

MINUTES
ZONING BOARD OF APPEALS
June 1, 2022

MEMBERS PRESENT:

PATRICIA CASTELLI, ACTING CHAIR
THOMAS QUINN
ROBERT BONOMOLO, JR.
BILLY VALENTINE

ABSENT:

DAN SULLIVAN, CHAIRMAN
MICHAEL BOSCO

ALSO PRESENT:

Deborah Arbolino, Administrative Aide
Denise Sullivan, Deputy Town Attorney
Anne Marie Ambrose Official Stenographer

This meeting was called to order at 7: 00 P.M. by 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

NEW ITEMS:

MC CARTHY
74 Hamilton Avenue
Tappan, New York
74.17 / 2 / 23; R-15 zone

FLOOR AREA RATIO
VARIANCE APPROVED

ZBA#22-36

KALAYJIAN
419 White Oak Road
Palisades, New York
77.20 / 1 / 28; R-22 zone

FRONT YARD, SIDE YARD,
AND REAR YARD VARIANCES
APPROVED

ZBA#22-37

CAMPANELLA
22 Fern Oval
Orangeburg, New York
74.09 / 2 / 27; RG zone

FRONT YARD, SIDE YARD,
AND TOTAL SIDE YARD
VARIANCES APPROVED

ZBA#22-38

CLERKIN
45 Brightwood Avenue
Pearl River, New York
68.12 / 5 / 52; RG zone

SECTION 5.226 FENCE HEIGHT
AND LOCATION VARIANCE
APPROVED

ZBA#22-39

TOWN OF ORANGETOWN
2022 JUN -7 P 2:35
TOWN CLERK'S OFFICE

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

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 8:30 P.M.

Dated: June 1, 2022

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
2022 JUN - 1 P 2:35
TOWN CLERK'S OFFICE

FLOOR AREA RATIO VARIANCE APPROVED

To: Christopher and Maureen McCarthy
74 Hamilton Avenue
Tappan, New York 10983

ZBA #22-36
Date: June 1, 2022
Permit #BLDR-397-2021

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-36: Application of Chris and Maureen McCarthy for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, R-15 District, Group M, Column 4 (Floor Area Ratio: 20% permitted, 21.9% proposed) for a covered patio at an existing single-family residence. The property is located at 74 Hamilton Avenue, Tappan, New York and is identified on the Orangetown Tax Map as Section 74.17, Block 2, Lot 23; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, June 1, 2022 at which time the Board made the determination hereinafter set forth.

Maureen and Christopher McCarthy appeared and testified.

The following documents were presented:

1. Plans labeled "McCarthy Residence Covered Patio Addition" dated October 28, 2021 with the latest revision date of February 7, 2022 signed and sealed by Harold J. Goldstein, Architect. (2 pages).

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. Bonomolo, aye; Mr. Quinn, aye; Mr. Valentine, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Bosco were absent.

Christopher McCarthy testified that both his family and his wife's family have a history of Melanoma cancer; that they had a pergola and that is not working well; that their neighbor installed a pool and cut down some trees that has allowed more sun in their yard; that they would like to enjoy the outside space and a covered patio would allow them to do that.

Maureen McCarthy testified that they had sun setter at a house they had previously owned and it really isn't wide enough to provide sufficient shade; and the covered patio would not affect anyone because they have the Orange and Rockland easement in the rear of the property.

Public Comment:

No public comment.

TOWN CLERK'S OFFICE
2022 JUN - 1 P 2:35
TOWN OF ORANGETOWN

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. Catelli 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 floor area ratio variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar additions have been constructed in the neighborhood. The property in the rear of the house is owned by Orange & Rockland Utilities and is an easement for the utility company.
2. The requested floor area ratio variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar additions have been constructed in the neighborhood.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested floor area ratio variance is not substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. Similar additions have been constructed in the neighborhood.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

TOWN CLERK'S OFFICE

2022 JUN - 1 P 2: 35

TOWN OF ORANGETOWN

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested floor area ratio 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 CLERK'S OFFICE
2022 JUN -7 P 2:35
TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested floor area ratio variance is APPROVED; was presented and moved by Mr. Bonomolo, seconded by Mr. Quinn and carried as follows: Mr. Valentine, aye; Mr. Bonomolo, aye; Mr. Quinn, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Bosco 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: June 1, 2022

