

MINUTES
ZONING BOARD OF APPEALS
June 21, 2017



MEMBERS PRESENT: DAN SULLIVAN
PATRICIA CASTELLI
THOMAS QUINN
JOAN SALOMON
MICHAEL BOSCO
LEONARD FEROLDI, ALTERNATE

ABSENT: NONE

ALSO PRESENT: Dennis Michaels, Esq. Deputy Town Attorney
Ann Marie Ambrose, Official Stenographer
Deborah Arbolino, Administrative Aide

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 & POSTPONED ITEMS:

SUBARAU DISTRIBUTION CORP. 73.20 / 1 / 25; LIO zone	DECISION DEFERRED	ZBA#17-29
LIN 74.17 / 1 / 36; R-22 zone	WITHDRAWN	ZBA#17-34
KELLEHER SHED 73.05 / 1 / 71; R-40 zone	REAR YARD AND SIDE YARD FOR SHED APPROVED AS MODIFIED 15' SIDE YARD AND REAR YARD	ZBA#17-38

NEW ITEMS:

115 ROUTE 303 77.07 / 2 / 1; LO zone	SIGN AREA VARIANCE APPROVED	ZBA#17-44
AYERS 68.16 / 6 / 24; RG zone	FLOOR AREA RATIO, LOT WIDTH, SIDE YARD, TOTAL SIDE YARD, AND BUILDING HEIGHT VARIANCES APPROVED	ZBA#17-45
BOYKO 69.05 / 3 / 45; R-15 zone	SIDE YARD VARIANCE APPROVED	ZBA#17-46
PROJECT SYCAMORE DATA CENTER PERFORMANCE STANDARDS 73.08 / 1 / 1, 3 & 4; RPC-OP zone	APPROVED	ZBA#17-47
PROJECT SYCAMORE DATA CENTER FENCE 73.08 / 1 / 1, 3 & 4; RPC-OP zone	FENCE HEIGHT VARIANCE APPROVED	ZBA#17-48

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 applications: Hawks View Subdivision Lot 22.4, Critical Environmental Area, 290 & 298 South Boulevard, Upper Grandview, NY; 71.05 / 1 / 22.4; R-22 zone; HNA Training Center Site Plan, 334 Route 9W, Palisades, N.Y.; 78.13/ 1 / 1; CC zone; 17 Highview Avenue Parking Plan, 17 Highview Avenue, Orangeburg, NY 74.11 / 1 / 25; LI zoning district; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

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

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

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 11: 20 P.M.

Dated: June 21, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By Christian Catania
Christian Catania for
Deborah Arbolino, Administrative Aide

DISTRIBUTION:
APPLICANT
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
TOWN BOARD MEMBERS
BUILDING INSPECTOR (Individual Decisions)
Rockland County Planning



DECISION

APPLICATION WITHDRAWN BY MR. LIN

To: Andrew Lin
118 Constitution Drive
Orangeburg, New York 10962

ZBA #17-34
Date: June 21, 2017
Permit # 46035

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA # 17-34: Application of Andrew Lin for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-22 District, Table of General Use Regulations, Section 3.11, Column 5, #1 (No Fowl shall be kept, shall be penned or housed within 200' of any lotline nor shall any fowl be permitted to graze upon, pasture in or use that portion of any lot within 100 feet of any lot line) for an existing chicken coop located 5' from the side yard and 20' from the rear yard at an existing single-family residence. The premises are located at 118 Constitution Drive, Orangeburg, New York and are identified on the Orangetown Tax Map as Section 74.17, Block 1, Lot 36; in the R-22 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 21, 2017 at which time the Board made the determination hereinafter set forth.

Andrew Lin appeared and testified.

The following documents were presented:

1. Survey for Property at Nauraushaun dated 07/24/1967 last revision date 11/22/1972 not signed or sealed by John C. Hoffmann, L.S..
2. A picture of the existing chicken coop with a drawing of same.
3. Two letters in support of the application.

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

Dennis Michaels, Deputy Town Attorney, stated that the application is a USE variance and that the case for a use variance is very difficult and must meet all four of the stringent criteria for a use variance mandated by NYS Town Law.

