

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

April 27, 2009

Present: Steven P. Knowlton, Chair
Mary Ann Armano
John Dunnigan
Robert Knoebel, Sr.
Ellyse Berg

In Memoriam:
Raymond O'Connell

The following resolution was offered by Member Armano seconded by Member Berg and carried based upon a review of the evidence presented at the public hearing held on April 27th, 2009.

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

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In the Matter of the application of Gerard and Elvira Francisco (161 Sickles Avenue) for an Area Variance from VON Code59-30 J to permit the parking of 2 cars in the front yard.

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The Zoning Board of Appeals held a public meeting on the 27th day of April and due deliberations having been made this day;

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

PREFATORY COMMENTS

This is the second application brought by this applicant to permit parking in a required front yard. The prior application brought in January of this year for three parking spaces in the front yard was denied by this Board. In the instant case, the applicant has reverted to his original application for two spaces which he amended at the January hearing to seek three spaces.

FINDINGS OF FACT & CONCLUSIONS OF LAW

FIRST: Applicants petition the Zoning Board for the variance noted above. The application is brought again as a result of a pending and continuing violation which has not been mitigated.

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 Gerard Francisco, Applicant;
3. ZBA members knowledge of the site in question;
4. Site visits by all members of the ZBA
5. There was no public testimony.
6. Record and decision of the ZBA dated January 26, 2009

THIRD: The site in question is located in the R-1 zoning district. The Applicant purchased the property in December of 2005 pursuant to the local zoning regulations.

FOURTH: The Nyack Planning Board has previously issued a positive recommendation to this Board in relation to the variance request to permit two spaces in the front yard.

FIFTH: The applicant has, for some time, been using the entire front yard of the premises as a parking lot for three cars. The applicant stated that recently the yard has been used for only 2 cars.

SIXTH: The building on the premises is non-conforming as to side yards, and thus presently has no driveway in either side yard. An addition was placed on the east side of the building which eliminated the possibility of any side yard driveway. The Applicant is unaware of when the addition was built, as is the Building Department. This information was obtained at the last proceeding. The Applicant purchased the property in its present configuration, and requires two parking spaces.

SEVENTH: The building is a two storey (with attic) wood frame structure. The Applicant testified that it is a one family building.

EIGHTH: The front yard currently has no landscaping. There is a significant tree on the east property line whose root system would be compromised by any application of blacktop or other surface as per the Planning Board's findings.

NINTH: The Applicant testified that there have been no changes in the conditions on the site since the application of January, 2009.

TENTH: The ZBA incorporates by reference its decision of January 26, 2009 and deliberation thereof in its findings herein.

These Findings were moved and passed 5-0.

After the close of the public portion of the hearing and after discussion by members of the Zoning Board with the Applicant, the following conditions were agreed to by the Applicant:

1. There is to be a landscaped and planted area 2 feet wide from the paved walkway in an easterly direction to border the proposed parking area.
2. The proposed parking area is to be no larger than 18 feet (in the East-West dimension) and 19 feet (in the North-South dimension). The surface treatment of the parking area is to be determined by the Planning Board.
3. The area between the parking area and the eastern property line (property line currently demarcated with a white picket fence) is to be landscaped and planted. The significant tree is to be preserved.
4. The area between the house and the proposed parking area is to be landscaped and planted.
5. All landscaping and plantings are to be regularly and properly maintained.
6. Any further directives of the Planning Board not inconsistent with those above are to be followed.

CONCLUSIONS OF LAW:

Now, based upon the moved Findings of Fact and the conditions set forth above and agreed to by the Applicant, the Zoning Board considered the factors set forth in Section 7-712-b of the Village Law of the State of New York as follows:

FIRST: That the proposed variance does not create an undesirable change in the neighborhood.

SECOND: That no detriment to nearby properties will result from granting the variance.

THIRD: That the Applicant has demonstrated that there are no other means by which it could achieve its purpose without the requested variance.

FOURTH: That the variance is substantial in light of the current conditions on the site.

FIFTH: That the hardship is self-created.

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(s) applied for should be GRANTED with the conditions set forth above.

On a roll call, the vote was as follows:

Ayes: 5

Nays: 0

Abstain: 0

s/ Steven P. Knowlton

STEVEN P. KNOWLTON, Chairman
Zoning Board of Appeals, Nyack.