

MINUTES  
ZONING BOARD OF APPEALS  
July 6, 2022

MEMBERS PRESENT: DAN SULLIVAN, CHAIRMAN  
PATRICIA CASTELLI, ACTING CHAIR  
THOMAS QUINN  
ROBERT BONOMOLO, JR.  
MICHAEL BOSCO  
BILLY VALENTINE

ABSENT: NONE

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:

NOONAN'S 16 E. Central Avenue Pearl River, New York 68.20 / 1 / 13; CS zone	REAR YARD, OUTDOOR DINING AND PARKING VARIANCES APPROVED FENCE UP TO 12' ACCEPTED IN REAR YARD ON PLAN	ZBA#22-44
NOONAN'S 20 E. Central Avenue Pearl River, New York 68.20 / 1 / 13 & 14; CS zone	REAR YARD, OUTDOOR DINING AND PARKING VARIANCES APPROVED FENCE UP TO 12' ACCEPTED IN REAR YARD ON PLAN	ZBA#22-45
SAFE-N-SOUND 249N. Middletown Road Pearl River, New York 68.12 / 3 / 27; zone	BOARD DETERMINED THAT A USE VARIANCE WAS GRANTED IN ZBA#95-66 AND USE VARIANCES RUN WITH THE LAND	ZBA#22-46
TAPPAN FIRE DISTRICT 135 Washington Street Tappan, New York 77.11 / 3 / 4; CS zone	FRONT YARD, SIDE YARD, TOTAL SIDE YARD AND REAR YARD VARIANCES APPROVED	ZBA#22-47
FEINBERG 1 Gary Lane Orangeburg, New York 74.14 / 1 / 92; RG zone	FRONT YARD VARIANCE APPROVED	ZBA#22-48

TOWN CLERK'S OFFICE  
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TOWN OF ORANGETOWN

HOPPE  
8 Cara Drive  
Nanuet, New York  
64.18 / 1 / 14; R-15 zone

SIDE YARD AND  
TOTAL SIDE YARD  
VARIANCES APPROVED

ZBA#22-49

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: Temple Israel Memorial Park-Amendment to Filed Site Plan, 75 Van Wyck Road, Blauvelt, NY 69.20 / 2 / 28; R-15 zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings

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 10:30 P.M.

Dated: July 6, 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  
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TOWN CLERK'S OFFICE

**REAR YARD, SECTION 3.11, COLUMN 7 #1 OUTDOOR DINING & SALES ;  
SECTION 3.11, COLUMN 6: PARKING VARIANCES APPROVED**  
THE BOARD ACKNOWLEDGED FENCES IN THE REAR YARD THAT COULD BE UP TO  
12' IN HEIGHT

To: Donald Brenner (Noonan's)  
4 Independence Avenue  
Tappan, NY 10983

ZBA #22-44  
Date: July 6, 2022  
Permit #bldc-540-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-44: Application of Noonan's for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, CS District, Group FF, Column 11 (Rear Yard: 25' required, 5.3' proposed), and from Section 3.11, Column 7 #1 (Outdoor Dining & #3 all retail service establishments shall be within enclosed building: requires 2 (two) variances) and from Section 3.11, Column 6 (Restaurants require 1 (one) parking space per 100 sq. ft. gross floor area: 1,768 sq. ft. gross floor area existing= 18 parking spaces required, 0 spaces provided): ZBA #19-42 needs correction: 2,465 sq. ft. proposed and 25 parking spaces granted with 4782 sf for 48 spaces required on permit #48239; 2<sup>nd</sup> floor (13 spaces) total required parking spaces for site at 16E is 79 spaces for an existing restaurant. The property is located at 16 East Central Avenue, Pearl River, New York and is identified on the Orangetown Tax Map as Section 68.20, Block 1, Lot 13; in the CS zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, July 6, 2022 at which time the Board made the determination hereinafter set forth.

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

The following documents were presented:

1. Plans labeled "T.F. Noonan's Restaurant Outdoor Dining Expansion" dated April 15, 2021 with the latest revision date of May 18, 2022 signed and sealed by Harold J. Goldstein, Architect. (2 pages).
2. A letter dated June 24, 2022 from Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
3. A letter dated June 21, 2022 from Rockland County Sewer District No.1 signed by Joseph LaFiandra, Engineer II.
4. A sign off dated June 7, 2022 from Rockland County Highway Department by Dyan Rajasingham and a sign-off dated June 29, 2022 from Rockland County Health Department by Elizabeth Mello.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application seeks area or bulk variances for construction or expansion of primary, or accessory or appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls; this application is exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn went home before the vote.