Andrew Lin testified that he realizes that a use variance is very difficult but he paid his fees and wants to be heard; that he moved up here from Long Island 10 years ago; that his parents are working doctors; that having chickens were natural for him; that his mom gave him one, and he inherited a flock from a friend; that they are all dead because two weeks ago they were wiped out by a coyote; that he has two German Shepard's, one is a service dog and one is a hunter, that had they been out in the yard, they would have protected the flock; that fowl are even permitted in NYC; that it is legal to have road kill for his dogs; that this is something new he trying because it is supposed to be good for the dogs; that he tried to be considerate and gave the rooster away; and that he is withdrawing his application.



Public Comment:

Katrin Brainard, 64 Constitution Drive, Tappan, testified that she has a huge problem with the application, that two years ago there were a couple of chickens and then a rooster that never stopped crowing; that then they ballooned to over two dozen chickens and the hutch or coop was moved to within ten feet of her property; that the chicken poop stinks; that the noise was horrible and prevented use of her own yard.

Des Coomves, Constitution, testified that he lives right next door; that Mr. Lin has a dead deer hanging in the yard and is feeding his dogs the deer; that it is disgusting; that the chickens stink because no one ever cleaned up after them; that the dogs and chicken poop stinks and he says he wants goats; that Mr. Lin should move to the Catskills and have a farm; that this is a residential area and these animals should not be permitted.

Kimberly Wekerle, 22 Devon Drive, Orangeburg, testified that she is guest at her sister's house. 64 Constitution often, and the noise and smell from Mr. Lins' property are awful and prevent the enjoyment of her sister's backyard.

Vanessa Lapins, 659 Western Highway, testified that she has hens and they have reduced the ticks and mosquitoes on her property; that it is nice to know where your food comes from and it has been a positive experience for her family.

Cheryl McNeil, 56 Old Western Highway, testified that she has worked at the Library for 7 years and Mr. Lin is a regular at the Library and is a polite, kind, calm person; that she would like the Town Board to make it easier for people to have chickens and ducks; and handed documents to the Board; and that knowing where your food comes from is important.

Gail Kestenvaum, 168 Cowpens Drive, testified that she is on the corner of Constitution and she does not hear the chickens, that they have never bothered her and that the Lins[are wonderful neighbors and that they even give her eggs from the chickens.

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.



Lin Chickens & Coop
ZBA#17- 34
Page 3 of 3

Permit #46035

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

The application was withdrawn by Mr. Lin.

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

DATED: June 21, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By Christian Catania
Christian Catania for 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



DECISION

15' SIDE YARD AND 15' REAR YARD VARIANCES APPROVED WITH A SPECIFIC CONDITION

To: Matthew Kelleher
234 Gilbert Avenue
Pearl River, New York 10965

ZBA #17-38
Date: June 7, 2017 & June 21, 2017
Permit # 46247

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-38: Application of Matthew Kelleher for variances from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-40 District, Group E, Section 3.12, Columns 9 (Side Yard: 30' required 10' proposed) and from 11 (Rear Yard: 50' required, 10' proposed) for the installation of an accessory shed at an existing single family residence. The premises are located at 234 Gilbert Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 73.05, Block 1, Lot 71; in the R-40 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, June 7, 2017 and June 21, 2017 at which time the Board made the determination hereinafter set forth.

Matthew Kelleher appeared and testified.

The following documents were presented:

1. Site plan with the proposed shed drawn on it.
2. A copy of a picture of the proposed shed with detail pages attached.



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

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

Matthew Kelleher testified that his lot is undersized and he only has .74 acres; that in order to meet the requirements for the setbacks for the shed, he would have to have it set up against his garage; that the ten foot setback that he is suggesting is reasonable; that he has three small kids; that he does have a Rubbermaid shed that is portable and it is 7' x 7'; that his rear yard from his house is only 39.1'; that he has the shed positioned at an angle because it looks better that way; and that he does not know if he can give a 15' rear and a 15' side yard; and asked for a continuance until the June 21st meeting.

At the June 21, 2017 hearing Matthew Kelleher submitted revised plans showing the shed 15' from the rear and side yards and not positioned at an angle and five computer generated pictures of his rear yard.

Matthew Kelleher testified that he listened to the Boards suggestions can brought back



pictures of his back yard and side yard to show the Board why he would like to place the shed in that corner; that he has measured and he can move the shed to provide a 15' side and rear yard and it will not be installed at an angle; and that it is not a two car garage and he will not be parking cars in or near the shed.

