

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

July 28, 2014

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

In Memoriam:
Raymond O'Connell

The following resolution was offered by Member Dunnigan, seconded by Member Armano, and carried based upon a review of the evidence presented at the public hearing held on July 28, 2014

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

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In the Matter of the Application of David & Deborah Alter
(15 Tallman Place) for an area variance
from VON Code Section 360-4.9(B)(a)(1) &
VON Code Section 360-4.9(B)(b) to permit the
installation of a front yard fence greater than 42" in height
with greater than 60% closed surface.
-----X

The Zoning Board of Appeals held a public meeting on July 28, 2014, 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 variances 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. Positive recommendations of the Planning Board with respect to the grant of the variance;
4. There was no testimony from members of the public;
5. Site visits by members of the ZBA; and
6. ZBA members' knowledge of the site in question.

Third: The site in question, which is owned by Applicants David and Deborah Alter, is a corner lot located in the TFR zoning district at the intersection of Orchard Street and Tallman Place in a view protection corridor. The Applicants purchased the property approximately 10-15 years ago pursuant to the local zoning regulations.

Fourth: The Applicant proposes to construct a 72" high stockade-style fence with a (roughly) 20% open surface along the westerly side of Orchard Street. The proposed fence will be located in the rear portion of the property and is intended to enclose and screen a play area and provide privacy from the street. The 33' long non-conforming portion of the fence will be set back from the paved portion of Orchard Street as depicted in the site plan dated June 17, 2014, and any greater setback would severely compromise the useable play area of the yard. From the street, the fence will appear to be approximately 8' tall because it will be installed about 2' above the grade of the street due to the slope of the property.

Fifth: The site in question is uniquely situated on a sloped corner lot with both front yards abutting quiet, dead end streets. The primary orientation of the home is toward Tallman Place, and the lot extends in a southerly direction from Tallman Place to the south terminus of Orchard Street. The lot to the south of the site in question is situated on Ackerman Place. Views from the west side are not impacted by the proposed fence because, due to the slope of the property, the rear yard of the Applicants' western neighbors is 4'-5' higher than the top of the fence. Views to the east are already obscured by existing houses and tall (7'-8') high hedges which run along the east side of Orchard Street. The views of the south side neighbors are not impacted by the proposed fence.

Sixth: The Applicant explored the possibility of planting a high hedge instead of installing a fence, but a landscape architect said it was not feasible because of the location of two large trees, one 48" in diameter and one 18" in diameter.

Seventh: A lower or more open fence would not provide adequate screening or privacy given the slope of the backyard which descends from 56' to 48'.

Eighth: The Planning Board offered a positive recommendation to the ZBA with respect to the grant of the variance. The Planning Board found that there would be no significant impact on the neighbors, the plan is logical and fits with the adjoining properties and that it would enhance the character and quality of the streetscape at that location.

Findings of Fact 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 paragraph 2, 4, 5 & 8. (5-0).

SECOND: That the Applicants have demonstrated that there are no other means by which they could achieve their 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 paragraphs 3, 4, 5, 6 & 7. (5-0)

THIRD: That, on balance, the variances are 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. (5-0)

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, 5, 6 & 8. (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 condition:

1. The directives of the Planning Board are followed.

On a roll call, the vote was as follows:

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

Nays: 0

Abstain: 0

Catherine H. Friesen
Zoning Board of Appeals, Nyack