

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

July 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 Dunnigan, seconded by Member Knowlton, and carried based upon a review of the evidence presented at the public hearings held on February 23, March 30, May 27th, June 29th and July 27th, 2009.

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

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In the Matter of the application of Majid & Francesca Bozorgomid (188 Main Street) for the following 5 Area Variances and One Special Permit:

1. VON Code 59-19A Lot and Bulk Table to permit a lot area of 1975 sq. ft. where 4000 sq. ft. is the minimum;*
2. VON Code 59-19A Lot and Bulk table to permit lot coverage of 53% where 28% is the maximum;
3. VON Code 59-20A(1)(d) to permit accessory building lot coverage of 21% where 7% is the maximum;
4. VON Code 59-19A to permit three stories where 2 and ½ is the maximum;
5. VON Code 59-19B, Lot and Bulk table to permit a rear yard setback of 2.8 feet where 25 feet is the minimum.*
6. A Special Permit to permit an accessory structure within 5 feet of the lot line and located nearer to the street than the principal structure;

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The Zoning Board of Appeals held a public meeting on the 23rd of February, the 30th of March, the 27th of May and the 29th of June, and due deliberations having been made this day, the 27th day of July, 2009;

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

Upon motion and after deliberation, the Zoning Board of Appeals finds that the Steep Slope provision of the Nyack Subdivision law applies to this application. Moved and passed 5-0.

PREFATORY COMMENTS

This is essentially an application for a subdivision. The Applicant wishes to subdivide a steep slope lot that stretches from its Catherine Street frontage on the north to its Main Street frontage on the south. During the hearing of February 23rd, the ZBA asked the applicant to prepare a brief setting forth the basis for his contention that the ZBA had authority to grant relief from Nyack's Steep Slope law (50-15G) and grant the requested relief of all variances requested prior to receiving Planning Board recommendations on the site specific variances. This brief was presented in a timely fashion, and is appended to the record herein.

Variance #6 as noted above has been withdrawn and a Special Permit application has been substituted after the applicant agreed to move the accessory structure 5 feet from the property line.

Applicants take the position that but for the Steep Slope provision of the subdivision law their lot would be subdividable, and that the application would then only require 2 variances overall and one variance (rear lot line for the proposed Main Street lot) for the subdivision application. Applicants, through counsel, take the position that the current subdivision law affects disparate lots in the Village in an inequitable manner (including theirs), and while not going so far as to classify the effect in this case as a constitutional taking, Applicants have applied sufficient negative hyperbole to the statute's drafters, the legislators and the application of the statute itself as to constitute an argument that this Board should simply reject the statute out of hand in deciding the current application. We decline.

In further support Applicants cite the Nyack Comprehensive Master Plan which lists as one of the goals for the downtown to increase the number of Village residents living there.

Applicants also rely heavily on this Board's decision in an earlier matter granting certain variances to Applicant's lot immediately to the East (184 Main Street). Applicants argue that in light of those approvals, the applications are so similar that, for all practicable purposes, the Application currently pending is merely *pro forma* and the issues already decided. The current application was originally brought together with the application for 184 Main Street in 2005 as a single application but was withdrawn prior to any hearing.

Upon motion, these Prefatory Comments were moved and passed 5-0.

Upon motion, the Zoning Board of Appeals has elected to deliberate first on the variances required for the subdivision application. Moved and passed 5-0.

FINDINGS OF FACT & CONCLUSIONS OF LAW

FIRST: Applicants petition the Zoning Board for the five variances and one special permit

as noted above. Variances 1 and 5 are essential for the subdivision. Variances 2, 3 and 4 pertain to the proposed building to be constructed on the site. Variance 6 has been supplanted as noted 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, including photographs, steep slope “analysis” done by the Applicants, traffic study and photographic renderings of the site and the neighboring site;
2. Testimony of Robert Silarski, architect, for the applicants
3. Testimony of Joseph Adams, Esq. counsel for applicants;
4. Testimony of Majid Bozorgomid, Applicant;
5. ZBA decision and findings dated November 26, 2007 referable to Applicant’s adjoining property at 184 Main Street;
6. ZBA members knowledge of the site in question;
7. Site visits by all members of the ZBA
8. The Planning Board file maintained by the Building Department in regard to this application and the Planning Board negative recommendation to this Board in regard to variances #'s 1 and 5;
9. Testimony of the following members of the public: Luke and Debra Birkeland, (14 Catherine Street) all opposed to the application;
10. Testimony of Tom Berman (8 Catherine Street) opposed to the application;
11. Testimony of Joan Santo (25 Catherine Street) opposed to the application;
12. Testimony of Mrs. Rodriguez (23 Catherine Street) opposed to the application;
13. Testimony of Susan Conroy and Belinda Ferguson, opposed to the application;
14. Testimony of Vas Sersdev, (19 Catherine Street) opposed to the application;
15. Testimony of Salley Schmidt, property owner of 174/176 Main Street, in support of the application
16. A petition, signed by a majority of Catherine Street residents, opposed to the application.

THIRD: Approximately 25% of the site in question is located in the C-1 zoning district and approximately 75% of the site in question is located in the R-1 zoning district. The Applicant seeks to subdivide the property approximately along these dimensions. The Applicant purchased the property in April of 2004 pursuant to the local zoning regulations.

FOURTH: The Nyack Planning Board has issued a negative recommendation to this Board in relation to variance requests 1 and 5. It declined to issue a recommendation on the remaining requests.

