

MINUTES
ZONING BOARD OF APPEALS
April 7, 2021

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

ABSENT: THOMAS QUINN

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

CONTINUED ITEM:

MC KERNAN BARN GARAGE 4 Sherwood Lane Orangeburg, New York 64.20/1/10.2; R-50 zone	FLOOR AREA RATIO VARIANCE APPROVED	ZBA#21-24
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NEW ITEMS:

MARTINEZ DRIVEWAY 29 Merritt Drive Nanuet, New York 68.18/ 1 / 78.1; R-15 zone	CONTINUED	ZBA#21-31
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O'BRIEN POOL 12 Carol Lane Tappan, New York 77.11 / 2 / 52; R-15 zone	SECTION 5.227 REAR YARD FOR SWIMMING POOL APPROVED AS MODIFIED TO 10' REAR YARD	ZBA#21-32
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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: Fleck Site Plan, Critical Environmental Area, 31 Shadyside Avenue, Upper Grandview, 71.05 / 1 / 36; R-22 zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings


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

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 8:30 P.M.

Dated: April 7, 2021

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

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DECISION

**.162 FLOOR AREA RATIO VARIANCE APPROVED: REVISED PLOT PLAN
DATED 3/9/21 SIGNED AND SEALED BY JAY GREENWELL, L.S.;
ARCHITECTURAL PLANS DATED MARCH 8, 2021 SIGNED AND SEALED BY KIER
B. LEVESQUE, R.A. WITH SPECIFIC CONDITION THAT NO OTHER ACCESSORY
STRUCTURES CAN BE CONSTRUCTED ON THE PROPERTY**

To: Kier B. Levesque
49 Third Avenue
Nyack, New York 10960

ZBA #21-24
Date: March 3, 2021
Permit #51033

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#21-24: Application of Stephan McKernan for a variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-40 District, Group E, Section 3.12, Columns 4 (Floor Area Ratio: 15% permitted, 16.4 proposed) and 11 (Rear Yard: 50' required, 30'3" proposed) for a one-story accessory barn/garage at an existing single-family residence. The property is located at 4 Sherwood Lane, Orangeburg, New York and is identified on the Orangetown Tax Map as Section 64.20, Block 1, Lot 10.2 in the R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, March 3, 2021 at which time the Board made the determination hereinafter set forth.

Stephan McKernan and Kier Levesque, Architect, appeared and testified.

The following documents were presented:

1. Plans labeled "McKernan Barn/Garage" dated January 15, 2021 signed and sealed by Kier B. Levesque, Architect. (3 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 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. Sullivan, aye; Mr. Bonomolo, aye; Ms. Castelli, aye; Mr. Quinn, aye; and Mr. Valentine, aye. Mr. Quinn, was absent from the April 7, 2021 hearing.

At the March 3, 2021 hearing Kier Levesque, Architect, testified that the applicant would like to install a garage/barn at the back of the property within 30' from the property line; that they have laid out the plan for the yard with a play area for the kids, the pool and patio area and lounge area and the garage barn in the rear of the property with a basement for the pool equipment; that the lot is oddly shaped; that it was located in this location so that the yard would be used for the young children; that there are 10' arborvitae knit together at the edge of the property which would block the view of the building from adjoining the adjoining property in the rear; that even with the 30' rear yard there would be at least 80' to the neighbors' house to the rear; that it looks

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like a similar rear yard exists to the adjacent neighbor to the left; that the height of the cupola is 21'; that there is a macadam's drive and two garage doors on the building and there is a bathroom and a basement for the pool equipment; that the project has not been reviewed for drainage ; that the lot is narrow and if moved it would require a side yard variance; that the pool is 20' x 40' with ten feet of lawn and then a 20' x 40' patio; that they would like to request a continuance to return with a smaller building that would be fifty feet from the rear property line.

Public Comment:

