

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

January 29, 2015

Present: Catherine Friesen, Chair
John Dunnigan
Mary Ann Armano
Ellyse Berg (recused)
Roger Cohen (alternate)

In Memoriam:
Raymond O'Connell

Absent: Robert Knoebel, Sr.

The following resolution was offered by Member Armano, seconded by Member Cohen, and carried based upon a review of the evidence presented at the public hearing held on January 29, 2015.

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

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In the Matter of the application of the Board of Trustees of the Nyack Library for Special Use Permit per Article V VON Code Section 360-5.9A (regarding the consolidation of lots) and Area Variances required to subdivide properties from 4 lots to 3 lots

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The Zoning Board of Appeals held public meetings on the 24th Day of November, the 12th Day of January, 2015 and the 29th Day of January, 2015, and due deliberations having been made on the 29th Day of January, 2015;

Now, upon said hearings and upon the evidence adduced thereat, it is hereby found and determined that:

FINDINGS OF FACT & CONCLUSIONS OF LAW

FIRST: Applicant the Board of Trustees of the Nyack Library petitions the Zoning Board for a Special Use Permit per Article V Von Section 360-5.9A (regarding the consolidation of lots) and for Area Variances required to re-subdivide the current 4 lots into 3 lots. The plan includes merging lot 10 (the library's parking lot) with Lot 8 (occupied by the existing library and the

library's expansion) and changing the lot lines between lots 10 and 11. The newly configured Lot 7 will have a total of 4,726 square feet and will be occupied solely by the Art Café (Stevenson House). Lot 8 will have a total of 28,623 square feet and will now include the existing 3 story library, its addition and the parking area and accessory structure (former barn). Lot 11 will consist of 11,727 square feet and will include the Depew House and its surrounding property. Neither proposed Lot 7 nor proposed Lot 11 has any on-site parking.

SECOND: As determined by the Building Inspector, the current application requires both a Special Use Permit and at least six Area Variances.¹ During the public hearing held on November 24, 2014, the Applicant agreed to modify its proposal so as to minimize the size of certain variances. With these modifications, the required variances are as follows:

- A. Proposed lot# 7 (Stevenson House)
 - a. Minimum side yard of 2.0 ft where 5 ft is required (as modified at the request of member Knoebel)
 - b. Minimum total side yard of 3.7 feet where 5 feet is required (as modified at the request of member Knoebel);
 - c. Minimum 15 foot setback above the first floor where 0.0 feet is required
 - d. A deficit of 6 parking spaces, where none are provided
- B. Proposed lot #8 (existing library buildings):
 - a. 0 foot setback above the first floor where 15 feet is required
- C. Proposed lot #11 (Depew House):
 - a. Rear yard setback of 1.2 feet where 25 feet are required
 - b. Building height of 2.5 stories where 2 stories are permitted (which is a preexisting condition)

THIRD: 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 Dennis Lynch, Esq., Michael Browning and Steven Collazual on behalf of the Applicant;
3. ZBA members' knowledge of the site in question;
4. Site visits by all members of the ZBA;
5. Building Inspector's Plan Review Summary dated November 24, 2014, and January 26, 2015;
6. Testimony of Don Yacopino, Nyack Chief Building Inspector
7. Minutes of the Planning Board dated April 19, 2004, May 3, 2004, March 7, 2005, July 11, 2005, April 3, 2006, June 5, 2006, July 10, 2006, August 14, 2006, September 11, 2006, October 4, 2006, January 8, 2007, April 7, 2014; July 7, 2014 and September 14, 2014
8. ZBA resolutions dated May 26, 2004 and March 29, 2005;
9. Correspondence from the County of Rockland Department of Planning to the Nyack

¹ A letter from the Applicant's attorney, Dennis Lynch, dated November 24, 2014, which challenged the jurisdiction of the Zoning Board and raised objections to the Building Inspector's determinations, was withdrawn prior to the January 29th meeting.

- Planning Board dated April 16, 2014 and May 29, 2014;
10. Correspondence from the Applicant and/or its attorney, Feerick, Lynch & MacCartney, to the Nyack Planning Board dated March 4, 2014, June 2, 2014 and September 5, 2014;
 11. Local Waterfront Revitalization Form completed by the Applicant and dated August 19, 2014;
 12. Short Environmental Assessment Form dated September 8, 2014;
 13. Draft Shared Use Parking Agreement received by the Building Department November 19, 2014;
 14. Testimony from the following members of the public in support of the application: Mary Ann Evangelist and Charles Muthex; and
 15. Testimony from the following members of the public opposed to the application: Dominick Pilla (23 Depew Avenue).

FOURTH: The site in question is located in the DMU and OMU zoning districts. The original library building was constructed in 1903. Between 1996 and 2004, the Library purchased adjoining lots incorporating the “Depew House” and proposed an extension that led to extensive hearings before the Nyack Planning Board and the ZBA. On March 29, 2005, the ZBA approved a request for a variance from the parking requirements from the required 50 spaces to 25 spaces. Following additional hearings and discussion, the Planning Board granted final site plan approval and construction on the extension thereafter commenced. Construction was completed in 2011.

