

MINUTES
ZONING BOARD OF APPEALS
JANUARY 16, 2019

MEMBERS PRESENT:

DAN SULLIVAN
THOMAS QUINN
JOAN SALOMON
PATRICIA CASTELLI,
LEONARD FEROLDI, ALTERNATE

ABSENT:

MICHAEL BOSCO

ALSO PRESENT:

Ann Marie Ambrose,	Official Stenographer
Deborah Arbolino,	Administrative Aide
Denise Sullivan,	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

CONTINUED ITEM:

DIONNES'S WAY
12-16 North Main Street
Pearl River, New York
68.16 / 6 / 67; PAC zone

POSPPONED

ZBA#19-01

NEW ITEMS:

TUCCI
132 East Central Avenue
Pearl River, NY
68.20/ 2 / 7; CS zone

FRONT YARD, SIDE YARD,
TOTAL SIDE YARD VARIANCES
FOR BUILDING;
SIDE YARD & REAR YARD FOR ACCESSORY
STRUCTURE ACKNOWLEDGED

ZBA#19-05

FITZPATRICK
203 Summit Avenue
Tappan, New York
77.06 / 1 / 58; R-15 zone

FRONT YARD FENCE
HEIGHT VARIANCE APPROVED

ZBA#19-06

PELLEGRINO
82 Hamilton Avenue
Tappan, New York
74.17 / 2 / 22; R-15 zone

FLOOR AREA RATIO AND
ACCESSORY STRUCTURE
DISTANCE FROM PRIMARY
STRUCTURE VARIANCE (§ 5.153)
APPROVED

ZBA#19-07

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BRACKEN
31 Tweed Boulevard
Upper Grandview, New York
71.09 / 1 / 43; R-22 zone

FRONT YARD VARIANCE
AND SECTION 5.153 VARIANCE
APPROVED

ZBA#19-08

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: Madira Framing Corporation: Adjustment to Conservation Easement line Plan- Rochris Subdivision Plan, 226 South Greenbush Road, Orangeburg, NY, 70.19 / 1 / 26; in the R-15 zoning district; Schneider Minor Subdivision Plan, 40 Van Wardt Place, Tappan, NY, 77.15 / 1 / 72; R-15; Fairfield Inn at Orangeburg Commons Site Plan, 5 Greenbush Road, Orangeburg, NY, 74.15 / 1 / 21& 22; LI/ Route 303 Overlay Zone Districts; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

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

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 8:15 P.M.

Dated: January 16, 2019

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

**FRONT YARD, SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED
LOCATION OF ACCESSORY STRUCTURE SIDE & REAR YARD ACKNOWLEDGED**

To: James Tucci
50 Mary Crest Road
West Nyack, New York 10994

ZBA #19-05
Date: January 16, 2019
Permit #47974

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 19-05: Application of Tucci Venture's LLC for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, CS District, Group FF, Section 3.12, Column 8 (Front Yard: 0' or 45' required, 30.2' proposed), 9 (Side Yard: 0' or 12' required, 5.1' proposed) and 10 (Total Side Yard: 0' or 25' required, 14.2' proposed) for an addition to an existing building. The property is located at 132 East Central Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.20, Block 2, Lot 7; in the CS zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 16, 2019 at which time the Board made the determination hereinafter set forth.

James and Eileen Tucci appeared and testified.

The following documents were presented:

1. Copy of the survey dated September 28, 2018 signed and sealed by Robert E. Sorace, L.S..
2. Architectural Elevations dated May 29, 2018 by Harry J. Goldstein, Architect, not signed or sealed.
3. A letter dated December 6, 2018 from the Rockland County Highway Department signed by Dyan Rajashingham, Engineer II.
4. A letter dated December 31, 2018 from the Rockland County Health Department signed by Elizabeth Mello, P.E., Senior Public Health Engineer.
5. A letter dated January 10, 2019 from the Rockland County Sewer District #1 signed by Joseph La Fiandra, Engineer II.
6. A letter dated January 15, 2019 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.

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) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Mr. Sullivan, aye; Mr. Quinn, aye; Mr. Feroldi, aye; and Ms. Castelli, aye. Mr. Bosco was absent.

