

MINUTES
ZONING BOARD OF APPEALS
MAY 1, 2019

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

ABSENT: LEONARD FEROLDI, ALTERNATE
JOAN SALOMON

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

NEW ITEMS:

FITZPATRICK 203 Summit Avenue Tappan, NY 77.06 / 1 / 58; R-15 zone	FRONT YARD FENCE HEIGHT VARIANCE APPROVED	ZBA#19-40
BETHANY CHURCH SIGN 90 Old Orangeburg Road Orangeburg, New York 74.09 / 1 / 64; R-80 zone	SIGN VARIANCES APPROVED	ZBA#19-41
T.F.NOONAN'S 14-16 East Central Avenue Pearl River, NY 68.20 / 1/ 13; CS zone	PARKING VARIANCES APPROVED	ZBA#19-42
O'SULLIVAN 38 Marycrest Road West Nyack, NY 69.06 / 2 / 53; R-22 zone	CONTINUED UNTIL JUNE 5, 2019	ZBA#19-43

TOWN OF ORANGETOWN
2019 MAY -9 A 10:13
TOWN CLERK'S OFFICE

FLANAGAN
20 Hilltop Drive
Pearl River, New York
69.17 / 1 / 81; R-15 zone

SIDE YARD VARIANCE
APPROVED

ZBA#19-44

LOWE'S OF ORANGEBURG
200 Route 303
Orangeburg, New York
74.15 / 1 / 3; LI zone

OUTDOOR STORAGE
APPROVED AS MODIFIED

ZBA#19-45

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: Loretta Jara Subdivision, 52 Oak Tree Lane, Tappan, NY 77.11 / 3/ 5; R-15 zone; Fleck Plans, Critical Environmental Area , Third Floor , 31 Shadyside Avenue, Upper Grandview, NY 71.05 / 1 / 36; R-22 zone; Project Sycamore Data Center Site Plan Amendment; 75 Third Avenue, Orangeburg, NY; 73.08 / 1/ 1, 3 &4; RCP-OP zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.


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

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 9:00 P.M.

Dated: May 1, 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

TOWN OF ORANGETOWN
2019 MAY -9 A 10:13
TOWN CLERK'S OFFICE

DECISION

FRONT YARD FENCE HEIGHT VARIANCE APPROVED

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

ZBA #19-40
Date: May 1, 2019
Permit #48407

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#19-40: Application of Erika Fitzpatrick for an amendment to ZBA #19-06 for elevation raised 2' by fill brought into property and for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 5.226 (Fence Height: 4 ½ ' permitted, 6' proposed) for a fence at an existing single-family residence. The premises are located at 203 Summit Avenue, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.06, Block 1, and 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, May 1, 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) (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. Sullivan, aye; Mr. Quinn, aye; Mr. Bosco, aye; and Ms. Castelli, aye. Mr. Feroldi and Ms. Salomon were absent.

Erika Fitzpatrick testified that she is back because her husband had filled in portions of the yard to make to it level and when the Building Inspector came out to do an inspection he gave them a stop work order because of this; that they had to get a topographic survey and submit a grading plan; and they still want to put up the same fence that they were approved for before.

Public Comment:

Robert Cunningham, 12 Knutsen Knoll, testified that he lives in the same style house as the Fitzpatrick's that the property needs a fence; that he has lived in his house for forty-one years and the Fitzpatrick's need a fence with three children.

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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. The Board understood the need to level the property.
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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TOWN CLERK'S OFFICE

The foregoing resolution to approve the application for the requested front yard fence height (6.0') variance is APPROVED; was presented and moved by Ms. Castelli, seconded by Mr. Bosco and carried as follows: Mr. Quinn, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Feroldi and Ms. Salomon were absent.

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

DATED: May 1, 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

§ 3.11 COLUMN 5 PARAGRAPH 12 SIGN VARIANCES APPROVED

To: John Atzl (Bethany Mar)
234 North Main Street
New City, New York 10956

ZBA #19-41
Date: May 1, 2019
Permit #48532

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA # 19-41: Application of Bethany Church for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-80 District, Section 3.11, Column 5 Paragraph 12 (one sign not over 20 sq. ft. must be 25' from any lot line: 32 sq. ft. sign proposed, 10' from the front yard and 5' from the side yard and 2 sq. ft. of non-illuminated directional sign permitted: 6.25 sq. ft. per sign proposed: 12.4 sq. ft. proposed) for signs at the Church. The Church is located at 90 Old Orangeburg Road, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 74.09, Block 1, Lot 64; in the R-80 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 1, 2019 at which time the Board made the determination hereinafter set forth.

John Atzl, Land Surveyor and Frank Phillips, Attorney, appeared and testified.

