

**REGULAR MEETING  
ZONING BOARD OF APPEALS**

Nyack Village Hall  
Nyack, New York

June 27, 2016

Present: Catherine H. Friesen, Chair  
Mary Ann Armano  
John Dunnigan  
Ellyse Berg  
Roger Cohen

**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 hearings held on May 23, 2016 and June 27, 2016,

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

-----X  
In the Matter of the application of Miguel Castaneda for El  
Tequila Corp. (12 South Franklin) for an Area Variance  
from VON Code Section 360-4.5B(3) to permit a deficit of  
6 off street parking spaces  
-----X

The Zoning Board of Appeals having held a public meeting on May 23, 2016 and June 27, 2016, and due deliberations having been made;

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 petitions the Zoning Board for the variance noted 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. Testimony of Miguel Castaneda, Owner, and Robert Lewis, Esq., on behalf of the Applicant;
3. Minutes of the Planning Board dated April 11, 2016 and June 6, 2016;
4. ZBA members knowledge of the site in question, including site visits by all members of the ZBA;

5. Testimony from the following members of the public: Terri Grenier and Rajeve Sathiyamurthy.

**THIRD:** The site in question, a 1307 square feet space in the DMU zoning district, has been vacant for 14 years and is adjacent to a warehouse. The Applicant is a potential lessee of the site, and has permission of the owner to make this application. The applicant proposes to convert the space, which was previously used for retail, into a bar and restaurant. There are three apartments located on the second floor of the property. The proposed use requires 6 parking spaces, and there is no on-site parking.

**FOURTH:** The Applicant proposes to install a bar with 8 seats and a restaurant containing ten tables with a food prep area, but no kitchen. There is no outside space. Although the Applicant described his proposal on his application for a variance as a “Family Oriented Restaurant +Bar-no kitchen”, it was never presented as such to the ZBA and, as set forth below, the proposed hours of operation are typical for bars and taverns and are not family-friendly. The Applicant proposes to install sound proofing to prevent noise from disturbing the upstairs residents and has indicated that a closing time of 1 am on Sunday through Wednesday nights and 3 am on Thursday through Saturday would be economically feasible.

**FIFTH:** Following a public hearing at which it received input from the Village Planner, the Nyack Planning Board has issued a positive recommendation to this Board in relation to the variance request with the conditions that the hours of operation not extend beyond 10 pm, the use of the space not contain billiards, sound attenuation be installed to protect the upstairs tenants, the Applicant obtain the necessary approvals from the NYS Liquor Authority and that the distance from the site to a nearby church be verified. While the Applicant agreed with the 10 o’clock closing time when he initially appeared before the Planning Board, the Applicant later reconsidered as noted in paragraph 4 and requested that the Zoning Board permit it to remain open until 3 am. The ZBA sent the matter back to the Planning Board to receive its recommendation in light of the later closing time. Upon further reconsideration, the Planning Board offered no recommendation to the ZBA, with at least one member noting that the 10pm closing time was a significant factor in making its initial positive recommendation.

**SIXTH:** The site is located on Burd Street, south of the Main Street bars and in close proximity to seven residences in addition to the upstairs apartments. Noise created by bar patrons entering and exiting the premises on Main Street and Broadway, standing outside to smoke, and returning to their cars is a continuing source of concern in a relatively small downtown area. The current application is outside that small area, while still within the DMU.

**SEVENTH:** The ZBA has previously determined in similar applications that there are no available parking spaces from nearby establishments by which the Applicant could take advantage of VON Code Section 360-4.5(E). The ZBA further notes that the site in question is located within walking distance of metered public parking lots owned and maintained by the Village.

**EIGHTH:** This is a Type II Action under SEQRA with no environmental impact.

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

### **CONCLUSIONS OF LAW:**

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 variance creates an undesirable change in the character of the neighborhood or a detriment to nearby properties. 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 3, 4, 5 and 6. (5-0).

**SECOND:** That the Applicant has demonstrated that there are no other means by which he could achieve his purpose without the requested variance. 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 paragraph 3 and 7. (5-0)

**THIRD:** That the variance is 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 paragraph 3. (5-0)

**FOURTH:** That the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district to the extent it will generate nighttime noise on an otherwise quiet street. 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 6 and 8. (5-0)

**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 3 and 4. (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 variance applied for should be DENIED.

On a roll call, the vote was as follows:

Ayes: 5 (Friesen, Dunnigan, Armano, Berg, Cohen)

Nays: 0

Abstain: 0

Catherine H. Friesen  
CATHERINE H. FRIESEN, Chairperson  
Zoning Board of Appeals, Nyack.