

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

June 22, 2015

Present: Catherine Friesen, Chair
John Dunnigan
Robert Knoebel, Sr.
Mary Ann Armano
Ellyse Berg
Roger Cohen (alternate)

In Memoriam:
Raymond O'Connell

Absent: None

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 18, 2015, and June 22, 2015.

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

-----X

In the Matter of the application of Ricardo Cerdeira (159 Main Street) for an Area Variance from VON Code Section 360-4.5C(2), Table 4-2, to permit a deficit of 3 off street parking spaces

-----X

The Zoning Board of Appeals having held public meetings on May 18, 2015, and June 22, 2015, 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, including a memorandum of Alicia M. Crowe, Esq. to the Village Planner, Bob Galvin, dated April 30, 2015;
2. Testimony of Ricardo Cerdeira, Applicant, and Alicia M. Crowe, Esq., on behalf of the

- Applicant.
3. Minutes of the Planning Board dated May 4, 2015;
 4. Memorandum of Bob Galvin to the Planning Board dated May 1, 2015;
 5. Letter from Kevin A. Nulty, Chief of Police, Orangetown Police Department, to Mayor Jennifer Laird-White dated December 2, 2013, and letter from Kevin A. Nulty to James Politi, the Village Planner, dated June 20, 2014;
 6. Negative Recommendation of the Planning Board with respect to the requested variance;
 7. ZBA members knowledge of the site in question, including site visits by all members of the ZBA;
 8. Testimony from the following member of the public in support of the application: Ed Mooney, 472 Mountainview Ave.

THIRD: The site in question, a street level storefront of less than 800 square feet at 159 Main Street, is located in the DMU zoning district. The Owner purchased the property in approximately the mid-1990s pursuant to the local zoning regulations. The Applicant has permission of the owner to make this application.

FOURTH: The premises in question was converted to a wine bar in 2013 after the applicant received a variance from VON Code Section 360-4.5C(2), Table 4-2, to permit a deficit of 2 parking spaces. A copy of the ZBA's May 20th resolution is attached hereto and incorporated herewith. The ZBA granted the application upon finding that the proposed establishment was intended to be small (approximately 800 square feet) with a maximum capacity of 20 patrons. The ZBA further found that the absence of outdoor service would mitigate noise concerns. The variance was granted upon the condition, to which the applicant agreed, that it was limited to the Applicant's establishment of a wine bar use at the premises serving food and beverages between the hours of 5 pm and midnight, and that variance would lapse upon any change of use or intensity of use. The ZBA further noted in its finding that the provision in the Village Code authorizing payment in lieu of providing required parking spaces was unavailable to the Applicant because it was contingent upon an application for site development review which the prior application did not require.

FIFTH: In May, 2014, the Applicant filed a site plan application, requesting permission to add 500 square feet of outdoor space in the rear of the premises, but withdrew it after the Nyack Planning Board expressed concerns about noise and safety. In 2015, the Applicant filed a renewed, scaled-down application seeking permission to incorporate 475 square feet of rear yard into the existing use by adding optional seating for 12 persons in the rear of the premises. Patrons would be served indoors by the wine bar only, with proposed hours of operation beginning at 5 pm and terminating no later than 10:00 pm on Monday through Thursday and no later than 11:00 pm on Friday through Sunday. The Applicant proposed that the rear yard seating be provided between May 15th and October 15th. The expanded use requires additional parking spaces, for which the applicant seeks a variance.

SIXTH: Following a public hearing at which the Planning Board received input from the applicant and the Village Planner, the Planning Board issued a negative recommendation to the ZBA with respect to the requested variance. The Planning Board found that the planned improvements were not in keeping with the nature and use of rear yards in the Village, that similar applications have been denied, that the Police Department is adamantly against additional seating in the rear yard, and

that there was no public benefit to granting more rear yard drinking establishments. The site plan application remains open.

SEVENTH: The site in question is located across the street from a public parking lot where parking is free after 5 pm. Nonetheless, a parking variance is required by the Village Code. The Applicant established that a provision of the Code permitting payment of a fee in lieu of providing the required parking spaces is not available because the Village Board has not yet determined an appropriate fee.

EIGHTH: The Orangetown Police Department in its letter dated June 20, 2014, expressed strong concerns about access to the rear yard through a stockade fence and about potential disruption to the neighborhood in the event that a less serene tenant takes occupancy of the space. The Zoning Board shares the concerns of the Planning Board about the Police Department's issues with this application.

NINTH: The proximity of this establishment and any possible successor tenant to neighboring dwellings raises significant noise concerns that are not obviated by the proposed screening and awning. While this tenant has created a serene environment for a mature clientele, the Zoning Board recognizes that there are no guarantees that a future tenant will establish a similarly restrained atmosphere.

TENTH: The Zoning Board is sympathetic to the application, but finds that it would be more appropriately handled through a special permit process where the nature and type of establishment could be limited.

ELEVENTH: The proposed action is a Type II action under SEQRA.

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 does create 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 6, 8 and 9. (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 5 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 paragraphs 3, 4, 5 and 6. (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. 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, 5, 6, 8 and 9. (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.