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

TOWN CLERK'S OFFICE
2022 JUN - 1 P 2:35
TOWN OF ORANGETOWN

FRONT YARD, SIDE YARD AND REAR YARD VARIANCES APPROVED

To: Dr. Tro and Rosette Kalayjian
10 Sioux Court
Palisades, New York 10964

ZBA #22-37
Date: June 1, 2022
Permit #BLDR 957-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-37: Application of Kevork Kalayjian, Dr. Tro Kalayjian and Rosette Kalayjian for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-22 District, Group I, Section 3.12, Columns 8 (Front Yard: 40' required, 23.1' proposed), 9 (Side Yard: 25' required, 16' 10" proposed) and 11 (Rear Yard: 45' required, 39.1' proposed) for an addition to an existing single-family residence. The premises are located at 419 White Oak Road, Palisades, New York and is identified on the Orangetown Tax Map as Section 77.20, Block 1, Lot 28; in the R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, June 1, 2022 at which time the Board made the determination hereinafter set forth.

Dr. Tro Kalayjian and Rosette Kalayjian appeared and testified.

The following documents were presented:

1. Plans labeled "Renovation & Addition at 419 White Oak Road" dated April 7, 2022 signed and sealed by Samuel Martinez, Architect. (9 pages).
2. Two letters in support of the application from abutting property owners.
3. Four computer generated pictures of house in the area that are being renovated and expanded.

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. Valentine, aye; Mr. Quinn, aye; Mr. Bonomolo, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Bosco were absent.

Dr. Tro Kalayjian testified that he grew up in this house; that his parents are the original owners of the house and they purchased it in 1986; that after long discussions with his parents and trying to find a suitable house for both families to live in; they have decided to sell their home in Palisades and make his house appropriate for his parents and his family; that there will not be any interior separation of the living spaces and there will remain one front door; that there will be two full kitchens; that they were being respectful of the floor area ratio when they were designing the addition; that the house is on a corner lot with about a half -acre of property; that the land is flat; and he submitted pictures of other houses in the neighborhood that have made improvements to the properties.

Rosette Kalayjian testified that they love the school district and want to stay in the Town; that they have letters of support from two of the neighbors most affected by the proposed addition; and that both families will need their individual spaces.

Public Comment:

No public comment.

2022 JUN -1 P 2:35
TOWN OF ORANGETOWN

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. Valentine 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 rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar additions have been constructed in the neighborhood.
2. The requested front yard, side yard and rear yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar additions have been constructed in the neighborhood.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested front yard, side yard and rear yard variances although somewhat substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. Similar additions have been constructed in the neighborhood.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

TOWN OF ORANGETOWN
2022 JUN - 7 P 2: 35
TOWN CLERK'S OFFICE

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 rear 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.


TOWN CLERK'S OFFICE
2022 JUN - 7 P 2: 35
TOWN OF ORANGETOWN

The foregoing resolution to approve the application for the requested front yard, side yard and rear yard variances are APPROVED; was presented and moved by Mr. Quinn, seconded by Ms. Castelli and carried as follows: Mr. Valentine, aye; Mr. Bonomolo, aye; Mr. Quinn, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Bosco 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: June 1, 2022

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

TOWN CLERK'S OFFICE
2022 JUN - 1 P 2:35
TOWN OF ORANGETOWN

FRONT YARD, SIDE YARD AND TOTAL SIDE YARD VARIANCES APPROVED

To: Christopher and Sarah Campanella
22 Fern Oval
Orangeburg, New York 10968

ZBA #22-38
Date: June 1, 2022
Permit #BLDR-815-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-38: Application of Christopher and Sarah Campanella for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, RG District, Group Q, Section 3.12, Columns 8: (Front Yard: 25' required, 22' proposed), 9 (Side Yard; 10' required, 7' proposed) and 10 (Total Side Yard: 30' required, 25.39' proposed) for an addition to an existing single-family residence. The property is located at 22 Fern Oval, Orangeburg, New York and is identified on the Orangetown Tax Map as Section 74.09, Block 2, Lot 27; in the RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, June 1, 2022 at which time the Board made the determination hereinafter set forth.

Christopher, Sarah, Thomas and Brendan Campanella appeared and testified.

The following documents were presented:

1. Plans labeled "Campanella Residence One-Story Addition" dated April 16, 2021 signed and sealed by Harold J. Goldstein, Architect. (2 pages).
2. Survey dated 8/28/1962.
3. Ten color photos of the house and property.
4. A letter in support of the application signed by six abutting property owners.

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. Valentine, aye; Mr. Quinn, aye; Mr. Bonomolo, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Bosco were absent.