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James Tucci testified that they have owned the building for 16 years; that he has conducted business there during that time; that they would like to renovate and improve the building aesthetically to blend with the surrounding buildings better; that the porch that exists has concrete pillars and is in need of repair; that they plan to remove it and replace it with a wood front porch that will match the surrounding houses; that they are proposing a low profile ramp and to remove the screened in addition at the rear and make it the same level as the house as an additional room and they will address all of the comments from the Rockland County Highway Department.

Eileen Tucci testified that stated that the ramp will add a positive effect for the business; that she is a social worker and specializes in grief and bereavement; that she has been operating her business out of the building for the last four years; that her husbands' sign has been removed; that they have a tenant upstairs; that the existing building does not conform to the code; and that proposed changes will be in keeping with the character of the neighborhood.

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 front yard, side yard and total side yard variances for the house will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The improvements to the building will enhance the neighborhood and the requested variances are minimal since the existing structure is already non-conforming. The Board acknowledged the existing 2.2' side yard and 1.9' rear yard for the existing accessory structure garage on the lot.
2. The requested front yard, side yard and total side yard variances for the house will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The improvements to the building will enhance the neighborhood and the requested variances are minimal since the existing structure is already non-conforming. The Board acknowledged the existing 2.2' side yard and 1.9' rear yard for the existing accessory structure garage on the lot.

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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 front yard, side yard and total side yard variances for the house, 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 improvements to the building will enhance the neighborhood and the requested variances are minimal since the existing structure is already non-conforming. The Board acknowledged the existing 2.2' side yard and 1.9' rear yard for the existing accessory structure garage on the lot.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board **RESOLVED** that the application for the requested front yard, side yard and total side yard variances for the house; (and the Board acknowledged the exiting 2.2' side yard and 1.9' rear yard for the existing accessory structure garage) 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

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judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

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

The foregoing resolution to approve the application for the requested front yard, side yard and total side yard variances for the house; (and the Board acknowledged the 2.2' side yard and 1.9' rear yard for the existing accessory structure garage on the lot) are APPROVED; was presented and moved by Mr. Sullivan, seconded by Ms. Castelli, and carried as follows: Mr. Quinn, aye; Mr. Sullivan, aye; Ms. Salomon, aye; Mr. Feroldi, aye; and Ms. Castelli, aye. Mr. Bosco 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: January 16, 2019

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

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DECISION

FRONT YARD FENCE HEIGHT VARIANCE APPROVED

To: Erika Fitzpatrick
203 Summit Avenue
Tappan, New York 10983

ZBA #19-06
Date: January 16, 2019
Permit #48407

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 19-06: Application of Erika Fitzpatrick for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 5.226 (Front Yard Fence Height: 4 ½' permitted, 6' proposed) for a six-foot fence at an existing single-family residence. The property is located at 203 Summit Avenue, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.06, Block 1, Lot 58; 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 16, 2019 at which time the Board made the determination hereinafter set forth.

Erika Fitzpatrick appeared and testified.

The following documents were presented:

1. Copy of the survey with the fence location drawn on it.
2. A letter of support from an abutting property owner.

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) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Mr. Sullivan, aye; Mr. Quinn, aye; Mr. Feroldi, aye; and Ms. Castelli, aye. Mr. Bosco was absent.

Erika Fitzpatrick testified that she would like to install a six-foot fence on her property because she lives on a corner lot and has a two and four year old and new baby on the way; that her two year old is really fast and she is afraid to use the yard without a fence; that her two year old daughter would probably climb a four foot fence and she would like the privacy of a six-foot fence.

Public Comment:

Joe Sinanaj, 123 Lester Road, testified that he lives across the street from the Fitzpatrick's' that the property needs a fence; that he has lived in his house for twenty five years and raised five kids there without one but now that they have a dog they have a fence.

