

MINUTES
ZONING BOARD OF APPEALS
November 20, 2019

MEMBERS PRESENT: MICHAEL BOSCO
 THOMAS QUINN
 JOAN SALOMON
 PATRICIA CASTELLI, ACTING CHAIR

ABSENT: LEONARD FEROLDI, ALTERNATE
 DAN SULLIVAN

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 Ms. Castelli, Acting Chair.
Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

POSTPONED ITEMS:

BRAITHWAITE 1087 Route 9W South Upper Grandview, NY 71.09 / 1 / 6; R-22 zone	FRONT YARD AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#19-92
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NEW ITEMS:

SCHOLL 87 Autumn Drive Tappan, New York 77.07 / 2 / 18; R-15 zone	REAR YARD VARIANCE APPROVED	ZBA#19-101
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SAFE-N-SOUND CHILDCARE SPECIAL PERMIT RENEWAL 249 North Middletown Road Pearl River, NY 68.12 / 3 / 27; CO zone	SPECIAL PERMIT RE-NEWED retro to December 1, 2006 and EXPIRING DECEMBER 1, 2026	ZBA#19-102
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WEST LEWIS MINOR SUBDIVISION PLAN 39 West Lewis Avenue Pearl River, NY 68.12 / 1 / 44; RG zone	CONTINUED UNTIL JANUARY 8, 2020	ZBA#19-103
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Page 2
BROWN
6 Gage Court
Tappan, NY
77.05 / 1 / 24; R-22 zone

CONTINUED
DATE UNCERTAIN

ZBA#19-104

DONG
34 Van Terrace
Sparkill, New York
78.09 / 1 / 3; R-15 zone

REAR YARD VARIANCE
APPROVED WITH THE SPECIFIC
CONDITION THAT A DRAINAGE PLAN
BE SUBMITTED AND FOUND SATISFACTORY
TO THE TOWN ENGINEER/BUILDING INSPECTOR PRIOR TO C/O

ZBA#19-105

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: Henry Kaufman Campgrounds Phase 1 Drainage Improvements' Sickletown Road Areas Site Plan, 667 Blauvelt Road, Pearl River, NY, 69.10 / 2 / 21 & 69.14 / 1 / 28; R-80 zone; Henry Kaufman Campgrounds Amendment to Preliminary Site Plan Approval (Bronx House) PB#17-59, dated February 28, 2018, 667 Blauvelt Road, Pearl River, NY, 69.10 / 2 / 21 & 69.14 / 1 / 28; R-80 zone; Henry Kaufman Campgrounds Pedestrian Bridge Plan, 667 Blauvelt Road, Pearl River, NY 69.10 / 2 / 21 & 69.14 / 1 / 28; R-80 zone; Chefman Site Plan, 29 Corporate Drive, Orangeburg, NY 73.19 / 1 / 8; LIO zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

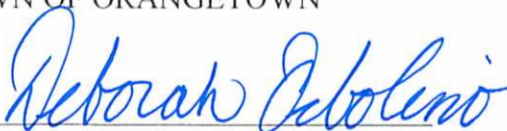
THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

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: November 20, 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 AND BUILDING HEIGHT VARIANCES APPROVED

To: Mark Braithwaite
1087 Route 9W
Upper Grandview, New York 10960

ZBA #19-92
Date: November 20, 2019
Permit #48514

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA # 19-92: Application of Mark Braithwaite for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-22 District, Group I, Section 3.12, Column 8 (Front Yard: 40' required, 9.9' existing) and 12 (Building Height: 7.425' permitted, 18' 6" existing) for a master bedroom suite in existing unfinished space at an existing single-family residence. The premises are located at 1087 Route 9W South, Upper Grandview, New York and is identified on the Orangetown Tax Map as Section 71.09, Block 1, Lot 6; in the R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 20, 2019 at which time the Board made the determination hereinafter set forth.

Mark Braithwaite, Architect and owner appeared and testified.