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Donald Brenner, attorney, testified that all of the comments about parking can be addressed by the municipal lots that are within 500 feet and a thousand feet of the establishment; that the business has been operational for 21 years and never had a problem with parking; that the business owners pay taxes that help support the municipal lots; that the building was built in 1928; that the business suffered during COVID; that many people are still not comfortable eating inside establishments; that the outdoor dining that was permitted during the virus is going to expire and that is why the applicant is trying to establish it permanently; that this lot needs a variance for 86 parking spaces; that the fence that was just mentioned in the e-mail from the building inspector has been there since 2011 or 2012; that it is an eight foot fence on a two foot wall and there is another fence that the inspector did not mention but is shown on the plan on the west side that is approximately 11' or 12' feet high.

Larry Vergine stated that the wood fence was put up in 2007 for people to smoke outside. Mr. Vergine also stated that there are about a hundred thousand dollars' worth of televisions outside in that area and the fences protect them from theft when the business is closed.

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 rear yard, Section 3.11, Column 7 #1 Outdoor dining and sales and Section 3.11 Column 6 parking variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. This is an established business in downtown Pearl River that struggled to survive during COVID; the building was built in 1928; there are two municipal lots within five hundred and one thousand feet of the establishment, which history has shown to be sufficient, the business has been in operation for 21 years. The COVID virus changed the world in many ways, introducing the public to outdoor dining is just one; and the applicant is requesting to be able to accommodate his clientele that enjoys outdoor dining.
2. The Board acknowledged the eight-foot fence on the two-foot stone wall behind the building that was mentioned in the building inspectors' e-mail that the Deputy Town Attorney to the Board received just prior to the start of the meeting and also acknowledged the 11- or 12-foot fence that was not mentioned on the east side in the rear of the property. There was testimony that these fences have existed for some time and are necessary to protect all of the televisions that are outside in this area from theft when the restaurant is closed; and a fence was previously approved at the rear of the property by the ZBA.

3. The Board overrode comments #1 and #2 of the Rockland County Department of Planning letter dated June 24, 2022 because none of these conditions were self-created by the applicant (i.e. COVID, 1928 building).
4. The requested rear yard, Section 3.11, Column7 #1 Outdoor dining and sales and Section 3.11 Column 6 parking variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
6. The requested rear yard, Section 3.11, Column7 #1 Outdoor dining and sales and Section 3.11 Column 6 parking variances although 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. This is an established business in downtown Pearl River that struggled to survive during COVID; the building was built in 1928; there are two municipal lots within five hundred and one thousand feet of the establishment, which history has shown to be sufficient, the business has been in operation for 21 years. The COVID virus changed the world in many ways, introducing the public to outdoor dining is just one; and the applicant is requesting to be able to accommodate his cliental that enjoys outdoor dining.
7. 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 rear yard, Section 3.11, Column7 #1 Outdoor dining and sales and Section 3.11 Column 6 parking granting of the area variance. This is an established business in downtown Pearl River that struggled to survive during COVID; the building was built in 1928; there are two municipal lots within five hundred and one thousand feet of the establishment, which history has shown to be sufficient, the business has been in operation for 21 years. The COVID virus changed the world in many ways, introducing the public to outdoor dining is just one; and the applicant is requesting to be able to accommodate his cliental that enjoys outdoor dining.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED to override the Rockland County Department of Planning Comments #1 and #2 contained in the June 24, 2022 letter to the ZBA and that the application for the requested rear yard, Section 3.11, Column7 #1 Outdoor dining and sales and Section 3.11 Column 6 parking variances are APPROVED with 86 spaces (48 + 2+18 based upon 4782 interior sf + 1768 outdoor sf) being the total amount of spaces 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.

TOWN CLERK'S OFFICE  
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TOWN OF ORANGETOWN

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

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

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

The foregoing motion to override Rockland County Department of Planning comments #1 and #2 contained in their June 24, 2022 letter to the ZBA and to approve the application for the requested rear yard, Section 3.11, Column 7 #1 Outdoor dining and sales and Section 3.11 Column 6 parking variances are APPROVED; was presented and moved by Mr. Bosco, seconded by Ms. Castelli and carried as follows: Mr. Valentine, aye; Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Quinn went home before the vote.