Ed Bialas, 276 Sickletown Road, testified that his property borders the south property line of the applicant at 4 Sherwood, on his north side; that he and his wife purchased their home in August of 2000; that at that time Sickletown Road was a road through a forest with only a few homes; that over the last 20 years they have watched the area develop and have welcomed each new addition along the road; that they support the growth in the area; that he is a civil engineer and has been involved in construction for over 50 years; that for the last thirty years he has operated hi own explosives and contract drilling company; that he has completed developments for Pulte, Hovnanian, Garden Homes and BNE among many others; that he is presently retired and to date had no issue with the ongoing construction of 4 Sherwood; that it appears to be a beautiful home, that is a welcome addition to the neighborhood; that after receiving notice of the zoning board hearing he went to the building department and met with Debbie Arbolino the administrative aide and completed the appropriate paper work and reviewed the site plan and the reasons for the variances; that he is opposed to the granting of any variance for the following reasons: (1) concern about potential adverse effects to the drainage on his property because a natural swale exists on the north side of the property and the lot slopes downhill from the west to the east; that the variance request impacts the south side of the 4 Sherwood, the north side of 276 Sickletown along the common property line where the natural swale is; that this is verified by the elevations as presented on the applicants site plans; that he would call attention to elevation near the southwest corner of 4 Sherwood along the property line is 161.2; that the natural swale runs on the south side of the property line, his side , and is several feet lower; that is confirmed in part by observing underneath the southern property line bearing of N77 degrees 30 minutes 57 seconds West in the property line bearing, the elevation is 159.6. this elevation is on his side of the property line and is about 1.5 feet lower; than the southeast corner elevation is 154.1 on both sides of the property line; that the elevation change from south west to southeast corner is 161.2-154.1 equals 7.1 feet.; that this 7.1 feet along a distance of 120 feet or roughly a 6% grade leading into and through his property; the 120 feet is the length of the common property line; that the runoff swale flattens out and runs another 125 feet along the north side of the property and dissipates into the woods on the east side of his property; that since construction began on 4 Sherwood he has been observing the property line and to date there appears to be no change and he would like it to stay that way; (2) that he opposes the granting of the variance request out of concern for the value of his property and how granting any of the variances could negatively affect the sale value or negatively impede his ability or future owners ability to subdivide without additional financial hardship; that the process of subdivision is hard enough on its own' that granting variances along the northern property line of his property may affect the process in the future; and (3) the granting of any variance request would diminish the privacy of his property; that when the original site plan was developed for 4 Sherwood Lane, the engineers and architects were aware of the design constraints imposed by the geometry of the property lines and presented a plan in compliance with the Orangetown Building Code; that the original plans submitted to the board did not present any design/ code conflict; that if they did he would have received a notice; that the construction of 4 Sherwood has already imposed a privacy issue

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with his yard and from his deck; that the location and elevation of the first and second floors offers an unobstructed view into those areas, although from a distance; that the variance would allow structures at an even closer presence; that a privacy row of evergreens has been planted along the property line, but it will take years for the trees to grow and fill in; and that he would like to close with a question for the board; that if the variances are granted over his concerns, what recourse would he have in the event the drainage is affected or if his ability to sell or subdivide is impacted negatively in the future?; that he would like to stress that he is opposed to the granting of the variances along the common property line with 4 Sherwood Lane and thanked the Board for their time and consideration.

APRIL 7, 2021

ZBA#21-24: Application of Stephan McKernan for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-40 District, Group E, Section 3.12, Column 4 (Floor Area Ratio: .15 permitted, .162 proposed) for a one-story accessory barn/garage at an existing single-family residence. The property is located at 4 Sherwood Lane, Orangeburg, New York and is identified on the Orangetown Tax Map as Section 64.20, Block 1, Lot 10.2 in the R-40 zoning district.

Mr. Quinn was absent.

New items submitted for review:

1. Amended Plot Plan for Pool & Barn McKernan last revised March 9, 2021 signed and sealed by Jay A. Greenwell, L.S..
2. Architectural plans last revised March 9, 2021 signed and sealed by Kier B. Levesque, Architect.
3. An e-mail dated March 31, 2021 from Ed Bialis, 276 Sickletown Road, abutting neighbor to 4 Sherwood Drive expressing concerns about the location of the pool equipment and asking if it would be placed in the cellar of the proposed garage/barn.

Kier Levesque, Architect and Stephen McKernan appeared and testified.

Kier Levesque testified that the proposed barn/garage structure has been reduce to 550 sq. ft. from the original proposal of 960 sq. ft. for a total reduction of 410 sq. ft.; that the pool equipment will be in the cellar; that the proposed structure has been moved past the 50' required rear yard; that he southeast runoff has been addressed by Jay Greenwell and that they agree to the condition that no other accessory structures will be constructed on the property.

Public comment:

None

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.

