

MINUTES
ZONING BOARD OF APPEALS
September 19, 2018

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

ABSENT: JOAN SALOMON

ALSO PRESENT: Ann Marie Ambrose, Official Stenographer
Deborah Arbolino, Administrative Aide
Barbara Gionta, Deputy Town Attorney

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:

MC KEON SPECIAL PERMIT
35 S. William Street
68.20 / 1 / 24; CS zone
42 Ridge Street
Pearl River, NY
68.20 / 1 / 31; CS zone

RENEWAL
GRANTED WITH SPECIFIC
CONDITIONS FOR BOTH LOTS
WITH A FIVE YEAR
RENEWAL

ZBA# 18-57

ZBA#18-59

O'SULLIVAN
865 Western Highway
Blauvelt, NY
65.17 / 1 / 8; R-40 zone

POSTPONED

ZBA#18-59

O'SULLIVAN STOP WORK ORDER
865 Western Highway
Blauvelt, NY
65.17 / 1 / 8; R-40 zone

POSTPONED

ZBA#18-60

PATEL
2 Sgt. Bollinger Court
Tappan, NY
77.07 / 2 / 3.2; R-15 zone

REAR YARD
VARIANCE APPROVED

ZBA#18-61

TOWN OF ORANGETOWN
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HYDE
EXTENSION OF TIME
89 Washington Spring Road
Palisades, NY
78.18 / 1 / 22; R-22 zone

FLOOR AREA RATIO,
SIDE YARD AND REAR YARD
VARIANCES APPROVED

ZBA#18-62

ZAPATA
SIDEWALK DINING
779 Route 340
Palisades, NY
77.20 / 2 / 24; R-15 zone

POSTPONED

ZBA#18-63

ORANGETOWN COMMERCE
CENTER
5 Greenbush Road
Orangeburg, NY
74.15 / 1 / 2; LI zone

SELF-STORAGE IS NOT
IDENTIFIED IN THE CODE
DETERMINATION IS THAT
SELF STORAGE IS PERMITTED IN
LI ZONE: HOWEVER WATCHMAN'S
RESIDENCE IS NOT AUTOMATICALLY
PERMITTED WITH SELF-STORAGE:
APPLICANT MAY RETURN WITH REQUEST

ZBA#18-64

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 9:25 P.M.

Dated: September 19, 2018

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
2018 OCT 19 A 10:28
TOWN CLERK'S OFFICE

DECISION

SPECIAL PERMIT RENEWAL APPROVED FOR FIVE YEARS WITH SPECIFIC CONDITIONS

To: Andy McKeon
3 Terrence Court
Pearl River, New York 10965

ZBA #18-57 & 18-58
Date: September 19, 2018
Permit # N.A.

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#18-57 & ZBA # 18-58: Application of Andy McKeon for renewal of a Special Permit that was granted November 29, 1949 "Temporary permit for commercial automobile parking lot not to exceed two years from date hereof" and continued in ZBA#73-122, ZBA#78-60 & ZBA#83-78.; to continue the use of the lots as commercial parking lots. The property is located at 35 S. William Street & 42 Ridge Street, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.20, Block 1, Lots 24 & 31; in the CS zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 19, 2018 at which time the Board made the determination hereinafter set forth.

Andy McKeon appeared and testified.

The following documents were presented:

1. Survey dated February 10, 1987 revised March 4, 1987 by Robert Rahnefeld, P.L.S..
2. A letter dated April 7, 2017 from Michael Acheson, Assistant Building Inspector, Town of Orangetown.
3. Zoning Board of Appeals Decisions # 83-78, #78-60, and 73-122.
4. Certificate of Occupancy dated April 29, 1957 for a commercial parking lot.
5. A letter dated November 18, 1949 from Wilhelmina L. Johnson Deputy Zoning Inspector, Town of Orangetown to Mr. Spooner, owner of 42 Ridge Street at that time.
6. Minutes from the November 10, 1949 Zoning Board of Appeals Hearing.
7. A letter date October 29, 1949 from John Cucchiara to the Zoning board of Appeals.
8. A certificate of Occupancy dated January 16, 1950 for 42 Ridge Street, Pearl River for "Temporary use of premises described in application for a Commercial Automobile Parking Lot (Not a used-car lot or junk yard) -said use to be limited to a period of two years from date hereof also use of existing buildings for a public garage, provided no repair work is done out of doors Approved by Board of Appeals 11/10/49. Permit also granted or use of two directional "Parking" signs. (6" by 36" long.) dated January 16, 1950.
9. Survey dated October 12. 1949 by Edward Barbour.
10. A letter dated August 22, 2018 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
11. A letter dated July 30, 2018 from the Rockland County Highway Department signed by Dyan Rajasingham, Engineer III.
12. Sign off sheet that there are no comments from Liz Mello, Rockland County Health Department.

