate Park; that they have a 20,000 sq. ft. building that they are proposing a 35,400 sq. ft. addition for; that they received a preliminary approval and a neg dec from the Planning Board on June 15, 2020; that they are before the Board today to request a variance for outdoor storage because the products that they make need to be tested outdoors; that they are proposing a 14' high screen wall with landscaping a the southwest corner of Olympic drive that will not be visible from the street; that there is an Orangetown Sewer Treatment facility behind the lot; that they will be appearing before ACABOR for the landscape review; and that the comment from Rockland County Planning concerning the "right-of way" was completed in 1983 when World Wide Volkswagen and Reynolds Metal were there.

Sean Quinn testified that they assemble store fronts, glass enclosures, skylights, that all need to be tested in true weather; that they are constructed in the building and assembled outside in the outdoor storage are and tested for water and weather; that they can be there for a week or two and then they are taken apart and delivered to fill the order and re-assembled on site; that this process assures that there will be less chance for leakage once a product is delivered and assembled on site.

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 outdoor storage variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The property is large and the location of the proposed outdoor storage area will not be visible from the street. The 14' screened wall and proposed vegetation will be attractive.

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2. The requested outdoor storage variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The property is large and the location of the proposed outdoor storage area will not be visible from the street. The 14' screened wall and proposed vegetation will be attractive.
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 property is large and the location of the proposed outdoor storage area will not be visible from the street. The 14' screened wall and proposed vegetation will be attractive.
4. The requested outdoor storage variance is not substantial, and 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 variance.

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

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(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 outdoor storage area variance is APPROVED; was presented and moved by Mr. Bonomolo, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; and Ms. Castelli, aye. Mr. Quinn and Mr. Valentine were absent.

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

DATED: November 4, 2020

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

APPLICANT  
ZBA MEMBERS  
SUPERVISOR  
TOWN BOARD MEMBERS  
TOWN ATTORNEY  
DEPUTY TOWN ATTORNEY  
OBZPAE  
BUILDING INSPECTOR-M.M.

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

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DECISION

**INTERPRETATION:**

To: Toni Balaguer  
144 Howard Avenue  
Tappan, New York 10983

ZBA #20-74  
Date: November 4, 2020  
Permit #50342

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 20-74: Application of Toni Balaguer for an interpretation from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 11.2 (Definitions Home Occupation: Private Airbrush Artist not listed) for a home business at an existing single-family residence. The premises are located at 144 Howard Avenue, Tappan, New York and are identified on the Orangetown Tax Map as Section 74.17, Block 3, Lot 2; 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 4, 2020 at which time the Board made the determination hereinafter set forth.

Toni Balaguer appeared and testified.

The following documents were presented:

1. Copy of Survey for Gentile dated April 29, 2005 by William D. Youngblood.
2. Picture of the house, entrance to area of house proposed for this use and parking available.
3. Layout of house.
4. A cover letter dated 8/18/2020.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that since this application requests an interpretation of an existing code, rule or regulation, the foregoing application is exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (37); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Quinn and Mr. Valentine were absent.

Toni Balaguer testified that in July she applied for a Home Occupancy permit and was denied because the use she is proposing is not listed under home occupation; that the listed uses are narrow in scope and the code has not been amended in almost 11 years; that she believes if the code was written today an airbrush artist would be an acceptable use; that the business is low and each appointment is about 15 minutes; that the appointments usually take place in the

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evening between 5:00 p.m. and 8:00 p.m.; that it is mostly seasonal business and averages about 2 ½ hours a week; and during peak hours about 6 hours per week; that airbrush tanning is very different than a tanning salon; that salons mainly use large UV Tanning bed equipment and accommodate several people at a time; that she has an entrance on the left side of the house, right off the driveway and the space is 325 sq. ft. out 4,500 sq. ft. house; that it is on the ground level with two windows and two doors and no construction or renovations are need for the space; that she lives with her husband and tow daughters aged 14 and 12; that initially she started the side business with the intention of making extra money and realized that she is also able to teach her girls to have a good work ethic; that she has been an airbrush artist since 2010 and is registered with the County Clerk's office and has an LLC; that for 12 years they lived on Greywood Drive and never had an issue with her neighbors'; that about a year ago her realtor insisted that they look at this house because it was ideal for her business, with a separate entrance and parking; and being separate from the rest of the house; that this past July she was mailed a violation notice from the Town and that is how she ended up here; that everyone in the Town has been helpful and she hopes she will be able to continue her business; that she has no problem with limiting the number of cars or clients.

The Board discussed the uses permitted and found that an "air-brush artist" could fit into the permitted category of artist and asked the applicant to limit the appointments to no more than six people at a time and no more than three vehicles at a time. The Board asked for these limitations with the idea of a large bridal party wanting to get spray tanned.

Public Comment:

James Magretti, 3 Revere Place, Tappan, N.Y., testified that he does not support a business operating in the residential area and has concerns about traffic

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.

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**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 interpretation, decided in favor of the applicant, that an “air-brush artist” can operate under artist as per Section 11.2 Definitions Home Occupancy.
2. The Board requested that the applicant limit the number of clients to six (6) at one time and also limited the number of cars to three (3) at one time and noted that the Home Occupation occupies 325 sq. ft. of the existing house.

**DECISION:** In view of the foregoing and the testimony and documents presented, the Board **RESOLVED** that the application for the requested interpretation is decided in **FAVOR** of the Applicant; 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.