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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 as modified to .162 will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has moved the proposed structure forward and honoring the required rear yard set back as the Board requested and has addressed the concerns about drainage between his property and 276 Sickletown Road property. The pool equipment shall be located in the cellar of the proposed barn/garage structure, addressing the concerns of noise by the neighbor at 276 Sickletown Road. The applicant has also agreed that no other accessory structures shall be constructed on the lot forever.
2. The requested floor area ratio variance as modified to .162 will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has moved the proposed structure forward and honoring the required rear yard set back as the Board requested and has addressed the concerns about drainage between his property and 276 Sickletown Road property. The pool equipment shall be located in the cellar of the proposed barn/garage structure, addressing the concerns of noise by the neighbor at 276 Sickletown Road. The applicant has also agreed that no other accessory structures shall be constructed on the lot forever.
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 as modified to .162 although somewhat 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 applicant has moved the proposed structure forward and honoring the required rear yard set back as the Board requested and has addressed the concerns about drainage between his property and 276 Sickletown Road property. The pool equipment shall be located in the cellar of the proposed barn/garage structure, addressing the concerns of noise by the neighbor at 276 Sickletown Road. The applicant has also agreed that no other accessory structures shall be constructed on the lot forever.
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 floor area ratio variance as modified to .162 is APPROVED; and FURTHER RESOLVED, that No Other Accessory Structure shall be constructed on the property forever; 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 variance as modified to .162 is APPROVED; and FURTHER RESOLVED, that No Other Accessory Structure shall be constructed on the property forever; was presented and moved by Mr. Bosco, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn 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: April 7, 2021

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

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DECISION

REAR YARD VARIANCE FOR A POOL APPROVED AS MODIFIED TO 10' REAR YARD: BOARD FOUND THAT THE HYBRID POOL IS SIMILAR TO AN ABOVE GROUND POOL, THEREFORE DOES NOT NEED TO BE 15' FROM THE PRIMARY STRUCTURE

To: Michael O'Brien
12 Carol Lane
Tappan, New York 10983

ZBA #21-32
Date: April 7, 2021
Permit #51060

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#21-32: Application of Michael O'Brien for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 5.227 (Rear Yard for a swimming pool: 20' required, 5' proposed 10' approved) for an in-ground pool at an existing single-family house. Board found that the proposed hybrid pool is NOT an in-ground pool, and should be considered an above-ground pool. The premises are located at 12 Carol Lane, Tappan, New York and is identified on the Orangetown Tax Map as Section 77.11 Block 2, Lot 52 in the R-15 zoning district

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, April 7, 2021 at which time the Board made the determination hereinafter set forth.

Michael and Brooke O'Brien appeared and testified.

The following documents were presented:

1. Survey with pool dated 2/23/2021 signed and sealed by Paul Gdanski, P.E., PLLC based on a survey done by Anthony B. Celentano dated July 20, 2020.

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. Sullivan, aye; Mr. Bonomolo, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn was absent.

Michael O'Brien testified that they are proposing to install a hybrid pool in their backyard; that because of Covid they will probably be spending a lot more time in the yard; that they purchase their house five years ago and they thought they purchased more property than they actually did because of the way the backyard was designed by the previous owner; that they needed to get a survey in order to install the pool and that is when they found out that the rear yard is much smaller than they thought; that they are correcting the mis-representation now; that the fence on the easterly property line is partially on Town property and will be corrected; that they can pivot the pool to have a 10' rear yard; and they appreciate the Board finding that the hybrid pool is the same as an above ground pool which would allow it to be closer to the house.

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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 Mr. Bosco and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested § 5.227 rear yard for a pool variance as modified to 10' will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar rear yard setbacks for pools have been granted in the neighborhood. The Board made a finding that the proposed hybrid pool should be considered an above-ground pool not an in-ground pool, for purposes of distance from the principal structure.
2. The requested § 5.227 rear yard for a pool variance as modified to 10' will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar rear yard setbacks for pools have been granted in the neighborhood. The Board made a finding that the proposed hybrid pool should be considered an above-ground pool not an in-ground pool, for purposes of distance from the principal structure.
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 § 5.227 rear yard for a pool variance as modified to 10' 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. Similar rear yard setbacks for pools have been granted in the neighborhood. The Board made a finding that the proposed hybrid pool should be considered an above-ground pool not an in-ground pool, for purposes of distance from the principal structure.

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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 § 5.227 rear yard for a pool variance as modified to 10' is APPROVED; and FURTHER RESOLVED, that the Board made a finding that the proposed hybrid pool should be considered an above-ground pool not an in-ground pool, for purposes of distance from the principal structure; 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 § 5.227 rear yard for a pool variance as modified to 10' is APPROVED, and FURTHER RESOLVED that the Board made a finding that the proposed hybrid pool should be considered an above-ground pool not an in-ground pool, for purposes of distance from the principal structure; was presented and moved by Mr. Valentine, seconded by Mr. Bosco and carried as follows: Mr. Bonomolo, aye; Mr. Bosco, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and and Mr. Valentine, aye. Mr. Quinn 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: April 7, 2021

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
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