

**REGULAR MEETING  
ZONING BOARD OF APPEALS**

Nyack Village Hall  
Nyack, New York

November 25, 2013

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

**In Memoriam:**  
Raymond O'Connell

Absent: 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 November 25, 2013

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

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In the Matter of the Application of Kier Levesque for  
Riverside Builders (71 South Broadway) for an area variance  
from VON Code Section 360-4.3, (Dimensional Standards)  
Table 4-1 for 4 dwelling units where 2 are permitted.  
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The Zoning Board of Appeals held a public meeting on November 25, 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 petitions the Zoning Board for the variance 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;

2. Testimony of Kier Levesque, Architect, on behalf of the Applicant;
3. Minutes of the Planning Board dated November 12, 2013 and draft minutes of the ARB dated October 16, 2013;
4. Building Inspector's Plan Review Summary dated November 25, 2013;
5. Site visits by members of the ZBA; and
6. ZBA members' knowledge of the site in question.
7. Testimony of the following members of the public: Joe Nives (68 South Broadway) and David Sanders (69 South Broadway)

**Third:** The site in question is located in the DMU zoning district. The owner of the property, Riverside Builders, purchased the property in January 2013 pursuant to the local zoning regulations. The Applicant submitted proof that the building has been used for residential purposes and multifamily housing since 1965, in various configurations.

**Fourth:** The Applicant proposes to renovate a mixed use building by demolishing two one-story structures to the rear of the main building and converting existing retail space on the sub-basement, basement and second floors to apartments. The Applicant contends that this conversion is consistent with recent trends in the downtown area to reduce retail above and below street level and to add residential units. Existing retail space on the first floor and an existing third floor apartment will remain. The proposed dwelling units all exceed 600 square feet and no additional parking spaces would be required by the conversion. The building is located not far from the Spear Street lot where tenants could obtain a monthly parking permit.

**Fifth:** It is stated goal of the Comprehensive Master Plan is to advance business interests in the downtown, especially on lower Main Street and the feeder streets off Broadway. It is another stated goal of the CMP to enhance the mixed-use character of downtown and to maintain a diverse mixes of land use. In this case, the applicant has demonstrated that the proposed conversion of some of the building's retail space to dwelling units is consistent with these goals.

**Sixth:** Both the Planning Board and the ARB offered positive recommendations to this Board in relation to the variance requests. In making its recommendation, the Planning Board found that "the proposed use of five (5) separate floors (four residential and one retail) is in keeping with the character and nature of the neighborhood, that the proposed plans will enhance the street, the life in the Village, and encourages [sic] the type and density required. Given that the demolition of two small structures will add green space and that the Village is contemplating an increase in density in the DMU, that the proposed units are all compliant with existing size recommendations, the Planning Board is encouraged that this work will be conducted in the Village."

Findings of Fact moved and passed (5-0)

## **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 3, 4, 5 and 6. (5-0).

**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. (5-0)

**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, 5 and 6. (5-0)

**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, 5 and 6. (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 variance applied for should be GRANTED with the following conditions:

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, Knoebel, Armano, Dunnigan, Berg)

Nays: 0

Abstain: 0

*Catherine Friesen*

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