

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

February 25, 2013

Present: Catherine Friesen, Chair
John Dunnigan
Mary Ann Armano
Ellyse Berg

In Memoriam:
Raymond O'Connell

Absent: Robert Knoebel, Sr.
Roger Cohen (alternate)

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

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

-----X
In the Matter of the Application of Joseph Lagana
(220 Main Street) for an area variance from VON Code
Section 360-4.3, (Dimensional Standards) Table 4-1
For eighteen (18) dwelling units where fourteen (14) are
permitted
-----X

The Zoning Board of Appeals held a public meeting on the 25th Day of February, 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 Joseph Lagana petitions the Zoning Board for the area variance as set forth 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 Laura Weiss, Esq. and Barry Terach on behalf of the Applicant, and Joseph Lagana, 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 January 7, 2013 and February 4, 2013, and positive recommendation of the Planning Board with respect to the variance;
6. Minutes of the Architectural Review Board dated December 19, 2012;
7. Draft resolution of the Nyack Village Board to grant a 10% density credit to the Glenmare Apts. LLC Development (220 Main Street);
8. Notice of SEQRA Negative Declaration dated February 11, 2013;
9. Village of Nyack Local Waterfront Revitalization Program Coastal Assessment Form dated February 5, 2013;
10. Letter from Adler Consulting to Village of Nyack Building Department dated February 5, 2013;
11. Building Inspector's Plan Review Summary dated February 25, 2013;
12. Testimony from the following member of the public in support of the application:
Beth Riso.

THIRD: The site in question is located in the DMU and TFR zoning districts across the street from the intersection of Main Street and Mill Street. The Applicant purchased the property in the mid-1990s pursuant to the local zoning regulations. The total lot area consists of 40,999 square feet and includes several tax parcels that have been combined.

FOURTH: The Applicant proposes to demolish an existing one-story building and construct a three-story, 18 unit apartment building with a street facing retail component on essentially the same footprint to the immediate west of the Adare, a 16 unit, three story apartment building located on the same combined lot. The permitted density is 30 dwelling units ("DU") per acre, resulting in 27 dwelling units permitted as of right for this property. The Applicant is seeking a total of 34 dwelling units (16 existing plus 18 proposed). The Applicant has appeared before the Village Board seeking a 10% Affordable Housing density credit which, if granted, reduces the variance required from seven units to four units. The Applicant appears before this Board seeking only a four unit variance.

FIFTH: In explaining why the additional units are necessary, the Applicant contends that the property requires disproportionate investment due to the required demolition of the existing building and the uncertainty of the subterranean conditions. In addition, Mr. Lagana testified that the ability of the applicant to obtain the necessary financing for the project depends on the projected revenue stream from the four additional units. Further, according to the Applicant, granting the variance would ameliorate a unique hardship in that it would provide the developer with resources to address potential underground stream repairs. The Applicant also notes that the property is in a prominent location with high public visibility and needs to be developed accordingly, and that the variance would allow the developer the resources to greatly improve the overall aesthetic of the immediate neighborhood.

SIXTH: The proposed units are all between 813 and 1,586 square feet and exceed the minimum established by the Code. The Applicant testified that there will be adequate off-street parking for all the units and that additional parking spaces will be made available if necessary at the Mill Street lot across the street.

SEVENTH: The Nyack Planning Board has issued a positive recommendation to this Board in relation to the Applicant's request for a four dwelling unit variance request, which it calculated as an 11.7% variance. In making its recommendation, the Planning Board noted that it had considered the positive benefits of a cohesively planned and executed development outside of the downtown area which provides more than sufficient parking for its tenants. The Planning Board, as lead agency, also issued a negative SEQRA declaration finding that there were no significant environmental impacts from the project that had not been mitigated by a careful review of the traffic, runoff and other environmental concerns. Citing general concerns about the number of units, the ARB declined to make a recommendation to this Board whether the variance should be granted. The ARB granted the demolition permit, however, and gave conditional approval of the plans.

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

CONCLUSIONS OF LAW:

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 variance does not create an undesirable change in the neighborhood. (4-0)

SECOND: That no detriment to nearby properties will result from granting the variance. (4-0).

THIRD: That the Applicant has demonstrated that there are no other means by which he could achieve his purpose without the requested variance. (4-0)

FOURTH: That the variances are not substantial in light of the current conditions on the site. (4-0)

FIFTH: That, on balance, the hardship is self-created. (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 Village Board, Planning Board, ARB and Nyack Fire Department are followed.

2. In the event that the number of parking spaces changes due to the input of the Fire Department, the Applicant will provide sufficient off-street parking to the satisfaction of the Building Department.

On a roll call, the vote was as follows:

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

Nays: 0

Abstain: 0

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