

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

October 25, 2010

Present: Catherine Friesen, Chair
Mary Ann Armano
John Dunnigan
Robert Knoebel, Sr.
Ellyse Berg

In Memoriam:
Raymond O'Connell

The following resolution was offered by Member Berg, seconded by Member Armano, and carried based upon a review of the evidence presented at the public hearing held on October 25, 2010.

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

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In the Matter of the application of Byunghee Chung (116A Main Street) for an Area Variance from VON Code Section 59-5.5B(3) to permit a deficit of 1 off street parking space

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The Zoning Board of Appeals held a public meeting on the 25th Day of October 2010, 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 Byunghee Chung petitions the Zoning Board for the Variances 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 Byunghee Chung, 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.

THIRD: The site in question is located in the DMU zoning district. The Applicant leased the property in April 2010 pursuant to the local zoning regulations. Proof has been provided to the Building Department that the owner of the property, Eddie Teitel, consent to the application.

FOURTH: Prior to making this application, the applicant leased the subject premises and converted a retail store to a combined bakery/market/sundries shop which has several tables. Pursuant to VON 59-5.5B3, “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”. The retail use required five spaces, and the proposed take-out restaurant use requires 6 spaces, resulting in a shortfall of 1 parking space.

FIFTH: The Nyack Planning Board has issued a positive recommendation to this Board in relation to the variance request. In making its recommendation, the Planning Board found that the proposed use of the premises promotes the eclectic use of downtown retail and is a predominantly daytime business.

SIXTH: It is stated goal of the Comprehensive Master Plan is to advance business interests in the downtown, especially on lower Main Street and the feeder streets off Broadway. It is another stated goal of the CMP to enhance the mixed-use character of downtown and to maintain a diverse mixes of land use. In this case, the applicant has demonstrated that the proposed take-out restaurant use is complementary to the retail use on the same site.

SEVENTH: When the Zoning Law was amended in 2009, the Village Board chose to maintain parking requirements in the downtown area, and to maintain a disparity in the parking requirements between retail and restaurant use, with retail stores required to provide 1 space per 400 square feet, and take-out restaurants required to provide 1 space per 300 square feet. 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 59-5.5, but the Applicant has demonstrated that 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 Board takes notice that it was demonstrated last month in connection with another nearby application for a parking variance that there is no available parking within a 1200 foot radius of the principal lot for purposes of providing required accessory parking spaces pursuant to VON Code Section 59-5.5(E)(1).

EIGHTH: Hours of operation will be 10 AM to 8 PM, seven days a week.

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 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 it could achieve its 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(s) applied for should be GRANTED.

On a roll call, the vote was as follows:

Ayes: 5

Nays: 0

Abstain: 0

/s/ Catherine H. Friesen