



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

Shawyn Patterson Howard
Mayor

Elvira Castillo
Chair

-----X
In the Matter of the Application by

Jose Zuniga

For an AREA VARIANCE
(Expansion of dimensional nonconformity)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW &
DETERMINATION**

Zoning Board Calendar No: 1759-Z

Property:

419 South First Ave
Mount Vernon NY
Tax Map No. 169.31, Block 3128, Lot 37
In the RMF 6.75 Zoning District

-----X

Per the Zoning Board application dated August 12, 2021, Jose Zuniga, the Owner and Applicant herein, seeks to expand a dimensional nonconformity on his property to legalize the front porch enclosure on the second story with permission of the Zoning Board of Appeals as required and set forth in Chapter 267 of the Mount Vernon Zoning Code, Section 11 (c) (Dimensional nonconformity). The subject property is located at 419 South First Avenue in the RMF 6.75 zoning district, Block 3128, Lot 37 on Map Page No. 169.31 of the Tax Assessment Map of the City of Mount Vernon. The Property is improved with a single-family home.

Background

1. Per the Deed recorded on October 30, 2017, Jose Zuniga and Lidia Magana are the Owners of the subject property. Jose Zuniga is the Applicant for the subject expansion of a dimensional nonconformity.
2. The Applicant seeks to legalize the enclosure of the second story porch on the premises. The existing building and lot are dimensionally non-conforming because it is a lot that is 25 feet in width where 75 feet is required; 2,575 square feet where 6,750 is required; and the side yard is 1.5 feet where 7 feet is required.

Zoning Review

3. The subject property is located in the RMF 6.75 residential multi-family zoning district, wherein the use as a single-family dwelling is permitted in accordance with § 267-17(E) of the Mount Vernon Zoning Code.

4. The property is located in the RMF 6.75 zoning district, which requires:

- Per Mount Vernon Zoning Code § 267-11(C), “A building or structure that is conforming in use but does not conform to the lot dimension, yard dimension, height, building coverage, floor area ratio, off- street parking, loading or similar dimensional requirements of this chapter shall be deemed to be dimensionally nonconforming. No building permit shall be issued that will result in the increase of any such dimensional nonconformity, but any building or structure or portion thereof may be altered to decrease its dimensional nonconformity.”
- Lot Area – 6,750 Square Feet
- Lot Width – 75 feet
- Front Yard Setback – 20 feet
- Side Yard – 7 feet each, 18 combined.
- Rear Yard – 20 feet

5. In the R6.75 zoning district; the Applicants propose to increase the dimension nonconformity of lot width, side yard, and lot area.

6. The requested expansion of a dimensional nonconformity above must be evaluated based on the 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

7. Owner Jose Zuniga filed this application on August 12, 2021. A copy of the application is attached hereto and made a part hereof.

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

Hearing

9. A public hearing was commenced on September 20, 2021 and closed on September 20, 2021 prior to proper notice being completed by the applicant. Upon this discovery, the matter was properly noticed and the hearing reopened on October 19th, 2021, and closed on October 19, 2021. At the hearing, the public was afforded the opportunity to speak in favor of, in opposition to, or otherwise comment on, the application

10. Prior to the Public Hearing, the Board Members reviewed the full application package, which included but is not limited to, the completed Application form; Plan Examiner's Report, revised through April 2, 2021; photographs of the Property and surrounding area; survey of the Property, prepared by Kulhanek & Plan Land Surveyors, P.C., dated April 21, 1997; a copy of the ARB Information Search, issued by the City of Mount Vernon Buildings Department, dated February 13, 2020; Information/Violation Search results issued by the City of Mount Vernon Buildings Department; Affidavit of Sign Posting, dated September 7, 2021; Affidavit of Mailing, dated October 4, 2021; radius map, and list of property owners within the prescribed radius.

11. The Zoning Board of Appeals considered the subject application a Type II action pursuant to Section 617.5(c)(16) of the State Environmental Quality Review Act (SEQRA) (granting of individual setback and lot line variances and adjustments); and based on 617.5(c)(17) (granting of an area variance for a single-family, two-family or three-family residence), therefore ending the SEQRA process.

12. A Public Hearing was held on October 19, 2021 via zoom, a quorum was present consisting of the Zoning Board Chair and three (3) Members, for a total of four (4) Members present. The Zoning Board secretary received no written objections from the public.

