

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

September 24, 2012

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

In Memoriam:
Raymond O'Connell

Absent: None

The following resolution was offered by Member Berg, seconded by Member Armano, and carried based upon a review of the evidence presented at the public hearing held September 24, 2012.

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

-----X

In the Matter of the application of Paul Rozsypal (166 Cedar Hill Avenue) for Area Variances from VON Code Section 360-4.3, Dimensional Standards Table 4-1 to permit:

- (1) Two lots of 4,881.5 square feet where 5,000 square feet is required (lot #1 & #2); and
- (2) An east front yard on lot # 2 of 5.6 feet where 19.52 feet is required (lot #2).

-----X

The Zoning Board of Appeals held a public meeting on the 24th Day of September, 2012, and due deliberations having been made this 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 two area variances noted above.¹

¹ A third variance request for a rear yard on lot #1 of 26 feet where 29.2 feet is required was withdrawn by the Applicant at the hearing and is not being considered by this Board.

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 Paul Rozsypal and Charles Schaub, Applicants;
3. Minutes of the Planning Board dated July 2, 2012 and September 10, 2012;
4. Positive recommendation of the Planning Board for the grant of the variances;
5. ZBA members' knowledge of the site in question;
6. Site visits by all members of the ZBA; and
7. Testimony of the following members of the public in opposition to the application:
 - a. Anna Ottaiano
 - b. Richard Cahill
 - c. Wendy Kay:

THIRD: The site in question is located in the TFR zoning district and is in a view protection corridor on the corner of Mill Street and Cedar Hill Avenue. The Applicants purchased the property in 2012 pursuant to the local zoning regulations.

FOURTH: The applicants wish to subdivide the existing corner lot (which is 100 feet by 100 feet) into 2 lots which are each non-compliant as to lot area (4,881.5 square feet where 5,000 square feet is required) and to retain the existing single family home which will be on lot #2. The existing house on lot #2 will require an area variance for an east front yard of 5.6 feet where 19.52 feet is required which is an existing non-conformity. The Applicants do not presently have plans to build on lot #1, and no site plan application with respect to that lot has been filed.

FIFTH: The Nyack Planning Board has issued a positive recommendation to this Board in relation to the variance requests finding that the proposed non-conformities were minor and that there will be no negative impact upon the neighborhood. In this regard, the Planning Board noted that the street lots on the opposite (south) side of Cedar Hill Avenue are located in South Nyack and that the proposed lots mirror them.

SIXTH: Adjoining property owners and neighbors have objected to the application on the ground that proposed subdivision does not fit the character of the neighborhood, especially on the north side of the street, and have expressed concerns about traffic and driveway egress.

SEVENTH: The proposed lot size is 97.63% of the required lot size, requiring an area variance of approximately 2.4%. The angled shape of the lot prevents it from being a full 10,000 square feet, despite its dimensions. The lot sizes in the immediate vicinity vary, as do the uses of the dwellings.

EIGHTH: The Applicants propose to retain and restore the existing house on lot #2.

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

CONCLUSIONS OF LAW:

After discussion and upon motion, the ZBA elected to deliberate on the variances in an omnibus fashion. 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:

FIRST: That the proposed variances do not create an undesirable change in the neighborhood. (4-1, Dunnigan dissenting)

SECOND: That no detriment to nearby properties will result from granting the variances. (5-0).

THIRD: That the Applicants have demonstrated that there are no other means by which they could achieve their purpose without the requested variances. (5-0)

FOURTH: That the variances are not substantial in light of the current conditions on the site because, even though the dimensions of the lot are 100' by 100', the total area is 2.4% short of the required size because of the angle of the lot. (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(s) applied for should be GRANTED with the following conditions:

1. Any conditions and directives of the Planning Board shall be followed and are made express conditions of this variance grant.
2. The use of the premises on lot #2 shall not change from its present use as the grant of the variance was based on its status as a single family residence.
3. A factor in the Board's determination regarding the effect of the variances on the neighborhood related to the Applicants' concession that the height of the roof ridge on any house built on lot #1 will not exceed the height of the existing house on lot #2. Therefore, that restriction on the height of any home to be constructed on lot #1 will be a specific condition of this variance grant.

On a roll call, the vote was as follows:

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

Nays: 0

Abstain: 0

Catherine Friesen

CATHERINE FRIESEN, Chair
Zoning Board of Appeals, Nyack.