The following documents were presented:

1. Site Development Plan dated 06/16/2018 with the latest revision date of 12/7/2018 signed and sealed by John R. Atzl, Land Surveyor and Ryan A. Nasher, P.E. (5 pages)
2. A drawing of the proposed monument sign by Foley Sign Company.
3. A letter dated April 17, 2019 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
4. A sign off sheet marked no comments from Dyan Rajasingham, P.E. Rockland County Highway Department.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that since the Planning Board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or did not object to the Planning Board acting as Lead Agency for these applications, pursuant to coordinated review under the State Environmental Quality Review Act Regulations § 617.6 (b)(3); and since the Planning conducted SEQRA reviews and, on September 12, 2018 (set forth in PB#18-31 for Bethany Mar Thomas Church Plan site plan) rendered environmental determinations of no significant adverse environmental impacts to result from the proposed land use actions (i.e. a "Negative Declarations" of "Neg Dec."), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulations § 617.6 (b)(3). The motion was seconded by Ms. Castelli and carried as follows: Mr. Quinn, aye; Mr. Bosco, aye; Ms. Castelli, aye; and Mr. Sullivan, aye. Mr. Feroldi and Ms. Salomon were absent.

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John Atzl testified that the monument sign for the church is out front on the east side of the revised entrance road; that they donated a strip of the land to the state for road widening and it is set 5' from the east property line which belongs to the New York Armory; that the church is located in a residential zone but it is not a typical residential zone; that Rockland State entrance is right down the street with an oversized sign and the Nathan Kline Institute is located close by with a 40 sq. ft. sign; and the other two signs are directional signs .

Frank Phillips stated that the proposed signage would not create an undesirable change in the neighborhood character or to nearby properties, since other properties in the immediate area have larger signs; that the request is not substantial; that the signs would not have an adverse physical or environmental effect on the neighborhood; that two of the proposed signs are direction traffic control signs; and the sign is aesthetically pleasing.

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 sign size and location variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Although the zone is a residential zone, it is not a typical residential neighborhood. Rockland Hospital Guild is within a block of the church and so is the Nathan Kline Institute; both of which have larger signs than the proposed signs for the Church, which is directly abutting the New York State Armory property. Two of the signs proposed for the application are direction traffic safety signs.
2. The Board overrode the disapproval from the Rockland County Planning letter dated April 17, 2019 signed by Douglas J. Schuetz, Acting Commission of Planning, because of the location of the proposed church and its surrounding neighborhood. Although the Church is located in a residential zone; it is surrounded by Rockland Hospital Guild, Nathan Kline Institute and the New York State Armory. Joseph's Home Inc. abuts the Church to the west. It is not a typical residential zone.

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3. The requested sign size and location variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Although the zone is a residential zone, it is not a typical residential neighborhood. Rockland Hospital Guild is within a block of the church and so is the Nathan Kline Institute; both of which have larger signs than the proposed signs for the Church, which is directly abutting the New York State Armory property. Two of the signs proposed for the application are direction traffic safety signs.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
5. The requested sign size and location variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. Although the zone is a residential zone, it is not a typical residential neighborhood. Rockland Hospital Guild is within a block of the church and so is the Nathan Kline Institute; both of which have larger signs than the proposed signs for the Church, which is directly abutting the New York State Armory property. Two of the signs proposed for the application are direction traffic safety signs.
6. 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 sign size and location variances are APPROVED; and the Rockland County Planning disapproval letter dated April 17, 2019 was overridden unanimously for the following reasons: (1) the location of the proposed church and its surrounding neighborhood: the Church is located in a residential zone, however it is surrounded by Rockland Hospital Guild, Nathan Kline Institute and the New York State Armory; (2) Joseph's Home Inc. abuts the Church to the west; New York State Armory abuts the property to the east: It is not a typical residential zone; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

- (i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.
- (ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

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

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

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

The foregoing resolution to approve the application for the requested sign size and location variances are APPROVED; was presented and moved by Mr. Quinn, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Feroldi and Ms. Salomon were absent.

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

DATED: May 1, 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

TOWN CLERK'S OFFICE

2019 MAY -9 10:12

TOWN OF ORANGETOWN

DECISION

§ 3.11, COLUMN 6 #5 RESTAURANT PARKING VARIANCE APPROVED

To: Larry Vergine
16 E. Central Avenue
Pearl River, New York 10965

ZBA #19-42
Date: May 1, 2019
Permit #48230

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#19-42: Application of T.F. Noonan's Inc. for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, CS District, Section 3.11, Column 6 #5 (Restaurants- 1 (one) parking space per 100 sq. ft. gross floor area: 1,392 sq. ft. gross floor area existing and 1.093 sq. ft. are being added: 2,465 sq. ft. gross floor area= 25 parking spaces required, 0 parking spaces provided) for an existing restaurant. The restaurant is located at 14-16 East Central Avenue, Pearl River, New York and is identified on the Orangetown Tax Map as Section 68.20, Block 1, Lot 13 in the CS zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 1, 2019 at which time the Board made the determination hereinafter set forth.