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: July 6, 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 JUL 15 12:11 PM

**REAR YARD, SECTION 3.11, COLUMN 7 #1 OUTDOOR DINING & SALES ;  
SECTION 3.11, COLUMN 6: PARKING VARIANCES APPROVED**  
THE BOARD ACKNOWLEDGED FENCES IN THE REAR YARD THAT COULD BE UP TO  
12' IN HEIGHT

To: Donald Brenner (Noonan's)  
4 Independence Avenue  
Tappan, NY 10983

ZBA #22-45  
Date: July 6, 2022  
Permit #51887

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-45: Application of Noonan's for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.12, CS District, Group FF, Column 11 (Rear Yard: 25' required, 5.3' proposed), and from Section 3.11, Column 7 #1 (Outdoor Dining & #3 all retail service establishments shall be within enclosed building: requires 2 (two) variances) and from Section 3.11, Column 6 (Restaurants require 1 (one) parking space per 100 sq. ft. gross floor area: 236 sq. ft. + 2 spaces required, 1<sup>st</sup> floor 20 East Central (26 spaces) 2<sup>nd</sup> floor 20 E Central (20 spaces): total spaces required: 48 spaces for an existing restaurant. The property is located at 20 East Central Avenue, Pearl River, New York and is identified on the Orangetown Tax Map as Section 68.20, Block 1, Lot 14; in the CS zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, July 6, 2022 at which time the Board made the determination hereinafter set forth.

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

The following documents were presented:

1. Plans labeled "T.F. Noonan's Restaurant Outdoor Dining Expansion" dated April 15, 2021 with the latest revision date of May 18, 2022 signed and sealed by Harold J. Goldstein, Architect. (2 pages).
2. A letter dated June 24, 2022 from Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
3. A letter dated June 21, 2022 from Rockland County Sewer District No.1 signed by Joseph LaFiandra, Engineer II.
4. A sign off dated June 7, 2022 from Rockland County Highway Department by Dyan Rajasingham and a sign-off dated June 29, 2022 from Rockland County Health Department by Elizabeth Mello.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application seeks area or bulk variances for construction or expansion of primary, or accessory or appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls; this application is exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (9); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn went home before the vote.

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TOWN CLERK'S OFFICE

Donald Brenner testified that he has the same argument about parking for this lot as for the other lot ( Lot 13-heard by the ZBA at this same meeting); that downtown Pearl River has municipal lots for public use; that there are two municipal lots within easy walking distance of the restaurant; that this portion of the restaurant use to be "Steve's Diner"; that it is a one-story structure; that the smoking area for the restaurant is behind it; and four outdoor tables are partially on this lot because of the distance required between tables; that although the building inspector refers to a second floor requirement for parking, there is no second floor on this building; that the parking requirement for this premises is 33 spaces; that the fences in the rear of the building exist on this lot also (similarly to Lot 13); that adding the parking together for both lots (Lot 13 and this Lot 14) is 129 spaces for both lots which is marked on page 2 of the plans.

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 rear yard, Section 3.11, Column 7 #1 Outdoor dining and sales and Section 3.11 Column 6 parking variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. This is an established business in downtown Pearl River that struggled to survive during COVID; the building was built in 1928 and there are two municipal lots within five hundred and one thousand feet of the establishment, which history has shown to be sufficient, and the business has been in operation for 21 years. The COVID virus changed the world in many ways, introducing the public to outdoor dining is just one; and the applicant is requesting to be able to accommodate his clientele that enjoys outdoor dining.
2. The Board acknowledged the eight-foot fence on the two-foot stone wall behind the building that is shown on the drawing sheet 2 of 2 and was mentioned in the e-mail from Building Inspector Rick Oliver to Deputy Town Attorney Sullivan (which e-mail was received just prior to the meeting) and also acknowledged the 11- or 12-foot fence that was not mentioned on the east side at the rear of the property. There was testimony that these fences have existed for some time and are necessary to protect all of the televisions that are outside in this area from theft when the restaurant is closed.
3. The Board overrode comments #1 and #2 of the Rockland County Department of Planning letter dated June 24, 2022 because none of these conditions were self-created by the applicant (i.e. COVID, 1928 building).