13. The public was afforded the opportunity to speak in opposition to, in favor of, or otherwise comment

on the application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Dimensional nonconformity

14. Pursuant to Mount Vernon Zoning Code § 267-43, after weighing the benefit to the Applicants against the detriment to the health, safety and welfare of the neighborhood and community, the Zoning Board of Appeals hereby determines that the Applicants presented appropriate proof and have met the criteria necessary to obtain the requested variance for expansion of a dimensional nonconformity.

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

Upon information received at the public hearing and upon Applicants' submissions, including, but not limited to, the survey and photographs of the property, the Zoning Board finds that the property presently presents a dimensional nonconformity. The enclosure of the second floor of the porch will not truly increase this dimensional nonconformity, as the measurements of the property will not change. Therefore, in weighing the benefit to the Applicants against the detriment to the health, safety and welfare of the neighborhood and community, the Zoning Board concludes that the enclosure of the second story porch on this particular property is not substantial.

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 Applicants' submissions, including, but not limited to, the survey, photographs of the property, and ARB and Building Department information search results, the Zoning Board finds that the property has existed with an unenclosed second story porch for several years and there is no history of complaints from the surrounding community against the Property for said

porch. Moreover, the Zoning Board finds that the granting of an area variance for dimensional nonconformity 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. Accordingly, the Zoning Board concludes that granting the area variance for dimensional nonconformity 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 Applicants' submissions, including, but not limited to, the survey and photos of the surrounding neighborhood, the Zoning Board finds that the expansion of the dimensional nonconformity is not a substantial change. The Applicant proposes only to enclose the second story porch in order to allow more living space within the residence. The Zoning Board concludes that the granting of the requested area variance does not run contrary to Mount Vernon Zoning Code in that such grant will neither increase nor decrease the dimensional nonconformity; rather, it will remain the same that currently exists.

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

Pursuant to § 267-11(C) of the Mount Vernon Zoning Code, the Zoning Board deems the subject Property to be dimensionally nonconforming due to the above-mentioned lot width, lot size, and side yard measurements. This is a situation that cannot be remedied without the deconstruction of the house in its entirety. The enclosure of the second story front porch does not increase this dimensional nonconformity measurements but still allows the Applicant more living space for the residents of the home. The Zoning Board concludes that, in this instance, there is an inability to alleviate the difficulty by some method feasible for the Applicants other than a variance.

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

Upon information received at the public hearing and upon Applicants' submissions, including, but not limited to, the survey, the Zoning Board finds that second story porch has existed on the premises when Applicants purchased the Property.

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 finds that the dimensional nonconformity existed prior to Applicants' purchase of the Property. The Zoning Board therefore concludes that the difficulty alleged by the Applicants was not self-created.

DETERMINATION

15. For the foregoing reasons, the Board determines that the requested area variance for expansion of a dimensional nonconformity complies with Chapter 267 of the Mount Vernon City Code.

16. Following deliberations, on October 19, 2021, a motion to grant the requested area variance was made by Board Member Cutler, seconded by Board Member Darden, and carried by a majority vote of the four (4) Zoning Board members present.

Accordingly, it is therefore:

RESOLVED, that the application of Jose Zuniga, for a certain AREA Variance (dimensional nonconformity) at the premises identified as 419 South First Avenue, designated as Block 3128, Lot Number 37, on the Tax Assessment Map No. 169.31 of the City of Mount Vernon, New York, is hereby granted with the conditions listed herein.

Conditions

1. That, Applicant shall adhere to any and all rules and regulations of City Boards, Departments and Agencies, and the County, if applicable, involved or affected by this application.

2. That all property taxes shall be paid and current prior to the issuance of the Building Permit. Certification from the City that all required City and County taxes have been paid to date (including due proof that payment for said taxes has been presented and cleared by the Applicant's financial institution) shall be submitted to the Zoning Board, Planning Department and Building Department for the file prior to issuance of the Building Permit.

3. That, all conditions recited herein shall be noted on the original and all file copy prints of the site plan.

4. That, pursuant to § 267-43(D)(3) of the Mount Vernon Zoning Code, all the above conditions shall be incorporated into the building permit(s) and certificate(s) of occupancy.

[this space intentionally left blank]

Vote Record

Resolution Re: 419 South First Avenue

Date: October 19, 2021


Ayes: 4

Nays:

	Yes/Aye	No/Nay	Abstain	Absent
Chair Elvira Castillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conrad Cutler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shez Darden	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry Solly	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date Approved: October 19, 2021

Date Signed: 11-8, 2021

By: 
Elvira Castillo
CHAIR