Larry Vergine and Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Architectural plan labeled "Interior Alteration to T.F.Noonan's on 16 East Central Avenue, Pearl River NY" dated 11/23/2018 signed and sealed by Robert Hoene, Architect.
2. Survey dated July 23, 1997 signed and sealed by Robert E. Sorace, PLS.
3. Pearl River Meter District plan showing where Noonan's is located.
4. A google map plan showing where there is available parking close to Noonan's.
5. A letter dated April 11, 2019 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
6. A letter dated April 2, 2019 from the Rockland County Highway Department signed by Dyan Rajasingham, Engineer III.

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

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Donald Brenner, Attorney, testified that Larry rented the additional for supplemental use for the existing restaurant; that the building was built in 1927; that it never had any parking; that the restaurant is located in downtown Pearl River and there is plenty of public parking in the area; and he submitted two sets of parking plans for the area to the Board for their review; and he testified further that the benefits to the applicant can only be achieved through the granting of parking variances; that the granting of the variances will not create an undesirable change in the neighborhood or to its nearby properties; that the request is not substantial given all of the available public parking in the area; and it is self-created because the business is successful.

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 Section 3.11, Column 6 #5 parking variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The requested Section 3.11, Column 6 #5 parking variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant submitted two plans showing ample parking in the area.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.

The requested Section 3.11, Column 6 #5 parking 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 applicant submitted two plans showing ample parking in the area.

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5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested Section 3.11, Column 6 #5 parking 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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TOWN CLERK'S OFFICE

The foregoing resolution to approve the application for the requested Section 3.11, Colum 6 #5 parking variance is APPROVED; was presented and moved by Mr. Sullivan, seconded by Mr. Bosco and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Feroldi and Ms. Salomon were absent.

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

DATED: May 1, 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
2019 MAY -9 A 10:12
TOWN CLERK'S OFFICE

DECISION

SIDE YARD VARIANCE APPROVED UNDERSIZED LOT ACKNOWLEDGED

To: Brian and Elizabeth Flanagan
20 Hilltop Drive
Pearl River, New York 10965

ZBA #19-44
Date: May 1, 2019
Permit #48654

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 19-44: Application of Brian and Elizabeth Flanagan for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 3.12, Column 9 (Side Yard: 15' required, 11.06' proposed) (Section 5.21 Undersized lot applies) for a deck at an existing single-family residence. The premises are located at 20 Hilltop Drive, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.17, Block 1, Lot 81; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 1, 2019 at which time the Board made the determination hereinafter set forth.

Brian Flanagan appeared and testified.

The following documents were presented:

1. Architectural plans labeled "Flanagan Residence" dated 03/05.2019 with the latest revision date of 03/21/2019 signed and sealed b Jennifer Claire Lucas, R.A. (4 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. Quinn, aye; and Ms. Castelli, aye. Ms. Salomon and Mr. Feroldi were absent.

Brian Flanagan testified that the existing deck is about 30 years old; that he would like to remove it and rebuild a deck slightly larger than what exists; that the existing deck is 17' x 16' and he would like to construct a 17' x 22' deck in its place; and the lot is an undersize lot.

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 side yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The lot is undersized (§5.21) and the new deck is only slightly larger than the deck it is replacing.
2. The requested side yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The lot is undersized (§5.21) and the new deck is only slightly larger than the deck it is replacing.
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 side 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 lot is undersized (§5.21) and the new deck is only slightly larger than the deck it is replacing.
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 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 side yard variance is APPROVED and the Undersized lot is acknowledged; was presented and moved by Mr. Bosco, seconded by Ms. Caselli and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Ms. Salomon and Mr. Feroldi were absent.

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

DATED: May 1, 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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DECISION

**PARKING SPACES AND OUTDOOR STORAGE VARIANCES APPROVED AS
LABELED ON REVISED PLAN**

To: Brett Krenz Lowe's Home Centers LI
1605 Curtis Bridge Road
Wilkesboro, North Carolina 28697

ZBA #19-45
Date: May 1, 2019
Permit #48449

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 19-45: Application of Lowe's of Orangeburg for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, LI District, Section 3.11, Column 6 # 2 (676 Parking Spaces Required, 655 parking spaces existing; 557 parking spaces proposed) and Column 7 #5 (All Outdoor Storage shall be within completely enclosed buildings: outdoor storage proposed) at Lowe's of Orangeburg. The premises are located at 200 Route 303, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 74.15, Block 1, Lot 3; in the LI zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, May 1, 2019 at which time the Board made the determination hereinafter set forth.

