

MINUTES
ZONING BOARD OF APPEALS
January 20, 2021

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

ABSENT: NONE

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:

DE PAOLA 116 South Highland Avenue Pearl River, New York 68.14 / 3 / 22; R-40 zone	TOTAL SIDE YARD VARIANCE APPROVED	ZBA#21-06
FLAHERTY 20 Pinto Road Pearl River, New York 69.10 / 1 / 21; R-15 zone	TOTAL SIDE YARD VARIANCE APPROVED	ZBA#21-07
CASTAGNA 39 DeLongis Court Sparkill, New York 77.12 / 1 / 34.25; RG zone	CONTINUED	ZBA#21-08
KIRBY 462 Washington Street Tappan, New York 77.08 / 3 / 55; R-15 zone	SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED	ZBA#21-09
ALAM 154 Western Highway Tappan, New York 77.06 / 3 / 12; R-15 zone	§ 5.153 FOR SHED AND AND GAZEBO APPROVED § 5.226 FENCE HEIGHT VARIANCES APPROVED FOR 9'9' AND 6' FENCES	ZBA#21-10

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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 8:20 P.M.

Dated: January 20, 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

TOTAL SIDE YARD VARIANCE APPROVED

To: Joseph DePaola
116 Highland Avenue
Pearl River, New York 10965

ZBA #21-06
Date: January 20, 2021
Permit #49792

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#21-06: Application of Joseph DePaola for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-40 District, Group E, Section 3.12, Column 10 (Total Side Yard: 80' required, 70.81' proposed) for a renovation and addition to an existing single-family residence. The property is located at 116 South Highland Avenue, Pearl River, New York and is identified on the Orangetown Tax Map as Section 68.14, Block 3, Lot 22 in the R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 20, 2021 at which time the Board made the determination hereinafter set forth.

Joseph and Kimberly DePaola appeared and testified.

The following documents were presented:

1. Plans labeled "DePaola Residence" dated October 4, 2019 with the latest revision date of 12/4/20 signed and sealed by Perry Mitchell Petrillo, Architect. (6 pages).
2. Nine letters from neighbors in support of the granting of the variance.

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. Quinn, aye.

Joseph DePaola testified that he purchased the house ten years ago; that he and his wife got married in September and plan on starting a family soon; that they are renovating the kitchen and taking over an existing bedroom to accomplish that; that they are adding to the dining room and taking over the porch but would like to add two bedrooms above; that they are constricted by the sewer easement in the front of the house and the topography in the rear of the house; that forward and left is the only place that they can expand; that in 1992 the previous owner brick-faced the structure would made it one foot shy of the required 80' total side yard; that they would have required a total side yard even if they did not add the eight foot bump out for what is existing; that they still have 31 ½' to their property line on that side of the house and their neighbors house is about 50 or 60 feet from his property line; and the back of his neighbor's garage faces his property.

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Kimberly DePaola testified that they have letters of support from their neighbors.

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 total side yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant's property has existing restrictions that dictate where an addition could be constructed. There is a sewer easement in the front of the property and a deep drop in elevation at the rear of the property, and as the house presently sits it would require a total side yard variance for one foot because of the brick-face, asking for the minimal 8' bump out is not unreasonable and will still be approximately 80 to 90 feet from the nearest neighbor's house.
2. The requested total side yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant's property has existing restrictions that dictate where an addition could be constructed. There is a sewer easement in the front of the property and a deep drop in elevation at the rear of the property, and as the house presently sits it would require a total side yard variance for one foot because of the brick-face, asking for the minimal 8' bump out is not unreasonable and will still be approximately 80 to 90 feet from the nearest neighbor's house.
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 total side yard 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. Similar additions have been constructed in the neighborhood. The applicant's property has existing restrictions that dictate where an addition could be constructed. There is a sewer easement in the front of the property and a deep drop in elevation at the rear of the property, and as the house presently

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sits it would require a total side yard variance for one foot because of the brick-face, asking for the minimal 8' bump out is not unreasonable and will still be approximately 80 to 90 feet from the nearest neighbor's house.

