

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

November 26, 2018

Present: Steven P. Knowlton, Chair
Jack Dunnigan
Ellyse Berg
Richard Gressle
Roger Cohen
Glen Keene, Alternate

In Memoriam:
Raymond O'Connell

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 26, 2018.

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

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In the Matter of the application of David Wilkinson (66 South Broadway) for Area Variances from VON Code Article IV, § 360-4.3 for a dwelling unit less than 400 sq. ft. and from VON Code Article IV, § 360-4.5C to permit a unit without a required parking space.

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The Zoning Board of Appeals held a public meeting on the 26th of November 2018, 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 David Wilkinson petitions the Zoning Board for the area variances outlined 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. The testimony of Kier Levesque for the Applicant;
3. ZBA members knowledge of the site in question;

4. Site visits by all members of the ZBA;
5. Chief Building Inspector's notes and summary;
6. The positive recommendation of the Nyack Planning Board referable to the variance to permit a unit smaller than 400 sq. ft. and its declination to offer a recommendation related to the parking variance;
7. There was no public comment.

THIRD: The site in question is located in the DMU-1 zoning district.

FOURTH: The Applicant wishes to legalize an apartment created without a building permit and without required parking.

FIFTH: The dwelling unit at issue has been in existence since at least the late 1980's although illegally. The building occupies the entire footprint of the site.

SIXTH: The Planning Board assumed lead agency status for the purposes of SEQRA analysis. It also issued a positive recommendation as to the size variance, but declined to offer a recommendation as to the parking variance.

These Findings of Facts were moved and passed (5-0)

CONCLUSIONS OF LAW:

Upon motion, the Zoning Board has elected to deliberate on the variance requests in an omnibus fashion. (5-0)

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 neighborhood. 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 SECOND through SIXTH. (5-0)

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

THIRD: 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 SECOND through SIXTH. (3-2)

FOURTH: That the variances are 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 paragraphs SECOND through SIXTH. (4-1)

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 SECOND and FOURTH. (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 conditions to which the Applicant has agreed:


1. The recommendations of the Nyack Architectural Review Board, the Nyack Planning Board, the Village Fire Inspector and the Village of Nyack Fire Department in relation to this application must be followed.

On a roll call, the vote was as follows:

Ayes: 5

Nays: 0

Abstain: 0


STEVEN P. KNOWLTON, Chairman
Zoning Board of Appeals, Nyack.

BOARD -- Chairman Klose moves to re-approve the previously submitted and approved plans and approvals from subject to all the prior language and reiterate the positive recommendation from the Planning Board in June 6, 2016 minutes with the applicant to return for further site plan approval after GML review - Seconded by Jean Gilles; Vote 4-0- positive recommendation to the ZBA.

SITE PLAN REMAINS OPEN Updated NEG DEC. DATED December 3, 2018 TO BE RE-CONSIDERED AND ADOPTED at the December meeting.

5. **66 South Broadway. Kier Levesque for Wilkinson. Request for referral to Zoning Board of Appeals for two area variances. Property is in DMU-1 zoning district.** Area Variances are required from: Article IV, VON§360-4.5C, Minimum Parking Requirements Table 4-2 for one parking space. Article IV, VON§360-4.3, Dimensional Standards Table 4-1 for a dwelling unit less than 600 sq. ft. Application has been sent out for GML review. Copies of relevant 1987 documents included.

Village Planner Comments- The application is for the legalization of an existing fourth efficiency apartment. The lot size is 2,500 sf with 20' frontage and 125' depth. Property is completely land-locked. The first floor is occupied by the Christine Corder Salon (668 sf). There are two apartments on the second floor (400 sf and 363 sf). The third floor has a penthouse loft (720 sf) and a 400 sf efficiency apartment. The existing building is 3 ½ stories with a height of 38'. The building received a variance in May 1987 for the density increase allowing three apartments in the building. Comments from the ZBA minutes indicated that the two undersized apartments on the second floor were favorably viewed by the members and generally in keeping with the Code. The ZBA approved a special permit in 1987 for the project. The rear apartment on the second floor has a 100 sf outdoor deck. When the ZBA approved the variance in 1987 for three apartments in the building, the density was 30 units per acre. The density per acre in 2014 was increased to 50 units per acre to match the 2.0 FAR in the downtown. The applicant is not increasing the building's FAR which is 1.6 where 2.0 is allowed.

SEQRA A Short Form EAF has been provided which has been reviewed. The proposed action is seeking the legalization of a fourth efficiency apartment. The proposed action does not increase the footprint, nor does it increase the FAR. The fourth apartment has been in existence for over 30 years with no adverse impacts. The action appears to be a minor action with no significant environmental impacts. The action is for a residential apartment allowed by zoning with no use variance being required. This will be compatible with a new Type II action which will be available at the end of the year, namely, the "reuse of a commercial or residential structure not requiring a change in zoning or a use variance, unless it meets or exceeds certain specified Type I thresholds".

Village of Nyack Planning Board (November 5, 2018)

I would recommend that the Planning Board type this as a Type II action with no further SEQRA review required. This will allow the applicant to proceed to the ZBA for the requested area variances including density, parking (1 space) and an efficiency apartment less than 450 sf. (Note that the ZBA in 1987 allowed the use of two smaller apartments on the second floor of the building.) The Planning Board can ask the applicant's architect if there is any possibility of providing a sustainability amenity which would then obviate the need for a density variance from the ZBA.

The Planning Board can then consider a draft resolution at its next meeting after the ZBA has issued a decision.

PUBLIC--several questions concerning the size of the apartment and the effect on the tenants

BOARD-- Klose moves to close public hearing as to the variance-- Jean-Gilles second, vote 4-0.

BOARD -- Chairman Klose makes a motion with respect to the parking variance that the Planning Board should make no recommendation to the ZBA given the existing state of the Village Zoning Code and the various past applications relating to parking.

Chairman Klose adopts the Village Planner's recommendation that this is a Type II action for SEQRA and moves with respect to the second variance to issue a positive recommendation to permit the legalization of the 400 square foot apartment where 450 is required as the non-conformity has been existing for more than 30 years and the small size of the efficiency apartment is mitigated by the existence and enhancement of an outside deck. Second by Jean-Gilles -- 4-0 positive recommendation approved.

OTHER BUSINESS-- Motion to adjourn by Klose, seconded by Member Englander - passed by a vote of 4-0. Meeting adjourned at 8:35 PM