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2022 JUN 24 11:10 AM  
TOWN OF ORANGE



4. The requested rear yard, Section 3.11, Column 7 #1 Outdoor dining and sales and Section 3.11 Column 6 parking variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
6. The requested rear yard, Section 3.11, Column 7 #1 Outdoor dining and sales and Section 3.11 Column 6 parking variances although 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. This is an established business in downtown Pearl River that struggled to survive during COVID; the building was built in 1928, however there are two municipal lots within five hundred and one thousand feet of the establishment, which history has shown to be sufficient, and the business has been in operation for 21 years. The COVID virus changed the world in many ways, introducing the public to outdoor dining is just one; and the applicant is requesting to be able to accommodate his clientele that enjoys outdoor dining.
7. 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 variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED to override the Rockland County Department of Planning Comments #1 and #2 contained in the June 24, 2022 letter to the ZBA and that the application for the requested rear yard, Section 3.11, Column 7 #1 Outdoor dining and sales and Section 3.11 Column 6 parking variances are APPROVED with 33 spaces (26 +5+2 based upon 2590 interior sf\_ 520 smoking area sf + 238 outdoor sf) being the total amount of spaces 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.

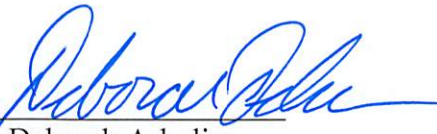
(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown 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.

The foregoing resolution to override Rockland County Department of Planning comments #1 and #2 contained in their June 24, 2022 letter to the ZBA and approve the application for the requested rear yard, Section 3.11, Column 7 #1 Outdoor dining and sales and Section 3.11 Column 6 parking variances are APPROVED; was presented and moved by Mr. Bosco, seconded by Mr. Valentine and carried as follows: Ms. Castelli, aye, Mr. Bosco, aye; Mr. Valentine, aye, Mr. Bonomolo, aye; and Mr. Sullivan, aye. Mr. Quinn went home prior to the vote.

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: July 6, 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 OF ORANGETOWN  
2022 JUL 15 P 12:10  
TOWN CLERK'S OFFICE

**USE VARIANCE RE-AFFIRMED FROM ZBA#95-66: USE VARIANCES RUN WITH THE LAND AND SHOULD NOT BE CONDITIONED TO THE PRESENT OWNER**

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

ZBA #22-46  
Date: July 6, 2022  
Permit #ZON-000204-2022

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-46: Application of Safe N Sound Childcare for renewals of a Special Permit that was granted in ZBA #05-33, ZBA #19-102, ZBA #95-66, ZBA 98-91; for operation of a Day Care Center at 249 North Middletown Road, Pearl River, NY. and identified on the Orangetown Tax Map as Section 68.12, Block 3, Lot 27; in the CO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, July 6, 2022 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney and Sean Quinn appeared and testified.

The following documents were presented:

1. Plans labeled "Site Development Plan for Safe-N-Sound Child Care" dated January 5, 2022 signed and sealed by Jay A. Greenwell, L.S.. (2 pages).
2. ZBA Decision #95-66 dated October 18, 1995; ZBA#19-102 dated November 20, 2019; ZBA#05-33 dated April 20, 2005;
3. A letter dated June 23, 2022 from Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
4. A letter dated June 9, 2022 from Rockland County Highway Department signed by Dyan Rajasingham, Engineer III.
5. A letter dated June 29, 2022 from Rockland County Center for Environmental Health signed by Elizabeth Mello, P.E., Senior Public Health Engineer.
6. A sign-off dated June 29, 2022 from Rockland County Health Department, and from NYSDOT same date.

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, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that since the Planning Board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or did not object to the Planning Board acting as Lead Agency for these applications, pursuant to coordinated review under the State Environmental Quality Review Act Regulations § 617.6 (b)(3); and since the Planning conducted SEQRA reviews and, on April 13, 2022 (as set forth in PB #20-13) rendered environmental determinations of no significant adverse environmental impacts to result from the proposed land use actions (i.e. a "Negative Declarations" of "Neg Dec."), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulations § 617.6 (b)(3). The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn went home before the vote.

TOWN CLERK'S OFFICE  
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Donald Brenner, Attorney, testified that this property was granted a use variance in ZBA #95-66 and that use variances run with the land; that they should not be conditioned with a special permit; that they do have a special permit that is in effect until 2027; that the applicant is building a new building at a cost of four million dollars; that no bank will give a loan for building based on a special permit that must be renewed every five years; that the condition that was placed on the use variance was improper and would not hold up in court; that recently a case came down Index 8972 that also stated that a use variance cannot have a personal use put on it; that time and ownership are not enforceable.

