

MINUTES
ZONING BOARD OF APPEALS
November 2, 2022

MEMBERS PRESENT: DAN SULLIVAN, CHAIRMAN
MICHAEL BOSCO
ROBERT BONOMOLO, JR.
PATRICIA CASTELLI
THOMAS QUINN
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 Mr. Sullivan, Chairman.
Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

CONTINUED ITEM:

VERDICCHIO
137 Penn Court
Orangeburg, New York
74.17 / 1 / 74; R-22 zone

REAR YARD VARIANCE ZBA#22-68
APPROVED AS AMENDED

NEW ITEMS:

COMITO
656 Oak Tree Road
Palisades, New York
78.17 / 2 / 9; R-40 zone

FLOOR AREA RATIO ZBA#22-70
VARIANCE APPROVED

KENNEDY
8 Fern Oval East
Orangeburg, New York
74.09 / 2 / 12; R-15 zone

REAR YARD VARIANCE ZBA#22-71
APPROVED

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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.

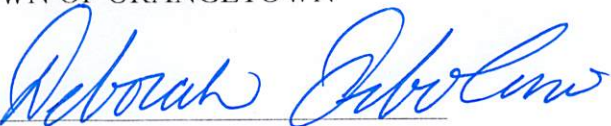
OTHER BUSINESS:

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: Moore & Mills Site Plan, Critical Environmental Area, 1083 South Route 9W, Nyack, NY 71.09 / 1 / 7; R-22 zone; Saint Thomas Aquinas Site Plan, 125 Route 340, Sparkill, NY 74.16 / 1 / 1; R-40 zoning district; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 8:00 P.M.

Dated: November 2, 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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5' REAR YARD or EDGE OF POOL, WHICHEVER IS LESS; VARIANCE APPROVED

To: Gerald Verdicchio
137 Penn Court
Orangeburg, New York 10962

ZBA #22-68
Date: October 19, 2022 & Nov. 2, 2022
Permit #BLDR-2667-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-68: Application of Gerald Verdicchio for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-22 District, Group I, Section 3.12, Column 9 (Rear Yard: 45' required, 0' existing : Applicant will adjust to 5' or edge of pool) for an existing deck and pool at an existing single-family residence. The premises are located at 137 Penn Court, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 74.17, Block 1, Lot 74; R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at Hearings held on the following Wednesdays, October 19, 2022 and November 2, 2022 at which time the Board made the determination hereinafter set forth.

At the October 19, 2022 hearing Gerald and Debra Verdicchio appeared and testified.

The following documents were presented:

1. Plans labeled "Survey of Property for Verdicchio" dated July 26, 2022 signed and sealed by Jay A. Greenwell, PLS. (1 page).
2. Violation Search Dated September 1999 with attachments, Legal Fee paid to Freeman, Loftus & Manley, two letters from neighbors in support of the application, invoice from Jay Greenwell PLS, LLC for survey, Bill from Liborio Derario, Architect, bill from Nordstrom Contracting and a uniform residential appraisal report with three pictures.
3. Two google maps pictures of the site.
4. Twelve color photographs of the site and the property to the rear of the lot.
5. A two-page letter that Debra Verdicchio read into the record.

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

At the hearing of October 19, 2022 and on advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulations §617.5 (c) (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. Sullivan, aye; Mr. Bonomolo, aye; and Ms. Castelli, aye. Mr. Quinn and Mr. Bosco were absent.

Gerald Verdicchio testified that they purchased their home in 2000 without any violations; that the pool and deck existed at the time and he submitted the violation search that was done at the time along with the legal fee paid to Freeman, Loftus & Manley, two letters from neighbors in support of the application, an invoice from Jay Greenwell PLS, LLC for survey, a bill from Liborio Derario, Architect, a bill from Nordstrom Contracting and a uniform residential appraisal report with three pictures. He also submitted twelve color photographs taken from different areas in the rear of the house to show the grade from the Subaru property to their house. He further stated that he has already cut the deck back to remove the portion that was on the Subaru property; that he maintains the Subaru property; that he is going to remove the horseshoe pit that is on their property and that he is recently retired from the Rockland County Sheriff's office after 30 years.

