

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

November 25, 2013

Present: Catherine H. Friesen, Chair
Robert Knoebel, Sr.
Mary Ann Armano
John Dunnigan
Ellyse Berg

In Memoriam:
Raymond O'Connell

Absent: Roger Cohen (alternate)

The following resolution was offered by Member Berg, seconded by Member Dunnigan, and carried based upon a review of the evidence presented at the public hearing held on November 25, 2013.

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

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In the Matter of the application of Walter Harrington (5 First Avenue) for Area Variances from from VON Code Section 360-1.9E for alterations to a building that is non-conforming with respect to the following dimensional standards: lot area of 8,615 ft² where 10,000 ft² are required; rear yard of 13 feet where 34 feet is required; and a maximum building height of 32.67 feet/3 stories where 32 feet/2 stories is permitted.

In the matter of the application of Walter Harrington (5 first Avenue) for an appeal from the Architectural Review Board's decision of October 16, 2013, to deny approval for vinyl siding

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The Zoning Board of Appeals held a public meeting on the 25th Day of November, 2013, 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: Applicant Walter Harrington petitions the Zoning Board for area variances as set forth above and appeals from the from the Architectural Review Board's decision of October 16, 2013, to deny approval for vinyl siding

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 Richard Harrington, son of the Applicant, on behalf of the Applicant;
3. ZBA members' knowledge of the site in question;
4. Site visits by all members of the ZBA;
5. Minutes of the Planning Board dated November 12, 2013 and draft minutes of the Architectural Review Board dated October 16, 2013;
6. Building Inspector's Plan Review Summary dated November 25, 2013;
7. There was no testimony from any member of the public.

THIRD: The site in question is located in the TFR zoning district. The Applicant acquired the property in 1961 pursuant to the local zoning regulations, and has lived in it continuously for 52 years.

FOURTH: The Applicant proposes to enlarge his front porch and install vinyl siding. The existing building is nonconforming as set forth above and the proposed deck will not increase these nonconformities. The Applicant submitted proof that three of the four abutting properties contain dwellings that are vinyl sided. Mr. Harrington testified that using alternative material would present a financial hardship because the vinyl siding has already been purchased. He further testified that his father has no ability maintain "HardiePlank", especially given the exposure of the property on the east side.

FIFTH: The Nyack Planning Board and ARB have both issued positive recommendations to this Board in relation to the variance requests. The ARB denied the Applicant's request to install vinyl siding, stating "At the September meeting, there were objections from some Board members concerning the installation of vinyl siding, which had commenced without Building Department approval. It was observed that this is a historical block, and no other buildings on this block have vinyl siding (other than the adjacent property which faces Gedney Street). At the prior meeting, the applicant had been asked to consider alternative materials, such as Hardy Plank, to consider keeping the existing siding in place, or to consider a better quality or scaled material that was in keeping with the adjacent properties. It was noted that the proposed material would render the house excessively dissimilar in quality and appearance to every other property on First Avenue, having a negative impact on the historical character and value of the street".

SIXTH: Contrary to the ARB's contention, First Avenue is not a "historical block". The ARB

granted two other requests to install vinyl siding the same night it denied the Applicant's request and no reason for the different treatment is reflected in the draft minutes.

SEVENTH: This area variance is exempt from review under SEQRA as it involves a one or two family home.

These Findings of Fact were moved and passed. (5-0)

CONCLUSIONS OF LAW:

On 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 4 and 5. (5-0).

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 paragraph 4. (5-0)

THIRD: That 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 4 and 5. (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 5. (5-0)

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. (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 conditions:

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

The Board further finds that the appeal is SUSTAINED, and the decision of the ARB to deny approval for vinyl siding is VACATED, based upon the ZBA's findings in paragraphs 4, 5 and 6, which led the ZBA to conclude that the ARB's decision was not supported by substantial evidence in the record.

On a roll call, the vote was as follows:

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

Nays: 0

Abstain: 0

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