Denise Sullivan, Deputy Town Attorney, stated that she discussed this case with Town Attorney, Robert Magrino and they are in agreement with applicant's attorney; that a use variance was granted in ZBA #95-66 and the conditions placed on it are not enforceable.

Public Comment:

Christina Orfanoudakis, 129 East Lewis Avenue, Pearl River, testified that she is concerned if this use continues by new owners, that it continues as a daycare; that it has been referred to as a school and she would like to know if it will remain a daycare or if it will be a school; and that she would like to know the number of staff; and who would have access to the emergency access on East Lewis Avenue; and flooding is a concern.

Irene Spadaccini, 168 East Lewis Avenue, Pearl River, testified that she agrees with her neighbor and what she is concerned about and asked for clarification concerning the emergency access on East Lewis.

Vincentia Dondero, 93 East Lewis Avenue, Pearl River, agrees with the concerns already expressed and asked about hours of operation for the daycare.

Sean Quinn, Applicant, testified that the Pearl River Fire Department wanted the emergency access from East Lewis and they will have the key for access; that the daycare shall operate Monday through Friday from 7a.m. to 6 p.m.; that there will be 20 staff and 128 kids.

Donald Brenner, testified that the Planning Board already did SEQRA and that there will be no discharge from the property; that the basins will collect the overflow and everything will be directed into storm drains; and that the ages of the children at the center will be infants to pre-k.

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 Mr. Bonomolo and carried unanimously.

TOWN OF ORANGETOWN  
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TOWN CLERK'S OFFICE

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 use variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The Board acknowledged the flaws in ZBA decision #95-66 and removed the conditions that were improperly added to the granting of the use variance, acknowledging that use variances are granted to the land and not the property owner, and noted that this facility has operated on this lot for 35 years.
2. The requested use variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. . The Board acknowledged the flaws in ZBA decision #95-66 and removed the conditions that were improperly added to the granting of the use variance, acknowledging that use variances are granted to the land and not the property owner, and noted that this facility has operated on this lot for 35 years.
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 use 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. . The Board acknowledged the flaws in ZBA decision #95-66 and removed the conditions that were improperly added to the granting of the use variance, acknowledging that use variances are granted to the land and not the property owner, and noted that this facility has operated on this lot for 35 years.
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.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested reaffirmation of the use 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.

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APPROVED  
JUL 12 2022  
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(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

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

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

The foregoing resolution to approve the application for the requested reaffirmation of the use variance is APPROVED; was presented and moved by Mr. Sullivan, seconded by Ms. Castelli and carried as follows: Mr. Valentine, aye; Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Quinn went home before the vote.

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: July 6, 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-Dave

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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TOWN OF ORANGETOWN

**FRONT YARD, SIDE YARD, TOTAL SIDE YARD AND REAR YARD VARIANCES  
APPROVED: 3' SIDE YARD FOR EMERGENCY GENERATOR**

To: Ryan Nasher (Tappan Fire)  
232 North Main Street  
New City, New York 10956

ZBA #22-47  
Date: July 6, 2022  
Permit #BLDC-604-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-47: Application of Tappan Fire District for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, CS District, Section 3.12, Group GG, Column 8 (Front Yard: 100' required, 45' proposed), 9 (Side Yard: 100' required, 12' proposed) and 10 (Total Side Yard: 200' required, 79' proposed) and 11 (Rear Yard: 100' required, 5' proposed) for a new firehouse. The property is located at 135 Washington Street, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.11, Block 3, Lot 4 in the CS zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, July 6, 2022 at which time the Board made the determination hereinafter set forth.

Mr. Quinn recused himself from the application as he is a member of the Board of the Tappan Fire District, left the podium and the room.

Robert Ortman, and Ray Slavin, Commissioners Fire District, Jeff Sendewski, Architect, Ryan Nasher, P.E., and Jerome Jefferson, Attorney for the Fire District, appeared and testified.