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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 front yard fence height variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The property has two front yards and the proposed fence is going to be set back from the street ten feet.
2. The requested front yard fence height variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The property has two front yards and the proposed fence is going to be set back from the street ten feet.
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 front yard fence height 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. The property has two front yards and the proposed fence is going to be set back from the street ten feet.
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 front yard fence height (6.0') 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 front yard fence height (6.0') variance is APPROVED; was presented and moved by Mr. Quinn, seconded by Ms. Salomon and carried as follows: Mr. Feroldi, aye; Mr. Quinn, aye; Mr. Sullivan, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Mr. Bosco 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: January 16, 2019

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

TOWN OF ORANGETOWN
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TOWN CLERK'S OFFICE

DECISION

FLOOR AREA RATIO VARIANCE AND § 5.153 (ACCESSORY BUILDING DISTANCE TO PRIMARY STRUCTURE VARIANCE) APPROVED

To: Michael Pellegrino
82 Hamilton Avenue
Tappan, New York 10983

ZBA #19-07
Date: January 16, 2019
Permit #48330

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 19-07: Application of Michael Pellegrino for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15, District, Section 3.12, Group M, Column 4 (Floor Area Ratio: .20 permitted, .23 proposed) and from § 5.153(accessory structure distance to primary building: 15' required, 9.1' existing) for a shed at an existing single family residence. The property is located at 82 Hamilton Avenue, Tappan, New York and are identified on the Orangetown Tax Map as Section 74.17, Block 2, Lot 22; 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 16, 2019 at which time the Board made the determination hereinafter set forth.

Michael and Mary Pellegrino appeared and testified.

The following documents were presented:

1. Survey dated October 19, 2018 signed and sealed by Anthony Celentano, PLS.
2. Three pages of shed plans by Dream Spaces dated 10/13/2018.

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) (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; Ms. Salomon, aye; Mr. Sullivan, aye; Mr. Quinn, aye; Mr. Feroldi, aye; and Ms. Castelli, aye.

Michael Pellegrino testified that they would like to keep the existing shed and they need a variance for floor area ratio because of the size of the shed; that the shed is 10' x 12'.

Ms. Salomon stated that the shed needs a variance for its location because it is less than 15' from the primary structure.

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 floor area ratio (0.20 permitted, and 0.23 proposed) variance and § 5.153(accessory structure distance to primary building: 15' required, 9.1' existing) for a shed will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The requested floor area ratio (0.20 permitted, and 0.23 proposed) variance and § 5.153(accessory structure distance to primary building: 15' required, 9.1' existing) for a shed will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
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 (0.20 permitted, and 0.23 proposed) variance and § 5.153(accessory structure distance to primary building: 15' required, 9.1' existing) for a shed 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.
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 (0.23) variance and §5.153 (accessory structure distance to primary building: 15' required, 9.1' existing) variance for a shed 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.

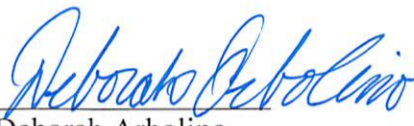
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The foregoing resolution to approve the application for the requested floor area ratio (0.20 permitted and 0.23 proposed) variance and §5.153 (accessory structure distance to primary building: 15' required, 9.1' existing) for a shed is APPROVED; was presented and moved by Mr. Sullivan, seconded by Mr. Quinn and carried as follows: Mr. Feroldi, aye; Mr. Quinn, aye; Mr. Sullivan, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Mr. Bosco 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: January 16, 2019

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

TOWN OF ORANGETOWN
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TOWN CLERK'S OFFICE

DECISION

**FRONT YARD VARIANCE AND ACCESSORY STRUCTURE IN A FRONT YARD
VARIANCE APPROVED**

To: Steven Silverberg (Bracken)
120 White Plains Road Suite 305
Tarrytown, New York 10591

ZBA #19-08
Date: January 16, 2019
Permit #44472

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 19-08: Application of Bracken Site Plan for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-22, District, Section 3.12, Group I, Columns 8 (Front Yard: 40' required,, 2.5' existing to existing ground level deck: 15.7' existing to corner of house, 14.7' proposed for deck stairs and 27' proposed to hot tub) and from Section 5.153 (No accessory structure is permitted in the front yard) for the installation of an outdoor hot tub and circular staircase at an existing residence. The property is located at 31 Tweed Boulevard, Upper Grandview, New York and are identified on the Orangetown Tax Map as Section 71.09, Block 1, Lot 43; in the R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 16, 2019 at which time the Board made the determination hereinafter set forth.

