



Zoning Board of Appeals
Mount Vernon, New York 10550-2060

Shawyn Patterson-Howard
Mayor

Elvira Castillo
Chair

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In the Matter of the Application by

NYRY 356 LLC

For a AREA VARIANCES
(to Reconstruct an Existing
Dimensionally Nonconforming Building)

FINDINGS OF FACT,

**CONCLUSIONS OF LAW &
DETERMINATION**

Zoning Board Calendar No: 1763-Z

Property:

356 South 10th Avenue
Mount Vernon NY
Tax Map No. 169.38, Block 3028, Lot 13
In the RMF-6.75 Zoning District

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Per the Zoning Board application dated November 30, 2021, NYRY 356 LLC, the Owner, by and through Applicant Badaly Engineering PLLC, seeks a variance to obtain relief from the dimensional requirements regarding the reconstruction of dimensionally nonconforming buildings that have been destroyed or damaged, as set forth in § 267-11(D)(1) and (2) of the Mount Vernon Zoning Code. Applicant seeks to reconstruct the existing fire-damaged dimensionally nonconforming 3-family detached residence located at 356 South Tenth Avenue in the RMF-6.75 zoning district, Block 3028, Lot 13 on Map Page No. 169.38 of the Tax Assessment Map of the City of Mount Vernon.

Background

1. The subject property is located on the north side of South 10th Avenue, one parcel to the east of West 5th Street. Per the survey, prepared by Apple Surveying and dated August 27, 2020, the subject residence is a 2 ½ - story and cellar frame building on a 33.33' x 100' parcel. The survey shows that the adjacent house (358 South 10th Avenue) also has frontage of 33.33' along South 10th Avenue and a depth of 100'. Per the Plan Examiner's Report, prepared by Errol McIntosh, R.A. and dated November 12, 2021, the subject lot is an existing undersized lot which makes it a nonconforming lot with a nonconforming yard. All nonconforming dimensions existed prior to the fire damage. Applicant proposes to reconstruct the fire-damaged existing nonconforming 3-family detached dwelling

by erecting a 3-family, 3-story detached residence over the existing footprint, with no increase to any of the existing dimensional nonconformities. The area variances needed to for the reconstruction are set forth in the zoning table that appears on Sheet A-100.00 (Site Plan & Zoning Compliance Tabulation) of the architectural drawings.

In addition, although the exact date of the fire damage was not determined, Applicant stated that the fire occurred more than one year from the date of the public hearing regarding this application and color aerial photos of the site indicate that the fire occurred between April 2019 and April 2021.

Zoning Review

2. The subject property is located in the RMF-6.75 Multifamily Residence zoning district wherein “multifamily dwellings, not to exceed three units per building”, are a permitted principal use, pursuant to Mount Vernon Zoning Code § 267-17(E)(1)(c).

3. Mount Vernon Zoning Code § 267-11(D)(1)(Reconstruction) provides:

“Should a building or structure, the use of which, or the use of a portion of which, is nonconforming, or which is dimensionally nonconforming, be destroyed or damaged by any means to an extent greater than 50% of the replacement cost of the entire building or structure used in connection therewith at the time of the reconstruction, it shall not thereafter be reconstructed or used except in conformity with the provisions of this chapter.”

4. Mount Vernon Zoning Code § 267-11(D)(2)(Reconstruction) provides:

“Should a building or structure, the use of which, or the use of a portion of which, is nonconforming or which is dimensionally nonconforming, be destroyed or damaged by any means to an extent of 50% or less of the replacement cost of the entire building or structure used in connection therewith at the time of the reconstruction, it may be reconstructed and any accompanying nonconforming use continued, provided that the reconstruction is commenced within one year of the date of such damage and completed within two years of said date, and further provided that it shall be reconstructed in accordance with a plan approved by the Board of Appeals on Zoning so as to result, where reasonable, in greater conformity with this chapter.”

5. Mount Vernon Zoning Code § 267-43(D)(Variances) provides:

“On appeal from an order, requirement, decision or determination made by an administrative official or agency charged with the enforcement of this chapter, or on referral of an applicant to the Board by an approving agency acting pursuant to Article VI or VII of this chapter, the Board of Appeals is authorized to vary or modify the strict letter of this chapter, where its literal interpretation would cause unnecessary hardship, in such manner as to observe the spirit of the chapter, secure public safety and welfare and do substantial justice.”

6. Mount Vernon Zoning Code § 267-1(H)(Purposes) provides that one of the purposes of Chapter 267 is: *“[t]o protect the character and social and economic stability and to encourage the orderly and beneficial development of the City and all of its neighborhoods.”*

7. In the RMF-6.75 Multifamily Residence zoning district; the Applicant proposes to reconstruct a fire-damaged existing dimensionally nonconforming 3-family detached dwelling.