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(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 interpretation is APPROVED IN FAVOR OF THE APPLICANT; was presented and moved by Ms. Castelli seconded by Mr. Sullivan and carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; and Ms. Castelli, aye. Mr. Quinn and Mr. Valentine were absent.

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

DATED: November 4, 2020

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
Administrative Aide

DISTRIBUTION:

APPLICANT  
ZBA MEMBERS  
SUPERVISOR  
TOWN BOARD MEMBERS  
TOWN ATTORNEY  
DEPUTY TOWN ATTORNEY  
OBZPAE  
BUILDING INSPECTOR-M.M.

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

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DECISION

**FLOOR AREA RATIO VARIANCE APPROVED: SECTION 3.11, COLUMN 2 #7 AND SECTION 4.5 AND 4.52 VARIANCES ARE NOT NECESSARY TWO KITCHENS ARE PERMITTED IN A SINGLE-FAMILY RESIDENCE WITHOUT COMPLETE SEPARATION FROM THE TWO LIVING AREAS; NO SEPARATE APARTMENT EXISTS**

To: Karl Ackermann (Grochowski)  
159 E. Central Avenue  
Pearl River, New York 10965

ZBA #20-75  
Date: November 4, 2020  
Permit #50394

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#20-75: Application of Anthony Grochowski for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-22 District, Group I, Section 3.12, Column 4 (Floor Area Ratio: .20 permitted, .2613 proposed); from Section 3.11, R-80 District, Column 2 #7 (Conversion of a detached, owner-occupied, single-family dwelling so as to add 1 additional dwelling unit clearly subordinate to the main 1 family use to occupy not more than 600 sq. ft. of floor area subject to Section 4.5: 780 sq. ft. existing) and from Section 4.52 ( There shall be no significant exterior change and no new structures built on the property within the past 10 years as to create an additional dwelling unit) for an addition to an existing single-family dwelling with an existing apartment. The property is located at 170 Rutgers Road East, Orangeburg, New York and is identified on the Orangetown Tax Map as Section 74.13, Block 2, Lot 57 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 4, 2020 at which time the Board made the determination hereinafter set forth.

Karl Ackermann, Architect, Anthony and Mary Grochowski appeared and testified.

The following documents were presented:

1. Plans labeled "Proposed Addition/Alteration and Restricted Two Family Application for Mr. & Mrs. Grochowski Residence" dated June 2, 2020 with the latest revision date of September 3, 2020 signed and sealed by Karl E. Ackermann, Architect. ( 3 pages).
2. Survey dated April 28, 2020 signed and sealed by James G. Scheuermann, L.S.
3. A letter of support signed by five abutting neighbors.

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

On advice of Denise Sullivan, 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) (11), (12), (16) and/or (17); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Quinn and Mr. Valentine were absent.

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Karl Ackermann, Architect, testified that the applicants would like to add a small addition to the existing house upstairs for a hallway bathroom and storage; that their parents live downstairs in the bi-level style house and their living space is 780 sq. ft.; that there is an entrance for them into the house at the side of the house but there is no separation between their living space and the rest of the house inside; that the second kitchen has existed 15 years; that their parents moved into the house with them 15 years ago; that they were told that they needed to apply for the variances for Local Law #7 and file the covenant in order to get a permit for the 450 sq. ft. addition that they are requesting; that they still need a floor area ratio variance; that they will withdraw the covenants and be very happy with the house remaining as is with two kitchens in a single-family residence.

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 floor area ratio variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The requested Section 3.11, Column 2 #7, Section 4.5 and section 4.52 are not necessary, the applicant testified that there are two kitchens in the existing single-family residence and that her parents live on the lower level of the bi-level style home; that there is an existing lower level entrance to the area of the house that her parents occupy, however there is no interior separation of the spaces. The area in which the parents occupy is part of the single-family residence and they do not have a separate apartment.
2. The requested floor area ratio variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. . The requested Section 3.11, Column 2 #7, Section 4.5 and section 4.52 are not necessary, the applicant testified that there are two kitchens in the existing single-family residence and that her parents live on the

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lower level of the bi-level style home; that there is an existing lower level entrance to the area of the house that her parents occupy, however there is no interior separation of the spaces. The area in which the parents occupy is part of the single-family residence and they do not have a separate apartment.

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 floor area ratio variance is not substantial, and 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. . The requested Section 3.11, Column 2 #7, Section 4.5 and section 4.52 are not necessary, the applicant testified that there are two kitchens in the existing single-family residence and that her parents live on the lower level of the bi-level style home; that there is an existing lower level entrance to the area of the house that her parents occupy, however there is no interior separation of the spaces. The area in which the parents occupy is part of the single-family residence and they do not have a separate apartment.
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.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested floor area ratio is APPROVED, and FURTHER RESOLVED that the requested Section 3.11, Column 2 #7, Section 4.5 and section 4.52 variances are not necessary since the area of the house with a second kitchen is not separated in the interior of the house by any walls or doors which would make it a separate apartment, therefore there is no need for a covenant and the two filed covenants shall be withdrawn; 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.

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The foregoing resolution to approve the application for the requested floor area ratio variance is APPROVED; Section 3.11, Column 2 #7, Section 4.5 and section 4.52 variances WERE NOT NECESSARY: NO INTERIOR SEPARATION BETWEEN LIVING SPACES; was presented and moved by Mr. Sullivan, seconded by Mr. Bosco and carried as follows: Mr. Bonomolo, aye; Mr. Bosco, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Quinn and Mr. Valentine were absent.

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

DATED: November 4, 2020

ZONING BOARD OF APPEALS  
TOWN OF ORANGETOWN

By   
Deborah Arbolino  
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