

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

February 22, 2021

Present: Steven P. Knowlton, Chair
Jack Dunnigan
Ellyse Berg
Roger Cohen

**In Memoriam:
Raymond O'Connell**

Absent: Richard Gressle

The following resolution was offered by Member Berg, seconded by Member Dunnigan, and carried based upon a review of the evidence presented at the public hearing held on February 22, 2021.

**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 Reinstatement of Previously Granted Area Variances from:

1. VON Code Article IV, § 360-4.3 for a dwelling unit less than 400 sq. ft.;
2. VON Code Article IV, § 360-4.5C to permit a unit without a required parking space;

And for a further Area Variance from VON Code Article IV, §360-4.3, Dimensional Standards Table 4-1 for an Increase in Density to 5 Dwelling Units Where 3 are Permitted
-----X

The Zoning Board of Appeals held a public meeting on the 22nd of February, 2021, 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 reinstatement of the variances and to permit a 5th dwelling unit.
7. Comments of the Rockland County Department of Planning

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

FOURTH: The Applicant wishes to reinstate previously granted variances (see this Board's decision dated November 26, 2018 and made a part of the record herein) and to add a 5th dwelling unit, below street level with emergency access to the rear which is grade level.

FIFTH: Testimony elicited at the hearing revealed that the conditions at the site have not changed since the original variances were granted. The reinstatement is required as construction did not begin within 12 months of the initial grant, and the variances have expired.

SIXTH: Additionally, the Applicant has suffered a financial downturn at the site as the below grade space has been vacant since the start of the Covid-19 crisis. This is the basis for the variance request regarding the 5th dwelling unit.

SEVENTH: No additional off street parking is required for the site.

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

After initially moving and passing the resolution rule on the variance reinstatement and the additional variance in an omnibus fashion, discussion revealed a concern about the variance that would permit a 5th dwelling unit. The ZBA withdrew that resolution and the reinstatement and the new variance were discussed and ruled on separately.

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 in relation to the request to reinstate the previously granted variances:

(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 SEVENTH. (4-0)

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. (4-0)

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 SEVENTH. (4-0)

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 SEVENTH. (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 paragraphs SECOND and FOURTH. (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 request for the previously granted variances to be reinstated 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 the reinstatement and the new application must be followed.

On a roll call, the vote was as follows:

Ayes: 4

Nays: 0

Abstain: 0

The Zoning Board next considered the factors set forth in Section 7-712-b(3)(b) of the Village Law of the State of New York as follows in relation to the request for a further Area Variance from VON Code Article IV, §360-4.3, Dimensional Standards Table 4-1 for an Increase in Density to 5 Dwelling Units Where 3 are Permitted.

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 SEVENTH. (4-0)

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. (4-0)

THIRD: That the Applicant has not 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 SEVENTH. (3-1)

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 SEVENTH. (4-0)

FIFTH: That the hardship is not 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, FOURTH and SIXTH. (3-1)

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 request for the previously granted variances to be reinstated 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 the reinstatement and the new application must be followed.

Ayes: 4

Nays: 0

Abstain: 0

/s/ Steven P Knowlton
STEVEN P. KNOWLTON, Chairman
Zoning Board of Appeals, Nyack.