

MINUTES
ZONING BOARD OF APPEALS
April 18, 2018

MEMBERS PRESENT: JOAN SALOMON
PATRICIA CASTELLI, ACTING CHAIR
THOMAS QUINN
LEONARD FEROLDI, ALTERNATE

ABSENT: DAN SULLIVAN
MICHAEL BOSCO

ALSO PRESENT: Ann Marie Ambrose, Official Stenographer
Deborah Arbolino, Administrative Assistant
Denise Sullivan, Deputy Town Attorney

This meeting was called to order at 7: 00 P.M. by Ms. Castelli, Acting Chair.
Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

MC MAHON
2 Sickletown Road
Pearl River, NY
69.19 / 1 / 30; R-15 zone

SIDE YARD
VARIANCE APPROVED

ZBA#18-21

SMITH
90 Rockland Road
Sparkill, NY
78.05 / 1 / 39; R-80 zone

FLOOR AREA RATIO,
UNDERSIZED LOT SIDE YARD
AND TOTAL SIDE YARD APPROVED
APPLICANT REMOVED THE DETACHED
GARAGE FROM THIS APPLICATION

ZBA#18-22

OTHER BUSINESS:

ZBA#02-105: John J. Loughran: 314 Orangeburg Road (69.17 / 4 / 4; R-15 zone): the Board reviewed the file and discussed the existing 17.5' side yard and went over the variances that were granted on November 6, 2002. Ms. Castelli made a motion to accept the 17.5' side yard and acknowledge that in 2002 the Zoning Board was not requiring applicants to apply for variances for pre-existing non-conforming conditions; which motion was seconded by Mr. Quinn and carried as follows: Ms. Salomon, aye; Mr. Feroldi, aye; Mr. Quinn, aye; and Ms. Castelli, aye. Mr. Bosco and Mr. Sullivan were absent.

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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.

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 8:15 P.M.

Dated: April 18, 2018

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By *Deborah Arbolino*

Deborah Arbolino, Administrative Aide

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

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DECISION

SIDE YARD VARIANCE APPROVED

To: Martin and Una McMahon
2 Sickletown Road
Pearl River, New York 10965

ZBA #18-21
Date: April 18, 2018
Permit #47342

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#18-21: Application of Una and Martin McMahon for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, R-15 District, Section 3.12, Column 9 (Side Yard: 20' required, 19.1' proposed) to build a new single-family residence that will replace a house that was destroyed by fire. The premises are located at 2 Sickletown Road, Pearl River, New York and are identified on the Orangetown Tax Map as Section 69.19, Block 1, Lot 30; in the R-15 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, April 18, 2018 at which time the Board made the determination hereinafter set forth.

Martin and Una McMahon and Seamus Glynn, contractor, appeared and testified.

The following documents were presented:

1. Architectural plans by Albert Dattoli, Architect (5 pages)
2. A letter dated March 21, 2018 from the Rockland County Health Department signed by Elizabeth Mello, P.E., Senior Public Health Engineer.
3. A letter dated March 28, 2018 from the Rockland County Sewer District #1 signed by Joseph LaFiandra, Engineer II.
4. A letter dated March 16, 2018 from the Rockland County Highway Department signed by Dyan Rajasingham, Engineer III.
5. A letter dated April 9, 2018 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.

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

Una McMahon testified that they had a fire at the house when a vehicle drove into the property; that they are rebuilding the house in the same location but they need a side yard variance in order to proceed; that they are not adding any new bedrooms; that the lower level will be unfinished basement space and that they have a detached garage that was not damaged.

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.

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested side yard variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicants are requesting to rebuild the house that was damaged by fire on the original footprint and the requested side yard variance is small and does not have a negative or adverse effect on the neighborhood.
2. 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 applicants are requesting to rebuild the house that was damaged by fire on the original footprint and the requested side yard variance is small and does not have a negative or adverse effect on the neighborhood.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance.
4. The requested side yard variance is not substantial. The applicants are requesting to rebuild the house that was damaged by fire on the original footprint and the requested side yard variance is small and does not have a negative or adverse effect on the neighborhood.
5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variances.

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DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested side yard 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 side yard variance is APPROVED; was presented and moved by Ms. Salomon, seconded by Ms. Castelli and carried as follows: Mr. Quinn, aye; Mr. Feroldi, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Bosco were absent.