Sarah Campanella testified that the house is a split level style house; that they have lived in the house for 18 years; that they love their neighborhood; that they started to look for a solution for Brendan two years ago; that they could not find another house that did not need to be modified and that is why they came up with this plan with Harry Goldstein, to make this house work for them; that some of the houses that they looked at had second story decks that were too scary for her son; that the goal is to add one level at the side of the house to provide a handicap bathroom, small bedroom with a closet, bed and chair; and to extend the kitchen wider and move the dining room into the front of the house; that presently the minivan can pull into the garage and her son can get to the chairlift, however he needs help getting into the lift to go up the six steps into the area that would operate as living space for him; and that after looking at other options this seems like the best solution.

Chris Campanella testified that he and his wife are both teachers and plan to stay in the house; that the South Orangetown Schools meet their sons' special needs.

TOWN CLERK'S OFFICE

JUN 1 2022

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.

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested 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. Similar additions have been constructed in the neighborhood.
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. Similar additions have been constructed in the neighborhood.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested front yard, side yard and total side yard variances although somewhat substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. Similar additions have been constructed in the neighborhood.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

TOWN OF ORANGETOWN
2022 JUN -1 P 2:36
TOWN CLERK'S OFFICE

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.

TOWN OF ORANGETOWN
2022 JUN - 1 P 2:36
TOWN CLERK'S OFFICE

The foregoing resolution to approve the application for the requested front yard, side yard, and total side yard variances are APPROVED; was presented and moved by Ms. Castelli, seconded by Mr. Quinn and carried as follows: Mr. Valentine, aye; Mr. Bonomolo, aye; Mr. Quinn, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Bosco 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: June 1, 2022

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

TOWN OF ORANGETOWN
2022 JUN -1 P 2:36
TOWN CLERK'S OFFICE

SECTION 5.226 FENCE HEIGHT VARIANCE APPROVED

To: Caroline Clerkin
45 Brightwood Avenue
Pearl River, New York 10965

ZBA #22-39
Date: June 1, 2022
Permit #RENEW-1098-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-39: Application of Brian and Caroline Clerkin for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, RG District, District, Section 5.226 (fences over 6' in height in rear and side yards must be set back from the property line two-thirds the height of the fence: 8' fence proposed: 5'4" setback required, 2' existing) for an eight foot fence in a portion of the rear/side yard at an existing single-family residence. The property is located at 45 Brightwood Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.12, Block 5, Lot 52 in the RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, June 1, 2022 at which time the Board made the determination hereinafter set forth.

Caroline Clerkin appeared and testified.

The following documents were presented:

1. Survey labeled "Brian and Caroline Clerkin" revised July 9, 2009 with fence drawn on it.
2. Two pages of specs for vinyl fence.
3. Seven color pictures of the fence and yard.
4. ZBA Decision #10-03 for a front yard variance granted on January 6, 2010.

Ms. Castelli, Acting Chair, made a motion to open the Public Hearing which motion was seconded by Mr. Valentine 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. Valentine, aye; Mr. Quinn, aye; Mr. Bonomolo, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Bosco were absent.

Caroline Clerkin testified that she has lived in the house for 13 years; that at one point they got new neighbors in the property at the rear of the house; and the neighbors have a pool with a high/ elevated platform/ deck around it; that the property is above her property and they could see right into her yard; that there was no privacy; that they installed the eight foot fence in the rear corner to provide privacy for their kids; that the neighbor on the other side(the left side) of her property complained about the fence and that is how she found out that it was not legal; that she is before the Board to legalize the fence that has been there for seven years; that there are bushes planted on both sides of the fence; and the neighbors that complained have since retired and moved.

Public Comment:

No public comment.

TOWN CLERK'S OFFICE

2022 JUN -1 P 2:36

TOWN OF ORANGETOWN

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. Valentine 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 5.226 fence height/location variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The fence is in the back corner of the property and provides privacy for the neighbor with the pool behind the applicant and for the applicant; it is only constructed in one corner of the property with bushes in front of it and because of that, it is not intrusive.
2. The requested Section 5.226 fence height/location variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested Section 5.226 fence height/location variance is not substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

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DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested Section 5.226 fence height/location 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 Section 5.226 fence height/location variance is APPROVED; was presented and moved by Mr. Valentine, seconded by Mr. Bonomolo and carried as follows: Mr. Valentine, aye; Mr. Bonomolo, aye; Mr. Quinn, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Bosco 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: June 1, 2022

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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TOWN CLERK'S OFFICE