Ronald Lezott, Maser Consulting, and Jamar Wright, Assistant Store Manager, Lowe's of Orangeburg, appeared and testified.

The following documents were presented:

1. Plan labeled " Fire Access and Outdoor Storage Plan for Lowe's of Orangeburg" dated 03/19/2019 signed and sealed by Russell T. Mc Fall II P.E. (1 page).
2. A memorandum dated March 10, 2019 from Jane Slavin, RA, Director Office of Building, Zoning, Planning Administration and Enforcement, Town of Orangetown.
3. Narrative Summary dated March 22, 2019 from Maser Consulting signed by Christopher J. Riggle, P.E., Project Manager. (5 pages)
4. Planning Board Decision #19-14 dated March 13, 2019 (9 pages).
5. Zoning Board Decision #04-72 and ZBA#09-40.
6. A letter dated April 17, 2019 signed by Douglas J. Schuetz, Acting Commissioner of Planning.
7. A letter dated April 15, 2019 from the Rockland County Center for Environmental Health signed by Elizabeth Mello, P.E., Senior Public Health Engineer.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that since the Planning Board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or did not object to the Planning Board acting as Lead Agency for these applications, pursuant to coordinated review under the State Environmental Quality Review Act Regulations § 617.6 (b)(3); and since the Planning conducted SEQRA reviews and,

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on March 13, 2019 (set forth in PB#19-14 for Lowe's of Orangeburg Site Plan- Outdoor Storage and Fire Lane Plan Review) rendered environmental determinations of no significant adverse environmental impacts to result from the proposed land use actions (i.e. a "Negative Declarations" of "Neg Dec."), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulations § 617.6 (b)(3). The motion was seconded by Ms. Castelli and carried as follows: Mr. Quinn, aye; Mr. Bosco, aye; Ms. Castelli, aye; and Mr. Sullivan, aye. Mr. Feroldi and Ms. Salomon were absent.

Ronald Lezott, Maser Consulting testified that the original approval for Lowe's was given on March 16, 2005; that in 2008 they came back and asked for a garden center expansion; that on July 11, 2018 they were put in violation for the outdoor storage trailers and designated fire lanes; that they have been cleaning up the site and they have submitted a plan that will keep the designated fire lane open and permit them storage areas for seasonal items; that they are proposing to have two trailers in the rear west side of the building one for pallets that will be recycled and one for recycled appliances; that they would also like to have in the far West portion of the lot closest to the rail to trails, an area for garden freight storage and mulch storage; that there is plenty of screening in the area because of the vegetation between the lot and the trail; that they have 34 parking spaces on the South side of the building and 54 future spaces in the front of the building; that historical traffic data shows that parking has never been an issue at the store; and that they will submit a revised plan clearly labeling what can be stored in the garden freight area and the times that items can be stored and the parking will clearly labeled on the revised plan.

Jamar Wright, Lowe's Assistant Manager, testified that they are no longer selling the trailers that use to be parked by the rail trail and that they are selling off the remainder of the sheds in the parking are in front of the garden center and they will not be selling any more sheds; that they would like to use the garden freight storage area, plant display area in front of the garden center and the mulch storage area from March until September and they would like to keep the seasonal sales areas in the front of the store all year.

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.

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FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested parking space and outdoor storage variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The store needs more official designated areas to show seasonal items for sale and on its busiest days, there are always empty parking spaces. Granting variances for less parking and designating specific areas for the outdoor storage will keep the site neat and clean.
2. The store will no longer sell trailers or sheds and the area where the sheds are presently located will be clear by September.
3. The requested parking space and outdoor storage variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The store needs more official designated areas to show seasonal items for sale and on its busiest days, there are always empty parking spaces. Granting variances for less parking and designating specific areas for the outdoor storage will keep the site neat and clean.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
5. The requested parking space and outdoor storage variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The store needs more official designated areas to show seasonal items for sale and on its busiest days, there are always empty parking spaces. Granting variances for less parking and designating specific areas for the outdoor storage will keep the site neat and clean.
6. 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 parking space and outdoor storage 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.

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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 Parking Space and Outdoor Storage variances are APPROVED with the following Specific Conditions: (1) All sheds presently located on the northeast portion of the lot shall be removed from the site by September 15, 2019; (2) The Fire Lane shall remain clear at all times; (3) Mulch storage area shall be moved out of the existing 10' sanitary easement; (4) the area labeled garden freight storage shall be clearly labeled with the items that shall be stored there; (5) the garden freight storage area, the mulch storage area and the outdoor plant display are in front of the fenced in garden area shall be used from March through September only; was presented and moved by Mr. Sullivan, seconded by Mr. Quinn and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Feroldi and Ms. Salomon were absent.

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

DATED: May 1, 2019

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
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FILE,ZBA, PB
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