

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

April 27, 2015

Present: Catherine Friesen, Chair
John Dunnigan
Robert Knoebel, Sr.
Mary Ann Armano
Ellyse Berg
Roger Cohen (alternate)

In Memoriam:
Raymond O’Connell

Absent: None

The following resolution was offered by Member Berg, seconded by Member Knoebel, and carried based upon a review of the evidence presented at the public hearing held on April 27, 2015.

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

-----X
In the Matter of the Application of Rockland Housing
Action Coalition, Inc. (263 Main Street) for area variances
-----X

The Zoning Board of Appeals held a public meeting on the 27th Day of April, 2015, 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, Rockland Housing Action Coalition, Inc., petitions the Zoning Board for area variances from Article II VON Code 360-2.2C (stating that, when a lot is situated in 2 or more districts the regulations for the less restrictive portion of the lot shall not extend into the more restricted portion of the lot), and from Article IV VON Code Section 360-4.3, (Dimensional Standards) Table 4-1 for a 15’ rear yard building setback from an adjacent residential zone, and 9 Efficiency Dwelling units of 450 square feet where 600 square feet is required.

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 Gerry Levi, Bart Rodi and Bert Hughes on behalf of the Applicant;

3. Minutes of the Planning Board dated January 5, 2015 and April 13, 2015;
4. Minutes of the ARB dated November 19, 2014, December 17, 2014, and March 18, 2015;
5. Building Inspector's Plan Review Summary dated April 27, 2015;
6. Site visits by members of the ZBA;
7. ZBA members' knowledge of the site in question.
8. Testimony of the following members of the public: Cheryl Ferguson and Alex Yannis.

Third: The site in question is located at 263 Main Street. While the bulk of the property is in the DMU zoning district, the rear of the building encroaches into the TFR zoning district by approximately 25 feet. The Applicant is the contract purchaser of the property and has submitted proof to the Building Department that it has the consent of the owner to make the application.

Fourth: The Applicant proposes to demolish the existing single story structure and construct a three story multi-family apartment building containing 33 dwelling units with parking primarily below ground. The proposed apartment building will contain a mixture of 9 efficiencies, 12 one-bedroom apartments and 12 two-bedroom apartments for low income families, individuals with disabilities and returning veterans in need of affordable housing. The 9 efficiency apartments will each contain 462 square feet. 41 parking spaces will be provided on site, and the Building Inspector has determined that the parking requirements have been met. The Applicant has incorporated green infrastructure elements into the plan which will bring the number of permitted dwelling units to the requested 33.

Fifth: The Zoning Code permits efficiency units of 450 square feet, but only in mixed use occupancies. A proposal to eliminate this restriction has been approved by the Village Board, but will not become law until May 28, 2015.

Sixth: The Planning Board issued a positive recommendation to the ZBA with respect to the variance requests. The site plan application remains pending before the Planning Board.

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

Eighth: The Planning Board declared itself lead agency with respect to SEQRA and their determination is still pending.

Ninth: Two members of the public, Mr. Yannis and Ms. Ferguson, voiced concerns about their privacy and traffic. While these matters do not concern the variance application, they should be taken under consideration by the Planning Board.

Findings of Fact moved and passed (5-0)

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, 4, 6 & 7. (5-0).

SECOND: That the Applicant has demonstrated that there are no other means by which it could achieve its 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 3 and 4. (5-0)

THIRD: That, on balance, the variances are not 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 3 and 4. (5-0)

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 4 and 6. (5-0)

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. (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 variances applied for should be GRANTED with the following condition:

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

On a roll call, the vote was as follows:

Ayes: 5 (Friesen, Armano, Knoebel, Cohen, Berg)

Nays: 0

Abstain: 0

Catherine Friesen

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