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On advice of Barbara Gionta, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination based on the facts as presented in the applications submissions and in the record, that the foregoing application (ZBA#18-57) seeks a special permit for a proposed commercial automobile parking lot, not to exceed two years from date hereof, in a zoned CS (Commercial Shopping) lot located at 35 S. William Street and since application ZBA#18-58 seeks a special permit for a proposed commercial automobile parking lot, not to exceed two years from date hereof, in a zoned CS (Commercial Shopping) lot located at 42 Ridge Street, Pearl River, NY, these application are a Type II application is exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (7); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Feroldi, aye; Ms. Castelli, aye; Mr. Quinn, aye; and Mr. Sullivan, aye. Ms. Salomon was absent.

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

Andy McKeon testified that he and his wife purchased the property in 1993; that they have owned it for 25 years; that there is a multi-family unit on one parcel and for years they did not really use the lot for parking, other than for the tenants; that in 2010 people started approaching him to use the lot for over-night parking; that there is not enough parking in the down town area; that he has about 15 residents from South Main, Main Street, Franklin and South William Street that pay him a small fee to park in the lot; that it really is more a community service; that he also has three landscapers that park over night because they were getting violations for parking in their driveways; that he has a few seniors that live in the old movie house senior housing; a commercial coffee truck and a bread route truck that all belong to local residents; that there are two refrigerated trucks that he will ask to leave if they are a problem for the neighbors; that to the east is a town parking lot; that north and south to the lot are wooded areas; that west is the 6 family apartment building; that he will address the county and bring the parking lot to current standards but the only problem is there is a white oak tree that is about 170 years old with a hundred foot canopy and he thinks if he paves up to it the tree will die; that he doesn't want to kill the tree; and that he has had Paul Sokol's Tropicana trucks in the lot because Paul asked to keep the trucks there; that he did not realize that these refrigerated trucks were that noisy and he will ask Paul to find a new location but he would like to give him some time to find a new place to park; and that he will maintain the five foot wide strip of property between his parking lots and the Gilbride property.

Dan Sullivan stated that the lots have been used as commercial lots since 1949; and that the applicant can speak to the building department and the County Highway Department to see how to improve the lot and try to save the tree, if the Board votes to renew the Special Permit.

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Public Comment:

Brian Gilbride, 10 Maggiolo Drive, Pearl River, testified that he purchased the property south of this in early 2000 and did a subdivision; that no one parked there then; that he is trying to sell the property now and can't because of this large commercial parking lot ; that the property is not maintained; that it is not fair that after all these years he is getting a notice now from the Town; that he should have been made aware of this years ago; that the Town dropped the ball on this; and that he is very frustrated with the Town.

Pia Gilbride, 10 Maggiolo Drive, Pearl River, testified that in 1999 when she was strolling her two young children she noticed the property and spoke to an old man selling it; that she and her husband thought they were making a good investment for their children; that they had a buyer for the property that backed out because of the parking lot and how poorly it is maintained; that they have three children in College and this was supposed to be their nest egg and it is unfair that the McKeon lot limits us; and that allowing more commercial vehicles at the McKeon site makes it worse for us.

Rosanna Petruzzelli, 34 South William Street, testified that the property looks like a zombie property; that it is full of weeds; that there are refrigerated trucks that run all night long for fifteen minutes on and five minutes off; that it has landscape trucks filled with stuff; that maintenance of these vehicles takes place in the lot and it is an eyesore.

Noel Stapleton, 72 South William Street, testified that he doesn't understand how the politicians can be talking about making Pearl River beautiful and compatible with other Main Streets and not make the owner of these lots clean them up; that he takes take pride in his property and maintains it nicely but that this property is an ugly duckling and the Town should push for this to be cleaned up; it seems that the Town officials are all over the place; they talk about a bike lane for kids across from Franklin and then nothing; that the officials need to realize the things change and he passes by this eyesore daily.

Ms. Castelli asked the applicant if the landscape trucks load up in the parking lots and was told they do not.