Public Comment:

Salvatore Loccisano, 264 South Middletown Road, Pearl River, testified that this building looks more like a two-car garage; that it is being proposed right on the edge of the property and he has plenty of room on the other side of his property.

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 rear yard variances as modified to 15' setbacks, for an accessory shed, will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has changed the location and angle of the proposed shed and will provide a 15' rear and 15' side yard.
2. There shall not be any cars parked inside, or within five feet, of the proposed shed.
3. The requested side yard and rear yard variances as modified to 15' setbacks, for an accessory shed, will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has changed the location and angle of the proposed shed and will provide 15' rear yard and 15' side yard setbacks.
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 side yard and rear yard variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The applicant has changed the location and angle of the proposed shed and will provide 15' rear yard and 15' side yard setbacks.
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 variances.



DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested side yard and rear yard variances as modified to 15' rear yard and 15' side yard setbacks, for an accessory shed, are APPROVED with the Specific Condition that no cars shall be parked inside or within five feet, of the proposed shed; 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 side yard and rear yard variances as modified to 15' side yard and 15' rear yard setbacks, for an accessory shed, with the specific condition and that no cars shall be parked within five feet of the proposed shed and that no cars shall be parked inside of the shed; was presented and moved by Mr. Bosco, seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Mr. Bosco, aye; Mr. Quinn, aye ;Ms. Castelli, aye; and Ms. Salomon, aye.

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

DATED: June 7, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Christian Catania ^{By} Christie Catania
for Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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



DECISION

SIGN AREA VARIANCE APPROVED

To: Donald Brenner (115 Route 303)
4 Independence Avenue
Tappan, New York 10983

ZBA #17-44
Date: June 21, 2017
Permit #46279



FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-44: Application of 115 Route 303 LLC for variances from Chapter 43, Code of the Town of Orangetown (Zoning)LO District, Section 3.11 Group QQ, Column #5 Item #11 (Sign Area: 30 sq. ft. permitted, 254 sq. ft. proposed) for a monument sign and building mounted signs at a proposed self-storage business building. The premises are located at 115 Route 303, Tappan, New York and are identified on the Orangetown Tax Map as Section 77.07, Block 2, Lot 1; in the LO zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 21, 2017 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Nick Malagisi, Real Estate Consultant, Brian Donaghy, Owner, Frank Reif, Architect, appeared and testified.

The following documents were presented:

1. Site plan and proposed sign details dated May 5, 2016 with the latest revision date of April 20, 2017 signed and sealed by Frank G. Reif, Registered Architect.
2. A letter dated June 5, 2017 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
3. A letter dated May 26, 2017 from the Rockland County Highway Department signed by Joseph Arena, Senior Engineering Technician.
4. A letter dated June 7, 2017 from the Rockland County Drainage Agency, signed by Vincent Altieri, Executive Director.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination that the foregoing application 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) (7); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Ms. Castelli, aye; Ms. Salomon, aye; Mr. Sullivan, aye; Mr. Quinn, aye; Mr. Feroldi, aye; and Mr. Bosco, aye.

Donald Brenner, Attorney, testified that the history of the building is that, it was, for many years, used for light manufacturing; that it was not used to capacity for many years since the type of manufacturing that took place there, years ago, has left the country; that this Board granted the property a use variance for storage purposes; that the work performed on the building will be interior work; that the signage is necessary because the building is set back so far from the road and there is quite a bit of natural foliage along Route 303 and Kings Highway; that Rockland County Planning sent their usual letter of



denial for signage over the permitted size; that they did not look at this site; that the property and building is set much lower than the existing roads and the building is set back 350 feet from Route 303; that cars travel on Route 303 at 40 miles per hour; that a 30 sq. ft. sign would not be large enough to see and the facility would not be noticed until a car passed it; that turning around on Route 303 is dangerous and having sufficient signage is a safety issue.

Frank Reif, Architect, testified that the signage is a national brand and the signage is the logo; that it is copy righted and used on the front of the building by the offices and the further back by the area that renters would load and unload their belongings for storage; that the white channel letters fit into the red box 3' x 21' letters in a 7' x 7' box repeated twice on the building; that the facility is down a substantial driveway and they are proposing a third sign that would be placed 25' from the front property line and it would be a free standing sign that would be a drive under sign, free standing with two support stations and the sign in the middle above and this sign would be 30 sq. ft.; that the building is set back from the road about 350 feet and the average speed on Route 303 in that area is 40 miles per hour; and that these signs would allow drivers to locate the facility safely; that the letters on the entrance sign would be 1.9' on the entrance sign and 3' on the building signs; that the entrance sign will be 30 sq. ft.; and each of the building signs will be 63 sq. ft. and 49 sq. ft. and there will be security lights and down lights around the building.

