

VILLAGE OF SOUTH NYACK
Zoning Board of Appeals Minutes
December 3, 2019

PRESENT: Roger Seiler – Chairman
Bruce Forrest – Member
Charles Cross – Member
Jeffrey Hirsch – Member
Richard Rose – Member

ALSO PRESENT: Sokuna Mam – ZBA Secretary
Robert Knoebel – Attorney for Zoning Board
Scott Fine, Building Inspector

ABSENT: Richard Holt – Alternate Member
Dewitt Rulon – Alternate Member

Mr. Seiler called the meeting to order at 7:38 pm. This meeting was noticed to the public on November 19, 2019. The following public hearing was held:

An appeal by Mark Holder from Article XI, Section 330-69(A) (1) & Article VII Section 330-34 Nonconforming Building and Uses and Table of Use and Bulk Requirements, Schedule 1, Page 2 of the Zoning Law of the Village of South Nyack for a side-yard and front yard area variances to construct a new deck. The premises is located at 1 Livingston Pl., South Nyack, NY 10960 and identified on the Tax Map as Section Block Lot 66.77-1-34 on an RG-4 Zoning District.

Case: 1 Livingston Pl., South Nyack, NY 10960
Appearing: Mark Holder, owner

Mr. Holder proposed construct 16x8 deck on the east side of the building.

Mr. Seiler explained that the property is a corner lot. In a corner lot, a house faces two streets with two yards, each considered a front yard. The Zoning Board can decide to assign one of the front yards to be a side yard; if circumstances make this practical.

Mr. Holder explained that the existing side yard is 9.3ft and the requirement is 10ft. the front yard is 18.4ft and the requirement is 20ft. He read the response to the five criteria.

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; *there will be no undesirable change in the character of the neighborhood, or a detriment to nearby properties due to the granting of a variance. many homes in South Nyack have decks facing South Broadway. This will not be detrimental to nearby properties.*
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; *there is no other way to achieve this deck on South Broadway side of the home other than building it on the proposed side. It is for the*

enjoyment of the current and future occupants of this property. The deck faces the east while the back of the property is shaded due to the neighbors' trees.

3. Whether the requested area variance is substantial; *the requested area variance is not substantial. Some of the requested variances already exist.*
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; *this is a small deck. It will not have an adverse effect on the physical or environmental conditions in the neighborhood. It will beautify the one and will allow outdoor access to the South Broadway side of the home.*
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 an area variance. *not self-created*

Mr. Rose asked **Mr. Holder** if the house is a one or two family dwelling.

Mr. Holder explained that the house is a two family dwelling.

There was a discussion about the existing door that would lead out to the deck.

Mr. Hirsch asked about the door.

Mr. Holder explained that the door to nowhere has a 12ft drop from the window.

There was a discussion about egress.

Mr. Rose disagreed with **Mr. Holder**'s response to the first criteria whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties because there's no deck on the front of the houses along South Broadway based on his observation, but front porches.

Mr. Holder explained to Mr. Rose that Mr. Rose needs to drive up more near him in regards to decks in front of the houses.

Mr. Rose explained the differences between decks and porches with the following:

- Decks are often elevated from the ground and are open underneath
- Porch are often grounded on the ground and are usually covered
- Decks usually have barbecue grills under, and other things are unsightly

Mr. Holder explained that enclosing underneath a deck was discussed at the Planning Board. It will bring more problems to the property including animals living under deck and it would encourage storing stuff which will be an eye sore visually on the street. He's trying to beautify the property. He's not planning to put stuff underneath his deck.

There was a discussion about the deck use in the future.

Mr. Knoebel explained that a variance runs with the property and screening was discussed at the Planning Board meeting.

There was a discussion about stairs.

There was a discussion about the fact that the property has two front yards, but the zoning board will make a decision about one of the front yards being a rear or side yard.

Mr. Rose expressed his concerns about if the board can make sure in the future there's nothing stored underneath the deck.

There was a discussion that screening was recommended at the Planning Board meeting, but screening is not required.

Mr. Knoebel reminded that the Zoning Board is asked to grant a variance which essentially allows an encroachment into a required front yard and that's why the board is discussing things that enumerate the impact that requirement.

No Members from the public were present.

Mr. Forrest made a motion to close the public hearing.