Debra Verdicchio read a two-page letter. "Good evening everyone, My name is Debbie Verdicchio and I currently reside at 137 Penn Court, Orangeburg, NY. My husband and I are her seeking permission to obtain a variance on an existing deck we have attached to our home. We purchased this home in February 2000 and have lived in the Town of Orangetown for almost 23 years. When we purchased this home both the top deck and the bottom deck surrounding the pool already existed which is noted on the appraisal. About 15 years ago we did some work and squared off the right corner of the bottom deck to create more space for lounge chairs and a fire pit. At that time, we did not realize two things, one that we would need a permit to extend an already existing deck and two that we were impeding on property that did not belong to us, had we known we certainly would have done things a lot differently. The property that we are impeding on is property that belongs to Subaru, but it is property that they do not use or cannot use (Note the drop off and area to my home). Although this property does not belong to us, we have taken care of it for over 20 years. We have paid to maintain the grass and the removal of dead or fallen trees and branches due to many storms we have had over those 20 years including Hurricane Sandy which cause many trees to fall and having to be removed for safety reasons. At no time were we trying to take over that property, but it did come to feel as our own over time due to how it is situated next to our existing property. We take full responsibility for extending the existing deck and never purposely tried to do anything wrong. Very honestly, we did not even know until we signed contracts on the sale of our home and it was brought to our attention. We have a wonderful couple that is buying our home and our backyard is something that they love and one of the reasons they are purchasing our home so getting this variance is extremely important to us. Since learning about this problem, we paid \$1,700.00 to have our property resurveyed, \$4,000.00 for an architect to sign off on the structural soundness and safety of the deck and \$3,750.00 to have the deck cut back as per new survey plans. I truly hope that you will take all we have done and our apology into account and issue us the variance needed so that we may proceed with the sale of our home.

Dan Sullivan, Chairman, stated that the Board has never granted a zero-foot set back; that the applicant should have come to the Board prior to spending the money to cut the deck at 0'; that the Board may require more of the deck be removed; that they cannot speak to what the applicant has done on the Subaru property, as that that issue is between the applicant and Subaru.

Public Comment:

Dain Landon, General In-House Counsel for Subaru, testified that he was just made aware of this today; that they would like to work something out with the applicant.

Brendan Kenefic, purchaser for the house, testified that they would like to work something out with Subaru.

Debra Verdicchio asked for a continuance to the next hearing, November 2, 2022.

November 2, 2022

No new items were submitted for review prior to the hearing.

At the hearing a partial copy of the survey, not to scale, was submitted by Attorney Dominick Penzetta, Attorney for the buyers.

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Dominick Penzetta, Attorney and Gerald Verdicchio appeared and testified.

Dominick Penzetta, Attorney testified that he has permission from the owners attorney, Thomas Diviny, to represent both parties at this hearing; that they are proposing to remove an additional five feet from the pool deck to allow a five foot set back from the rear yard, which would allow room for maintenance of the deck; that the Verdicchio family purchased the property 22 years ago with the pool deck existing; that they originally understood that the a zero foot (0') setback would be acceptable to the ZBA; that they have maintained and used the property at the rear of the pool, that the original attorney did not due a good job explaining property lines; that they are willing to put money in escrow in order to move forward with the closing before the interest rates get too high; that there are two lines on the survey, the deeded line is darker and the lighter line is a filed map overlap as here are differences between the Subaru Subdivision Map and the Subdivision Map for the applicants/ subdivision; and that he would like to know when they can get a stamped decision.

Gerald Verdicchio testified that they bought the house this way; that the two lines on the survey are confusing; that he should have went to the lighter line and they went to the darker one.

Dan Sullivan, Chairman, stated that he appreciates the offer to remove the portion of the deck that is more than five feet from the property line; that the plan states the pool is 5.2' from the property line and the darker line, the deeded line, is the line that is being used.

Public Comment:

Dain Landon, General In-House Counsel for Subaru, testified that Subaru Distributor's would support a five-foot rear yard variance.

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 variance as modified to five-foot or the edge of the pool, whichever is less, will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The neighbor most affected by the granting of the rear yard variance is Subaru and their In-House Council testified that they support the five-foot rear yard setback. The applicant shall submit a revised survey showing exactly what portion of the deck will be removed and that the entire deck has a five-foot set back to the deeded property line.

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2. The requested rear yard variance as modified to five-foot or the edge of the pool, whichever is less, will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The neighbor most affected by the granting of the rear yard variance is Subaru and their In-House Council testified that they support the five-foot rear yard setback. The applicant shall submit a revised survey showing exactly what portion of the deck will be removed and that the entire deck has a five-foot set back to the deeded property line.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested rear yard variance, even as modified to five-foot or edge of the pool, is 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 neighbor most affected by the granting of the rear yard variance is Subaru and their In-House Council testified that they support the five-foot rear yard setback. The applicant shall submit a revised survey showing exactly what portion of the deck will be removed and that the entire deck has a five-foot set back to the deeded property line.
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 rear yard variance as modified to five-foot or edge of the pool, whichever is less, is APPROVED with the Specific Condition that a revised survey be submitted showing the portion of the deck extending more than five feet removed from the revised survey; 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.

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(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 rear yard variance as modified to five-foot rear yard or edge of pool, whichever is less; is APPROVED; was presented and moved by Mr. Sullivan, seconded by Mr. Quinn, and carried as follows: Mr. Bosco, aye; Mr. Valentine, aye; Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Quinn, aye. Mr. Bonomolo was absent.