The following documents were presented:

1. Plans labeled "Tappan Fire District Site Plan" dated February 28, 2022 with the revision dated March 28, 2022 signed and sealed by John R. Atzl, L.S., and Ryan A. Nasher, PE., (5 pages).
2. Planning Board Decision #22-22 dated May 11, 2022.
3. A cover letter dated March 28, 2022 with a revision dated May 4, 2022 from Atzl, Nasher & Zigler P.C.
4. A letter dated March 16, 2022 from Rick Oliver, Deputy Building Inspector.
5. A letter dated January 11, 2022 from Sara McIvor, Historic Preservation Technical Specialist, Parks, Recreation, and Historic Preservation .
6. A letter dated June 22, 2022 from Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
7. A letter dated June 29, 2022 from Rockland County Center of Environmental Health signed by Elizabeth Mello, P.E., Senior Public Health Engineer.
8. A letter dated June 22, 2022 from Rockland County Sewer District No.1 signed by Joseph LaFiandra, Engineer II.
9. A sign-off dated June 29, 2022 from Rockland County Health Department.
10. A letter addressed to the Zoning Board from Tappan Fire District's engineers dated June 27, 2022 responding to the letter dated June 22, 2022 from Rockland County 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, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that since the Planning Board noticed its intent to declare itself Lead Agency and distributed that notice of intention to all Involved Agencies, including the ZBA who consented or did not object to the Planning Board acting as Lead Agency for these applications, pursuant to coordinated review under the State Environmental Quality Review Act Regulations § 617.6 (b)(3); and since the Planning conducted SEQRA reviews and, on May 11, 2022 (as set forth in PB #22-06) rendered environmental determinations of no significant adverse environmental impacts to result from the proposed land use actions (i.e. a "Negative Declarations" of "Neg Dec."), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to SEQRA Regulations § 617.6 (b)(3). The motion was seconded by Ms. Castelli and

carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn had previously recused himself from the application review.

Ryan Nasher testified the applicant has appeared before the Planning Board and received a preliminary approval and a neg dec for SEQRA; that the Planning Board referred then to the Zoning Board for the requested variances; and that they are scheduled for meeting with the Historic Board and Architectural Review Board after this; that the parking calculations for 38 spaces required would be necessary for a retail shop but not for the proposed use; that the Fire District can use the property at the association building at 123 Washington Street, Tappan, for parking; that the existing building on 123 Washington Street, Tappan, cannot be retro-fitted for the new trucks; that they have tried and that will not work; that they need this size building to accommodate the new trucks, (including a ladder truck) all their gear and new offices, bathrooms and gear cleaning areas. That they require 38'9" for the new truck. He agreed that the lighting would be reduced to 0.1 lumens.

Public Comment:

Brian Clarke, 12 Washington Lane, Tappan, testified that he and his wife have owned their home for 14 years; that they have three kids; that he is a civil engineer; that he apologizes for not getting involved sooner; that this moves the firehouse into his home; that presently it is 375 feet from his house, as proposed it will be 80 feet; that it will be 50 feet to the trampoline in his back yard and 30 feet to the back yard; that the increase in size to three bays increases the decibels of the trucks; that it nice that the light lumines were reduced to .1; that the parking is deficient by 66%; that the airhorn scares people and animals; that it will be 27 steps from his home; that the ZBA should protect homeowners; that this is not Queens; that access to the park will be changes; that this will make his home unlivable and unsellable; and he will have to seek legal counsel.

Karl Ackermann, 159 East Central Avenue, Pearl River, testified that he does not understand why they would not add onto their substation, that they have plenty of property there.

Ryan Nasher, P.E., testified that there will be access to the park; that they have no problem installing a natural sound barrier and plenty of vegetation; that the fencing is facing East; that the back of the building will have plantings; that the generator will be located on the East side of the building; that they will install a vegetative sound barrier for the neighbor; that adding onto the substation does not fix any problems because it is over the tracks; that the applicant did review the possibility of using the substation; and that they cannot modify 123 Washington Street, Tappan, NY to accept the modern trucks and the building is very cramped right now; and they are proposing the three bays for the future.

Ray Slavin, Commissioner Tappan Fire District stated that some of the trucks are 45 and 48 years old; that the ladder pumper trucks are seventy five feet ; that they need to have equipment on both sides of the tracks; that moving next door to this site solves the problem of having a building large enough to house the new trucks and the equipment needed; that the air horn can be turned toward the East to address the neighbor's concern; that they cannot move the proposed building to the West of the site because they will be in the flood plain of he creek; that they can screen the property in the Southeast side for the neighbor; that Tuesday night training will take place at 123 Washington Street and 125 Washington Street; that the Fire District has a total of three (3) lots for parking in the area; that they are always hoping to recruit new firemen; that as older members retire, they get new members ; that they will keep the van and the antique truck and replace two existing firetrucks for two new firetrucks; and that they need to keep the building where it is because of the turning radius off of Washington Street into the lot and staying out of the road.