Chuck Bracken and Steve Silverberg, Attorney, appeared and testified.

The following documents were presented:

1. Site plan for Bracken dated 06/22/2018 with the latest revision date of 10/15/2018 signed and sealed by John J. Bezuyen, P.L.S..
2. A memorandum dated November 7, 2017 from Jane Slavin, RA., Director, O.B.Z.P.A.E..
3. A five page letter from Steven Silverberg, Attorney for the applicant dated November 19, 2018.
4. Planning board Decision #15-35 dated November 8, 2017.
5. ZBA Decision #18-26 dated May 2, 2018 for a pool in the front yard and ZBA#17-61 dated September 6, 2017 for a garage in a front yard.
6. Sundance "Spas 980 Kingston Specifications (6 pages).
7. Spiral staircase details (2 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) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Salomon, aye; Mr. Sullivan, aye; Mr. Quinn, aye; Mr. Feroldi, aye; and Ms. Castelli, aye. Mr. Bosco was absent.

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Steven Silverberg, Attorney testified that the property is located in an R-22 zone; that the Planning board granted a preliminary approval and a neg dec on November 8, 2017; the proposed location of the hot tub is situated 27 feet from the front yard and the proposed location of the circular staircase is 38 feet from the front yard which does not meet the minimum requirement; that there is a strong basis for granting the variance, the property is located on a County road and between the house and road are trees and three rock structures, making improvements virtually unnoticeable from the surrounding area; that these improvements will be hidden from the road by the natural tree line and rock structures and by the topography of the lot; the existing patio that will hold the hot tub is set low on the property and the hot tub is only 34" high; that the staircase is necessary to access the patio from the exiting upper deck; that this Board granted a variance for a pool in the front yard at 20 Arlene Court in Pearl River and for a garage in the front yard at 26 Shadyside; that there will not be an undesirable change to the character of the neighborhood or detriment to nearby properties; that the benefit sought cannot be achieved any other way because of the slope and configuration of the property; that the request may be looked at as substantial but it does allow the applicant to improve the use and enjoyment of his property and it will not have any adverse effect or impact on the physical or environmental conditions in the neighborhood and whether it is self-created should be considered but a reason to preclude the granting of the requested variances.

Chuck Bracken testified that the house was built in 1982 and that the patio area will be maintained as it is will the hot tub on it.

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 front yard variances (40' required, 2.5' existing to existing ground level deck: 15.7' existing to corner of house, 14.7' proposed for deck stairs and 27' proposed to hot tub) and Section 5.153 (accessory structure in front yard) variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The property is in a critical environmental area and placing the hot tub on an existing patio (which on the side of the house) will not have a negative effect on the environment or the steep slope.

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2. The requested front yard variance (40' required, 2.5' existing to existing ground level deck: 15.7' existing to corner of house, 14.7' proposed for deck stairs and 27' proposed to hot tub) and Section 5.153 (accessory structure in front yard) variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The property is in a critical environmental area and placing the hot tub on an existing patio (which on the side of the house) will not have a negative effect on the environment or the steep slope.
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 front yard variance (40' required, 2.5' existing to existing ground level deck: 15.7' existing to corner of house, 14.7' proposed for deck stairs and 27' proposed to hot tub) and Section 5.153 (accessory structure in front 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. The property is in a critical environmental area and placing the hot tub on an existing patio (which on the side of the house) will not have a negative effect on the environment or the steep slope.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board **RESOLVED** that the application for the requested front yard variance (40' required, 2.5' existing to existing ground level deck: 15.7' existing to corner of house, 14.7' proposed for deck stairs and 27' proposed to hot tub) and Section 5.153 (accessory structure in front yard) variance is **APPROVED**; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

- (i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.
- (ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.
- (iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

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


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

The foregoing resolution to approve the application for the requested front yard variance (40' required, 2.5' existing to existing ground level deck: 15.7' existing to corner of house, 14.7' proposed for deck stairs and 27' proposed to hot tub) and Section 5.153 (accessory structure in front yard) variance is APPROVED; was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Feroldi, aye; Mr. Quinn, aye; Mr. Sullivan, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Mr. Bosco 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: January 16, 2019

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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