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

DATED: November 2, 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 CLERK'S OFFICE
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FLOOR AREA RATIO VARIANCE APPROVED

To: Marc Comito
87 Sixth Avenue
Nyack, New York 10960

ZBA #22-70
Date: November 2, 2022
Permit #BLDR—2029-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-70: Application of Comito Homes LLC for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-40 District, Group E, Section 3.12, Column 4 (Floor Area Ratio: 15% permitted, 16.59% proposed) for a pool cabana at an existing single-family residence. The premises are located at 656 Oak Tree Road, Palisades, New York and are identified on the Orangetown Tax Map as Section 78.17, Block 2, Lot 9; R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, November 2, 2022 at which time the Board made the determination hereinafter set forth.

Marc Comito and Jay Greenwell, Land Surveyor, appeared and testified.

The following documents were presented:

1. Plans labeled "Comito Homes LLC 656 Oak Tree Road" dated September 9, 2022 signed and sealed by George Theodore Palladino, R.A. (2 pages).
2. Plans labeled "Amended Plot Plan with Pool and Cabana Comito 656 Oak Tree Road" dated 10/07/2021 with the latest revision date of 9/14/ 2022 signed and sealed by Jay A. Greenwell, L.S.

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. Valentine, aye; Ms. Castelli, aye; and Mr. Quinn, aye. Mr. Bonomolo was absent.

Jay Greenwell, Land Surveyor, testified that the dwelling was approved with a .146 floor area ratio; that the permitted floor area ratio is .15; that the owner knew that he wanted to install the pool and a small cabana behind it; that the lot is undersized for the R-40 zoning district; that they do not need any other area variances for the pool or the cabana; that the proposed cabana is 288 sq. ft.; that the cabana would be 16' x 18'; that it will have a powder room and storage area and a canopy area for seating; that the canopy area counts in the floor area ratio.

Marc Comito testified that they would be permitted 88 sq. ft. for the cabana, without needing a floor area ratio variance; and that they are over the permitted square footage by 200 sq. ft. and that the neighbors do not object.

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 floor area ratio variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The lot is undersized for the R-40 zoning district, and the proposed cabana is over the permitted floor area ratio by 200 sq. ft.; no other area variances are required to construct the 288 sq. ft. structure, which is a reasonable size for a pool cabana.
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. The lot is undersized for the R-40 zoning district, and the proposed cabana is over the permitted floor area ratio by 200 sq. ft.; no other area variances are required to construct the 288 sq. ft. structure, which is a reasonable size for a pool cabana.
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. The lot is undersized for the R-40 zoning district, and the proposed cabana is over the permitted floor area ratio by 200 sq. ft.; no other area variances are required to construct the 288 sq. ft. structure, which is a reasonable size for a pool cabana.
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 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.


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

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

DATED: November 2, 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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REAR YARD VARIANCE APPROVED

To: Phillip and Michelle Kennedy
8 Fern Oval East
Orangeburg, New York 10962

ZBA #22-71
Date: November 2, 2022
Permit #BLDR-1895-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-71: Application of Philip and Michelle Kennedy for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Group M, Section 3.12, Column 11 (Rear Yard: 35' required, 6.5' proposed) for a three seasons room at an existing single-family residence. The premises are located at 8 Fern Oval East, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 74.09, Block 2, Lot 12; R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, November 2, 2022 at which time the Board made the determination hereinafter set forth.

Phillip Kennedy appeared and testified.

The following documents were presented:

1. Surveying information used from Fabian C. Adler Associates on 10/31/68 survey with dimensions of dwelling taken by Joseph J. Moran, P.E., signed and sealed by Joseph John Moran., P.E. (1 page).
2. Drawing of he existing sunroom (two pages signed and sealed by Joseph J. Moran, P.E..
3. A letter dated September 13, 2022 signed by Joseph J. Moran, P.E..
4. Two letters in support of the application from abutting property owners.

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. Valentine, aye; Ms. Castelli, aye; and Mr. Quinn, aye. Mr. Bonomolo was absent.

Phillip Kennedy testified that they are selling the house and need to get a variance for the existing structure to move forward with the sale; that they purchased the house 26 years ago; that the 3 season room has existed at the location for decades; that he grew up in the house across the street at 5 Fern Oval; that he has lived on this block for 53 years; that the property has an odd triangular shape; that all of the houses on the block are situated a bit odd on the lots; and that he would appreciate it if the Board could grant him the variance.

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 rear yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The structure has existed in its present location for at least 26 years without incident and the property most affected by the variance is the old Rockland Psychiatric property, which currently owned by the Town.
2. The requested rear yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The structure has existed in its present location for at least 26 years without incident and the property most affected by the variance is the old Rockland Psychiatric property, which currently owned by the Town.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested rear yard variance although 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 structure has existed in its present location for at least 26 years without incident and the property most affected by the variance is the old Rockland Psychiatric property, which currently owned by the Town.
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
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DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested rear yard variance is APPROVED; and FURTHER RESOLVED that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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

TOWN OF ORANGETOWN
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TOWN CLERK'S OFFICE

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

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

DATED: November 2, 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

TOWN OF ORANGETOWN
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