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 total side 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.

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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 total side yard variance is APPROVED; was presented and moved by Mr. Bonomolo, seconded by Mr. Bosco and carried as follows: . Mr. Quinn, aye; Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; and Ms. Castelli, aye.

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

DATED: January 20, 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-Dom 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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TOWN CLERK'S OFFICE

DECISION

TOTAL SIDE YARD VARIANCE APPROVED

To: Allyn Flaherty
17 Joseph Bow Court
Pearl River, New York 10965

ZBA #21-07
Date: January 20, 2021
Permit #50842

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#21-07: Application of Allyn Flaherty for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, R-15 District, Group M, Column 10 (Total Side Yard: 50' required, 40.4' proposed) for the construction of a new single-family residence. The property is located at 20 Pinto Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.10, Block 1, Lot 21 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 20, 2021 at which time the Board made the determination hereinafter set forth.

Allyn Flaherty and Jack Yorizzo, applicant's brother and contractor, appeared and testified.

The following documents were presented:

1. Plans labeled "New Residence for Allyn Flaherty" dated September 15, 2020 signed and sealed by Harold J. Goldstein, Architect. (4 pages).
2. Survey labeled "Z.B.A. Appeal Dwelling Replacement Site Plan for Flaherty" dated October 30, 2020 signed and sealed by Robert E. Sorace, PLS

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. Quinn, aye.

Allyn Flaherty testified that she has been an Orangetown resident for 15 years; that she is divorced with two college aged children; that she would like to build this house so that she can retire in town; that it is a ranch style house with a two car garage and a half story above with two additional bedrooms for her children; that the west side of the property faces Villa Drive and the existing house is in tear down shape.

Jack Yorizzo testified that the proposed house is in keeping with the character of the neighborhood because there are both existing smaller older homes in the area and much larger homes on Villa; that this proposal is in between.

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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. Bonomolo 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 total side yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Other houses are similarly sited on their lots in the neighborhood.
2. The requested total side yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Other houses are similarly sited on their lots 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 a variance.
4. The requested total side yard 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. Other houses are similarly sited on their lots 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 variance.

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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 total side 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 total side yard variance is APPROVED; was presented and moved by Ms. Castelli, seconded by Mr. Bosco and carried as follows: Mr. Quinn, aye; Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; and Ms. Castelli, aye.

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

DATED: January 20, 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-Dom. M.

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

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TOWN CLERK'S OFFICE

DECISION

SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED; UNDERSIZED LOT ACKNOWLEDGED

To: Mary Kirby
767 Route 9W
Nyack, New York 10960

ZBA #21-09
Date: January 20, 2021
Permit #49811

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#21-09: Application of Mary Kirby for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 3.12, Columns 9 (Side Yard: 15' required, 13.04' to deck existing, 10.4' to house existing and 11.63' on opposite side of house) and 10 (Total Side Yard: 30' required, 24.67' existing to deck, 22.03' existing to house) Section 5.21(c) undersized lot applies: Stairs to deck were acknowledged by Board) for an existing deck at an existing single-family residence. The property is located at 462 Washington Street, Tappan, New York and is identified on the Orangetown Tax Map as Section 77.08, Block 3, Lot 55 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 20, 2021 at which time the Board made the determination hereinafter set forth.

Mary Kirby and Robert Palumbo appeared and testified.

The following documents were presented:

1. Plans labeled "Existing Front Deck 462 Washington Street, Tappan, New York " dated 2/13/2020 with the latest revision date of 3/9/2020 signed and sealed by Joshua C. Jakob, 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 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. Quinn, aye.

Mary Kirby testified that the deck and stairs existed when she purchased the house; that the architect that drew the plans said they were probably constructed in the 90's; that she sold the house they came up as a violation on the property; that she was told that title searches are being done differently and that is why this happened now; that she just want to legalize the existing conditions on the house; that the driveway is shared and she is ok with any way that the Board chooses to approve the application.