The following documents were presented:

1. Architectural plans dated 01/23/2019 with the latest revision date of 08/28.2019 signed and sealed by Mark Braithwaite, Architect, labeled "Alteration Braithwaite Residence" (5 pages).
2. Survey labeled "Survey for Braithwaite" dated September 26, 2016 signed and sealed by William D. Youngblood, L.S.
3. A letter dated September 19, 2019 from the Rockland County Sewer District No.1 signed by Joseph LaFiandra, Engineer II.
4. A sign off sheet with no comments at this time from Rockland County Highway Department signed by Dyan Rajasingham, dated September 9, 2019.
5. A letter dated October 1, 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, Ms. Castelli 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 Mr. Quinn and carried as follows: Mr. Bosco, aye; Ms. Salomon, aye; Mr. Quinn, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Feroldi were absent.

Mark Braithwaite, Architect, testified that this is his house and he is not adding to the footprint of the building; that he is taking what was used as storage space in the unfinished garage loft and attic loft and making it into a master bedroom , master bathroom, laundry and walk in closet; that

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this is what prompted the application to be sent to the Zoning Board; that he would like to continue the interior work that he has been doing and that the addition was constructed in 1996; that Mike Manzare, the building inspector noticed that there had been framing changes that did not match the approved plan that was done in 1996; that the dormer on those plans were three to four feet more than the plan showed; that this work was done prior to his purchase of the house and that he was assured that he could straighten it out with the Zoning Board.

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.

Ms. Castelli made a motion to close the Public Hearing which motion was seconded by Mr. Bosco and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested front yard and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. These conditions have existed without incident since 1996; no change to the footprint of the building is being proposed.
2. The requested front yard and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. These conditions have existed without incident since 1996; no change to the footprint of the building is being proposed.
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 and building height 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. These conditions have existed without incident since 1996; no change to the footprint of the building is being proposed.

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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 front yard and building height variances are APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

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

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

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


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The foregoing resolution to approve the application for the requested front yard and building height variances are APPROVED; was presented and moved by Mr. Bosco, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Mr. Sullivan 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: November 20, 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

REAR YARD VARIANCE APPROVED

To: Charles and Ann Scholl
87 Autumn Drive
Tappan, New York 10983

ZBA #19-101
Date: November 20, 2019
Permit # 49021

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#19-101: Application of Charles and Ann Scholl for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 3.12, Column 11 (Rear Yard: 35' required, 26.25' proposed) for a deck at an existing single-family residence. The premises are located at 87 Autumn Drive, Tappan, New York and is identified on the Orangetown Tax Map as Section 77.07, Block 2, Lot 18 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 20, 2019 at which time the Board made the determination hereinafter set forth.

Ann Scholl appeared and testified.

The following documents were presented:

1. Site plan based on survey by Barbour & Jost dated January 8, 1964, signed and sealed by Kier B. Leveque, R.A. dated August 4, 2019.
2. ZBA Decision #96-44 dated June 19, 1996 for a rear yard variance.

Ms. Castelli, Acting Chair, made a motion to open the Public Hearing which motion was seconded by Ms. Salomon and carried unanimously.

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Ms. Castelli 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 Mr. Quinn and carried as follows: Mr. Bosco, aye; Ms. Salomon, aye; Mr. Quinn, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Feroldi were absent.

Ann Scholl testified that she is before the Board for a variance for a detached free standing deck that is 1 ½' off the ground in her back yard; and that they did get a variance for the rear yard in 1996 for the screened in porch.

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.