Nick Malagasi, Real Estate Consultant, presented the Board with a google earth picture of the site, pointing out the vegetation surrounding the site; and testified that the neighboring property enjoys all clear street frontage; that the self-storage use is a retail use and at least 80% of the users will be residential customers; and 20% will be business owners; that the site is well suited for self-storage with sufficient height, great demographics but it is almost invisible from the road; that the sign will alleviate people driving past and having to turn around to get to the site; that Cube Smart is a top U.S Company with 6 to 8 people entering the site per hour; and security is very important for the business and there will be 24 hour video recorded security for the site.

Public Comment:

Mary Cardeanas, 66 Pine Tree Lane, Tappan testified that she is concerned about lighting and how bright it will be because of all the residences near the site.

Marge Giuliano, 283 Kings Highway, testified that she also has concerns regarding lighting and its impact on the houses nearby.

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 sign area variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The building is set back 350 feet from the road and is lower than the surrounding roads and the signage will be necessary to locate the business.
2. The Board voted to override modification #1 of the Rockland County Planning Department's NYS General Municipal Law (GML) letter, dated June 5, 2017, signed by Douglas J. Schuetz, Acting Commissioner of Planning, for the following reasons: (a) the building is set back from Route 303 approximately 350 feet; (b) the building is set at a much lower grade than Route 303; (c) the existing vegetation along Route 303 and Kings Highway is not being removed and is quite thick, camouflaging the building from the road; (d) the speed limit on Route 303 in front of the building is 40 miles per hour, and having clear signage will prevent traffic slowdowns because of searching for the facility, which could cause vehicle accidents.
3. The requested sign area variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The building is set back 350 feet from the road and is lower than the surrounding roads, and the signage will be necessary to locate the business.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
5. The requested sign area variance, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The building is set back 350 feet from the road and is lower than the surrounding roads, and the signage will be necessary to locate the business.
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 variances.





DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested sign area variance is APPROVED and to override modification #1 of the Rockland County Planning Department's NYS General Municipal Law (GML) letter, dated June 5, 2017, signed by Douglas J. Schuetz, Acting Commissioner of Planning for the following reasons: (a) the building is set back from Route 303 approximately 350 feet; (b) the building is set at a much lower grade than Route 303; (c) the existing vegetation along Route 303 and Kings Highway is not being removed and is quite thick, camouflaging the building from the road; (d) the speed limit on Route 303 in front of the building is 40 miles per hour, and having clear signage will prevent traffic slowdowns because of searching for the facility, which could cause vehicle accidents; 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 sign area variance and to override modification #1 of the Rockland County Planning Department's NYS General Municipal Law (GML) letter, dated June 5, 2017, for the aforementioned reasons; was presented and moved by Ms. Castelli, seconded by Ms. Salomon and carried as follows: Mr. Sullivan, aye; Mr. Bosco, aye; Mr. Quinn, aye; Ms. Castelli, aye; and Ms. Salomon, aye.

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

DATED: June 21, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By *Christian Catania* *for* Christian Catania
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



DECISION

FLOOR AREA RATIO, LOT WIDTH, SIDE YARD, TOTAL SIDE YARD, AND BUILDING HEIGHT VARIANCES APPROVED

To: Lawrence Ayers
~~679 Oak Tree Road~~
~~Palisades, New York 10964~~
130 E. Washington Ave., Pearl
River, NY 10965

ZBA #17-45
Date: June 21, 2017
Permit #46396



FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-45: Application of Lawrence Ayers for variances from Chapter 43, (Zoning) of the Code of the Town of Orangetown, RG District, Section 3.12 Group Q, Columns 4 (Floor Area Ratio: .30 permitted, .306 proposed), 5 (Lot Width: 75' required, 50' existing), 9 (Side Yard: 10' required, 8.8' proposed), 10 (Total Side Yard: 30' required, 19.4' proposed) and 12 (Building Height: 11.8' permitted, 24' proposed) for an addition to an existing single-family residence. The Premises are located at 130 E. Washington Avenue, Pearl River, New York and are identified on the Orangetown Tax Map as Section 68.16, Block 6, Lot 24 in the RG zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 21, 2017 at which time the Board made the determination hereinafter set forth.

