



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 11:00 P.M.

Dated: October 9, 2013

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  
2013 OCT 24 PM 2 04  
TOWN CLERKS OFFICE

DECISION

**FLOOR AREA RATIO, SIDE YARD, TOTAL SIDE YARD, § 5.153 ACCESSORY DISTANCE AND BUILDING HEIGHT VARIANCES APPROVED**

To: Michael McNally  
493 Gilbert Avenue  
Pearl River, New York 10965

ZBA # 13-72  
Date: October 9, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#13-72: Application of Michael McNally for variances from Chapter 43 (Zoning), Section 3.12, R-15 District, Group M, Columns 4 (Floor Area Ratio: .20 permitted, .259 existing, .275 proposed), 9 (Side Yard: 20' required, 10.8' proposed), 10 (Total Side Yard: 50' required, 36.3' proposed) and 12 ( Building Height: 10.8' permitted, 25.4' proposed) and from Section 5.153 (Accessory Structure Distance: 15' required, 10' proposed) for an addition to an existing single-family residence. The premises are located at 493 Gilbert Avenue, Pearl River, New York and identified on the Orangetown Tax Map as Section 69.18, Block 2, Lot 20; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 9, 2013 at which time the Board made the determination hereinafter set forth.

Michael McNally appeared and testified.

The following documents were presented:

1. Survey by Robert Rahnefeld, P.L.S..
2. Architectural plans dated August 1, 2013 by Harry Goldstein, Architect,

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Albanese, aye; Ms. Salomon, aye; Mr. Feroldi, aye; Ms. Castelli, aye; Mr. Bosco, aye; and Mr. Sullivan, aye.

Mike McNally testified that he and his wife purchased the house 13 years ago; that since the purchase they have had four children, ages 11 years to 5 years; that the house is 1066 sq. ft.; that they love the neighborhood and the schools; that they do not want to sell the house; that they are proposing the addition so that they can stay in the house; that they are proposing to go out on the right side of the house to add a garage and go up to add bedrooms and bump out in the back for a family room and add a front porch; that they cannot bump out on the left side of the house because there is a sewer easement there; that they have a pool in back yard; that the architect recommended that the proposed garage be built at 26' wide but they cut it back to 24' to stay as far away from the neighbors property line as possible; that there were several other houses in the immediate area that were granted variances for their additions; that the neighbor at 501 Gilbert applied for and received a .25 floor area ratio and 26.11 building height variances. 538 Gilbert got a .246 floor area ratio and a side yard and building height; that 523 Gilbert got a .2174 floor area ratio and 539 Gilbert got a side yard and .264 floor area ratio; that there were also variances granted at 57 Mapleshade, 36 Cherry Lane, 102 Wildwood and two more houses on Mountainview; that the proposed addition will be in keeping with the character of the neighborhood and that he will move the existing shed to be 10; from the house.

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Public Comment:

No public comment.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

Mr. Sullivan made a motion to close the Public Hearing which motion was seconded by 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 floor area ratio, side yard, total side yard, building height and Section 5.153 variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The addition is being proposed on the side of the house where the existing driveway is located, and the house cannot be expanded on the other side because it contains a sewer easement. The side yard most affected by the proposed addition lines up with the neighbor's driveway and garage and similar additions have been constructed in the area.
2. The requested floor area ratio, side yard, total side yard, building height and Section 5.153 variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. . The addition is being proposed on the side of the house where the existing driveway is located, and the house cannot be expanded on the other side because it contains a sewer easement. The side yard most affected by the proposed addition lines up with the neighbor's driveway and garage and similar additions have been constructed 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 variances.
4. The requested floor area ratio, side yard, total side yard, building height and Section 5.153 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 addition is being proposed on the side of the house where the existing driveway is located, and the house cannot be expanded on the other side because it contains a sewer easement. The side yard most affected by the proposed addition lines up with the neighbor's driveway and garage, and similar additions have been constructed 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 floor area ratio, side yard, total side yard, building height and § 5.153 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.

TOWN CLERKS OFFICE  
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McNally  
ZBA#13-72  
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The foregoing resolution to approve the application for the requested floor area ratio, side yard, total side yard, building height and Section 5.153 variances was presented and moved by Mr. Sullivan, seconded by Mr. Bosco and carried as follows: Mr. Bosco, aye; Mr. Feroldi, aye; Ms. Albanese, aye ;Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: October 9, 2013

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 -R.A.O.

