REGULAR MEETING ZONING BOARD OF APPEALS

Nyack Village Hall June 27, 2016

Nyack, New York

Present: Catherine H. Friesen, Chair

Mary Ann Armano In Memoriam:
John Dunnigan Raymond O'Connell

Ellyse Berg Roger Cohen

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 June 27, 2016.

BOARD OF APPEALS VILLAGE OF NYACK, COUNTY OF ROCKLAND

In the Matter of the application of Vibes Café (17 North

Franklin) for an Area Variance from VON Code Section 360-3.2E(6)(b)(2) to permit outdoor dining within 50 feet of the MFR-1 zone

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The Zoning Board of Appeals having held a public meeting on 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

<u>FIRST:</u> 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 Rajeve Sathiyamurthy, Owner, on behalf of the Applicant;
- 3. Minutes of the Planning Board dated 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 Kim Sippel.

THIRD: The site in question is located in the DMU zoning district. The applicant wishes to use a patio for outdoor dining and to install a ramp to permit handicap access. The site is less than 50 feet from the MFR zone and abuts residential properties to its rear on Bridge Street.

FOURTH: The proposed dining area of the restaurant which will serve Caribbean food will seat 8-10 people. The Applicant proposes to allow outdoor dining from 11 am to 11 pm, agrees to abide by Nyack's zoning regulations governing outdoor dining and sidewalk cafes, and has agreed to reasonable restrictions on amplified music.

<u>FIFTH:</u> Following a public hearing, the Nyack Planning Board gave conditional site plan approval and issued a positive recommendation to this Board in relation to the variance request.

SIXTH: 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 with the conditions to which the Applicant has agreed does not 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 3 4, and 5. (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. (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 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 3, 4, 5 and 6. (5-0)

<u>FIFTH:</u> 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) The Applicant is to adhere to all applicable rules and regulations governing sidewalk cafes pursuant to VON Code Section 360-3.2E(7)(d)(8) and (9) and VON Code Section 360-3.2E(6)(B)(5), specifically:
 - All outdoor café and sidewalk tables, as well as any furnishings used in association with the outdoor café area, shall be removed from the outdoor café area at or before 11 pm and
 - b. All windows and doors of the building shall be closed at or before 11 pm
- 2) No outdoor amplified music will be permitted after 9 pm on Sundays through Thursdays and 11 pm on Friday and Saturday.

On a roll call, the vote was as follows:

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

Navs: 0

Abstain: 0

Catherine H. Friesen

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