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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After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the following Special Findings for the proposed Renewal of the Special Permit Use, as per Zoning Code Section 4.31, have been satisfactorily satisfied, for the following reasons:

1. The requested Renewal of the Special Permit for five years will be appropriately located with respect to transportation, water supply, waste disposal, fire and police protection and other public facilities. The applicant's parking lot shall comply with the current standards of a public parking lot and the area shall be maintained properly (Rockland County Highway Department letter dated July 30, 2018 signed by Dyan Rajasingham, Engineer III).
2. The granting of the Renewal of the Special Permit for five years will not cause undue traffic congestion or create a traffic hazard. The Renewal of the Special Permit is for over -night parking of automobiles and enclosed trailers which are unoccupied overnight. No idling of unattended vehicles will be permitted. No maintenance of vehicles shall take place on the site. No loading or unloading of vehicles on premises. No overnight engine start-up such as a refrigerated box truck.
3. The granting of the Renewal of the Special Permit for five years will not create, at any point of determination set forth in Zoning Code Sections 4.16, 4.17 and 4.18 any more dangerous and objectionable elements, referred to in Section 4.11 than is characteristic of the uses expressly permitted as of right in the same Zoning District. The applicant's parking lot shall comply with the current standards of a public parking lot and the area shall be maintained properly (Rockland County Highway Department letter dated July 30, 2018 signed by Dyan Rajasingham, Engineer III).
4. The requested Renewal of the Special Permit for five years will not adversely affect the character of or property values in the area. The property has been used as a commercial parking lot for the last fifty years and there is a need for parking in the area. . The Renewal of the Special Permit is for over -night parking of automobiles and enclosed trailers which are unoccupied overnight. No idling of unattended vehicles will be permitted. No maintenance of vehicles shall take place on the site. No loading or unloading of vehicles on premises. No overnight engine start-up such as a refrigerated box truck.
5. Will not otherwise impair the public health, safety, morals, convenience, comfort, prosperity and other aspects of the general welfare of the Town. The property has been used as a commercial parking lot for the last fifty years and there is a need for parking in the area. . The Renewal of the Special Permit is for over -night parking of automobiles and enclosed trailers which are unoccupied overnight. No idling of unattended vehicles will be permitted. No maintenance of vehicles shall take place on the site. No loading or unloading of vehicles on premises. No overnight engine start-up such as a refrigerated box truck.

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6. The requested Renewal of the Special Permit for five years will comply with all other regulations applicable to such use. For all Special Permit Uses a proposed plan, showing the size and location of the lot, design and location of the proposed facilities (including access drives, screening and streets within 1,000 feet) and a detailed description thereof must be submitted in accordance with rules prescribed by the Board (if any).
7. Before any Renewal of the Special Permit is granted, the applicant must secure approval of the proposed structure by the Town Engineer or the consulting engineers for the Town of Orangetown, if same has been requested or is otherwise required.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested continuance of the Special Permit for the commercial parking lot is APPROVED for FIVE YEARS; with the following SPECIFIC CONDITIONS: (1) The applicant's parking lot shall comply with the current standards of a public parking lot and the area shall be maintained properly (Rockland County Highway Department letter dated July 30, 2018 signed by Dyan Rajasingham, Engineer III); (2) **THE APPLICANT HAS 60 DAYS FROM THE DATE OF THE STAMPED DECISION TO HAVE REFRIGERATED TRUCKS REMOVED FROM SITE;** (3) The Renewal of the Special Permit is for over -night parking of automobiles and enclosed trailers which are unoccupied overnight; (4) No idling of unattended vehicles will be permitted; (5) No maintenance of vehicles shall take place on the site; (6) No loading or unloading of vehicles on premises; (7) No overnight engine start-up such as a refrigerated box truck. 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.

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(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 continuance of the Special Permit for the commercial parking lot for Five (5) years is APPROVED; with the following Specific Conditions: (1) The applicant's parking lot shall comply with the current standards of a public parking lot and the area shall be maintained properly (Rockland County Highway Department letter dated July 30, 2018 signed by Dyan Rajasingham, Engineer III); (2) **THE APPLICANT HAS 60 DAYS FROM THE DATE OF THE STAMPED DECISION TO HAVE REFRIGERATED TRUCKS REMOVED FROM SITE;** (3) The Renewal of the Special Permit is for over -night parking of automobiles and enclosed trailers which are unoccupied overnight; (4) No idling of unattended vehicles will be permitted; (5) No maintenance of vehicles shall take place on the site; (6) No loading or unloading of vehicles on premises; (7) No overnight engine start-up such as a refrigerated box truck; was presented and moved by Mr. Sullivan, seconded by Mr. Quinn and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Mr. Sullivan, aye; Mr. Feroldi, aye; and Ms. Castelli, aye. Ms. Salomon was absent.