Ms. Castelli made a motion to close the Public Hearing which motion was seconded by Ms. Salomon and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The free standing deck does not intrude further into the rear yard than the existing screened in porch which was granted a rear yard variance in ZBA#96-44 dated June 19, 1996.
2. The requested rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The free standing deck does not intrude further into the rear yard than the existing screened in porch which was granted a rear yard variance in ZBA#96-44 dated June 19, 1996.
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 rear yard variance, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The free standing deck does not intrude further into the rear yard than the existing screened in porch which was granted a rear yard variance in ZBA#96-44 dated June 19, 1996.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

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

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

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

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

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

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The foregoing resolution to approve the application for the requested rear yard variance is APPROVED; was presented and moved by Ms. Salomon, seconded by Mr. Quinn and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Mr. Sullivan 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: November 20, 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

TOWN OF ORANGETOWN
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DECISION

SPECIAL PERMIT EXTENSION APPROVED UNTIL DECEMBER 1, 2026

To: Donald Brenner (Safe-n-Sound)
4 Independence Avenue
Tappan, New York 10983

ZBA #19-102
Date: November 20, 2019
Permit # 49343

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 19-102: Application of Safe-n-Sound Childcare for renewal of a Special Permit that was granted in ZBA#95-05 and extended in ZBA#05-33 dated April 20, 2005 and filed in the Town Clerk's Office on May 5, 2005. Premises are located at 249 North Middletown Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.12, Block 3, Lot 27; CO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 20, 2019 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney and Geraldine Josephson appeared and testified.

The following documents were presented:

1. Site plan by Adler & Young dated April 19, 1995.
2. ZBA Decision #05-33 dated April 20, 2005.
3. ZBA Decision #95-66 dated October 18, 1995.

Ms. Castelli, Acting Chair, made a motion to open the Public Hearing which motion was seconded by Ms. Salomon and carried unanimously.

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Ms. Castelli 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 Mr. Quinn and carried as follows: Mr. Bosco, aye; Ms. Salomon, aye; Mr. Quinn, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Feroldi were absent.

Donald Brenner, Attorney, testified that the business had been operating in Pearl River for 32 years; that the conditional permit expired but the applicant is licensed by NYS and that license has not lapsed; that this was an oversight by the applicant and they would like to request the permit be issued retro to 2006.

Geraldine Josephson, testified that they are open from 6:30 A.M. to 6:30 P.M. five days a week; that they are permitted to have a capacity of 62 children and that she employs 24 people and apologizes for not renewing the permit.

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.

Ms. Castelli made a motion to close the Public Hearing which motion was seconded by Mr. Quinn 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 following Special Findings for the proposed Special Permit Use, as per Zoning Code Section 4.31, have been satisfactorily satisfied, for the following reasons:

1. The Special Permit pursuant to which the applicant Safe-n-Sound Childcare was operating its children's day care program expired on December 1, 2006; the program has operated without a permit since that date; however the program has always been licensed by New York State.
2. The requested extension of the Special Permit will be appropriately located with respect to transportation, water supply, waste disposal, fire and police protection and other public facilities.
3. The granting of the extension of the Special Permit will not cause undue traffic congestion or create a traffic hazard.
4. The granting of the extension of the Special Permit will not create, at any point of determination set forth in Zoning Code Sections 4.16, 4.17 and 4.18 any more dangerous and objectionable elements, referred to in Section 4.11 than is characteristic of the uses expressly permitted as of right in the same Zoning District.
5. The requested extension of the Special Permit will not adversely affect the character of or property values in the area.
6. Will not otherwise impair the public health, safety, morals, convenience, comfort, prosperity and other aspects of the general welfare of the Town.
7. The requested extension of the Special Permit will comply with all other regulations applicable to such use. For all Special Permit Uses a proposed plan, showing the size and location of the lot, design and location of the proposed facilities (including access drives, screening and streets within 1,000 feet) and a detailed description thereof must be submitted in accordance with rules prescribed by the Board (if any).

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8. Before any Special Permit is granted, the applicant must secure approval of the proposed structure by the Town Engineer or the consulting engineers for the Town of Orangetown, if same has been requested or is otherwise required, which was done at the granting of the first special permit is 1995.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested Special Permit renewal is APPROVED (retroactive to December 1, 2006 for 20 years and will expire on December 1, 2026) ; 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 Special Permit renewal is APPROVED: (retroactive to December 1, 2006 for 20 years and will expire on December 1, 2026); was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Mr. Sullivan 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: November 20, 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 CLERK'S OFFICE
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DECISION

REAR YARD VARIANCE APPROVED WITH SPECIFIC CONDITION: No certificate of occupancy shall be issued until the drainage plan is approved by the building department/town engineer.