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

TOWN OF ORANGETOWN  
2013 OCT 24 PM 2 04  
TOWN CLERKS OFFICE

DECISION

**FRONT YARD, SIDE YARD, TOTAL SIDE YARD VARIANCES APPROVED  
SECTION 5.21(c) UNDERSIZE LOT APPLIES**

To: Robert Bellospirito  
19 Andre Hill  
Tappan, New York 10983

ZBA # 13-74  
Date: October 9, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-74: Application of Robert Bellospirito for a variances from Chapter 43 (Zoning) Town of Orangetown, R-15 District, Group M, Columns 8 (Front Yard: 30' required, 13.5' existing), 9 (Side Yard: Section 5.21 (c) applies: 15' required, 12.33' proposed for left side, 8' existing and 8' proposed for right side); and 10 (Total Side Yard: 30' required, 20.33' existing and proposed) for an addition to an existing single-family residence. The property is located at 19 Andre Hill, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.10, Block 3, Lot 76.2; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 9, 2013 at which time the Board made the determination hereinafter set forth.

Robert Bellospirito and Robert Hoene, Architect, appeared and testified.

The following documents were presented:

1. Architectural plans dated 06/17/2013 with the latest revision date of 07/16/2013 signed and sealed by Robert Hoene, Architect.
2. A letter dated September 24, 2013 from the County of Rockland Department of Planning signed by Thomas B. Vanderbeek, P.E., Commissioner of Planning.
3. A letter dated September 16, 2013 from the County of Rockland Department of Highways signed by Sonny Lin, P.E..

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Albanese, aye; Ms. Salomon, aye; Mr. Feroldi, aye; Ms. Castelli, aye; Mr. Bosco, aye; and Mr. Sullivan, aye.

Robert Hoene, Architect, testified that they are proposing to add 372 sq. ft. to the existing house; that they are staying in line with the existing house; that there is a wrap around porch on the house and the existing set back is 8' on the south side and 12.33' on the north side; that Mr. Bellospirito owns the lot next door that houses the detached garage; that the house presently has a galley kitchen and the interior plan is to blow out the kitchen and dining areas and make them more usable for entertaining; that there will be no change to the existing non-conforming front yard.

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Public Comment:

No public comment.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested front yard, side yard and total side yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The proposal is for a one story addition of 372 sq. ft., which is staying in line with the existing side yard and total side yard setbacks of the house, and similar additions have been constructed in the area. The existing front yard setback is not being changed.
2. The requested front yard, side yard and total side yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposal is for a one story addition of 372 sq. ft., which is staying in line with the existing side yard and total side yard setbacks of the house, and similar additions have been constructed in the area. The existing front yard setback is not being changed.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested front yard, side yard and total side yard variances are not substantial. The front yard is not changing, and the side yard and total side yard are existing conditions that are being expanded slightly.
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.

TOWN CLERKS OFFICE

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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, side yard and total side yard 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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Bellospirito  
ZBA#13-74  
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The foregoing resolution to approve the application for the requested front yard, side yard and total side yard variances was presented and moved by Mr. Sullivan, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Mr. Feroldi, aye; Ms. Albanese, aye ;Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: October 9, 2013

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 -B.v.w.

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

TOWN CLERKS OFFICE  
2013 OCT 24 PM 2 04  
TOWN OF ORANGETOWN

DECISION

**SECTION 5.226 (SIX-FOOT FENCE IN FRONT YARD) VARIANCE  
APPROVED**

To: Susan Tu and Simon Li  
378 Blauvelt Road  
Pearl River, New York 10965

ZBA # 13-75  
Date: October 9, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-75: Application of Susan Tu and Simon Li for a variance from Chapter 43 (Zoning) Town of Orangetown, R-15 District, Group M, Section 5.226 (Front Yard Fence Height: 4 ½' permitted; 6' proposed) for a fence in a front yard. The premises is located at 378 Blauvelt Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.13, Block 4, Lot 1; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 9, 2013 at which time the Board made the determination hereinafter set forth.

Susan Tu appeared and testified.

