

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

April 28, 2014

Present: Catherine Friesen, Chair
Robert Knoebel, Sr.
Roger Cohen (alternate)

In Memoriam:
Raymond O'Connell

Absent: John Dunnigan
Mary Ann Armano
Ellyse Berg

The following resolution was offered by Member Cohen, seconded by Member Knoebel, and carried based upon a review of the evidence presented at the public hearing held on March 31, 2014 and April 28, 2014.

**BOARD OF APPEALS
VILLAGE OF NYACK, COUNTY OF ROCKLAND**

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In the Matter of the Application of Bob Silarski on behalf
Bourbon Street (132 Main Street) for area variances
-----X

The Zoning Board of Appeals held public meetings on March 31, 2014 and April 28, 2014, and due deliberations having been made on April 28, 2014;

Now, upon said hearing and upon the evidence adduced thereat, it is hereby found and determined that:

FINDINGS OF FACT & CONCLUSIONS OF LAW

First: Applicant petitions the Zoning Board for area variances from VON Code Section 360-4.3, (Dimensional Standards) Table 4-1 for a FAR of 2.32 where 2.0 is permitted; 6 dwelling units where 2 are permitted; and 2 dwelling units of less than 600 square feet where 600 square feet is required. In addition, per VON Code Section 360-19E, the applicant petitions for an area variance from VON Code Section 360-4.3, Table 4-1, for the alteration/enlargement of a building with an existing 0.0 foot year yard setback, where 15 feet is required. Finally, the Applicant petitions the Zoning Board for area variances from VON Code Section 360-4.5B(3), Table 4-2, to permit a deficit of 5 off street parking spaces.

Second: The ZBA, in reaching its Findings of Fact and Conclusions of Law has taken the following factual testimony and evidence under consideration:

1. The application and supporting documents submitted;
2. Testimony of Bob Silarski, Architect, on behalf of the Applicant;
3. Minutes of the Planning Board dated October 7, 2013; November 12, 2013, and March 3, 2014;
4. Draft Minutes of the ARB dated April 16, 2014;
5. Memorandum of Bob Galvin, Village Planner, to the Planning Board, dated March 3, 2014;
6. Building Inspector's Plan Review Summaries dated March 31, 2014, and April 28, 2014;
7. Site visits by members of the ZBA;
8. ZBA members' knowledge of the site in question.
9. Testimony of the following members of the public in support of the application: Terry Grenier

Third: The site in question is located at 132/132A Main Street in the DMU zoning district. The owners of the property, Brian Moran and Michael Solicito, doing business as Bourbon Street of Nyack, purchased the property in 1999 pursuant to the local zoning regulations.

Fourth: The existing two-story mixed use building at the site currently contains a bar/restaurant on the first floor and two one-bedroom apartments on the second floor. The north side of the existing building sits on the property line (and so has 0.0 foot rear yard setback). The Applicant proposes to renovate the building by demolishing two existing second floor apartments, extending the second floor 25 foot to the north, constructing two one-bedroom units and an efficiency unit on the enlarged second floor, and adding a new third floor that will consist of three one-bedroom apartments. Two of the apartments – the second floor efficiency unit (453 square feet) and a third floor one-bedroom (500 square feet) – will be smaller in size than currently permitted by Code (600 square feet). Due to the size of the existing first floor, the proposed enlargement of the building will result in a FAR of 2.32 where 2.0 is allowed (a 16% increase over the existing FAR). Because the Code requires the Applicant to provide seven parking spaces and two spaces are “grandfathered”, the proposed renovations result in a deficit of five spaces.

Fifth: When the Applicants first appeared before the Planning Board in October, 2013, they initially proposed to demolish the second floor apartments and to replace them with “event” space, an application that raised significant concerns about noise, crime and the loss of residential units, that the Planning Board found to be inconsistent with the goals of the Comprehensive Master Plan, and that would have required an area variance for nine parking spaces. In response to these and other concerns, the Applicant substantially revised the application. Bob Galvin, the Village Planner carefully reviewed both the original proposal and the revised plans and found that the revisions addressed the concerns raised by the Planning Board. In particular, Mr. Galvin noted that the redevelopment of the second floor as residential space with the addition of the third floor retained the character of the surrounding mixed use area and provided an opportunity to

upgrade and modernize the property's apartments, thus enhancing the Village's housing stock. Mr. Galvin further noted that the proposed extension was still 40 feet from the rear TFR zone, and that the land use at the rear does not include residential units in close proximity. He reviewed the Applicant's economic analysis, finding that the proposal was an attempt to realize the economic payback of the previous proposal. In addition, Mr. Galvin observed that the proposed density was in conformance with initiatives under review by the Village Board which would reduce the minimum apartment size to 450 square feet for an efficiency apartment.