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

DATED: September 19, 2018

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-N.A.

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

TOWN OF ORANGETOWN
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TOWN CLERK'S OFFICE

DECISION

REAR YARD VARIANCE APPROVED

To: Maheskumar Patel
2 Sgt Bollinger Court
Tappan, New York 10983

ZBA #18-61
Date: September 19, 2018
Permit # 47872

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#18-61: Application of Maheshkumar Patel for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Section 3.12, Column 11 (Rear Yard: 35' required, 28.5' proposed) for a deck at an existing single-family residence. The premises are located at 2 Sgt. Bollinger Court, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.07, Block 2, Lot 3.2; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 19, 2018 at which time the Board made the determination hereinafter set forth.

Rudy Dupuy, Architect, appeared and testified.

The following documents were presented:

1. Survey by Joseph Haller, P.L.S. dated July 26, 2000, not signed or sealed.
2. Architectural plans dated June 12, 2018 labeled "2 Sgt. Bollinger Ct." signed and sealed by Rudy Dupuy, Architect (1 page).

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

On advice of Barbara Gionta, 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. Bosco, aye; Mr. Sullivan, aye; Mr. Quinn, aye; Mr. Feroldi, aye; and Ms. Castelli, aye. Ms. Salomon was absent.

Rudy Dupuy, Architect, testified that they would like to rebuild an existing deck; that they went for a variance two years ago for an addition and a deck but they are not building the addition and would request to build the deck only.

Public Comment:

No public comment.

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

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

Mr. Sullivan made a motion to close the Public Hearing which motion was seconded by Ms. 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 rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar decks exist in the neighborhood.
2. The requested rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. . Similar decks exist in the neighborhood.
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 rear yard variance, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. Similar decks exist in the neighborhood.
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.

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

General Conditions:

- (i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.
- (ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.
- (iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.
- (iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.
- (v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

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

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

DATED: September 19, 2018

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
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DECISION

FLOOR AREA RATIO, SIDE YARD, AND REAR YARD VARIANCES APPROVED

To: William Bosley (Hyde)
12 Sugarhill Road
Nyack, New York 10960

ZBA #18-62
Date: September 19, 2018
Permit #47788

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#18-62: Application of Amy Hyde for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, R-22 District, Group I, Columns 4 (Floor Area Ratio: .20 permitted, .263 proposed), 9 (Side Yard: 25' required, 7.2' existing and proposed no change), and 11 (Rear Yard: 45' required, 17.1' & 14.3 existing) for an addition to an existing single-family residence. The premises are located at 89 Washington Spring Road, Palisades, New York, and are identified on the Orangetown Tax Map as Section 78.18, Block 1, Lot 22; R-22 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 19, 2018 at which time the Board made the determination hereinafter set forth.

William Bosley, contractor, Amy Hyde and Carl Pate appeared and testified.

The following documents were presented:

1. Architectural plans dated May 9, 2018 labeled "Hyde/Pate Residence 89 Washington Springs Road" signed and sealed by Margaret Fowler, Architect (14 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 Barbara Gionta, 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. Bosco, aye; Mr. Sullivan, aye; Mr. Quinn, aye; Mr. Feroldi, aye; and Ms. Castelli, aye. Ms. Salomon was absent.

Amy Hyde testified that they are combining homes and want to add a master bedroom suite to the house; that the plans were approved on May 21, 2008 but never built; that they are planning on proceeding with the plans now; that they are the same plans and same architect that was previously approved for the previous property owner; that the house is over 100 feet away from Ms. Schraa at I Ludlow Lane and the space in between is like a forest.

William Bosley testified that the 7.2 set back is existing and they are not going further out; that they are adding a second floor at that side of the house but it is a minimum of a football field away from the neighbor at 1 Ludlow Lane and because it is so thickly forested between the houses the addition will not be encroaching on the neighbors privacy.

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Public Comment:

Scott Dowd, Attorney, representing Louis Schraa at 1 Ludlow Lane testified that his client is objecting to the previously approved expired plans because of the 7.2' side yard from her border; that the area is a sensitive area and any change will be a detriment to her property; that there is also a stone wall there that is of concern; that there has been problems with the prior owners and the history seems to be continuing.

