REGULAR MEETING
ZONING BOARD OF APPEALS

Nyack Village Hall
Nyack, New York

September 27, 2010

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

In Memoriam:
Raymond O'Connell

Absent: Mary Ann Armano

The following resolution was offered by Member Berg, seconded by Member Knoebel, and carried based upon a review of the evidence presented at the public hearing held on September 27, 2010.

BOARD OF APPEALS
VILLAGE OF NYACK, COUNTY OF ROCKLAND
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In the Matter of the application of Robert Silarski on behalf of Mertz Realty/Adam Lipson (owner of 100 Main Street) and Patti Aagard (lessee) for an Area Variance from VON Code Section 59-5.5B(3) to permit a deficit of 15 off street parking spaces

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The Zoning Board of Appeals having held a public meeting on September 27, 2010 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
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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 Robert Silarski, Applicant, and Patti Aagard;

3. ZBA members knowledge of the site in question, including site visits by all members of the ZBA;
4. Letters and e-mails submitted in support of the applicant by
   a. Former Mayor John Shields, dated September 13, 2010
   b. Richard Sussman, dated September 12, 2010;
   c. Bonnie Fletcher, on behalf of the American Red Cross, dated August 31, 2010;
   d. Anissa White-Walker, Director of Marketing and membership of the Chamber of Commerce, dated September 12, 2010;
   e. Cris Spezial, dated August 31, 2010;
   f. Comptom Maddox, dated September 11, 2010;
   g. Marie Somos, dated August 31, 2010;
   h. Maijia Kupris, dated August 31, 2010;
   i. Arnold Roufa, dated August 31, 2010;
   j. Carol Fleischmann, dated September 1, 2010
   k. Nan Gunderson, dated September 1, 2010
   l. Undated e-mail signed "Jan & Shel"
   m. Tommy Goodman dated September 6, 2010
   n. Heather Cornell, dated September 6, 2010
   o. Gail Rossi, dated September 7, 2010
   p. Bob Zampino, dated September 7, 2010
   q. Neil Borodkin, dated September 8, 2010
   r. Mike Sulcov, dated September 9, 2010
   s. Natasha Rabin, dated September 1, 2010
   t. Maija Laurens, dated September 2, 2010
   u. Thomas Cardullo, dated September 9, 2010
   v. Jane Berkowicz, dated September 9, 2010
   w. Lori Barth, dated September 10, 2010
   x. John Moses, dated September 11, 2010
   y. Litany Burns, dated September 12, 2010
   z. Joe Hazucha, dated September 12, 2010
   aa. Anthony, Nick & Joe Mellilo, dated September 13, 2010;
   bb. David Budway, undated;
   cc. Marianne Olive, undated;
   dd. Jan Haber, on behalf of the Nyack Villager, undated; and
   ee. Additional letters submitted at the public hearing on September 27th, copies of which are maintained in the files of the Building Inspector.

5. A petition signed by approximately 70 members of the public (including, but not limited to, residents of Nyack) supporting the expansion of Reality Bites;

6. Public testimony in support of the application by:
   a. Frank Mancione;
   b. Manonce Celestine;
   c. Steve Manachelli;
   d. Stephanie Genavese;

e. Elizabeth Haras;
f. Mr. Mateo;
g. Glen Osonitschi;
h. Julian Mostel; and
i. Maya Lawren.

THIRD: The site in question, located at 100 Main Street, is located in the DMU zoning district. The Owner purchased the property in approximately 1995 pursuant to the local zoning regulations. Patti Aagard leases space on the first floor of the building and, since 2004, has operated a restaurant known as "Reality Bites". The Applicant has submitted proof to the Building Department that she has permission of the owner to make this application, and Ms. Aagard represents that she intends to sign a lease giving her a further 15 year extension to operate "Reality Bites". In addition to "Reality Bites", portions of the first floor and mezzanine level of the building are occupied by an internet sales and service operation. According to the Applicant, while Reality Bites was originally classified as a "take out restaurant", the operation has evolved to the point where eat-in patrons out-number take-out patrons. In addition to re-classifying the restaurant for zoning purposes under the Code as a "Restaurant", the Applicant also wishes to expand the restaurant to occupy the first floor and mezzanine space currently used by the internet sales and sales operation, whose use under the Code is classified as "Retail sales and service".

FOURTH; Under VON Code Section 59-5.5, a use classified as "Restaurant" requires more parking spaces per square foot than uses classified as either "Restaurant-Take out" or "Retail Sales and Service". 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 current uses collectively require 11 parking spaces (five for restaurant-takeout and six for retail sales and services), while the proposed use of the first floor and mezzanine requires 26 spaces, resulting in a shortfall of 15 parking spaces.

FIFTH: The Nyack Planning Board has issued a positive recommendation to this Board in relation to the variance request by way of a split 4-1 decision.

SIXTH: It is a stated goal of the Comprehensive Master Plan ("CMP") 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 addition, it is a further stated goal of the CMP to provide live/work space for artists in the downtown area recognizing that such is a "way to stabilize or revitalize older downtown and urban areas". In this regard, the Applicant has presented testimony that her business tends to attract a more mature crowd, and various artists have written letters and given public testimony about the importance of Reality Bites to Nyack's artistic vibrancy. Further testimony established that Ms. Aagard's business provides a venue for local jazz and blues artists who would not otherwise have an opportunity to perform in Nyack.

SEVENTH: 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 retail and restaurant use, with retail stores required to provide 1 space per 400 spare feet, take-out restaurants to provide 1 space per 300 square feet, and restaurants required to provide 1 space per 150 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 59-4.5, 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 Applicant has provided proof that there is no available alternative parking within a 1200 foot radius of the principal lot for purposes of providing required accessory parking spaces pursuant to VON Code Section 59-45(E)(1).

EIGHTH: 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 4-0.

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. (4-0)

SECOND: That no detriment to nearby properties will result from granting the variance. (4-0)

THIRD: That the Applicant has demonstrated that there are no other means by which it could achieve its purpose without the requested variance. (4-0)

FOURTH: That the variance is substantial in light of the current conditions on the site. (4-0)

FIFTH: That the hardship is not self-created. (4-0)

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 recommendation:

That the Applicant create a valet parking plan in conjunction with other local establishments and/or work with the Village Board to come up with alternative parking plans for the downtown area.

On a roll call, the vote was as follows:

Ayes:	4
Nays:	0
Abstain:	0

/s/

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