8. The requested area variances must be evaluated based on the area variance criteria set forth in Mount Vernon City Code § 267-43(D) and Article 5A, Section 81-B of New York State General City Law.

The Application

9. Owner NYRY 356 LLC, by and through Applicant Badaly Engineering PLLC, filed this application dated November 30, 2021. A copy of the application is attached hereto and made a part hereof.

10. The application for the requested variances was in proper form, consistent with the requirements found in § 267-44 of the Mount Vernon Zoning Code.

Hearing

11. Prior to the Public Hearing, the Board Members reviewed the full application package, which included the completed Application form; Plan Examiner's Report, prepared by Errol McIntosh, R.A., dated November 12, 2021; color photographs of the Property and surrounding neighborhood, both before and after the fire damage; survey of the Property, prepared by Apple Surveying, dated August 27, 2020; completed Short Environmental Assessment Form (Part 1), prepared by Shahin Badaly, P.E., dated December 3, 2021; and the following architectural drawings, prepared by Badaly Engineering PLLC, dated September 4, 2020:

- T-001.00 (Title Page)
- A-100.00 (Site Plan & Zoning Compliance Tabulation)
- A-110.00 (Existing Floor Plan)
- A-111.00 (Proposed Floor Plan)
- A-200.00 (Front and Rear Building Elevation)
- A-201.00 (Side Building Elevations)
- A-202.00 (Building Elevation Images)
- A-300.00 (Exterior Material Specifications).

12. The Zoning Board of Appeals considered the subject application a Type II action pursuant to Section 617.5(c)(11) of the State Environmental Quality Review Act (SEQRA)(construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections). Moreover, the application qualifies as a Type II action pursuant to 6 NYCRR Section 617.5(c)(17)(granting of an area variance for a single-family, two-family or three-family residence), thus ending the SEQRA process.

13. A Public Hearing regarding the application was held on April 19, 2022, at 6:30p.m. via videoconference. On that date a quorum was present consisting of a total of three (3) Members present. The Zoning Board secretary received no written consents and no written objections from the public.

14. The public was afforded the opportunity to speak in opposition to, in favor of, or otherwise comment on the application. No members of the public appeared before the Board.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Area Variances to Reconstruct Existing Dimensionally Nonconforming Residence

15. Pursuant to Mount Vernon Zoning Code § 267-43, after weighing the benefit to the Applicant against the detriment to the health, safety and welfare of the neighborhood and community, the Zoning Board of Appeals hereby determines that the Applicant presented appropriate proof and met the criteria necessary to obtain the area variances needed to reconstruct the fire-damaged existing dimensionally nonconforming building.

a. How substantial the variation is in relation to the requirement:

Upon information received at the public hearing and upon Applicant's submissions, including, but not limited to, the application, the survey, the Plan Examiner's Report, and photographs of the property and surrounding neighborhood both before and after the fire, the Zoning Board finds that the subject lot is an undersized lot; the dimensional nonconformities existed prior to the fire damage; and the proposed reconstruction will occur on the existing footprint with no dimensional increase of nonconformities. Therefore, the Zoning Board concludes that the variation in relation to the requirement is not substantial in this instance. Moreover, as ascertained during the public hearing, the existing dimensionally nonconforming building was damaged to an extent of less than 50% of the replacement cost of the entire building, thus meeting the threshold set forth in Mount Vernon Zoning Code § 267-11(D)(2). Since the zoning code permits the reconstruction, the Zoning Board further concludes that the requested variances are not substantial in this instance.

b. Adverse effects or impacts on the physical or environmental conditions in the neighborhood or district:

Upon information received at the public hearing and upon Applicant's submissions, including, but not limited to, the application, the survey, photographs of the property and surrounding neighborhood both before and after the fire, and the completed environmental assessment form, the Zoning Board finds that: the completed environmental assessment form indicates that the proposed action will have no significant impact on the environment; and Applicant intends to install on-site subsurface retention chambers as part of its stormwater management plan to prevent runoff onto adjacent properties;. Moreover, the Zoning Board finds that the granting of area variances for the subject three-family residence qualifies as a Type II action under SEQRA, meaning that said action has been determined not to have a significant impact on the environment, under New York State law. For all the foregoing reasons, the Zoning Board concludes that granting area variances to allow for the reconstruction of the dimensionally nonconforming residence will not have adverse effects or impacts on the physical or environmental conditions in the neighborhood or district.

c. Substantial change in the character of the neighborhood or substantial detriment to adjoining properties:

Upon information received at the public hearing and upon Applicant's submissions, including, but not limited to, the application, the survey and color photographs of the property and surrounding neighborhood, both before and after the fire, the Zoning Board finds that the subject lot and proposed building fit in with the character of the neighborhood; and the home immediately adjacent to the subject lot is an identical, dimensionally nonconforming undersized lot. For the foregoing reasons, the Zoning Board concludes that granting area variances to allow for the reconstruction of the dimensionally nonconforming residence will not produce a substantial change in the character of the neighborhood nor will it create a substantial detriment to adjoining properties. On the contrary, the proposed reconstruction will have a positive impact on the neighborhood by replacing the fire-damaged remains with a habitable dwelling.

d. Ability to alleviate the difficulty by some method feasible for the applicant other than a variance:

Upon information received at the public hearing and upon Applicant's submissions, including, but not limited to, the application, the survey, and color photographs of the property and surrounding neighborhood, both before and after the fire, the Zoning Board finds that the existing structure is to be rebuilt over its existing footprint; any change in the building footprint to increase conformity would require demolishing the existing foundation and constructing a new foundation; the subject lot is undersized; and the existing lot area and frontage would not allow for an adequate dwelling to be built in compliance with all setback requirements. In light of the above, the Zoning Board concludes that, in this instance, there is an inability to alleviate the difficulty by some method feasible for the Applicant other than the requested variances.

e. Whether the difficulty alleged by the applicant was self-created:

Upon information received at the public hearing and upon Applicant's submissions, the Zoning Board finds that: the subject lot is an existing dimensionally nonconforming undersized lot; and the existing building was damaged by fire. Moreover, § 267-43(D)(2)(E) of the Mount Vernon Zoning Code states that whether the difficulty alleged by the applicant was self-created is a consideration that "shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance." Accordingly, the Zoning Board concludes that the difficulty was not self-created by the Applicant and the only feasible course of action here is to reconstruct the building according to the existing dimensional nonconformities.

f. In addition, the Zoning Board finds that the fire damage occurred over one year from the date of the public hearing regarding this application. However, this Board takes notice that the Governor of the State of New York declared a state of emergency in March 2020 due to COVID-19, wherein government operations, supply chains, and nonessential construction projects were drastically interrupted. In light of the disruptions caused by the

unprecedented COVID-19 health crisis, pursuant to Mount Vernon Zoning Code § 267-43(D), this Board hereby elects to exercise its authority to vary the strict letter of Mount Vernon Zoning Code § 267-11(D)(2) because requiring reconstruction to commence within one year of the date of damage and completed within two years of said date would cause unnecessary hardship to the Applicant. Instead, Applicant shall adhere to the provisions set forth in § 267-45 of the Zoning Code which requires issuance of a building permit for construction within one year of the date of variance and completion within two years of the date of issuance of the building permit. Such variance will observe the spirit of Chapter 267 by encouraging the orderly and beneficial development of the neighborhood, will secure public safety and welfare, and do substantial justice, pursuant to § 267-43(D) of the Zoning Code.

DETERMINATION

16. For the foregoing reasons, the Board determines that Applicant's request for area variances to reconstruct a fire-damaged existing dimensionally nonconforming building complies with Chapter 267 of the Mount Vernon City Code.

17. Following deliberations, on April 19, 2022, a motion to grant the requested area variances was made by Board Member Cutler, seconded by Board Member Solly, and carried by a unanimous vote of the three (3) Zoning Board members present.

Accordingly, it is therefore:

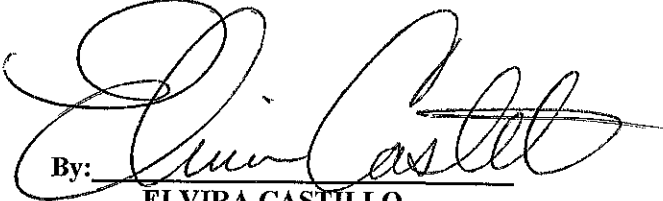
RESOLVED, that the application of NYRY 356 LLC, for AREA Variances to allow for the reconstruction of a dimensionally nonconforming building damaged by fire at the premises identified as 365 South Tenth Avenue, designated as Block 3028, Lot Number 13, on the Tax Assessment Map No. 169.38 of the City of Mount Vernon, New York, is hereby granted. And it is

FURTHER RESOLVED that the strict letter of Mount Vernon Zoning Code § 267-11(D)(2) requiring reconstruction to commence within one year of the date of damage is hereby varied in this case. Instead, Applicant shall adhere to the standard provisions set forth in § 267-45 of the Zoning Code which require issuance of a building permit for construction within one year of the date of variance and completion within two years of the date of issuance of the building permit.

Total Members: 5
Members Present: 3
Motion/Motion 2nd: Cutler/Solly
Ayes: 3 (Darden, Cutler, Solly)
Nays: 0
Abstain: 0
Absent: 1 (E. Castillo)
Vacancy: 1

Date Approved: April 19, 2022

Date Signed: 8/24, 2022

By: 
ELVIRA CASTILLO
CHAIR