Lawrence and Alece Ayers and Douglas Siebenaler, Architect, appeared and testified.

The following documents were presented:

1. Survey dated February 25, 2017 with the latest revision date of April 21, 2017 signed and sealed by Robert E. Sorace, P. L.S..
2. Architectural plans dated 4/10/2017 not signed or sealed by Douglas Siebenaler, Architect.
3. A letter dated June 7, 2017 from the County of Rockland Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.
4. A letter dated May 21, 2017 from the Rockland County Highway Department signed by Joseph Arena, Senior Engineering Technician.
5. A letter dated May 16, 2017 from the Rockland County Health Department signed by Scott McKane, P.E., Senior Public Health Engineer.
6. A letter dated May 25, 2017 from the Rockland County Sewer District #1 signed by Joseph LaFiandra, Engineer II.
7. Three letter in support of the application.

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

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

Douglas Sibenaler, architect, testified that the existing structure is very small and has only two very small bedrooms; that they are proposing to bump out in the rear of the house and the front of the house; that they are not going to change the side or total side yard setbacks; that the lot is very narrow; and the garage is an existing non-conforming structure that is not changing.



Alece Ayers testified that they purchased the house in 2004 before they had children, that they have four children now and have outgrown the space; that they love the neighborhood and want to expand the house for their family.

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 floor area ratio, lot width, side yard, total side yard and building height variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The lot width, side yard and total side yard conditions exist as proposed, and no changes are proposed for these items; a second floor is being proposed for the existing house and an addition to the front and rear of the structure. Similar additions have been constructed in the area.
2. The requested floor area ratio, lot width, side yard, total side yard and building height variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The lot width, side yard and total side yard conditions exist as proposed, and no changes are proposed for these items; a second floor is being proposed for the existing house and an addition to the front and rear of the structure. Similar additions have been constructed in the area.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.
4. The requested floor area ratio, lot width, side yard, total side yard and building height variances, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The lot width, side yard and total side yard conditions exist as proposed, and no changes are proposed for these items; a second floor is being proposed for the existing house and an addition to the front and rear of the structure. Similar additions have been constructed in the area.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.



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

General Conditions:

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

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

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

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

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

The foregoing resolution to approve the application for the requested floor area ratio, lot width, side yard, total side yard and building height variances was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Mr. Bosco, aye; Mr. Quinn, aye; Ms. Castelli, aye; and Ms. Salomon, aye.

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

DATED: June 21, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By Christian Catania
Christian Catania Deborah Arbolino
for Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR-R.A.O.

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



DECISION

SIDE YARD VARIANCE APPROVED

To: Lou Sagula (Boyko)
P.O. Box 211
Nanuet, New York 10954

ZBA #17-46
Date: June 21, 2017
Permit # 46338



FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#17-46: Application of Michael Boyko for a variance from Chapter 43 (Zoning) of the Code of the Town of Orangetown, R-15 District, Section 3.12, Group M, Column 9 (Side Yard: 20' required, 13.10' proposed) for an addition to at an existing single-family residence. The Premises are located at 52 Lang Terrace, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.05, Block 3, Lot 45 in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 21, 2017 at which time the Board made the determination hereinafter set forth.

Michael Boyko, and Lou Sagula, Contractor, appeared and testified.

The following documents were presented:

1. Architectural plans dated March 5, 2013 with the latest revision date of March 1, 2017 signed and sealed by Robert Hoene, Registered Architect.

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

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

Michael Boyko testified that they are proposing to remove and existing attached garage and replace it with a suite for his mother-in-law; that his father –in-law passed away in October and his mother-in-law has been living with them since; that they are proposing to construct a bedroom, full bathroom, wet bar and living room with a separate entrance for her that she will be able to have some privacy but also enter into the house from her private space.



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 side yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The lot is narrow, and similar additions have been constructed in the neighborhood.
2. The proposed new in-law suite will not have a kitchen.
3. The requested side yard variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The lot is narrow and similar additions have been constructed in the neighborhood.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
5. The requested side yard variance, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The lot is narrow and similar additions have been constructed in the neighborhood.
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 variances.



