

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

November 28, 2016

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

In Memoriam:
Raymond O'Connell

Absent:

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 hearings held on November 28, 2016.

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

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In the Matter of the application of Enrique Almonte (145 Main Street) for an Area Variance from VON Code Section 360-4.5B(3) to permit a deficit of 3 off street parking spaces

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The Zoning Board of Appeals held a public meeting on the 28th Day of November 2016, 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 Enrique Almonte petitions the Zoning Board for the Variance as set forth 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 Enrique Almonte, Applicant, and Julia Khomut, DCAK Architecture, and Robert Lewis, Esq., on behalf of the Applicant.
3. ZBA members knowledge of the site in question;
4. Site visits by all members of the ZBA;
5. Testimony of members of the public: none.
6. Planning Board Minutes dated November 7, 2016.

THIRD: The site in question is located in the DMU zoning district. The Applicant leased the property in 2008 pursuant to the local zoning regulations.

FOURTH: The Applicant seeks to legitimize its use of the 1,047 square foot space which has a certificate of occupancy as a takeout restaurant, but which has been used as a restaurant where food is consumed on the premises. The proposed hours of operation are from 10 am to 11:00 pm Sunday through Thursday and from 10 am to 12:30 am on Friday and Saturday. The change of use creates a deficit of 3 parking spaces, for which the applicant seeks a variance.

FIFTH: The Nyack Planning Board declined to issue a recommendation to this Board in relation to the variance request.

SIXTH: 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, and that it approved a very similar application (116A Main Street) in September with conditions on its hours of operation.

SEVENTH: This is an Unlisted Action under SEQRA with no environmental impact.

The above Findings 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 does not 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 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 paragraphs 3 and 4. (5-0)

THIRD: That the variance is 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 paragraph 3 and 4. (5-0)

FOURTH: That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. 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 4 and 7. (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 GRANTED with the following conditions, to which the Applicant has agreed:

- 1) Applicant is to submit any additional documentation and pay any additional fees as required by the Building Department; and
- 2) Hours of operation will be from 10 am through 11 pm Mondays through Thursday, and from 10 am to 12:30 am on Friday and Saturday.

On a roll call, the vote was as follows:

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

Nays: 0

Abstain: 0

/s/ Catherine H. Friesen
CATHERINE H. FRIESEN, Chair
Zoning Board of Appeals, Nyack.