Mr. Rose seconded

Board Vote:

Mr. Seiler	Aye
Mr. Forrest	Aye
Mr. Cross	Aye
Mr. Hirsch	Aye
Mr. Rose	Aye

Motion approved 5-0

FINDINGS OF FACTS

Mr. Hirsch listed the finding of facts and balancing test:

- The applicant answered the criteria.
- Being a corner property, it has two front yards.
- The existing side yard is non-conforming because it is 9.3ft, whereas the requirement for a side yard is 10ft.
- The existing building is non-conforming as to the yard to the rear of the building.
- If the yard adjoining Livingston Pl. is a front yard, then the rear yard setback doesn't meet the required minimum of 20ft.
- the requested area variance is not substantial
- the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance
- there's no other way to achieve the proposed deck on South Broadway side

- the deck is small and it will not have an adverse effect

Mr. Seiler requested a reopening of the public meeting. This was approved by consensus.

Mr. Seiler asked about the two measurements that were on the drawings that were not cleared including the 7ft and 8ft.

Mr. Holder explained that the 7ft is to the columns of the deck and 16x 8ft is the deck area.

Mr. Hirsch said the proposed front yard on South Broadway to the property line is 18.7ft and based on the Village Engineer's report said 18.4ft is being proposed.

Mr. Forrest explained that the applicant needs 1.3ft variance.

Mr. Seiler explained that if according to the balancing of benefits to the applicant if granted, versus benefits to the community if denied, it weighs strongly in favor of the applicant.

Mr. Rose commented that putting in screening will have equal benefits to the applicant and the community.

Mr. Forrest asked the board in making its determination, is there benefit to the community denying the deck versus advantage to the applicant if the variance is granted.

Mr. Rose commented that it benefits the community by denying the deck because he believed it is not compatible to the neighborhood. It is a detriment to put a deck in the front yard.

Mr. Cross commented that the benefit will be greater to the applicant than to the neighborhood. The Zoning Code creates two front yards because it's on a corner lot. In a practical matter, this is a side yard. The encroachment to the front yard is not significant.

Mr. Rose commented that this is not a unique situation because there's many houses in South Nyack have a corner lot.

Mr. Forrest commented that it is not a functional front-yard.

Mr. Cross commented that for this property, the board should not compare this house with a house that has a front yard with a front street.

Mr. Rose stated his opinion that you cannot build a shed on a side yard.

Mr. Forrest commented that you will need to demonstrate the overwhelming benefit to the community the reason of denying the deck that's being applied.

Mr. Hirsch asked about what was the neighbors' concern about the application.

There was a discussion about the procedure of notifying the neighbors’.

Mr. Knoebel commented that a corner lot is defined as a parcel of land at the junction of, and fronting on, two or more intersecting streets.

Mr. Seiler commented that a front lot line is defined as the lot line facing the public or private road that provides the primary means of access to the property. Thus, in the case of a lot abutting only one street, the line separating the lot from the street; in the case of a corner or through lot, both yards abutting streets shall meet the requirements for "yard, front" unless one of those yards is designated in a variance ruling by the Zoning Board of Appeals as a side or rear yard.

Mr. Cross commented that if there was a potential negative impact on the community visually than that is a detriment to the community, but it is not significant enough to outweigh the benefit to the applicant in granting the variance.

Mr. Cross made a motion to grant a variance for the construction of the deck on the front yard that borders South Broadway with the stipulation that in order to offset any potential negative impact to the community, the deck is to be screened on the north and east side with lattices.

- This is a Type 2 SEQRA action with no potential for negative environmental impact.

The premises is located at 1 Livingston Pl., South Nyack, NY 10960 and identified on the Tax Map as Section Block Lot 66.77-1-34 on an RG-4 Zoning District.

Mr. Rose seconded

Board Vote:

Mr. Seiler	Aye
Mr. Forrest	Aye
Mr. Cross	Aye
Mr. Hirsch	Aye
Mr. Rose	Aye

Motion approved 5-0

Old Business:

Mr. Forrest moved to approve October 1, 2019 Zoning Board of Appeals as amended minutes.

Mr. Cross seconded

Board Vote:

Mr. Seiler	Aye
Mr. Forrest	Aye
Mr. Cross	Aye
Mr. Hirsch	Aye

Motion approved 4-0

Upon motion made by **Mr. Forrest** and **Mr. Hirsch** seconded, and unanimously approved, the meeting adjourned at 8:59pm.

The next meeting is TBD

Respectfully submitted,

Sokuna Mam
Zoning Board Secretary

Approved: _____