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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 Ms. Castelli and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested side yard and total side yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The Board acknowledged the undersized lot and noted that the deck and stairs have existed for some time without incident in the neighborhood and that usually the yards would be measured from the third step and it seems that the building inspector overlooked that in this case. However the Board acknowledges the steps that impede into the side yard.
2. The requested side yard and total side yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. . The Board acknowledged the undersized lot and noted that the deck and stairs have existed for some time without incident in the neighborhood and that usually the yards would be measured from the third step and it seems that the building inspector overlooked that in this case. However the Board acknowledges the steps that impede into the side yard.
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 side yard and total side yard variances are 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 Board acknowledged the undersized lot and noted that the deck and stairs have existed for some time without incident in the neighborhood and that usually the yards would be measured from the third step and it seems that the building inspector overlooked that in this case. However the Board acknowledges the steps that impede into the side yard.

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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 side yard and total side yard variances are APPROVED and the Undersized lot is acknowledged; 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 side yard and total side yard variances are APPROVED and the undersized lot is acknowledged, and the stairs from the deck into the side yard are acknowledged; was presented and moved by Mr. Sullivan, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Quinn, aye.

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

DATED: January 20, 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

TOWN OF ORANGETOWN
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TOWN CLERK'S OFFICE

DECISION

§ 5.153 AND §5.226 VARIANCES APPROVED

To: Shamsul Alam
154 Western Highway
Tappan, New York 10983

ZBA #21-10
Date: January 20, 2021
Permit #50880

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#21-10: Application of Shamsul Alam for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Section 5.153 (Accessory Structure no closer than 15' from primary structure: 9'9" from gazebo and 12'1" from house existing for a shed and from Section 5.226 (Front yard fence height shall not exceed 4 ½': 6' and 9' 9" existing for a basketball court; 6' fence setback 6' from the road) at an existing single-family house. The premises are located at 154 Western Highway, Tappan, New York and is identified on the Orangetown Tax Map as Section 77.06. Block 3, Lot 12 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 20, 2021 at which time the Board made the determination hereinafter set forth.

Shamsul and Sagia Alam appeared and testified.

The following documents were presented:

1. Hand drawn plan showing the shed, basketball court and fence. (1 pages).

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 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. Quinn, aye.

Shamsul Alam testified that he did not realize that he needed a permit for the fence when he installed the basketball court for recreation for his family; that he installed the high fence to prevent missed balls from going into the road as a safety issue; that he did not realize that his rear yard is considered a front yard because he has a corner lot; that he was refinancing the house and the title search came with the fence as a violation and that the gazebo and the shed are too close together and the shed is too close to the house; and he does have a six-foot fence that is set back six feet from the road.

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 §5.153 and § 5.226 variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The Board acknowledged that the applicant has two front yards; that the high fence along the street side to contain over thrown basketballs serves as a safety for passing cars and the persons playing basketball and that the existing 6' fence is set far enough back from the road not to interfere with traffic. The shed and gazebo are not visible to any neighbors and the yard is not large.
2. The requested §5.153 and § 5.226 variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Board acknowledged that the applicant has two front yards; that the high fence along the street side to contain over thrown basketballs serves as a safety for passing cars and the persons playing basketball and that the existing 6' fence is set far enough back from the road not to interfere with traffic. The shed and gazebo are not visible to any neighbors and the yard is not large.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested §5.153 and § 5.226 variances 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 Board acknowledged that the applicant has two front yards; that the high fence along the street side to contain over thrown basketballs serves as a safety for passing cars and the persons playing basketball and that the existing 6' fence is set far enough back from the road not to interfere with traffic. The shed and gazebo are not visible to any neighbors and the yard is not large.
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.

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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 §5.153 and § 5.226 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 §5.153 and § 5.226 variances are APPROVED; was presented and moved by Mr. Quinn, seconded by Mr. Bosco and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Quinn, aye.

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

DATED: January 20, 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-Dom. M.

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

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TOWN CLERK'S OFFICE