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

General Conditions:

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

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

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

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

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

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

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

DATED: June 21, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By Christian Catania
Christian Catania *for* *Deborah Arbolino*
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



DECISION

**CONFORMANCE TO PERFORMANCE STANDARDS AND FENCE HEIGHT
VARIANCE APPROVED**

To: Brian Quinn (Sycamore Data Center)
Montalbano, Condon & Frank P.C.
67 North Main Street
New City, New York 10956

ZBA #17-47 & #17-48
Date: June 21, 2017
Permit #46407



FROM: ZONING BOARD OF APPEALS of the Town of Orangetown

ZBA #17-47: Application of Project Sycamore Data Center requesting the Zoning Board of Appeals' review, and determination, of conformance with the Town of Orangetown Zoning Code's (Orangetown Code Chapter 43), Section 4.1, Performance Standards, for generators at the proposed Data Center; and

ZBA #17-48: Application for an area variance from Orangetown Code Chapter 43, RPC-OP District, Attachment 17A, refers to Section 5.226, Fences & Walls -- A fence over six- feet in height must be setback from the lot line a distance equal to 2/3 its height -- an 8' fence is proposed at the property line.

The proposed Data Center will be located at Third Avenue and Convent Road, Orangeburg, New York, and is identified on the Orangetown Tax Map as Section 73.08, Block 1, Lots 1, 3 & 4 in the RPC-OP Zoning District.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, June 21, 2017, at which time the Board made the determination hereinafter set forth.

Brian Quinn, Attorney, Jacob Raketich, Architect, Ed Hesselbacher, Project Manager, J.P. Morgan Chase, and Robert John Foley, P.E., appeared and testified.

The following documents were presented:

1. Project Sycamore Data Center Site Plan, C001: Cover Sheet; C100: Overall Site Plan; C101: Construction Details dated 05/16/2017 signed and sealed by Robert John Foley, P.E..
2. Resume of Operations and Equipment dated 06/18/2017.
3. Fire Prevention Supplement.
4. A letter dated June 20, 2017 from Joseph Moran, P.E., Commissioner, Department of Environmental Management and Engineering, Town of Orangetown.
5. A memorandum dated June 5, 2017, from Michael B. Bettmann, Chief Fire Inspector, Town of Orangetown.
6. A letter dated June 19, 2017 from Douglas J. Schuetz, Commissioner of Planning, Rockland County Department of Planning.
7. A letter dated June 6, 2017 from Joseph Arena, Senior Engineering Technician, Rockland County Highway Department.

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

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination, based upon the testimony heard by this Board and the facts as presented in the application submissions and in the record, that since the Performance Standards conformance application entails the ZBA engaging in a review to determine compliance with technical requirements, this application is a Type II action exempt from the State Environmental Quality Review Act (SEQRA), pursuant to SEQRA Regulation §617.5(c)(28); which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Feroldi, aye; Mr. Sullivan, aye; Ms. Salomon, aye; Mr. Quinn, aye; and Ms. Castelli, aye.

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 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 Regulation §617.5(c)(7), which does not require SEQRA environmental review. The motion was seconded by Ms. Castelli and carried as follows: Mr. Feroldi, aye; Ms. Castelli, aye; Mr. Quinn, aye; Mr. Sullivan, aye; Ms. Salomon, aye; and Mr. Bosco, aye.

Brian Quinn, Attorney, testified that they are proposing a data center for JP Morgan Chase on 61 acres of property at the old Rockland State Hospital site; that the property will be from Oak Street along Convent Road southwest to Third Avenue and east to First Avenue and to Second Avenue and the old abandoned Catholic Church; that Broad Acre Golf entrance will be south to Oak and First with new access easement and a better entrance; that there are 30 buildings on 61 acres that will be demolished and asbestos will be remediated; that this property was previously zoned R-80 but it would be too costly a clean up to make it profitable to build houses in the R-80 zoning district; that the Town Board rezoned the are to RCPOP designed to accommodate data centers similar to the Bloomberg Data Center; that this center will employ about 30 employees in o 24 hour/ seven days a week operation; with much traffic increase; and that they know that Data Centers require 8' fences for security purposes but did not adjust the code to include them and that tit why they need the fence height variance; that the project will go back before the Planning Board on June 28 for final approval; and that they would request an over-ride of # 3 of the Rockland County Planning letter dated June 19, 2017 because the generators are within sound attenuation enclosures specified for generator that will limit noise to a maximum of 55dBA at 23 feet from enclosure and the enclosures will be surrounded by screen walls.

