

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

May 20, 2013

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

In Memoriam:
Raymond O'Connell

Absent: Robert Knoebel, Sr.

The following resolution was offered by Member Armano, seconded by Member Berg, and carried based upon a review of the evidence presented at the public hearing held on May 20, 2013.

**BOARD OF APPEALS
VILLAGE OF NYACK, COUNTY OF ROCKLAND**
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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 2 off street parking spaces

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The Zoning Board of Appeals having held a public meeting on May 20, 2013, 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 Ricardo Cerdeira, Applicant, and Frank DeVita, owner of the property;

3. Minutes of the Planning Board dated May 6, 2013;
4. ZBA members knowledge of the site in question, including site visits by all members of the ZBA;
5. There was no testimony from members of the public.

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, and has entered into a lease for the site and commenced demolition. The applicant proposes to convert the space, which was previously used as a hair salon but has been vacant since August 2012, into a wine bar, which will be open from 5 pm to midnight with a maximum capacity of 20 people plus one employee. The wine bar will serve wine, beer, port and champagne, but not hard liquor. The Applicant is not seeking a sidewalk permit.

FOURTH: Under VON Code Section 360-4.5C(2), Table 4-2, a use classified as “bar or tavern” requires more parking spaces per square foot than a use classified as a “personal service”. Pursuant to VON Code Section 360-4.5B(3) , “the owner must provide (or receive a variance for) parking equal to the difference between the parking requirement for the existing use and the parking requirement for the new use”. In this case, there is a deficit of 2 parking spaces.

FIFTH: The Nyack Planning Board has issued a positive recommendation to this Board in relation to the variance request with the suggested conditions that it be 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, that the Applicant be required to return the Planning Board and the Zoning Board to renew the variance upon each change of use, and that the variance will otherwise lapse or expire upon any change of use.

SIXTH: It is a stated goal of the Comprehensive Master Plan (“CMP”) to enhance the fine-grain mixed-use character of downtown by (among other means) maintaining a diverse mix of land uses and by strengthening regulations for bars and outdoor dining to address concerns such as noise, crime and proximity to residences. While noting that “Nyack has increasingly become a nightlife destination for Rockland County and nearby areas” and recognizing that bars and restaurant patrons are “generally responsible and add to downtown’s vitality and economic health”, the CMP expressed concerns about the impacts of noise and rowdy patrons on adjacent areas, as well as increased traffic and parking demands.

SEVENTH: The proposed establishment is small and is anticipated to have a quiet atmosphere, with an estimated capacity of 20 patrons and a closing time of midnight. The absence of outdoor service, front or back, will mitigate noise concerns.

EIGHTH: When the Zoning Law was amended in 2010, the Village Board chose to maintain parking requirements in the downtown area, and to maintain a disparity in the parking requirements between personal service and bar/tavern use. The Village Board also enacted a provision that permits payment of a fee in lieu of providing the parking spaces required by the

Code (VON Code 360-4.5(L)), but this provision is not available to the Applicant because it is contingent on an application for site development review and is not available in the context of an application for a variance. In addition, the Applicant has provided proof that he attempted to find available parking from nearby establishments in order to take advantage of VON Code Section 360-4.5(E), but that no spaces were available to him at this time.

NINTH: The site in question is located within walking distance of metered public parking lots owned and maintained by the Village.

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 of the Village Law of the State of New York as follows:

FIRST: That the proposed variance does not create an undesirable change in the neighborhood. (5-0)

SECOND: That no detriment to nearby properties will result from granting the variance. (5-0)

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

FOURTH: That the variance is not substantial in light of the current conditions on the site. (5-0)

FIFTH: That the hardship is self-created. (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 condition:

- (1) It is an express condition of the variance, agreed to by the Applicant, that the variance shall be 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. The variance will lapse upon any change of use or intensity of use.

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.