FIFTH: The current parking lot includes 26 parking spaces, with five reserved spaces accessible to the rear of the Depew House and three reserved spaces marked for library staff. The remaining 16 spaces provide metered public parking and three spaces are land banked. Two additional land banked spaces are located in the landscaped area in the southern side of the library addition.

SIXTH: If approved, the present application would permit the Library Board at some future date to sell the lots containing the Depew House and the Stevenson House, if it determined that such action was required to carry out its fiduciary duties. The Library contends that approval of the plan is required and that no feasible alternatives exist because the only way that a marketable status of the Library’s properties can be achieved is by the lot line revision. The Library also offered testimony that there will be no physical change in the library or its properties as a result of the application or the variances; there will be no change in the character of the neighborhood; and that a proposed Shared Use Parking Agreement will ensure adequate parking for the Library and the Depew House and continue to minimize the impact of any parking demands on the neighborhood. In this regard, the Library offered testimony that, because the heaviest parking attributable to the Depew House occurs during the daytime hours, while the heaviest parking demands on the library occur during the evenings and weekends when the Depew House is closed, shared use is appropriate and efficient. The Shared Use Parking Agreement also allocates two spaces to the Stevenson House, which reduces, although it does not eliminate, the parking variance required. Finally, the Library contends that the hardship is not self-created because the new building was designed with Village input and approval.

SEVENTH: In his plan review summary dated November 24, 2014, Chief Building Inspector Yacopino noted that, if the proposed subdivision is approved, several of the walls of the Stevenson House and the Depew House would be within 3 feet of the property line. The Chief Building Inspector testified that this raises fire safety concerns because the old wood clad buildings lack fire-resistant walls and protected window openings which would be required under other circumstances by the New York State Building Code. While acknowledging that compliance with the New York State Building Code is not required in this case, the Zoning Board finds that the Building Inspector's observations are relevant to its considerations pursuant to Article IV, VON Code 360-5.8A saying that "land to be subdivided must of such character that it can be used safely for building purposes without danger to health or peril from flood, fire or menace".

EIGHTH: In response to concerns raised by Member Knoebel regarding proposed Lot #7 (Stevenson House), the applicant agreed to move the proposed lot line to reduce the necessary side yard variances. An undeveloped portion of Lot #8 which abuts the eastern and northern boundaries of Lot #7 contains open decking which may pose fire safety concerns to Lot # 7 if the Library uses open flame devices in that space.

NINTH: Despite holding extensive public hearings on the proposed application, the Planning Board declined to offer a recommendation to the ZBA regarding whether the proposed variances should be granted. At its meeting held September 8, 2014, however, the Planning Board, which had declared itself lead agency under SEQRA for the Unlisted action, issued a Negative Declaration. The Planning Board also reviewed the proposed Shared Use Parking Easement Agreement and did not raise any objections to it.

TENTH: Article IV, VON Code Section 360-4.13F(2)(subdivision design standards) states that "applicants seeking to consolidate lots shall demonstrate that such consolidation will not result in lots sizes that are inconsistent with the established character of the surrounding areas." Having reviewed a map of the surrounding properties, the Zoning Board finds that the proposed lot sizes are not out of character with the area, which contains both commercial and residential properties.

ELEVENTH: Dominick Pilla (23 Depew Street) testified that there were shared drainage facilities between the three properties.

TWELTH: As previously found by the ZBA in its decision dated March 29, 2005, the Library is a non-commercial venture that provides extraordinary benefits to the Village and surrounding communities.

These Findings of Fact were moved and passed (4-0).

CONCLUSIONS OF LAW:

When considering both the Special Permit and variance requests, the Zoning Board accorded the applicant deferential treatment due to the inherently beneficial nature of the Library in promoting

the public health and welfare.

VARIANCE REQUESTS

With respect to the application for the area variances, the ZBA decided upon oral motion to consider the variances for each proposed lot 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.

Proposed Lot 7 (Stevenson House)

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 6, 7 and 8. (4-0).

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 6 and 8. (4-0)

THIRD: That 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 paragraphs 5, 6 and 8. (4-0)

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 6, 8, 9, and 10. (4-0)

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 paragraph 4. (4-0)

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 Architectural Review Board are followed;
2. To accommodate any fire separation concerns raised by the Building Inspector, the grant of the side yard variances on proposed Lot #7 are conditioned upon the applicant, and its successors and/or assigns, being precluded from utilizing any open flame devices on the northern side of the premises (both on any decking and on any open space located on the northern side of the premises), and on the any decking located on the eastern side of the premises.
3. The applicant shall provide the Building Department with a recorded Shared Use Parking Agreement dedicating two (2) parking spaces for Lot #7 in the existing parking lot proposed to be part of Lot #8 on the subdivision plat. The form of the Agreement shall be reviewed and approved by the Village Attorney, and the applicant shall be required to provide a recorded copy of the approved Agreement to the Building Department prior to the recording of the subdivision plat.