Sixth: Following further public hearings on March 3, 2014, and a review of Mr. Galvin's findings, the Planning Board ultimately issued a positive recommendation to the ZBA with respect to the variance requests finding that "on balance, the applicants revised approach toward residential instead of event space is a response to the Board's insistence on the proposal being in line with the goals of the Comprehensive Plan". The Planning Board found that the focus on providing residential units was a positive revision and that proposal retained the character of the surrounding mixed use area. The Planning Board subsequently gave site plan approval at its April meeting, and issued a negative declaration under SEQRA.

Seventh: The ARB approved the application and chose not to offer a recommendation to the ZBA with respect to the required variances.

Eighth: The Applicant offered testimony that, based on their market research, compliance with the maximum density restrictions and FAR would severely compromise the project's economic viability. As noted above, the Applicant substantially modified its proposal both to minimize required variances and to conform to the Village's Comprehensive Master Plan where it could do so without compromising the economic viability of the project.

Ninth: When the Zoning Law was amended in 2010, the Village Board chose to maintain parking requirements in the downtown area. The Village Board also enacted a Code section that permits payment of a fee in lieu of providing the required parking spaces if authorized by the Planning Board as a condition of site plan approval (VON Code Section 360-4.5(L)), but the Board never set the fee as required by the section that would enable either the Planning Board or the Applicant to avail themselves of this provision. In addition, the Applicant has provided proof that he attempted to find available parking from nearby establishments in order to take advantage of VON Code Section 360-4.5(E), but that no spaces were available at this time. The ZBA recognizes that nearby applicants within the DMU Zone on Main Street have also been unable to locate any alternative accessory parking spaces within 1200 feet of their principal lots.

Tenth: The site in question is located within walking distance of metered public parking lots owned and maintained by the Village where tenants could potentially obtain a monthly parking permit.

Eleventh: It is stated goal of the Comprehensive Master Plan is to advance business interests in the downtown, especially on lower Main Street and the feeder streets off Broadway. It is another

stated goal of the CMP to enhance the mixed-use character of downtown and to maintain a diverse mixes of land use. In this case, the applicant has demonstrated that the proposal is consistent with these goals.

Twelfth: The unkempt condition of the current back yard was a concern to both the Applicant's neighbor and members of the ZBA given the proposed expansion of the building. This issue was also raised before the ARB at which time the owners committed to cleaning up the back yard, as well as replacing the roof and undertaking other improvements.

Findings of Fact moved and passed (3-0)

CONCLUSIONS OF LAW

Upon oral motion, the Zoning Board voted to consider the variances in an omnibus fashion

The Zoning Board considered the factors set forth in Section 7-712-b(3)(b) of the Village Law of the State of New York as follows:

(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

FIRST: That the proposed variances do not create an undesirable change in the character of the neighborhood or a detriment to nearby properties. This conclusion was reached based upon deliberations of the Zoning Board at the public hearing, and based upon the factual findings set forth above in paragraphs 3, 5, 6, 10, 11 and 12. (3-0).

SECOND: That the Applicant has demonstrated that there are no other means by which he could achieve his purpose without the requested variances. This conclusion was reached based upon deliberations of the Zoning Board at the public hearing, and based upon the factual findings set forth above in paragraphs 4, 5, 8 and 9. (3-0)

THIRD: That, on balance, the variances are substantial in light of the current conditions on the site. This conclusion was reached based upon deliberations of the Zoning Board at the public hearing, and based upon the factual findings set forth above in paragraph 4. (3-0)

FOURTH: That the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This conclusion was

reached based upon deliberations of the Zoning Board at the public hearing, and based upon the factual findings set forth above in paragraphs 5, 6, 10, and 12. (3-0)

FIFTH: That, on balance, the hardship is self-created. This conclusion was reached based upon deliberations of the Zoning Board at the public hearing, and based upon the factual findings set forth above in paragraphs 3 and 4. (3-0)

The Board has weighed the findings of fact and the conclusions of law against one another as required under Section 7-712-b of the Village Law of the State of New York and finds in the interest of justice that the variance applied for should be GRANTED with the following conditions:

1. The directives of the Planning Board and the Architectural Review Board are followed;
2. The modifications to the rear yard shall be maintained in accordance with the Village of Nyack's Property Maintenance Code.

On a roll call, the vote was as follows:

Ayes: 3 (Friesen, Knoebel, Cohen)

Nays: 0

Abstain: 0

Catherine Friesen
CATHERINE H. FRIESEN, Chair
Zoning Board of Appeals, Nyack