

**REGULAR MEETING  
ZONING BOARD OF APPEALS**

Nyack Village Hall  
Nyack, New York

September 29, 2014

Present: Catherine Friesen, Chair  
John Dunnigan  
Ellyse Berg

**In Memoriam:**  
Raymond O'Connell

Absent: Robert Knoebel, Sr.  
Mary Ann Armano  
Roger Cohen (alternate)

The following resolution was offered by Member Dunnigan, seconded by Member Berg, and carried based upon a review of the evidence presented at the public hearing held on September 29, 2014.

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

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In the Matter of the application of Blake Tovin (70 South Franklin Street) for an area from Article I VON Code 360-1.9E for the alteration or enlargement of a Building that is nonconforming with respect to the following dimensional and developmental standards: an existing 4.4 foot south side yard where 5 feet is required and a 3.5 foot rear yard where 15 feet is required, and a minimum combined side yard variance of 4' where 5' is required

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The Zoning Board of Appeals held a public meeting on the 29<sup>th</sup> Day of September, 2014, and due deliberations having been made that day;

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

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

**FIRST:** The Applicant petitions the Zoning Board for area variances as set forth above.

**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 Robert Silarski, Architect, on behalf of the Applicant;
3. ZBA members' knowledge of the site in question;
4. Site visits by all members of the ZBA;
5. Building Inspector's Plan Review Summary dated September 29, 2014,
6. Minutes of the ARB dated July 16, 2014;
7. Minutes of the Planning Board dated September 8, 2014
8. There was no testimony from any member of the public.

**THIRD:** The site in question is located in the DMU zoning district. The property owners acquired the property in 2008 pursuant to the local zoning regulations.

**FOURTH:** The Applicant proposes to construct a one story attached, two-car garage at the northwest rear corner of the existing arts and crafts studio. The proposed construction will not increase the existing south yard nonconformity, although the rear yard nonconformity will be extended by 16.5 feet (the width of the garage). In addition, the construction will create a new non-conformity: a minimum combined side yard setback of 4' where 5' is required. Modifications to the plan eliminated an additional previously required side yard variance. There is no other feasible location on the property in which to situate a garage, and any alterations or enlargements would require some variance from the Zoning Code.

**FIFTH:** The Nyack Planning Board issued a positive recommendation to this Board in relation to the variance request, finding that the planned improvements will enhance the neighborhood. The ARB approved the application, but declined to comment on the required variance.

**SIXTH:** The Planning Board found the area variance is exempt from review under SEQRA as a type II action.

These Findings of Fact were moved and passed. (3-0)

### **CONCLUSIONS OF LAW:**

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 variance does 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 4 and 5. (3-0).

**SECOND:** That the Applicant has demonstrated that there are no other means by which he could achieve his purpose without the requested variance. 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)

**THIRD:** That the variance is 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 variance 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 4 and 5. (3-0)

**FIFTH:** That 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 variances applied for should be GRANTED with the following condition:

1. The directives of the Planning Board and Architectural Review Board are followed.

On a roll call, the vote was as follows:

Ayes: 3 (Friesen, Dunnigan, Berg)

Nays: 0

Abstain: 0

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