Jeff Sendlenski, Architect, testified that the front depth access is for fire safety; that the building meets DOT standards for clearance; that the Firefighter's gear between the trucks are at a specified distance; that safety gear orders are off the floor; that the direction of the air horn could be changed; that the radio room houses controls must be in the new fire house; and he opened

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floor plans to show the Board; that the second floor space is the manager facility for fire commissioners, secretary, treasurer and district officers; that the office at the Western Highway location was made out of a closet; that the constraints on the site must be taken into consideration; that the distance from the road is required for the turning radius and the PRC committee moved it onto the Planning Board after they were satisfied that trucks would not be blocking Washington Street; that the minimum the firehouse can be is 65' deep by 50' wide; that the trucks require 3,300 sq. ft.; that the additional 2,166 sq. ft. is the bare minimum for code egress and restrooms; that they didn't expand the first floor and kept the program items on the second floor because of the constraints of the site; and that the area above the truck bays is open and does not contain any rooms on the second floor. That there is 3250 sf for trucks and 2166 sf for 1<sup>st</sup> floor administrative offices, bathrooms, etc. and a 2<sup>nd</sup> floor meeting room.

Jerome Jefferson, 139 Lafayette Avenue, Suffern NY Attorney for the Fire District, testified that the Volunteer Fire Association of Tappan (VFAT) owns the building at 123 Washington Street, Tappan and the Fire District charges them rent; that the Fire District is funded with taxpayer money and the Fire District would prefer to not pay rent and use their own building; that as a non-profit corporation, we can put it in our own building and not worry about how much the VFAT could raise the rent.

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 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, total side yard, and rear yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The Board acknowledged the need of the Fire District to update their trucks for the safety of the community they serve and that the building at 123 Washington Street, Tappan, is not able to be retrofitted for the new larger trucks. The Volunteer Tappan Fire Association of Tappan owns the building at 123 Washington Street, Tappan, and the Tappan Fire District owns the property at 135 Washington Street, Tappan, and moving to this site will enable the District to build a firehouse that holds the new firetrucks and apparatus necessary to keep the District safe. The rear yard variance is necessary because of the required length of the bays for the new apparatus and it allows the trucks the proper turning radius to get into the lot without blocking Washington Street. The side yard and total side yard variances are necessary in order to keep the building out of the flood plain. The front yard variance is caused by the required size of the building in order to house the new fire trucks.
2. The Fire District has offered to turn the air horn to face North West. The Fire District has offered to install the emergency generator so that it exhausts to the North and to provide a vegetative barrier at the rear of the firehouse to accommodate the concerns of the neighbor at 12 Washington Lane and to help reduce noise.

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3. The requested front yard, side yard, total side yard and rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Board acknowledged the need of the Fire District to update their trucks for the safety of the community they serve and that the building at 123 Washington Street, Tappan, is not able to be retrofitted for new trucks. The Volunteer Tappan Fire Association of Tappan owns the building at 123 Washington Street, Tappan, and the Tappan Fire District owns the property at 135 Washington Street, Tappan. Moving to the property they own will enable the District to build a firehouse that holds the new firetrucks and apparatus necessary to keep the District safe. The rear yard variance is necessary because of the required length of the bays for the new apparatus and it allows the tucks the proper turning radius to get into the lot without blocking Washington Street. The side yard and total side yard variances are necessary in order to keep the building out of the flood plain. The front yard variance is caused by the required size of the building in order to house the new fire trucks.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
5. The requested front yard, side yard, total side yard and rear yard variances although 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. The Board acknowledged the need of the Fire District to update their trucks for the safety of the community they serve and that the building at 123 Washington Street, Tappan, is not able to be retrofitted for new trucks. The Volunteer Fire Association of Tappan owns 123 Washington Street, Tappan, and the Tappan Fire District owns 135 Washington Street, Tappan. Moving to the property they own will enable the District to build a firehouse that holds the new firetrucks and apparatus necessary to keep the District safe. The rear yard variance is necessary because of the required length of the bays for the new apparatus and it allows the tucks the proper turning radius to get into the lot without blocking Washington Street. The side yard and total side yard variances are necessary in order to keep the building out of the flood plain. The front yard variance is caused by the required size of the building in order to house the new fire trucks.
6. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

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, total 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.

The foregoing resolution to approve the application for the requested front yard, side yard, total side yard and rear yard variances are APPROVED; was presented and moved by Ms. Castelli, seconded by Mr. Bosco and carried as follows: Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Valentine, aye. Mr. Quinn recused himself as a member of the Fire District.