FIFTH: The site in question is a “through lot” with street frontages on both Catherine and

Main Street, and as such, has no rear yard. It is a property with a loss of elevation of nearly 25 feet from its northern lot line at Catherine Street and the proposed new lot line which would divide the lot into a residential lot and a commercial one. As such, it is not disputed that the Steep Slope provision of the Nyack Code (50-15(G)) applies to this subdivision application, and any subsequent building applications. The current lot (and if approved the proposed commercial lot "Lot 2") is presently improved with a commercial building which housed at one time a restaurant on the ground level and apartments on the upper two floors.

SIXTH: The applicants seek the five variances and one special permit noted above. In the current application and based upon the current plans, all but two of the variances stem from the application of Nyack's Steep Slope provision contained in the subdivision law (VON Code 50-15G) which require the subtraction, for lot and bulk computations of any land that lies within a zone that has a slope of 25% or greater. Applicants take the position here that but for VON 50-15G, they would require only two variances.

SEVENTH: The application proposes a footbridge to the Catherine Street garage that will connect to the main dwelling at the new third floor. Due to the geographic nature of the lot, no basement is to be built, and thus the third floor will be the access to the garage. The additional story will permit this access on the same level as the garage. Additionally, access to Main Street for Lot 1 (residential lot) is proposed over an easement granted from Applicant's neighboring lot to the East, including the small footbridge over the Nyack Brook. The proposed Lot 1 will have no frontage on Main Street. Further, the proposed building for Lot 1 will face the rear yard of that lot, with the garage in the front yard (Catherine Street frontage).

EIGHTH: The garage will be a one story structure sited within five feet of the front yard lot line and in advance of the main structure. The applicant posits that this plan, and the variances sought, would have the minimum impact on the creek and on the site.

NINTH: The Applicant relies heavily on his prior application at 184 Main Street for support in his seeking the variances in this application.

TENTH: The objecting neighbors cite the following concerns:

1. Traffic increase on an already narrow and increasingly busy roadway;
2. Safety concerns for young families and children as a result of the potential increase in traffic related to the new dwelling and diminished sight lines related to the siting of the new garage;
3. Difficulties with snow and leaf removal due to the placement of the garage at or about the lot line on Catherine Street;
4. Safety concerns related to drivers backing out of the new garage;
5. Negative impact of the removal of trees on the site.
6. Negative impact on safety related to the location of the proposed garage as it relates to existing, opposing driveways.
7. The addition of a second, Catherine Street facing garage on an adjacent lot rather

than a front facing dwelling, as is recommended in the Comprehensive Master Plan.

8. Loss of traffic view corridor (safety concern) for drivers backing out of the garage to be built at 184 Main and proposed for 188 Main Street, both of which will be within 5 feet of the Catherine Street right-of-way as well as for those exiting existing garages on Catherine Street.
9. Loss of privacy due to the denuding of the hillside;
10. Inappropriate density on a steep slope hillside;

ELEVENTH: A review of the Planning Board file and minutes reveals two reports rendered by the Village Engineer referable to this application that raise concerns that bear upon both the subdivision application and the site plan process. The ZBA places special emphasis on the findings noted at #5 of the September 29, 2008 report and at # 2, 4, 6, 7, 8, and 9 of the March 2, 2009 report.

TWELFTH: As of this decision, foundation and site excavation work have begun on the neighboring site.

THIRTEENTH: Catherine Street is one of the narrowest streets in the Village of Nyack, and is classified by the Village and the State DOT as a one lane street. The site in question borders on Catherine Street at a location where the elevation drops in an easterly direction, and driver sight lines are already diminished. Additionally pertinent are the location of the driveways of neighboring residences which make it difficult presently for residents to exit and enter their driveways. Due to the narrowness of the street, a driver backing out of or pulling into a driveway on Catherine Street must use the entire width of the street to accomplish this maneuver. In the fall and winter, the width of the street is effectively narrowed further due to snow and leaves on the roadway.

FOURTEENTH: This Board's grant of the variances for 184 Main Street were partially premised on amendments to that plan that in the opinion of the ZBA mitigated sight line dangers that resulted from placing the garage at that site within three feet of the Catherine Street right-of-way. As noted by the objecting neighbors, the additional garage, as planned, would render those prior mitigating actions a nullity.

FIFTEENTH: Applicants contend that the Nyack Brook constitutes a sufficient buffer between the proposed new commercial lot and proposed new residential lot so as to mitigate the request for a 2.8 foot rear yard where 25 feet is required when a commercial property abuts a residential lot.

CONCLUSIONS OF LAW:

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:

As to the requested variance from VON Code 59-19A (Variance #1: Lot Area):

FIRST: That the proposed variance does create an undesirable change in the neighborhood. 5-0

SECOND: That a detriment to nearby properties will result from granting the variance. 5-0

THIRD: That the Applicant has shown that there are no other means by which it could achieve its purpose without the requested variance. 4-1

FOURTH: That the variance is substantial in light of the current conditions on the site. 5-0

FIFTH: That the hardship is self-created. 5-0

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 **DENIED**.

On a roll call, the vote was as follows:

Ayes:	5
Nays:	0
Abstain:	0

As to the application for a variance from VON Code 59-19B (Variance #5: rear yard—proposed commercial lot):

FIRST: That the proposed variances creates an undesirable change in the neighborhood. 4-1.

SECOND: That a detriment to nearby properties will result from granting the variance. 5-0

THIRD: That the Applicant has demonstrated that there are no other means by which it could achieve its purpose without the requested variance. 5-0

FOURTH: That the variance is substantial in light of the current conditions on the site. 5-0

FIFTH: That the hardship is self-created. 5-0

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 **DENIED**.

On a roll call, the vote was as follows:

Ayes: 5

Nays: 0

Abstain: 0

Upon motion, the ZBA declined to consider the Applicant's other variance requests and the request for the Special Permit in light of the denial of the two variances necessary for the subdivision. Moved and passed 5-0.

s/ Steven P. Knowlton

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

*: sub-division area variances