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, side yard and rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The side yard and rear variances are for existing conditions. The proposed addition is for a second floor addition at the section of the yard that borders a well forested area.
2. The requested floor area ratio, side yard and rear yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The side yard and rear variances are for existing conditions. The proposed addition is for a second floor addition at the section of the yard that borders a well forested area.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested floor area ratio, side yard and rear yard variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The side yard and rear variances are for existing conditions. The proposed addition is for a second floor addition at the section of the yard that borders a well forested area.

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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 variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested floor area ratio, side yard and rear yard 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 floor area ratio, side yard and rear yard variances are APPROVED; was presented and moved by Ms. Castelli, seconded by Mr. Quinn and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Mr. Sullivan, aye; Mr. Feroldi, aye; and Ms. Castelli, aye. Ms. Salomon was absent.

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

DATED: September 19, 2018

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-D.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: REQUESTED USE: SELF-STORAGE FACILITES PERMITTED; WATCHMAN'S RESIDENCE IN CONNECTION TO SELF STORAGE USE SHALL BE CONSIDERED INDIVIDUALLY: IT IS NOT AN INTENDED USE IN ALL LI ZONES; NOT APPROVED AS PART OF THIS APPLICATION

To: Hochman, Tortorella & Wekstein LLP
One North Broadway Suite 701
White Plains, New York 10601
Att: Noelle Wolfson

ZBA # 18-64
Date: September 19, 2018
Permit #N.A.

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#18-64: Application of Orangetown Commerce Center for an interpretation that the "wholesale sales or storage ; warehouses" use permitted in the LI zoning district includes and permits self-storage with a watchman's residence as this Board determined in the application of Hillside Commercial Park (ZBA#08-06): Determination of the Building Department is that the "self-storage" and the watchman's residence is not a permitted accessory use in the LI zoning district.(Memorandum dated July 25, 2018 from Jane Slavin, RA., Director O.B.Z.P.A.E.) The subject property is located at 5 Greenbush Road, Orangeburg, New York and is identified on the Orangetown Tax Map as Section 74.15, Block 1, Lot 2; in the LI zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, September 19, 2018 at which time the Board made the determination hereinafter set forth.

Noelle Wolfson, Attorney and Al Rossi appeared and testified.

The following documents were presented:

1. Site Plan dated 01/15/2016 latest revision date of 05/08/2018 signed and sealed by Leonard Jackson P.E..
2. Architectural plans dated May 17, 2018 labeled "Orangetown Commerce Center" signed and sealed by William Dahn, Architect (2 pages).
3. A letter dated August 3, 2018 from Noelle C. Wolfson, Hocherman Tortorella & Wekstein LLP. (3 pages)
4. A memorandum dated July 25, 2018 from Jane Slavin, RA, Director, Office of Building, Zoning, Planning Administration and Enforcement, Town of Orangetown.
5. Zoning Board of Appeals decision #08-06 Hillside Commercial Park.
6. A memorandum concerning Hillside Commercial Park dated October 10, 2007 from John Giardiello, P.E. Director, Office of Building, Zoning, Planning Administration and Enforcement, Town of Orangetown.
7. A letter dated September 10, 2018 from the Rockland County Health Department signed by Elizabeth Mello, P.E., Senior Public Health Engineer.
8. A letter dated August 28, 2018 from the Rockland County Highway Department signed by Dyan Rajasingham, Engineer III.
9. A letter dated September 10, 2018 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
10. A memorandum dated August 30, 2018 from Michael Bettmann, Chief Fire Inspector, Town of Orangetown.
11. E-mails between Dennis Sullivan, Deputy Town Attorney to the Zoning Board and Justin Starr (DEC concerning he brownfields clean-up of the propertyⓈ more stringent clean-up is required for residential use than for commercial use).

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

On advice of Barbara Gionta, 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 July 25, 2018 (set forth in PB#18-29 for ORANGETOWN COMMERCE CENTER SITE PLAN AMENDMENT) 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. Quinn, aye; Mr. Feroldi, aye; Ms. Castelli, aye; Mr. Sullivan, aye; and Mr. Bosco, aye. Ms. Salomon was absent.