Proposed Lot 8 (Existing Library Building)

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 6 and 7. (4-0).

SECOND: That the Applicant has demonstrated that there are no other means by which it could achieve its 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 6. (4-0)

THIRD: That the variance is 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 6. (4-0)

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 6, 9, 10 and 11. (4-0)

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 paragraph 4. (4-0)

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 Architectural Review Board are followed;
2. The applicant shall provide an easement for the siting and maintenance of any utilities or drainage facilities which cross lot #8 and service any other lot referenced in the application. The easement shall also grant access to Lot #8 to the owners of Lots #7 and Lot #11 in the event that such access is required to effectuate repairs to the structures or facilities located on Lot #7 & Lot #11. The form of the easement shall be reviewed and approved by the Village Attorney, and the applicant shall be required to provide a recorded copy of the approved Agreement to the Building Department prior to the recording of the subdivision plat.
3. To accommodate any fire separation concerns raised by the Building Inspector, the grant of an area variance on proposed Lot #8 is conditioned upon the applicant being precluded from utilizing any open flame devices to the undeveloped portion of Lot #8 which abuts the eastern and northern boundaries of Lot #7, including but not limited to grills or barbeques.

Proposed Lot 11 (Depew House)

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 6. (4-0).

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 paragraph 6. (4-0)

THIRD: That 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 5 and 6. (4-0)

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 paragraph 6, 9, 10 and 11. (4-0)

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 paragraph 4. (4-0)

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 Architectural Review Board are followed;
2. The applicant shall provide an easement for the siting and maintenance of any utilities or drainage facilities which cross lot #11 and service any other lot referenced in the application. The easement shall also grant access to Lot #11 to the owners of Lots #8 in the event that such access is required to effectuate repairs to the structures or facilities located on Lot #8. The form of the easement shall be reviewed and approved by the Village Attorney, and the applicant shall be required to provide a recorded copy of the approved Agreement to the Building Department prior to the recording of the subdivision plat.
3. The applicant shall provide the Building Department with a recorded Shared Use Parking Agreement dedicating six (6) parking spaces for Lot #11 in the existing parking lot proposed to be part of Lot #8 on the subdivision plat. The form of the Agreement shall be reviewed and approved by the Village Attorney, and the applicant shall be required to provide a recorded copy of the approved Agreement to the Building Department prior to the recording of the subdivision plat.
4. The applicant, and its successors and/or assigns, shall be precluded from constructing additional parking spaces on the northern side of the premises, which prohibition shall be reflected on the subdivision plat.
5. The Planning Board shall consider the necessity of installing fire suppression installations on the structure located on Lot #11 due to the proximity of the parking lot to the structure.

SPECIAL PERMIT APPLICATION

As to the application for Special Permit, the Zoning Board of Appeals finds that such a Special Permit is required by VON Code Section 360-5.9A which states that “the merger of two or more lots requires special permit approval”. The term “lot” is defined by VON Code Section 360-6.1 as “any parcel of land, not necessarily coincident with a lot or lots shown on a map of record, which is occupied by a building and its accessory buildings Together with the required open spaces appurtenant to such building....”. Here, the Applicant is seeking to relocate lot lines to create three separate lots with three separate structures and to incorporate the parking lot (which is currently part of the parcel occupied by the Depew House) into the proposed Lot # 8 containing the existing library buildings. Accordingly, the requirement that the Applicant obtain a Special Permit clearly applies.

Having considered the factors set forth in VON Code 360-5.9C, the Zoning Board of Appeals makes the following Conclusions of Law:

FIRST: That the Applicant has shown that all proposed structures, equipment and

material will be readily accessible for fire and police protection.

SECOND: That the Applicant has shown that the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.

THIRD: The Applicant has shown that the location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to or incongruous with said district or conflict with the normal traffic of the neighborhood.

FOURTH: The Applicant has shown that the location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

FIFTH: The Applicant has shown that the proposed consolidation will not result in lots sizes that are inconsistent with the established character of the surrounding areas

The Board has weighed the findings of fact and the conclusions of law as required under VON Code Section VON Code 360-5.9C *et. seq.* and finds that , as there are no changes proposed to the existing uses on the respective parcels, or to the buildings on the parcels, there would be no disruption or adverse affect on the surrounding neighborhood or community at large. Accordingly, the Special Permit is GRANTED on the condition that the applicant complies with the conditions of the variances.

On a roll call, the vote was as follows:

Ayes: 4 (Friesen, Dunnigan, Armano, Cohen)

Nays: 0

Abstain: 0

Catherine H. Friesen

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