Jacob Raketich, Architect, testified that the construction will be done in phase construction; that there will be 24 generators with pump refrigerant; that the 8 foot fence is a requirement for Data Centers because of security; that the facility will have personal financial information for thousands and more commercial transactions; that security is extremely important; that the ten foot fence for the substation is set far enough in on the property that no variance is needed for it.

Public Comment:

No public comment.

The Board reviewed the Performance Standards and Fire Supplement forms.

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

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

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

**FINDINGS OF FACT AND CONCLUSIONS FOR PERFORMANCE STANDARDS
CONFORMANCE APPLICATION ZBA #17-47:**

After personal observation of the property, hearing all the testimony, and reviewing all of the documents submitted, the Board found and concluded that:

Based upon the information contained in the applicant's Resume of Operations and Equipment and the Fire Prevention Supplement; the report dated June 20, 2017, from Joseph J. Moran, P.E., Commissioner of the Orangetown Department of Environmental Management and Engineering (D.E.M.E.); the report dated June 5, 2017, from Michael B. Bettmann, Chief Fire Inspector, Town of Orangetown Bureau of Fire Prevention (B.F.P.); and the NYS General Municipal Law (GML) letter, dated June 19, 2017, from Douglas Schuetz, Rockland County Department of



Planning; the other documents submitted to the Board, and the testimony of Applicant's representatives, the Board finds and concludes that the application conforms with the Performance Standards set forth in Zoning Code Section 4.1, subject to compliance with the orders, rules and regulations of the Orangetown Office of Building, Zoning & Planning Administration & Enforcement, D.E.M.E., and B.F.P., and all other departments having jurisdiction of the premises.

DECISION: In view of the foregoing, and the testimony and documents submitted, the Board RESOLVED that the Application for Performance Standards Conformance, pursuant to Zoning Code §4.1, is APPROVED, with the following SPECIFIC CONDITIONS (1) the report dated June 20, 2017, from Joseph J. Moran, P.E., Commissioner of D.E.M.E., (2) the report dated June 5, 2017, from Michael B. Bettmann, Chief Fire Inspector, B.F.P., and (3) the NYS General Municipal Law (GML) letter, dated June 19, 2017, from the Rockland County Department of Planning (except for Modification #3, which the Board voted to override, because the generators are within sound attenuation enclosures specified for generators that will limit the noise to a maximum of 55 decibels at 23 feet away from the enclosures, and the enclosures will be surrounded by screening walls), shall all be complied with; 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.

FINDINGS OF FACT AND CONCLUSIONS FOR FENCE HEIGHT APPLICATION ZBA #17-48:

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 fence height variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Similar height fences have been approved for data centers in the area.
2. The requested fence height variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Similar height fences have been approved for data centers in the area.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested fence height variance, although somewhat substantial, afford benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. Similar height fences have been approved for data centers in the area.

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

General Conditions:

- (i) The approval of any variance, Special Permit or Performance Standards conformance 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, Special Permit or Performance Standards conformance by the Board is limited to the specific variance, Special Permit or Performance Standards conformance 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, Special Permit or Performance Standards conformance 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, Special Permit or Performance Standards conformance approval will lapse if any contemplated construction of the project or any use for which the variance, Special Permit or Performance Standards conformance 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 Sycamore Data Center 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 conformance to Performance Standards with the following conditions: (1) the report dated June 20, 2017, from Joseph J. Moran, P.E., Commissioner of D.E.M.E., (2) the report dated June 5, 2017, from Michael B. Bettmann, Chief Fire Inspector, B.F.P., and (3) the NYS General Municipal Law (GML) letter, dated June 19, 2017, from the Rockland County Department of Planning (except for Modification #3, which the Board voted to override, because the generators are within sound attenuation enclosures specified for generators that will limit the noise to a maximum of 55 decibels at 23 feet away from the enclosures, and the enclosures will be surrounded by screening walls), shall be complied with; was presented and moved by Mr. Sullivan, seconded by Ms. Salomon and carried as follows: Mr. Quinn, aye; Mr. Salomon, aye; Mr. Bosco, aye; Mr. Sullivan, aye; and Ms. Castelli, aye.

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

DATED: June 21, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By Christian Cataná
Christian Cataná for Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
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FILE,ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