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

DATED: April 18, 2018

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

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DECISION

**PRE-EXISTING NON-CONFORMING CONDITIONS RECOGNIZED: LOT AREA,
LOT WIDTH, AND FRONT YARD
FLOOR AREA RATIO, SIDE YARD & TOTAL SIDE YARD VARIANCES APPROVED**

To: Donald Smith
90 Rockland Road
Sparkill, New York 10976

ZBA #18-22
Date: April 18, 2018
Permit # 47276

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#18:22 : Application of Donald Smith for variances from Chapter 43, R-80 District, Section 3.12 Group A, Column 4 (Floor Area Ratio: 10% permitted, 12.1% proposed, 12.04% revised per architect) and from Section 5.21a (Undersized lot applies: Side Yard: 20' required, 3' proposed and Total Side Yard: 40' required, 37.3' proposed) for an addition /alteration to a single-family residence and a proposed detached garage. The premises are located at 90 Rockland Road, Sparkill, New York and are identified on the Orangetown Tax Map as Section 78.05, Block 1, Lot 39; in the R-80 zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, April 18, 2018 at which time the Board made the determination hereinafter set forth.

Jane Smith appeared and testified.

The following documents were presented:

1. Survey for tax lot 78.05-1-39 dated 10/19/2017 signed and sealed by Anthony R. Celentano, PLS..
2. Architectural plans dated 12/15/2017 by Margaret Fowler, Architect, not signed or sealed (10 pages).
3. A letter dated March 13, 2018 from the Rockland County Highway Department signed by Dyan Rajasingham, Engineer III.
4. A letter dated March 21, 2018 from the Rockland County Health Department signed by Elizabeth Mello, P.E., Senior Public Health Engineer.
5. A letter dated April 17, 2018 from the Office of Parks Recreation & Historic Preservation, Palisades Interstate Park Commission signed by Karl B. Roecker, Senior Landscape Architect. (3 pages)
6. A letter dated April 18, 2018 from the Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning.

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

Jane Smith testified that she is not in front of the Board for the garage; that they separated the permit into two parts because Rick Oliver told them to; that she is before the Board for the addition to the house; that she would like to remove the garage and return with that application separately; that they have a growing family and her in-laws visit from Florida and stay with them and they would like to expand out in the rear of the house to expand the kitchen, dining and living rooms; and have basement space below those areas for storage; that the carport would remain and they would need a side yard variance for that; and that she would have the architect provide the revised floor area ratio calculations tomorrow.

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Public Comment:

No public comment.

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

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

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

FINDINGS OF FACT AND CONCLUSIONS:

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

1. The requested floor area ratio, side yard and total side yard variances will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The applicant has separated the building permit into two applications and for this hearing the proposed detached garage is not part of this application. The applicant will return in the future with an application for the detached garage. The amended requested floor area ratio without the garage is 12.04% and has been certified by the applicant's architect. There had been an error previously, and the floor area ratio without the detached garage but including all the proposed additions to the house is 12.04%, the side yard is 3' to the carport and the total side yard is 37.3'.
2. The lot is undersized and located adjacent to a utility easement on the Palisades Interstate Park Commission property.
3. The requested floor area ratio, side yard and total side yard variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The applicant has separated the building permit into two applications and for this hearing the proposed detached garage is not part of this application. The applicant will return in the future with an application for the detached garage. The amended requested floor area ratio without the garage is 12.04% and has been certified by the applicant's architect. There had been an error previously, and the floor area ratio without the detached garage but including all the proposed additions to the house is 12.04%, the side yard is 3' to the carport and the total side yard is 37.3'.
4. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining variances.

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5. The requested floor area ratio, side yard and total side 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 will return in the future with an application for the detached garage. The amended requested floor area ratio without the garage is 12.04% and has been certified by the applicant's architect. There had been an error previously, and the floor area ratio without the detached garage but including all the proposed additions to the house is 12.04%, the side yard is 3' to the carport and the total side yard is 37.3'.
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 floor area ratio as amended to 12.04%, side yard and total side yard variances are APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

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

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

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

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

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(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 as amended (12.04%), side yard and total side yard variances are APPROVED; was presented and moved by Mr. Quinn, seconded by Ms. Salomon and carried as follows: Mr. Feroldi, aye; Mr. Quinn, aye; Ms. Salomon, aye; and Ms. Castelli, aye. Mr. Sullivan and Mr. Bosco were absent.

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

DATED: April 18, 2018

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

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

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

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