The following documents were presented:

1. Site plan with the placement of the proposed fence drawn on it.
2. Twenty three photographs of the property.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Albanese, aye; Ms. Salomon, aye; Mr. Feroldi, aye; Ms. Castelli, aye; Mr. Bosco, aye; and Mr. Sullivan, aye.

Susan Tu testified that she has two front yards because her property is a corner property; that she lives close to the high school and kids use her yard as a cut through; that she has two children aged eight and eleven; that she is proposing to install a six-foot vinyl fence to stop cars from parking on her property and to afford some privacy; and that the fence would keep garbage off of the yard.

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Public Comment:

Paul Witte, 371 Blauvelt Road, stated that he is an abutting neighbor across the street from the applicant; that he agrees the fence is needed because there is an ongoing problem of cars parking on their property and they have two young kids; and the fence is being set back far enough from the road that it will not block sight distances.

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. 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 six-foot fence in a front yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The six foot fence on this property will provide privacy, it will keep kids from using the yard as a cut-through and it will be placed far enough back from Holt Drive that it will not interfere with the road.
2. The requested six-foot fence in a front yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The six foot fence on this property will provide privacy, it will keep kids from using the yard as a cut-through and it will be placed far enough back from Holt Drive that it will not interfere with the road.
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 six-foot fence in a front yard variance, although somewhat substantial, affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
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.

TOWN CLERKS OFFICE

2013 OCT 24 PM 2 04

TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested front yard 6' fence height 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.

TOWN CLERKS OFFICE  
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Tu & Li Fence  
ZBA#13-75  
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The foregoing resolution to approve the application for the requested 6' front yard variance was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Bosco, aye; Mr. Feroldi, aye; Ms. Albanese, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: October 9, 2013

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  
2013 OCT 29 PM 2 04  
TOWN CLERKS OFFICE

DECISION

**TOTAL SIDE YARD VARIANCE APPROVED**

To: John and Ann Marie Donohoe  
49 Champ Avenue  
Pearl River, New York 10965

ZBA # 13-76  
Date: October 9, 2013

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA# 13-76: Application of John and Ann Marie Donohoe for a variance from Chapter 43 (Zoning) Town of Orangetown, R-15 District, Group M, Column 10 (Total Side Yard: 50' required, 40.70' proposed) for an addition to an existing single-family residence. The premises are located at 49 Champ Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.10, Block 2, Lot 55; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, October 9, 2013 at which time the Board made the determination hereinafter set forth.

John and Ann Marie Donohoe and Robert Hoene, Architect, appeared and testified.

The following documents were presented:

1. Site plan.
2. Architectural plans dated 12/21/2012 with the latest revision date of 05/20/2013 signed and sealed by Robert Hoene, Architect.
3. A letter in support of the application signed by three abutting property owners.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9), (10), (12) and/or (13); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Albanese, aye; Ms. Salomon, aye; Mr. Feroldi, aye; Ms. Castelli, aye; Mr. Bosco, aye; and Mr. Sullivan, aye.

Robert Hoene, Architect, testified that the applicant is seeking to add a second story to an existing split level house; that they are adding a master bedroom, bathroom and a kid's bedroom; and that the deck is 20' from the side yard.

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2013 OCT 24 PM 2 04

TOWN OF ORANGETOWN

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. 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 total side yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The total side yard is changing because the house was built on an angle to the property lines and the deck to rear changes the total side yard. Similar additions have been constructed in the area.
2. The requested total side yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The total side yard is changing because the house was built on an angle to the property lines and the deck to rear changes the total side yard. Similar additions have been constructed 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 variances.
4. The requested total side yard variance is not substantial. The house was constructed on an angle to the property lines.
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.

TOWN CLERKS OFFICE  
2013 OCT 24 PM 2 05  
TOWN OF ORANGETOWN



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

General Conditions:

- (i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.
- (ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.
- (iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.
- (iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.
- (v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.


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The foregoing resolution to approve the application for the requested total side yard variance was presented and moved by Ms. Albanese, seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Feroldi, aye; Ms. Albanese, aye; Ms. Castelli, aye; Ms. Salomon, aye; and Mr. Sullivan, aye.

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

DATED: October 9, 2013

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 -MM.

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

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