Noelle Wolfson, Attorney, Hocherman, Tortorella & Wekstein, testified that this is an application for an interpretation that self-storage with a watchman’s residence is a principal permitted use in the Town’s LI zoning district under the “Wholesale sales and storage: warehouse use Orangetown Code Section 3.11, Column 1 use 10 and that the Zoning Board upheld this conclusion in ZBA#08-06 Hillside Commercial Park; that this Board held that self-storage with a watchman’s residence is a principal permitted use in the LI zoning district; that this application has received preliminary conditional amended site plan and commercial subdivision approval to construct an approximately 118,000 square foot, two-story, multi-tenant warehouse building on the property; that the warehouse uses in the building would include flex-warehouse space and self-storage; that an integral part of the self-storage component of the proposed multi-tenant warehouse is an on-site apartment for a watchman; that the use proposed in this application is the same as that proposed in the Hillside application; that in both cases the applicant proposed self-storage with a watchman’s residence as part of a bigger warehouse project; that in both cases the Director determined that self-storage with a security residence is not a permitted use in the LI zoning district; that John Giardiello in his memo dated October 10, 2007 recommended that the Hillside applicant seek an interpretation from this Board as to whether self-storage is permitted in the LI zoning district and in the Hillside application this Board held that self-storage with a security residence is a principal permitted use in the LI zoning district and we are merely requesting that this Board adhere to its earlier interpretation

The Board requested legal advice from the Deputy Town Attorney, Barbara Gionta.

Dan Sullivan, Chairman stated that the previous decision on Hillside was not interpreted the way that the attorney for the applicant has said; that there is no self-storage use listed in the Orangetown Code; that the Board did determine that the self-storage was a permitted right in the LI zone but the watchman residence was not a given right in every self-storage use; that they were separate interpretations and just because the Board permitted a watchman’s residence on

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the Hillside application, it is not a blanket approval for any and all self-storage facilities; that this particular lot has added complications because of the remedial action that has to take place to clean up the site; and the DEC is not looking at the site for residential use, the remedial work plan clearly states that the anticipated use of the site is commercial use and as such, the more stringent residential use is not currently allowed for the site; that if the applicant wants to pursue the request for a residential use for a watchman, they are welcome to come back at such time that the DEC is on the same page.

Al Rossi, owner of the property, testified that he would like to ask for clarification of the Board's interpretation at Hillside; and stated that they revised the site plan and added the second floor with the small area for an apartment and a small lobby and elevator; that the revised plan went back to the Planning Board and was approved; and that they appreciate the opportunity to return when the site is cleaned up for residential use.

Public Comment:

No public comment.

Ms. Castelli and Mr. Sullivan stated that they were present for the Hillside Decision and they considered three items individually at the time: (1) the requested 280a; (2) the interpretation concerning Self-storage and if it was permitted by right in the LI zone; (3) whether this particular self-storage facility should be permitted an on-site apartment for a watchman; that these items were looked at individually and specifically for the Hillside application.

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:

1. The requested interpretation regarding Self-Storage as a use permitted in the LI zone: Self-storage facilities, although not specifically addressed in the Orangetown Zoning Code, are permitted in the LI zone.
2. The property is located in the LI zone and this property (5 Greenbush Road (74.15-1-2) may require an environmental easement from NYS DEC when it is cleaned up; it is identified with the NYS DEC as an active site identified by DEC SITE NO. C344078. The remedial action work plan currently in place for the site at 5 Greenbush Road (DEC No. C344078) clearly state that the anticipated use of the site is commercial use and as such, the more stringent Residential or Restricted Residential use is not currently allowed for the site.

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3. The Board will not consider a watchman's residence for the self-storage facility at this time because of the reasons stated above.
4. This site is not the same as Hillside Commercial Park. The interpretation for a watchman's residence for a Self-Storage Facility shall be considered on an individual basis and is not an intended use in all LI zones with a self-storage facility.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested interpretation regarding Self-Storage as a use permitted in the LI zone: (1) Self-storage facilities, although not specifically addressed in the Orangetown Zoning Code, are permitted in the LI zone; (2) However the interpretation for a watchman's residence for a Self-Storage Facility cannot be considered at this time because the remedial action work plan currently in place for the site at 5 Greenbush Road (DEC No. C344078) clearly state that the anticipated use of the site is commercial use and as such, the more stringent residential use is not currently allowed for the site; (3) and the watchman's residence for a Self-Storage Facility shall be considered on an individual basis and is not an intended use in all LI zones with a self-storage facility, 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 affirm the interpretation of Hillside Commercial Park (ZBA#08-06) regarding Self-storage facilities, although not specifically addressed in the Orangetown Zoning Code, are permitted in the LI zone; and that residential use is not permitted except by a variance; was presented and moved by Mr. Sullivan, seconded by Mr. Quinn and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Mr. Sullivan, aye; Mr. Feroldi, aye; and Ms. Castelli, aye. Ms. Salomon was absent.

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

DATED: September 19, 2018

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
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