To: Guoxiao Dong
6 Amethyst Court
West Nyack, New York 10994

ZBA #19-105
Date: November 20, 2019
Permit # 49337

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#19-105: Application of Guoxiao Dong for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 3.12, Columns 11 (Rear Yard: 35' required, 23.2' proposed) for a deck at an existing single-family residence. The premises are located at 34 Van Terrace, Sparkill, New York and is identified on the Orangetown Tax Map as Section 78.09, Block 1, Lot 3 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, November 20, 2019 at which time the Board made the determination hereinafter set forth.

Guoxiao Dong and Greg Smith, Contractor, appeared and testified.

The following documents were presented:

1. Survey dated September 6, 2019 signed and sealed by John Atzl, P.L.S.
2. Architectural plans labeled "Proposed Alteration for C & D Property Holdings, LLC signed and sealed by Jorge L. Lopez, Architect dated 09/06/2019 with the last revision date of 09/26/2019.
3. A letter dated November 15, 2019 objecting to the application from the Christensen family, 36 Van Terrace.
4. Three color pictures of the rear yard/decks submitted the applicant.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Ms. Castelli 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 Mr. Quinn and carried as follows: Mr. Bosco, aye; Ms. Salomon, aye; Mr. Quinn, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Feroldi were absent.

Guoxiao Dong testified that he purchased the property in October 2018 in a short sale; that the house was in foreclosure; that the property was a mess and he started to clean it up without a permit; that the water break and the gas leak were before his time; that he did work without a permit and is trying to fix that now; that he has three permits now, one for the decks, one for interior work and one for the drainage; that he agreed to submitting a drainage plan that shows

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zero net increase in run-off for approval by the town engineer and or building inspector.

Greg Smith, contractor, testified that he was hired after the decks were built by the applicant and he received the stop work order, to correct and fix the decks.

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.

Ms. Castelli made a motion to close the Public Hearing which motion was seconded by Mr. Quinn and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The original deck on the house was approximately three (3') feet less wide than the deck built without a permit. A licensed contractor has been hired to correct any errors made in the building of the decks. The applicant has agreed to submit a drainage plan that shall satisfy the Town Engineer/Building Inspector that zero net increase in run-off will be achieved on the property because of all the fill that was added prior to the stop work order being issued. No certificate of occupancy shall be issued until the drainage plan is approved by the building department/ town engineer.
2. The requested rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The original deck on the house was approximately three (3') feet less wide than the deck built without a permit. A licensed contractor has been hired to correct any errors made in the building of the decks. The applicant has agreed to submit a drainage plan that shall satisfy the Town Engineer/Building Inspector that zero net increase in run-off will be achieved on the property because of all the fill that was added prior to the stop work order being issued. No certificate of occupancy shall be issued until the drainage plan is approved by the building department/ town engineer.
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.

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4. The requested rear yard variance, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The original deck on the house was approximately three (3') feet less wide than the deck built without a permit. A licensed contractor has been hired to correct any errors made in the building of the decks. The applicant has agreed to submit a drainage plan that shall satisfy the Town Engineer/Building Inspector that zero net increase in run-off will be achieved on the property because of all the fill that was added prior to the stop work order being issued. No certificate of occupancy shall be issued until the drainage plan is approved by the building department/ town engineer.
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.
6. DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested rear yard variance is APPROVED with the Specific condition that No certificate of occupancy shall be issued until the drainage plan is approved by the building department/ town engineer ; 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.

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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 rear yard variance is APPROVED with the Specific condition that No certificate of occupancy shall be issued until the drainage plan is approved by the building department/ town engineer ; was presented and moved by Mr. Bosco, seconded by Mr. Quinn and carried as follows: Mr. Bosco, aye; Mr. Quinn, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Mr. Sullivan 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: November 20, 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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