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: July 6, 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-M.M.

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

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**FRONT YARD VARIANCE APPROVED**

To: Erika Feinberg  
1 Gary Lane  
Orangeburg, New York 10962

ZBA #22-48  
Date: July 6, 2022  
Permit #BLDR-301-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-48: Application of Erika Feinberg for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, RG District, Section 3.12, Group Q, Column 8 (Front Yard: 25' required, 11.5' proposed) for a deck at an existing single-family residence with two front yards. The premises are located at 1 Gary Lane, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 74.14, Block 1, Lot 92 in the RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, July 6, 2022 at which time the Board made the determination hereinafter set forth.

Erika Feinberg appeared and testified.

The following documents were presented:

1. Copy of survey with deck drawn on it prepared by Erika Feinberg dated 6/1/2022.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (11), (12), (16) and/or (17); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; Ms. Castelli, aye; Mr. Valentine, aye. Mr. Quinn left prior to the motion.

Erika Feinberg testified that she applied for a permit to replace a deck and was issued the permit; and then she had the deck constructed; that when the building inspector came out he issued a "Stop Work Order" and stated that she needed a variance because she has two front yards and that is why she is before the Board; that she has a corner lot and two front yards.

Public Comment:

No public comment.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested front yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The Board acknowledged the corner lot and the two front yards and noted that similar decks have been constructed in the neighborhood.
2. The requested front yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Board acknowledged the undersized lot and noted that 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 variance 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. The Board acknowledged the undersized lot and noted that 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.

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

General Conditions:

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

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

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

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

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

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TOWN CLERK'S OFFICE

The foregoing resolution to approve the application for the requested front yard variance is APPROVED; was presented and moved by Mr. Bonomolo, seconded by Ms. Castelli and carried as follows: Mr. Valentine, aye; Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Quinn left prior to the motion.

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: July 6, 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-M.M.

TOWN CLERK  
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TOWN OF ORANGETOWN  
2022 JUL 15 P 12:09  
TOWN CLERK'S OFFICE

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

To: Karl Ackermann (Hoppe)  
159 E Central Avenue  
Pearl River, New York 10965

ZBA #22-49  
Date: July 6, 2022  
Permit #BLDR-1265-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-49: Application of Richard and Virginia Hoppe for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Section 3.12, Group M, Columns 9 (Side Yard: 15' required, 9'10" proposed), and 10 (Total Side Yard: 30' required, 25' 2" proposed) (Section 5.21 (c) undersized lot applies) for a deck at an existing single-family residence. The premises are located at 8 Cara Drive, Nanuet, New York and are identified on the Orangetown Tax Map as Section 64.18, Block 1, Lot 14 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, July 6, 2022 at which time the Board made the determination hereinafter set forth.

Karl Ackermann, Architect and Richard and Virginia Hoppe and appeared and testified.

The following documents were presented:

1. Plans labeled "Existing Wood Deck Variance /CO for Mr. & Mrs. Hoppe" dated May 10, 2022 signed and sealed by Karl Ackermann, Architect. (3 pages).
2. Copy of Survey dated September 1953 by H Dorfman, P.E. & L.S.

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

On advice of Denise Sullivan, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (11), (12), (16) and/or (17); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Valentine, aye; Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; and Ms. Castelli, aye. Mr. Quinn left prior to the motion.

Karl Ackermann, Architect, testified that the deck exists and was built in 2006 without a permit; that the side yard is encroached upon; that the lot is undersized and the deck also needs a total side yard variance; that the applicants are updating everything structurally and have paid the full fees for the permit to legalize the deck.

Mr. Hoppe testified that he has lived in the house for 58 years; that it was his family home; that the deck was built near a sliding a door for access to a patio area, and that the deck was built to Code in 2006.

Public Comment:

No public comment.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS:**

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

1. The requested side yard and total side yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The Board acknowledged the undersized lot and noted that similar decks have been constructed in the neighborhood.
2. The requested 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 Board acknowledged the undersized lot and noted that similar decks 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 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. The Board acknowledged the undersized lot and noted that similar decks 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.

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DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested side yard 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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The foregoing resolution to approve the application for the requested side yard and total side yard variances are APPROVED and the undersized lot is acknowledged; was presented and moved by Mr. Sullivan, seconded by Mr. Bosco and carried as follows: Mr. Valentine, aye; Mr. Bosco, aye; Mr. Bonomolo, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Quinn left prior to the vote.

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: July 6, 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-Ken

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